

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-1125, SUB 9
DOCKET NO. W-1125, SUB 10

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
Greater Kinnakeet Shores Home Owners,)	
Inc. c/o Pat Weston, P.O. Box 853, Avon,)	AFFIDAVIT OF RAY E.
North Carolina 27915,)	HOLLOWELL, JR., MANAGING
Complainant)	MEMBER OF
)	OUTERBANKS/KINNAKEET
v.)	ASSOCIATES, LLC
)	
Outer Banks/Kinnakeet Associates, LLC,)	
Defendant.)	

OW COMES Ray E. Hollowell, Jr., Managing Member of Outerbanks/Kinnakeet Associates, LLC ("Affiant"), having been duly sworn or affirmed, deposes and states as follows:

1. I am the managing member of Outerbanks/Kinnakeet Associates, LLC ("the Company");
2. I am competent to give the testimony provided in this Affidavit and authorized to do so on behalf of the Company;
3. The statement of facts contained in this Affidavit are made from my personal knowledge, except for statements specifically identified as made upon information and belief, which Affiant believes to be true and for which the source of information and the basis for belief are stated.
4. I am presently unable to appear personally before the Commission to provide testimony in this proceeding;

5. On July 18, 2022, on behalf of the Company I executed the attached Asset Purchase Agreement by and Between Outerbanks/Kinnekeet Associates, LLC. (Seller) and Currituck Water and Sewer, LLC (Buyer) ("the Asset Purchase Agreement"). A true and accurate copy of the Asset Purchase Agreement is attached hereto as Exhibit A;

6. The Asset Purchase Agreement contemplates the sale of all of the Company's assets, subject to the Commission's approval of the sale and the transfer of the Certificate of Public Convenience and Necessity ("CPCN") issued by the Commission in Docket No. W-1125, Sub 0.

7. During the executory phase of the Asset Purchase Agreement, including while the requested approval of the sale and transfer of the CPCN are pending at the Commission, Currituck Water and Sewer, LLC is able, ready, and willing to serve as emergency operator of the system.

8. This ends my affidavit.

SWORN/AFFIRMED AND SUBSCRIBED TO BEFORE ME

July 20, 2022 (Date)

[Signature] (Signature of Affiant)

(Notary Seal)

Crystal Matthews (Signature of Notary Public)

Crystal Matthews (Name of Notary Public – printed)



My Commission Expires: May 14, 2025 (date)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Petition to Intervene has been duly served upon all persons on the docket service list by United States Postal Service or by electronic mail with the party's consent.

This the 22nd day of July, 2022.

BUFFKIN LAW OFFICE

BY: /s/ Patrick Buffkin

Counsel for Outerbanks/Kinnekeet Associates, LLC

HOLLOWELL AFFIDAVIT EXHIBIT A. ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

OUTER BANKS/KINNEKEET ASSOCIATES, LLC.
(Seller)

and

CURRITUCK WATER AND SEWER, LLC.
(Buyer)

July 18, 2022

OFFICIAL COPY

JUL 22 2022

Table of Schedules and Exhibits

1. Wastewater Assets, including real property, easements, and rights-of-way agreements, to be transferred to Buyer
2. Number and identification of active connections to the Wastewater System
3. All parcels to be transferred, including lots where the WWTP and Pump Stations are located
4. Customer records
5. Developer agreements
6. Documentation for cost of Wastewater System and additions to Wastewater System subsequent to initial proceeding in this docket
7. Easements and rights-of-way agreements
8. DWQ permits and approvals, including Collection System permits
9. Agreements which are encumbrances to Wastewater System
10. Prepaid tap fees and CIAC
11. NCDOT and other highway and public road encroachment agreements
12. Notices of termination, defaults or claims
13. Collection System map
14. Maps showing all Pump Stations

OFFICIAL COPY

JUL 22 2022

STATE OF NORTH CAROLINA
COUNTY OF DARE

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made this the 18th day of July, 2022 ("Effective Date"), by and between Outer Banks/Kinnekeet Associates, LLC ("Seller"), a North Carolina corporation, and Currituck Water and Sewer, LLC, a North Carolina limited liability company ("Buyer") (individually referred to as a "Party" and collectively referred to as the "Parties").

WITNESSETH:

(capitalized terms are defined in Article I)

WHEREAS, Seller owns and operates a wastewater utility system ("Wastewater System") serving the Kinnekeet Shores Subdivision ("Subdivision") located in Dare County, North Carolina; and

WHEREAS, Seller has obtained a Certificate of Public Convenience and Necessity ("Certificate" or "CPCN") from the North Carolina Utilities Commission ("Commission"), and approvals from the North Carolina Department of Environment and Natural Resources-Division of Water Quality (now Division of Water Resources) ("DWQ") for the Wastewater System as follows:

Name	Commission Docket No.	DWQ No.
Kinnekeet Shores	W-1125, Sub 0	WQ0015514/WQ0002284

WHEREAS, Buyer is engaged in the business of owning and operating wastewater utility assets and furnishing wastewater utility operation and management services in the State of North Carolina; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all assets of the Wastewater System serving the Subdivision as specifically hereinafter described and identified.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, warranties, representations, stipulations and agreements hereinafter contained, the Parties hereto mutually agree and covenant as follows:

