

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. W-1125, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the matter of	)	
Greater Kinnakeet Shores Home Owners,	)	MOTION OF
Inc. c/o Pat Weston P.O. Box 853, Avon,	)	OUTER BANKS/KINNAKEET
North Carolina 27915,	)	ASSOCIATES, INC. TO
Complainant,	)	DISMISS COMPLAINT
v.	)	FOR LACK OF STANDING
	)	AND JURISDICTION
Outer Banks/Kinnakeet Associates, LLC,	)	
Respondent.	)	

NOW COMES the Respondent, Outer Banks/Kinnakeet Associates, LLC moving the Commission to dismiss Complainant's complaint upon the grounds that Complainant lacks the standing to assert the claims set forth in the complaint and whereas Complainant lacks the standing to assert said claims, the Commission lacks subject matter jurisdiction to adjudicate said claims; and for the failure of the Complainant to comply with the Rules of the Commission in pleading its complaint. In support of this motion, Respondent shows the following:

**LACK OF SUBJECT MATTER JURISDICTION**

1. Complainant's Articles of Incorporation filed with the North Carolina Secretary of State, a true copy of which is attached hereto as **Exhibit A**, set forth the duties and responsibilities of Complainant which do not include asserting a cause of action against a private utility provider on behalf of certain members.

2. The Kinnakeet Shores Subdivision Declaration of Protective Covenants and Restrictions and its amendments are recorded in the Office of the Dare County Register of Deeds. As shown by the following exhibits, Complainant is neither authorized nor required to assert an action against a private utility on behalf of a member:

A. **Exhibit B:** a true copy of the original Declaration, filed 7 October 1981 in Book 317 at page 297, sets forth the following:

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 the charter of said organization . . . .

Book 317, Page 301

ARTICLE V  
GENERAL PROVISIONS

...

2. Enforcement. In the event of a violation or breach of any of these restrictions by any property owner, or agent of such owner, the Property owners' Association . . . shall have the right to proceed at law or in equity to compel compliance to the terms hereof or to prevent the violation or breach in any event.

Book 317, Page 303.

B. **Exhibit C:** a true copy of the Amended Declaration, filed 24 August 1982 in Book 330 at Page 206; does not amend the provisions regarding the Property Owners' Association or its powers of enforcement.

C. **Exhibit D:** a true copy of the Amended Declaration, filed 6 October 1982 in Book 332 at Page 159; does not amend the provisions regarding the Property Owners' Association or its powers of enforcement.

D. **Exhibit E:** a true copy of the Declaration, filed 27 December 1983 in Book 357 at Page 912; makes the original Declaration applicable to Phase II but does not amend the provisions regarding the Property Owners' Association or its powers of enforcement.

E. **Exhibit F:** a true copy of the Declaration, filed 12 December 1986 in Book 487 at Page 670, sets forth the following:

ARTICLE III  
PROPERTY OWNERS' ASSOCIATION

1. Organization. For the purpose of providing maintenance and control of all common elements and 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 . . . .

Book 487, Page 680

ARTICLE V  
GENERAL PROVISIONS

. . . .

2. Enforcement. Enforcement of these covenants, restrictions and declarations shall be [sic] the Declarant or its successor in interest until said right is transferred and assigned to the Kinnakeet Shores Property owners Association, Inc. . . . [r]emedies for violations shall include, but not be limited to other equitable restraints against the violation or for mandatory compliance with said covenants or at law for damages by virtue of any such violation, or both.

Book 487, Page 690

3. The Subsequent Declarations and Amended Declarations recorded in the Dare County Registry do not change or amend the powers and duties of the Complainant.
4. "Standing is a necessary prerequisite to a court's proper exercise of subject matter jurisdiction." *Aubin v. Susi*, 149 N.C. App. 320, 324, 560 S.E.2d 875, 878, *disc. rev. denied*, 356 N.C. 610, 574 S.E.2d 474 (2002).
5. "[O]nly one with a genuine grievance" can bring a valid complaint. *Mangum v. Raleigh Bd. of Adjust.*, 362 N.C. 640, 644, 669 S.E.2d 279, 283 (2008).
6. "To establish standing, three elements must be satisfied:  
  
(1) injury in fact—an invasion of a legally protected interest that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision."  
  
*Neuse River Found., Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 114, 574 S.E.2d 48, 52 (2002).
7. "Standing most often turns on whether the party has alleged 'injury in fact' in light of the applicable statutes or caselaw." *Id.*
8. Further, "a plaintiff must demonstrate standing separately for each form of relief sought." *Friends of Earth, Inc. v. Laidlaw Envtl. Servs. (TOC) Inc.*, 528 U.S. 167, 185, 120 S.Ct. 693, 145 L.Ed. 2d 610, 629 (2000).

