

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.

ATTORNEYS AT LAW

2502 S. CROATAN HIGHWAY

NAGS HEAD, NORTH CAROLINA 27959

TELEPHONE (252) 441-0871

TELEFAX (252) 441-8822

INTERNET: www.hrem.com

OF COUNSEL

CHARLES W. OGLETREE
J. FRED RILEY

RETIRED

MARK M. MALAND
THOMAS L. WHITE, JR.

OTHER OFFICES

ELIZABETH CITY, NC
COLUMBIA, NC

M. H. HOOD ELLIS
DAVID C. GADD
BENJAMIN M. GALLOP
ROBERT B. HOBBS, JR.*
L. P. HORNTHAL, JR.
L. PHILLIP HORNTHAL, III
ANDREW W. HOWLE
A. VANN IRVIN**
JOHN D. LEIDY
W. BROCK MITCHELL
DONALD C. PRENTISS

*BOARD CERTIFIED SPECIALIST IN
REAL PROPERTY LAW

** BOARD CERTIFIED SPECIALIST IN
ESTATE PLANNING AND PROBATE LAW

March 8, 2019

Mr. Peter Rascoe
Town of Southern Shores
5375 N Virginia Dare Trail
Southern Shores, NC 27949

HAND DELIVERED

Re: Town of Southern Shores - Fire Department Financing

Enclosed please find the Original signed Fires Services Contract and Memorandum of the Contract and the Recorded Original of the Memorandum of Contract from Dare County. If you have any questions or concerns, please give me a call.

Sincerely yours,



Kristine Rodman
Legal Assistant

NORTH CAROLINA
DARE COUNTY

**AMENDED AND RESTATED
FIRE SERVICES CONTRACT
BETWEEN THE TOWN OF SOUTHERN SHORES,
SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.,
AND FIRE SERVICE REAL ESTATE, INC.**

THIS AMENDED AND RESTATED CONTRACT AND AGREEMENT (the "Contract"), dated as of February 26, 2019 (the "Contract Date"), by and between TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation (the "Town"); SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina nonprofit corporation (the "Fire Department"); and FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation ("FSRE") (the Town, the Fire Department and FSRE collectively the "Parties").

WITNESSETH:

WHEREAS, pursuant to the Charter of the Town and powers granted the Town by North Carolina General Statutes §160A-11 and §160A-17, the Town may enter into a continuing contract for the performance of services; and

WHEREAS, the Fire Department was established and exists under applicable State and local laws for the purpose of limiting, reducing, or preventing damage or personal injury caused by fire or other emergency, with headquarters in the Town's boundaries; 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 Fire Department has conveyed certain of its former improved properties to FSRE; and

WHEREAS, such conveyed improved properties are described in a Deed of Gift recorded January 30, 2009 in Book 1790, Page 153 of the Dare County Registry, are located at 15 South Dogwood Trail (the "Active Fire Station") and 28 East Dogwood Trail (the "Inactive Fire Station") (collectively the Real Property); and

WHEREAS, the Real Property is provided by FSRE to the Fire Department to assist the Fire Department is fulfilling the services to the Town required under 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, in consideration of the mutual promises and agreements contained herein, the Parties mutually contract and agree as follows:

- (1) **CONTRACT TERM**- The effective term of this Contract shall commence on July 1, 2019, and shall continue for a period of ten (10) years thereafter. In the event a longer term is necessary for the Fire Department to qualify for any long-term financing of approved debt, the Parties mutually agree to cooperatively and in good faith negotiate an amendment to this Contract, upon such terms and conditions as may be reasonably acceptable to the Parties, extending the term. A year within the terms of this Contract shall be the Town's fiscal year running from July 1 of one calendar year through midnight of June 30 of the following calendar year.
- (2) **SERVICES PROVIDED**- The Fire Department agrees to furnish and provide continuing Fire Protection Service to all properties lying within the incorporated limits of Southern Shores, NC, by promptly dispatching, upon call from the Dare County Central Communications voice call or paging system or upon notification of a fire or emergency by any other means, the Fire Department's firefighting and rescue equipment and adequate certified and qualified personnel to operate the same, and then making diligent efforts to control and extinguish all fires, and control or mitigate emergencies. In providing services under this Contract, the Fire Department shall be considered the "Fire Department" of the Town as described in Article 14 of Chapter §160A of the North Carolina General Statutes ("NCGS"), and the Fire Department's Fire Chief shall be considered the "Fire Chief" of the Town, with all the typical associated and regulatory duties and responsibilities of a Fire Chief of a Fire Department in the State of North Carolina, including but not limited to those broad duties as described in NCGS §160A-292. The term "Fire Protection Services" shall also include but not be limited to necessary clearing of the public streets of the Town following any event which causes the blockage of any street, sufficient to allow the passage of any vehicle or apparatus of the Fire Department. In the event of a declaration of a major disaster, the Fire Department shall,

upon the Town's request, further assist Town staff and contractors with clearing Town streets of downed trees to the extent of Fire Department's resources.

