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KINNAKEET SHORES SUBDIVISION  
PHASES 19 and 21

DECLARATION AND RESTATEMENT OF PROTECTIVE COVENANTS AND  
RESTRICTIONS

WHEREAS, Kinnakeet Shores General Partnership, as the original Declarant, filed a Declaration of Protective Covenants and Restrictions for Phase Three of Kinnakeet Shores Subdivision that appears in Book 487, Page 670 of the Dare County Registry, and subsequent amendments have been filed with respect to later phases of Kinnakeet Shores appearing in Book 546, Page 589 (Phases 4 and 5), Book 560, Page 789 (Phase 6), Book 564, Page 545 (Phase 6, Soundside), Book 629, Page 341 (Phases 7 and 8), Book 1339, Page 164 (Phases 9, 10 and 11) Book 867, Page 731 (Phase 12) and Book 1281, Page 610 and amended in Book 1330, Page 46 (Phase 15); Book 1450, Page 52 (Phase 17); Book 1511, Page 39 (Phase 18) and Book 1511, Page 40 (Phase 22); and

WHEREAS, Outerbanks Kinnakeet, Inc. (herein the "Declarant") has succeeded to the rights of the original Declarant by transfer from Kinnakeet Shores General Partnership by Deed recorded in Book 1270, Page 469 of the Dare County Registry to Outer Banks/Kinnakeet Associates, LLC, and in turn to Declarant by Deed recorded in Book 1429, Page 323 of the Dare County Registry. Declarant, being owner of all land and interests in Phases 19 and 21, desires by this Declaration to impose the following covenants, which are consistent with the general scheme of development for Kinnakeet Shores, as originally set out in the Declaration for Phase Three and subsequently recorded phases:

NOW THEREFORE, the Declarant does hereby declare that the Declaration of Protective Covenants and Restrictions herein set forth are hereby imposed upon all numbered Lots in Phases 19 and 21, Kinnakeet Shores Subdivision as shown and delineated on the maps or plats entitled Final Plat, Kinnakeet Shores Phase 19 recorded in Plat Cabinet 6 Slides 26-27, Dare



County Registry and Kinnakeet Shores Phase 21 recorded in Plat Cabinet B, Slides 28-29 (herein the "Lots"), and any amendments or supplements hereafter recorded, all of which will run with the land, and shall be binding upon the Declarant, its successors, grantees and assigns, and upon all subsequent owners of Lots as shown on the aforesaid plats. Articles I through V hereinafter are a restatement and modification of the general covenants and restrictions that carry forth the general scheme of development of Kinnakeet Shores Subdivision and integrate Phases 19 and 21 Lot owners into the Greater Kinnakeet Shores Homeowners Association, Inc. (hereinafter the "Owners Association"). Articles VI and VII apply specifically to Phases 9, 10, 11, 17, 18, 19, 21 and 22 and subsequent phases brought under its authority to create the Kinnakeet Shores Recreation Association, Inc. (hereinafter the "Recreation Association"), an organization separate from and owning and managing property different than the Owners Association. For all purposes hereinafter, "Declarant" shall mean the named Declarant and any successor or assign that shall acquire more than fifty percent (50%) of Lots and undeveloped acreage in the area now owned by the named Declarant, if such successor or assign shall not be named as successor Declarant in any instrument of conveyance, or any successor or assign specifically named as successor Declarant in any instrument filed for record in the Dare County Registry. There shall be but one Declarant at any one time hereunder.

To the extent covenants and restrictions set out in the Declaration of Protective Covenants and Restrictions heretofore filed with respect to Kinnakeet Shores are not set out herein, they are and shall be deemed omitted and shall not apply to Phases 19 and 21. To the extent covenants and restrictions set out herein differ from those set out in the Declaration of Protective Covenants and Restrictions heretofore filed, they shall be deemed amended as provided herein with respect to Phases 19 and 21. Articles VI and VII appear only in the prior recorded restrictions relating to Phases 9, 10, 11, 17, 18 and 22 of Kinnakeet Shores.

#### ARTICLE I

#### RESIDENTIAL AREA COVENANTS

##### 1. Permitted Uses: Commercial Uses Prohibited.

A. No Lot shall be used except for residential purposes. No business or business activity may be conducted upon the property at any time, except for home business conducted by phone, computer or mail that does not involve regular deliveries (other than US mail or overnight deliveries) or employees regularly working at the property other than the owner or resident; provided however that nothing herein shall preclude the Declarant from using all or part of the dwellings owned by it for the purpose of carrying on business directly related, but not limited to the development, management or sale of property of the Subdivision.

B. No residence constructed on a Lot shall be submitted by contract or recorded agreement as a condominium or to fractional ownership having more than four (4) family units, or other entities, as owners.



2. Permitted Structures. No building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family residence and Accessory Structures, as defined herein, approved in accordance with the terms of Paragraph 3 of this Article. The Architectural Review Committee (designated and also referred to herein as the "ARC") shall establish standards for siting of all structures, exterior colors, exterior materials, roof materials, roof pitch and roof breaks, decking, rails, pickets, exterior lighting and other matters referred to herein. All structures shall be built pursuant to the standards adopted by the ARC. The standards may be changed from time to time provided that the changed standards are filed with the Owners Association. No improvement or structure may be erected, altered, placed or permitted to remain on any Lot shown on the aforesaid plat except as provided herein. Dwellings constructed in Phases 19 and 21 shall have not less than 3000 square feet of enclosed heated area. The calculation of enclosed heated area shall not include garages, decks, porches and walkways. "Accessory Structures" as used herein shall mean all permitted structures other than the primary residential building located within a Lot, and may include a garage, a guest house, a pool and pool house, decks and patios, or combinations thereof.

3. Architectural Control. For so long as the Declarant shall own and offer for sale Lots in the Subdivision (which term, unless the context clearly indicates otherwise, means all present and future phases of Kinnakeet Shores, whose owners are members of the Owners Association), the Declarant shall appoint, and shall have the power to remove members of the ARC. Thereafter, members of the ARC shall be appointed by the Board of Directors of the Owners Association. The initial terms of the members of the ARC shall be one, two, and three years each. Ownership of property in the Subdivision shall not be a requirement for appointment to the ARC. Subject to the approval of the directors of the Owners Association, the ARC may employ professionals to render services and to advise it, including but not limited to, surveyors, attorneys, engineers and architects. The Owners Association shall pay the cost of such professional services.

No building, structure, or site work preparatory to construction, shall be commenced, altered, repaired, maintained or reconstructed on any Lot until the plans and specifications for such work have been reviewed and approved in writing by the ARC. All approved plans shall be signed by at least two members of the ARC. Before commencing such review, a Lot owner shall submit to the ARC a complete set of plans and specifications, including, but not limited to, a site plan, a foundation plan, a Lot survey by a North Carolina registered surveyor, a floor plan or plans, elevations of all sides, a schedule of proposed exterior colors and materials, and any other schedules required by the ARC in order for it to determine if its adopted standards will be satisfied. No changes or subsequent alterations shall be made to the site or building without the express written approval of the ARC. The ARC may approve or conditionally approve the building site location, the plans or specifications, or it may refuse approval upon any grounds, including purely aesthetic considerations, which in its sole discretion shall appear warranted to protect the beauty and harmony of the Subdivision. In the event the ARC fails to approve or disapprove said plans and specifications within 45 days after receipt of a written request therefore, accompanied by all of the requirements, then such approval shall not be required. The ARC, the Declarant, the Owners Association, their successors, assigns or agents shall not be responsible for any structural defects in the plans or specifications of any building or structure erected according to such plans and specifications, or for



mislocation of structures on the Lot, and the ARC and the Declarant, their agents, successors or assigns, shall have the right, but no affirmative duty, to inspect any construction for the purpose of ascertaining its compliance with the approved plans and specifications.

Where construction of any improvement required to be approved has not commenced before the expiration of 6 months following approval, said approval shall be void and of no effect; the plans for such improvement shall be resubmitted to the ARC for reconsideration, and the ARC may, in its discretion, either confirm its earlier approval of the plans or disapprove them.