ARTICLE I Definitions

- 1.1. “*Agreement*” shall mean this Asset Purchase Agreement.
- 1.2. “*Certificate*” shall mean a Certificate of Public Convenience and Necessity for wastewater utility service issued by the North Carolina Utilities Commission, as amended from time to time.
- 1.3. “*Closing*” is defined in Article XI hereof.
- 1.4. “*Closing Date*” shall mean the date of the Closing.
- 1.5. “*Collection System Permits*” shall mean, collectively, those permits issued by DWQ for the construction and operation of the Wastewater Collection System, including all modifications thereto.
- 1.7. “*Commission*” or “*NCUC*” shall mean the North Carolina Utilities Commission.
- 1.8. “*DEQ*” shall mean the North Carolina Department of Environmental Quality.
- 1.9. “*DWQ*” or “*DWR*” shall mean the Division of Water Quality of DENR (now Division of Water Resources).
- 1.10. “*Governmental Authority*” shall mean each and every applicable authority, department, agency, bureau, or other entity or instrumentality having jurisdiction over the Wastewater System, including the federal government of the United States, the North Carolina State government and any subdivisions and municipalities thereof, including the Dare County government, and all other applicable governmental authorities and subdivisions thereof.
- 1.11. “*GPD*” means gallons per day.
- 1.13. “*Kinnekeet Shores Subdivision*” or “*Subdivision*” shall mean the approximately _____ acres of real property identified in the deeds recorded in Book ___, Page ___, Book ___, Page ___, Book ___, Page ___, Book ___, Page ___, and Book ___, Page ___ in the office of the Register of Deeds of Dare County, upon which the Kinnekeet Shores Subdivision has been or may be developed. To be completed at a later date.
- 1.14. “*Non-Discharge Permit*” and “*Permit*” shall mean the permit for the operation of the Wastewater System issued by DWQ, Permit No. WQ15514, as shown on Schedule 8 attached hereto and incorporated herein by reference, and any subsequent modifications thereto.
- 1.15. “*Pump Station No. 1*” shall mean the sewage pumping station, as shown on Page of Schedule 15.
- 1.16. “*Pump Station No. 2*” shall mean the sewage pumping station, as shown on Page of Schedule 15.

1.17. “*Pump Station No. 3*” shall mean the sewage pumping station, as shown on Page of Schedule 15.

1.18. “*Reuse Effluent*” shall mean the wastewater that has been treated to the point that it meets the quality standards required by the Permit.

1.19. “*Service Line*” shall mean that portion of the individual household wastewater line that Buyer will own (or have easement rights to own) and maintain. The Service Line shall include that portion of the line that is located within a recorded easement for the benefit of the Seller from the cleanout to the wastewater main at or near the street. For any case where a cleanout does not exist, the Service Line shall mean that portion of the individual household wastewater line that Buyer will own (or have easement rights to) and maintain. The Service Line shall include that portion of the line that is located within a recorded easement for the benefit of Seller to the wastewater main at or near the street.

1.20. “*Utility Company*” shall mean a public or private company duly authorized by the NCUC to provide wastewater utility services (collection, treatment and disposal) within a specified franchise area and any entity providing such services on behalf of a body politic, municipality or other governmental body or entity.

1.21. “*Wastewater Assets*” shall mean certain of Seller’s interests in the real property, tangible personal property and intangible personal property, as described in Schedule 1, and related to the provision of wastewater utility service for the Subdivision. The Wastewater Assets described in Schedule 1 are hereinafter called the “Wastewater Assets”, and those Wastewater Assets will be transferred by Seller to Buyer in accordance with the terms of this Agreement.

1.22. “*Wastewater Collection System*” shall mean the wastewater service lines, gravity collection lines, force mains, pump stations, and all appurtenant equipment constructed and located within the Subdivision, that transmit the wastewater from the customers in the Subdivision, to the Wastewater Treatment Plant, as more fully described in the collection system map in Schedule 13.

1.23. “*Wastewater System*” shall mean the Wastewater Treatment Plant, the Wastewater Collection System, easements, buildings, parts, and equipment, and other facilities used in the collection, treatment, holding and disposal of the wastewater, and any additional components of the wastewater utility system necessary to provide service as shown on Schedule 1.

1.24. “*Wastewater Treatment Plant*” and “*WWTP*” shall mean the 350,000 GPD wastewater treatment and disposal facilities.

ARTICLE II Representations and Covenants by Seller

SELLER REPRESENTS, WARRANTS and COVENANTS THAT ON THE DATE HEREOF AND AS OF THE CLOSING:

2.1. Organization; Good Standing. Seller is a corporation, validly existing and in good standing under the laws of the State of North Carolina, and it is authorized to do business in the State of North Carolina.

2.2. Power and Authority Relative to Agreement. Seller has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly and validly authorized by its shareholders, directors and officers, and no other action on the part of Seller is necessary in furtherance thereof. Seller

2.3. No Actions at Law or Suits in Equity. There are no pending or, to Seller's knowledge, threatened actions at law or suits in equity relating to the Wastewater Assets, and there are no pending or, to Seller's knowledge, threatened proceedings before any governmental agency with respect to the Wastewater Assets. There are no actions or proceedings pending or, to Seller's knowledge, threatened against Seller that would prohibit or make illegal the consummation of the transactions contemplated by this Agreement.