- (3) **DOI CERTIFICATION AND IRS STATUS-** The Fire Department shall, at all times, remain certified by the North Carolina Department of Insurance (DOI) and its Office of State Fire Marshall (OSFM), or any successive governmental agencies responsible for fire department certification in the State of North Carolina, with a public protection classification rating of not less than PPC 9S 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). The Fire Department shall, at all times, maintain effective Mutual Aid Agreements with each of the fire departments serving jurisdictions contiguous to the Town of Southern Shores. During the term of this Contract, the Fire Department shall maintain its status as a nonprofit corporation and tax-exempt status under Section 501 (c)(3) or 501 (c)(4) of the Internal Revenue Code, and shall properly and timely file annually any required IRS Form 990.
- (4) **PROVISION OF SERVICES-** The Fire Department shall provide Fire Protection Services to the Town in a manner that is consistent with NC General Statutes, the NC Administrative Code, and any applicable adopted Town ordinances and policies, including but not limited to the Town's Emergency Management Plan, as said policies, ordinances and plans may be amended and/or modified by the Town from time to time in the Town's discretion or as may be required by applicable law. The Town understands and acknowledges the Fire Department shall use its own means and methods of performance, which shall not be subject to control, direction, or supervision of the Town. Subject to the provisions of this Contract, all firefighting equipment and personnel necessary and proper for the performance of this Contract shall be provided by the Fire Department at its sole cost and expense, and all persons engaged in fighting fires pursuant to the provisions of the Contract shall be subject to the exclusive control, direction, education, training, and supervision of the Fire Department. The Town shall not have any right or power with respect to the employment, control, direction, education, training, supervision, suspension, or discharge of any person who may engage in firefighting services or activities in the Fire Department's performance of its obligations under this Contract. When considering whether to provide additional funds for the acquisition of real property to be used by the Fire Department in performing its obligations under this Contract, the Town may, in its discretion, elect to acquire and retain title to such real property and then make the real property available to the Fire Department, through one or more leases, licenses or through other means, for the Fire Department to use to perform its obligations under this Contract.
- (5) **PROHIBITION OF TOWN INTERFERENCE WITH FIRE DEPARTMENT-** Pursuant to the terms of this Contract and by adopted policy as necessary, the Town shall not interfere with personnel of the Fire Department in the discharge of duties in providing any services to the Town under this Contract except as may be required by law.
- (6) **DEBT-** In seeking to incur any debt for acquisition, construction, or repairs for operations, the Fire Department understands that the cost of such debt shall be fully reflected in its annual budget submitted to the Town and as such must be approved by the Town as a budget expense before an appropriation is made by the Town to cover any additional debt

service expense approved as a part of the Base Compensation as described in Paragraph (11) (a) below.

(7) **ANNUAL PRESENTATION OF PROPOSED BUDGET AND AUDIT**- Annually, the Fire Department shall present the Town with (1) a fiscal year-end audit, completed by a qualified North Carolina Certified Public Accountant, determining the financial condition of the Fire Department as well as the financial condition of FSRE, and (2) a proposed budget, duly adopted by the Fire Department's Board of Directors, projecting operations for the upcoming year.

(a) The budget shall be in a form and level of detail that is mutually agreed upon and shall include, at a minimum, specific projected revenues and expenses for operations, capital acquisition, and debt service. The budget shall be submitted using the same time schedule required of Town departments but no later than April 1 of each year. The budget shall provide sufficient information for the Town to determine all projected and legally obligated expenses reasonably anticipated by the Fire Department for the upcoming year, showing all projected expenses to be covered by the Base Compensation including any debt service expenses, and to determine all reasonably anticipated streams of revenues. The Fire Department shall provide an official familiar with the submitted budget to appear before the Town Council at the Town Manager's request to discuss the budget in open session of a public meeting of the Town Council.

(b) The fiscal year-end financial audit shall be conducted by a reputable Certified Public Accounting firm. The audit shall result in the production of a written audit report detailing the financial status of both the Fire Department and FSRE. The Fire Department shall use its best efforts to assure that a copy of the written audit report will be presented to the Town no later than November 15th of each calendar year.

