



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.go

August 7, 2018

COUNCIL MEETING-5:30 P.M.-PITTS CENTER

1. Opening
 - A. Call Meeting to Order (all citizens interested in offering Public Comment are reminded to sign up.)
 - B. Pledge of Allegiance
 - C. Moment of Silence
 - D. Amendments to / Approval of Agenda
 - E. Consent Agenda **TAB 1**
 - i. Council Meeting Minutes – July 10, 2018
2. Recognition
 - A. Sam Williams-9 years of service on the Planning Board
 - B. Carlos Gomez-2 years of service on the Planning Board
3. Staff Reports
 - A. Town Planner
 - B. Police Chief
 - C. Fire Chief, Southern Shores Volunteer Fire Department
 - D. Town Manager's Report
 - E. Town Attorney's Report
4. General Public Comment (Limit: 3 minutes per speaker.)

(Note: All matters heard or considered by the Council are subject to possible action by the Council.)
5. Old Business
 - A. Consideration of ZTA-18-07 and ZTA 18-07A, Zoning Text Amendment application submitted by the Town of Southern Shores, and subsequent draft directive, to amend Town Code Section 36-132, *Regulation of Structures and Uses Nonconforming*. (Council may currently adopt ZTA-18-07. ZTA-18-07A may only be adopted upon receiving a recommendation of the Planning Board, and subsequently holding a Public Hearing. ZTA-18-07A is on the August 20, 2018 Planning Board agenda for consideration.) **TAB 2**
6. New Business
 - A. Public Hearing for consideration of LDA-18-01, a Landmark Designation Application submitted by Clayton Small to designate 116 Ocean Blvd. as a Historic Landmark. **TAB 3**
 - i. Report from Historic Landmarks Commission- Chairman Whitley.
 - B. Consideration of Draft Fire Services Contract, effective July 1, 2019. **TAB 4**
 - C. Trash/Recycle Cans Lining NC 12 – Councilman Newberry.
7. General Public Comment (Limit: 3 minutes per speaker.)
8. Other Business
 - A. Mayor's Comments & Responses
 - B. Council Member's Comments & Responses
9. Adjourn



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**Town of Southern Shores
Regular Council Meeting
July 10, 2018**

12 The Town of Southern Shores Town Council met in the Pitts Center located at 5377 N. Virginia
13 Dare Trail at 5:30 p.m. on Tuesday, July 10, 2018.

14
15 **COUNCIL MEMBERS PRESENT:** Mayor Bennett, Mayor pro tem Chris Nason and Council
16 Members Fred Newberry, Jim Conners and Gary McDonald.

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18 **COUNCIL MEMBERS ABSENT:** None

19
20 **CALL TO ORDER / PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE**

21 Mayor Bennett called the meeting to order at 5:30 p.m., led the Pledge of Allegiance, and held a
22 moment of silence.

23
24 **AMENDMENTS / APPROVAL OF AGENDA**

25 **MOTION:** Councilman Conners moved to approve the agenda as presented. The motion was
26 seconded by Mayor pro tem Nason. The motion passed unanimously (5-0)

27
28 **CONSENT AGENDA**

29 The consent agenda consisted of the following items:

- 30 i. Council Meeting Minutes – June 5, 2018
31 ii. Tax Pickups & Releases
32 iii. Budget Amendments-(Projects Approved, Budgeted, and Contractually
33 Encumbered in FY17-18, Yet Not Spent - Rollover to FY 18-19)
34 1. Budget Amendment #1 Cost to complete CodeWright contract
35 2. Budget Amendment #2 Amount to finish architectural work for new fire
36 station
37 3. Budget Amendment #3 Police cars, tax and tags and equipment that
38 was ordered FY 17-18 but not yet received.

39
40 **MOTION:** Mayor pro tem Nason moved to approve the consent agenda as presented. The
41 motion was seconded by Councilman Conners. The motion passed unanimously (5-0).

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44 **STAFF REPORTS**

45 The following Department Heads presented Department reports for the month:

- 46 o Town Planner Wes Haskett presented the monthly report for June. The Historic
47 Landmark Commission met on June 26th and recommended historic designation of
48 116 Ocean Blvd. The public hearing set by the Mayor will be August 7th. The next

49 Planning Board meeting is July 16th at which time the board will consider VA-18-05,
50 a Variance application submitted by Attorney E. Crouse Gray, Jr. for a Variance from
51 Section 36-202, (d), (4) and (5) of the Southern Shores Town Code for the property
52 located at 291 Duck Rd. The Board will also conduct an election of officers.

- 53 o Police Chief David Kole presented a monthly report for June and presented a
54 PowerPoint presentation of data collected from the "No-Left Turn" weekend (a copy
55 of the PowerPoint presentation is hereby attached)
- 56 o Deputy Chief Jay Williams presented the Fire Department's monthly report for June.
- 57 o The Town Manager presented the Manager's report and addressed several matters:
 - 58 o Hurricane Chris is moving out and hopefully the beaches will be back
59 to normal.
 - 60 o The designs for the three segments of South Dogwood Trail walking
61 trail are still being worked on. Once they are complete, they will be
62 presented to Council for consideration.
 - 63 o East Dogwood Trail walking trail design should be set to go out for bid
64 next week. On June 19th a meeting with the East Dogwood Trail
65 /south side property owners occurred with no major concerns
66 expressed.
 - 67 o A draft Fire Services contract commencing July 2019 will be sent to
68 Council in the next couple of weeks, prior to the August meeting. The
69 contract will be an agenda item for August Council Meeting.
 - 70 o The architect for the Southern Shores Volunteer Fire Department will
71 be presenting a final design and site plan at the Council's September
72 meeting. He will be seeking any final design comments from Council
73 at that time and will then use that design to go out to bid. He
74 anticipates bringing the lowest bid and a finance package to Council
75 at the Council's November meeting. He also anticipates Council
76 making a final decision at that point on its funding participation, and
77 whether to proceed or not.
 - 78 o The NC Turnpike Authority anticipates an environmental review
79 Record of Decision in the next couple of months on the Mid-Currituck
80 Bridge.

81
82
83 Councilman Conners asked the Town Manager when the Town Engineer will get a look at the
84 Fire Department plans. The Town Manager replied as soon as the design and site plan comes
85 out, prior to the September Council meeting, in order to review storm water management at the
86 site per the Town Ordinance.

87 88 **GENERAL PUBLIC COMMENT**

89 Mayor Bennett called for public comment and the following citizens offered comment:

- 90 1. Emily Ausband-170 Duck Rd-purchased a 50 x 100 ft. lot perpendicular but adjacent to
91 her 170 Duck Rd property in anticipation of building a small cottage on it. The upcoming
92 text amendment requiring the lot combination should exclude properties that share a
93 small portion of the property line.
- 94 2. Bill Cogger-7 Ginguite Trail-thanked Gerri Sullivan for getting group aroused about this
95 zoning coverage thing. We are accommodating the builders and that's what they did
96 when he was on the architectural review board. Opposes zoning text amendment
97 ZTA18-07.
- 98 3. Lorelei DiBernardo- 32 9th Ave opposes zoning text amendment ZTA -18-04 lot
99 coverage.

- 100 4. Nick Nuzzi-41 Skyline Rd- Opposes ZTA 18-07, penalizes homeowners who have
101 purchased properties on two or more 50 ft. wide lots.
102 5. Joe Van Gieson-228 N Dogwood Trl-does not dispute Police Chief Kole's numbers but
103 one number is the number of cars on Sea Oats on June 24, 2017. The number on June
104 23, 2018 was 823, the number on June 24, 2017 was 1,967. He does not know if it is
105 1100 less cars because of the no-left turn test but it tells that something is different in
106 the two years.
107 6. Ann Sjoerdsma-69 Hickory Trail-compelled to explain what the word "bias" means. Bias
108 is presenting an incomplete report and cherry picking the evidence. ZTA -18-04 is an
109 attempt to improve upon an ordinance already in place.
110 7. Jay Dunlap-161 Hickory Trl-Can the state help with the traffic issue and perhaps the
111 Town can provide port-a-john installed in heavy traffic locations throughout Town.
112
113

114 **OLD BUSINESS**

115 SECOND READING- ZTA-18-07, A ZONING TEXT AMENDMENT APPLICATION SUBMITTED
116 BY THE TOWN OF SOUTHERN SHORES TO AMEND TOWN CODE SECTION 36-132,
117 REGULATION OF STRUCTURES AND USES NONCONFORMING. FIRST READING BEFORE
118 COUNCIL PASSED 3-2 ON JUNE 5, 2018.
119

120 **MOTION:** Councilman McDonald, following up on an email received today, moved to go into
121 closed session and discuss legal parts of proposed ZTA 18-07 with the Town Attorney in a manner
122 preserving the attorney client privilege pursuant to N.C.G.S. 143-318.11(a)(3). The motion was
123 seconded by Councilman Newberry. The motion passed unanimously (5-0).
124

125 **MOTION:** Upon returning to open session, Councilman Conners moved to table ZTA 18-07,
126 and have staff and the Town Attorney work up a ZTA that would require two non-conforming lots
127 that have one structure located on both of them be recombined into one conforming lot if the
128 structure is demolished or otherwise altered in a manner that exceeds 50% of the value of existing
129 structure. The motion was seconded by Councilman McDonald. The motion passed unanimously
130 (5-0).
131

132 **NEW BUSINESS**

133 COUNCIL APPOINTMENTS TO PLANNING BOARD SEAT VACANCIES

134 Planning Board Nominations:

- 135 o Seated Member #3: Councilman McDonald nominated David Neal. Nominations closed.
136 Vote: (5-0 in favor)
137 o Seated Member #4: Councilman Conners nominated Andy Ward. Councilman McDonald
138 nominated Leo Holland. Nominations closed. Vote 3-2 in favor of Andy Ward. Mayor
139 Bennett, Mayor pro tem Nason and Councilman Conners voted affirmative in favor of
140 Andy Ward; McDonald and Newberry opposed. Nomination of Andy Ward passed.
141 o Alternate Member #1: Councilman McDonald nominated Leo Holland. Nominations
142 closed. Vote: (5-0 in favor).
143 o Alternate Member #2: Councilman Conners nominated Michael Basilone. Nominations
144 closed. Vote: (4-1 in favor). Councilman Newberry opposed. Nomination passed
145
146

147 **Next Agenda Item:**

148 PUBLIC HEARING AND CONSIDER ADOPTION OF A CAPITAL INFRASTRUCTURE
149 IMPROVEMENT PLAN FOR FY 2018-2019.
150

151 Town Attorney Gallop opened the public hearing and called for comment:

- 152 1. Joseph Van Gieson-228 N Dogwood-no comment on the priority of streets but rather the
153 financing. Hopes that the Capital Infrastructure Improvement Plan expense line includes
154 the \$282,000 transfer associated with projects; wants to see the capital improvements
155 expense line at \$1.2 million.
156

157 **MOTION:** Councilman McDonald moved to adopt ordinance 2018-07-01 an Ordinance
158 Establishing a Capital Infrastructure Improvement Plan and Authority to Implement. The motion
159 was seconded by Councilman Conners. The motion passed unanimously (5-0).
160

161 **Next Agenda Item:**

162 PUBLIC HEARING-CONSIDER ZTA-18-04, A ZONING TEXT AMENDMENT APPLICATION
163 SUBMITTED BY THE TOWN OF SOUTHERN SHORES TO AMEND TOWN CODE SECTION 36-
164 202 ESTABLISHING NEW LOT COVERAGE REQUIREMENTS.
165

166 Mayor Bennett read a statement that when he purchased his property and added a storage room
167 under his house the permit officer made him aware that the property was approximately 3%
168 already over lot coverage. A storage room permit was then issued due to the fact of it being under
169 the house and not adding to lot coverage. Town Attorney Gallop stated since the Mayor has no
170 financial gain associated with this zoning text amendment, he has no conflict of interest.
171

172 Town Attorney Gallop opened the public hearing and called for comment:

- 173 1. Richard Walker-30 Skyline Rd.-Wants tax bill to separate the house and land portion
174 (reflecting lot that house is on, not combined lots).
175 2. Emily Walker-30 Skyline Rd. -wants to keep current ambiance of the Town.
176 3. Andy Ward-147 Bayberry Trail-not in favor of the ZTA as presented and would like Council
177 to send it back to the new Planning Board for consideration. Sometimes less is more.
178 4. Ann Sjoerdsma-69 Hickory Trl-Why are we revisiting this issue? Mostly agrees with Andy
179 Ward and Lorelei DiBernardo' s comments. People have spoken as part of CodeWright
180 survey.
181 5. Joe Van Gieson-228 N Dogwood Trl-Agrees with previous speakers. Proposed ZTA as
182 written is encroaching on the environment. Opposes ZTA-18-04.
183 6. Gerri Sullivan-31 10th Ave.-opposes ZTA 18-04, it will encourage building larger homes,
184 you can double the area you currently have as far as lot coverage. Pervious materials were
185 abused previously and she has heard this is why the Town Code was rewritten in 2010-
186 2011.
187 7. Lorelei DiBernardo-32 9th Ave.-read a letter from her husband opposed to ZTA 18-04 (letter
188 attached).
189

190 **MOTION:** Councilman McDonald moved to not pass ZTA-18-04 and not send it back to
191 Planning Board. The motion was seconded by Councilman Newberry. The motion failed (2-3)
192 Councilman McDonald and Newberry voting affirmative; Mayor Bennett, Mayor pro tem Nason and
193 Councilman Conners opposing.
194

195 In support of the proposed ZTA, Mayor pro tem Nason stated the lot coverage remains the same
196 at 30%. It encourages people to use pervious materials which they would not ordinarily do on their
197 own. A strict storm water plan would have to be presented, gravel walkways will now be
198 considered coverage. He further stated that he respectfully disagrees with some statements and
199 that swimming pools trap storm water. This amendment gets the Town in line with what is actual
200 coverage and closer to state storm water standards.
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202 Councilman Newberry stated he would not be convinced, agrees with Andy Ward's comments and
203 he is opposed to the proposed ZTA.

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Councilman Conners stated he is not totally against everything in the ZTA. He agreed with Mr. Wards numbers.

Mayor Bennett stated Council can consider Mr. Ward's request to send it back to the Planning Board, vote against it, or vote for it.

Councilman McDonald stated he voted this down the first time and the reason he did was sixty-eight percent of the people in the community responded to a survey that had recently been done and they were against it. Their comments were to leave it alone and the majority of our community is against this.

Councilman McDonald then asked Mayor pro tem Nason "How much money do you need to make?"

Councilman Nason immediately asked Councilman McDonald to please retract that statement.

Councilman Nason stated this is about the renovation process and he was making no money from this. He also stated Councilman McDonald's comment was entirely inappropriate and to retract his statement and apologize.

Councilman McDonald refused to apologize, and stated, "the truth sometimes hurts."

Mayor pro tem Nason called for Councilman McDonald to be censured for his comments.

Councilman Newberry stated how is he supposed to censure Councilman McDonald if he did not hear the comment. Councilman Conners stated it was an accusation that Mr. Nason is making money off this change.

Mayor Bennett called for one motion at a time.

MOTION: Mayor pro tem Nason moved to not accept ZTA -18-04 but to send it back to the Planning Board for their consideration. The motion was seconded by Councilman Conners. The motion passed unanimously (5-0).

MOTION: Mayor pro tem Nason moved to have this board formally censure Mr. McDonald for his comment, stating it was totally out of line and he had no evidence for it. The motion was seconded by Councilman Conners. The motion failed 2-3, Mayor pro tem Nason and Councilman Conners voting affirmative; Mayor Bennett, Councilman Newberry and Councilman McDonald opposing.

[In reference to ZTA-18-04 discussion, Councilman McDonald asked Mayor pro tem Nason "how much do you need to make", refused to retract the statement, and refused to apologize publicly for making the statement, also stating "the truth sometimes hurts".

PUBLIC HEARING -CONSIDER ZTA-18-03, A ZONING TEXT AMENDMENT APPLICATION SUBMITTED BY THE SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT TO AMEND TOWN CODE SECTION 36-163, SECTION 36-165, AND 36-205 ESTABLISHING PARKING, SIGNAGE, AND SETBACK REQUIREMENTS FOR FIRE STATIONS.

255 Town Attorney Gallop opened the public hearing and called for comment. Hearing no citizen
256 wishing to speak he asked the Town Planner to present the Staff report.

257

258 Wes Haskett, Deputy Town Manager and Planning Director presented the staff report and stated
259 the rear and side setbacks are zero in the ZTA as presented. The Fire Department's architect
260 plans call for an 18-ft. side setback. Council, if they choose, could reduce the side setback in the
261 zoning text amendment.

262

263 **MOTION:** Councilman McDonald moved to adopt ZTA-18-03 amending the proposed zero-
264 side setback to 10 ft. The motion was seconded by Councilman Conners. The motion passed
265 unanimously (5-0).

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268 **GENERAL PUBLIC COMMENT**

269 Mayor Bennett called for public comment and the following citizens offered comment:

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278 **MAYOR COMMENTS & COUNCIL COMMENTS**

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Mayor Bennett thanked the Planning Board applicants for volunteering.

280

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Councilman Newberry stated Council should listen more to the public comments and surveys and the Town's Land Use Plan. The Land Use Plan needs to be looked at when considering zoning text amendments.

284

285

Councilman Conners stated when someone is disrespectful to him, you may get disrespect back.

286

287

288 **ADJOURN**

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ATTEST:

Respectfully submitted,

295

296

297

Thomas G. Bennett, Mayor

Sheila Kane, Town Clerk

ZTA-18-07



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949
Phone 252-261-2394 / Fax 252-255-0876
info@southernshores-nc.gov
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PLANNING BOARD GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 4/20/18 Filing Fee: \$200 Receipt No. N/A Application No. Z-TA-18-07

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36, Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- Chapter 30. Subdivisions-Town Code
- Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District
- Chapter 36. Article IX. Planned Unit Development (PUD)
- Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units *
- Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- Chapter 36. Article X. Section 36-303 Fees
- Chapter 36. Article X. Section 36-304-Vested Rights
- Chapter 36. Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name Town of Southern Shores
Address: 5375 N. Virginia Dare Trail
Southern Shores NC 27949
Phone 252-2394 Email info@southernshores-nc.gov

Applicant's Representative (if any)

Name _____
Agent, Contractor, Other (Circle one)
Address _____
Phone _____ Email _____

Property Involved: Southern Shores Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: Site Plan Review Final Site Plan Review Conditional Use Permitted Use
 PUD (Planned Unit Development) Subdivision Ordinance Vested Right Variance

Change To: Zoning Map Zoning Ordinance

W. H. Hatt
Signature

4-20-18
Date

* Attach supporting documentation.



Town of Southern Shores

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Ordinance-2018-06-03

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the density of population and the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, pursuant to N.C.G.S. § 160A-371 et seq. the Town may enact and amend ordinances regulating the subdivision of land within its territorial jurisdiction; and

WHEREAS, prior to the incorporation of the Town, many lots were created within its jurisdiction that have become nonconforming due to their lack of sufficient lot width and area. Over time the character and density of the Town have been developed such that many of these smaller nonconforming lots were built upon as if they were combined with one another. In recent years, the Town has seen a trend towards redevelopment of such informally combined parcels to the ends of breaking them back into the smaller nonconforming lots and building dwellings upon the nonconforming lots. Such redevelopment is inconsistent with the low density character of the Town; and

WHEREAS, the Town desires to manage the development of the Town in a manner which maintains the low density character of the Town and requires formal recombination of lots to current Town standards toward a goal of reducing the existence of nonconforming lots. Similarly, the Town desires to allow for existing nonconforming lots that are not otherwise adjacent to lots owned by the same person or entity to be developed rather than vacant and unusable; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Zoning Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

1 For purposes of this ordinance amendment, underlined words (underline) shall be
2 considered as additions to existing Town Code language and strikethrough words
3 (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the
4 adopted Town Code which are not repeated herein, but are instead replaced by an ellipses
5 ("...") shall remain as they currently exist within the Town Code.

6
7 **ARTICLE III. Amendment of Zoning Ordinance.**

8
9 **NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Southern
10 Shores, North Carolina, that the Town Code shall be amended as follows:

11
12 **PART I.** That subsection (a) of Sec. 36-132 Regulation of structures and uses be
13 replaced in its entirety with the following:

14
15 **(a) *Nonconforming lots of record.***

16
17 (1) In any district in which single-family dwellings are permitted, a single-family
18 dwelling and customary accessory building may be erected on any single lot not
19 under the same ownership as any adjacent lot and which met all legal requirements
20 at the time of its creation and recording in the Dare County public registry. All
21 applicable dimensional requirements other than lot area and lot width shall be met
22 for development or redevelopment of such a lot except that a lot having a lot width
23 of fifty (50) feet or less may use a side yard setback of twelve (12) feet.