9. "If a party does not have standing to bring a claim, a court has no subject matter jurisdiction to hear the claim." *Rodriguez v. Rodriguez*, 710 S.E.2d 235 (N.C. App. 2011) *quoting Estate of Apple v. Commercial Courier Express, Inc.*, 168 N.C. App. 175, 177, 607 S.E.2d 14, 16.
10. "A North Carolina court has subject matter jurisdiction only if the petitioner or plaintiff has standing. . . ." *In re T.B.*, 629 S.E.2d 895 (N.C. App. 2006).
11. A corporation must have the authority to commence a lawsuit and must comply with its own by-laws in commencing a lawsuit in order to have standing to prosecute a lawsuit. *Peninsula Property v. Crescent Resources*, 614 S.E.2d 351, 171 N.C. App. 89 (2005).
12. "The powers of the Commission are supervisory and regulatory, and it possesses quasi-judicial functions." *State ex rel. Utilities Commission v. Carolina Power & Light Co.*, 109 S.E.2d 253, 250 N.C. 421 (1959).
13. "The absence of subject matter jurisdiction affects the court's statutory or constitutional power to adjudicate a claim and is an issue that can be raised at any stage of a proceeding." *Cunningham v. Selman*, 689 S.E.2d 517, 1 N.C. App. 270 (2009) citing N.C. Gen. Stat. § 1A-1, Rule 12(h)(3).
14. Complainant has alleged no cognizable injury and in fact, Complainant appears to be alleging a claim that must be asserted by a property owner that has been denied a building permit as a result of the moratorium on new wastewater connections.

15. Complainant fails to allege the identity of any property owner that would be a member of Complainant that has been denied a building permit as a result of the moratorium on new wastewater connections.

16. Whereas the Complainant has alleged no cognizable injury, and is neither authorized nor required to commence a lawsuit on behalf of a member.

#### FAILURE TO COMPLY WITH RULES OF COMMISSION

17. Rule R1-3 of the Rules of the Commission provides the following:

(a) Classification. — Parties to proceedings before the Commission are designated as applicants, petitioners, complainants, defendants, respondents, protestants, or interveners, according to the nature of the proceeding and the relationship of the parties thereto.

...

(e) Defendants. — Persons against whom a complaint is filed are termed defendants.

18. In this matter, Complainant has filed a Complaint against Outer Banks/Kinnakeet Associates, LLC (OBKA) and denominated said party as the “Respondent”.

19. OBKA should have been designated as “Defendant” in the Complaint but because OBKA is designated as Respondent in the Complaint, OBKA has answered the Complaint as “Respondent”.

20. Complainant has violated Rule R1-3 of the Rules of the Commission by improperly designating OBKA as “Respondent”.

21. Rule R1-9 states, in relevant part, the following:

(b) Contents. — Rule R1-5 will apply to complaints under this rule and, in addition thereto, complaints under this rule shall set forth in numbered paragraphs:

- (1) The full name, post-office address, and the electronic mailing address of each complainant.
- (2) The name, post office address and electronic mailing address of counsel representing the complainant, if any.
- (3) The full name, post-office address, and, if available, the electronic mailing address of each defendant against whom complaint is made.

22. Complainant has failed to comply with the Rule R1-9 by failing to set forth in a numbered paragraph “[t]he full name, post-office address, and the electronic mailing address of [the] complainant.”

23. Complainant has failed to comply with the Rule R1-9 by failing to set forth in a numbered paragraph “[t]he name, post office address and electronic mailing address of counsel representing the complainant . . . .”

24. Complainant has failed to comply with the Rule R1-9 by failing to set forth in a numbered paragraph “[t]he full name, post office address and electronic mailing address of the defendant against whom complaint is made.”

25. Whereas Complainant has repeatedly failed to comply with the Rules of the Commission as to content and format of its complaint, Complainant’s complaint should be dismissed.

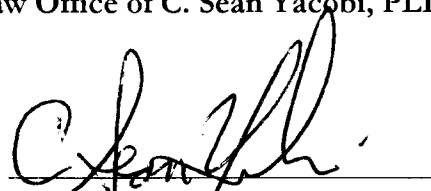
WHEREFORE, Respondent respectfully prays the Commission to dismiss the Complaint herein upon the grounds that Complainant lacks the standing to assert the claims herein and therefore, the Commission lacks the subject matter jurisdiction to adjudicate said claims, and upon

the grounds that the Complainant has repeatedly failed to comply with the Rules of the Commission in pleading its complaint.

This the 4<sup>th</sup> day of February, 2022

**Law Office of C. Sean Yacobi, PLLC**

By



C. Sean Yacobi

Attorney for Respondent

NC State Bar No. 40195

PO Box 1851

Nags Head, NC 27959

Phone: (252) 715-3595

Fax: (252) 715-3492

[cyacobi@lawofyacobi.com](mailto:cyacobi@lawofyacobi.com)



## CERTIFICATE OF SERVICE

I hereby certify that the foregoing document entitled MOTION TO DISMISS has been served on the parties to this action by:

( ) Depositing a copy hereof, postage prepaid, in the United States Mail, properly addressed to each said party or his/her/their/its attorney.

