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BY: CLAUDIA HARRINGTON
Cheryl L. House, Register of Deeds
Dare County, NC

Fee Amt: \$26.00

NC Excise Tax: \$0.00

BOOK 2286 PAGE 427 (11)

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Prepared by and return to:
Robert B. Hobbs, Jr., Attorney
Hornthal, Riley, Ellis & Maland, LLP
2502 S. Croatan Highway
Nags Head, North Carolina 27959

Excise Tax: \$-0-
Transfer Tax: \$-0-

Tax Parcel: 022110000 and 022519012
LT # _____

MEMORANDUM OF CONTRACT

NORTH CAROLINA, DARE COUNTY

THIS MEMORANDUM OF AMENDED AND RESTATED CONTRACT (the "Memorandum of Amended and Restated Contract"), dated February 26, 2019, (the "Contract Date"), by and between TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, whose mailing address is Attention Town Manager, 5375 N. Virginia Dare Trail, Southern Shores, NC 27949 (the "Town"); SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation, whose mailing address is Southern Shores Volunteer Fire Department, Inc., 15 South Dogwood Trail, Southern Shores, NC 27949 (the "Fire Department"); and FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, whose mailing address is Fire Service Real Estate, Inc., 15 South Dogwood Trail, Southern Shores, NC 27949 ("FSRE") (the Town, the Fire Department and FSRE collectively the "Parties").

WHEREAS, FSRE owns certain real property located in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina and being more particularly described in that certain Deed of Gift recorded January 30, 2009 in Book 1790, Page 153 of the Dare County Registry, with property addresses of 15 South Dogwood Trail, Southern Shores, NC 27949 (the "Active Fire Station") and 28 East Dogwood Trail, Southern Shores, NC 27949 (the "Inactive Fire Station") (the property described in Deed recorded in Book 1790, Page 153 of the Dare County Registry, and also referred to herein as the Active Fire Station and the Inactive Fire Station, may be collectively referred to as the "Real Property"); and

WHEREAS, currently the Fire Department provides the Town services to prevent, limit, and reduce damage or personal injury caused by fire or other emergency under a contract dated February 1, 2009 and scheduled to expire on June 30, 2019 (the "2009 Fire Department Contract"); and

WHEREAS, the Town and FSRE are parties to a contract entitled, "Contract Between the Town of Southern Shores and Fire Service Real Estate, Inc." dated February 1, 2009 (the "2009 FSRE Contract"); and

WHEREAS, certain provisions of the 2009 FSRE Contract are contained in that certain Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry (the "2009 Memorandum of Agreement"); and

WHEREAS, the Parties entered into a new continuing contract, dated November 7, 2018 (the "Original Contract Date"), effective July 1, 2019 (the "Effective Date"), for the purpose of the Fire Department continuing to provide services for the Town to prevent, limit, and reduce damage or personal injury caused by fire or other emergency; and

WHEREAS, the Parties entered into and recorded a Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry (the "2018 Memorandum of Contract"); and

WHEREAS, the Parties now desire to make certain changes to the Contract; and

WHEREAS, the term "Contract Date" as used herein shall mean the date of this Amended and Restated Contract and not the Original Contract Date.

NOW, THEREFORE, this Memorandum of Amended and Restated Contract shall serve as record notice that the following agreements apply to the Real Property and the Personal Property Assets, and shall replace in its entirety the 2018 Memorandum of Contract:

1. Section 9 of the Contract provides as follows:

(9) **PERMISSION TO USE FACILITIES-** Each of the Parties acknowledges a mutual desire to cooperate with the other Parties in ensuring day-to-day operations are conducted in the best interest of the citizens of the Town. As further consideration for this Contract, each party agrees the use of certain properties by the other party for day to day operations shall be permitted as follows:

