

NORTH CAROLINA

DARE COUNTY

BOOK 487 PAGE 670

KINNAKEET SHORES SUBDIVISION

PHASE THREE

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

THAT WHEREAS, Kinnakeet Shores General Partnership, a North Carolina partnership, hereinafter the Declarant, is the fee simple owner of that tract of land located in Kinnakeet Township, Dare County, North Carolina, and being shown on a map or plat entitled "Kinnakeet Shores - Phase Three", by Meekins and Associates, Land Surveyors, dated the 24th day of April, 1986 and recorded in Plat Cabinet C, Slide 12E, the Office of the Register of Deed of Dare County, North Carolina; and

WHEREAS, Kinnakeet Shores General Partnership intends to develop the property shown on the aforesaid plat according to a common scheme such that the restrictions herein imposed shall inure to the benefit of each purchaser of lots as shown on the said plat to insure the best use and most appropriate development of building sites to protect against improper uses of surrounding lots which would depreciate the value of their property, to preserve the natural beauty of the property, to guard against the erection of poorly designed or proportioned structures and structures built of improper or unsuitable materials, to insure the highest and best development of said property, to encourage and secure the harmonious improvement of building sites, to secure and maintain proper setbacks from property lines and to maintain adequate open space between structures; and in general to provide adequately for a high development of said property, both of enhancing the values of investments made by purchasers of building sites and preserving, as fully as possible, the natural beauty of the subdivision.

ARTICLE I

RESIDENTIAL AREA COVENANTS

1. Permitted Uses; Commercial Uses Prohibited. No lot shall be used except for residential purposes. No business or business activity may be carried on upon the property at any time, provided however that nothing herein shall preclude the Declarant, its successors in interest, agents and employees from using all or part of the dwellings

owned by them for the purpose of carrying on business directly related but not limited to the development and/or management of the subdivision.

2. Permitted Structures. No building shall be erected, altered, placed, or permitted to remain on any lot other than one single-family residence (expressly excluding duplexes, double or multiple-unit houses) and an attached garage approved in accordance with the terms of Paragraph 3 of this Article. The Architectural Review Committee shall establish standards for exterior colors, exterior materials, roof materials, roof pitch and roof breaks, decking, rails, pickets, and exterior lighting. All structures shall be built pursuant to the standards adopted by Architectural Review Committee. The standards may be changed from time to time subject to approval of the change by a majority of the directors of the Property Owners Association board of directors. 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.

No building or structure shall be erected or constructed to a height greater than 35 feet to the top plate from the average of the elevations of the four corners of the house as determined prior to any land disturbing activity in preparation for construction of the building or improvement. The mean elevation as specified herein shall be entered on the survey map furnished to the ARC. Dwellings constructed on oceanfront lots shall have 1800 square feet of enclosed heated area and oceanside lots shall have 1400 square feet of enclosed heated area. The calculation of enclosed heated area shall not include garages, decks, porches and walkways.

3. Architectural Control. The Declarant shall appoint an Architectural Review Committee (designated and also referred to herein as ARC). The initial terms of the members of the ARC shall be one, two, and three years respectively, and thereafter, the ARC members shall be appointed for terms of three years each. Ownership of property in the subdivision shall not be a requirement for membership on the ARC. Subject to the approval of the directors of the property 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 property 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 Architectural Review Committee. Before commencing such review, a lot owner shall submit to the Architectural Review Committee three (3) complete sets of plans and specifications, including but not limited to: a site plan, a foundation plan, foundation survey by a North Carolina registered surveyor, a floor plan or plans, the four directional elevations, 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 Architectural Review Committee. The Architectural Review Committee 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. The Architectural Review Committee shall not approve plans for any residence with an enclosed heated area of less than 1800 square feet on oceanfront lots (and 1400 sq. ft. on ocean side lots) excluding garages, decks, porches and walkways. In the event the ARC fails to approve or disapprove said plans and specifications within 45 days after receipt of a written request therefore, then such approval shall not be required. The ARC, the Declarant, its 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, and the ARC and the Declarant, its 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 Architectural Review Committee for reconsideration, and the Architectural Review Committee 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 resubdivided 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 building site 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 its successors in interest. 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 building site, 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 Architectural Review Committee has the right to determine the exact location of any building to be located on the lot. Such location shall be determined only after a reasonable time has been allowed for the lot owner to submit a survey and plans showing such location to the Architectural Review Committee and the Architectural Review Committee to review said survey and plans.