☒ Electronic transmission to every party or his/her/their/its attorney, with delivery via facsimile, e-mail or other electronic address made to the facsimile, e-mail or electronic addresses shown herein below.

### PARTY SERVED:

Edward S. Finley, Jr.  
2024 White oak Road  
Raleigh, NC 27608  
edfinley98@aol.com

This the 4<sup>th</sup> day of February, 2022

Law Office of C. Sean Yacobi, PLLC

By: 

C. Sean Yacobi  
Attorney for Respondent  
NC Bar No. 40195  
PO Box 1851  
Nags Head, NC 27959  
Phone: (252) 715-3595  
Fax: (252) 715-3492  
yacobilaw@gmail.com

ARTICLES OF INCORPORATION

OF

GREATER KINNAKEET SHORES HOME OWNERS, INC.

The undersigned, being of full age, hereby makes and acknowledges these Articles of Incorporation for the purpose of forming a non-profit corporation under and by virtue of the laws of the State of North Carolina, as contained in Chapter 55-A of the General Statutes of North Carolina, entitled "Nonprofit Corporation Act", and the several amendments thereto, do hereby set forth:

ARTICLE I

The name of the corporation shall be Greater Kinnakeet Shores Home Owners, Inc.

ARTICLE II

The period of duration of the corporation shall be perpetual.

ARTICLE III

The purpose for which the corporation is organized are:

(a) To acquire, construct, maintain and operate common areas and recreation facilities in a residential development known as Kinnakeet Shores on land situated in Avon, Dare County, North Carolina.

(b) To enforce any and all covenants, restrictions and agreements applicable to the common areas, lots and dwelling units in the development and particularly any Declarations of Covenants and Restrictions or similar declaration which may hereafter be made with respect to the development and which may hereafter be recorded in the Dare County Registry;

(c) To make and perform any contracts and do any acts and things, and exercise any powers suitable, convenient, proper or incidental for the accomplishment of any objects enumerated herein;

(d) To engage in any lawful act or activity for which corporations may be organized under Chapter 55A of the General Statutes of North Carolina; however, notwithstanding anything herein to the contrary, the Corporation shall exercise only such powers as are in furtherance of the exempt purposes of organizations set forth in Section 501(c) of the Internal Revenue Code of 1954 and the regulations thereunder as the same now exist or as they may be hereafter amended from time to time.

ARTICLE IV

The Corporation shall have members as provided by the By-Laws.

ARTICLE V

Except for the initial Board of Directors whose names are set forth in these Articles of Incorporation, the Board of Directors shall be elected or appointed as provided in the By-Laws.



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ARTICLE VI

The Corporation shall have all the powers granted corporations under the Law of the State of North Carolina. However, notwithstanding anything herein to the contrary, the Corporation shall exercise only such powers as are in furtherance of the exempt purposes of organizations set forth in the Subsection of Section 501(c) of the Internal Revenue Code of 1954 under which the Corporation chooses to qualify for exemption, as the same now exists, or as it may be amended from time to time.

ARTICLE VII

No part of the net earnings of the Corporation shall inure to the benefit of any officer, director, or member of the Corporation; and upon dissolution of the Corporation, the assets thereof shall, after all of its liabilities and obligations have been discharged or adequate provision made therefore, be distributed exclusively to any association or associations organized for the purposes similar to those set forth in Article III hereinabove or to charitable, religious, scientific, literary or educational organizations which would then qualify under the provisions of Section 501(c)(3) of the Internal Revenue Code of 1954 and its regulations as they now exist or as may be amended from time to time.

ARTICLE VIII

The address of the initial registered office of the Corporation in the State of North Carolina is John G. Gaw, Jr., Law Offices, Sun Professional Building, 1500 S. Croatan Highway, P. O. Box 1895, Kill Devil Hills, Dare County, North Carolina; and the name of its initial registered agent at such address is John G. Gaw, Jr.

ARTICLE IX

The number of directors constituting the initial board of directors shall be three (3); and the names and addresses of the persons who are to serve as directors until the first meeting of the Corporation or until their successors are elected and qualified are:

<u>NAME</u>	<u>ADDRESS</u>
E. Paul Breaux, Jr.	1500 S. Croatan Highway Kill Devil Hills, N.C. 27948
George E. Goodrich	1500 S. Croatan Highway Kill Devil Hills, N.C. 27948
Danny L. Daniels	1500 S. Croatan Highway Kill Devil Hills, N.C. 27948

ARTICLE X

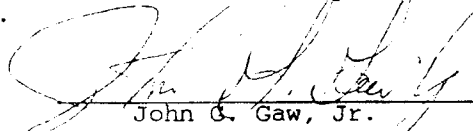
In the event of the dissolution of the Corporation, no member shall be entitled to any distribution or division of its remaining property or its proceeds, and the balance of all money and other property received by the Corporation from any source, after the payment of all debts and obligations of the Corporation, shall be used or distributed exclusively for the purposes within the intentment of Section 501(c) of the Internal Revenue Code as the same now exists or as it may be amended from time to time.