24
25 (2) If any of the following situations apply, all adjacent lots under the same
26 ownership shall be recombined into: (i) a single lot which may or may not meet the
27 minimum requirements for the district in which such lots are located; or (ii) multiple
28 lots which all meet the minimum requirements for the district in which such lots
29 are located:

30
31 a. Development is proposed upon land under the same ownership which
32 includes one or more nonconforming lots adjacent to one or more other lots
33 under the same ownership;

34
35 b. Demolition or redevelopment exceeding 50% of an existing structure's
36 value is proposed and any portion of the existing structure or associated use
37 is currently or has been within the previous seven (7) years located upon or
38 occurring on two or more lots under the same ownership, as measured from
39 the time of application;

40
41 c. Development is proposed of a new structure or use to be located on two
42 or more lots under the same ownership;

43
44 d. Prior to the sale or transfer of land when any portion of the land being
45 sold or transferred was a parcel or part of a parcel of land upon which an
46 existing structure or associated use is currently or has been within the

1 previous seven (7) years located upon or occurring on two or more lots
2 under the same ownership, as measured from the time of application; or
3

4 e. Prior to the sale or transfer of land including a nonconforming lot or lots
5 adjacent to one or more other lots under the same ownership;
6

7 A plat prepared by a North Carolina licensed surveyor showing the recombination
8 shall be recorded in the Dare County public registry, and a copy of the
9 recorded plat shall be provided to the Town prior to the issuance of a zoning or
10 building permit for development or redevelopment upon any of the newly created
11 lots. Lots created by a recombination required by this section shall be deemed to
12 equal or exceed the standards of the Town under Chapter 30, and are exempt from
13 the subdivision process under Chapter 30.
14

15 (3) For purposes of this subsection (a), the term "same ownership" shall be
16 construed broadly to effectuate the reduction of nonconforming lots within the
17 Town. Land and lots under the same ownership shall include, but not be limited to,
18 any of the following or any combination of the following:
19

20 a. A lot is owned, in whole or in part, by an individual and another lot is
21 owned by the same individual or by an Affiliate of the same individual;
22 and/or,
23

24 b. A lot is owned, in whole or in part, by a legal entity and another lot is
25 owned by the same legal entity or by an Affiliate of the same legal entity.
26

27 (4) For purposes of this subsection (a), the following definitions apply:
28

29 a. An "Affiliate" of an owner shall mean:
30

31 (i) In the case of an individual owner, a family member of the owner,
32 or a legal entity controlled by the owner.
33

34 (ii) In the case of a legal entity owner, an individual who controls
35 the legal entity, or another legal entity controlled by the owner.
36

37 b. "Controlled" or "controls" shall mean the power, by ownership, operation
38 of law or contract, whether exercised or not, directly or indirectly, actually
39 or effectively, to operate, supervise, or manage a legal entity, or to appoint
40 or elect the management of the legal entity, or to otherwise direct the
41 operation, supervision or management of the legal entity.
42

43 c. "Family member" of an owner shall mean the owner's spouse, lineal
44 descendants, siblings and parents whether related by blood or marriage.
45

1 **ARTICLE IV. Statement of Consistency with Comprehensive Plan and**
2 **Reasonableness.**

3
4 The Town's adoption of this ordinance amendment is consistent with the Town's adopted
5 comprehensive zoning ordinance, land use plan and any other officially adopted plan that
6 is applicable. For all of the above-stated reasons and any additional reasons supporting the
7 Town's adoption of this ordinance amendment, the Town considers the adoption of this
8 ordinance amendment to be reasonable and in the public interest.

9
10 **ARTICLE V. Severability.**

11
12 All Town ordinances or parts of ordinances in conflict with this ordinance amendment are
13 hereby repealed. Should a court of competent jurisdiction declare this ordinance
14 amendment or any part thereof to be invalid, such decision shall not affect the remaining
15 provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the
16 Town of Southern Shores, North Carolina which shall remain in full force and effect.

17
18 **ARTICLE VI. Effective Date.**

19
20 This ordinance amendment shall be in full force and effect from and after the ___ day of
21 _____, 2018.

22
23
24 _____, Mayor

25
26 **ATTEST:**

27
28 _____
29 Town Clerk

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31 **APPROVED AS TO FORM:**

32
33
34 _____
35 Town Attorney

36
37 **Date adopted:**

38
39 _____
40 **Motion to adopt by Councilmember:**

41 _____
42 **Motion seconded by Councilmember:**

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Vote: ___ AYES ___ NAYS

ZTA-18-07A



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27919
Phone 252-261-2394 / Fax 252-255-0876
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PLANNING BOARD GENERAL APPLICATION FORM TOWN OF SOUTHERN SHORES, NC 27949

Date: 7/20/18 Filing Fee: \$200 Receipt No. N/A Application No. 2JA-18-07A

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- Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use
- Chapter 36. Article X. Section 36-303 Fees
- Chapter 36. Article X. Section 36-304-Vested Rights
- Chapter 36. Article XIV. Changes and Amendments

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name Town of Southern Shores
Address: 5375 N. Virginia Dare Trl
Southern Shores, NC 27949
Phone 252-2394 Email info@southernshores-nc.gov

Applicant's Representative (if any)

Name _____
Agent, Contractor, Other (Circle one)
Address _____
Phone _____ Email _____

Property Involved: Southern Shores Martin's Point (Commercial only)

Address: _____ Zoning district _____
Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: Site Plan Review Final Site Plan Review Conditional Use Permitted Use
 PUD (Planned Unit Development) Subdivision Ordinance Vested Right Variance

Change To: Zoning Map Zoning Ordinance

Signature W. H. Hault

Date 7-20-18

* Attach supporting documentation.



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

info@southernshores-nc.gov

www.southernshores-nc.gov

Ordinance-2018-18-07A

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the density of population and the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, pursuant to N.C.G.S. § 160A-371 et seq. the Town may enact and amend ordinances regulating the subdivision of land within its territorial jurisdiction; and

WHEREAS, prior to the incorporation of the Town, many lots were created within its jurisdiction that have become nonconforming due to their lack of sufficient lot width and area. Over time the character and density of the Town have been developed such that many of these smaller nonconforming lots were built upon as if they were combined with one another with principal buildings lying across lot lines. In recent years, the Town has seen a trend towards demolition of the principal buildings located across lot lines and redevelopment of these informally combined parcels. The nature of this redevelopment results in the use of the smaller nonconforming lots and the construction of principal buildings upon each of the nonconforming lots. Such redevelopment increases density and is inconsistent with the Town's desire to maintain its low density character; and

WHEREAS, the Town desires to manage the development of the Town in a manner which maintains the low density character of the Town and requires formal recombination of nonconforming lots that have previously been or will be built upon as if they were a single lot. At the same time, the Town desires to allow for existing nonconforming lots that do not have a principal building built or proposed to be built across lots lines to remain able to build a single-family dwelling and customary accessory building; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general

1 welfare for the Town to amend the Town's Zoning Ordinance and Town Code of
2 Ordinances as stated below.

3
4 **ARTICLE II. Construction.**

5
6 For purposes of this ordinance amendment, underlined words (underline) shall be
7 considered as additions to existing Town Code language and strikethrough words
8 (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the
9 adopted Town Code which are not repeated herein, but are instead replaced by an ellipses
10 ("...") shall remain as they currently exist within the Town Code.

11
12 **ARTICLE III. Amendment of Zoning Ordinance.**

13
14 NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern
15 Shores, North Carolina, that the Town Code shall be amended as follows:

16
17 **PART I.** That subsection (a) of Sec. 36-132 Regulation of structures and uses be
18 replaced in its entirety with the following:

19
20 **(a) *Nonconforming lots of record.***

21
22 (1) In any district in which single-family dwellings are permitted, a single-family
23 dwelling and customary accessory building may be erected on any single lot
24 which met all legal requirements at the time of its creation and recording in the
25 Dare County public registry. All applicable dimensional requirements other than
26 lot area and lot width shall be met for development or redevelopment of such a lot
27 except that a lot having a lot width of fifty (50) feet or less may use a side yard
28 setback of twelve (12) feet.

29
30 (2) Prior to demolition of an existing principal building, redevelopment exceeding
31 50% of an existing principal building's value, or construction of a new principal
32 building when such existing or proposed principal building is located or proposed
33 to be located on two or more lots any of which are non-conforming, all lots
34 underlying the existing or proposed principal building shall be recombined into a
35 single lot. A plat prepared by a North Carolina licensed surveyor showing the
36 recombination shall be recorded in the Dare County public registry, and a
37 copy of the recorded plat shall be provided to the Town prior to the issuance of a
38 zoning or building permit for the demolition, redevelopment or development upon
39 the newly created lot. The lot created by a recombination required by this section
40 shall be deemed to equal or exceed the standards of the Town under Chapter 30,
41 and are exempt from the subdivision process under Chapter 30. The unlawful
42 demolition of a principal building in violation of this section shall preclude the
43 application of section (1) for the underlying lots unless and until a recombination
44 occurs under this section as if the principal building had not been demolished.

1 **ARTICLE IV. Statement of Consistency with Comprehensive Plan and**
2 **Reasonableness.**

3
4 The Town's adoption of this ordinance amendment is consistent with the Town's adopted
5 comprehensive zoning ordinance, land use plan and any other officially adopted plan that
6 is applicable. For all of the above-stated reasons and any additional reasons supporting
7 the Town's adoption of this ordinance amendment, the Town considers the adoption of
8 this ordinance amendment to be reasonable and in the public interest.

9
10 **ARTICLE V. Severability.**

11
12 All Town ordinances or parts of ordinances in conflict with this ordinance amendment
13 are hereby repealed. Should a court of competent jurisdiction declare this ordinance
14 amendment or any part thereof to be invalid, such decision shall not affect the remaining
15 provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the
16 Town of Southern Shores, North Carolina which shall remain in full force and effect.

17
18 **ARTICLE VI. Effective Date.**

19
20 This ordinance amendment shall be in full force and effect from and after the ___ day of
21 _____, 2018.

22
23
24 _____, Mayor

25
26
27 **ATTEST:**
28
29
30 _____
31 Town Clerk

32
33
34 **APPROVED AS TO FORM:**
35
36
37 _____
38 Town Attorney

39
40 **Date adopted:**
41
42 _____
43 **Motion to adopt by Councilmember:**
44 _____
45 **Motion seconded by Councilmember:**
46 _____

1
2
3

Vote: **AYES** **NAYS**

BLANK



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

www.southernshores-nc.gov

ORDINANCE 2018-08-01

**ORDINANCE DESIGNATING THE PROPERTY AND STRUCTURE LOCATED
AT 116 OCEAN BLVD. AS A HISTORIC LANDMARK**

WHEREAS, all of the prerequisites to the adoption of this ordinance prescribed in Part 3C Article 19, Chapter 160A (Historic Districts and Landmarks) of the General Statutes of North Carolina and an ordinance creating the Southern Shores Historic Landmarks Commission (the "Historic Landmark Designation and Historic Landmarks Commission Ordinance") have been met and;

WHEREAS, Southern Shores Historic Landmarks Commission has undertaken an inventory of properties of historical, architectural, prehistoric and cultural significance within the Town of Southern Shores caused to be made an investigation and report on the historic, architectural, prehistoric, educational or cultural significance of the property known as Small World, located at 116 Ocean Boulevard in the Town of Southern Shores; and

WHEREAS, a written application was received from the record owner(s) of the property requesting the property be designated as a historic landmark; and

WHEREAS, the Southern Shores Historic Landmarks Commission held a public hearing on June 26, 2018 to consider designating Small World, located at 116 Ocean Boulevard as a historic landmark; and

WHEREAS, the Southern Shores Town Council has taken into full consideration all statements and information in the application and the designation report prepared for the Southern Shores Historic Landmarks Commission and presented to the Southern Shores Town Council on the 7th day of August, 2018, on the question of designating the property known as Small World, located at 116 Ocean Boulevard owned by Clayton J. Small, David C. Small, and Donald E. Small as a historic landmark, and

WHEREAS, the property known as Small World, located at 116 Ocean Boulevard in the Town of Southern Shores and more particularly described as the house and lots shown as Lots 7 & 8, Block 18, Section 2, Southern Shores as referenced in Exhibit A attached hereto, is an intact example of the modest, single story, low gable roof houses of mid-20th century origin that were constructed in the Outer Banks in a similar vein to the historic Flat-Top houses in Southern Shores developed by Frank Stick; and

WHEREAS, the property known as Small World, located at 116 Ocean Boulevard in the Town of Southern Shores is thought to be one of only two gable roof structures in the Southern Shores potential historic landmark inventory.; and

WHEREAS, Small World, located at 116 Ocean Boulevard in the Town of Sothern Shores, no significant property improvements or architectural changes to the structures have occurred and they remain as they existed nearly 65 years ago; and

WHEREAS, the Southern Shores Historic Landmarks Commission has recognized the special significance of Small World in terms of its historical, prehistoric, design, setting, workmanship, materials, feeling and/or association and has recommended that the property be designated a "historic landmark" as outlined in Section 17-3 of the Historic Landmark Designation and Historic Landmarks Commission Ordinance; and

WHEREAS, the Division of Archives and History of the North Carolina Department of Cultural Resources has reviewed and commented on the application and designation report for Small World.

NOW, THEREFORE BE IT ORDAINED by the Southern Shores Town Council that:

Section 1. The property and structure known as Small World, located at 116 Ocean Boulevard in the Town of Sothern Shores, North Carolina jurisdictional area, more particularly described in Exhibit A, is hereby designated a historic landmark pursuant to Part 3C, Article 19, Chapter 160A of the General Statutes of North Carolina and the Southern Shores Historic Landmark Designation and Historic Landmarks Commission Ordinance.

Section 2. The owner(s) and occupants (s) of the property known as Small World be given notice of this ordinance as required by applicable law and that a copy of this ordinance be filed and indexed in the office of the Register of Deeds of Dare County, as required by applicable law.

Section 3. In accordance with Part 3C, Article 19, Chapter 160A of the General Statutes of North Carolina and Southern Shores Historic Landmark Designation and Historic Landmarks Commission Ordinance, a second copy of the ordinance shall be kept on file in the office of the Southern Shores Town Clerk and be made available for public inspection at any reasonable time. A third copy of the ordinance and all amendments thereto shall be kept on file with the Southern Shores Planning and Code Enforcement Department.

Section 4. In accordance with Part 3C, Article 19, Chapter 160A of the General Statutes of North Carolina and the Southern Shores Historic Landmark Designation and Historic Landmarks Commission Ordinance, the exterior and site features of all historic landmarks are always under the purview of the Southern Shores Historic

Landmarks Commission's Certificate of Appropriateness provisions.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. Any part of the ordinance determined by a court of competent jurisdiction to be in violation of any law or constitutional provision shall be deemed severable and shall not affect the validity of the remained.

Section 7. In the event the demolition, removal, or destruction of the property is authorized as provided by law, such action may be delayed up to 365 days as provided by Section 17-9 of the Historic Landmark Designation and Historic Landmarks Commission Ordinance.

Section 8. This ordinance shall become effective immediately upon its adoption.

ATTEST:

Thomas G. Bennett, Mayor

Sheila Kane, Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date Adopted: X/X/2018

Motion to adopt by Council Member:

Motion seconded by Council Member:

Vote: X Ayes X Nays

EXHIBIT A

Dare County Tax Department
 P.O. Box 1000
 Manteo NC 27954-1000



PROPERTY TAX BILL

>>>>IMPORTANT>>>>

[PLEASE CLICK HERE FOR IMPORTANT INFORMATION](#)

DROP BOX NOW AVAILABLE...located in front of the Dare County Justice Center, 982 Marshall C. Collins Dr., Manteo NC

Please Mail or Bring this stub when making payment to insure payment is credited to the correct account.

MAIL TO: The Tax Office Designated below.

PENALTIES ARE DETERMINED BY U.S. POSTAL POSTMARK.



SMALL, CLAYTON JAMES
 248 GRIGGS ACRES DR
 POINT HARBOR NC 27964

Owner as of January 1: SMALL, CLAYTON JAMES

Customer Number	District			Bill Number
023061285	SOUTHERN SHORES			29981
Parcel Number	Billing Date	Tax Year	Due Date	Delinquent After
022535000	07/17/2018	2018	09/01/2018	01/07/2019
Description of Property		% Rate	Tax Levied	
PIN#: 986708-87-3693				
Description: LOT: 7-8 BLK: 18 SEC SO/SH SEC 2		.170000	DARE CO	\$4,997.30
Street Address: 116 OCEAN BLVD		.220000	SS TOWN	\$2,339.16
Real Property Value: 1,060,700		.000000		\$0.00
Personal Property Value: 2,555		.000000		\$0.00
Exempt Value: 0		.000000		\$0.00
Total Taxable Value: 1,063,255				\$0.00
		.000000		\$0.00
			LATE LIST:	\$0
			PAYMENT:	\$0
				AMOUNT DUE: \$7,336.46

Make Check Payable & Remit To: (include Parcel Number 022535000 on your check.)

DARE COUNTY TAX COLLECTION
 PO BOX 538310
 ATLANTA, GA 30353-8310

Questions: Direct all inquiries to (252)475-5952
 Office Hours: 8:30 AM - 5:00 PM, Monday - Friday

Credit Card Payments: Please note that all credit card payments made at the tax office will now be charged a 2% administration fee.

When calling please have your 9 DIGIT PARCEL NUMBER available



TOWN OF SOUTHERN SHORES

5375 N Virginia Dare Trl, Southern Shores, NC 27949

(252) 261-2394 tel (252) 255-0876 fax

www.southernshores-nc.gov

Historic Landmarks Designation Application

Application No. LDA-18-01 Date 4-23-18

This application initiates consideration of a property for designation as a Southern Shores Historic Landmark by the Southern Shores Historic Landmarks Commission and the Southern Shores Town Council. It enables evaluation of the resource to determine if it qualifies for designation. The evaluation is made by Town Staff and/or third party resources, which makes a recommendation to the Historic Landmarks Commission, which in turn makes its recommendation to the Town Council. Requirements and procedures are established in Chapter 17 of the Southern Shores Town Code. Please type if possible. Use 8-1/2" x 11" paper for supporting documentation and if additional space is needed. Return completed application to the Southern Shores Planning & Code Enforcement Department or mail to:

Wes Haskett, Town Planner/Code Enforcement Officer
Town of Southern Shores
5375 N. Virginia Dare Trl.
Southern Shores, NC 27949

1. Name of Property (if historic name is unknown, give current name or street address):

Historic Name: Small Cottage

Current Name: Small World

2. Location:

Street Address: 116 Ocean Blvd, Southern Shores, NC 27949

3. Legal Owner of Property (if more than one, list primary contact):

Name: Clayton Small

Address: 248 Griggs Acres Drive

City: Point Harbor

State: North Carolina 27964

Zip: 27964

Telephone No: 252-202-5051

E-Mail: clayton.small3@gmail.com

4. Applicant/Contact Person (If other than owner):

Name:

Address:

City:

Telephone No:

E-Mail:

5. General Data/Site Information:

Date of Construction and major additions/alterations:

Built 1954. No major additions/alterations

Number, type, and date of construction of accessory structures:

Two-car garage built 1954

Approximate lot size or acreage:

35,500 square feet

Architect, builder, carpenter, and/or mason:

Architect: Harry C. Lawrence Builder: Curtis Gray

Original Use:

Summer cottage for family use

Present Use:

Summer cottage for family use

6. Classification:

A. Category (check all that apply):

Structure(s) Object Site

7. Reason for Request:

**Local Landmark Designation Report
116 Ocean Boulevard
Southern Shores, Dare County**

1. NAME OF PROPERTY

Historic Name: Small Cottage

Current Name: Small World

2. LOCATION

116 Ocean Boulevard

Southern Shores, North Carolina 27949

3. TAX PARCEL ID NUMBER

022535000

4. CURRENT OWNERS

Clayton J. Small

David C. Small

Donald E. Small

5. OWNERS ADDRESS

Primary Contact:

Clayton J. Small

248 Griggs Acres Drive

Point Harbor, NC 27964

252-202-5051

clayton.small3@gmail.com

6. APPRAISED VALUE OF PROPERTY

Current Dare County tax appraisal value is \$1,060,700

a. Tax appraised land value: \$1,009,600

b. Tax appraised building value: \$44,600

c. Tax appraised miscellaneous value: \$6,500

7. REASON FOR REQUEST

The original structure at 116 Ocean Boulevard, now 64 years old, is a modest (three bedroom, two bath) seasonal cottage without heat or air conditioning. Ownership has remained in the same family and has been handed down for two generations. Use of the cottage has been

limited to family and friends. The cottage has not been a rental property. In recent years the fixed costs to operate and maintain the cottage have increased dramatically while the condition of the structure has deteriorated. The cottage owners are now facing the hard decision of what to do with the property. Securing a historic landmark designation (with commensurate tax abatement) would influence the owner's decision to retain the property, reinvest in the structure and maintain its historic heritage

8. DATE OF CONSTRUCTION

The cottage at 116 Ocean Boulevard was built in 1954.