(8) **STRATEGIC PLAN**- The Town acknowledges that significant capital projects may be required during the term of this Contract to support the Fire Department, including but not limited to possible construction of a new fire station, possible acquisition of replacement vehicles, fire engines, and apparatus, and possible employment of firefighters. By no later than April 1, 2020, the Fire Department shall develop and present to the Town a long-term, ten-year Strategic Plan outlining projected dates when the Fire Department believes such construction, acquisition, and replacements and employments should occur and with projected costs. The Strategic Plan shall be updated annually by the Fire Department and presented to the Town by no later than April 1 of each succeeding year. When considering whether to provide additional funds for the acquisition of real property to be used by the Fire Department in performing its obligations under this Contract, the Town may, in its discretion, opt to acquire and retain title to that real property itself and then make the real property available to the Fire Department, through one or more leases or through other means, for the Fire Department to use to perform its obligations under this Contract.

(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).

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry contained in this Section 9.

(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.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 10.

(11) **COMPENSATION TO THE FIRE DEPARTMENT-**

- (a) The Town's fiscal year 2018-2019 appropriation to the Fire Department for the provision of fire protection services is \$545,914. The amount of funding provided by the Town each year shall be referred to as the "Base Compensation," which Base Compensation for each year of this Contract shall be determined by the annual

budget that is approved by the Town for continued operations of the Fire Department. To reiterate, \$545,914 shall be considered the base compensation for FY 2018/2019. No annual total compensation shall ever be less than the Base Compensation, plus annual debt service expenses, which have been specifically approved by the Town Council. Base Compensation shall include the debt service incurred by the Fire Department, if any, for FY 2018-2019 for the Fire Department's financing of the construction of a new fire station at 15 South Dogwood Trail, Southern Shores, NC. Once any debt as approved by the Town's governing board has been satisfied, the corresponding debt service expense shall no longer be considered a part of the Base Compensation.

- (b) Upon approval by the Town's governing board of an annual budget submitted by the Fire Department, the Town shall appropriate, and subsequently disburse in two (2) equal amounts bi-annually and no later than August 1 and February 1 respectively, funds to compensate the Fire Department in amounts equal one-half of the Base Compensation (except to the extent that the Base Compensation is paid out based on some other agreed-upon payment schedule) approved by the Town provided for that year.
 - (c) The Fire Department may seek other sources of revenue including, but not limited to, gifts, donations, grants, sales of promotional items, additional fire protection service customers (but only after obtaining the Town's prior written approval in each instance for the Fire Department to serve those other customers), and fees for service (but only after obtaining the Town's prior written approval in each instance to charge the said fees for service).
 - (d) The Town acknowledges that the Fire Department is currently a party to a contract with Dare County to provide Fire Protection Services to Martin's Point Subdivision.
- (12) **EXPANDED SCOPE/ADDITIONAL WORK**- The Town and Fire Department agree that at any time during the term of this Contract either party may initiate discussions regarding the expansion of the scope of the Contract to include expanded or additional services to be provided to the Town by the Fire Department. If such expansion of scope is agreed to and implemented, the financial terms and other terms of this Contract shall be changed to reflect the new scope.
- (13) **AVAILABILITY OF RECORDS**- As the Fire Department is a contractor of the Town, agents of the Town and/or any citizen may, upon reasonable request and notice, inspect the financial records of the Fire Department by appointment with the Treasurer or leadership of the Fire Department during normal business hours.
- (14) **INSURANCE OBLIGATIONS**-
- (a) The Fire Department agrees to maintain insurance coverage, the premiums for which shall be included in the budget of the Fire Department, said coverage to be as follows:

(i) The insurance coverage to be maintained by the Fire Department shall be as follows:

a) Workers' Compensation: Coverage to apply to all volunteers for statutory limits in compliance with the applicable State and Federal laws. The policy must include employer's liability with a limit of \$100,000.00 each accident; \$100,000 bodily injury or disease for each employee and \$500,000.00 bodily injury or disease policy limit.

b) Comprehensive General Liability: Shall have minimum limits of \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include premises and/or operations, products and/or completed operations, broad form property damage, and a contractual liability endorsement.

c) Business Auto Policy: Shall have minimum limits of \$1,000,000.00 per occurrence combined single limit for bodily injury liability and property damage liability. This shall include: owned vehicles, hired and non-owned vehicles, and employee non-ownership.

d) Professional Errors and Omissions Liability: Coverage shall have minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate.

e) Umbrella Liability: Coverage shall have a minimum limit of \$1,000,000.00 with underlying coverages of compensation/employer's liability.