ARTICLE XI

The name and address of the incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
John G. Gaw, Jr.	Sun Professional Building 1500 S. Croatan Highway P. O. Box 1895 Kill Devil Hills, NC 27948

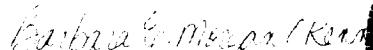
IN WITNESS WHEREOF, I have hereunto set my hand and seal  
this 4th day of March, 1988.

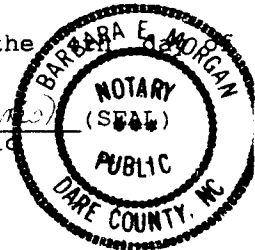
  
\_\_\_\_\_  
John G. Gaw, Jr. (SEAL)

STATE OF NORTH CAROLINA  
COUNTY OF DARE

I, the undersigned Notary Public, do hereby certify that  
John G. Gaw, Jr., personally appeared before me this day and  
acknowledged the due execution of the foregoing instruments for  
the purposes therein expressed.

Witness my hand and notarial seal, this the  
March, 1988.

  
\_\_\_\_\_  
Notary Public



My commission expires: 4-27-92

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Block 317 PAGE 301

EXHIBIT

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3. Common Elements. To insure that land designated as Common Elements shall remain for the perpetual benefit of all members, their families and guests, of the Property Owners Association, hereinafter described, an 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. The Property Owners Association shall have the right to establish reasonable rules and regulations for the use and enjoyment of all such space.

4. Use Restrictions. Pursuant to its general plan of conservation and environmental protection, 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.

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 all rights 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 the charter of said organization for the benefit of all its members, each and every lot owner, in 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 Property Owners' Association, Inc., a non-profit corporation.

2. Fees and Assessments. An initiation fee of \$50.00 per lot shall be paid by members at the time of accepting the deed or contract for his 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 reasonable assessment charges for the services provided by and supported by the Association, except that assessment charges for the Association fiscal year beginning in 1981 shall be \$25.00 per lot. No assessment shall be made upon the lot of any owner during the Association fiscal year in which he purchases his lot.

3. Lien. Each lot shall be subject to a continuing lien to secure the payment of each assessment when the same is made. Upon demand, the Association will furnish a lot owner(s) 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 assigns involved in the development of the subdivision.

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4. Succession to Powers. Upon the sale of all lots covered by the Declarants plan of development for the areas to which this Declaration is applicable, the powers of the Declarant reserved by this Declaration shall automatically pass to and be vested in the Association. The Declarant reserves the right to assign these powers, or any part thereof, to the Association at any earlier time it deems desirable. In addition, at such time when 75% of the lots in the area to which this Declaration has been made applicable shall have been sold, the Board of Directors of the Association, upon authorization by a majority of the voting members thereof, may render a formal, written application to the Developer requesting it to assign the powers reserved to it by this Declaration to the Association, and the Declarant shall comply. The Association, following the assignment, may not, however, impair the right of the Declarant to the use of the Common Elements or to exercise the exclusive powers reserved unto it in Paragraphs 1, 10, and 14 of Article I for the conduct of its business incidental to the development of the subdivision.

5. Future Development. If other property adjoining or adjacent to Kinnakeet Shores - Phase One shall be developed by Declarant or its successor, the Declarant or its successor shall have the option but not be obligated 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 in any additional properties made subject to this Declaration of Protective Covenants and Restrictions shall become members of the Property Owners Association established herein and all of the provisions of this Declaration of Protective Covenants and Restrictions shall become applicable to said lots.

#### ARTICLE IV

##### LIENS

1. Validity. All liens authorized and created hereby shall become effective only upon the recordation by the lienholder 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. Interest. If any unpaid assessment or other charge constituted a lien on the property by this Declaration shall remain unpaid for 30 days after the date upon which it first becomes due and payable, interest shall begin to accrue at the rate of six percent (6%) per annum, and such interest shall be secured by the lien.

3. Collection and Enforcement. The amount of any unpaid assessment or charge constituted a lien upon the property, together with any accrued interest and the costs of collection, including reasonable attorney's fees, shall remain the personal obligation of the owner of the property at the time such assessments and charges were made and continue to be a lien upon the property until paid; the lienholder may bring an action at law to collect the same or an action to foreclose the lien against the property in the manner provided by law.

4. Subordination of Liens. The lien of the assessments and charges provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments or charges which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or charges thereafter becoming due, nor from the lien of any such subsequent assessment or charge.

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BOOK 317 PAGE 303

ARTICLE V

GENERAL PROVISIONS

1. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of 10 years unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

2. Enforcement. In the event of a violation or breach of any of these restrictions by any property owner, or agent of such owner, the Property Owners' Association, the owners of the lots in the subdivision, the Declarant or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, 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 violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (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. The failure to enforce any right, reservation, restriction or condition contained in this deed, 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 or subsequent thereto and shall not bar or affect its enforcement.