(a) In the event the Town Council approves a final construction bid amount for financing the construction costs of a new fire station, the Town agrees to grant to FSRE, as an appurtenance to FSRE's property located at 15 South Dogwood Trail, Southern Shores, NC, a permanent, perpetual and non-exclusive easement over, under and across a portion of the Town's property located at 27 Pintail Trail, Southern Shores, NC, for the sole and limited purpose of "maintaining an open area for vehicle parking, vehicle turning, and outdoor training, with no permanent structures to be constructed, erected or otherwise maintained within the Easement Area." At the time such easement is granted by the Town, the Easement Area shall be described on a survey prepared by a licensed North Carolina surveyor, a copy of which shall be attached to the Deed of Easement. The Town shall not bear any expense associated with the preparation of such survey. The survey shall depict an Easement Area of approximately 200 linear ft. by 58 linear ft. portion of the Town's

property located at 27 Pintail Trail, and shall share a common boundary with, and is situated directly adjacent to, the Fire Department's current fire station at 15 South Dogwood Trail, Southern Shores, NC. The Deed of Easement shall be recorded by FSRE or the Fire Department in the Dare County Registry at the expense of FSRE or the Fire Department. FSRE and the Fire Department shall be solely responsible for its use of such easement and, to the extent permitted by applicable law, shall, to the extent covered by applicable insurance, indemnify, defend, and hold the Town harmless for any loss or costs and in any actions whatsoever due to the Fire Department's and/or FSRE's use as described herein.

- (b) In the event FSRE and/or the Fire Department constructs a new fire station at 15 South Dogwood Trail, Southern Shores, NC, FSRE shall grant to Town a non-exclusive, permanent and perpetual easement over and across FSRE's Property and appurtenant to the Town's property located at 27 Pintail Trail, Southern Shores, NC, for the sole and limited purposes of "(i) parking Town employees' vehicles in the Easement Area, and (ii) ingress, egress, and access by pedestrians and vehicles between Pintail Trail and the Town's property located at 27 Pintail Trail, Southern Shores, NC;" said access being located where such access is currently located and being similar and in proximity to that easement granted reserved and granted to the Town in the Memorandum of Agreement recorded March 3, 2009 in Deed Book 1793, Page 146, Dare County Registry. The Deed of Easement contemplated by this Section 9(b) shall be in a form reasonably satisfactory to the Town and shall be recorded in the Dare County Registry by the Town at the Town's expense. A survey depicting the easement area for this Deed of Easement shall be prepared by a surveyor licensed in North Carolina and procured by FSRE and/or the Fire Department at the sole expense of FSRE and/or the Fire Department.
- (c) The Town utilizes the Town's public works property located at 27 Pintail Trail, Southern Shores, NC in part for the Town's storage of inert material. In the event the easement described in Section 9(a) above is granted by the Town, the Town will no longer be able to use the Town's public works property located at 27 Pintail Trail, Southern Shores, NC for the Town's storage of inert material. As part of the consideration for the easement which the Town has agreed to grant under Section 9(a) of this Contract, FSRE and the Fire Department will grant to the Town at the same time the Town grants the easement described in Section 9(a) above, an exclusive, perpetual, permanent and non-revocable use and license coupled with an interest, for the Town's exclusive use of (i) a certain enclosed portion (largest-sized bay) of the building known as the inactive East Dogwood Trail Fire Station located on property owned by FSRE at 28 East Dogwood Trail, Southern Shores, NC (the "Inactive Station"), for Town storage purposes, and (ii) an open paved area of approximately 50 feet by 75 feet in size located in the Inactive Station's rear parking area for non-intrusive storage of inert earthen material by the Town. The Town shall be solely responsible for its storage and use and, to the extent permitted by applicable law, shall indemnify, defend, and hold the Fire Department and FSRE harmless for any loss or costs and in any actions whatsoever due to the Town's use as described in this subsection (c).