2.4. Effect of Agreement. The execution and delivery by Seller of this Agreement does not, and the performance by Seller of its obligations under this Agreement and the consummation of the transactions contemplated hereby, shall, to Seller's knowledge, not:

a. Conflict with or result in a violation or breach of any of the terms, conditions or provisions of Seller's articles of incorporation, bylaws or other governing documents;

b. Result in a default, penalty, or any adjustment in required payments (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, deed of trust, indenture, license, agreement, lease or other instrument or obligation to which Seller is bound, except for such defaults, penalties or adjustments (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or

c. Conflict with or result in a violation or breach of any term or provision of any law applicable to Seller or any of its affiliates or any of their respective assets and properties.

2.5. Contractual Obligations. There are no restrictions, covenants, contracts or obligations of any nature between Seller and any other party relating to the Wastewater Assets. Seller has not entered into any service agreements with persons receiving wastewater service from the Wastewater System other than the persons owning lots in the Subdivision that will survive beyond the Closing Date and has no obligations to any such persons other than the persons owning lots in the Subdivision.

Between the date hereof and the Closing, Seller will maintain the Wastewater System in operational compliance with the Permits and, at reasonable times and upon reasonable prior notice, permit Buyer, its attorneys and agents, to examine Seller's books, accounts, and other records relating to the Wastewater Assets.

2.6. Notice of Termination or Default. Seller is not aware of, and Seller has not received any notice of termination or notice of default or claim with respect to any agreement or commitment in effect related to the Wastewater Assets, except for any such notices of default set forth on Schedule 12 attached hereto.

2.7. Permits and Approvals. Seller has all the required permits and approvals from DWQ to operate the Wastewater System.

2.8. Wastewater Monitoring. Seller has conducted all wastewater sampling and analyses required by DWQ, and Seller is current on all such sampling and analyses.

2.9. Accuracy or Representations and Warranties. No representation or warranty by Seller in this Agreement, or any statement or certificate furnished or to be furnished to Buyer pursuant hereto or in connection with the transactions contemplated herein, contains or will contain any untrue statement of a material fact or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE III

Representations and Covenants by Buyer

BUYER REPRESENTS, WARRANTS and COVENANTS THAT ON THE DATE HEREOF AND AS OF THE CLOSING:

3.1. Organization; Good Standing. Buyer is a North Carolina limited liability company in existence under the laws of the State of North Carolina and has full power and authority to conduct its business as it is now being conducted and to own, operate, and manage its assets and properties.

3.2. Power and Authority Relative to Agreement. Buyer has full entity power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, and the performance by Buyer of its obligations hereunder, have been duly and validly authorized by its members and manager, and no other action on the part of Buyer is necessary in furtherance thereof.

3.3. No Actions or Proceedings. There are no actions or proceedings pending or, to Buyer's knowledge, threatened against Buyer or any of its assets and properties that would be reasonably expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

3.4. Effect of Agreement. The execution and delivery by Buyer of this Agreement does not, and the performance by Buyer of its obligations under this Agreement and the consummation of the transactions contemplated hereby do not:

a. Conflict with or result in a violation or breach of any of the terms, conditions or provisions of Buyer's articles of organization, operating agreement, or other corporate government documents;

b. Result in a default, penalty, or any adjustment in required payments (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, deed of trust, indenture, license, agreement, lease or other instrument or obligation to which Buyer or any of its affiliates is a party or by which any of their respective assets and properties may be bound, except for such defaults, penalties or adjustments (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained; or

c. Conflict with or result in a violation or breach of any term or provision of any law applicable to Buyer or any of its affiliates or any of their respective assets and properties.

3.5. No Claim by Third Parties. All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by Buyer directly with Seller without the intervention of any person on behalf of Buyer in such manner as to give rise to any valid claim by any person against Seller for a finder's fee, brokerage commission or similar payment.

3.6. Experience. Buyer is a Utility Company and is experienced in the ownership, operation and maintenance of wastewater treatment and disposal facilities.

3.7. Accuracy of Representations and Warranties. No representation or warranty by Buyer in this Agreement, or any statement or certificate furnished or to be furnished to Seller pursuant hereto or in connection with the transactions contemplated herein, contains or will contain any untrue statement of a material fact or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE IV

Purchase Price and Obligations in Consideration of Purchase Price

4.1. Purchase of Wastewater Assets. Upon the terms and subject to the conditions of this Agreement, the Seller hereby sells, transfers, assigns, conveys and delivers to the Buyer all of the Seller's right, title, and interest in and to the Assets (as defined below), free and clear of all liens, pledges, charges, or encumbrances of any nature whatsoever. Seller agrees to sell and Buyer agrees to purchase the Assets on or before the Closing Date, for the consideration hereinafter set forth herein.