6. Setbacks and Building Lines. No building shall be erected or maintained on any lot closer than 25 feet from the front property line, nor closer than 10 feet from the side property lines, not 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 18 months from the start thereof, provided that the Declarant, its successor in interest or assigns, 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 property owner. The erection of any exposed antennas shall be done only with the approval of the Architectural Review Committee. As long as cable service is available, no exposed antenna or satellite dish shall be erected on or used on any of the subdivision lots.

9. Screening. Each lot owner shall provide screening from the public view, approved in writing by the Architectural Review Committee, 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 Architectural Review Committee, in its sole opinion, shall require to preserve the beauty and harmony of the development.

10. Pilings. All dwellings located on the East side of Highway 12 which are constructed on a foundation of or which are supported by pilings shall utilize pilings with a minimum of 8 inch by 8 inch characteristics which shall be buried no less than eight (8) feet below the surface of the ground. All pilings shall be enclosed with siding or lattice approved by the Architectural Review Committee.

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 Architectural Review Committee 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 Architectural Review Committee.

13. Occupancy. No single-family residence erected upon any lot shall be occupied in any manner prior to completion of construction and

until the Architectural Review Committee 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 "For Sale", "For Rent", and signs giving the name of the house or owner, shall be erected on any lot. Permitted signs shall be no larger than six (6) square feet in area. No signs shall be illuminated. The Declarant shall not be prevented from erecting such signs as may be deemed necessary to the operation 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.

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 lot owner shall provide a concrete driveway and concrete surface for parking at least two (2) vehicles off the street. The storage of travel trailers, campers, trucks and self-propelled mobile homes shall be in a garage or under the residential dwelling. 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 N. C. Highway 12 and Access to Subdivision Streets. No driveway or other access way on any lot bordering N.C. Highway 12 shall be constructed or located such as to allow access directly onto N.C. Highway 12. Access within the subdivision shall only be permitted to and over the subdivision streets at points or locations approved by the Architectural Review Committee. 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 required 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.

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. A trash and rubbish container at least 8 feet wide and 8 feet long 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 container 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 said 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 Property 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 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. The provision 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 is 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. All wells and toilets and sewage units shall be installed and located in accordance with the rules and regulations of the North Carolina Department of Health or its successor regulatory agency. 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. The Corporation, 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, rear and

side lot lines of each lot 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 and other conveniences and utilities and appurtenances 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 drainageways for the benefit, health and safety of the neighboring residents. 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 lots only.

The Declarant reserves unto itself, its successors in interest and assigns, an easement 20 feet in width across the rear of all lots along North Carolina Highway 12 for the purpose of planting, maintaining and replacing vegetation and for the purpose of conducting such ordinary and usual activities necessary to landscape said easement area; however, the reservation of this easement and right does not create a duty on behalf of Declarant, its successors in interest or assigns, to landscape the easement area or plant vegetation within said easement.

23. Private Ocean Access. The developer 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 further delineated and shown on the said subdivision plat. The Declarant further reserves the right to grant lot owners and condominium or townhouse unit owners of subsequently platted subdivisions 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, subdivisions, condominium or townhouse projects to share on a pro rata basis the cost of repairing, replacing, and maintaining the boardwalk, 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. The Declarant shall have the right to convey such common elements to an appropriate governmental body for upkeep and maintenance or to the Property Owners Association which shall accept such conveyance upon tender of a deed by the Declarant, its successors in interest or assigns.

2. Bridges. Declarant expressly reserves to itself, its agents or assigns, 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 Property Owners Association, their families and guests, a now-exclusive easement is hereby granted to each and every member of said Association, his family and guests, to pass over and enjoy the open spaces of the designated common elements shown on the maps and plats to which this Declaration is applicable

subject to the rules and regulations of the Association and these covenants. The Property 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".

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 draining and circulation of canals, lakes and drainage ways. The 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 provided by these covenants or for a violation of these covenants and/or the rules and regulations of the association until said violation has stopped or 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 Property 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,

and each and every lot owner, by accepting a deed or contract for any lot in the areas to which this Declaration is 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 Property Owners Association, Inc., a non-profit corporation (sometimes herein referred to as the Corporation or Association).

2. Fees and Assessments. An initial fee of \$50.00 per lot shall be paid by members at the time of accepting the deed or executing the contract for his, her or their respective lot(s). The 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, except that the assessment for the Association fiscal year beginning in 1986 shall be \$25.00 per lot.

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 demand, the 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.