9. ARCHITECTURAL SIGNIFICANCE

The cottage at 116 Ocean Boulevard consists of a frame structure and gable roof built upon a poured concrete slab. A large brick fireplace is centered in the floor plan and features prominently in exterior views of the structure. The roof is covered with asphalt shingles and the exterior siding is unpainted (gray) asbestos shingles. The floor plan is symmetrical with the dining room and living room in the central area (separated by the large floor to ceiling fireplace), the bedrooms in the north-east, south-east, and south-west corners, and the kitchen in the north-west corner. Front (east) and rear (west) entrances are via covered screened porches. Noteworthy interior features include open beams in the dining and living rooms and juniper paneling throughout the cottage. A two-car garage with gable roof is positioned offset to the north and at right angles to the main structure. The garage and cottage were built at the same time by the same contractor (Curtis Gray). Both structures incorporate the same roof and exterior shingles.

Since original construction in 1954, no significant property improvements or architectural changes to the structures have occurred. The cottage at 116 Ocean Boulevard remains as it existed nearly 65 years ago and is thought to be one of only two gable roof structures in the Southern Shores potential historic landmark inventory.

10. HISTORIC SIGNIFICANCE

The cottage located at 116 Ocean Boulevard in Southern Shores, North Carolina was built in 1954 by Dr. Lyndon F. Small and his wife

Marianne C. Small. Dr. Small was a renowned chemist with a distinguished public service career (see biographical note below). Mr. and Mrs. L.F. Small were frequent visitors to the outer banks of North Carolina for most of their lives and owned an oceanfront cottage in Kill Devil Hills from the 1930's until 1954. During their visits to Kill Devil Hills over the years, Dr. and Mrs. Small were acquainted with both Frank and David Stick. It was through this acquaintance that they became aware of the opportunity to relocate to a more secluded beachfront location. Dr. and Mrs. Small purchased a lot located in Southern Shores in 1950 and built their new oceanfront summer cottage in 1954. That cottage today stands as built .

Ownership of the cottage has been handed down from generation to generation, and is now jointly owned by three grandsons of Dr. and Mrs. Small.

The Small cottage at 116 Ocean Boulevard is historically significant on two counts:

- a) The cottage was designed and built for Dr. Lyndon F. Small, a renowned chemist and distinguished public servant; and the chain of ownership has remained unbroken with successive direct descendents of Dr. Small
- b) Since it was built in 1954, the cottage has not been architecturally modified.

BIOGRAPHICAL NOTE ON DR. LYNDON F. SMALL

Dr. Small (1897 – 1957), graduated from Dartmouth, received his master's degree from Harvard and his Ph.D. from the Massachusetts Institute of Technology. Leading up to World War II, Dr. Small directed the Drug Addiction Laboratory, which was established at the University of Virginia by the National Research Council's Division of Medical Sciences in 1929. While at UVA, Dr. Small led a research group to separate the beneficial pain-killing qualities of opiates from their addictive qualities.

Preparing for war, the National Institutes of Health requested Dr. Small and his group move to Bethesda, Maryland, and change their research focus to the development of antimalarials. Dr. Small's group was successful in developing numerous effective substitutes for

quinine and other drugs. Malaria left untreated would decimate troops in the field, notably in the Pacific theater.

With the rapid and continuous appearance of some fifty papers by Dr. Small and his associates, his reputation as an alkaloid chemist and specialist in morphine chemistry grew accordingly and he was elected to a number of important offices. He was Chairman of the Division of Organic Chemistry of the American Chemical Society in 1936; Consultant to the U. S. Public Health Service from 1929 to 1939; U. S. Technical Representative to the League of Nations in Geneva in 1931, and a member of the Opium Assay Commission in London in 1937.

In 1941 Small was elected to the National Academy of Sciences and he received in 1949 the Hillebrand Prize of the Washington Section of the American Chemical Society for outstanding research on alkaloid chemistry. He was elected Member of the reorganized Committee on Drug Addiction and Narcotics, National Research Council, in 1947; Consultant to the Technical Command, Army Chemical Center, Maryland, in 1950; Chairman of the Post Office Advisory Committee in 1951; and Member of the United Nations Opium Committee in 1954.

11. ABSTRACT

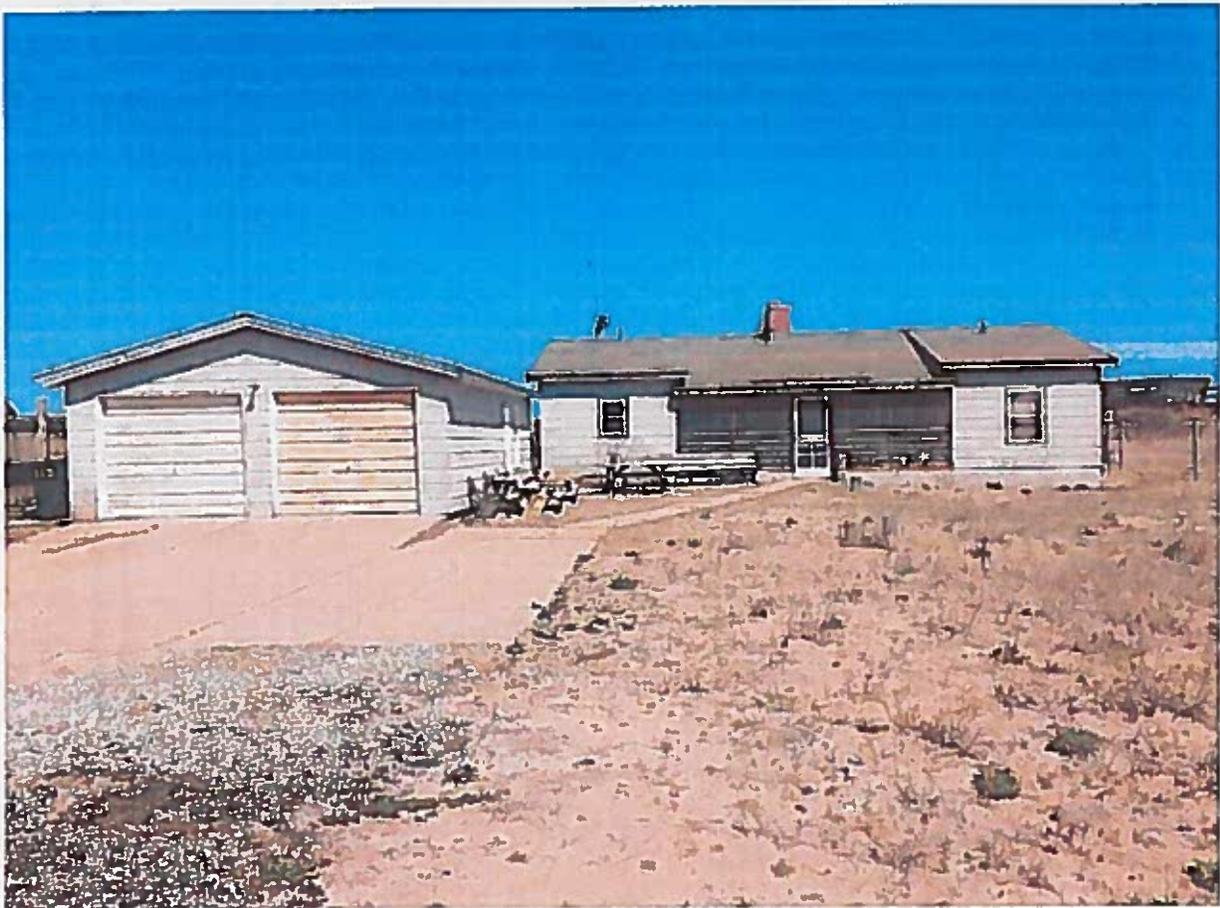
The Small cottage at 116 Ocean Boulevard is one of the original oceanfront structures to be established in Southern Shores. Since construction in 1954, no significant property improvements or architectural changes to the structures have occurred and remains as it existed nearly 65 years ago. This structure is thought to be one of only two gable roof examples in the Southern Shores potential historic landmark inventory. Designed and built for Dr. and Mrs. Lyndon F. Small, the cottage has been handed down for two generations and is currently owned by three grandsons of Dr. and Mrs. Small. In summary, the cottage exhibits integrity in six aspects: design, setting, workmanship, materials, feeling, and association.

The cottage, garage and the lot on which they sit (approximately 100 ft x 390 ft) are proposed for historic designation.

The Small Cottage
116 Ocean Boulevard

Small World

Street View



Small Cottage 1962 Aftermath of Ash Wednesday Storm

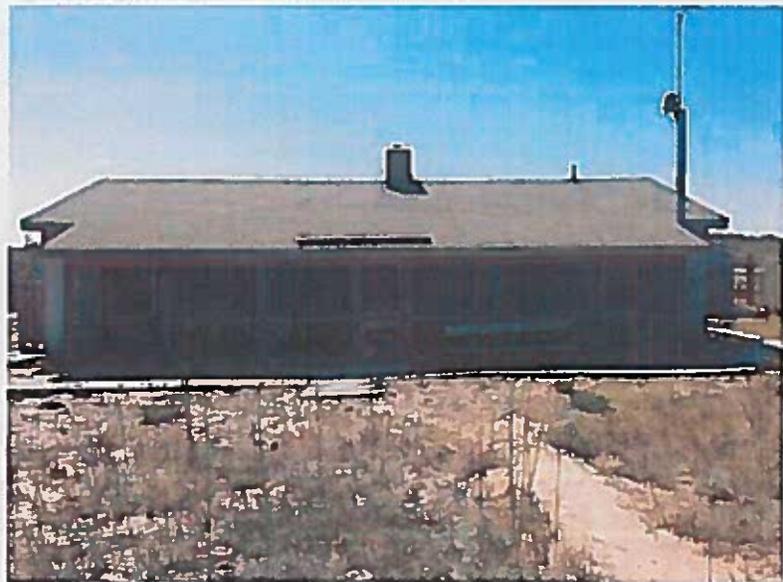


Family Vacation at 116 Ocean Boulevard 1964



Note: Current owners of the Small Cottage are included in this photograph from 1964. They are: Donald E. (Gene) Small shirtless on the far left (age 6), Clayton Small white tee-shirt in center on top of Jeep (age 9), and David Small second from right with red surfboard (age 16).

Small Cottage Exterior Views West and East Exposures



Small Cottage Exterior Views South and North Exposures



Small Cottage Exterior Views Garage



Small Cottage Property Deed 10-17-1950



FOURTH CLERK
STATE OF NORTH CAROLINA

THIS DEED, made this 17th day of August, 1950, by F. B. ... and wife ... and John B. ... and wife, Charlotte A. ... parties of the first part, ... and L. F. ... and wife, ... parties of the second part.

WITNESSETH:

That said parties of the "first part, in consideration of the sum of Two Dollars and other valuable considerations, paid by the said parties of the second part, receipt of which is hereby acknowledged, have bargained and sold, and by this instrument do grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns, the following lots or parcels of land, situate in Atlantic Township, Curro County, North Carolina, bounded on the West by Green Boulevard and on the East by the Atlantic Ocean, more particularly described as follows:

Three certain lots or parcels of land known and designated by Lots Nos. 7 and 8, Block 18, Section 2, of that subdivision known as "Seaside Shores" or or plat of which is duly recorded in Map Book 1, page 122, in the Public Registry of Curro County, North Carolina.

Say, all, and several rights are not hereby conveyed.

TO HAVE AND TO ENJOY the aforesaid lots or parcel of land and all privileges and appurtenances thereto belonging or to accrue hereby appertaining unto them the said parties of the second part, their heirs and assigns, to their only use and behoof in fee simple absolute and forever, subject to the following restrictions which shall be observed by the said parties with the lands and building on the parties of the second part and their heirs and assigns:

1. This conveyance shall not be valid, tenable, conveyed nor issued to a person of African descent.

D. E. ...

2. In witness whereof the purpose of construction and maintenance of public utilities and the maintenance of present utilities shall be retained over this property to the 10 feet existing line of way.

3. On areas front lots in Blocks 17, 18, 19, and 20, no building is to be constructed thereon which shall exceed the fireproof sign of the ground level surface of Green Boulevard any closer than 20 feet from the fireproof and boundary boundaries of said properties, nor shall any other building be constructed to over 100 feet of property surveyed. One must there may be constructed on each 100 feet of said property in addition to the said building.

4. In order to preserve a uniformity of beauty and to protect purchasers of this property from having unsightly types of architecture placed on existing properties with the consequent deterioration to the value, all elevations (roof for buildings to be constructed on the property above referred to shall be approved by the vendors' architect.

5. Streets 17 through 20, inclusive, and the lots situated thereon to streets 1 through 5, inclusive, shall be utilized for residential purposes only.

6. All buildings and coverings and a foundation over the property shall be constructed in compliance with the laws and regulations of the North Carolina Department of Public and Welfare which are now in force.

7. No commercial signs except those used in connection with hotels, business houses or apartment houses, and no billboards, advertisements or signs of any kind shall be placed on any of the premises herein designated.

The parties of the first part covenant to and with the parties of the second part, their heirs and assigns, that they are subject to said provisions in fee simple, and have a right to convey the same; that they are free and clear of any and all ...

D. E. ...

process and that they do hereby warrant and defend against the title to the same against the lawful claims of all persons whatsoever.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals, the day and year first above written.

[Signatures]

FOURTH CLERK
STATE OF NORTH CAROLINA

I, ... a Notary Public, do hereby certify that F. B. ... and wife, ... and John B. ... and wife, Charlotte A. ... personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this 17th day of August, 1950.

[Signature]

My commission expires this 17th day of ...

FOURTH CLERK
STATE OF NORTH CAROLINA

The foregoing recitations of ... a Notary Public of ... County, State of North Carolina, I received by me material seal, is adjusted to be correct. For the instrument and the recitations on registration.

Witness my hand this 17th day of October, 1950.

[Signature]

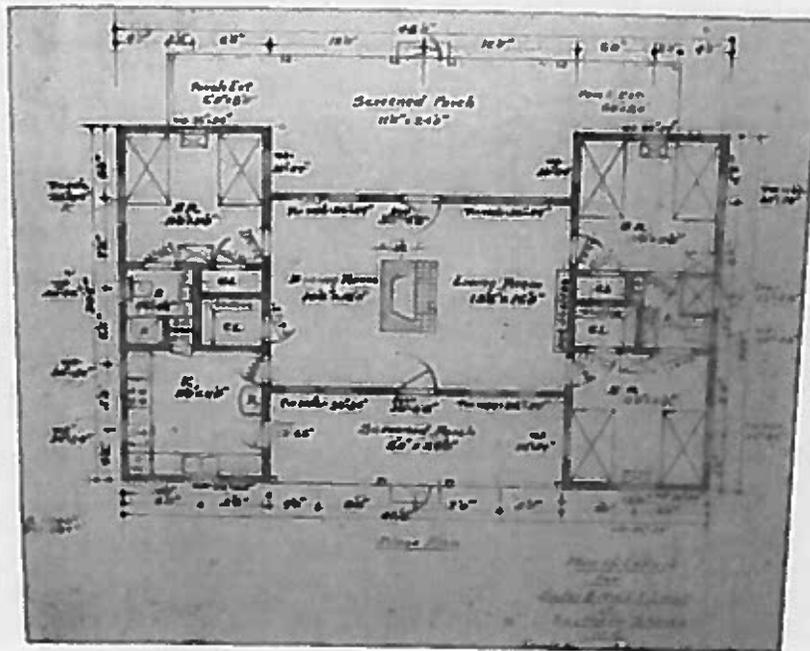
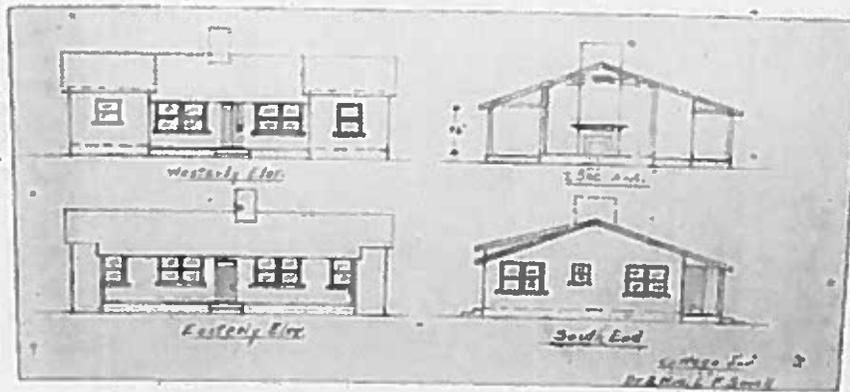
STATE ARCHIVE COURT
Curro County

D. E. ...

Small Cottage

Architectural Plans 10-15-1953

By Harry C. Lawrence



Small Cottage Boundary Map

12/5/2017

Deer County GIS

☰ Search By Name, Address, Parcel, etc

🔍 🗨



Small Cottage Tax Bill - 2017

12/2/2017

Tax Bill

Dare County Tax Department
P.O. Box 1000
Manteo NC 27954-1000



PROPERTY TAX BILL



SMALL, CLAYTON JAMES
24B GRIGGS ACRES DR
POINT HARBOR NC 27964

>>>>IMPORTANT>>>>

PLEASE CLICK HERE FOR IMPORTANT INFORMATION

DROP BOX NOW AVAILABLE located in front of the Dare County Justice Center, 962 Marshall C. Collins Dr., Manteo NC

Please Mail or Bring this stub when making payment to insure payments are credited to the correct account.

MAIL TO: The Tax Office Designated below

PENALTIES ARE DETACHED BY U.S. POSTAL POSTMARK.

Owner as of January 1: **SMALL, CLAYTON JAMES**

Customer Number	District	Bill Number		
023061285	SOUTHERN SHORES	29925		
Parcel Number	Billing Date	Tax Year	Due Date	Delinquent After
022535000	07/28/2017	2017	09/01/2017	01/05/2018
Description of Property	% Rate	Tax Levied		
PIN#: 986708-87-3693				
Description: LDT, 7-8 BLK, 18 SEC SO/SH SEC 2	.470000	DARE CD	\$4,997.30	
Street Address: 116 OCEAN BLVD	.220000	SS TOWN	2,339.16	
Real Property Value:	\$1,060,700		0.00	
Personal Property Value:	2,555		0.00	
Exempt Value:	0		0.00	
Total Taxable Value:	\$1,063,255		0.00	
	.000000		0.00	
		LATE LIST:	0	
			AMOUNT DUE:	\$7,336.46

Make Check Payable & Remit To: (include Parcel Number 022535000 on your check.)

DARE COUNTY TAX COLLECTION
PO BOX 538310
ATLANTA, GA 30353-8310

Questions: Direct all inquiries to (252)475-5952
Office Hours: 8:30 AM - 5:00 PM, Monday - Friday

Credit Card Payments: Please note that all credit card payments made at the tax office will now be charged a 2% administration fee.

When calling please have your 9 DIGIT PARCEL NUMBER available.

Local Designation Report
Small World
116 Ocean Blvd.
Southern Shores, North Carolina



April 23, 2018

Historic Landmark Designation Report

116 Ocean Blvd.

Southern Shores, North Carolina

1. NAME OF PROPERTY:

Historic Name: Small Cottage

Current Name: Small World

2. LOCATION:

116 Ocean Blvd.

Southern Shores, NC

27949

3. LEGAL OWNERS OF PROPERTY:

Clayton J. Small

David C. Small

Donald E. Small

4. APPLICANT:

Clayton J. Small

248 Griggs Acres Dr.

Point Harbor, NC 27964

5. GENERAL DATA/SITE INFORMATION:

According to Dare County Tax records, Small World was built in 1954. Dare County Register of Deeds records show that the home sits on Lots 7 and 8, Block 18, Section 2. Ownership of the property has remained in the same family which has been handed down two generations. In recent years, the fixed costs to operate and maintain the cottage have increased dramatically while the condition of the structure has deteriorated. The cottage owners are now facing the hard decision of what to do with the property. Securing a historic landmark designation (with commensurate tax abatement) would influence the owners' decision to retain the property, reinvest in the structure, and maintain its historic heritage

Approximate parcel size or acreage: 35,500 sq. feet

Original Use: Summer cottage for family use

Present Use: Summer cottage for family use

Architect: Harry C. Lawrence

Builder: Curtis Gray

Appraised building value: \$44,600

Appraised detached garage value: \$6,500

Appraised land value: \$1,009,600

Total Tax Value (land and buildings): \$1,060,700

6. ARCHITECTURAL SIGNIFICANCE:

The cottage at 116 Ocean Boulevard consists of A frame structure and gable roof built upon a poured concrete slab. A large brick fireplace is centered in the floor plan and features prominently in exterior views of the structure. The roof is covered with asphalt shingles and the exterior siding is unpainted (gray) asbestos shingles. The floor plan is symmetrical with the dining room and living room in the central area (separated by the large floor to ceiling fireplace); the bedrooms in the northeast, southeast, and southwest corners; and the kitchen in the northwest corner. Front (east) and rear (west) entrances are via covered screened porches. Noteworthy interior features include open beams in the dining and living rooms and Juniper paneling throughout the cottage. A two-car garage with gable roof is positioned offset to the north and at right angles to the main structure. The garage and cottage were built at the same time by the same contactor (Curtis Gray). Both structures incorporate the same roof and exterior shingles.