3. Severability. Invalidity of any one of these covenants, or part thereof, by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

4. Successors and Assigns. All references to Declarant shall include the successors and assigns thereof, 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 when the powers are vested in or to the successors of Declarant to whom the powers are expressly assigned.

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

IN WITNESS WHEREOF the said Greenwood Development Corporation has caused this instrument to be executed in its name by its President and attested by its Secretary and its corporate seal affixed hereto, all as the act and deed of the said corporation by its authority duly and legally given, the day and year first above written.

GREENWOOD DEVELOPMENT CORPORATION

BY:   
PRESIDENT

ATTEST:

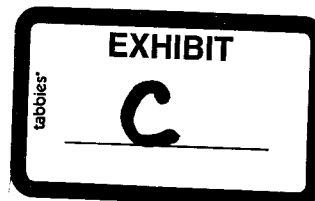
  
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BOOK 330 PAGE 206



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Prepared by and return to:  
Charles D. Evans  
P.O. Box 189  
Santee, NC 27954

ALVA C. WISE  
REGISTER OF DEEDS  
DARE COUNTY, N.C.

NORTH CAROLINA  
DARE COUNTY

KINNAKEET SHORES SUBDIVISION  
AMENDED DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

THIS AMENDED DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS made this the 13th day of July, 1982, by CEDAR HOMES, INC., and GREENWOOD DEVELOPMENT CORPORATION, owners of Lot No. 87 in Kinnakeet Shores Subdivision, Phase One, as hereinafter described, has hereby declared and made known, as follows:

WHEREAS, Greenwood Development Corporation as owner and developer of a certain tract of land located and being in Kinnakeet Township, Dare County, North Carolina, South of Avon, and being shown on a map or plat entitled "Kinnakeet Shores - Phase One, by Triangle Engineering and Surveying, Inc., Land Surveyors, dated the 24th day of April, 1980, and recorded in Plat Cabinet 8, Slide 9, in the office of the Register of Deeds of Dare County, North Carolina:

AND WHEREAS by a document filed on October 7, 1981, and recorded in Book 317, page 297, Dare County Registry, Greenwood Development Corporation filed a Declaration of Protective Covenants and Restrictions affecting the use of the said property:

AND WHEREAS Paragraph 6 of ARTICLE I of said covenants requires that all utilities be placed underground, but it has come to the attention of the developer that Cape Hatteras Electric Membership Corporation, the electric utility, will not install underground utilities in its area of service and, therefore, it has become impossible to comply with said restriction insofar as it relates to electrical service:

NOW, THEREFORE, the parties of the first part being the owners of Lot No. 87 in Kinnakeet Shores Subdivision, Phase One, do hereby declare and make known an amendment to Paragraph 6 of ARTICLE I of the aforesaid Declaration of Protective Covenants and Restrictions by deleting said provision and by substituting in its place the following provision:

6. Utilities: All utilities with the exception of electric power, shall be placed underground, and the erection of any exposed antennas shall be done only with the approval of the Architectural Review Committee. Electric Utility Company.

The parties hereto, being owners of Lot 87 in said subdivision do declare and make the above covenant which shall run with the lands shown on the map to which herein referred to, by whomsoever purchasers of lots in Kinnakeet Shores - Phase One Subdivision, their heirs, successors and assigns.

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IN TESTIMONY WHEREOF the parties hereto have each caused this instrument to be executed in its name by its President and attested by its Secretary and its corporate seal affixed hereto, all as the act and deed of the said corporation by its authority duly and legally given, the day and year first above written.

GREENWOOD DEVELOPMENT CORPORATION

BY: [Signature]  
President

ATTEST:  
[Signature]  
Secretary  
(Corporate Seal)

CEDAR HOMES, INC.

BY: [Signature]  
James Michael Ramsey  
President

ATTEST:  
[Signature]  
Secretary

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

I, Nada B. Eanes, a Notary Public in and for the aforesaid State and County, do hereby certify that John E. Eck personally came before me this day and acknowledged that he is the Secretary of Greenwood Development Corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

WITNESS my hand and notarial seal, this the 19th day of July, 1982.

MY COMMISSION EXPIRES:  
October 12, 1989.

[Signature]  
NOTARY PUBLIC for S.C.  
(Notarial Seal)

STATE OF NORTH CAROLINA

COUNTY OF DARE

I, Ann L. Beckham, a Notary Public in and for the aforesaid State and County, do hereby certify that James M. Ramsey personally came before me this day and acknowledged that he is the Secretary of Cedar Homes, Inc. and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself as its Secretary.

WITNESS my hand and notarial seal, this the 27<sup>th</sup> day of July, 1982.

MY COMMISSION EXPIRES:  
Nov 29, 1984

[Signature]  
NOTARY PUBLIC  
(Notarial Seal)

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Feb 04 2022

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STATE OF NORTH CAROLINA

COUNTY OF DARE

I, Ann L. Beckham, a Notary Public in and for the aforesaid State and County, do hereby certify that Judy B. Ramsey personally came before me this day and acknowledged that she is the Secretary of Cedar Homes, Inc., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by herself as its Secretary.