4. Future Development. If other property is developed by Declarant or its successor in interest, the Declarant or its successor in interest shall have the option but not be obligation to include such properties under the provisions of this Declaration of Protective Covenants and Restrictions. 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 Property Owners Association established herein and shall be subject to the assessments, charges, liens, by-laws and charter of the Association as provided in an amendment to this Declaration.

ARTICLE IV

ASSESSMENTS AND LIENS

1. Validity. All liens authorized and created hereby shall become effective only upon recordation by the lien holder in the Dare County

Registry of an instrument which 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 Corporation 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 Corporation, it will incur for the mutual benefit of all of the owners of the 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 Corporation has been 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 Corporation 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 (including water) 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 Corporation 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 owner shall be uniform unless otherwise provided for in this Declaration of Protective Covenants and Restrictions. Should the Corporation be the owner of a lot, then the assessment which would otherwise be due and payable to the Corporation 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 Corporation. The Declarant and its successors in interest shall, in its sole discretion, pay each year either the difference between the assessments collected by the Corporation 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 Corporation on behalf of the lot owners, repairing, maintaining, altering, improving, replacing common elements (including a swimming pool and swimming pool area, if built) as well as any private streets, beach and other access ways and driveways within the project, any common element septic systems and drainfields and all utility 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 association affairs; enforcing these restrictions and the rules and regulations of the subdivision; paying taxes, indebtedness of the Corporation, insurance premiums, common utility expenses of the 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 Corporation 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 Corporation 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, Phase Three 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 Corporation. Said annual

assessments or charges shall be due on January 1 of the year for which it is assessed except that the annual assessment of the calendar year of 1986 which shall be prorated for calendar year 1986 after this Declaration has been filed with the Dare County Public Registry and shall be due and payable for said year on the date therefore established by the Corporation through its board of directors. 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, 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 an amounts to be fixed from year to year by the Corporation, and which may establish different rates from year to year as it may deem necessary.

C. The board of directors of the Corporation 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 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 Corporation 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 Corporation 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 effect the liability of any owner for such assessment. Should the Corporation 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 common elements, or in the event of emergencies, the Declarant shall have the authority to levy such

additional assessment or charges it may deem to be necessary.

D. The board of directors of the Corporation, in establishing the annual budget for the operation, management and maintenance of the 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 Corporation 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 said Corporation 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 Declarant and such monies shall be used only to make capital improvement to common property. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Corporation, be expended for current operation and maintenance.

E. All monies collected by the Corporation shall be the separate property of the Corporation, and such monies may be applied by the Corporation to the payment of any expense of operating and managing the Corporation 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 Corporation. As monies for any assessment are paid to the Corporation by any owner of a lot, the same may be commingled with monies paid to the Corporation by the other owners of lots. Although all funds and common surplus, including other assets of the Corporation, 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 Corporation, no other member of the Corporation shall have the right to assign, hypothecate, pledge or any manner transfer his interest therein. When the owner of a lot shall cease to be a member of the Corporation by reason of his divestment of ownership of such lot, by

whatever means, the Corporation shall not be required to account to such owner for any share of the funds or assets of the Corporation, or which may have been paid to the Corporation by such owner, as all monies which any owner has paid to the Corporation shall be held by the Corporation for the benefit of all owners and said monies may be used by the Corporation for the management of the common elements and facilities and shall constitute an asset of the Corporation.

F. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Corporation 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 Corporation. All monies owing to the Corporation shall be due and payable at the main office of the Corporation in the State of North Carolina or such other place as directed by the Board.

G. Upon the failure of the owner of a lot to pay any such assessment or charge, additional assessment, or installment thereof when due, the Corporation 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. Such rights and powers shall continue in the Corporation and the lien of such charge or assessment shall be deemed to run with the lot and the improvements subject thereto. The successive owners of each lot subject to the lien, by the acceptance of deeds therefore, 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 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 Corporation for payment of all assessments or charges regular or special, which may be levied by the Corporation against such lots while such party or parties are owners of

a lot. In the event that any lot owners are in default in payment of any assessment or installment thereof owed to the Corporation, such lot owner or owners shall be personally liable, jointly or severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

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 association and subdivision common elements and facilities requires the continuing payment of cost and expenses therefore, 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 Corporation is necessary in order to preserve and protect the investment of each lot owner, the Corporation 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, if any, which may be due on the amount of any delinquent assessments or charges owing to the Corporation, and which lien shall also secure all costs and expenses, including a reasonable attorneys' fee, which may be incurred by the Corporation in enforcing this lien upon said lot. The lien granted to the Corporation 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 Corporation shall be entitled to a reasonable rental from the owner of any lot from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for said lot. The lien granted to the Corporation 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 Corporation in order to preserve and

protect its lien, and the Corporation shall further be entitled to interest at the highest rate by law on any such advances made for such purpose. All persons, firms or corporations 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 Corporation, and shall acquire such interest in any lot expressly subject to such lien rights.