Since original construction in 1954, no significant property improvements or architectural changes to the structures have occurred. The cottage at 116 Ocean Boulevard remains as it existed nearly 65 years ago and is thought to be one of only two gable roof structures in the Southern Shores potential historic landmark inventory.

7. HISTORIC SIGNIFICANCE:

The cottage located at 116 Ocean Boulevard in Southern Shores, North Carolina was built in 1954 by Dr. Lyndon F. Small and his wife Marianne C. Small. Dr. Small was a renowned chemist with a distinguished public service career (see biographical note below). Mr. and Mrs. L.F. Small were frequent visitors to the outer banks of North Carolina for most of their lives and owned an oceanfront cottage in Kill Devil Hills from the 1930's until 1954. During their visits to Kill Devil Hills over the years, Dr. and Mrs.

Small were acquainted with both Frank and David Stick. It was through this acquaintance that they became aware of the opportunity to relocate to a more secluded beachfront location. Dr. and Mrs. Small purchased a lot located in Southern Shores in 1950 and built their new oceanfront summer cottage in 1954. That cottage today stands as built.

Ownership of the cottage has been handed down from generation to generation, and is now jointly owned by three grandsons of Dr. and Mrs. Small.

The Small cottage at 116 Ocean Boulevard is historically significant on two counts:

- a. The cottage was designed and built for Dr. Lyndon F. Small, a renowned chemist and distinguished public servant; and the chain of ownership has remained unbroken with successive direct descendants of Dr. Small
- b. Since it was built in 1954, the cottage has not been architecturally modified.

BIOGRAPHICAL NOTE ON DR. LYNDON F. SMALL

Dr. Small (1897 – 1957), graduated from Dartmouth, received his Master's degree from Harvard and his Ph.D. from the Massachusetts Institute of Technology. Leading up to World War II, Dr. Small directed the Drug Addiction Laboratory, which was established at the University of Virginia by the National Research Council's Division of Medical Sciences in 1929. While at UVA, Dr. Small led a research group to separate the beneficial pain-killing qualities of opiates from their addictive qualities.

Preparing for war, the National Institutes of Health requested Dr. Small and his group move to Bethesda, Maryland, and change their research focus to the development of antimalarials. Dr. Small's group was successful in developing numerous effective substitutes for quinine and other drugs. Malaria left untreated would decimate troops in the field, notably in the Pacific theater. With the rapid and continuous appearance of some fifty papers by Dr. Small and his associates, his reputation as an alkaloid chemist and specialist in morphine chemistry grew accordingly and he was elected to a number of important offices. He was Chairman of the Division of Organic Chemistry of the American Chemical Society in 1936; Consultant to the U. S. Public Health Service from 1929 to 1939; U. S. Technical Representative to the League of Nations in Geneva in 1931, and a member of the Opium Assay Commission in London in 1937.

In 1941 Small was elected to the National Academy of Sciences and he received in 1949 the Hillebrand Prize of the Washington Section of the American Chemical Society for outstanding research on alkaloid chemistry. He was elected Member of the reorganized Committee on Drug Addiction and Narcotics, National Research Council, in 1947; Consultant to the Technical Command, Army Chemical Center, Maryland, in 1950; Chairman of the Post Office Advisory Committee in 1951; and Member of the United Nations Opium Committee in 1954.

8. SPECIAL SIGNIFICANCE SUMMARY:

The original structure at 116 Ocean Boulevard, now 64 years old, is a modest (three bedroom, two bath) seasonal cottage without heat or air conditioning. Ownership has remained in the same family and has been handed down for two generations. Use of the cottage has been limited to family and friends. The cottage has not been a rental property.

9. ABSTRACT:

The Small cottage at 116 Ocean Boulevard is one of the original oceanfront structures to be established in Southern Shores. Since construction in 1954, no significant property improvements or architectural changes to the structures have occurred and remains as it existed nearly 65 years ago. This structure is thought to be one of only two gable roof examples in the Southern Shores potential historic landmark inventory. Designed and built for Dr. and Mrs. Lyndon F. Small, the cottage has been handed down for two generations and is currently owned by three grandsons of Dr. and Mrs. Small. In summary, the cottage exhibits integrity in six aspects: design, setting, workmanship, materials, feeling, and association.

The cottage, garage and the lots on which they sit (approximately 100 ft. x 390 ft.) are proposed for historic designation.



Small World, Street View



Small World, 1962 Aftermath of Ash Wednesday Storm



Small World, 1964. Donald E. (Gene) Small shirtless on the far left (age 6), Clayton Small white tee-shirt in center on top of Jeep (age 9), and David Small second from right with red surfboard (age 16).



Small World, East Side



Small World, West Side



Small World, South Side



Small World, North Side



Small World, Detached Garage

A 165 10/17/50
9-30 am

DEED

N. E. AYDLETT AND WIFE,
 FANTHA H. AYDLETT, and
 JOHN B. MCMULLAN AND WIFE,
 CHARLOTTE S. MCMULLAN,

TO

L. F. SMALL AND WIFE,
 MARIANNE SMALL.

Marianne in title

old Deed

~~Filed for Record October 17 50
 at 9:30 a.m. and duly recorded
 Book 38 Page 451 this 17
 day of October 1950~~

Melvin R. Daniel
 Notary Public, DeWitt County, N. C.

LAW OFFICES
 MCMULLAN & AYDLETT
 324 CAROLINA BUILDING
 ELIZABETH CITY, N. C.

D E Small

Small World, Deed

NORTH CAROLINA

DARE COUNTY

THIS DEED, Made this 18th day of August, 1950, by N. E. Aydlett and wife, Pantha H. Aydlett, and John B. McMullan and wife, Charlotte S. McMullan, parties of the first part, to L. F. Small and wife, Marylan^{NE} Small, parties of the second part.

W I T N E S S E T H:

That said parties of the first part, in consideration of the sum of Ten Dollars and other valuable considerations, paid by the said parties of the second part, receipt of which is hereby acknowledged, have bargained and sold, and by this instrument do grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns, the following lots or parcels of land, situate in Atlantic Township, Dare County, North Carolina, bounded on the West by Ocean Boulevard and on the East by the Atlantic Ocean, more particularly described as follows, viz:

Those certain lots or parcels of land known and designated at Lots Nos. 7 and 8, Block 18, Section 2, of that sub-division known as "Southern Shores", map or plat of which is duly recorded in Map Book 1, page 128, in the Public Registry of Dare County, North Carolina.

Gas, oil, and mineral rights are not hereby conveyed.

TO HAVE AND TO HOLD the aforesaid lots or parcel of land and all privileges and appurtenances thereunto belonging or in anywise thereto appertaining unto them the said parties of the second part, their heirs and assigns, to their only use and behoof in fee simple, absolute and forever, subject to the following restrictions which shall be deemed to be covenants running with the lands and binding on the parties of the second part and their heirs and assigns:

1. This property shall not be sold, leased, conveyed nor loaned to a person of African descent.

D E Small

LAW OFFICES
McMULLAN & AYDLETT
224 CAROLINA BUILDING
ELIZABETH CITY, N. C.

Small World, Deed

2. An easement for the purpose of construction and maintenance of public utilities and the maintenance of present utilities shall be retained over this property in the 10' front abutting the highway.

3. On ocean front lots in Blocks 17, 18, 19, and 20, no building is to be constructed closer than 100 feet from the westerly edge of the present improved surface of Ocean Boulevard nor closer than 10 feet from the northerly and southerly boundaries of said properties, nor shall more than one dwelling be constructed to each 100 feet of property conveyed. One guest house may be constructed on each 100 feet of said property in addition to the main dwelling.

4. In order to preserve a uniformity of beauty and to protect purchasers of this property from buying undesirable types of architecture placed on abutting properties with the consequent depreciation to the whole, all elevation plans for buildings to be erected on the property above designated shall be approved by the vendors' architect.

5. Blocks 17 through 20, inclusive, and the lots abutting the highway in Blocks 21 through 23, inclusive, shall be utilized for residential purposes only.

6. All toilets and sewerage units installed upon the property shall be constructed in compliance with the plans and regulations of the North Carolina Department of Health and no outside toilets are permitted thereon.

7. No commercial signs except those used in connection with hotels, boarding houses or apartment houses, and no trailers, livestock, poultry or other animals other than household pets may be maintained on any of the property herein designated.

The parties of the first part covenant to and with the parties of the second part, their heirs and assigns, that they are seized of said premises in fee simple, and have a right to convey the same; that same are free and clear of any and all **D.E. Small**

LAW OFFICES
DUMAS & ANGLITT
200 S. BROADWAY
RICHMOND, VA. 23219

Small World, Deed

branches and that they do hereby warrant and will forever defend the title to the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals, the day and year first above written.

N. E. Aydlott (SEAL)
Pantha H. Aydlott (SEAL)
John B. McMullan (SEAL)
Charlotte S. McMullan (SEAL)

NORTH CAROLINA
PASQUOTANK COUNTY

I, Pauline S. Evans, a Notary Public, do hereby certify that N. E. Aydlott and wife, Pantha H. Aydlott, and John B. McMullan and wife, Charlotte S. McMullan, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this 18th day of August, 1950.

Pauline S. Evans
Notary Public

My commission expires July 28, 1952

NORTH CAROLINA
DARE COUNTY

The foregoing certificate of Pauline S. Evans, a Notary Public of Pasquotank County, State of North Carolina, attested by her notarial seal, is adjudged to be correct. Let the instrument and the certificate be registered.

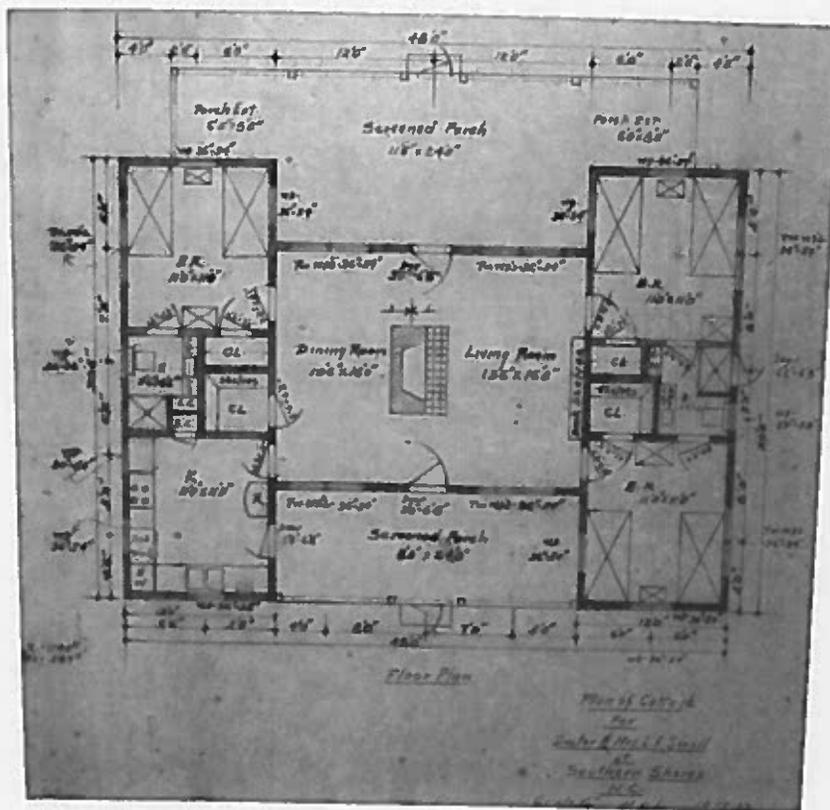
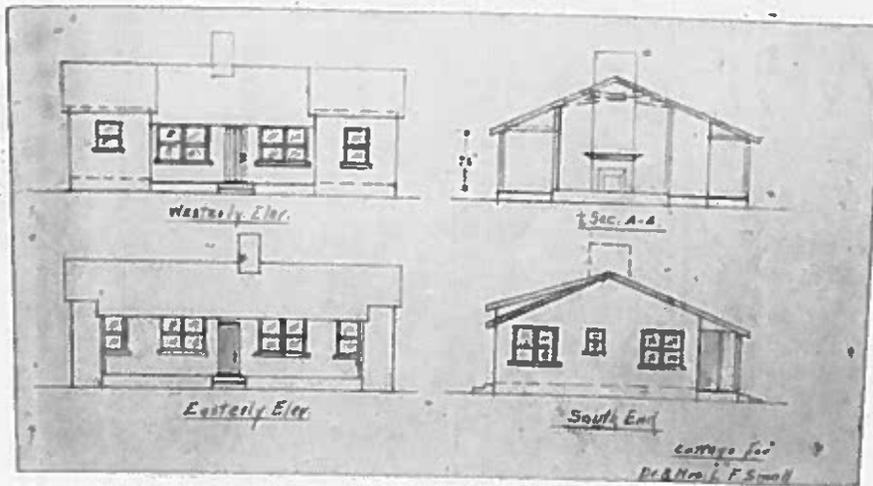
Witness my hand this 17 day of October, 1950.

Colwell
Clerk Superior Court
Dare County.



LAW OFFICES
MULLIN & AYDLOTT
200 CHURCH STREET
CHARLOTTE, N. C.

D E Small



Small World Architectural Plans, October 15, 1953 by Harry Lawrence

Dare County Tax Department
 P.O. Box 1000
 Manteo NC 27954-1000



PROPERTY TAX BILL



SMALL, CLAYTON JAMES
 248 GRIGGS ACRES DR
 POINT HARBOR NC 27964

>>>>IMPORTANT>>>>

PLEASE CLICK HERE FOR IMPORTANT INFORMATION

DROP BOX NOW AVAILABLE - located in front of the Dare County Justice Center 962 Marshall C. Collins Dr. Manteo NC

Please Mail or Bring this stub when making payment to ensure payment is credited to the correct account
 MAIL TO: The Tax Office Designated below

PENALTIES ARE DETERMINED BY U.S. POSTAL POSTMARK

Owner as of January 1: **SMALL, CLAYTON JAMES**

Customer Number	District	Bill Number
023061285	SOUTHERN SHORES	29925
Parcel Number	Billing Date	Tax Year
022535000	07/28/2017	2017
	Due Date	Delinquent After
	09/01/2017	01/05/2018

Description of Property	% Rate	Tax Levied
PIN#: 986708-87-3693		
Description: LOT: 7-8 BLK. 18 SEC SO/SH SEC 2	470000	DARE CO \$4,997.30
Street Address: 116 OCEAN BLVD	.220000	SS TOWN 2,339.16
Real Property Value: \$1,060,700	.000000	0.00
Personal Property Value: 2,555	.000000	0.00
Exempt Value: 0	.000000	0.00
Total Taxable Value: \$1,063,255		0.00
	.000000	0.00
		LATE LIST: 0
		AMOUNT DUE: \$7,336.46

Make Check Payable & Remit To: (include Parcel Number 022535000 on your check.)

DARE COUNTY TAX COLLECTION
 PO BOX 538310
 ATLANTA, GA 30353-8310

Questions: Direct all inquiries to (252)475-5952

Office Hours: 8:30 AM - 5:00 PM, Monday - Friday

Credit Card Payments: Please note that all credit card payments made at the tax office will now be charged a 2% administration fee.

When calling please have your 9 DIGIT PARCEL NUMBER available.

References

Small, Clayton. Submitted documentation.

Mossettig, Eric. Lyndon Frederick Small (1897-1957), A Biographical Memoir. National Academy of Sciences.

Dare County. (n.d). <http://gis.darecountync.gov/>



**North Carolina Department of Natural and Cultural Resources
State Historic Preservation Office**

Ramona M. Bartos, Administrator

Governor Roy Cooper
Secretary Susi H. Hamilton

Office of Archives and History
Deputy Secretary Kevin Cherry

May 30, 2018

Wes Haskett
Town Planner
Town of Southern Shores
5375 North Virginia Dare Trail
Southern Shores, NC 27949

RE: Designation of Small Cottage, 116 Ocean Boulevard, Southern Shores, Dare County

Dear Mr. Haskett:

Thank you for the report we received on the proposed designation of the Small Cottage located at 116 Ocean Boulevard in Southern Shores. We have reviewed the report and offer the following comments.

The Small Cottage, constructed c. 1954 for Dr. Lyndon F. Small and his wife Marianne C. Small, appears to be an intact example of the modest, single story, low gable roof houses of mid-20th century origin that were constructed in the Outer Banks in a similar vein to the historic Flat-Top houses in Southern Shores developed by Frank Stick. Given the preserved state of this building type, it appears to be a good candidate for local landmark designation. Due to its lack of antiquity, it is unlikely that intact, significant archaeological resources are associated with this property and an archaeological survey is not recommended.

We feel the local designation report presents sufficient information for the Southern Shores Historic Landmarks Commission and the Town Council to determine that the property possesses the requisite significance and integrity for local landmark designation.

Landmark designation means the community recognizes a property as an important historic resource worthy of preservation. Any substantial exterior design changes to a designated landmark are subject to the design review procedures of the Southern Shores Historic Landmarks Commission. The owner may apply for an annual deferral of fifty percent of the property taxes for as long as the property is designated and retains significance and integrity.

If the local governing board wishes to extend the Commission's design review authority to significant features of the interior, the owner must give written consent. The designation ordinance must specify the features and describe the nature of the Commission's design review authority over them.

Thank you for the opportunity to comment on the report. Please note, our comments are advisory only and therefore, nonbinding. Once the governing board has received a recommendation from the Southern Shores Historic Landmarks Commission, it should proceed in the same manner as would otherwise be required for

an amendment to the zoning ordinance. Once the decision has been made, please return a completed copy of the enclosed form to our office.

This letter serves as our comments on the proposed designation of the Small Cottage. Please contact me at 919-807-6575 should you have any questions about our comments.

Sincerely,



Amber E. Stimpson
Local Preservation Commissions / CLG Coordinator

CC: Commission Chair

Enclosure

BLANK

July 31, 2018

To: Town Council
From: Town Manager
Re: Draft Fire Services Contract eff. July 1, 2019

Included in your meeting books are copies of the same historical contract documents and a copy of the DRAFT July 1, 2019 Fire Services contract – all previously submitted to you via my emails of July 27, 2018.

Included are the following Town documents:

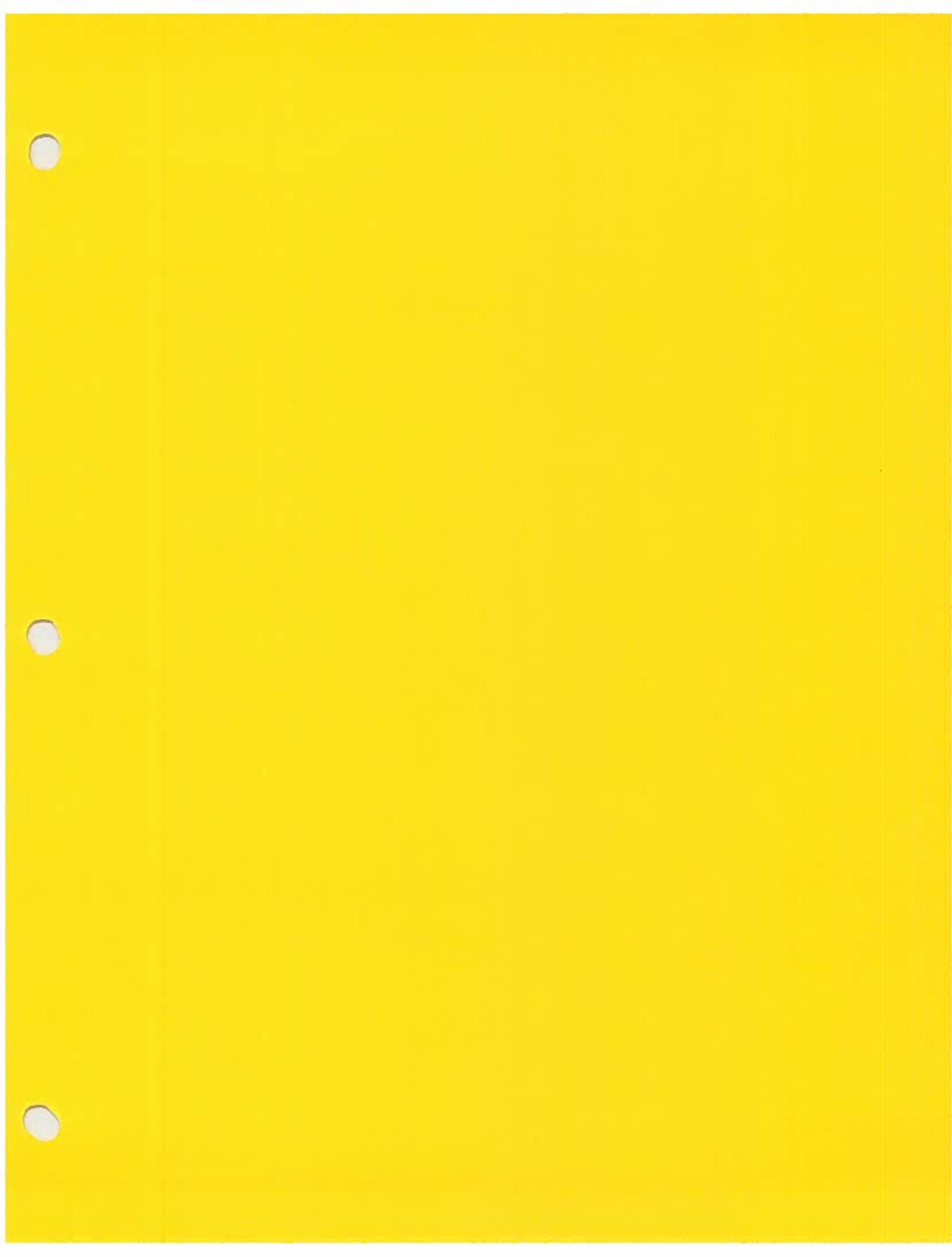
1. 2008 contract with SSVFD, Inc.
2. 2009-2019 contract with SSVFD, Inc. (in force now)
3. 2009 contract with Fire Service Real Estate (FSRE), Inc. (in force now)
4. 2009 recorded Memorandum of Agreement w/ FSRE, Inc. (in force now)
5. DRAFT 2019-2029 contract with SSVFD, Inc. and FSRE, Inc.