(ii) Additional special requirements shall be as follows:

a) The Fire Department shall include the Town as an additional insured on each of the liability policies required to be maintained by this Contract.

b) The Fire Department shall maintain current, valid insurance policies meeting the requirements stated above during the entire duration of this Contract. The Fire Department shall insure that for any policy of insurance held by the Fire Department pursuant to this Contract that the Town receives any certificates for new insurance policies within thirty (30) days of the effective date of the policy and that the Town receives renewal certificates more than thirty (30) days prior to any expiration date on every policy. The Fire Department shall ensure that the Town is provided thirty (30) days' notice of any event of a cancellation or modification of any policy of insurance held by the Fire Department pursuant to this Contract. The Fire Department shall insure that certificates of insurance meeting the required insurance provisions shall be forwarded to the Town. The Fire Department shall insure that

the insurance certificates contain no language stating or implying that no liability shall be imposed upon the insurance company for failure to provide the Fire Department and the Town with the notice required by this Contract.

- (b) FSRE agrees to maintain reasonable liability insurance coverage, as protection from judgments of any kind, including but not limited to insurance coverage for claims of premises liability and general liability insurance. FSRE agrees to include the Fire Department and the Town as a named insured on any policies of insurance maintained pursuant to this Contract. In the event the Fire Department maintains sufficient insurance coverage to satisfy this provision, FSRE need not purchase additional insurance unless it feels such purchase is reasonably necessary.
- (c) FSRE and/or the Fire Department shall maintain adequate and reasonable Property Insurance upon the Real Property and the Personal Property Assets (as defined in this Contract), including all buildings, building improvements and personal property, in an amount equal to full insurable replacement cost. FSRE and/or the Fire Department, as the case may be, agrees to include the Town as a named insured on any policies of property insurance maintained pursuant to this Contract
- (d) Upon request from the Town and in each instance, FSRE and the Fire Department shall provide the Town with copies of any or all insurance policies and declaration pages associated therewith that are required to be carried under this Section 14.

(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.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 15.

(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.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 16.

(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).

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 17.

- (18) **RIGHTS TO ASSETS AND FINANCIAL RESPONSIBILITY-** Other than as specifically set forth in this Contract, the Town has no claim or other rights related to the property and assets of the Fire Department. Except as specifically set forth in this Contract, the Town shall have no financial responsibility for or control over the debts, encumbrances or liabilities of the Fire Department. In the future the Town, in its sole discretion, may agree to co-sign or guarantee a future loan, lease, bond or financial instrument on behalf of the Fire Department and under such terms as agreed to by the Parties.

(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 the Memorandum of Amended and Restated Contract of even date herewith, attached as **Exhibit A**.

(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.

Attached as **Exhibit A** is the approved form of Memorandum of Contract to be executed by the Parties and recorded in the Dare County Public Registry that includes the terms contained in this Section 19.

(20) **INDEMNIFICATION-**

(a) Except as provided in Section 17 of this Contract, the Fire Department and FSRE jointly and severally agree to indemnify and hold the Town harmless from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and litigation expenses) that the Town may incur that are directly or indirectly attributable, in whole or in part, to a breach of this Agreement by the Fire Department or FSRE, or any other acts or omissions by the Fire Department or FSRE.

- (b) The Town agrees to indemnify and hold the Fire Department and FSRE harmless from and against any and all claims, demands, actions, liabilities, damages, losses, costs and expenses (including reasonable attorneys' fees and litigation expenses) that the Fire Department and FSRE may incur that are directly or indirectly attributable, in whole or in part, to a breach of this Agreement by the Town, or any other acts or omissions by the Town.
- (21) **SEVERABILITY**- Every provision of this Contract intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Contract.
- (22) **SUIT COSTS**- In the event any Party shall institute an action to enforce the provisions of this Contract, the Party or Parties prevailing in such action, whether by adjudication, arbitration, or settlement, shall be entitled to recover suit costs, including reasonable attorney's fees, from the other Party or Parties.
- (23) **APPLICABLE LAW**- This Contract shall be construed and interpreted under the laws of the State of North Carolina.
- (24) **PARTIES**- This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. As used herein, words in singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
- (25) **NOTICES**- Notices hereunder shall be effective and deemed given when deposited in the United States Mails, postage prepaid, certified mail with return receipt requested. Alternatively, the party may use a nationally recognized overnight delivery service. Notices shall be addressed, in the case of the Town to:

Town of Southern Shores
Attention Town Manager
5375 N. Virginia Dare Trail
Southern Shores, NC 27949

With a required copy to:

Benjamin M. Gallop
Town Attorney
Hornthal, Riley, Ellis & Maland, L.L.P.
2502 S. Croatan Highway
Nags Head, North Carolina 27959

In the case of the Fire Department:

Southern Shores Volunteer Fire Department, Inc.
15 South Dogwood Trail

Southern Shores, NC 27949

In the case of FSRE:

Fire Service Real Estate, Inc.
15 South Dogwood Trail
Southern Shores, NC 27949

Any Party may change the address to which such notices are to be addressed by giving each other party notice in the manner herein set forth.

