

Space Above This Line For Recording Data

EASEMENT

Note to the Register of Deeds: Please return this Easement to the Town of Southern Shores (see address below) after recording.

Excise Tax: \$-0- Transfer Tax: \$-0- Parcel #: _____

North Carolina, Dare County

THIS EASEMENT, dated _____, 20____, by and between _____, whose mailing address is _____ (the "Owner"), and the TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, 5375 N. Virginia Dare Trail, Southern Shores, NC 27949 ("Town of Southern Shores"), and the TOWN OF DUCK, a North Carolina municipal corporation, PO Box 8369, Duck, NC 27949 ("Town of Duck"). The Town of Southern Shores and the Town of Duck may be collectively referred to herein as the "GRANTEE."

Owner is the owner in fee simple of certain real property, situated in the Town of Duck, Atlantic Township, Dare County, North Carolina and more particularly described as follows:

Property Address: _____, Duck, NC 27949; and

☐ Described in that certain deed to the Owner recorded in Book/Page _____, Dare County Registry; OR

☐ Other Description: _____
(the "Property"), and Owner desires to grant an easement to the GRANTEE for the Term and purposes stated below, and the GRANTEE has agreed to accept such easement from Owner.

The principal purpose of the easement granted herein is to facilitate the maintenance of the Ocean Beach within the Town of Duck, including the area of the easement, via beach nourishment and renourishment.

This Easement may be used by the Town of Duck for the purposes set forth herein as part of a Project conducted by the Town of Duck. This Easement may also be used by the Town of Southern Shores for the purposes set forth herein as part of a Project constructed by the Town of Southern Shores when part of the defined Project area includes properties located in the Town of Duck, such as a taper area. This Easement may also be used jointly by the Town of Duck and the Town of Southern Shores for Project(s) conducted simultaneously by both Towns.

NOW, THEREFORE, for a valuable consideration, including the benefits Owner may derive therefrom, the receipt of which is hereby acknowledged, Owner has dedicated, bargained and conveyed and by these presents does hereby dedicate, grant and convey to the GRANTEE, its successors and assigns, a

nonexclusive, irrevocable and assignable ambulatory easement and right-of-way in, on, over, through and across the hereinafter described land for use by the GRANTEE, its representatives, agents, employees, officials, engineers, consultants, surveyors, contractors, subcontractors, permittees, assignees, and invitees, for the Term set forth below. The easement area shall be that portion of the Property located between (1) the mean high water mark of the Atlantic Ocean, and (2) the landward toe or the Frontal Dune or Primary Dune. In the absence of a discernable Frontal Dune or Primary Dune, the easement area shall be that portion of the Property located between (3) the mean high water mark of the Atlantic Ocean, and (4) the waterward edge of any Permanent Structure located on the Property as of the date of this Easement. In the absence of a discernable Frontal Dune or Primary Dune or a Permanent Structure, the easement area shall be that portion of the Property located between (5) the mean high water mark of the Atlantic Ocean, and (6) a northern and/or southern extension of the western boundary of the easement area for the property or properties adjoining the Property on the north and/or south whose comparable easement areas have been established using either the Frontal Dune or Primary Dune or a Permanent Structure located on such adjoining property (the "Easement Area"). Owner also grants and conveys to the GRANTEE a nonexclusive pedestrian only access easement across any portion of the Property that is reasonably necessary for the purpose of permitting the GRANTEE'S inspection and, if necessary, observation and surveying of the GRANTEE'S work and activities within the Easement Area, for the Term set forth below (the "Access Easement"). Other than the limited nature of the Access Easement, the use of and access to the Easement Area shall be from the Ocean Beach or Atlantic Ocean adjacent to the Easement Area and not the uplands of the Property.

TO HAVE AND HOLD the said easement unto the GRANTEE, its successors and assigns, for the Term set forth below. The GRANTEE shall have the right to temporarily or permanently assign this easement to the federal, state, or county governments, or any agencies or department thereof or any governmental authority formed to implement beach nourishment, renourishment and/or stabilization on the Ocean Beach in the GRANTEE, but only for the purposes set forth in this easement agreement. This easement shall be binding on the Owner, Owner's heirs, successors and assigns, and shall run with the title of the Property. The terms, uses, conditions and restrictions of the Easement are as follows:

1. GRANTEE may use the Easement Area to evaluate, survey, inspect, construct, preserve, patrol, protect, operate, maintain, repair, rehabilitate, and replace a public Ocean Beach, a dune system, and other erosion control and storm damage reduction measures, including the right to (a) deposit sand; (b) accomplish any alterations of contours on said land; construct berms and dunes; (c) nourish and renourish periodically; (d) move, store and remove equipment and supplies; (e) erect and remove temporary structures; (f) perform any other work necessary and incident to the construction, periodic renourishment and maintenance of the Project; (g) plant vegetation on said dunes and berms; (h) erect, maintain and remove silt screens, sand fences and other sand collection measures; (i) facilitate preservation of dunes and vegetation through the limitation of access to dune areas; and (j) trim, cut, fell, and remove from said land all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within the boundaries of the Easement Area. GRANTEE will not engage in any of the foregoing activities in the Easement Area without holding a permit to do so, to the extent a permit for such activity or activities is required by law.