4. Subdivision or Resubdivision of Lots. No Lot shall be subdivided or re-subdivided to create an additional Lot or Lots. There may be added to or combined with any Lot, however, as shown on the recorded plat, all or a portion of another Lot or Lots to produce a larger Lot and in such event, any boundary line changes (as well as any boundary line changes within the Subdivision for any reason whatsoever) shall require the written consent of the Declarant, or, if applicable, the ARC. When one owner acquires two or more adjoining Lots or a portion of a Lot contiguous with a whole platted Lot, then in that event, the adjoining one or more Lots or a portion thereof may be used as one Lot, in which event the side line easements and set backs referred to herein shall apply to the outside perimeter of the property line of the combined Lots acquired by said property owner .

5. Building Locations. The ARC has the right to approve the exact location of any building to be located on the Lot.

6. Setbacks and Building Lines. No building shall be erected or maintained on any Lot closer than 35 feet from the front property line, nor closer than 10 feet from the side property lines, nor closer than 20 feet from the rear line. Where a greater setback is shown on the subdivision plat the same shall apply instead of the setbacks in this paragraph. The front line shall be the shortest line adjacent to a street.

7. Completion of Building. All construction shall be completed within 12 months from the start thereof, provided that the ARC may extend such time when, in its opinion, the conditions warrant such extension.

8. Utilities and Cable TV. All utilities and cable TV connections and lines must be installed underground when and as underground service is available and at the expense of each individual Lot owner. The erection of any exposed antenna shall be done only with the approval of the ARC.

9. Screening. Each Lot owner shall provide screening from the public view, approved in writing by the ARC, for garbage stations, fuel tanks, service yards, air conditioning units, clothes lines, water tanks, rubbish storage receptacles, or for any other permanent facility which the ARC, in its sole opinion, shall require to preserve the beauty and harmony of the Subdivision.

10. (This Section Intentionally Omitted)



11. Temporary Structures. No temporary structures, such as a trailer, mobile home, tent or shack, shall be constructed or placed upon any Lot before, during or after completion of construction of any buildings and structures except for such structures as are normally used by construction contractors during the period of construction. Such temporary structures shall be promptly removed after completion of construction and may not be used as residences while on the property.
12. Vegetation and Fill. No existing vegetation or sand dunes shall be disturbed during construction without the express written consent of the ARC and until it approves the owner's proposal for the restabilization of any such disturbed area. No Lot shall be filled by more than 2 feet of material placed on the ground surface without first obtaining the written approval of the ARC.
13. Occupancy. No single-family residence erected upon any Lot shall be occupied in any manner prior to completion of construction and until the ARC has verified compliance with these covenants and with general compliance with the plans and specifications submitted and approved pursuant to Paragraph 3 of this Article; nor shall any residence, after completion of construction, be occupied until it complies with the approved plans and specifications, the requirements herein and all other covenants, conditions reservations and restrictions herein set forth.
14. Signs. Except as herein provided, no signs except signs giving the name of the house or owner, or rental agent identification signs shall be erected on any Lot. Permitted signs shall be no larger than six (6) square feet in area. After construction of a home, all signs shall be attached to the home and no freestanding signs shall be permitted. No signs shall be illuminated. The Declarant shall not be prevented from erecting such signs as may be deemed necessary to the operation or sale of Lots of the Subdivision or the normal conduct of its business, provided that any "For Sale" and "For Rent" signs so erected shall meet the requirements of this paragraph. Signs of general contractors and construction lenders may be erected during construction and must be removed prior to obtaining an occupancy permit. The ARC may enter upon the Lot of any owner and remove any sign violating these covenants and such entry by a member of the ARC shall not be deemed a trespass. The sign so removed may be left on the Lot to be removed from the premises or destroyed by either the Lot or sign owner.
15. Fences. No fences of any kind shall be permitted in the Subdivision, except such fences as shall be placed in common areas and recreational amenities by the Declarant, the Owners Association or the Recreation Association, except that required or optional safety fences (as opposed to screening fences) placed around pools or spas and screening fences for air conditioning units, garbage can storage and pet fences approved by the ARC may be constructed and shall be considered accessory structures. Exterior pet containment fencing approved by the ARC may be placed only under the house or within the house footprint.
16. Pets. No animals of any kind shall be kept, raised or bred on any Lot, except a reasonable number of the usual household domestic pets such as dogs or cats, provided that such pets shall not be kept, raised or bred for commercial purposes and provided that all pets are under the control of their owner.



17. Vehicle Storage. Upon construction of a residence, the building site owner shall provide a gravel, concrete, wood chip or other surface or combinations of surfaces acceptable to the ARC for its driveway and parking of at least four (4) vehicles off the street, or any greater number required by local zoning or building regulations. The storage of golf carts, travel trailers, campers, trucks and self-propelled mobile homes shall be in a garage or under the residential dwelling, or within auxiliary parking designated within the Subdivision. No one shall live in or occupy campers, travel trailers, trucks, self-propelled mobile homes and other vehicles while parked on the Lot.
18. Access to Subdivision Streets. Each Lot owner shall have a right of access, ingress and egress from N.C. Highway 12 across all Subdivision streets, except such streets that do no provide such access and are designated on the Recorded Plat or within Restrictive Covenants as access only for owners within a phase. Access within the Subdivision shall only be permitted to and over the Subdivision streets at points or locations approved by the ARC. All owners shall provide a temporary clay driveway for workers and for unloading construction materials prior to commencing construction. The Lot owner shall repair and bear the expense of repairing Subdivision streets damaged by vehicles in connection with the construction on the Lot. The ARC may require the Lot owners to install a culvert where a driveway intersects a Subdivision street and the Lot owner shall pay the cost of the culvert and its installation. At the time of this Declaration, Subdivision streets are private to Subdivision property owners and have not been dedicated for public use and are not maintained by any governmental agency.
19. Nuisances. It shall be the responsibility of each Lot owner to maintain the exterior of his residence and the surrounding grounds of his Lot in a clean, tidy and safe manner and shall prevent waste from occurring to any structure on his Lot. In the event of destruction of or other casualty to the building or structure, the premises shall be cleared and debris removed therefrom by the owner of the Lot within 90 days from the date of such casualty.
  - A. No Lot shall be used in whole or in part for the storage of anything which might cause such Lot to appear cluttered, unclean or obnoxious to the eye, nor shall any substance, thing or material be kept on any Lot that might emit foul or obnoxious odors, noises or other conditions that will or may disturb the serenity, safety or comfort of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to create a nuisance to the neighborhood.
  - B. After construction has commenced, the property owner and his builder shall keep the Lot clean and neat in appearance. An appropriate construction trash and rubbish container shall be maintained during construction. All construction trash and debris shall be placed in the trash container and removed from the premises by the owner or the contractor. The burning of trash and rubbish is expressly prohibited. No structure, including the residential building, shall be occupied until all construction trash, rubbish, debris and the trash containers have been removed from the premises.



C. No junk, wrecks or inoperative automobiles, trucks, buses or boats shall be permitted to remain on the property unless otherwise permitted by this Declaration nor shall unsightly material be stored thereon. Owners of unoccupied Lots shall at all times keep and maintain their property in an orderly manner and prevent the accumulation of rubbish and debris upon the premises.

20. Lot Maintenance. Each Lot owner shall keep his Lot cleared of unsightly underbrush, weeds, debris and lumber. If any Lot owner shall permit the same to exist on his property and fail to remove the same within 30 days after being requested to do so by the Owners Association, then the Association or its agents or employees shall have the right to enter upon the Lot for the purpose of cleaning, clearing or cutting the grass, underbrush to removing debris which, in the Association's opinion, detracts from the overall beauty or natural character of the neighborhood or adversely affects the safety of health of the residents, and such entry shall not be deemed a trespass. The expenses of entry and removal shall be the personal debt of the Lot owner(s) and shall also constitute a lien upon the land until paid and shall be collectible as an assessment for purposes of these Restrictive Covenants. The provisions of this paragraph shall not be construed as an obligation of the Declarant or the Association to provide such services. The Association and its agents are granted a right and easement of ingress and egress over the Lots subject to these covenants for the purposes of this paragraph.

21. Water and Sewage. Potable water and sewage connections shall be made with public or franchised providers. No wells or septic tanks will be permitted on any Lot. No outside toilets will be permitted under any circumstances, except those self contained temporary facilities used by construction workers during the period of construction of a dwelling on a Lot, and such units shall be removed after completion of construction or before occupation of the dwelling, whichever shall first occur.