WITNESS my hand and notarial seal, this the 16<sup>th</sup> day of August, 1982.

MY COMMISSION EXPIRES:

Nov 24, 1984

Ann L. Beckham  
NOTARY PUBLIC  
(Notarial Seal) VV1010

STATE OF NORTH CAROLINA

COUNTY OF DARE

The foregoing Certificate of Anna Brown Bones a Notary Public of South Carolina and Ann L. Beckham a Notary Public of Dare County, NC is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Ann L. Beckham REGISTER OF DEEDS FOR DARE COUNTY

By Anna Brown Bones Deputy/Assistant-Register of Deeds

RECORDED: Aug 25 1982

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Feb 04 2022

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BOOK 332 PAGE 159

FILED

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Prepared by and return to:

Thomas L. White, Jr.

P. O. Box 189

Manteo, NC 27954

ALVA G. WISE  
REGISTERED DEEDS  
DARE COUNTY, N.C.

NORTH CAROLINA  
DARE COUNTY

KINNAKEET SHORES SUBDIVISION  
AMENDED DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

THIS AMENDED DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS made this the 24th day of March, 1982, by WILLIAM M. JAYNE and wife, SHARON L. JAYNE, ROBERT E. EDWARDS and wife, COLLEEN G. EDWARDS, ROBERT M. JAEGER and wife, SIBYL T. JAEGER, GLENN R. FEHR and wife, DIANE J. FEHR, HOWARD SHERMAN and wife, MARY E. SHERMAN, KAREN E. SPANNUTH, GREGORY HUGH TOVAR, SUZANNE WEISSAND, WILLIAM R. MATLACK and wife, SARAH D. MATLACK, and GREENWOOD DEVELOPMENT CORPORATION, being all of the owners of lands in Kinnakeet Shores Subdivision, Phase One, as herein-after described, has hereby declared and made known, as follows:

WHEREAS, Greenwood Development Corporation as owner and developer of a certain tract of land located and being in Kinnakeet Township, Dare County, North Carolina, South of Avon, and being shown on a map or plat entitled "Kinnakeet Shores - Phase One," by Triangle Engineering and Surveying, Inc., Land Surveyors, dated the 24th day of April, 1980, and recorded in Plat Cabinet B, Slide 9, in the office of the Register of Deeds of Dare County, North Carolina;

AND WHEREAS by a document filed on October 7, 1981, and recorded in Book 317, page 297, Dare County Registry, Greenwood Development Corporation filed a Declaration of Protective Covenants and Restrictions affecting the use of the said property:

AND WHEREAS Paragraph 6 of ARTICLE I of said covenants requires that all utilities be placed underground, but it has come to the attention of the developer that Cape Hatteras Electric Membership Corporation, the electric utility, will not install underground utilities in its area of service and, therefore, it has become impossible to comply with said restriction insofar as it relates to electrical service;

NOW, THEREFORE, the parties of the first part being the owners of all lands in Kinnakeet Shores Subdivision, Phase One, do hereby declare and make known an amendment to Paragraph 6 of ARTICLE I of the aforesaid Declaration of Protective Covenants and Restrictions by deleting said provision and by substituting in its place the following provision:

6. Utilities: All utilities with the exception of electric power, shall be placed underground, and the erection of any exposed antennas shall be done only with the approval of the Architectural Review Committee. Electric utility lines may be placed above the ground pursuant to the requirements of the electric utility company.

The parties hereto, being all of the owners of the lands in said subdivision do declare and make the above covenant which shall run with the lands shown on the map to which herein referred to, by whomsoever owned, and said covenant and restrictions shall be binding upon all purchasers of lots in Kinnakeet Shores - Phase One Subdivision, their heirs, successors and assigns.



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IN TESTIMONY WHEREOF the parties hereto have hereunto set their hands and seals and, if corporate, has caused this instrument to be executed in its name and behalf by its President, attested by its Secretary and its corporate seal affixed hereto all as the act and deed of the said Corporation by its authority duly and legally given.

GREENWOOD DEVELOPMENT CORPORATION

BY: [Signature]  
PRESIDENT

ATTEST:

