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AMENDMENT TO EASEMENT

This instrument prepared by Robert B. Hobbs, Jr., a licensed North Carolina Attorney
 No title examination requested or performed
 Return to Hornthal, Riley, Ellis & Maland, LLP, 2502 S. Croatan Hwy, Nags Head, NC 27959

Excise Tax: \$-0-
 Transfer Tax: \$-0-
 Tax Parcel: Portion of 030582000
 LT Number _____

North Carolina, Dare County

THIS AMENDED AND RESTATED EASEMENT (this "Easement"), made and entered into this the _____ day of _____, 20____, by and between CHICHAUK PROPERTY OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Grantor"), and the TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, (the "Town"). Grantor and Town may be individually referred to as a "Party" and collectively as the "Parties."

Premises

A. By easement dated February 7, 2012 and recorded in Book 1889, Page 6, Dare County Registry (the "2012 Easement"), Grantor conveyed to Town an easement over and across certain property owned by Grantor, more particularly described in the 2012 Easement, for the uses and purposes set forth in the 2012 Easement.

B. The Parties desire to amend and modify the terms of the 2012 Easement, and in doing so the Parties desire to amend and restate the 2012 Easement.

Agreement and Conveyance

NOW, THEREFORE, in consideration of the Premises and other consideration with no monetary value, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Grantor, for itself, and its heirs, successors, executors, and assigns, does hereby give, grant and convey unto the Town, its successors, and assigns, a permanent and perpetual easement over that portion of Grantor's property located in the Town of Southern Shores, Atlantic Township, Dare County, North Carolina, described as follows:

The beginning point is located as follows: Commencing at a four inch existing concrete monument (1.0 foot below ground) located at NCGS coordinates N 876,470.033 space sFT, E 2,968,409.563 sFT,; said concrete monument being located North 83 degrees 16 minutes 42 seconds West 353.90 feet from NCGS monument X 254, THE PLACE AND POINT OF BEGINNING.

THENCE FROM SAID POINT OF BEGINNING and along the western boundary line of Lots 12A, 10A, 7, and 8, Block 16, Section 1, Southern Shores, as shown on plats recorded in Map Book 1, Page 124, Plat Cabinet J, Slide 346, and Plat Cabinet G, Slide 276, Dare County Registry, South 27 degrees 11 minutes 07 seconds East 300.00 feet to a one inch existing iron pipe (flush); thence South 53 degrees 26 minutes 01 seconds West 126.06 feet to four inch existing concrete monument (flush) located in the southeastern corner of Lot 176 and the northeastern corner of Lot 175, Chicahauk subdivision, as shown on plat recorded in Map Book 7, Page 6, Dare County Registry; thence along the eastern or northeastern boundary line of Lots 176 and 177, Chicahauk subdivision, North 24 degrees 14 minutes 36 seconds West 206.00 feet to a four inch existing concrete monument (flush); thence along the northern property line of Lot 177, South 71 degrees 19 minutes 24 seconds West 194.17 feet to a four inch existing concrete monument (0.1 feet below ground), said concrete monument being located in the eastern right of way line of Spindrifft Trail (60 foot right of way); thence along the eastern right of way line of Spindrifft Trail, on a curve to the right with the radius of 601.88 feet, an arc length of 111.47 feet, and a chord bearing and length of North 12 degrees 56 minutes 55 seconds West 111.31 feet to a calculated point; thence continuing along the right of way line of Spindrifft Trail as the same intersects with Chicahauk Trail, on a curve to the right with a radius of 25.00 feet, an arc length of 37.69 feet, and a chord bearing and length of North 35 degrees 33 minutes 00 seconds East 34.22 feet to a calculated point in the southern or southeastern right of way line of Chicahauk Trail (60 foot right of way), thence along the southern or southeastern right of way line of Chicahauk Trail, on a curve to the left with the radius of 847.56 feet, an arc length of 235.23 feet, and a chord bearing and length of North 70 degrees 47 minutes 31 seconds East 234.47 feet to a calculated point; thence continuing along the right of way line of Chicahauk Trail, North 62 degrees 50 minutes 28 seconds East 15.83 feet to a four inch existing concrete monument broken (0.3 feet below ground); thence South 27 degrees 11 minutes 07 seconds East 4.93 feet to the place and point of beginning, and being a total easement area of 59,679 square feet (1.37 acres), as shown on that survey entitled, in part,