22. Easements for Utilities and Drainage, Vegetation, Water Reuse. Declarant, on behalf of itself and/or such utility companies that may service the Subdivision from time to time, reserves a perpetual right, privilege and easement ten (10) feet wide along the front and rear lines of all Lots, and within easements shown on recorded plats of Lots, to construct, maintain, and operate in, upon, across and through said easement in a proper and workmanlike manner, electric, cable television, telephone, gas, sewer, water, drainage, water reuse and other conveniences and utilities and appurtenance necessary or convenient thereto, together with the right at all times to enter upon the said easement with men and equipment for the purpose of inspecting, altering and repairing the same. The Declarant reserves the right to maintain or otherwise keep clear any obstructions that may adversely affect the proper maintenance and operation of the various utility systems and further reserves a perpetual right to enter upon any Lot for the purpose of constructing or maintaining emergency drainage ways for the benefit, health and safety of the neighboring residents. In addition, by taking subject to these restrictions, each Lot owner agrees that it will accept spray discharge of reclaimed water on their Lot within that area within 35' of all adjacent street rights of way as shown on the recorded plat and as noted on the first page of the plat. These reservations, however, shall not be considered an obligation of the Declarant to provide or maintain any such utilities, services or easements. It is further provided that where any two or more Lots are in common ownership and



used as one building site the easements reserved herein shall be located around the outside perimeter of the combined Lots only.

23. Private Ocean Access. The Declarant reserves for the private use of all Subdivision property owners, their families and guests, and not for the general public, the private access easements running from the Subdivision streets to the boundary of the U. S. Park service, said easements being delineated and shown on the subdivision plats of Kinnakeet Shores. The Declarant further reserves the right to grant Lot owners and condominium or townhouse unit owners of subsequently platted phases or projects the right of access, ingress and egress over and on the ocean access easements from the Subdivision streets to the U. S. Park Service line; provided those subsequent Lot owners, condominium owners, or townhouse unit owners are required by the covenants and restrictions applicable to said subsequent phases and condominium or townhouse projects to share on a pro rata basis the cost of repairing, replacing, and maintaining the boardwalks, decks or other improvements on and within the ocean access easements.

## ARTICLE II

### COMMON ELEMENTS

1. Alterations. The Declarant, in fulfilling its general plan for improvement of the Subdivision or subsequent development of the Declarant's property (including any condominium or townhouse projects on Declarant's property), hereby reserves, with respect to those areas denoted as common elements, roads, bridges, and canals, the right to change and alter roads, boardwalks, trails and to install or alter utility and drainage facilities and such other facilities as are necessary or desirable for implementation of its plan of development (whether present or future) and implementation of this reservation of common elements. The right to change or alter the use of such property is reserved exclusively for the benefit of the Declarant or the assigns of its declarant rights. The Declarant shall have the right to convey such common elements to an appropriate governmental body for upkeep and maintenance or to the Owners Association, which shall accept such conveyance upon tender of a deed by the Declarant.
2. Bridges. Declarant expressly reserves to itself the right to build bridges or walkways across any natural or man-made canal, lagoon, creek or physical barrier. Nothing in this paragraph will be construed, however, as an obligation for the Declarant to provide or construct any such improvements; except as shall be shown on any recorded plat.
3. Common Elements, Areas, and Properties. To insure that land designated as common elements, properties or areas shall remain for the perpetual benefit of all members of the Owners Association, their families and guests, a non-exclusive easement is hereby granted to each and every member of the Owners Association, his family and guests, to pass over and enjoy the open spaces of the designated common elements shown on the recorded maps and plats of Kinnakeet Shores, subject to the rules and regulations of the Owners Association and these covenants; except that areas designated as Common Areas on recorded plats of certain Phases may be reserved within the





applicable restrictive covenants to the exclusive benefit of owners and guests within that Phase. The Owners Association shall have the right to establish reasonable rules and regulations for the use and enjoyment of all such space. The term "common elements" shall include "common properties" and "common areas", but shall not include limited common elements designated on recorded plats or described in applicable Restrictive Covenants. Common elements, common properties and common areas, for purposes of these Covenants shall not include any area or facility reserved for the exclusive use of members of the Recreation Association, or conveyed by Declarant or others to such Association. Such areas and facilities, and the rights of Lot owners shall be governed by the provisions of Articles VI and VII hereafter.

4. Use Restrictions. Pursuant to its general plan of conservation and environmental protection and pursuant to its plan of development, the Declarant reserves the right to make trails or paths through the common elements, to restrict the use of certain vehicles therein, and to otherwise improve and enhance the said common elements, including but not limited to the protection of the common elements from erosion or other forms of degradation by planting, fencing or other expedient means and the implementation of adequate drainage and circulation of canals, lakes and drainage ways. The Owners Association shall have the right to suspend the rights of any owner, guest or family member to use any common element, property or amenity for failing to pay any assessment, or sum owed as provide by these covenants or for a violation of these covenants and/or the rules and regulations of the Owners Association until said violation has stopped or is otherwise lawfully corrected.

5. Disclaimer. It is expressly understood and agreed that the reservation of the roads, bridges and other common elements for the uses established hereby in no way places a burden of affirmative action on the Declarant, nor shall the Declarant be bound to make any such improvement or extend any such services as have been noted in this Article.

6. Rules and Assessments. The conveyance of any of the common elements to the Owners Association shall carry with it the right to make rules and regulations as to the use thereof and to assess the costs of upkeep and maintenance on the property owners as hereinafter provided.

### ARTICLE III

#### PROPERTY OWNERS ASSOCIATION

1. Organization. For the purpose of providing maintenance and control of all common elements and other common community services of the kind and nature required or authorized by this Declaration and by the charter of said organization for the benefit of all its members, each and every Lot owner, by accepting a deed or contract for any Lot in the areas to which this Declaration is or may become applicable, agrees to and shall be a member of and be subject to the obligations and duly enacted by-laws and rules of the Greater Kinnakeet Shores Property Owners Association, Inc., a



- non-profit corporation. Provisions governing the Recreation Association are set out in Articles VI and VII hereafter.
2. Fees and Assessments. The then current assessment set by the Owners Association for each Lot shall be paid by members from the time of accepting the deed for his, her or their respective Lot(s). The Owners Association shall also by majority vote of its Board of Directors, in accordance with the provisions of the by-laws, establish a reasonable annual assessment and such other charges and special assessments for the services provided by and supported by the Association.
  3. Lien. Each Lot shall be subject to a continuing lien to secure the payment of each assessment or charge when the same is made. Upon request, the Owners Association will furnish a Lot owner or mortgagee thereof a certificate showing the charges or assessments due on any given date. No assessments, however, shall be made upon the Lots retained by the Declarant.
  4. Future Development. If other property is developed by Declarant, the Declarant shall have the option, but not the obligation to include such properties under the provisions of the Declaration of Protective Covenants and Restrictions applicable to Kinnakeet Shores Subdivision. The specific terms of the covenants and restrictions for additional property made subject to the general scheme of development of Kinnakeet Shores, and including Lot owners as members of the Owners and Recreation Association, may be modified to reflect the nature, theme and density of such additional sections or phases. It is further provided that the owner or owners of the Lots and any additional properties subjected to this Declaration of Protective Covenants and Restrictions shall become members of the Owners Association and the Recreation Association established herein and shall be subject to the assessments, charges, liens, by-laws and charter of the Associations as provided in the Declaration.