J. The lien herein granted unto the Corporation 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 description of the lot encumbered thereby, the name of the record owner, the amount due and the date when 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, 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 Corporation. 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. 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, 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 assessment 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 Corporation, 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 Corporation by such owner. Such statement shall be executed by any officer of the Corporation, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Corporation shall be bound by such statement.

In the event that a lot and/or improvements 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 Corporation shall be in default (whether or not a claim of lien has been recorded by the Corporation) 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 Corporation 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 any delinquent assessment shall not be deemed to be an election by the Corporation which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceed 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 Corporation.

L. The Corporation shall not be obligated to spend in any one calendar year all of 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 Corporation shall not be obligated to apply any such surplus to the reduction of charges in the succeeding year.

M. The Corporation shall have authority, in its discretion, to borrow money to expend for the purposes set forth in this section hereof 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 section.

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 hereof 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 thereto has been recorded revoking or modifying said restrictions and covenants. Any subsequent lands subjected to this Declaration by an amendment 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 by vote of a majority in interest of all owners in Phase Three and any subsequent phases or lands upon which these covenants (and as the same may be amended) have been imposed.

2. Enforcement. Enforcement of these covenants, restrictions and declarations shall be the Declarant or its successor in interest until said right is transferred and assigned to the Kinnakeet Shores Property Owners Association, Inc., pursuant to this declaration and by instrument recorded in the Dare County Registry, after which the enforcement shall be by said corporation. 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 hereafter, as to the same breach or as to a breach occurring or subsequent thereto and shall not bar or affect its enforcement.

In addition to the above enforcement remedies, the Declarant, or its successor in interest until said rights are transferred and assigned to the Kinnakeet Shores Property Owners Association, Inc., as above provided, shall have and there is hereby reserved unto the Declarant, and its successor in interest, (including the the Kinnakeet Shores Property Owners Association, Inc.) 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, height of structures, 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 as set forth in Article V.

In the event the Declarant or its successors in interest 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 lot or lots and the Declarant, or its successors in interest 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 property 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 hereafter, as to the same breach or as to a breach occurring prior to subsequent thereto and shall not bar or affect its enforcement. The failure of the Declarant or its successors in interest, to enforce by civil action a breach of Article I, paragraph 3 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 Declarants or its successors in interest right to enforce such breach of Article I, paragraph 3 with respect to said standards after the foresaid period of 12 months has expired. The architectural review required thereby shall not require the Declarant or the Architectural Review Committee 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 in interest or its assigns, except that the powers and rights reserved to Declarant shall not, by the terms of this provision, inure to individual lot owners but only to the Association at such time as the powers are transferred to and vested in it or to the successors in interest of Declarant to whom the powers are expressly assigned. The Declarant reserves the right to assign and transfer all or a portion of the rights and the powers reserved herein to the Association at any time Declarant deems it desirable and the duties pertaining thereto shall thereafter be discharged by the 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 (or its successor in interest) in their sole discretion determine that such Property Owners Association is prepared to assume the rights and exercise the powers created by these covenants. Upon such transfer and assignment the

Property Owners Association shall succeed to and administer in accordance with said Corporation's governing document all the rights, priveleges and powers transferred thereby.

5. Future Development. The Declarant or its successor in interest 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 or its successor in interest.

6. Subordination of Lien. Newport News Savings and Loan Association joins in the execution of these covenants and restrictions to evidence the subordination of the lien of its deed of trust recorded in deed book 476 page 681 in the Dare County Registry to this Declaration of Covenants and Restrictions.

IN WITNESS WHEREOF THE SAID Kinnakeet Shores General Partnership, a North Carolina partnership, has executed this Declaration of Restrictive Covenants by and through its general partners, as the act of and by the authority of said partnership, and the undersigned (including said partnership) have adopted as their seal the word "seal" appearing at the end of their signature line the day and year first above written.

By: Michael R. Davenport (SEAL)

General Partner

By: George E. Martin (SEAL)

General Partner

By: Walter B. Bissell (SEAL)

General Partner

By: Harvey J. ... (SEAL)

General Partner

Newport News Savings and Loan Association

By: J. W. ... (SEAL)
President

ATTEST

Betty H. Looper
Betty H. Looper, Secretary