The "Assets" means all of the wastewater assets owned by the Seller and "Related to the Business" (as defined below), including all of the following tangible and intangible assets:

(a) all fixed assets, equipment, furniture tangible personal property Related to the Business, including, without limitation, the Wastewater Assets, including the parcels of land upon which the WWTP and Pump Stations are located, easements, including easements for the Pump Stations, and rights-of-way agreements, as set forth in Schedules 1 and 7,

(b) the rights and current, ordinary course obligations under contracts and agreements to which the Seller is a party (the “Contracts”);

(c) all trucks and other vehicles of Seller as set forth on Schedules 1-7;

(d) all credits, prepaid expenses, deferred charges, advance payments, security deposits and other prepaid items as set forth on Schedule 1-7, but specifically excluding any accounts receivable, bond, and other cash items in the business; and

(e) except as otherwise provided, all original or copies of all books, records, and other documents related to the Business that are held by the Seller, including, but not limited to, any marketing, advertising and promotional materials, accounting records, financial reports, property tax filings and materials, fixed asset lists, customer lists, vendor lists, personnel files, referral sources, research and development reports, assessments and reports, telephone numbers, records and information, manuals, correspondence, files and any similar items, but excluding all of the Seller’s corporate records and other tax returns.

For purposes of this Agreement, “Related to the Business” means owned by the Seller and primarily used or held for use by Seller in, or primarily related to, or primarily arising from, the Business, regardless of whether such assets are set forth on the Schedules attached hereto or owned by Seller. For the avoidance of doubt, the Assets include all assets Related to the Business, except for the Excluded Assets.

Excluded Assets. The Assets will not include: (i) cash, cash equivalents, certificates of deposit furnished to the Commission for the Commission required bond, or bank accounts of the Sellers; (ii) Seller’s accounts receivable; (iii) all books and records of the Seller that are required by law to be retained, so long as copies of such books and records are provided to the Buyer; (iv) all returns, reports, notices, forms, and other documents relating to any taxes, other than property taxes; provided, that the Assets will include copies of any tax returns or other information related to taxes of the Business or the Seller that the Buyer may reasonably request in writing, which the Seller shall provide within fifteen (15) business days after the Buyer’s request; (v) rights to any tax refunds; (vi) the rights that accrue or will accrue to the Seller under this Agreement or any agreement delivered in connection herewith; and (vii) those other assets listed herein (collectively, the “Excluded Assets”).

Assumption and Exclusion of Liabilities. The Buyer hereby agrees to assume and agrees to perform, pay and discharge only the following liabilities: (i) the current, ordinary course obligations first arising under the Contracts after the Effective Date and the ordinary course obligations as set forth in Section 4.1 (b) (the “Assumed Liabilities”); provided, however, that, notwithstanding the above, in no event will the Assumed Liabilities include any of the Excluded Liabilities. Except for the Assumed Liabilities, the Buyer will have no obligation with respect to, and the Seller shall be solely responsible for discharging all other liabilities or obligations of the

Seller, including, without limitation, all liabilities arising from the operation of the Business prior to Closing, all liabilities associated with any other business or activity of Seller other than the Business, all indebtedness of the Business and any and all taxes or tax obligations of the Seller or any equity owner of the Seller (“Excluded Liabilities”).

4.2. Purchase Price. The purchase price for the Wastewater Assets (the “Purchase Price”) shall be: .

- a. The sum of One Hundred Dollars; or
- b. Additional purchase price of as determined by the NCUC, as described in Article V, as rate base

These sums shall be paid for each existing active & inactive connection to the wastewater system, inclusive of the collection system, wastewater treatment plant, wastewater effluent disposal system, deeds/easements, and all assets currently in constructed or in operation that are necessary for the provision of providing service to the anticipated 408 lots within the Kinnakeet subdivision.

The purchase price shall be paid within 30 days of the final order by the NCUC with the determination of rate base.

In addition to the Purchase Price, the Seller shall be entitled to, and the Buyer shall pay to Seller, such additional sums as may be due, if any, pursuant to the Earnout Payments set forth in Section 1.4 herein.

4.3. Post-Closing Earnout Payment. The following post-Closing payments (each an “Earnout Payment” and collectively the “Earnout Payments”) shall be payable by Buyer to Seller in accordance with the following terms and conditions:

(a) Subject to a maximum aggregate Earnout Payment of two Hundred Thousand Dollars (\$200,000), for a period of three (3) years beginning on January 1, 2023 (the “Earnout Term”), Buyer shall pay to Seller an Earnout Payment with respect to each quarter ending on March 31, June 30, September 30, and December 31 during the Earnout Term (each an “Earnout Period”). Any Earnout Payment earned with respect to a particular Earnout Period shall be payable to Seller within thirty (30) days of the end of the applicable Earnout Period.

(b) The Earnout Payment with respect to each Earnout Period shall be \$500 per additional connection added to the wastewater facility between the closing date and the end of such Earnout Period.

4.4 Documents to be delivered to Buyer at Closing. At Closing, Seller will deliver to Buyer the following documents:

- a. Deeds and bills of sale, as applicable, for the Wastewater Assets. In the event that Seller does not have fee title to all parcels that are necessary for Buyer to access and operate the Wastewater System, Seller shall obtain fee title to the necessary parcels prior to Closing

b. Non-exclusive assignments of easements, rights-of-way agreements, and other assignments that are necessary for Buyer to access and operate the Wastewater System in accordance with this Agreement. In the event that there are not easements or rights-of-way agreements that are necessary for Buyer to access and operate the Wastewater System, Seller shall obtain the necessary easements or rights-of-way agreements prior to Closing.

c. All rights of Seller under Developer Agreements, as hereinafter defined in Paragraph 8.1.g, for the Wastewater Assets, including rights for future wastewater system expansion and any future connection charges, tap fees or impact fees which are to be paid by developers to Seller under the Developer Agreements. A list of all Developer Agreements shall be set forth in Schedule 5, with a copy of each Developer Agreement attached to Schedule 5.