#### ARTICLE IV

#### ASSESSMENTS AND LIENS

1. Validity. All liens authorized and created hereby, including the liens of the Recreation Association, shall become effective only upon recordation by the lien holder in the Dare County Clerk's Office of an instrument which complies with requirements of law and that sets forth the identity of the lienholder and the debtor (s), the Lot (s) to which the lien is attached, the amount of the underlying obligation which the lien secures, and the date when the indebtedness became due. No lien, whether recorded or not, shall be valid for more than ten-years from the date on which the underlying indebtedness it secures becomes due and payable.
2. Assessments; Liability; Lien and Enforcement. The Owners Association is given the authority to administer the operation and management of the Subdivision common elements and to employ a managing agent for that purpose, it being recognized that the delegation of such duties to one entity is in the best interest of the owners of all Lots. To properly administer the operation and



management of the Owners Association, it will incur for the mutual benefit of all of the owners of Lots, costs and expenses which are sometimes herein referred to as "common expenses". To provide the funds necessary for such proper operation, management and for capital improvements, as well as for the repair, maintenance and/or alteration of the amenities or common elements, the Owners Association has been and is hereby granted the right to make, levy and collect assessments and charges against the Lot owners and their Lots. In furtherance of this grant of authority to the Owners Association to make, levy and collect assessments, to pay the costs and expenses for the operation, management of and capital improvements to the common elements, and to pay the costs for the repair, maintenance and/or alteration of the amenities and common elements and to pay for the costs of common utilities and for such other purposes as herein provided, the following provisions shall be operative and binding upon the owners of all Lots. The owner of each Lot, by acceptance of a deed or other conveyance for such Lot, shall be deemed obligated to pay to the Owners Association such annual or special assessments, charges or common expenses to be fixed, established and collected on a Lot basis as hereinafter provided.

A. All assessments levied against the Lot owners shall be uniform unless otherwise provided for in this Declaration of Protective Covenants and Restrictions. Should the Owners Association be the owner of a Lot, then the assessment which would otherwise be due and payable to the Association by the owner of such Lot or Lots, shall be apportioned and an assessment therefore levied ratably among the owners of all Lots which are not owned by the Association. The Declarant shall, in its sole discretion, pay each year either the difference between the assessments collected by the Owners Association and the actual costs of operating and maintaining the common elements of the properties subjected to this Declaration or the per Lot assessment for the Lots held for sale by Declarant.

The funds arising from the annual assessment or charge as well as any additional or special assessments may be used for any or all of the following purposes: operating and managing the Owners Association on behalf of the Lot owners; repairing, maintaining, altering, improving, replacing common elements (including the Owners Association swimming pool, tennis court and surrounding area pool area) as well as any private streets, lakes, ponds, beach and other access ways and driveways within the Subdivision, any common element utility or irrigation systems as well as such other common improvements as the board of directors may authorize and subsequently approve; employing a manager for the association; employing or obtaining legal and accounting services or other professional services necessary in the furtherance of the Owners Association affairs; enforcing these restrictions and the rules and regulations of the Subdivision; paying taxes, indebtedness of the Owners Association, insurance premiums, common utility expenses of the Owners Association, including, but not limited to, charges for water and electric services (the cost of water used by subdivision amenities shall be considered a common expense), charges for removing debris or abating nuisances on owners Lots and any other expense incurred by the Owners Association in exercising its rights or discharging its duties as provided herein; governmental charges of all kinds and descriptions and, in addition, doing any other things necessary or desirable in the opinion of the Owners Association to keep the property in neat and good order, and to provide for the health, welfare and safety of the owners and residents of the Kinnakeet Shores Subdivision,



and subsequent owners of Property subject to these covenants and amendments thereto.

B. Assessments provided for herein shall be payable in annual installments or in such other installments and at such times as may be determined by the board of directors of the Owners Association. Said annual assessments or charges shall be due on January 1 of the year for which it is assessed. The board of directors shall establish the due date of any assessments other than the annual assessment at the time such special or emergency assessments or charges are declared by the board of directors. Each assessment or charge (or installment thereof) shall, when due, together with interest, penalties and reasonable attorney fees become a lien against the Lot and improvements against which such assessment or charge is made. The annual assessment and special assessments or charges shall be in amounts to be fixed from year to year by the Owners Association, and which may establish different rates from year to year as it may deem necessary.

C. The board of directors of the Owners Association shall establish an annual budget in advance for each fiscal year (which shall correspond to the calendar year). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Owners Association and Subdivision common elements, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Owners Association shall keep separate, in accordance with paragraph "D" hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such annual budget by the Owners Association, the copies of said budget shall be delivered to each owner of a Lot and the assessment for said year shall be established based upon such budget, although the delivery of a copy of said budget to each owner or the failure to deliver a copy of the budget shall not affect the liability of any owner for such assessment. Should the Owners Association at any time determine, in its sole discretion, that the assessment levied are, or may prove to be, insufficient to pay the costs of operation and management of the Lots or common elements, or in the event of emergencies, the Owners Association shall have the authority to levy such additional assessment or charges it may deem to be necessary.

D. The board of directors of the Owners Association, in establishing the annual budget for the operation, management and maintenance of the Owners Association, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and for capital improvements to the common property, which capital improvement and replacement fund ("Capital Improvement Fund") shall be for the purpose of enabling the Owners Association to replace structural elements and mechanical equipment constituting a part of the common property, as well as the replacement of personal property which may constitute a portion of the common property, held for the joint use and benefit of the owners of Lots. The amount to be allocated to the Capital Improvement Fund may be established by the Owners Association so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of common property. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to common property. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the



Association, be expended for current operation and maintenance.

E. All monies collected by the Owners Association shall be the separate property of the Owners Association, and such monies may be applied by the Owners Association to the payment of any expense of operating and managing the Owners Association and the Subdivision common elements, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the by-laws of the Owners Association. As monies for any assessment are paid to the Owners Association by any owners of Lots, the same may be commingled with monies paid to the Owners Association by other owners of Lots. Although all funds and common surplus, including other assets of the Owners Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Property, shall be held for the benefit of the members of the Owners Association, no member of the Owners Association shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein. When the owner of a Lot shall cease to be a member of the Owners Association by reason of his divestment of ownership of such Lot, by whatever means, the Owners Association shall not be required to account to such owner for any share of the funds or assets of the Owners Association, or which may have been paid to the Owners Association by such owner, as all monies which any owner has paid to the Owners Association shall be held by the Owners Association for the benefit of all owners, and said monies may be used by the Owners Association for the management of the common elements and facilities and shall constitute an asset of the Owners Association.

F. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Owners Association within thirty (30) days of the due date for such payment or the due dates of installments authorized by the Board. When in default, the delinquent assessment or delinquent installment thereof shall bear interest at the highest rate allowed by law (but in no event less than 10% per annum) from the due and payable date until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Owners Association. All monies owing to the Owners Association shall be due and payable at the main office of the Owners Association in the State of North Carolina or such other place directed by the Board. No acceptance of a payment of less than the entire amount owned by a Lot owner shall constitute a waiver by the Owners Association of the full amount due, and such acceptance shall automatically be applied against the most delinquent charges due, unless the Owners Association shall specifically agree in writing with the Lot owner that acceptance does constitute a waiver or compromise, or to some other allocation of payment.

G. Upon failure of the owner of any Lot to pay any such assessment or charge, additional assessment, or installment thereof when due, including interest, penalties and reasonable attorney fees, the Owners Association shall have the right to collect the amount thereof by an action at law against the owner as for a debt, and it may bring and maintain such other suits and proceedings at law or at equity as may be available, including, without limitation, enforcement of its lien rights against the Lot and its improvements. Such rights and powers shall continue in the Owners Association, and the lien of such charge or assessment, including interest, penalties and reasonable attorney fees shall be deemed to run with the Lot and the improvements thereon. The successive



owners of each Lot subject to the lien, by the acceptance of deeds therefor, shall be deemed personally to assume and agree to pay all unpaid assessments or charges, additional assessments which have been previously levied against the property, and all assessments or charges or additional assessments, interest, penalties and reasonable attorney fees as shall become a lien thereon during their ownership. The owner or owners of each Lot shall be personally liable, jointly and severally, to the Owners Association for payment of all assessments or charges, regular or special which may be levied by the Owners Association against such Lots while such party or parties are owners of a Lot.

H. No owner of a Lot may exempt himself from liability for any assessment levied against him or his Lot by a waiver of the use of enjoyment of any of the common property and elements, or by abandonment of the Lot or in any other way.