As I indicated to you in my July 27th email, the Draft 2019 contract contains two major policy shifts:

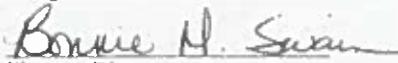
- A. The drafted method of determining annual budget appropriation is no longer a function of the Town's existing tax rate. Rather the draft contract proposes annual determination of the budget appropriation by the Town Council based on the SSVFD Inc.'s annual proposed budget and the contract's Base Compensation. **Please see Paragraphs (7)(a) and (11) of the Draft contract.**
- B. The draft contract proposes several triggers for default and termination of the contract. Upon termination due to default, the SSVFD, Inc. and the FSRE, Inc. will now be contractually obligated to outright (without further negotiation) convey title of all assets to the Town. **Please see Paragraphs (15) and (17) of the Draft contract.**

A few other points of explanation:

- a. **Please see Paragraphs (15) and (17) of the Draft contract** for the consequences if the SSVFD, Inc. or the FSRE, Inc. fold. Those entities are then contractually obligated to convey ALL SSVFD, Inc. and FSRE, Inc. property to the Town of Southern Shores – without any equity division or further negotiation of the process.
- b. FSRE, Inc. is an entity incorporated by the SSVFD, Inc. in 2009. The SSVFD, Inc. conveyed title to its real estate to the FSRE, Inc. in 2009. **Please see citations 4-7 of the preamble of the Draft contract.** That is the reason the FSRE, Inc. has been made a party to this Draft contract for July 1, 2019.
- c. The Draft contract does not obligate the Town of Southern Shores to assume any debt liability of either the SSVFD, Inc. or the FSRE, Inc. If the Council decides to appropriate funds to the SSVFD, Inc. to cover its debt service cost for a new building, the terms and conditions of that appropriation will be separately agreed on by Council. As reported to you previously, it is anticipated that the construction bids and financing proposals for a new fire station will come to you at your November 7, 2018 meeting. Council would, at that time, decide - separate from this contract - on the scope and extent of Town involvement in the station construction financing.



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


Bonnie M. Swain
Finance Director

NORTH CAROLINA

DARE COUNTY

THIS CONTRACT AND AGREEMENT made and entered into this First Day of July 2008, by and between Town of Southern Shores, party of the first part, also referred to as the Town, and the Southern Shores Volunteer Fire Department, Inc., party of the second part, also referred to as the Fire Department.

WITNESSETH:

THAT WHEREAS, N.C.G.S. 160A, Article 3, Sections 16-19 provides that a Town may enter into continuing contracts and pursuant to this authority, the Town of Southern Shores may enter into a continuing contract with a volunteer fire department and may make annual appropriations of such funds as may be provided for in this contract; and

WHEREAS, in consideration of the mutual promises and agreements herein contained and pursuant to the general power and authority of the Fire Department to furnish fire fighting services and the general power and authority of the Town of Southern Shores Town Council to provide fire protection for its inhabitants and owners of property within Southern Shores, the parties hereto mutually contract and agree as follows:

1. (a) The Fire Department agrees to furnish and provide continuing fire protection service to all properties lying within the incorporated limits of Southern Shores, N.C., by promptly dispatching, upon call from the Dare County Central Paging System or upon notification of fire by any other means, the Fire Department's fire fighting equipment and adequate personnel to operate the same, and then making diligent efforts to control and extinguish all fires.

(b) The Fire Department, in providing the said services, shall use its own means and methods which shall not be subject to control, direction or supervision by the party of the first part. All fire fighting 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 and supervision of the Fire Department. The party of the first part shall not have any right or power with respect to the employment, control, direction, supervision, suspension or discharge of any person who may engage in fire fighting services or activities in the performance of the

obligations imposed by this Contract upon the Fire Department in furnishing fire fighting services to the party of the first part for the benefit of its residents and property owners.

2. The party of the first part will adopt such rules and regulations, by ordinances or otherwise, as may be necessary and proper to prohibit interference with personnel of the Fire Department in the discharge of their duties in fighting fires within the Town of Southern Shores, to prohibit damage to and interference with the fire fighting equipment and apparatus of the Fire Department and to provide for such other rules and regulations as necessary for the furtherance of the objectives of this contract.

3. (a) The Fire Department will present its Budget to the Town of Southern Shores annually, and once approved by the Town Council, monthly payments will be made to the Fire Department as full compensation for fire fighting services to be rendered as contracted. The Towns' portion of FY 2007-2008 Fire Department Budget is \$291,400.00 to be paid in monthly payments on or before the 15th day of each month during the term of this contract. Payment will be made in the following manner; the initial payment of \$60,950.00 will be made in July 2008, followed by eleven equal payments of \$20,950.00 each month for the remainder of the year.

(b) Fire Department records are available for any resident to inspect by appointment with the Treasurer of the Fire Department. A fiscal year end financial audit will be conducted by a reputable CPA firm, and a copy of the audit will be presented to the Town by the end of October 2008.

(c) 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

(1) Workers' Compensation: Coverage to apply to all volunteers for statutory limits in compliance with the applicable state and federal laws. The policy must include employers 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.

(2) 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.

(3) 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.

(4) Professional Errors and Omissions Liability: Coverage shall have

minimum limits of \$1,000,000.00 per claim and \$2,000,000.00 aggregate.

(5) Umbrella Liability: Coverage shall have a minimum limit of \$1,000,000.00 with underlying coverages of compensation/employers liability.

(d) Additional special requirements shall be as follows:

- (1) The Town is to be included as an additional insured on each of the liability policies in the agreement.
- (2) Current, valid insurance policies meeting the requirements herein identified shall be maintained during the duration of this contact. Renewal certificates shall be sent to the Town 30 days prior to any expiration date. There shall also be a 30-day notification to the Town in the event of a cancellation or modification of any stipulated insurance coverage. The certificates of insurance meeting the required insurance provisions shall be forwarded to the Town of Southern Shores. Wording on the certificates which states that no liability shall be imposed upon the company for failure to provide such notice is not acceptable.

4. The Fire Department agrees that in the event of any dissolution of the Southern Shores Volunteer Fire Department, Inc., the Fire Department will convey or otherwise distribute to the Town of Southern Shores all of the assets of said corporation.

5. If the Town Council has, by resolution, decided to establish a Town Fire Department, the Fire Department, upon receipt of at least ninety days written notice of such action will, within the time provided in such notice, convey or otherwise distribute to the Town of Southern Shores a share of the assets of said corporation equal to not less than 80% of the total assets of the corporation. In the event of any dissolution of the Southern Shores Volunteer Fire Department, Inc. thereafter, the Fire Department will convey or otherwise distribute to the County of Dare all of the remaining assets of the corporation.

6. Assets assumed by the Town will include all associated obligations and debts for any vehicles, equipment or property conveyed to the Town. For purposes of this section, the funds invested in the Length of Service Annuity Program (LOSAP) will not be counted among the assets conveyed or be used to determine the total assets of the corporation.

7. Town warrants that it will fulfill all obligations and requirements and meet all terms and conditions required by the Federal Emergency Management Agency, the federal or state government in regard to any vehicles, equipment or property that has been acquired using grant funding.

8. Town agrees that it will, to the extent authorized by law, assume all responsibility for its assumption of all conveyed assets and obligations. Town further warrants that to the maximum extent authorized by law, it will protect, hold harmless, indemnify and defend the Fire Department, its Board of Directors, Officers and members from all liabilities, without limit, related to the condition of or use by the Town of any assets, or responsibility for obligations conveyed to the Town.

9. Town and Fire Department agree to cooperate in the formation of a Fire Service Advisory Board charged with the task of reviewing, investigating and reporting about the future of the firefighting services for the Town of Southern Shores. The Board will be composed of 2 Town Council members appointed by the Town, 2 Fire Department Board members appointed by the Fire Department and 2 citizen members, one of which will be appointed by the Town and one by the Fire Department, neither of whom shall be Town Council members or employees of the Town or members or employees of the Fire Department.

The term of this contract and agreement begins on July 1, 2008 and ends on June 30, 2009.

IN TESTIMONY WHEREOF, Southern Shores Volunteer Fire Department, Inc., has caused this instrument to be executed in its name and behalf by its Chairman of the Board, attested by its Secretary and its corporate seal affixed hereto all as the act and deed of said Corporation, and the Town of Southern Shores, a municipal corporation of the State of North Carolina has caused this instrument to be executed in its name and behalf by its Town Manager, attested by its Town Clerk, and its corporate seal affixed hereto as the act and deed of the said Municipality.

ATTEST:

Harold M. Sanders
Secretary

SOUTHERN SHORES VOLUNTEER FIRE
DEPARTMENT, INC.

BY: Seuge Swash
Chairman, Board of Directors

(Corporate Seal)

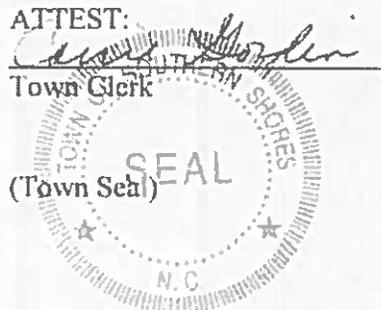
ATTEST:

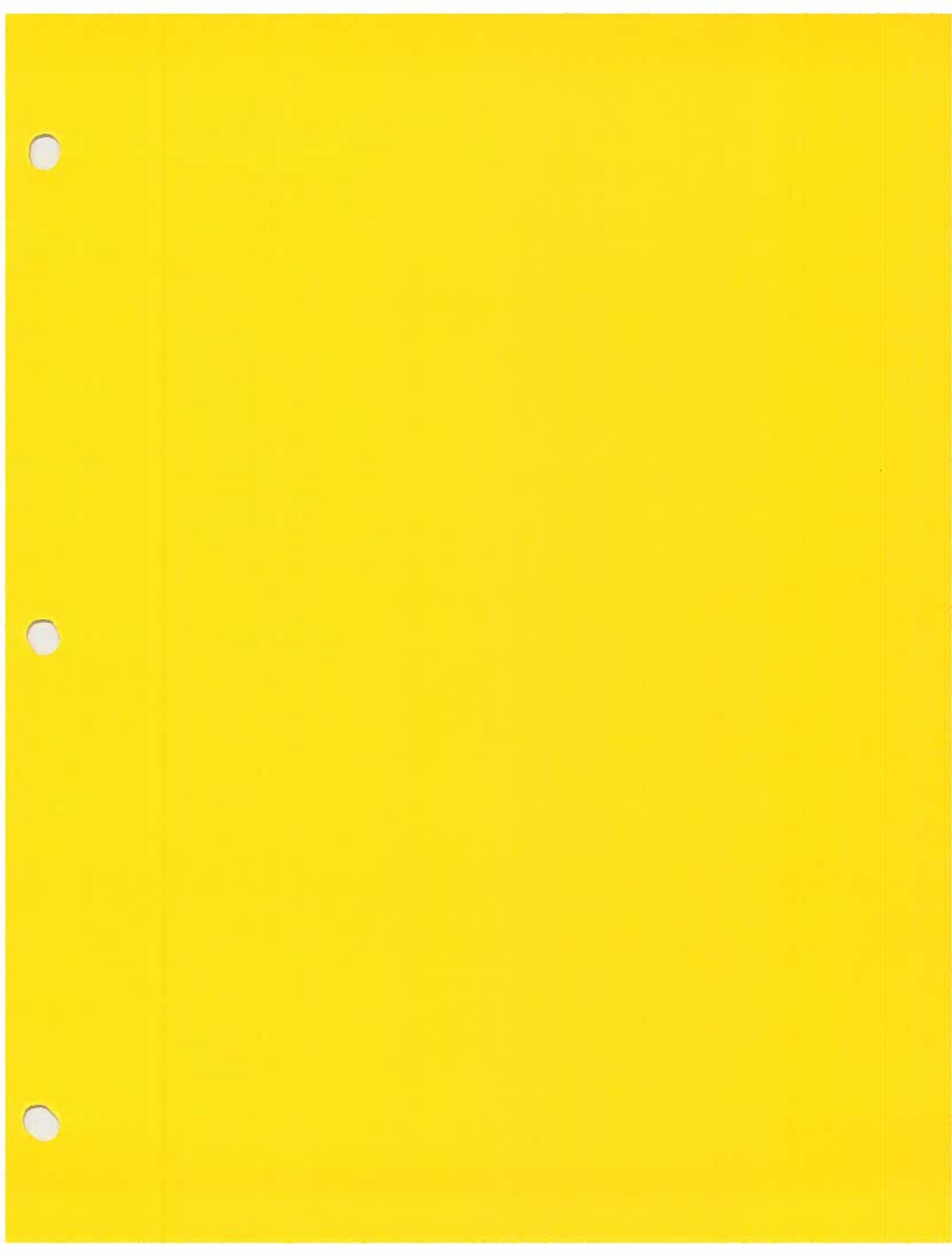
Charles M. Horden
Town Clerk

TOWN OF SOUTHERN SHORES

BY: Charles M. Horden
Town Manager

(Town Seal)





NORTH CAROLINA
Dare County

**FIRE SERVICES CONTRACT BETWEEN THE TOWN OF
SOUTHERN SHORES, AND THE SOUTHERN SHORES
VOLUNTEER FIRE DEPARTMENT, INC.**

THIS CONTRACT AND AGREEMENT (this "Contract") made and entered into this First Day of February 2009, by and between Town of Southern Shores, (the "Town"), and the Southern Shores Volunteer Fire Department, Inc., (the "Fire Department").

WITNESSETH:

THAT WHEREAS, N.C.G.S. 160A Article 3, Sections 16-19 provides that a Town may enter into continuing contracts and pursuant to this authority, the Town may enter into a continuing contract with a volunteer fire department and may make annual appropriations of such funds as may be provided for in this Contract; and

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained and pursuant to the general power and authority of the Fire Department to furnish fire fighting services and the general power and authority of the Town Council to provide fire protection for its inhabitants and owners of property within Southern Shores, the parties hereto mutually contract and agree as follows:

(1) CONTRACT TERM — The effective term of this Contract shall, upon the execution of this Contract by all parties begin on February 1, 2009 and shall extend for ten (10) years from the first day of July 2009. A Contract Year shall be considered to be a fiscal year running from July 1st of one calendar year through June 30th 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, N.C., by promptly dispatching, upon call from the Dare County Central Paging System or upon notification of fire or emergency by any other means, the Fire Department's fire fighting and rescue equipment and adequate personnel to operate the same, and then making diligent efforts to control and extinguish all fires and control or mitigate emergencies.

(3) MANNER OF PROVIDING SERVICES - The Fire Department, in providing the said services in a manner that is consistent with the Town's Emergency Management Plan, shall use its own means and methods, which shall not be subject to control, direction or supervision by the Town. All fire fighting 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 and supervision of the Fire Department. The Town shall not have any right or power with respect to the employment, control, direction, supervision, suspension or discharge of any person who may engage in fire fighting services or activities in the performance of the obligations imposed by this Contract upon the Fire Department in furnishing fire fighting services to the Town for the benefit of its residents and property owners.

(4) PROHIBITING INTERFERENCE WITH FIRE DEPARTMENT - The Town will adopt such rules and regulations, by ordinances or otherwise, as may be necessary and proper to prohibit interference with personnel of the Fire Department in the discharge of their duties in fighting fires within the Town, to prohibit damage to and interference with

the fire fighting equipment and apparatus of the Fire Department and to provide for such other rules and regulations as necessary for the furtherance of the objectives of this Contract.

(5) LONG TERM DEBT – The Fire Department shall not be restricted in its ability to encumber assets or commit to debt so long as its Debt Ratio remains less than 1.0. The Debt Ratio is calculated by using the following formula:

$$\text{Debt Ratio} = \text{Total Debt} / \text{Total Assets}$$

If the Fire Department wishes to commit to new debt that would cause its Debt Ratio to exceed 1.0, then the Fire Department must first receive the prior approval of the Town Council before doing so. If the Town does not provide approval, the Fire Department will not commit to or issue new debt until and unless doing so will not increase its Debt Ratio above 1.0, or it receives subsequent permission from the Town Council. The Town through its manager or the Town Council upon reasonable notice may request that the Fire Department provide the Town with its current Debt Ratio and the Fire Department shall respond to such a request within a reasonable time, not to exceed fourteen (14) business days.

(6) PRESENTATION OF BUDGET AND YEARLY AUDIT - The Fire Department will present the Town with a budget annually and a fiscal year end audit.

(a) The budget will be in a form and level of detail that is mutually agreed upon and include, at a minimum, revenue and expenses for operations, capital and debt service. The budget shall be submitted using the same time schedule required of Town departments. The budget shall provide sufficient information for the Town to calculate the Debt Ratio referenced in this Contract. The Fire Department shall provide a person familiar with the budget to appear before the Town Council at the Town Council'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 CPA firm. Said audit shall result in the production of a written audit report. The audit report shall provide sufficient information for the Town to calculate the Debt Ratio referenced in this Contract. The Fire Department will use its best efforts to assure that a copy of the written audit report shall be presented to the Town no later than November 1st of each Contract Year.

(7) DEVELOPMENT OF STRATEGIC PLAN - Town and Fire Department explicitly acknowledge that the Fire Department is facing significant capital projects during the term of this Contract, including those itemized in Attachment 1 to this instrument, entitled Southern Shores Volunteer Fire Department, Strategic Plan. The Fire Department shall provide for participation by the Town in the development and finalization of the priorities and the sources and availability of funding for those needs.

(8) COMPENSATION TO FIRE DEPARTMENT- Except as otherwise provided in this Section, the Fire Department's compensation under this Contract shall be calculated annually as of the first day of July by using an effective tax rate, expressed in cents per hundred dollars (hereinafter "effective tax rate") multiplied by the taxable value of property within the Town after adjustment for a 99.5% collection rate (hereinafter "Property Tax Base") per year.

(a) For the period beginning February 1, 2009 and ending June 30, 2009, the Town shall pay \$25,000 per month in five monthly payments. Payments shall be due on or before the fifteenth day of each month.

(b) For the Contract Year beginning July 1, 2009 and ending June 30, 2010, the compensation of the Fire Department shall be \$300,000. For said fiscal year, the Town shall make

two equal payments to the Fire Department in July and January each totaling \$150,000. Payments shall be due on or before the fifteenth day of both months.

(c) For the Contract Year beginning July 1, 2010 and ending June 30, 2011, the effective tax rate shall be two cents (\$0.02) per hundred and the Town shall make two equal payments to the Fire Department in July and January each totaling one half of the annual amount. Payments shall be due on or before the fifteenth day of both months.

(d) Annually, following the submission of the Fire Department budget request, the Town Council shall determine if the then current effective tax rate is sufficient to fund the needs of the Fire Department. The Fire Department may request adjustments in the effective tax rate annually during the budget process. The burden of proof in establishing the need for any increases shall be upon the Fire Department. The Town Council may accept, modify or decline any request for adjustment of the effective tax rate, no later than April 1st of each year, provided that the Fire Department may request and Town agrees to grant a public hearing regarding any such request.