4.5. Documents to be delivered to Buyer. Upon written request of Buyer, Seller will deliver to Buyer any of the following documents that Buyer requests

a. Without warranty, express or implied, all files, documents, papers, agreements, books of account, customer lists, records, and previous account balance history, lot numbers and service addresses, lists of schedules, original cost invoices and invoices of costs for additions to the Wastewater System after the CPCN was granted, in electronic and/or "hard" copies, and records in Seller's possession pertaining to the Wastewater Assets. This information shall be delivered to Buyer in editable electronic format, if possible.

b. Wastewater utility system prints, plans, specifications, engineering reports, engineer certifications, wastewater reports, surveys, shop drawings, equipment manuals, and wastewater analyses reports that are necessary for the operation of the Wastewater System and are in the possession of Seller or its agents. This information shall be delivered to Buyer in editable electronic format, if possible.

c. All non-developer contracts which relate to the Wastewater Assets and are necessary for the continuing maintenance and operation of the Wastewater Assets. Seller shall provide to Buyer a copy of each such contract prior to Closing, and Seller and Buyer shall mutually agree upon which contracts will be assigned to and assumed by Buyer.

d. All customer accounts receivables.

e. Copies of any covenants or restrictions related to wastewater service that are contained within customers' deeds.

This obligation of Seller to provide documents upon the written request of Buyer shall continue in effect after the Closing.

4.6. Absence of Liabilities. Seller shall transfer and convey the Wastewater Assets in marketable fee simple or title free and clear of all liens, encumbrances, liabilities, debts, assessments, claims, judgments, and current federal, state or county taxes, except those tax obligations expressly set forth in this Agreement to be prorated. Buyer is not

assuming, will not be responsible for, and will not pay any of Seller's liabilities, known or unknown, including debts, assessments, judgments, or federal, state or county taxes, except those tax obligations expressly set forth in this Agreement to be prorated.

4.7. Possession and Operations Prior to and After Closing. Possession of the Wastewater Assets shall be delivered to Buyer on the date of Closing. Buyer, at Closing, will immediately assume ownership and operation of the Wastewater Assets and be responsible for payment of all costs of the operation and maintenance, which arise after the Closing. Effective on the date of Closing, Buyer shall be responsible for having the electricity and other utility services placed in its name. Seller shall cooperate fully with Buyer to avoid any undue difficulties or interruptions of service after the date of Closing. From and after the Effective Date of this Agreement, Seller will not dispose of or encumber the Wastewater Assets. After the Effective Date of this Agreement and prior to the date of Closing, Seller will not, without the written consent of Buyer, enter into new agreements with developers for expansion of the Wastewater System. Upon the Buyer's assumption of ownership of the Wastewater Assets, and for the Five (5) years following the Seller shall be paid \$500.00 (Five Hundred Dollars) for each connection to the Wastewater Collection System

ARTICLE V

Establishment of Rate Base

5.1. Rate Base Treatment of Purchase Price. This Agreement is expressly contingent upon the Commission establishing the rate base to be the Purchase Price to be paid to Seller by Buyer at Closing. Buyer will use its best efforts to obtain an Order from the Commission that establishes the rate base as expeditiously as possible.

In the event that the Commission fails to establish the rate base as specified above or in event that Buyer is not satisfied with the amount of the rate base that the Commission establishes, Buyer shall have the right to terminate this Agreement in Buyer's sole discretion. In the event that Buyer terminates this Agreement, Buyer and Seller will have no further obligations to the other.

ARTICLE VI

Bond

6.1. Buyer to Furnish Bond with the Commission. Upon the Commission's approval of the transfer of the CPCN to Buyer for the Wastewater System, Buyer shall replace the \$70,000 bond required by the Commission and currently in place. Buyer shall assist Seller in obtaining the expeditious release and return of Seller's bond from the Commission.

ARTICLE VII

Inspection of Wastewater System

7.1. Condition of Wastewater Assets at Closing. Seller is responsible for all repairs required for the Wastewater System to remain in operational compliance with the Permits, capital upgrades for the Wastewater System until the date of Closing, and all outstanding expenses incurred prior to Buyer assuming the operations and preventative maintenance services of the Wastewater System.

Seller shall have no liability to Buyer after Closing with respect to the condition of the Wastewater Assets so long as the Wastewater Assets are maintained in operational compliance with the Permits. After Closing, Buyer will make any necessary upgrades to the Wastewater System at Buyer's cost.

ARTICLE VIII

Documents to be Delivered to Buyer Prior to Closing

8.1. Documents to be Furnished within 20 Days. Seller shall deliver to Buyer within 20 days of the execution of this Agreement the documents listed below for Buyer's review that Seller has not already provided to Buyer. Buyer shall have 60 days after execution of this Agreement to review and either approve or disapprove each document and the contents therein. If Buyer disapproves any of the documents, Buyer shall provide written notice within the 60-day period to Seller of its disapproval, and Buyer shall not be obligated to close this transaction. If Buyer fails to provide written notice of disapproval of any document within the 60-day period, Buyer shall be deemed to have approved the document.