2. Section 10 of the Contract provides as follows:

(10) ADDITIONAL PROPERTY RIGHTS, OBLIGATIONS AND COVENANTS-

- (a) **Right of First Negotiation-** During the term of this Contract, in the event the Fire Department or FSRE contemplates or considers the sale of any real property owned by FSRE or the Fire Department, the Town shall have the right to be the first party to enter negotiations and to make an offer to purchase such real property.
- (b) **Right of First Refusal-** In the event of unsuccessful negotiations and/or in the event FSRE or the Fire Department receive a bona fide offer from a third party which is acceptable to FSRE and/or the Fire Department for the purchase of any or all of the Real Property, shall give written notice by certified mail, return receipt requested, to the Town of the existence and terms and conditions of such offer, furnishing the Town with a correct and true copy of such offer, and the Town shall have sixty (60) days thereafter to notify FSRE and the Fire Department that the Town agrees to purchase the same property on the same terms and conditions as are contained in such offer. If the Town declines to make such offer, or fails to reply to FSRE's or the Fire Department's written notice of such offer, within such sixty (60) day period, FSRE or the Fire Department may accept such offer from the third party. This right of first refusal shall continue to be in effect until (1) the conveyance of such property pursuant to the terms of this Right of First Refusal, or (2) thirty (30) years after the Effective Date, whichever occurs first. Any written notice by FSRE or the Fire Department to the Town of the right of first refusal shall not relieve FSRE or the Fire Department of their obligation under this Right of First Refusal to give further notices of right of first refusal upon any future offers by third parties for any of the Real Property.
- (c) **Covenant to Not Demolish Property or Diminish in Value or Transfer-** Neither the Fire Department nor FSRE shall demolish, raze, or cause diminishment of value of, or to, any improved real property owned by FSRE or the Fire Department during the term of this Contract. Neither the Fire Department nor FSRE shall mortgage or encumber the any of the Real Property without the Town's prior written consent in each instance.
- (d) **Use Covenant-** The Real Property shall only be used for Fire Protection Services and the other purposes and easements expressly described in this Contract, and for no other purpose, without the prior written consent of the Town in each instance.
- (e) **Net Proceeds from any Property Sales-** Any net proceeds realized by the Fire Department or FSRE from the sale of any of the Real Property shall first be applied towards the principal balance owed by FSRE and/or the Fire Department on any remaining outstanding loan made to FSRE and/or the Fire Department for the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC, and next towards any succeeding outstanding loan balances, whether secured or unsecured, in order of greatest amounts owed. Any proceeds remaining after said loans have been paid off shall be transferred to the Fire Department (if not already

in the Fire Department's possession) and shall then be fully applied by the Fire Department to offset the Base Compensation to be paid by the Town in the next fiscal year.

- (f) **Notice to Town-** FSRE shall provide both the Fire Department and the Town with at least (20) days written notice of its intentions prior to encumbering, pledging or otherwise disposing of any portion of the Real Property in any manner other than a lease to the Fire Department or the Town for the purposes of providing fire services. Said notice shall include any information pertinent to the action FSRE intends to take, including but not limited to the parties, the consideration and the description of any parcel subject to the action intended by FSRE. FSRE shall provide any parties involved with the intended action full disclosure of this Contract, including its exhibits.
- (g) **Required Lease.** FSRE shall enter into a lease of the Real Property with the Fire Department. Upon termination of any lease existing at any time between FSRE and the Fire Department, the Town shall have the right of first refusal to enter into a new lease of the Real Estate with FSRE as against all other parties except the Fire Department.

3. Section 15 of the Contract provides as follows:

(15) **EVENTS OF TERMINATION-** Except as otherwise provided herein, one or more of the following shall constitute Events of Termination under this Contract:

- (a) The dissolution, insolvency, receivership, involuntary bankruptcy or voluntary bankruptcy of the Fire Department or FSRE.
- (b) The failure of the Fire Department to maintain a continuous certification by the DOI and its OSFM, or any successive governmental agencies responsible for fire department certification in the State of North Carolina, of a public protection classification rating of not less than Public Protection Class 7 as that term is currently interpreted and defined under Section .0900 of Subchapter 05A, Chapter 05 of Title 11 of the North Carolina Administrative Code (NCAC).
- (c) The failure of the Fire Department to at all times maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. This event of termination shall not apply if the cancellation of the mutual aid contract/agreement is due to circumstances that are beyond the control of the Fire Department (for example, when the actions of a town's governing body cancels, terminates, suspends or otherwise renders a mutual aid agreement ineffective).
- (d) The Town's receipt of written notice from the Fire Department that the Fire Department is unable to provide fire protection services for the Town due to an immediate lack of available volunteer firefighters,

- (e) A decision by the Town to establish a municipal fire department or to use another entity to provide fire services.
- (f) Inclusion of the Town in a Fire Protection District in which Fire Protection Services for the Town and its citizens will be provided by Dare County through any means allowed by law for Dare County to provide such services.

4. Section 16 of the Contract provides as follows:

(16) **EFFECT OF AN EVENT OF TERMINATION-** Upon the occurrence of an Event of Termination:

- (a) The Town shall have the right to take immediate possession of the Real Property and the Personal Property Assets if in the Town's judgment such action is necessary to continue to maintain adequate Fire Protection Services to the Town without interruption.
- (b) The Town shall provide the Fire Department and FSRE with notice of the occurrence of an Event of Termination. If such Event of Termination is not cured or remedied by the Fire Department and FSRE within thirty (30) days after the Fire Department and FSRE receive such written notice from the Town, the Town shall have the right to terminate this Contract. A termination of this Contract under this Section 16 shall cause the rights and obligations of the Parties to this Contract to terminate and cease, except to the extent provided in Sections 9, 10 and 17 herein, or as expressly provided otherwise in this Contract.