(e) If during the term of this contract and any extensions thereto, a reassessment is conducted which causes an adjustment up or down in the taxable property within the Town, the effective tax rate shall be adjusted to compensate for the change in values so that the resulting effective tax rate is revenue neutral to the Fire Department.

(f) Once the Town Council has established a new effective tax rate, such rate shall become the basis for continuing annual funding of the Fire Department until modified through the budget process contained in this Contract.

(g) The Fire Department reasonably relies on the predictable continuation of funding under this Contract to service long-term commitments that serve the mutual interests of the Town, other customers and the Fire Department. At no time during the term of this Contract will the effective tax rate be decreased from the amount specified in the previous year, without specific written agreement of the Board of Directors of the Fire Department.

(h) From time to time the Fire Department may encounter unusual financial needs beyond its reasonable control. These may include, but are not limited to, new regulatory requirements, industry-wide cost increases for items such as fuel and insurance. When the Fire Department becomes aware of such needs beyond its reasonable control, it may report those needs to the Town, together with options and a plan to meet those needs. The Town, at its sole discretion may choose, but shall not be required to adjust the effective tax rate for the remainder of the fiscal year or make a grant to the Fire Department for any portion of such needs that are associated with providing services under this Contract.

(i) The Fire Department may seek other sources of revenue including, but not limited to, gifts, donations, grants, additional customers and fees for service.

(i) Fees may be assessed of any person, corporation or entity for extraordinary expenses incurred when mitigating an emergency situation. Examples include the rental or purchase of specialized equipment (i.e.: cranes, heavy equipment, boats for rescues, lumber and tools for shoring of structures, etc.), and for the use of items and supplies that are likely reimbursable by insurers, (i.e.: foam concentrate, FIT-5, etc.).

(ii) The Fire Department may also charge fees of Town taxpayers, provided that a fee schedule is first presented to the Town and approved by the Council during the budget process or some other mutually agreeable time. Fees of this type may be established for multiple nuisance fire alarms, property inspections and similar occurrences and will be reviewed at least annually during the budget process.

(iii) The Fire Department may also establish a fee schedule for certain types of responses and services, (i.e.: traffic accident, extrication, etc.) provided that persons and corporations who pay property taxes to the Town shall be exempted from such service charges.

(9) 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 cost of providing new services.

(10) ESTABLISHMENT OF FIRE DISTRICT- During the first twelve months of this Contract Town and Fire Department will diligently analyze and use best efforts to determine if inclusion of the Town in the Fire District, which currently serves Martin's Point is a substantial benefit to the Town. If such a determination is made at any time during this Contract the parties may undertake such inclusion by mutual agreement to petition the County to expand the Fire Protection District to include the Town.

(11) AVAILABILITY OF RECORDS- The Town or any resident thereof may inspect the financial records of the Fire Department by appointment with the Treasurer or leadership of the Fire Department with reasonable notice and during business hours.

(12) INSURANCE OBLIGATIONS 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:

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

(i) 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.

(ii) 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.

(iii) 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.

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

(v) Umbrella Liability: Coverage shall have a minimum limit of \$1,000,000.00 with underlying coverages of compensation/employers liability.

(b) Additional special requirements shall be as follows:

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

(ii) 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 insure 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.

(13) EVENTS OF TERMINATION-- This Contract shall terminate upon any of the following events:

- (a) The dissolution, insolvency or bankruptcy of the Fire Department;
- (b) The dissolution, insolvency or bankruptcy of the Town;
- (c) 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;
- (d) The expiration of one hundred eighty (180) days after the Fire Department's receipt of written notice that the Town has adopted a resolution establishing a municipal fire department;
- (e) The expiration of one hundred eighty (180) days after the Fire Department's receipt of written notice that Town intends to use another entity to provide its fire services;
- (f) The parties entry into a new written agreement which expressly supersedes this Contract; or
- (g) The expiration of this Contract without the parties' written agreement to renew the terms of this Contract.

(14) EFFECTS OF TERMINATION-- Upon the termination of this Contract all obligations of the parties to this Contract shall cease except for those obligations created by this Section:

(a) DISTRIBUTION OF ASSETS/LIABILITIES - Upon termination of this Contract for any event of termination the assets and liabilities of the Fire Department shall be disposed of as follows:

Distribution based on Section (13) - The Fire Department shall convene and facilitate a meeting of its contracted customers including the Town, Dare County,

acting on behalf of the citizens of Martin's Point and any other municipalities or entities with which the Fire Department contracts to provide Fire and Rescue services. At that meeting, and any subsequent meetings, the parties will develop a fair division of assets of the Fire Department and a plan to assure continued Fire and Rescue services within each jurisdiction. If requested by the customers the Fire Department will provide, at the Fire Department's expense, a neutral third party administrator, acceptable to all customers, with expertise in implementation and provision of Fire and Rescue services, to assist in the development of the plan, evaluation and distribution of assets and establishment of any contracts or agreements required. The Fire Department shall cooperate fully with the distribution of assets and implementation of the plan developed during this process.

Town and Fire Department expressly agree that one goal of the process for dissolution of the Fire Department outlined herein is to assure that all assets and liabilities are fairly distributed and discharged so as to satisfy any and all encumbrances and financial responsibilities of the Fire Department at the time of dissolution.

Town specifically agrees that the funds invested on behalf of the Fire Department's members in the Length of Service Annuity Plan (LOSAP) will not be subject to distribution among the customers of the Fire Department, but will be distributed to the Fire Department members or in a manner that the members direct.

Fire Department agrees that should it contract with additional new customers, it will not agree to terms in new contracts that contain provisions regarding the distribution of assets that are used to serve the Town that give the new customers rights that are more than equal to those of the Town. New customers may participate in the process described herein with the same rights as the Town.

Assets directly contributed or funded by new customers and assets not used in or related to service to the Town may be exempted from this provision by terms of new customer contracts. For example, if a new customer in a new geographic area contributes a station and fire apparatus to the Fire Department for use in its own jurisdiction, that customer may be given preferential rights regarding that specific station and equipment, including reversion rights.

(b) ASSET OBLIGATIONS- The Town warrants that it will fulfill all obligations and requirements and meet all terms and conditions required by the Federal Emergency Management Agency, the Federal or State government in regard to any vehicles, equipment or property that has been acquired using grant funding, if such assets are actually conveyed to the Town.

(b) INDEMNIFICATION- The Town agrees that it will, to the extent authorized by law, assume all responsibility for all assets and obligations actually conveyed to the Town. Town further warrants that to the maximum extent authorized by law, it will protect, hold harmless, indemnify and defend the Fire Department, its Board of Directors, Officers and members from all liabilities, without limit, related to the condition of or use by the Town of any assets, or responsibility for obligations conveyed to the Town.

(c) REMAINING ASSETS- If the Fire Department is dissolved, any assets not conveyed to its customers under the terms of this Contract will be disposed of as required by State Law. If the Town establishes a Town Fire Department it shall not have any rights to assets of the Fire Department except as provided in this Contract.

(d) PROTECTION OF ASSETS - During any period following notice of impending termination of this Contract for which obligations of the Fire Department continue, the Fire Department shall not take any action to dispose of or

otherwise reduce the value or encumber any assets that may be conveyed to the Town pursuant to this agreement with the intent or purpose of avoiding or reducing the Town's interest in such asset.

(15) 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 Southern Shores Volunteer Fire Department, Inc. Except as specifically set forth in this Contract, the Town will have no financial responsibility for or control over the debts, encumbrances or liabilities of the Fire Department. If in the future the Town specifically agrees to co-sign or guarantee some future loan, lease, bond or financial instrument, the Town shall have the right to make conditions and exercise control over such obligations, which it guarantees.

(16) RELATION TO PRIOR CONTRACTS — This Contract replaces and supersedes all previous contracts entered into between the parties for the provision of fire services to the Town by the Fire Department.

(17) NEGOTIATION OF FUTURE CONTRACTS – If the parties have not negotiated a new agreement or renewal of this Contract then the parties shall enter into good faith negotiations for the same at least one hundred eighty (180) days prior to the end of the contract term. The Fire Department shall initiate said negotiations.

IN TESTIMONY WHEREOF: The Southern Shores Volunteer Fire Department, Inc., has caused this instrument to be executed in its name and behalf by its Chairman of the Board, attested by its Secretary and its corporate seal affixed hereto all as the act and deed of said Corporation, and the Town of Southern Shores, a municipal corporation of the State of North Carolina has caused this instrument to be executed in its name and behalf by its Town Manager, attested by its Town Clerk, and its corporate seal affixed hereto as the act and deed of the said Municipality.

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY: *Kengo Sakaki*
Chairman of the Board

ATTEST:

Harold Sanderson
Secretary
(corporate seal)



TOWN OF SOUTHERN SHORES

BY: *Andrew Bell*
Town Manager

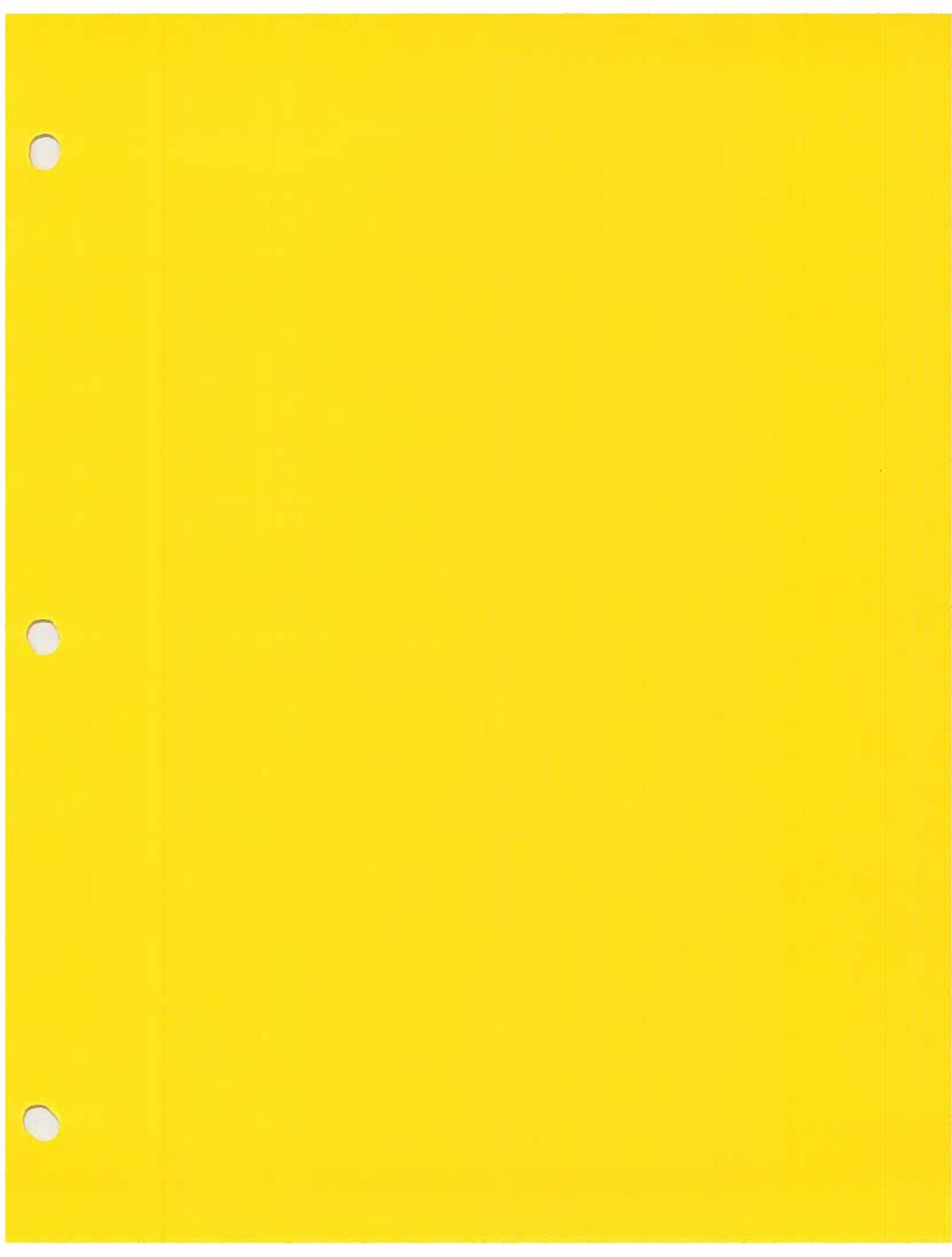
ATTEST:

Carrie Gordon
Town Clerk
(corporate seal)



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

Bonnie M. Swan
Town Finance Officer



NORTH CAROLINA
Dare County

CONTRACT BETWEEN THE TOWN OF SOUTHERN SHORES, AND FIRE SERVICE REAL ESTATE, INC.

THIS CONTRACT AND AGREEMENT (this "Contract") made and entered into this First Day of February 2009, by and between Town of Southern Shores, (the "Town"), and Fire Service Real Estate, Inc. ("FSRE").

RECITALS:

A. The Town and the Southern Shores Volunteer Fire Department, Inc. (the "Fire Department") have agreed to enter into a contract for fire services (the "Fire Contract"), a copy of said contract being attached hereto as Exhibit 'A';

B. As a condition precedent to the entry into the Fire Contract by the Town, the FSRE must agree to provide its assets, namely the real estate (the "Real Estate") described in the Deed of Gift found at Book 1790, Page 153 of the Dare County Public Registry and attached hereto as Exhibit 'B' and incorporated herein by reference, as part of the distribution of the assets of the SSVFD in the event of termination as set forth in Section 14 of the Fire Contract;

C. Such action is consistent with the Articles of Incorporation of FSRE and the stated purposes of the FSRE to specifically emphasize "the need to support firefighting services within Dare County, North Carolina."

D. The Fire Department is the only current lessee/customer of the FSRE and the existence of a contract between the Fire Department and the Town is a benefit to the FSRE in that the Fire Department will continue to lease the Real Estate from the FSRE;

NOW THEREFORE, in consideration of the Fire Department and the Town entering into the Fire Contract and the mutual promises and agreements herein contained the parties hereto mutually contract and agree as follows:

(1) Upon an event of termination triggering the distribution of assets of the Fire Department pursuant to Section 14 of the Fire Contract, FSRE shall comply with and distribute all assets of FSRE as agreed to by the Fire Department and its customers, including the Town, or as directed by the third party neutral administrator if one is hired pursuant to Section 14 of the Fire Contract.

(2) 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 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, the FSRE need not purchase additional insurance unless it feels such purchase is reasonably necessary.

(3) Upon the dissolution, insolvency or bankruptcy of FSRE, FSRE agrees to transfer and convey the Real Estate and any other assets of FSRE in a manner consistent with the Fire Contract to the Fire Department or as agreed to by both the Fire Department and the Town.

(4) During the term of this Contract, FSRE shall not take any action to dispose of or otherwise reduce the value or encumber any assets, including the Real Estate, that may be allocated to the Town or any other customer of the Fire Department pursuant to the Fire

Contract with the intent or purpose of avoiding or reducing the Town's interest in such assets. FSRE shall provide both the Fire Department and the Town with at least (20) days written notice of their intentions prior to encumbering, pledging or otherwise disposing of any portion of the Real Estate 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 the 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 the FSRE. The FSRE shall provide any parties involved with the intended action full disclosure of this Contract, including its exhibits.

(5) The FSRE shall enter into a lease of the Real Estate 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 the FSRE as against all other parties except the Fire Department.

(6) The Fire Department shall have the right to enforce any provisions in this Contract against FSRE.

(7) This Contract shall remain in effect as long as any contract exists between the Town and the Fire Department.

IN TESTIMONY WHEREOF: Fire Service Real Estate, Inc., has caused this instrument to be executed in its name and behalf by its Vice Chairman of the Board, attested by its Secretary as the act and deed of said Corporation, and the Town of Southern Shores, a municipal corporation of the State of North Carolina has caused this instrument to be executed in its name and behalf by its Town Manager, attested by its Town Clerk, and its corporate seal affixed hereto as the act and deed of the said Municipality.

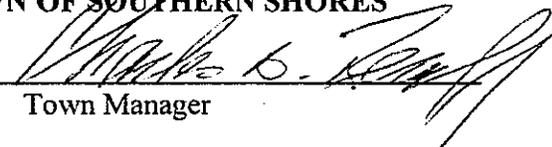
FIRE SERVICE REAL ESTATE, INC.

BY: 
Vice Chairman of the Board

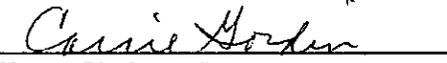
ATTEST:

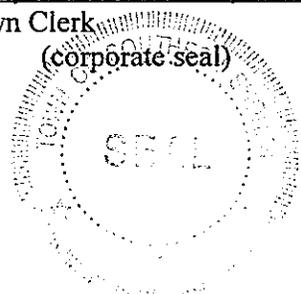

Secretary

TOWN OF SOUTHERN SHORES

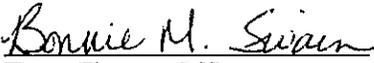
BY: 
Town Manager

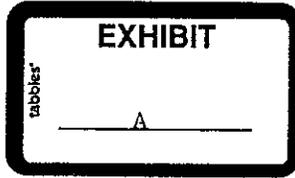
ATTEST:


Town Clerk



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


Town Finance Officer



NORTH CAROLINA
Dare County

**FIRE SERVICES CONTRACT BETWEEN THE TOWN OF
SOUTHERN SHORES, AND THE SOUTHERN SHORES
VOLUNTEER FIRE DEPARTMENT, INC.**

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WITNESSETH:

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NOW THEREFORE, in consideration of the mutual promises and agreements herein contained and pursuant to the general power and authority of the Fire Department to furnish fire fighting services and the general power and authority of the Town Council to provide fire protection for its inhabitants and owners of property within Southern Shores, the parties hereto mutually contract and agree as follows:

(1) CONTRACT TERM — The effective term of this Contract shall, upon the execution of this Contract by all parties begin on February 1, 2009 and shall extend for ten (10) years from the first day of July 2009. A Contract Year shall be considered to be a fiscal year running from July 1st of one calendar year through June 30th 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, N.C., by promptly dispatching, upon call from the Dare County Central Paging System or upon notification of fire or emergency by any other means, the Fire Department's fire fighting and rescue equipment and adequate personnel to operate the same, and then making diligent efforts to control and extinguish all fires and control or mitigate emergencies.

(3) MANNER OF PROVIDING SERVICES - The Fire Department, in providing the said services in a manner that is consistent with the Town's Emergency Management Plan, shall use its own means and methods, which shall not be subject to control, direction or supervision by the Town. All fire fighting 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 and supervision of the Fire Department. The Town shall not have any right or power with respect to the employment, control, direction, supervision, suspension or discharge of any person who may engage in fire fighting services or activities in the performance of the obligations imposed by this Contract upon the Fire Department in furnishing fire fighting services to the Town for the benefit of its residents and property owners.

(4) PROHIBITING INTERFERENCE WITH FIRE DEPARTMENT - The Town will adopt such rules and regulations, by ordinances or otherwise, as may be necessary and proper to prohibit interference with personnel of the Fire Department in the discharge of their duties in fighting fires within the Town, to prohibit damage to and interference with

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(5) LONG TERM DEBT – The Fire Department shall not be restricted in its ability to encumber assets or commit to debt so long as its Debt Ratio remains less than 1.0. The Debt Ratio is calculated by using the following formula:

$$\text{Debt Ratio} = \text{Total Debt} / \text{Total Assets}$$

If the Fire Department wishes to commit to new debt that would cause its Debt Ratio to exceed 1.0, then the Fire Department must first receive the prior approval of the Town Council before doing so. If the Town does not provide approval, the Fire Department will not commit to or issue new debt until and unless doing so will not increase its Debt Ratio above 1.0, or it receives subsequent permission from the Town Council. The Town through its manager or the Town Council upon reasonable notice may request that the Fire Department provide the Town with its current Debt Ratio and the Fire Department shall respond to such a request within a reasonable time, not to exceed fourteen (14) business days.

(6) PRESENTATION OF BUDGET AND YEARLY AUDIT - The Fire Department will present the Town with a budget annually and a fiscal year end audit.

(a) The budget will be in a form and level of detail that is mutually agreed upon and include, at a minimum, revenue and expenses for operations, capital and debt service. The budget shall be submitted using the same time schedule required of Town departments. The budget shall provide sufficient information for the Town to calculate the Debt Ratio referenced in this Contract. The Fire Department shall provide a person familiar with the budget to appear before the Town Council at the Town Council'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 CPA firm. Said audit shall result in the production of a written audit report. The audit report shall provide sufficient information for the Town to calculate the Debt Ratio referenced in this Contract. The Fire Department will use its best efforts to assure that a copy of the written audit report shall be presented to the Town no later than November 1st of each Contract Year.