"Topographic Survey, Chicahauk Trail Parking, Chicahauk Property Owners Association, Inc, Town of Southern Shores, Dare County, North Carolina," by John M. Hurdle, PLS, of Quible & Associates, P.C., surveyor's certificate dated September 25, 2024, a copy of which is attached hereto as "**Exhibit A**" (the "Easement Area") and made a part of this Easement.

2. Uses and Purposes. The Town may use the Easement Area for the following uses and purposes (collectively the "Easement Purposes"):

- a. Vehicular parking and associated pedestrian use and access by citizens and residents of the Town of Southern Shores;
- b. Vehicular parking by Town employees and Town contractors, including but not limited to parking by ocean rescue personnel, which parking spaces may be designated by the Town as reserved and marked with appropriate signage indicating such reserved use;
- c. Storage of sand fencing and related equipment; and
- d. Construction and maintenance of one or more storage sheds for equipment used for municipal purposes, including but not limited to ocean rescue equipment, provided that the Town shall maintain a minimum 10-foot buffer between such sheds and the southern boundary line of the Easement Area.

3. Improvements. All improvements constructed and maintained by Town as permitted in Section 2 of this Easement shall be at the Town's sole cost and expense. All improvements constructed by Town within the Easement Aea are considered personal property of the Town and may be removed by Town at any time during the term of this Easement and upon any subsequent termination of this Easement. At least 30 days before the Town's commencement of construction or modification of any improvements to the Easement Area, Town shall provide Grantor with notice by postal mail and email of the planned construction or modification and provide the Grantor with a copy of plans for review and an opportunity to provide the Town with comment or feedback during such 30-day period. Notice shall be provided according to Section 10 of this Easement.

4. Required Buffer. Town shall maintain a vegetative buffer of at least 10 feet wide along the eastern or northeastern property lines of Lots 176 and 177, Chicahauk Subdivision (which have property addresses of 94 Spindrift Trail and 96 Spindrift Trail respectively), which properties directly adjoin the Easement Area.

5. Grantor's Reserved Rights. This Easement is expressly made subject to the nonexclusive rights of Grantor's members, and the guests and families of Grantor's members, to pass over and enjoy the Easement Area as common elements of the Grantor that are not inconsistent with the Easement Purpose (the "Grantor's Rights").

6. Indemnification of Grantor. To the fullest extent permitted by law, the Town shall defend, indemnify and hold harmless Grantor, and Grantor's successors and assigns, from and against all claims, demands, loss and damage by third parties arising out of or relating to use of the Easement Area by the public for the Easement Purpose, provided that such claims do not result from the acts, negligence or willful misconduct of Grantor, Grantor's members, the

families and guests of Grantor's members, or the heirs, successors or assigns of any such persons or entities.

7. Indemnification of Town. To the fullest extent permitted by law, Grantor shall defend, indemnify and hold harmless the Town, and the Town's successors and assigns, from and against all claims, demands, loss and damage by third parties arising out of or relating to use of the Easement Area by Grantor, Grantor's members, the families and guests of Grantor's members, or the heirs, successors or assigns of any such persons or entities pursuant to the exercise of Grantor's Rights, provided that such claims do not result from the acts, negligence or willful misconduct of the Town, the Town's officers, employees, or agents, or the Town's successors and assigns.

8. Maintenance. The Town agrees to reasonably maintain the Easement Area for the Easement Purpose. The frequency and character of such Town maintenance shall be in the Town's sole and complete discretion. The Town's maintenance shall not be exclusive. Grantor may perform such additional maintenance to the Easement Area as Grantor may find desirable in order to fulfill its obligations to its members relating to the Grantor's Rights in the common elements. Such maintenance by Grantor shall not be inconsistent with the Town's use of the Easement Area for the Easement Purpose.