[Signature]  
SECRETARY

William M. Jayne (SEAL)  
WILLIAM M. JAYNE

Robert E. Edwards (SEAL)  
ROBERT E. EDWARDS

Robert M. Jaeger (SEAL)  
ROBERT M. JAEGER

Glenn R. Fehr (SEAL)  
GLENN R. FEHR

Howard Sherman (SEAL)  
HOWARD SHERMAN

Karen E. Spahnuth (SEAL)  
KAREN E. SPANHUTH

Suzanne Weisband (SEAL)  
SUZANNE WEISBAND

Sharon L. Jayne (SEAL)  
SHARON L. JAYNE

Corleen G. Edwards (SEAL)  
CORLEEN G. EDWARDS

Siryl T. Jaeger (SEAL)  
SIRYL T. JAEGER

Diane J. Fehr (SEAL)  
DIANE J. FEHR

Mary E. Sherman (SEAL)  
MARY E. SHERMAN

Gregory F. Tovar (SEAL)  
GREGORY F. TOVAR

William R. Matlack (SEAL)  
WILLIAM R. MATLACK

Sarah D. Matlack (SEAL)  
SARAH D. MATLACK

STATE OF SOUTH CAROLINA  
COUNTY OF GREENWOOD

I, Mamie W. Nicholson, a Notary Public in and for the aforesaid County and State, do hereby certify that John E. Eck personally came before me this day and acknowledged that he is Secretary of Greenwood Development Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by its Secretary.

WITNESS my hand and notarial seal, this the 2nd day of April 1982.

Mamie W. Nicholson  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 8/26/90

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Feb 04 2022

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STATE OF CONNECTICUT  
Bridgewater OF Bridgewater County

I, Lucille G. Hinesman, a Notary Public in and for the  
aforesaid Connecticut State do hereby certify that William M. Jayne  
and wife, Sharon L. Jayne, personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 12<sup>th</sup> day of April, 1982.

Lucille G. Hinesman  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

My Commission Expires 4/1/83

STATE OF NEW JERSEY  
County OF Burlington

I, Faye B. Moore, a Notary Public in and for the  
aforesaid County and State do hereby certify that Robert E. Edwards  
and wife, Colleen G. Edwards, personally appeared before me this day  
and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 9<sup>th</sup> day of May, 1982.

Faye B. Moore  
NOTARY PUBLIC  
1985

MY COMMISSION EXPIRES:

STATE OF PENNSYLVANIA  
County OF Lehigh

I, Charles D. B. Jaeger, a Notary Public in and for the  
aforesaid County and State do hereby certify that Robert M. Jaeger and  
wife, Sibyl T. Jaeger, personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 21<sup>st</sup> day of May, 1982.

Charles D. B. Jaeger  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

August 11, 1982

STATE OF PENNSYLVANIA  
County OF Bucks

I, Glenn R. Fehr, a Notary Public in and for the  
aforesaid County and State do hereby certify that Glenn R. Fehr and  
wife, Diane J. Fehr, personally appeared before me this day and acknow-  
ledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 15<sup>th</sup> day of July, 1982.

Glenn R. Fehr  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

DOREEN L. LEONARD, Notary Public  
KENNETH B. BARNES, Notary Public  
MY COMMISSION EXPIRES MAY 8, 1983  
Member Pennsylvania Association of Notaries

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Feb 04 2022

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BOOK 332 PAGE 162

STATE OF NEW YORK

County of Albany

I, John J. [Signature], a Notary Public in and for the aforesaid  
State do hereby certify that Howard Sherman and wife, Mary  
E. Sherman, personally appeared before me this day and acknowledged the  
due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 20th day of May,  
1982.

[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

April 13, 1986

April 13, 1986

STATE OF TENNESSEE

County of Washington

I, Jan Argo Wicby, a Notary Public in and for the  
aforesaid State do hereby certify that Karen E. Spannuth  
personally appeared before me this day and acknowledged the due execution  
of the foregoing instrument.

WITNESS my hand and notarial seal, this the 20th day of July,  
1982.

Jan Argo Wicby  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

4-29-84

STATE OF VIRGINIA

County of Augusta

I, Alma L. Cugen, a Notary Public in and for the aforesaid  
City and State do hereby certify that Gregory Hugh Tovar personally  
appeared before me this day and acknowledged the due execution of the  
foregoing instrument.

WITNESS my hand and notarial seal, this the 23rd day of September,  
1982.

Alma L. Cugen  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

April 13, 1986

STATE OF VIRGINIA

County of Augusta

I, Alma L. Cugen, a Notary Public in and for the  
aforesaid City and State do hereby certify that Suzanne Weisband  
personally appeared before me this day and acknowledged the due execution  
of the foregoing instrument.

WITNESS my hand and notarial seal, this the 21st day of Sept,  
1982.

Alma L. Cugen  
NOTARY PUBLIC

MY COMMISSION EXPIRES:

April 13, 1986

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Feb 04 2022

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STATE OF PENNSYLVANIA  
County OF Bucks

I, Elizabeth Wilson, a Notary Public in and for the aforesaid  
County and State do hereby certify that William R. Matlack and wife,  
Sarah D. Matlack, personally appeared before me this day and acknowledged  
the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 27th day of August,  
1982.