I. Recognizing that proper operation and management of the Owners Association and Subdivision common elements and facilities require the continuing payment of cost and expenses therefor, and that such proper operation and maintenance results in benefit to all of the owners of Lots, and that the payment of such common expenses represented by the assessments levied and collected by the Owners Association is necessary in order to preserve and protect the investment of each Lot owner, the Owners Association is hereby granted a lien upon each Lot and all improvements thereon, which lien shall secure and does secure the monies due for all assessments and charges now and hereafter levied against the owner of each Lot, which lien shall also secure interest and penalties, if any, which may be due on the amount of any delinquent assessments or charges owing to the Owners Association, and which lien shall also secure all costs and expenses, including a reasonable attorneys' fee, which may be incurred by the Owners Association in enforcing this lien upon said Lot and/or collecting the assessments due. The lien granted to the Owners Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Owners Association shall be entitled to the appointment of a receiver for said Lot. The lien granted to the Owners Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Owners Association in order to preserve and protect its lien, and the Owners Association shall further be entitled to interest at the highest rate permitted by law on any such advances made for such purpose. All persons, firms or associations who shall acquire by whatever means, any interest in the ownership of any Lot, are hereby placed on notice of the lien rights granted to the Owners Association, and shall acquire such interest in any Lot expressly subject to such lien rights.

J. The lien herein granted unto the Owners Association shall be enforceable from and after the time of recording a claim of lien in the Public Records of Dare County, North Carolina, which claim shall state the lien claimant, description of the Lot encumbered thereby, the name of the record owner, the amount due and the date it became due, or otherwise as is required by law. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest



thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Owners Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be subordinate to the lien of any mortgage or deed of trust, except for purchase money mortgages or deeds of trust given to secure a previous owner a part of the purchase price, or given a non-institutional lender in an attempt to evade the obligations of this Article. Any person, firm or corporation acquiring title to any Lot and its improvements by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale (except under circumstances of the exceptions in the previous sentence), shall be liable and obligated only for assessments as shall accrue and become due and payable for said Lot and its appurtenant undivided interest in Common Property subsequent to the date of acquisition of such title; and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Lot by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party acquiring title shall be subject shall be absorbed and paid by all Lot owners as a part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

K. Whenever any Lot and/or improvement may be leased, sold or mortgaged by the owner thereof, the Owners Association, upon written request of the Lot owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Owners Association by such owner. Such statement shall be executed by any officer of the Owners Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Owners Association shall be bound by such statement.

In the event that a Lot and/or improvement may be leased, sold or mortgaged at the time when payment of any assessment against the owner of said Lot and such assessment due to the Owners Association shall be in default (whether or not a claim of lien has been filed by the Association) then the rent, proceeds of such purchase or mortgage proceeds, shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Owners Association before the payment of any rent, proceeds of purchase or mortgage proceeds to the owner of any Lot who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Lot, the grantee thereof shall be jointly and severally liable with seller for all unpaid assessments against seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by purchaser therefor.

Institution of a suit at law to attempt to effect collection of the payment of the delinquent assessment shall not be declared to be an election by the Owners Association which shall prevent it



from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Owners Association.

L. The Owners Association shall not be obligated to spend in any one calendar year all the sums collected during said year by way of assessments or charges or additional assessments and may carry forward to surplus any balance remaining. The Owners Association shall not be obligated to apply any such surplus to the reduction of charges in the succeeding year.

M. The Owners Association shall have authority, in its discretion, to borrow money to expand for the purposes set forth herein upon such terms and security and for such period as it may determine, and to repay said borrowings and the interest thereon from the assessments or charges or special or additional assessments provided for in this Article.

N. The Subdivision streets shown on plats in Kinnakeet Shores Subdivision are private streets and shall be maintained by the Owners Association. The costs of maintaining and repairing the street is a common expense and shall be included in each annual assessment (or any special assessment imposed by the Board of Directors of the Association) as provided by these Covenants. The Declarant reserves unto itself or its successor in interest, the right to dedicate to the public or the state of North Carolina (1) the utility easement areas along the front Lot lines of each Lot (as well as along each side of the Subdivision streets not bounded by Subdivision Lots) and (2) a right-of-way for the purpose of access, ingress and egress, provided the State of North Carolina or any political subdivision or agency thereof, accepts said streets for maintenance purposes and provided further that a majority of the Owners Association directors and two-thirds of the owners in interest of Subdivision Lots and condominium or townhouse units vote to dedicate Subdivision streets to public use. The Declarant or the Owners Association, at such time as may be designated by the Declarant, shall have the right to erect guard gates, barriers or similar devices, which may be manned or unmanned, for the purpose of regulating or controlling access to and the use of Subdivision streets as well as prohibiting access and the use thereof by unauthorized persons. The Declarant, its agents or employees, owners of Lots, condominiums or townhouses which are subject to these covenants and their invitees and guests, as well as others that may be designated from time to time by the Declarant or the Owners Association, shall have the right to use any streets, pedestrian easements or ways dedicated for vehicular and/or pedestrian uses subject to regulation or control by the Declarant or, if appropriate, the Owners Association. The cost of restricting and controlling access to Subdivision streets is a common expense and shall be included in the annual or special assessments of the Owners Association applicable to all property owners in the Subdivision.

O. Provided sufficient central waste water system capacity or water system capacity is available, each dwelling constructed or placed on a Subdivision Lot shall connect to the subdivision central waste water treatment system (including the treatment plant and collection lines) prior to occupying the dwelling. To the extent allowed by law, said requirement shall be enforceable by the Declarant, the Owners Association, any property owner, or by Dare County. The Lot owner shall





submit an application for service together with payment of the connection or "tap-on" charge then in effect. The provider of such service will charge such connection charges, use fees and other charges approved by the North Carolina Utilities Commission and shall have such rights to collect delinquent charges and disrupt service as is permitted by law.

ARTICLE V

GENERAL PROVISIONS

1. Term of Covenants. These covenants shall run with the land and shall be binding on all parties owning a Lot or Lots or in possession thereof and all persons claiming under them for a period of 30 years from the date of the Declaration filed in Book 487, Page 670 and shall be extended for successive periods of 10 years thereafter, unless, prior to the expiration of the initial 30 year period or any such subsequent 10 year period, an instrument signed by the owners of record of the majority in interest of the Lots in the Subdivision and any subsequent phases subject hereto, has been recorded revoking or modifying said restrictions and covenants. Any subsequent lands subjected to this Declaration by an amendment or with reference hereto shall continue subject thereto for the remainder of the current term of these covenants and shall be extended on the same date as provided herein unless modified or rescinded as provided above.

2. Enforcement. Enforcement of these covenants, restrictions and declarations shall be by Declarant until said right is transferred and assigned to the Owners Association or the Recreation Association, as appropriate, pursuant to this Declaration and by instrument(s) recorded in the Dare County Registry, after which the enforcement shall be by said Association(s). Remedies for violations shall include, but not be limited to, either equitable restraint against the violation or for mandatory compliance with said covenants, or at law for damages by virtue of any such violation, or both. The failure to enforce any right, reservation or condition contained herein shall not be deemed a waiver of the right to do so thereafter, as to the same breach or as to a breach occurring subsequent thereto, and shall not bar or affect its enforcement.

In addition to the above enforcement remedies, the Declarant, until said rights are transferred and assigned to the Owners Association or the Recreation Association, as above provided, shall have, and there is hereby reserved unto the Declarant, the right, in its sole discretion, to amend and modify any standard set forth in these covenants for minor violations thereof with respect to any Lot to the end that such violation shall cease by reason of the modification, alteration, or abolition of said violated standard and covenant. By way of illustration, but not limitation, of the scope of this right, the set-back distances, house locations and utility locations may be amended, modified, altered, or revoked for any one Lot, however, the permitted uses and permitted structures of these covenants shall not be altered, modified or changed except by vote of a majority in interest of the Lot owners in the Subdivision.

In the event the Declarant employs an attorney to enforce any of the foregoing covenants by reason of a violation of said covenants, all costs incurred in such enforcement, including reasonable



attorneys fees, shall be paid by the owner of such of or Lots and the Declarant shall have a lien upon such Lot or Lots to secure the payment of all such accounts, which lien may be enforced by civil action in the nature of a suit to foreclose the lien of a deed of trust.

In addition to the foregoing, the Declarant shall have the right, whenever there shall have been built on any Lot in the Subdivision any structure which is in violation of these restrictions, to enter upon the Lot where such violations exist and summarily abate or remove the same at the expense of the owner, if after 30 days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. Except as hereinafter provided, the failure to enforce all rights, reservations, restrictions or conditions contained in these covenants, however long continued, shall not be deemed a waiver of the right to do so thereafter, as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. The failure of the Declarant to enforce by civil action a breach of these covenants with respect to architectural standards within 12 months following the completion of said construction and the issuance of an occupancy permit therefore by the appropriate governmental agency shall constitute a waiver of the Declarant's right to enforce such breach with respect to said standards after the aforesaid period of 12 months has expired. The architectural review required thereby shall not require the Declarant or the ARC to affirmatively police or enforce the plan approval requirement for violations thereof.