- a. Schedule 1 listing the Wastewater Assets.
- b. Schedule 2 listing the number and identification of all Commission docket numbers related to the Wastewater System.
- c. Schedule 3 listing of all parcels upon which the WWTP and pump stations are located, and all other real property related to the Wastewater System to be transferred, along with copies of all deeds and easements with recorded deed books and pages.
- f. Schedule 4 listing the names, physical addresses, mailing addresses, and lot numbers of all customers.
- g. Schedule 5 listing all Developer Agreements entered into between Seller and owners or developers of property in the regarding wastewater service to be provided to properties in the Subdivision. Schedule 5 shall list each agreement date and the parties to the agreement, with copies attached of each Developer Agreement.

- h. Schedule 6 listing of invoices for the cost for the installation of the Wastewater System and any repairs and upgrades made to the Wastewater System made after the CPCN was granted thereafter, with copies of invoices attached.
- i. Schedule 7 listing all easements and rights-of-way owned or used by Seller for the construction, operation, and maintenance of the Wastewater System, with copies of the documents attached.
- j. Schedule 8 listing all DWQ approvals and permits, with copies of the DWQ approvals and permits attached. Schedule 8 shall also list any portion of any Wastewater System that does not have a DWQ written approval or permit.
- k. Schedule 9 listing all other agreements entered into by or between Seller and other parties, which would or might be considered to be an encumbrance upon the Wastewater Assets, with copies of such agreements attached.
- l. Schedule 10 listing all prepaid customer tap fees and prepaid contribution in aid of construction ("CIAC") for which the Wastewater System or a portion thereof has not been installed.
- m. Schedule 11 listing all NCDOT and other highway and public road encroachment agreements in the Subdivision that affect or relate to the Wastewater System, with copies attached.
- n. Schedule 12 listing all notices of default, terminations and claims.
- o. Schedule 13 that provides the Collection System map.
- p. Schedule 14 that provides the maps showing all Pump Stations.

ARTICLE IX

Obligation to Request Commission Approval

9.1. Commission Approval of Transfer of CPCN by the Commission. Buyer, at Buyer's cost, shall prepare and file an application with the Commission for transfer of the CPCN for the Wastewater System to Buyer. Buyer and Seller agree to fully cooperate and use their best efforts to obtain the transfer of the CPCN. Seller shall furnish to Buyer the necessary financial documentation and information to establish the original cost of the Wastewater System in the proceeding before the Commission.

9.2. Rate Increase. In the application to transfer the CPCN, Buyer shall not request that the Commission approve a rate increase for all customers to the Wastewater System

9.3. Future Rate Increases. The Parties acknowledge and agree that Buyer may request rate increases from time to time after the Closing in this matter.

Article X not used**ARTICLE XI****Closing**

11.1. Date for the Closing. The Closing of the transaction contemplated hereunder shall occur within 30 days after the date of issuance or transfer of the CPCN to Buyer. The Closing shall occur in the office of an attorney licensed in the State of North Carolina.

11.2. No Claim by Third Parties. Seller and Buyer each represent to the other that no party is entitled to a commission upon the Closing and transfer of the Wastewater Assets, and each agrees to indemnify and hold harmless the other against any and all claims of real estate brokers, finders or similar agents claiming to have been engaged by the indemnifying party, for commissions or claims for similar fees incurred in any action, suit, proceeding or claim arising out of or in connection with the transaction contemplated by this Agreement. The indemnities in this Section 11.2 shall survive Closing or the termination of this Agreement.

11.3. Conditions Precedent to closing. Seller must provide free and clear title to the Wastewater Assets.

11.4 Other. Buyer must obtain resolution with the North Carolina Department of Justice for the Complaint and Motion for Injunctive Relief filed against Outer Banks/Kinnakeet Associates, LLC in the superior Court of Dare County (Case No. 22 CVS 177), filed on May 5, 2022. Resolution must be acceptable to Buyer at Buyer's sole discretion.

ARTICLE XI**Taxes and Assessments**

12.1. Taxes and Assessments. Seller and Buyer shall prorate taxes for the Wastewater System on a calendar year basis as of the Closing Date, with such prorations to include, but not be limited to, property taxes, real estate taxes, taxes imposed by special assessment or assessments by a Governmental Authority that are assessed or charged in calendar year 2022. Seller shall be responsible for all such taxes for any calendar year prior to 2022.

ARTICLE XII**Title Insurance**

13.1. Title Insurance and Surveys for Deeded Property. Seller, at Seller's cost, shall provide to Buyer (a) a title insurance commitment covering the tracts for the Wastewater Treatment Plant and Pump Station No. 1 to insure marketable fee simple or easement title, free and clear of any and all liens and encumbrances, and (b) a plot plan of each such tract to be conveyed in fee showing improvements, surveyed and sealed by a registered surveyor. Seller shall procure a title commitment on behalf of Buyer with respect to each site prior to the Closing and shall pay the

attorney's fees incurred in connection therewith. Buyer shall pay the title insurance premiums in connection with the issuance of an owner's policy of title insurance at Closing.