Elizabeth Wilson  
NOTARY PUBLIC

MY COMMISSION EXPIRES:  
April 29, 1985

ELIZABETH WILSON, Bucks County  
Notary Public  
My Commission Expires April 29, 1985

DARE COUNTY, NORTH CAROLINA

The foregoing certificates of Mamie W. Nicholson, a Notary Public of  
South Carolina; Lucille G. Harriman, a Notary Public of Connecticut; Faye B.  
Moore, a Notary Public of New Jersey; Charlotte B. Singer, a Notary Public  
of the Commonwealth of Pennsylvania; Dorene L. Lefkowitz, a Notary Public  
of Commonwealth of Pennsylvania; Lenore Bifulco, a Notary Public of the  
State of New York; Jan Argo Woodby, a Notary Public at Large of Tennessee;  
Alma C. Cregg, a Notary Public of Staunton, Virginia and Elizabeth Wilson,  
a Notary Public of Commonwealth of Pennsylvania, are certified to be correct.

This instrument and these certificates are duly registered at the  
date and time and in the book and page shown on the first page hereof.

Alma S. White  
REGISTER OF DEEDS

BY Vanessa McManis  
ASSISTANT REGISTER OF DEEDS  
Deputy

RECORDED October 7, 1982

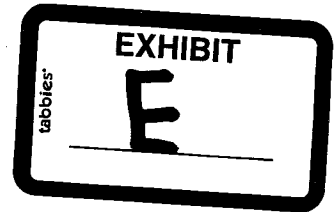
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BOOK 357 PAGE 912



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Feb 04 2022

Prepared by and Return to:  
Thomas L. White, Jr.  
P. O. Box 189  
Manteo, N. C. 27954

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NORTH CAROLINA  
DARE COUNTY

ALVA G. WISE  
REGISTER OF DEEDS  
DARE COUNTY, N.C.

KINNAKEET SHORES SUBDIVISION - DECLARATION OF  
PROTECTIVE COVENANTS AND RESTRICTIONS

WHEREAS Greenwood Development Corporation is owner of those certain lots or parcels of land located near the Village of Avon, Kinnakeet Township, Dare County, North Carolina, as shown on a map or plat of Kinnakeet Shores - Phase II prepared by W. M. Meekins, Jr. & Associates, dated the 7th day of February, 1983 and recorded in Plat Cabinet B, Slide 211, of the office of the Register of Deeds of Dare County, North Carolina;

AND WHEREAS, the Declarant heretofore filed a Declaration of Protective Covenants, recorded in Book 317, page 297, Dare County Registry, which said covenants were amended on the 14th day of July, 1983, recorded in Book 328, page 906, Dare County Registry;

AND WHEREAS, Greenwood Development Corporation intends to develop the lots and properties shown on said plat recorded in Plat Cabinet B, Slide 211, Dare County Registry under a common scheme of development so that the restrictions and declarations imposed shall inure to the benefit of each and every purchaser of lots shown on the aforesaid map or plat.

NOW THEREFORE, Greenwood Development Corporation does hereby declare and make known and publish that the Declaration of Protective Covenants recorded in Book 317, page 297, as amended in Book 328, page 906, Dare County Registry, shall apply to the lands shown on the map or plat entitled "Kinnakeet Shores - Phase II" recorded in Plat Cabinet B, Slide 211, Public Registry of Dare County, North Carolina.

The party hereto, being owner of the lands in said subdivision, does declare and make the above covenants which shall run with the lands shown on the map to which herein referred to, by whomsoever purchasers of lots in Kinnakeet Shores - Phase II, their heirs, successors and assigns.

IN TESTIMONY WHEREOF, Greenwood Development Corporation has caused this instrument to be executed in its name by its President and attested by its Secretary and its corporate seal affixed hereto, all as the act and deed of the said corporation by its authority duly and legally given, this 19th day of December, 1983.

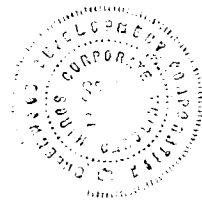
GREENWOOD DEVELOPMENT CORPORATION

By [Signature]  
President

ATTEST:

[Signature]  
Secretary

(Corporate Seal)



Unofficial Document



Unofficial Document

BOOK 357 PAGE 913

STATE OF SOUTH CAROLINA  
COUNTY OF GREENWOOD

I, Nada B. Banes, a Notary Public in and for  
the aforesaid State and County, do hereby certify that Wayne O.  
Justesen, Jr. personally came before me this day and acknowledged  
that he is the Secretary of Greenwood Development Corporation and that by  
authority duly given and as the act of the corporation, the foregoing  
instrument was signed in its name by its President, sealed with its  
corporate seal, and attested by himself as its Secretary.

Witness my hand and notarial seal this 19th day of December, 1983.

Nada B. Banes  
Notary Public

My Commission Expires:

October 12, 1989.

NORTH CAROLINA  
DADE COUNTY

The foregoing certificate of Nada Brown Banes, a Notary  
Public of Greenwood County, South Carolina, is certified to be correct.

This instrument and this certificate are duly registered at the  
date and time and in the Book and Page shown on the first page hereof.

Alma M. Woo  
Register of Deeds

By: Vanilla McMurphy  
~~Notary~~/Deputy  
Register of Deeds

RECORDED December 23, 1983

Unofficial Document

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Feb 04 2022

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,

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.

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