3. Severability. Invalidation of any one of these covenants by a judicial decree or order shall be severed and shall in no way affect any of the other provisions or covenants herein which shall continue and remain in full force and affect.

4. Successors and Assigns; Succession to Powers. All references to Declarant shall include its successors or its assigns as set out above. The powers and rights reserved to Declarant shall not inure to individual Lot owners but only to assigns identified above, or the Owners Association or Recreation Association at such time as, and to the extent the powers are transferred to and, vested in it. The Declarant reserves the right to assign and transfer all or a portion of the rights and the powers reserved herein to the Owners Association or, as appropriate, to the Recreation Association, at any time Declarant deems it desirable and the duties pertaining thereto shall thereafter be discharged by the respective Association. The Declarant shall pay the cost of preparing and recording the transfer instrument. Any such transfer of a portion or all of the rights and powers reserved unto the Declarant shall be at such time as the Declarant in its sole discretion determines that the respective Association is prepared to assume the rights and exercise the powers created by these covenants. Upon such transfer and assignment the Association shall succeed to and administer in accordance with said Association's governing document all the rights, privileges and powers transferred thereby.

5. Future Development. The Declarant may bring other lands which it develops under the force, lien and effect of this Declaration of Protective Covenants and Restrictions at the option of the Declarant.



6. Lot Clearing. No oaks, pines, cedars, hollies, or myrtle bushes taller than two (2) feet above the undisturbed ground surface shall be cut, removed, burned or otherwise damaged without the prior written approval of the ARC.
7. Pond and Shoreline Maintenance Easement. A pond maintenance easement shall exist ten (10) feet in width landward from the water line of all ponds for the purpose of maintaining the pond areas and shorelines, which easement is reserved unto the Declarant and unto the Owners Association for the purpose of allowing its authorized agents to enter upon the easement area for shoreline and pond maintenance only and, not for recreational or other purposes. Such easement shall be waived to the extent the ARC has approved and the owner has constructed any improvements encroaching on and blocking the easement area described herein.
8. Use of Lakes. The property owners, their families, guests, and invitees are granted an easement of enjoyment and the right to use the ponds within the Subdivision for recreational purposes, including, but not limited to, fishing and small craft boating, subject to the rules and regulations of the Declarant, the Recreation Association or the Owners Association at such time as the right to regulate and control is transferred and conveyed to said Association(s). The right to regulate and control the use of the ponds in the Subdivision shall include the right to prohibit the use of any pond for a specified purpose and the right to control the hours of a particular use or uses. In no event shall petroleum powered motorized boats be used on the ponds in the Subdivision, and in no event shall hunting be allowed or permitted on any Subdivision ponds. The Owners Association or the Recreation Association shall be empowered and shall discharge the responsibility of establishing the rules and regulations governing the use of the Subdivision ponds after the Declarant or its successor in interest files an instrument in the office of the Register of Deeds of Dare County, North Carolina, transferring said right to the Association. To the extent any Lot extends into an existing pond, Declarant, for itself and Lot owners, reserves a right to the use of the surface and waters of the pond within said Lot for the purposes hereof.
9. Motor Vehicles. No unlicensed off road vehicle can be operated in the Subdivision, except that electric or gas powered "golf carts" may be used by residents or their renters when the ownership and make are registered with the Owners Association. Off-road vehicles duly licensed by the North Carolina Department of Transportation or other States's comparable agency may be driven on Subdivision streets. No motor vehicle shall be stored within the Subdivision unless stored in an enclosed garage.
10. Sewage Collection Facilities. All facilities located on a Lot for collection of sewage from a home, and all maintenance, repair and replacement associated therewith shall be the responsibility of the Lot owners served by such facilities. In some phases, a pair of Lots are served by a collection tank serving each home and a pump tank serving a pair of homes. The collection tanks may be within a Lot, or may be over the Lot lines. The pump tanks will usually be over the line between the served homes. To the extent collection tanks or pump tanks that do not serve a home are located partially within the adjacent Lot, there is reserved a permanent easement for the benefit of the served home for the installation, maintenance, use, repair and replacement of the collection or pump tank.



12. Phase 19 and 21 Entrance Feature and Gate Easement Declarant hereby reserves a 10'x20' easement in Lots 1901, 1910 and 2101, and common area as shown on the recorded plats for Phases 19 and 21 for the placement, construction, maintenance, repair and replacement of a sign, gate and entrance feature for each Phase.

#### ARTICLE VI

#### RECREATION ASSOCIATION

1. Organization. For the purpose of providing certain recreational amenities and services of the kind and nature required or authorized by this Declaration and by the charter of the Kinnakeet Shores Recreation Association, Inc. for the benefit of all its members, each and every Lot owner, by accepting a deed or contract for any Lot in the areas to which this Declaration is or may become applicable, agrees to and shall be a member of and be subject to the obligations and duly enacted by-laws and rules of the Kinnakeet Shores Recreation Association, Inc., a non-profit corporation.
2. Fees and Assessments. As of the date of recording hereof, Declarant has completed construction of the primary recreational amenity for Kinnakeet Shores, that being the Avon Pier Beach Club, which includes a beachfront parcel of land on which has been constructed a swimming pool, deck/oungie area, elevated ocean view platform, restrooms, bath house, machine vending area, outside showers, on-site parking and beach access boardwalk.

The annual recreation assessment shall be charged for calendar year 2005 and thereafter. For calendar year 2005, the annual recreation assessment shall be \$200 per year for each unimproved Lot, \$400 per year for Lots with completed houses, and \$800 per year for Lots with completed houses subject to vacation rental listing agreements, or otherwise regularly rented for vacation purposes that permit access to the recreational amenities as part of the rental agreement. The Avon Pier beach club shall be available for the 2005 vacation season. Thereafter, the assessment shall be set as herein provided. The then current annual assessment for each Lot shall be paid by members from the time of accepting the deed for his, her or their respective Lot(s), prorated for the calendar year during which the Lot was purchased. The Recreation Association shall by majority vote of its Board of Directors, in accordance with the provisions of the by-laws, establish a reasonable annual recreation assessment and such other charges and special assessments for the services provided by and supported by the Association for years after 2005. The Recreation Association shall make assessments uniform within each category of usage, and the categories of usage may be (a) unimproved Lots (houses not complete during the applicable year, with category to change upon completion of house, and changed assessment to be prorated on a monthly basis as of the completion), (b) completed houses not subject to vacation rental listing agreement, or otherwise not regularly rented for vacation purposes, and (c) completed houses subject to vacation rental listing agreements, or otherwise regularly rented for vacation purposes. In the event the Recreation Association acquires, by purchase, lease, construction or otherwise, recreational amenities in addition to that originally constructed, the assessment may be appropriately increased to reflect the



additional operating and repair costs thereof, and provisions for capital maintenance or rent.

3. Lien. Each Lot shall be subject to a continuing lien to secure the payment of each assessment or charge when the same is made. Upon request, the Recreation Association will furnish a Lot owner or mortgagee thereof a certificate showing the charges or assessments due on any given date. No assessments, however, shall be made upon the Lots retained by the Declarant or its successors in interest or assigns, involved in the development of the Subdivision or the building of houses.

#### ARTICLE VII

#### ASSESSMENTS, CHARGES AND LIENS

1. Validity. All liens authorized and created hereby shall become effective only upon recordation by the lien holder in the Dare County Clerk's Office of an instrument which complies with requirements of law and that sets forth the identity of the lienholder and the debtor (s), the Lot (s) to which the lien is attached, the amount of the underlying obligation which the lien secures, and the date when the indebtedness became due. No lien, whether recorded or not, shall be valid for more than ten-years from the date on which the underlying indebtedness it secures becomes due and payable.