13.2. Title Insurance for Easements. Seller shall also provide Buyer a title commitment for all perpetual easements for the Wastewater Treatment Plant (if any), wastewater collection lines, force mains, and all Pump Stations, and all easements referred to in the Easement Agreements, not within publicly dedicated rights of way. The title opinion shall insure the perpetual easements to be free and clear of all liens and encumbrances. Seller shall procure a title commitment on behalf of Buyer with respect to each easement site prior to the Closing and shall pay the attorney's fees incurred in connection therewith. Buyer shall pay the title insurance premiums in connection with the issuance of an owner's policy of title insurance at Closing.

ARTICLE XIII

General Provisions

14.1. Customer Service Deposits. Seller represents and warrants to Buyer that Seller has not collected any customer service deposits. In the event that Seller has collected any customer service deposits, Seller shall refund the deposits to the customers from whom the deposits were collected immediately following the Closing.

14.2. Environmental Matters. During the period that Seller has owned the real property that constitutes part of the Wastewater System, Seller has not introduced to the real property any hazardous waste substances. Further, Seller has no knowledge of any such hazardous waste substance being introduced to the real property prior to the time Seller acquired the real property. For purposes on this paragraph, the definition of the term "hazardous substance" shall be that set out in Section 101(4) of the Federal Comprehensive Environmental Response, Compensation and Liability Act, except that for purposes of this Agreement, the term also shall include (i) petroleum (crude oil) and natural gas (whether existing as a gas or a liquid), and (ii) any substance defined as hazardous or toxic by any state or local regulatory agency having jurisdiction over the operations of Seller. The term hazardous substance herein shall not include the drinking wastewater additives such as chlorine, caustic soda, soda ash and phosphates.

14.3. Prepaid Tap Fees, Advances for Construction. Except as otherwise disclosed on Schedule 9, Seller has not received any prepaid tap fees or advances for construction or CIAC for which construction has not been completed.

14.4. Binding Upon Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller, and the successors and permitted assigns of each.

14.5. No Third Party Beneficiary Rights. Nothing expressed or referred to in this Agreement will be construed to give any person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except as to a successor or permitted assignee of Seller and Buyer, as provided in Section 14.2 of this Agreement.

14.6. No Assumption of Liabilities. Notwithstanding any provisions of this Agreement to the contrary, except as expressly provided in this Agreement, Buyer shall not assume or otherwise be liable for any liabilities, obligations or commitments of Seller, with the exception of the assumption by Buyer from Seller of the obligations associated with the Permit after the Closing and the obligations to provide wastewater service to the Subdivision after the CPCN is transferred to Buyer.

14.7. Force Majeure. Except as provided for in this Agreement and except for the payment of monetary obligations, neither Party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligation hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the Party affected and which, by the exercise of due diligence such Party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the Parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each Party may perform its obligations under this Agreement.

14.8. Enforcement of Agreement. The failure of either Party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either Party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

14.9. Notices. Any notice of delivery required to be made hereunder shall be made by mailing to the appropriate party as follows:

If to Buyer:

Currituck Water and Sewer, LLC
4700 Homewood Court, Suite 108
Raleigh, NC 27609
Attn: Michael J. Myers
Mmyers@envirolinkinc.com
Telephone: (252) 235-4900
Facsimile: (252) 235-2132

Copy to:

Britton Allen
Allen Law Offices, PLLC
4030 Wake Forest Rd.
Suite 115
Raleigh, NC 27606
ballen@theallenlawoffices.com
919-838-9529

If to Seller:

Outer Banks/Kinnekeet Associates, LLC
Attention: Ray Hollowell
Post Office Box 1158
Avon, NC 27915-1158
Telephone: 252-202-2358
RayEHallowell@yahoo.com

Delivery shall be deemed complete upon mailing. Either Party may change or add to its addresses set forth above, by like notice.

14.10. Incorporation of Exhibits. The Exhibits to this Agreement are made a part hereof and are hereby incorporated in full by reference.

14.11. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

14.12. Representations, Warranties and Obligations Survive Closing. The representations, warranties, and obligations contained herein shall survive, and continue in effect after the Closing.

14.13. Entire Agreement. This Agreement sets forth the complete understanding between Seller and Buyer and any amendments hereto, to be effective, must be made in writing.

14.14. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

14.15. Modifications in Writing. This Agreement shall not be modified, amended, or changed in any respect except in writing, duly signed by each Party, and each Party hereby waives any right to amend the Agreement in any other way.

14.16. Consent to Jurisdiction. The Parties agree that the courts of North Carolina shall have exclusive jurisdiction over this Agreement and any controversies arising out of, relating to, or referring to this Agreement, the formation of this Agreement, and actions undertaken by the Parties hereto as a result of this Agreement. Each of the Parties hereto expressly and irrevocably consents to the personal jurisdiction of such state courts, agrees to accept service of process by mail, and expressly waives any jurisdictional or venue defenses otherwise available.

IN TESTIMONY WHEREOF, Buyer and Seller have caused this instrument to be executed in a manner so as to be binding this the day and year first above written.