2. THERE IS RESERVED, HOWEVER, to the Owner, Owner's heirs, successors and assigns, the right to construct an Improved Dune Walkover Access structure within the Easement Area in accordance with any applicable Federal, State or local laws or regulations, provided that such structures shall not violate the integrity of the dune in shape, dimension or function, that same are consistent with applicable zoning, and that prior approval of the plans and specifications for such structure is obtained from the Town of Duck. Such structure shall be subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the work authorized herein. There is further reserved to the Owner, Owner's heirs, successors and assigns all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired.

3. Owner becomes the owner of any sand deposited into the Easement Area by GRANTEE at the time of the deposit. Owner acknowledges and agrees that use of the Ocean Beach is subject to traditional public trust rights. GRANTEE, its officers, employees, and agents may enter the Easement Area and the Access Easement whenever reasonably necessary for the purpose of inspecting same to determine compliance herewith, to maintain as may be necessary or convenient thereto. Owner shall in all other respects remain the fee owner of the Property and Easement Area, subject to any existing traditional public trust rights, and may make all lawful uses of the Property not inconsistent with the easements described and conveyed herein. Nothing in this easement shall hinder or impair the Owner's littoral and riparian rights associated with the Owner's Property. The designations Owner and GRANTEE shall include the parties, their heirs, successors and assigns.

4. The existence of this Easement shall not prevent Owner from applying for permits from the Town of Duck or any other agency to repair or replace a Permanent Structure, to the extent applicable ordinances or the rules or regulations of any other permitting agency would not otherwise prohibit the proposed repair or replacement for other reasons, and provided that such structure does not violate the integrity of the dune in shape, dimension or function, and provided further that such structures are subordinate to the construction, operation, maintenance, repair, rehabilitation and replacement of the Project.

5. Definitions. The following capitalized terms as used in this Agreement shall have the following meanings:

Accessory Building: A subordinate Building consisting of walls and a roof, the use of which is clearly incidental to that of a Principal Building on the same lot.

Building: Any structure enclosed and isolated by exterior walls and constructed or used for a residence or business. The word Building includes the word Structure.

Frontal Dune: The first mound of sand located landward of the Ocean Beach having sufficient vegetation, height, continuity and configuration to offer protective value.

Improved Dune Walkover Access: A raised walkway constructed for the purpose of providing access to the Ocean Beach from points landward of the dune system.

Ocean Beach: The lands located seaward of the natural indicators of the landward extent of the State's ocean beaches which include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. Ocean Beach includes those lands located above the mean high water mark that may be publicly or privately owned and, for the purposes of this easement, those publicly owned lands located below the mean high water mark out to the three (3) nautical mile extension of State waters.

Owner: The owner of the Property as identified on page 1 of this Easement.

Permanent Structure: A Building, including a Principal Building and any Accessory Building(s), covered decks, swimming pool, and improvements associated with a swimming pool, but not including any uncovered decks or any Improved Dune Walkover Access or any associated gazebos or other improved portions of an Improved Dune Walkover Access.

Primary Dune: The first mound of sand located landward of the Ocean Beach having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune toe).

Principal Building: A Building in which is conducted the principal use of the lot on which it is located.

Property: The real property described on page 1 of this Easement.

Project: The GRANTEE'S Beach Nourishment Project.

Term: The term of this Easement is perpetual.

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

(signatures begin on the following page)

EXECUTION AND NOTARY CERTIFICATE FOR AN OWNER WHO IS AN INDIVIDUAL

Owner:

_____(SEAL)

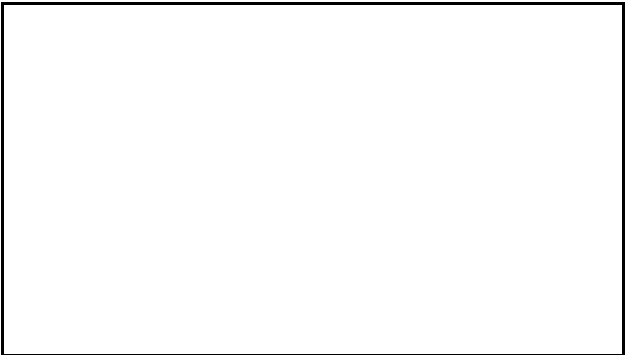
_____(SEAL)

State of _____, County or City of _____

I certify that the following person 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:

_____ [type pr print name(s)]

Date: _____, 20_____.



Signature of Notary Public

Typed or printed name of Notary Public

My commission expires:_____

Affix Notary Seal Inside This Box

EXECUTION AND NOTARY CERTIFICATE FOR AN OWNER WHO IS A CORPORATION,
LIMITED LIABILITY COMPANY, TRUST, PARTNERSHIP OR OTHER ENTITY

Owner:

Typed or printed name of Owner-Entity

BY: _____
Signature of authorized officer or manager

Typed or printed name of person signing

Typed or printed title of person signing

State of _____, County or City of _____

I certify that the following person 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:

_____ [type or print name of person signing]

Date: _____, 20____.



Affix Notary Seal Inside This Box

Signature of Notary Public

Typed or printed name of Notary Public

My commission expires: _____