2. Assessments, Liability, Lien and Enforcement. The Recreation Association is given the authority to own and administer the operation and management of the recreational amenities of the Subdivision conveyed to it by Declarant or otherwise acquired (herein the "recreational amenities") and to employ a managing agent for that purpose, it being recognized that the delegation of such duties to one entity is in the best interest of the owners of all Lots. To properly administer the operation and management of the Recreation Association it will incur for the mutual benefit of all of the owners of Lots, costs and expenses which are sometimes herein referred to as "recreational expenses". To provide the funds necessary for such proper operation, management and for capital improvements, as well as for the repair, maintenance and/or alteration of the recreational amenities, the Recreation Association has been and is hereby granted the right to make, levy and collect assessments and charges against the Lot owners and their Lots. In furtherance of this grant of authority to the Recreation Association to make, levy and collect assessments, to pay the costs and expenses for the operation, management of and capital improvements to the recreation amenities, and to pay the costs for the repair, maintenance and/or alteration of the recreational amenities and to pay for the costs of common utilities and for such other purposes as herein provided, the following provisions shall be operative and binding upon the owners of all Lots subject to Articles VI and VIII hereof. The owner of each Lot, by acceptance of a deed or other conveyance for such Lot, shall be deemed obligated to pay to the Recreation Association such annual or special assessments, charges or fees for recreational expenses to be fixed, established and collected on a Lot basis (within the designated category) or on a usage basis as herein provided.



3.

A. All assessments levied against the Lot owners shall be uniform within each category unless otherwise provided for in this Declaration of Protective Covenants and Restrictions. Owners of improvements in the Subdivision subject to Articles VI and VII hereof that regularly rent their property for vacation use may be subject to a reasonable surcharge set by the Recreation Association for facilities use, reflecting more intensive use of the facilities by vacation renters. Also, the Recreation Association may impose on owners or their guests, including renters, uniform, reasonable "per use" or "per week" fees for any recreational amenity, in addition to the uniform periodic assessments, if necessary, to more equitably distribute costs directly associated with frequency or intensity of usage. The Recreation Association may make some recreational facilities available to concessionaires for snack bars, equipment rentals, etc. Members will pay such fees as charged by such concessionaires, and any rent paid by such concessionaires shall be paid to the Recreation Association and placed in its general fund. Should the Recreation Association be the owner of a Lot, then the assessment which would otherwise be due and payable to the Recreation Association by the owner of such Lot or Lots, shall be apportioned and an assessment therefore levied ratably among the owners of all Lots which are not owned by the Recreation Association. The Declarant and its successors in interest shall, in its sole discretion, pay each year either the difference between the assessments collected by the Recreation Association and the actual costs of operating and maintaining the recreational amenities, or the per Lot assessment for the Lots held for sale by Declarant.

The funds arising from the annual assessment or charge as well as any additional or special assessments, or revenues from concessionaires may be used for any or all of the following purposes: operating and managing the Recreation Association on behalf of the Lot owners; repairing, maintaining, altering, improving, replacing recreational amenities; employing a manager for the Recreation Association; employing or obtaining legal and accounting services or other professional services necessary in the furtherance of the Recreation Association affairs; enforcing these restrictions and the rules and regulations pertaining to the recreational amenities; paying taxes, indebtedness of the Recreation Association, insurance premiums, common utility expenses of the Recreation Association, including, but not limited to, charges for water and electric services (the cost of water used by recreational amenities shall be considered a recreational expense) and any other expense incurred by the Recreation Association in exercising its rights or discharging its duties as provided herein; governmental charges of all kinds and descriptions; payments in support of the Owners Association, and, in addition, doing any other things necessary or desirable in the opinion of the Recreation Association to keep its property in neat and good order, and to provide recreational opportunities of the owners and residents of the Kinnakeet Shores Subdivision who are subject to Articles VI and VII hereof.

B. Assessments provided for herein shall be payable in annual installments or in such other installments and at such times as may be determined by the board of directors of the Recreation Association. Said annual assessments or charges shall be due on January 1 of the year for which it is assessed. The board of directors shall establish the due date of any assessments other



than the annual assessment at the time such special or emergency assessments or charges are declared by the board of directors. Each assessment or charge (or installment thereof) shall, when due, together with interest, penalties and reasonable attorney fees become a lien against the Lot and improvements against which such assessment or charge is made. Subject to the amounts and limitation set out in Article VI, Section 2 above for calendar years 2000 through 2002, the annual assessment and special assessments or charges shall be in amounts to be fixed from year to year by the Recreation Association, and which may establish different rates from year to year as it may deem necessary.

C. The board of directors of the Recreation Association shall establish an annual budget in advance for each fiscal year (which shall correspond to the calendar year). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Recreation Association and recreational amenities, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Recreation Association shall keep separate, in accordance with paragraph "D" hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such annual budget by the Recreation Association, the copies of said budget shall be delivered to each owner of a Lot and the assessment for said year shall be established based upon such budget, although the delivery of a copy of said budget to each owner or the failure to deliver a copy of the budget shall not affect the liability of any owner for such assessment. Should the Recreation Association at any time determine, in its sole discretion, that the assessments levied are, or may prove to be, insufficient to pay the costs of operation and management of the Lots or recreational amenities, or in the event of emergencies, the Recreation Association shall have the authority to levy such additional assessment or charges it may deem to be necessary.

D. The board of directors of the Recreation Association, in establishing the annual budget for the operation, management and maintenance of the Recreation Association, may designate therein a sum to be collected and maintained as a reserve fund for replacement of and for capital improvements to the recreational amenities, which capital improvement and replacement fund ("Capital Improvement Fund") shall be for the purpose of enabling the Recreation Association to replace structural elements and mechanical equipment constituting a part of the recreational amenities, as well as the replacement of personal property which may constitute a portion of the recreational amenities held for the joint use and benefit of the owners of Lots. The amount to be allocated to the Capital Improvement Fund may be established by the Recreation Association so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of recreational amenities. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to the recreational amenities. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Association, be expended for current operation and maintenance.



E. All monies collected by the Recreation Association shall be the separate property of the Recreation Association, and such monies may be applied by the Recreation Association to the payment of any expense of operating and managing the Recreation Association and the recreational amenities, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the by-laws of the Recreation Association. As monies for any assessment are paid to the Recreation Association by any owners of Lots, the same may be commingled with monies paid to the Recreation Association by other owners of Lots. Although all funds and common surplus, including other assets of the Recreation Association, and any increments thereto or profits derived therefrom or from the leasing or use of recreational amenities, shall be held for the benefit of the members of the Recreation Association, no member of the Recreation Association shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein. When the owner of a Lot shall cease to be a member of the Recreation Association by reason of his divestment of ownership of such Lot, by whatever means, the Recreation Association shall not be required to account to such owner for any share of the funds or assets of the Recreation Association, or which may have been paid to the Recreation Association by such owner, as all monies which any owner has paid to the Recreation Association shall be held by the Recreation Association for the benefit of all owners, and said monies may be used by the Recreation Association for the management of the recreational amenities and facilities and shall constitute an asset of the Recreation Association.

F. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Recreation Association within thirty (30) days of the due date for such payment or the due dates of installments authorized by the Board. When in default, the delinquent assessment or delinquent installment thereof shall bear interest at the highest rate allowed by law (but in no event less than 10% per annum) from the due and payable date until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Recreation Association. All monies owing to the Recreation Association shall be due and payable at the main office of the Recreation Association in the State of North Carolina or such other place directed by the Board. No acceptance of a payment of less than the entire amount owned by a Lot owner shall constitute a waiver by the Recreation Association of the full amount due, and such acceptance shall automatically be applied against the most delinquent charges due, unless the Recreation Association shall specifically agree in writing with the Lot owner that acceptance does constitute a waiver or compromise, or to some other allocation of payment.

G. Upon failure of the owner of any Lot to pay any such assessment or charge, additional assessment, or installment thereof when due, including interest, penalties and reasonable attorney fees, the Recreation Association shall have the right to collect the amount thereof by an action at law against the owner as for a debt, and it may bring and maintain such other suits and proceedings at law or at equity as may be available, including, without limitation, enforcement of its lien rights against the Lot and its improvements. Such rights and powers shall continue in the Recreation Association, and the lien of such charge or assessment, including interest, penalties and reasonable attorney fees shall be deemed to run with the Lot and the improvements thereon. The successive owners of each Lot subject to the lien, by the acceptance of deeds therefor, shall be deemed





personally to assume and agree to pay all unpaid assessments or charges, additional assessments which have been previously levied against the property, and all assessments or charges or additional assessments, interest, penalties and reasonable attorney fees as shall become a lien thereon during their ownership. The owner or owners of each Lot shall be personally liable, jointly and severally, to the Recreation Association for payment of all assessments or charges, regular or special which may be levied by the Recreation Association against such Lots while such party or parties are owners of a Lot. In addition, the Recreation Association shall have the right to suspend the rights of any owner, guest or family member to use any recreational amenity for failing to pay any assessment, or sum owed as provided by these covenants or for a violation of these covenants and/or the rules and regulations of the Recreation Association until said violation has stopped or is otherwise lawfully corrected.