5. Section 17 of the Contract provides as follows:

(17) **REQUIRED CONVEYANCE OF ALL PROPERTY UPON TERMINATION-**

- (a) Notwithstanding any provision to the contrary in this Contract, if this Contract is terminated under Section 16 of this Contract for any of the reasons set forth in Section 15 of this Contract, the Fire Department and/or FSRE shall, upon receipt of written notice from the Town, immediately and unconditionally convey and deliver to the Town (i) a general warranty deed describing all of the Real Property (the "Deed"), and (ii) a bill of sale (the "Bill of Sale") describing all of the personal property, including fixed assets and intangibles (the "Personal Property Assets") owned by the Fire Department and FSRE. Upon the Town's receipt and acceptance of the Deed and the Bill of Sale, the Town shall agree to accept and assume, and to hold the Fire Department and/or FSRE harmless from, any indebtedness previously incurred by the Fire Department and/or FSRE that is secured by the Real Property and/or the Personal Property Assets as collateral for such indebtedness.
- (b) Upon the occurrence of an Event of Termination and subsequent conveyance by the Fire Department and FSRE to the Town of the Real Property and the Personal Property Assets, and notwithstanding the provisions of Section 20(a) of this Contract, the Town will agree to indemnify and hold the directors, officers, and volunteers of the Fire Department and FSRE harmless for any cost or expense

incurred by the Town in connection with such Event of Termination, except for actual malfeasance or criminality on the part of those indemnified by this subparagraph (b).

6. Section 19 of the Contract provides as follows:

(19) RELATION TO PRIOR CONTRACTS; FINANCING PROVISIONS-

(a) Effective as of the Effective Date, the Contract replaces and supersedes all previous contracts entered into between the Parties, including but not limited to the 2009 Fire Department Contract and the 2009 FSRE Contract; provided, however, that effective as of the Contract Date, Sections 13 and 14 of the 2009 Fire Department Contract and Sections 1, 3 and 5 of the 2009 FSRE Contract, shall be and are hereby replaced and superseded in their entirety by the Contract.

(b) The 2009 Memorandum of Agreement dated February 26, 2009 and recorded in Book 1793, Page 146, Dare County Registry is hereby terminated in its entirety effective as of the Contract Date.

(c) Sections 9, 10, 15, 16, 17 and 19 of the Contract shall become effective in their entirety as of the Contract Date. All other terms and provisions of the Contract shall be effective as of the Effective Date.

(d) The 2018 Memorandum of Contract dated November 7, 2018 and recorded in Book 2273, Page 371, Dare County Registry shall be and is hereby superseded and replaced by this Memorandum of Amended and Restated Contract.

(e) All notices required by the Contract to be sent by any one or more of the Parties (the "Party Giving Notice") to one or more of the other Parties shall also be sent by the Party Giving Notice to all (1) third party tenants, other than any of the Parties, under a lease (or under a sublease or assignment of such lease) of any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Tenant"), and (2) lenders holding a mortgage, equipment lease, ground lease, or other form of financing instrument encumbering any of the Real Property or Personal Property Assets now or hereinafter located on the Real Property (each "Lender"). The Fire Department and FSRE shall promptly provide the Town with the name and mailing address of all Lenders and Tenants and any subsequent changes to their mailing addresses.

(f) All notices required by the Contract to be sent by any Lender or any Tenant to one or more of the Parties shall also be sent by such Lender or such Tenant to all of the other Parties to the Contract, including but not limited to the Town.

(g) The Town shall have the right and option (but not the duty or obligation except as may be expressly provided otherwise in the Contract) to cure any default by the Fire Department and/or FSRE in any third party financing of the Real Property, improvements,

equipment, assets or other real or personal property located on, used by or associated with the Real Property and Personal Property Assets, or the Fire Protection Services, and/or to exercise the a right of redemption under such financing in the event of default, and/or assume the indebtedness of any such financing in the event of default. In the case of such cure, redemption or assumption by the Town, the Fire Department and FSRE shall be required to deed, transfer and convey the Real Property and the Personal Property Assets to the Town in the same manner set forth in Section 17(a) of the Contract.