9. Default. If the Town fails to reasonably use the Easement Area for the Easement Purpose, and/or fails to reasonably maintain the Easement Area as set forth in this Easement, Grantor may terminate this Easement after first providing the Town with written notice of default with the opportunity for the Town to cure such default within sixty (60) days. Such notice shall be given as set forth in Section 10 of this Easement.

10. Notices. Notices hereunder shall be effective and deemed given when deposited in the United States Mails, postage prepaid, registered or certified mail with return receipt requested. Alternatively, the party may use a nationally recognized overnight delivery service. If notice is given by email, notice is effective when the email is sent to the receiving party's email address given below.

Notices shall be addressed, in the case of the Grantor to:

Chicahauk Property Owners Association, Inc.
Attention: President
5377 N. Virginia Dare Trail
Southern Shores NC 27949

Email: chicahauk@cpoaoxb.org

Notices shall be addressed, in the case of the Town to:

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

Email: cogburn@southernshores-nc.gov

With a copy to:

L. Phillip Hornthal, III, Town Attorney
Hornthal, Riley, Ellis & Maland, L.L.P.
301 E. Main St.
Elizabeth City, NC 27909

Email: phornthal@hrem.com

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

See attached "**Exhibit B**" for Grantor's corporate resolution approving and ratifying this Easement.

TO HAVE AND TO HOLD said easement unto the Town, its successors and assigns, and the Grantor, for themselves, their heirs, successors, executors and assigns, hereby warrants and covenant that Grantor is the sole owner of the property; that Grantor has the sole right to grant this easement; and that Grantor will warrant and defend title to the same against the lawful claims of all persons whomsoever, and the Grantor, for itself, and its heirs, successors, executors and assigns, release the Town from any and all claims for damages by reasons of said easement herein conveyed over property of the Grantor and the past and future use thereof by the Town, its successors and assigns, for all purposes for which the Town, its successors and assigns, is authorized by law to subject the same, subject to the terms and provisions hereinabove set forth.

(continued on the following page)

IN WITNESS WHEREOF, Grantor has executed this instrument, the day and year first above written.

CHICHAUK PROPERTY OWNERS ASSOCIATION,
INC., a North Carolina nonprofit corporation

BY: _____
President

STATE OF _____, (COUNTY) (CITY) OF _____

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: _____, President of CHICHAUK PROPERTY OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation.

Witness my hand and seal this ____ day of _____, 20____.



Affix Notary Seal Inside This Box

Signature of Notary Public

Typed or printed name of Notary Public

My commission expires: _____

IN WITNESS WHEREOF, and under penalty of perjury, the Town of Southern Shores has caused this instrument to be executed in its name and behalf by its Mayor, attested by the Town Clerk and its seal affixed hereto, all as the act and deed of its Town Council, pursuant to a resolution adopted on the ____ day of _____, 20____, all the day and year first above written.

TOWN OF SOUTHERN SHORES

By: _____
Elizabeth Morey, Mayor

ATTEST:

Shelia Kane, Town Clerk

[AFFIX TOWN SEAL]

STATE OF NORTH CAROLINA, COUNTY OF DARE

I, _____, a Notary Public of the County and State aforesaid, certify that Elizabeth Morey personally came before me this day and acknowledged that he is 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 Shelia Kane, its Town Clerk.

Witness my hand and seal this ____ day of _____, 20____.



Affix Notary Seal Inside This Box

Signature of Notary Public

Typed or printed name of Notary Public

My commission expires:_____

**EXHIBIT A
TO
AMENDED AND RESTATED EASEMENT
by and between
CHICAHUK PROPERTY OWNERS ASSOCIATION, INC.
and
TOWN OF SOUTHERN SHORES, NORTH CAROLINA**

SURVEY

(see attached)

**EXHIBIT B
TO
AMENDED AND RESTATED EASEMENT
by and between
CHICHAUK PROPERTY OWNERS ASSOCIATION, INC.
and
TOWN OF SOUTHERN SHORES, NORTH CAROLINA**

**RESOLUTION OF THE BOARD OF DIRECTORS OF
CHICHAUK PROPERTY OWNERS ASSOCIATION, INC.**

(see attached)