H. No owner of a Lot may exempt himself from liability for any assessment levied against him or his Lot by a waiver of the use of enjoyment of any of the recreational amenities, or by abandonment of the Lot or in any other way.

I. Recognizing that proper operation and management of the Recreation Association and recreational amenities and facilities require the continuing payment of cost and expenses therefor, and that such proper operation and maintenance results in benefit to all of the owners of Lots, and that the payment of such common expenses represented by the assessments levied and collected by the Recreation Association is necessary in order to preserve and protect the investment of each Lot owner, the Recreation Association is hereby granted a lien upon each Lot and all improvements thereon, which lien shall secure and does secure the monies due for all assessments and charges now and hereafter levied against the owner of each Lot, which lien shall also secure interest and penalties, if any, which may be due on the amount of any delinquent assessments or charges owing to the Recreation Association, and which lien shall also secure all costs and expenses, including a reasonable attorneys' fee, which may be incurred by the Recreation Association in enforcing this lien upon said Lot and/or collecting the assessments due. The lien granted to the Recreation Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Recreation Association shall be entitled to the appointment of a receiver for said Lot. The lien granted to the Recreation Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Recreation Association in order to preserve and protect its lien, and the Recreation Association shall further be entitled to interest at the highest rate permitted by law on any such advances made for such purpose. All persons, firms or associations who shall acquire by whatever means, any interest in the ownership of any Lot, are hereby placed on notice of the lien rights granted to the Recreation Association, and shall acquire such interest in any Lot expressly subject to such lien rights.

J. The lien herein granted unto the Recreation Association shall be enforceable from and after the time of recording a claim of lien in the Public Records of Dare County, North Carolina, which claim shall state the lien claimant, description of the Lot encumbered thereby, the name of the



record owner, the amount due and the date it became due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Recreation Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record.

The lien provided for herein shall be subordinate to the lien of any mortgage or deed of trust, except for purchase money mortgages or deeds of trust given to secure a previous owner a part of the purchase price, or given a non-institutional lender in an attempt to evade the obligations of this Article. Any person, firm or corporation acquiring title to any Lot and its improvements by virtue of any foreclosure, deed in lieu of foreclosure or judicial sale (except under circumstances of the exceptions in the previous sentence), shall be liable and obligated only for assessments as shall accrue and become due and payable for said Lot subsequent to the date of acquisition of such title; and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Lot by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party acquiring title shall be subject shall be absorbed and paid by all Lot owners as a part of the recreation expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessments from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

K. Whenever any Lot and/or improvement may be leased, sold or mortgaged by the owner thereof, the Recreation Association, upon written request of the Lot owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Recreation Association by such owner. Such statement shall be executed by any officer of the Recreation Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Recreation Association shall be bound by such statement.

In the event that a Lot and/or improvement may be leased, sold or mortgaged at the time when payment of any assessment against the owner of said Lot and such assessment due to the Recreation Association shall be in default (whether or not a claim of lien has been filed by the Association) then the rent, proceeds of such purchase or mortgage proceeds, shall be applied by the lessee, purchaser or mortgagee first to payment of any then delinquent assessment or installments thereof due to the Recreation Association before the payment of any rent, proceeds of purchase or mortgage proceeds to the owner of any Lot who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Lot, the grantee thereof shall be jointly and severally liable with seller for all unpaid assessments against seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid



by purchaser therefor.

Institution of a suit at law to attempt to effect collection of the payment of the delinquent assessment shall not be declared to be an election by the Recreation Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Recreation Association.

L. The Recreation Association shall not be obligated to spend in any one calendar year all the sums collected during said year by way of assessments or charges or additional assessments and may carry forward to surplus any balance remaining. The Recreation Association shall not be obligated to apply any such surplus to the reduction of charges in the succeeding year.

M. The Recreation Association shall have authority, in its discretion, to borrow money to expend for the purposes set forth herein upon such terms and security and for such period at it may determine, and to repay said borrowings and the interest thereon from the assessments or charges or special or additional assessments provided for in this Article.

N. The Recreation Association shall accept members on a permanent basis that are property owners in Phases of the Subdivision recorded prior to the recordation of Phases 9, 10 and 11 that are members of the Owners Association upon payment of an entrance, initiation or other one time fee in amounts established from time to time by the Declarant; provided that such members have paid the applicable one time fee and shall have executed a document (in form and content prescribed by the Declarant) in recordable form that permanently imposes Articles VI and VII hereof on the Lot owners and their property within the Subdivision. Such fee shall be paid to and retained by Declarant or its assigns. Periodic or special assessments for such members shall be the same as all other members, shall be paid to the Recreation Association and after recording of the said instrument, shall be subject to the provisions of Articles VI and VII hereof as if originally included herein. Declarant shall have the right to offer such memberships or not in its sole discretion. The Recreation Association shall not have the right to offer such memberships until Declarant shall have transferred its rights to manage and control the Recreation Association as set out herein. Thereafter, any one-time fee shall be set by the board of directors of, and received by the Recreation Association.

O. The Recreation Association may permit temporary use (in form of short term limited memberships, group contracts with management agencies, etc.) of its recreational amenities by parties that are not members of the Owners Association. Such use rights shall not include any voting or management participation rights. Such use rights shall be subject to rules, regulations and duration established by the Declarant; provided that in no event shall terms of use be less restrictive than those applicable to regular members. Such use rights shall be subject to fees (periodic and/or



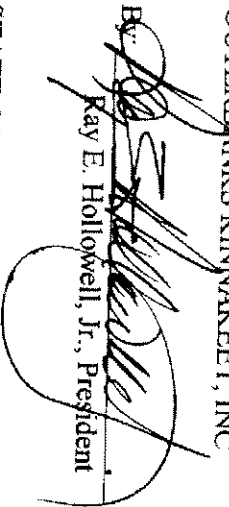
one-time) established by the Declarant or its assigns, provided that all usage or periodic fees shall be paid to the Recreation Association for its general fund and all one-time fees shall be paid to the Association and placed in its Capital Improvement Fund. To the extent any fees, contribution in aid of construction or other payments are made to Declarant to reserve or purchase access to the recreational facilities by parties not members of the Owners Association, Declarant may apply such payment to the costs of providing or constructing a recreational facility, or reimburse itself such costs if the facilities have been constructed; provided that any amounts in excess of such costs shall be paid to the Recreation Association. Periodic or use fees shall be set in the reasonable discretion of the Declarant, subject to the limitation set out above, but shall be paid to or received by the Recreation Association.

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IN WITNESS WHEREOF THE SAID OUTERBANKS KINNAKEET, INC. has  
executed this Declaration of Protective Covenants and Restrictions this the 7th day of  
March 2005.

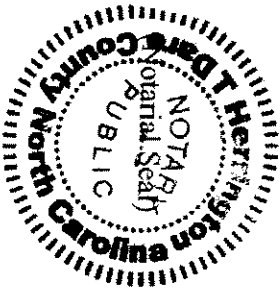
OUTERBANKS KINNAKEET, INC

By   
Kay E. Hollowell, Jr., President

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, T. Herrington, a Notary Public of Dare  
County, said State, certify that Kay E. Hollowell, Jr., personally came before me this day and  
acknowledged that he is President of Outerbanks Kinnakeet, Inc., a corporation, and that he, as  
President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal (or stamp), this the 7th day of March, 2005.



T. Herrington  
Notary Public  
My Commission Expires: 11-30-08

NORTH CAROLINA  
DARE COUNTY



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The foregoing certificate(s) of

T. Herrington

Notary (ies) Public is/are certified to be correct. This instrument and this certificate are duly registered at the date and time in the Book and Page shown on the first page hereof.

Barbara M. Gray, Register of Deeds

By:

~~Barbara M. Gray~~ T. Herrington  
~~Assistant~~/Deputy Register of Deeds