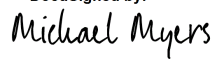
Signature page follows

OUTER BANKS/KINNEKEET ASSOCIATES, LLC

DocuSigned by:

DF17266DD2B944E...
Manager

CURRITUCK WATER AND SEWER, LLCC

DocuSigned by:

2F8E0AC7CF3E42F...
Manager

OFFICIAL COPY

JUL 22 2022

[Notary Page for Asset Purchase Agreement - Outer Banks/Kinnekeet Associates, LLC]

STATE OF NORTH CAROLINA

COUNTY OF DARE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Ray E. Hollowell, Jr., Manager of Outer Banks/Kinnekeet Associates, LLC. identity has been proven by satisfactory evidence, said evidence being: I have personal knowledge of the identity of the principal; I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a credible witness has sworn to the identity of the principal; personally came before me this day and acknowledged that he is Manager of Outer Banks/Kinnekeet Associates, LLC and that he, in such capacity and being authorized to do so, voluntarily executed the foregoing on behalf of the corporation for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this _____ day of _____, 2022.

Notary Public Signature: _____

Print Name: _____

My Commission Expires: _____

[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE FULLY LEGIBLE]

[Notary Page for Asset Purchase Agreement – Currituck Water and Sewer, LLC]

STATE OF NORTH CAROLINA

COUNTY OF DARE

I, the undersigned, a Notary Public of the County and State aforesaid, certify that Michael Myers, Member of Currituck Water and Sewer, LLC, whose identity has been proven by satisfactory evidence, said evidence being: I have personal knowledge of the identity of the principal(s) I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a credible witness has sworn to the identity of the principal(s); personally came before me this day and acknowledged that he a Member of Currituck Water and Sewer, LLC and that he, in such capacity and being authorized to do so, voluntarily executed the foregoing on behalf of the corporation for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 18th day of July, 2022.

Notary Public Signature: 
DocuSigned by: Elizabeth W Jenkins
7FE5EA4102E74FC...

Print Name: Elizabeth w Jenkins

My Commission Expires: August 4, 2026

[AFFIX NOTARY SEAL BELOW-NOTE THAT SEAL MUST BE FULLY
LEGIBLE]

SCHEDULE 1

Wastewater Assets, Including Parcels and Easements to be Transferred

OFFICIAL COPY

JUL 22 2022

SCHEDULE 2Number and Identification of NCUC Docket Nos.

NCUC DOCKET NO	TYPE PROCEEDING	DATE OF ORDER	SERVICE AREA IN KINNAKEET SHORES
W-1125, Sub 0	Transfer	3-13-2000	Phases 6-8, 12,15; Hatteras Plaza, Sun Coast Realty, US Post Office, and Kinnakeet Shores Clubhouse
W-1125, Sub 1	Contiguous Ext.	8-22-2002.	Phase 9-11
W-1125, Sub 2	Contiguous Ext.	11-17-2003	Phases 16-22
W-1125, Sub 5	Contiguous Ext.	11-22-2011	Hatteras Realty Complex

OFFICIAL COPY

Jul 22 2022

SCHEDULE 3
All Lots and Other Real Estate to be Transferred

DISCRIPTION OF ASSET	DB/PG	GRANTEE

OFFICIAL COPY

Jul 22 2022

Jul 22 2022

Jul 22 2022

Jul 22 2022

Jul 22 2022

SCHEDULE 5

Developer Agreements

Attach copies of all Developer Agreements.

If none, please indicate so by writing "NONE"

OFFICIAL COPY

JUL 22 2022

SCHEDULE 6

Invoices for Wastewater System Plant Additions

Attach copies of all invoices for any plant installations or improvements since the last test year.

OFFICIAL COPY

JUL 22 2022

SCHEDULE 7

Easements and Rights-of-Way Agreements

Attach copies of all easements and rights-of-way agreements owned by Seller which are used to serve wastewater customers.

If none, please indicate so by writing "NONE"

OFFICIAL COPY

JUL 22 2022

SCHEDULE 8

Attach copies of all DWQ (or predecessor agency) permits and approval letters for the Wastewater Systems and list of any portion of any system not having DWQ written approval.

DWQ DOCUMENT #	DATE	SERVICE AREA
Treatment Permit #	August 29, 2008	Kinnakeet Shores
Collection Permit WQ0017527	January 25, 2000	Phase 9-11
Collection Permit WQ0021012	May 15, 2002	Phase 16-22
Collection Permit WQCS00295	July 29, 2005	
Collection Permit WQ0002284	August 29, 2008	
Collection Permit WQ0035200	June 30, 2011	Phase 16-19, 21-22
Collection Permit		
Collection Permit		
Collection Permit		

OFFICIAL COPY

Jul 22 2022

SCHEDULE 9

Attach copies of all other agreements between Seller and other parties, which are and could be considered an encumbrance upon the Wastewater Assets.

If none, please indicate so by writing "NONE."

OFFICIAL COPY

JUL 22 2022

SCHEDULE 10

Attach copies of all prepaid tap fees or prepaid cash CIAC.

If none, please indicate so by writing "NONE."

OFFICIAL COPY

JUL 22 2022

SCHEDULE 11

Attach copies of all Department of Transportation and other highway and public road encroachment agreements.

If none, please indicate so by writing "NONE."

OFFICIAL COPY

JUL 22 2022

SCHEDULE 12

Attach copies of all Notices of Termination or Notices of Default or Claims
with respect to Purchased Systems.

If none, please indicate so by writing "NONE."

OFFICIAL COPY

JUL 22 2022

SCHEDULE 13

Collection System Map

OFFICIAL COPY

JUL 22 2022

SCHEDULE 14

Maps Showing Location of each Pump Station in Service Area