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(8) COMPENSATION TO FIRE DEPARTMENT- Except as otherwise provided in this Section, the Fire Department's compensation under this Contract shall be calculated annually as of the first day of July by using an effective tax rate, expressed in cents per hundred dollars (hereinafter "effective tax rate") multiplied by the taxable value of property within the Town after adjustment for a 99.5% collection rate (hereinafter "Property Tax Base") per year.

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two equal payments to the Fire Department in July and January each totaling \$150,000. Payments shall be due on or before the fifteenth day of both months.

(c) For the Contract Year beginning July 1, 2010 and ending June 30, 2011, the effective tax rate shall be two cents (\$0.02) per hundred and the Town shall make two equal payments to the Fire Department in July and January each totaling one half of the annual amount. Payments shall be due on or before the fifteenth day of both months.

(d) Annually, following the submission of the Fire Department budget request, the Town Council shall determine if the then current effective tax rate is sufficient to fund the needs of the Fire Department. The Fire Department may request adjustments in the effective tax rate annually during the budget process. The burden of proof in establishing the need for any increases shall be upon the Fire Department. The Town Council may accept, modify or decline any request for adjustment of the effective tax rate, no later than April 1st of each year, provided that the Fire Department may request and Town agrees to grant a public hearing regarding any such request.

(e) If during the term of this contract and any extensions thereto, a reassessment is conducted which causes an adjustment up or down in the taxable property within the Town, the effective tax rate shall be adjusted to compensate for the change in values so that the resulting effective tax rate is revenue neutral to the Fire Department.

(f) Once the Town Council has established a new effective tax rate, such rate shall become the basis for continuing annual funding of the Fire Department until modified through the budget process contained in this Contract.

(g) The Fire Department reasonably relies on the predictable continuation of funding under this Contract to service long-term commitments that serve the mutual interests of the Town, other customers and the Fire Department. At no time during the term of this Contract will the effective tax rate be decreased from the amount specified in the previous year, without specific written agreement of the Board of Directors of the Fire Department.

(h) From time to time the Fire Department may encounter unusual financial needs beyond its reasonable control. These may include, but are not limited to, new regulatory requirements, industry-wide cost increases for items such as fuel and insurance. When the Fire Department becomes aware of such needs beyond its reasonable control, it may report those needs to the Town, together with options and a plan to meet those needs. The Town, at its sole discretion may choose, but shall not be required to adjust the effective tax rate for the remainder of the fiscal year or make a grant to the Fire Department for any portion of such needs that are associated with providing services under this Contract.

(i) The Fire Department may seek other sources of revenue including, but not limited to, gifts, donations, grants, additional customers and fees for service.

(i) Fees may be assessed of any person, corporation or entity for extraordinary expenses incurred when mitigating an emergency situation. Examples include the rental or purchase of specialized equipment (i.e.: cranes, heavy equipment, boats for rescues, lumber and tools for shoring of structures, etc.), and for the use of items and supplies that are likely reimbursable by insurers, (i.e.: foam concentrate, FIT-5, etc.).

(ii) The Fire Department may also charge fees of Town taxpayers, provided that a fee schedule is first presented to the Town and approved by the Council during the budget process or some other mutually agreeable time. Fees of this type may be established for multiple nuisance fire alarms, property inspections and similar occurrences and will be reviewed at least annually during the budget process.

(iii) The Fire Department may also establish a fee schedule for certain types of responses and services, (i.e.: traffic accident, extrication, etc.) provided that persons and corporations who pay property taxes to the Town shall be exempted from such service charges.

(9) 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 cost of providing new services.

(10) ESTABLISHMENT OF FIRE DISTRICT- During the first twelve months of this Contract Town and Fire Department will diligently analyze and use best efforts to determine if inclusion of the Town in the Fire District, which currently serves Martin's Point is a substantial benefit to the Town. If such a determination is made at any time during this Contract the parties may undertake such inclusion by mutual agreement to petition the County to expand the Fire Protection District to include the Town.

(11) AVAILABILITY OF RECORDS- The Town or any resident thereof may inspect the financial records of the Fire Department by appointment with the Treasurer or leadership of the Fire Department with reasonable notice and during business hours.

(12) INSURANCE OBLIGATIONS 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:

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

(i) 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.

(ii) 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.

(iii) 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.

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

(v) Umbrella Liability: Coverage shall have a minimum limit of \$1,000,000.00 with underlying coverages of compensation/employers liability.

(b) Additional special requirements shall be as follows:

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

(ii) 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 insure 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.

(13) EVENTS OF TERMINATION-- This Contract shall terminate upon any of the following events:

- (a) The dissolution, insolvency or bankruptcy of the Fire Department;
- (b) The dissolution, insolvency or bankruptcy of the Town;
- (c) 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;
- (d) The expiration of one hundred eighty (180) days after the Fire Department's receipt of written notice that the Town has adopted a resolution establishing a municipal fire department;
- (e) The expiration of one hundred eighty (180) days after the Fire Department's receipt of written notice that Town intends to use another entity to provide its fire services;
- (f) The parties entry into a new written agreement which expressly supersedes this Contract; or
- (g) The expiration of this Contract without the parties' written agreement to renew the terms of this Contract.

(14) EFFECTS OF TERMINATION-- Upon the termination of this Contract all obligations of the parties to this Contract shall cease except for those obligations created by this Section:

(a) DISTRIBUTION OF ASSETS/LIABILITIES - Upon termination of this Contract for any event of termination the assets and liabilities of the Fire Department shall be disposed of as follows:

Distribution based on Section (13) - The Fire Department shall convene and facilitate a meeting of its contracted customers including the Town, Dare County,

acting on behalf of the citizens of Martin's Point and any other municipalities or entities with which the Fire Department contracts to provide Fire and Rescue services. At that meeting, and any subsequent meetings, the parties will develop a fair division of assets of the Fire Department and a plan to assure continued Fire and Rescue services within each jurisdiction. If requested by the customers the Fire Department will provide, at the Fire Department's expense, a neutral third party administrator, acceptable to all customers, with expertise in implementation and provision of Fire and Rescue services, to assist in the development of the plan, evaluation and distribution of assets and establishment of any contracts or agreements required. The Fire Department shall cooperate fully with the distribution of assets and implementation of the plan developed during this process.

Town and Fire Department expressly agree that one goal of the process for dissolution of the Fire Department outlined herein is to assure that all assets and liabilities are fairly distributed and discharged so as to satisfy any and all encumbrances and financial responsibilities of the Fire Department at the time of dissolution.

Town specifically agrees that the funds invested on behalf of the Fire Department's members in the Length of Service Annuity Plan (LOSAP) will not be subject to distribution among the customers of the Fire Department, but will be distributed to the Fire Department members or in a manner that the members direct.

Fire Department agrees that should it contract with additional new customers, it will not agree to terms in new contracts that contain provisions regarding the distribution of assets that are used to serve the Town that give the new customers rights that are more than equal to those of the Town. New customers may participate in the process described herein with the same rights as the Town.

Assets directly contributed or funded by new customers and assets not used in or related to service to the Town may be exempted from this provision by terms of new customer contracts. For example, if a new customer in a new geographic area contributes a station and fire apparatus to the Fire Department for use in its own jurisdiction, that customer may be given preferential rights regarding that specific station and equipment, including reversion rights.

(b) ASSET OBLIGATIONS- The Town warrants that it will fulfill all obligations and requirements and meet all terms and conditions required by the Federal Emergency Management Agency, the Federal or State government in regard to any vehicles, equipment or property that has been acquired using grant funding, if such assets are actually conveyed to the Town.

(b) INDEMNIFICATION- The Town agrees that it will, to the extent authorized by law, assume all responsibility for all assets and obligations actually conveyed to the Town. Town further warrants that to the maximum extent authorized by law, it will protect, hold harmless, indemnify and defend the Fire Department, its Board of Directors, Officers and members from all liabilities, without limit, related to the condition of or use by the Town of any assets, or responsibility for obligations conveyed to the Town.

(c) REMAINING ASSETS- If the Fire Department is dissolved, any assets not conveyed to its customers under the terms of this Contract will be disposed of as required by State Law. If the Town establishes a Town Fire Department it shall not have any rights to assets of the Fire Department except as provided in this Contract.

(d) PROTECTION OF ASSETS - During any period following notice of impending termination of this Contract for which obligations of the Fire Department continue, the Fire Department shall not take any action to dispose of or

otherwise reduce the value or encumber any assets that may be conveyed to the Town pursuant to this agreement with the intent or purpose of avoiding or reducing the Town's interest in such asset.

(15) 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 Southern Shores Volunteer Fire Department, Inc. Except as specifically set forth in this Contract, the Town will have no financial responsibility for or control over the debts, encumbrances or liabilities of the Fire Department. If in the future the Town specifically agrees to co-sign or guarantee some future loan, lease, bond or financial instrument, the Town shall have the right to make conditions and exercise control over such obligations, which it guarantees.

(16) RELATION TO PRIOR CONTRACTS — This Contract replaces and supersedes all previous contracts entered into between the parties for the provision of fire services to the Town by the Fire Department.

(17) NEGOTIATION OF FUTURE CONTRACTS – If the parties have not negotiated a new agreement or renewal of this Contract then the parties shall enter into good faith negotiations for the same at least one hundred eighty (180) days prior to the end of the contract term. The Fire Department shall initiate said negotiations.

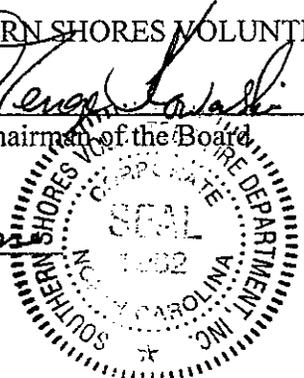
IN TESTIMONY WHEREOF: The Southern Shores Volunteer Fire Department, Inc., has caused this instrument to be executed in its name and behalf by its Chairman of the Board, attested by its Secretary and its corporate seal affixed hereto all as the act and deed of said Corporation, and the Town of Southern Shores, a municipal corporation of the State of North Carolina has caused this instrument to be executed in its name and behalf by its Town Manager, attested by its Town Clerk, and its corporate seal affixed hereto as the act and deed of the said Municipality.

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY: *Henry L. Ladd*
Chairman of the Board

ATTEST:

Harold Sanderson
Secretary
(corporate seal)

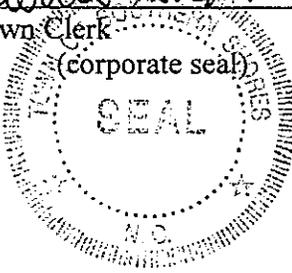


TOWN OF SOUTHERN SHORES

BY: *Charles R. [Signature]*
Town Manager

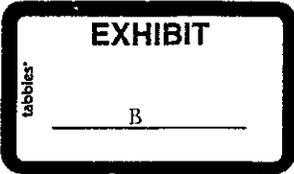
ATTEST:

Cornie Hester
Town Clerk
(corporate seal)



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

Bonnie M. Swan
Town Finance Officer



B: 1790 P: 153 Doc Id: 6252827
01/30/2009 03:17 PM Receipt # 09-0991
Doc Code: DEED NCEXISE Tax pd \$0.00
Barbara M Gray, Register of Deeds Dare CO, NC

6252827 B: 1790 P: 153 Page 1 of 3 1/30/09 3:17 PM

EXEMPT
DARE COUNTY TAX
COLLECTOR

NO. 251-09

Tax Lot No. _____ Parcel ID No. _____
Verified By _____ County on the _____ day of _____ 200

Mail after recording to: Grantee
This instrument was prepared by: Dwight H. Wheless File # 08-034
Brief description: Metes and Bounds, Southern Shores, Dare County, North Carolina

NORTH CAROLINA GENERAL WARRANTY DEED

Deed of Gift

THIS DEED made this 29th day of January, 2009, by and between

GRANTOR	GRANTEE
SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC., a North Carolina Non-Profit Corporation	FIRE SERVICE REAL ESTATE, INC., a North Carolina Non-Profit Corporation 15 South Dogwood Trail Southern Shores, NC 27949

The designation Grantors and Grantees as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH that the Grantor, for valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Town of Southern Shores, Dare County, North Carolina and more particularly described as follows:

Parcel One:

All that certain lot or parcel of land lying and being in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina, and more particularly described as follows:

BEGINNING at a point marked by a concrete marker set in the Northern right-of-way line of 36th Street, said point being located North 74°13'40" East 163.75 feet from the point of intersection of the Northern right-of-way line of 36th Street with the Eastern right-of-way line of Duck Road, and being located at the Southwestern corner on said right-of-way line of 36th Street of property now or formerly belonging to Larry K. Lambroff and wife; thence from the point of beginning, South 74°13'40" West 100 feet along the Northern right-of-way line of 36th Street to a concrete marker; thence North 15°46'20" West 150 feet to a concrete marker; thence North 74°13'40" East 150 feet to a point marked by a concrete marker at the Northwestern corner of property now or formerly owned by Larry K. Lambroff and wife; thence along the line of property now or formerly owned by Larry K. Lambroff and wife; South 15°46'20" East 150 feet to the point of beginning, said property containing all of Lot 23 and a portion of

NORTH CAROLINA-DARE COUNTY
I CERTIFY THE FOREGOING INSTRUMENT TO
BE A TRUE COPY AS COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE.
THIS 16th DAY OF February, 2009
BARBARA M. GRAY

REGISTER OF DEEDS OF DARE COUNTY
BY: Calvin Valencia
DEPUTY/ASSISTANT REGISTER OF DEEDS



Lots 22 and 24 in Block 33 as shown on that plat certain plat entitled Amended Plat B, Section 3, of Southern Shores, recorded in Map Book 1, Page 36, Dare County Registry.

Gas, oil and mineral rights are not hereby conveyed.

Being the same property conveyed to the Grantor herein by deed dated May 25, 1977 and recorded in Book 247, Page 411, Dare County Registry.

Parcel Two:

All that certain lot or parcel of land lying and being in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina, and more particularly described as follows:

BEGINNING at a point located in the Eastern margin or right of way of NCSR 1200, commonly referred to as the Duck Road, having a 60 foot right of way at this point where such Eastern right of way is intersected by the Northern margin or right of way of Dogwood Trail as it extends in an Easterly direction from the Duck Road towards the Atlantic Ocean, and said Dogwood Trail also having a 60 foot right of way at this point, and said point of beginning further located a course of North 34°44'44" East a distance of 48.92 feet from a concrete monument designated NCGS "Firehouse", which monument is located within the right of way of Dogwood Trail near the Southern margin thereof; running thence from the point of beginning a course of North 36°08'09" West a distance of 152.98 feet along the Eastern right of way of NCSR 1200 to a concrete monument; thence turning and running North 65°02'04" East a distance of 93.17 feet to a point; thence turning and running South 24°57'56" East a distance of 150.0 feet to a point in the Northern margin of Dogwood Trail; thence turning and running South 65°02'04" West a distance of 63.55 feet along the Northern margin of Dogwood Trail to the point or place of beginning.

Same being the remainder of Lot 25, Block 33 of the Subdivision of Southern Shores as shown on Map Book 2 at Page 142 of the Dare County Public Registry and constituting an additional portion of property located adjacent to and West of the Southern Shores Volunteer Fire Department property presently existing.

Gas, oil and mineral rights are not hereby conveyed.

This conveyance is made subject to existing rights of way easements including but not limited to the existence of a certain VEPCO transformer and other utility equipment located on and adjoining this property and crossing this property at various points.

Being the same property conveyed to Grantor herein by deed dated October 22, 1982 and recorded in Book 334, Page 656, Dare County Registry.

Parcel Three:

All that certain lot or parcel of land located and being on the West side of Dogwood Trail in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina, and bounded as follows:

BEGINNING at a concrete monument located in the West margin of the right of way of Dogwood Trail, the said monument also being located 654.53 feet North of the point of intersection of the West margin of the right of way of Dogwood Trail with the North margin of the right of way of U.S. Highway 158, said beginning point being also located at the intersection of the North boundary of the Bishop Vincent S. Waters parcel of land with the West margin of the right of way of Dogwood Trail; thence from the beginning point South 80 deg. 53 min. 00 sec. West 200 feet to an iron pipe or other marker; thence cornering North 10 deg. 07 min. 00 sec. West 150 feet to an iron pipe or other marker located and being in the South boundary of the lands of Kitty Hawk Land Company; thence cornering North 80 deg. 53 min. 00 sec. East 200 feet to the West margin of the right of way of Dogwood Trail; thence cornering and along the West margin of the right of way of Dogwood Trail South 10 deg. 07 min. 00 sec. East 150 feet to the point of beginning.

The same being the Eastern most 200 feet of those certain lands as shown on a map or plat entitled "Survey for Kitty Hawk Land Company of property to be given to Town of Southern Shores, NC," by Southern Surveying and Land Planning, dated January 14, 1986 and recorded in Plat Cabinet C, Slide 1E, Dare County Registry.

There is reserved and retained from the lands hereinabove conveyed, an easement for access, egress and ingress to and from other lands of the Town of Southern Shores lying to the Westward of the lands herein conveyed and a street being constructed by Kitty



Hawk Land Company on the North of the lands herein above conveyed, over, upon and across the Northwestern corner of the properties above described said easement being 25 feet in width and 84 feet in length and being bounded as follows:

BEGINNING at a point which said point is the Northwestern corner of the lands herein above conveyed said beginning point being located on a course of South 80 deg. 53 min. 00 sec. West 200 feet from the intersection of the South boundary of the lands of Kitty Hawk Land Company with the West margin of the right of way of Dogwood Trail and thence running from the beginning point North 80 deg. 53 min. 00 sec. East 84 feet to a point; thence cornering South 10 deg. 07 min. 00 sec. East 25 feet to a point; thence cornering South 80 deg. 53 min. 00 sec. West 84 feet to a point being in and marking the Eastern boundary of the remaining lands of the Town of Southern Shores; thence cornering and along the Town of Southern Shores East boundary North 10 deg. 07 min. 00 sec. West 25 feet to the point of beginning.

The property hereinabove described was acquired by Grantors by instrument recorded in Deed Book 355 page 166 and Deed Book 587, Page 363, Dare County Registry.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

The Grantor covenant with the Grantee, that Grantor is seized of the premises in fee simple, and has the right to convey the same in fee simple, that the title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

Easements and restrictions appearing of record.

IN WITNESS WHEREOF the Grantors have hereunto set their hands and seals the day and year first above written.

Southern Shores Volunteer Fire Department, Inc.

BY: George Kowalski (SEAL)
George Kowalski, Chairman

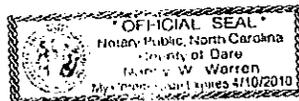
STATE OF North Carolina
COUNTY OF Dare

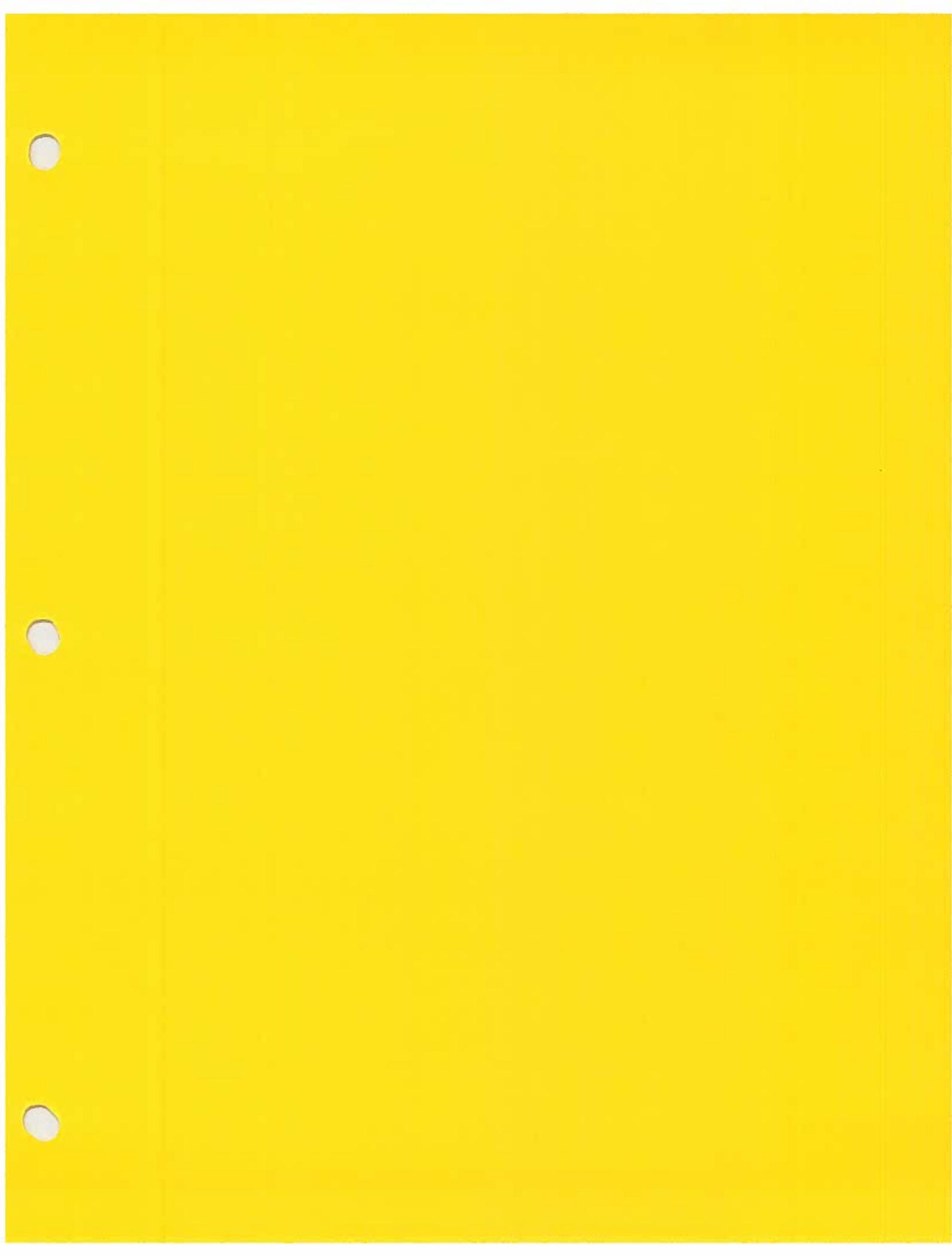
I, the undersigned, a Notary Public, certify that George Kowalski personally came before me this day and acknowledged to me that he is Chairman of the Board of Directors of Southern Shores Volunteer Fire Department, Inc., a Non-Profit North Carolina Corporation, and that he, as Chairman of the Board of Directors, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 30 day of January, 2009.