- (26) **NON-WAIVER**- The waiver by either party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision of this Contract.
- (27) **COUNTERPARTS**- This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.
- (28) **HEADINGS**- The headings, subheadings and captions in this Contract and in any exhibit hereto are for reference purposes only and shall not affect the meaning or interpretation of this Contract.
- (29) **ENTIRE AGREEMENT**- This Contract contains the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all negotiations, prior discussions, agreements, arrangements and understandings, written or oral, relating to the subject matter hereof.
- (30) **AMENDMENTS**- This Contract may not be amended except by written instrument duly executed by or on behalf of all of the parties hereto.

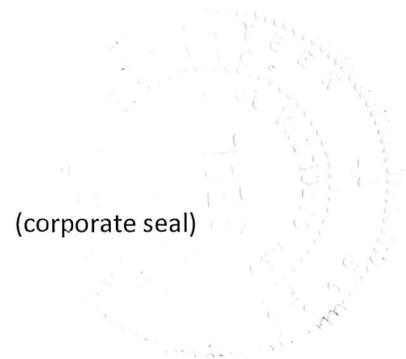
[signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Contract, and have been duly authorized to do so.

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.:

By: [Signature]
Chairman, Board of Directors

ATTEST: [Signature]
Secretary



TOWN OF SOUTHERN SHORES:

By: [Signature]
Mayor

ATTEST: [Signature]
Town Clerk



FIRE SERVICE REAL ESTATE, INC.:

By: [Signature]
Name: Patrick D. Regan
Title: Chairman

ATTEST: [Signature]
Secretary

(corporate seal)

Pre-Audit Certification:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

[Signature]
Finance Officer, Town of Southern Shores

EXHIBIT A
APPROVED FORM OF MEMORANDUM OF CONTRACT

(See attached)

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)

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 Cicmetro 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, 2019.

[Signature]
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



FIRE DEPARTMENT:

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY:

Chairman of the Board

ATTEST:

Secretary

NORTH CAROLINA, DARE COUNTY

I, Elizabeth A. Haslam, a Notary Public of the County of Dare, and State aforesaid, certify that Steve Cicmatu 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 Commision Expires Apr 28, 2020



TOWN:

TOWN OF SOUTHERN SHORES

BY: Thomas G. Bennett
Mayor

ATTEST:

Sheila Kane
Town Clerk



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)



Recorded: 02/28/2019 12:09:15 PM
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)

700061976



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: [Signature]
Chairman of the Board

ATTEST:

[Signature]
Secretary Steve Cicinato

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.

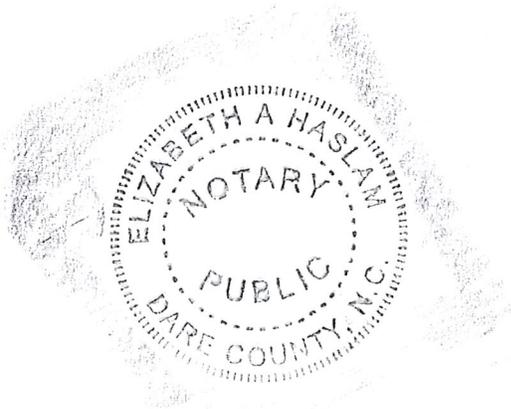
[Signature]
Notary Public

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 Cicento 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, 2019.

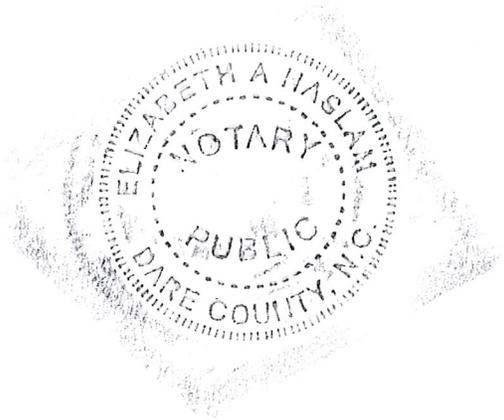
[Signature]
Notary Public

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:

[Signature]
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 Jneika KANE, its Town Clerk.

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

[Signature]
Notary Public

Notary's printed or typed name: Cynthia L Mills

My commission expires: 03/01/2020

(AFFIX NOTARY SEAL)