(h) In the event the Fire Department and FSRE finance improvements to the Real Property (including but not limited to the construction of a new fire station) as equipment under an equipment lease and/or sublease, the Parties agree and understand that such improvements shall be included as part of any transfer and conveyance to the Town under Sections 17(a) and 19(g) of the Contract, notwithstanding how such improvements are characterized in the financing documents.

7. Other Provisions. The other provisions set forth in the Contract are hereby incorporated by reference in this Memorandum.

(continued on the following page)

FIRE DEPARTMENT:

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY: _____

Chairman of the Board

ATTEST:

Steve Cicinato
Secretary

NORTH CAROLINA, DARE COUNTY

I, Elizabeth A Haslam, a Notary Public of the County of DARE, and State aforesaid, certify that Steve Cicinato personally came before me this day and acknowledged that (s)he is Secretary of SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Chairman of the Board, and attested by (him) (her) as its Secretary.

Witness my hand and official stamp or seal, this 26th day of February, 2019.

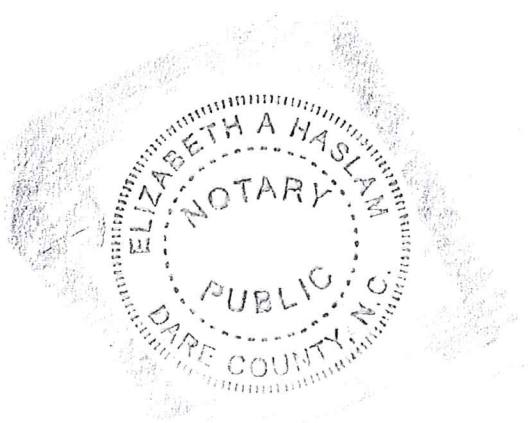
Elizabeth A Haslam
Notary Public

Notary's printed or typed name: Elizabeth A Haslam

My commission expires: April 28, 2020

(AFFIX NOTARY SEAL)

Elizabeth A Haslam
NOTARY PUBLIC
Dare County
North Carolina
My Commission Expires Apr 28, 2020



IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed and delivered as of the day and year first above written.

FSRE:

FIRE SERVICE REAL ESTATE, INC.

BY: [Signature]
Chairman of the Board

ATTEST:

[Signature]
Secretary

NORTH CAROLINA, DARE COUNTY

I, Elizabeth A Haslam, a Notary Public of the County of DARE, and State aforesaid, certify that Steve Cicineto personally came before me this day and acknowledged that (s)he is Secretary of FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Chairman of the Board, and attested by (him) (her) as its Secretary.

Witness my hand and official stamp or seal, this 26th day of February, 2020.

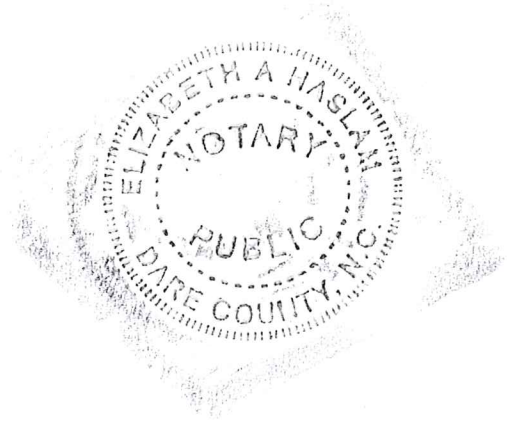
Elizabeth A. Haslam
Notary Public

Notary's printed or typed name: Elizabeth A. Haslam

My commission expires: April 28, 2020

(AFFIX NOTARY SEAL)

Elizabeth A Haslam
NOTARY PUBLIC
Dare County
North Carolina
My Commission Expires Apr 28, 2020



TOWN:

TOWN OF SOUTHERN SHORES

BY: Thomas G. Bennett
Mayor

ATTEST:

Sheila Kane
Town Clerk

(Corporate Seal)



STATE OF NORTH CAROLINA, COUNTY OF DARE

I, Cynthia L Mills, a Notary Public of the County and State aforesaid, certify that Thomas G Bennett personally came before me this day and acknowledged that he is the Mayor of The Town of Southern Shores, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by Sheila Kane, its Town Clerk.

Witness my hand and official stamp or seal, this 26 day of February, 2019.

Cynthia L Mills
Notary Public

Notary's printed or typed name: Cynthia L Mills

My commission expires: 03/01/2020

(AFFIX NOTARY SEAL)