Nancy W. Warren
Notary Public
My Commission Expires: 4/10/2010

(SEAL/STAMP)





Space Above This Line For Recording Data

Prepared by and return to:
Benjamin M. Gallop, Attorney
Hornthal, Riley, Ellis & Maland, LLP
Post Office Box 310
Nags Head, North Carolina 27959

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

Tax Parcel: 022110000 and 022519012

MEMORANDUM OF AGREEMENT

NORTH CAROLINA, DARE COUNTY

THIS MEMORANDUM OF AGREEMENT, made this 26 day of February, 2009, by and between FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, whose address is 15 South Dogwood Trail, Southern Shores, NC 27949 (hereinafter referred to as "FSRE"); and TOWN OF SOUTHERN SHORES, NORTH CAROLINA, a North Carolina municipal corporation, whose address is 5375 N. Virginia Dare Trail, Southern Shores, NC 27949 (hereinafter referred to as "Town"):

WHEREAS, FSRE owns certain real property located in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina and being more particularly described as follows:

SEE ATTACHED EXHIBIT A.

(the "Real Estate"); and

WHEREAS, FSRE and the Town have entered into an agreement dated February 1, 2009 (the "FSRE Agreement"), and FSRE and the Town desire to provide constructive notice of the existence of the FSRE Agreement concerning the Real Estate.

NOW, THEREFORE, this Memorandum shall serve as record notice that the following agreements apply to the Real Estate:

1. Right of First Refusal. Upon termination of any lease existing at any time between FSRE and the Southern Shores Volunteer Fire Department, Inc. (the "Fire Department"), the Town shall have the right of first refusal to enter into a new lease of the all or any portion of the Real Estate with the FSRE as against all other parties except the Fire Department. Upon the termination or expiration of any lease existing at any time between FSRE and the Fire Department, and upon receipt of a bona fide offer from a

third party, which offer is acceptable to FSRE for the leasing of all or any portion of the Real Estate described above to anyone other than the Fire Department, FSRE shall give written notice to Town, by certified mail, return receipt requested, of the existence and terms and conditions of such offer, furnishing Town with a correct copy of such offer, and Town shall thirty (30) days thereafter to notify FSRE by certified mail, return receipt requested, that Town agrees to lease the Real Estate on the same terms and conditions as are contained in such offer. If Town declines to make such offer, or fails to reply to FSRE's written notice of such offer, within such thirty (30) day period, FSRE may accept such offer from the third party. Any written notice by FSRE to Town of the right of first refusal shall not relieve FSRE's obligation under this Agreement to give further notices of right of first refusal upon any future offers by third parties for the Real Estate described in this Agreement.

The right of first refusal shall exist and continue until the termination or expiration of the FSRE Agreement.

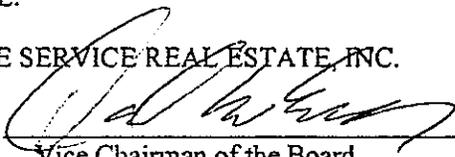
2. Transfer or other disposition of the Real Estate. The FSRE Agreement sets forth provisions with regard to any subsequent transfer or other disposition of the Real Estate by FSRE, which provisions are incorporated herein by reference in this Memorandum.

3. Other provisions. The other provisions set forth in the FSRE Agreement are hereby incorporated by reference in this Memorandum.

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.

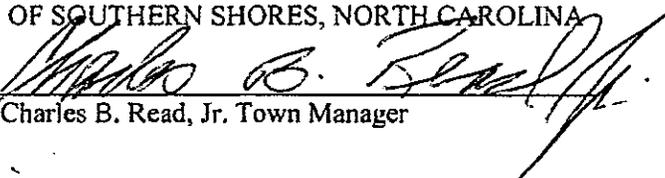
BY: 

Vice Chairman of the Board

ATTEST:


Secretary

TOWN OF SOUTHERN SHORES, NORTH CAROLINA

BY: 

Charles B. Read, Jr. Town Manager

ATTEST:

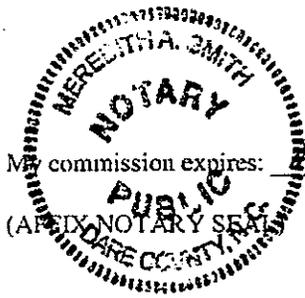

Carrie Gordin, Town Clerk



NORTH CAROLINA, DARE COUNTY

I, MEREDITH A. SMITH, a Notary Public of the County of DARE and State aforesaid, certify that DAVID EVANS 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 Vice Chairman of the Board, and attested by (him) (her) as its Secretary.

Witness my hand and official stamp or seal, this 26 day of FEB, 2009.



Meredith A. Smith
Notary Public
Notary's printed or typed name: MEREDITH A. SMITH

My commission expires: 3/01/2013

STATE OF NORTH CAROLINA, COUNTY OF DARE

I, Bonnie M. Swain, a Notary Public of the County and State aforesaid, certify that Charles B. Read, Jr. personally came before me this day and acknowledged that he is the Town Manager 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 Town Manager, sealed with its corporate seal and attested by Carrie Gordin, its Town Clerk.

Witness my hand and official stamp or seal, this 24th day of February, 2009.

Bonnie M. Swain
Notary Public
Notary's printed or typed name: Bonnie M. Swain

My commission expires: 1-12-10

(AFFIX NOTARY SEAL)

**EXHIBIT A
LEGAL DESCRIPTION OF THE REAL ESTATE**

Parcel One:

All that certain lot or parcel of land lying and being in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina, and more particularly described as follows:

BEGINNING at a point marked by a concrete marker set in the Northern right-of-way line of 36th Street, said point being located North 74°13'40" East 163.75 feet from the point of intersection of the Northern right-of-way line of 36th Street with the Eastern right-of-way line of Duck Road, and being located at the Southwestern corner on said right-of-way line of 36th Street of property now or formerly belonging to Larry K. Lambroff and wife; thence from the point of beginning, South 74°13'40" West 100 feet along the Northern right-of-way line of 36th Street to a concrete marker; thence North 15°46'20" West 150 feet to a concrete marker; thence North 74°13'40" East 150 feet to a point marked by a concrete marker at the Northwestern corner of property now or formerly owned by Larry K. Lambroff and wife; thence along the line of property now or formerly owned by Larry K. Lambroff and wife; South 15°46'20" East 150 feet to the point of beginning, said property containing all of Lot 23 and a portion of Lots 22 and 24 in Block 33 as shown on that plat certain plat entitled Amended Plat B, Section 3, of Southern Shores, recorded in Map Book 1, Page 36, Dare County Registry.

Gas, oil and mineral rights are not hereby conveyed.

Being the same property conveyed to the Grantor herein by deed dated May 25, 1977 and recorded in Book 247, Page 411, Dare County Registry.

Parcel Two:

All that certain lot or parcel of land lying and being in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina, and more particularly described as follows:

BEGINNING at a point located in the Eastern margin or right of way of NCSR 1200, commonly referred to as the Duck Road, having a 60 foot right of way at this point where such Eastern right of way is intersected by the Northern margin or right of way of Dogwood Trail as it extends in an Easterly direction from the Duck Road towards the Atlantic Ocean, and said Dogwood Trail also having a 60 foot right of way at this point, and said point of beginning further located a course of North 34°44'44" East a distance of 48.92 feet from a concrete monument designated NCGS "Firehouse", which monument is located within the right of way of Dogwood Trail near the Southern margin thereof; running thence from the point of beginning a course of North 36°08'09" West a distance of 152.98 feet along the Eastern right of way of NCSR 1200 to a concrete monument; thence turning and running North 65°02'04" East a distance of 93.17 feet to a point; thence turning and running South 24°57'56" East a distance of 150.0 feet to a point in the Northern margin of Dogwood Trail; thence turning and running South 65°02'04" West a distance of 63.55 feet along the Northern margin of Dogwood Trail to the point or place of beginning.

Same being the remainder of Lot 25, Block 33 of the Subdivision of Southern Shores as shown on Map Book 2 at Page 142 of the Dare County Public Registry and constituting an additional portion of property located adjacent to and West of the Southern Shores Volunteer Fire Department property presently existing.

Gas, oil and mineral rights are not hereby conveyed.

This conveyance is made subject to existing rights of way easements including but not limited to the existence of a certain VEPCO transformer and other utility equipment located on and adjoining this property and crossing this property at various points.

Being the same property conveyed to Grantor herein by deed dated October 22, 1982 and recorded in Book 334, Page 656, Dare County Registry.

EXHIBIT A
LEGAL DESCRIPTION OF THE REAL ESTATE (cont.)

Parcel Three:

All that certain lot or parcel of land located and being on the West side of Dogwood Trail in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina, and bounded as follows:

BEGINNING at a concrete monument located in the West margin of the right of way of Dogwood Trail, the said monument also being located 654.53 feet North of the point of intersection of the West margin of the right of way of Dogwood Trail with the North margin of the right of way of U.S. Highway 158, said beginning point being also located at the intersection of the North boundary of the Bishop Vincent S. Waters parcel of land with the West margin of the right of way of Dogwood Trail; thence from the beginning point South 80 deg. 53 min. 00 sec. West 200 feet to an iron pipe or other marker; thence cornering North 10 deg. 07 min. 00 sec. West 150 feet to an iron pipe or other marker located and being in the South boundary of the lands of Kitty Hawk Land Company; thence cornering North 80 deg. 53 min. 00 sec. East 200 feet to the West margin of the right of way of Dogwood Trail; thence cornering and along the West margin of the right of way of Dogwood Trail South 10 deg. 07 min. 00 sec. East 150 feet to the point of beginning.

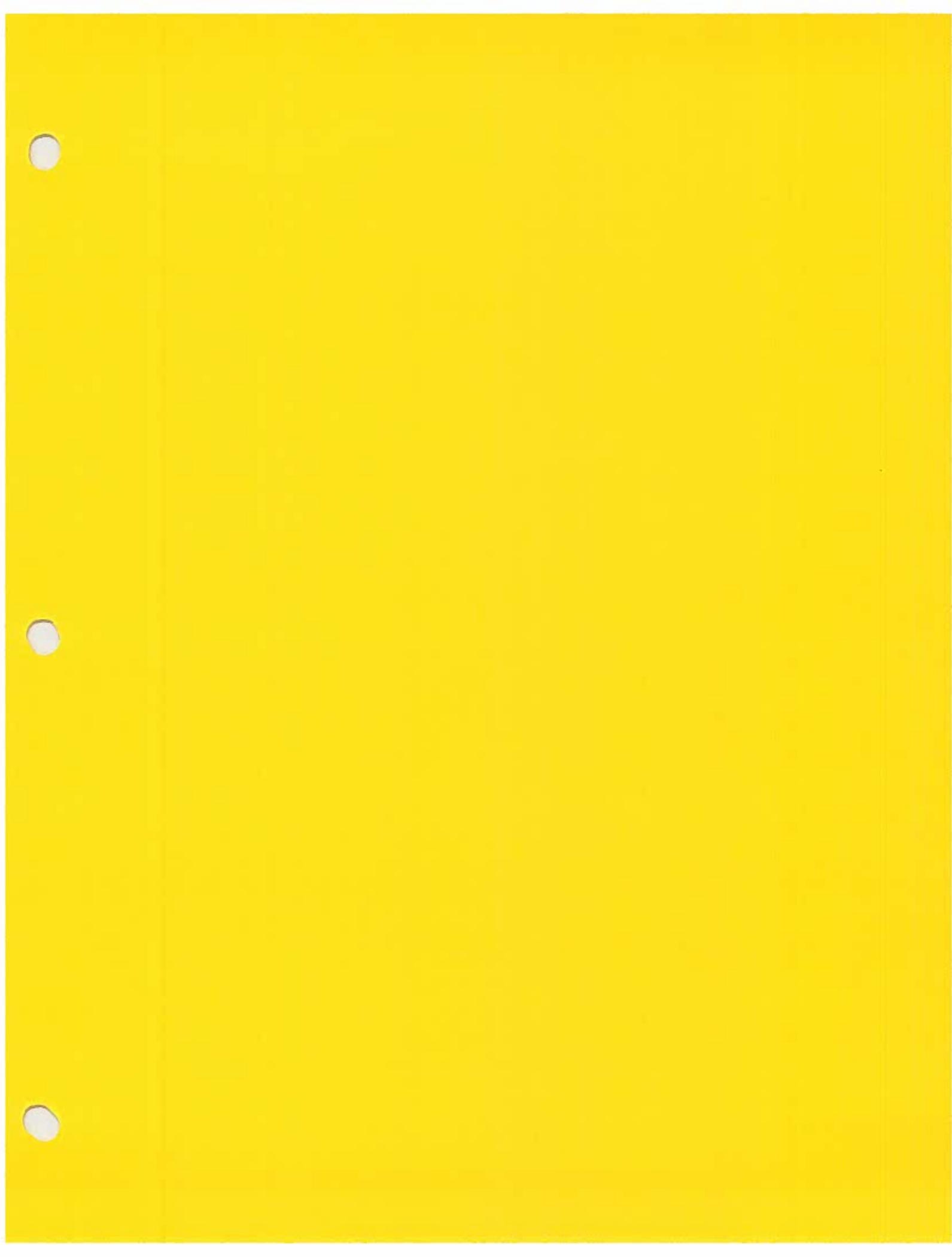
The same being the Eastern most 200 feet of those certain lands as shown on a map or plat entitled "Survey for Kitty Hawk Land Company of property to be given to Town of Southern Shores, NC," by Southern Surveying and Land Planning, dated January 14, 1986 and recorded in Plat Cabinet C, Slide 1E, Dare County Registry.

There is reserved and retained from the lands hereinabove conveyed, an easement for access, egress and ingress to and from other lands of the Town of Southern Shores lying to the Westward of the lands herein conveyed and a street being constructed by Kitty Hawk Land Company on the North of the lands herein above conveyed, over, upon and across the Northwestern corner of the properties above described said easement being 25 feet in width and 84 feet in length and being bounded as follows:

BEGINNING at a point which said point is the Northwestern corner of the lands herein above conveyed said beginning point being located on a course of South 80 deg. 53 min. 00 sec. West 200 feet from the intersection of the South boundary of the lands of Kitty Hawk Land Company with the West margin of the right of way of Dogwood Trail and thence running from the beginning point North 80 deg. 53 min. 00 sec. East 84 feet to a point; thence cornering South 10 deg. 07 min. 00 sec. East 25 feet to a point; thence cornering South 80 deg. 53 min. 00 sec. West 84 feet to a point being in and marking the Eastern boundary of the remaining lands of the Town of Southern Shores; thence cornering and along the Town of Southern Shores East boundary North 10 deg. 07 min. 00 sec. West 25 feet to the point of beginning.

The property hereinabove described was acquired by Grantors by instrument recorded in Deed Book 355 page 166 and Deed Book 587, Page 363, Dare County Registry.

Parcels One, Two and Three hereinabove described being the same property acquired on the 29th Day of January, 2009 by Fire Service Real Estate, Inc. via the Deed of Gift recorded on January 30th, 2009 at Book 1790 and Page 153 of the Dare County Public Registry.



NORTH CAROLINA
DARE COUNTY

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

THIS CONTRACT AND AGREEMENT (the "Contract") , dated as of _____, 20____ (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 the 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 an 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, it is the desire of the Parties to now enter into a new continuing contract , 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.

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 Contact, 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 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). 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 the 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 (i) 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 Deeds. 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 the 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 date of this Contract, 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 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 the 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 the FSRE. The 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 the 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. 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.
- (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).

(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, the 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, 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 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).
- (c) 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.
- (d) 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. This subsection 16(a) shall not apply to the Event of Termination described in Section 15(d) above.
- (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 ten (10) 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.

- (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 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 the 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).
- (c) This Section 17 shall not apply to the Event of Termination described in Section 15(d) above.
- (d) 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) **TOWN’S RIGHT TO TERMINATE WITHOUT CAUSE.** The Town, in its sole discretion, may terminate this Contract by providing the Fire Department and FSRE written notice that the Town is terminating this Contract, no earlier than 180 days following the latter’s receipt of the notice.

- (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**-This Contract replaces and supersedes all previous contracts entered between the Parties described in this Contract, including but not limited to the 2009 Fire Department Contract and the 2009 FSRE Contract.
- (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:

In the case of FSRE:

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.

- (25) **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.
- (26) **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.
- (27) **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.
- (28) **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.

- (29) **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: _____
Chairman, Board of Directors

ATTEST: _____
Secretary (corporate seal)

TOWN OF SOUTHERN SHORES:

By: _____
Mayor

ATTEST: _____
Town Clerk (corporate seal)

FIRE SERVICES REAL ESTATE, INC.:

By: _____
Name: _____
Title: _____

ATTEST: _____
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.

Finance Officer, Town of Southern Shores

DRAFT 8/1/2018

**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 CONTRACT, dated _____, 20____, (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 _____ (the "Fire Department"); and FIRE SERVICE REAL ESTATE, INC., a North Carolina nonprofit corporation, whose mailing address is _____ ("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, the Parties have entered into a Fire Services Contract (the "Contract") dated as of the Contract Date, with a term beginning July 1, 2019 (the "Effective Date"), and the Parties desire to provide constructive notice of the existence of the terms, provisions, conditions, restrictions, rights and responsibilities contained in the Contract with respect to the Real Property.

NOW, THEREFORE, this Memorandum shall serve as record notice that the following agreements apply to the Real Property:

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 FSARE 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 the 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 (i) 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 Deeds . 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 the 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 date of this Contract, 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 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 the 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 the FSRE. The 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 the 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, 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 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).
- (c) 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.
- (d) 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. This subsection 16(a) shall not apply to the Event of Termination described in Section 15(d) above.
- (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 ten (10) 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 the 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).
- (c) This Section 17 shall not apply to the Event of Termination described in Section 15(d) above.

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

7. Prior Memorandum Superseded. This Memorandum replaces and supersedes the Memorandum of Agreement between FSRE and the Town recorded in Book 1793, Page 146, Dare County Registry.

(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: _____
Chairman of the Board

ATTEST:

Secretary

NORTH CAROLINA, DARE COUNTY

I, _____, a Notary Public of the County of _____, and State aforesaid, certify that _____ 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 ___ day of _____, 20___.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)

FIRE DEPARTMENT:

SOUTHERN SHORES VOLUNTEER FIRE DEPARTMENT, INC.

BY: _____
Chairman of the Board

ATTEST:

Secretary

NORTH CAROLINA, DARE COUNTY

I, _____, a Notary Public of the County of _____, and State aforesaid, certify that _____ 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 ___ day of _____, 20__.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)

TOWN:

TOWN OF SOUTHERN SHORES

BY: _____
Mayor

ATTEST:

Town Clerk

(corporate seal)

STATE OF NORTH CAROLINA, COUNTY OF DARE

I, _____, a Notary Public of the County and State aforesaid, certify that _____ 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 _____, its Town Clerk.

Witness my hand and official stamp or seal, this ___ day of _____, 20__.

Notary Public

Notary's printed or typed name: _____

My commission expires: _____

(AFFIX NOTARY SEAL)