

BK 2701 PG 307 - 315 (9)

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Fee: \$26.00

Dare County, North Carolina

Cheryl L. House, REGISTER OF DEEDS

DOC# 700133155

09/29/2023 12:23:08 PM

Excise Tax: \$0.00

Transfer Tax: \$0.00

Dare County Land Transfer No.: 2892-23 Land Transfer Tax: 0.00 1985 Sessions Law Chapter 570 (HB 215)

EASEMENT

This instrument prepared by Robert B. Hobbs, Jr., a licensed North Carolina Attorney
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 022882000 and portion of 022872000

LT Number _____

North Carolina, Dare County

THIS ENCROACHMENT EASEMENT (this "Agreement"), made this 21 day of September, 2023 (the "Effective Date"), by and between SOUTHERN SHORES REALTY COMPANY, INC., also known as SOUTHERN SHORES REALTY CO., INC., a North Carolina corporation, whose postal mailing address is PO Box 150, Kitty Hawk, NC 27949-0150, and whose physical delivery address is 5 Ocean Blvd., Southern Shores, NC 27949 ("SSRC"), and the TOWN OF SOUTHERN SHORES, a North Carolina municipal corporation, and its successors and assigns, whose postal mailing address and physical delivery address is 5375 N. Virginia Dare Trail, Southern Shores, NC 27949 (the "Town"). SSRC and Town may be individually referred to herein as a "Party" and collectively the "Parties."

RECITALS:

A. SSRC is the owner of property described as Parcel No. 15 in that certain deed to SSRC dated January 1, 1982 and recorded in Book 348, Page 1031, Dare County Registry (the "SSRC Property").

B. Town is the owner of that certain property described as follows:

All those certain lots or parcels of land together with the improvements thereon, lying and being in Southern Shores, in Atlantic Township, Dare County, North Carolina, and known and designated as and being Lots No. 5 and 3, Block A, Amended Portion Section 1 of the subdivision known as Southern Shores, as shown and delineated on a map or plat of said subdivision designated "Amended Portion Section 1, Southern Shores, Kitty Hawk, N. C." made by D. H. Lawrence, Registered Surveyor, and duly recorded in Map Book 1, Page 91, in the office of the Register of Deeds of Dare County, North Carolina, reference to which is hereby made for a more particular description thereof.

(the "13 Skyline Property").

C. The parties have learned that portions of the improvements and vegetation owned by Town encroach upon the SSRC Property as shown on the survey attached hereto as Exhibit A and incorporated herein by this reference (collectively, the "Encroachments").

D. The Parties desire to acknowledge the presence of the Encroachments and provide for the permissive use and continued existence of the Encroachments on the Property as set forth in this Agreement.

AGREEMENT:

In consideration of the Recitals, and other good and valuable consideration in hand paid, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Existing Structure Encroachment.** As of the Effective Date, a structure along with associated HVAC equipment are situated on the 13 Skyline Property and are shown and identified as "1 STRY COMMERCIAL" and "HVAC" on the survey by Martin Barnette, P.L.S. (the "Barnette Survey") attached as EXHIBIT A (collectively, the "Structure"). The Barnette Survey shows an encroachment of a portion of the Structure (collectively, the "Structure Encroachment") onto the SSRC Property. SSRC hereby acknowledges the encroachment of the Structure Encroachment.

2. **Structure Encroachment Easement.** SSRC grants to Town, its successors and assigns, an exclusive and perpetual right and easement (the "Structure Encroachment Easement") for the continued presence of the Structure Encroachment on the SSRC Property. The Structure Encroachment Easement shall be appurtenant to the 13 Skyline Property and shall continue and survive any transfer or conveyance of title to the 13 Skyline Property during the term of this Agreement. This grant of easement shall not apply to or be construed to allow the construction of any new encroachments arising after the date of this Agreement and shall not give SSRC the right to use the Structure Encroachment; the which are for the sole and exclusive use and benefit of Town, and its successors and assigns.

3. **Maintenance of Structure Encroachment Easement.** Following execution of this Agreement, Town, its successors and assigns, shall have the exclusive obligation to ensure that the Structure Encroachment is maintained, functioning properly and in a good state of repair, at Town's sole cost and expense. In the event that SSRC shall discover that Town has failed to repair, replace or maintain the Encroachments and such failure is a material threat to cause damage to the Property, SSRC shall have the right to give Town written notice of such condition and Town shall have a period of sixty (60) days after receipt of such written notice to repair, replace or perform the maintenance necessary to correct such condition. If Town fails to promptly undertake said repairs, maintenance or replacement within the sixty (60) day period, SSRC or its successors in title shall be entitled, but not obligated, to undertake to correct such condition. In the event that SSRC or its successors in title undertake repairs, maintenance or replacement to correct the condition pursuant to this section, then Town shall reimburse the entity undertaking the work no later than thirty (30) days after written request for the same, provided that such request is accompanied by a detailed and itemized invoice outlining the work undertaken and the costs for the same. This responsibility shall include prevention of any

excessive drainage of water onto the SSRC Property that may be caused by the Structure Encroachment.

4. **Structure Maintenance Easement.** SSRC also grants to Town, its successors and assigns, a maintenance easement to allow Town and its successors and assigns the right to temporarily access a ten-foot wide area on all sides of the Structure Encroachment Easement and within the SSRC Property for occasional maintenance and repairs to the Structure located within the Structure Encroachment Easement (the "Structure Maintenance Easement").

5. **Duration of Structure Encroachment Easement and Structure Maintenance Easement.** The Structure Encroachment Easement and the Structure Maintenance Easement shall continue and exist for as long as the Structure exists, but upon the occurrence of Substantial Damage or demolition of the Structure, the Structure Encroachment Easement and the Structure Maintenance Easement shall terminate. For purposes of this Section 5, "Substantial Damage" means damage of any origin sustained by the Structure during any one-year period whereby the cost of restoring the Structure to its before-damaged condition would equal or exceed 50 percent of the market value of the Structure before the damage occurred. Upon the Structure being demolished or incurring Substantial Damage, the Structure Encroachment shall not be rebuilt or reconstructed within the Structure Encroachment Easement.

6. **Easement for Maintenance of Existing Cinderblock Wall.** SSRC grants to Town, its successors and assigns, an exclusive appurtenant easement for the continued encroachment of the portion of the cinderblock wall ("the Encroaching Wall") that is encroaching into the SSRC Property as shown on the Barnette Survey attached as EXHIBIT A (the "Encroaching Wall Easement"). The Encroaching Wall Easement may be unilaterally terminated by SSRC with 90-day advance written notice to Town or the then-owner of the 13 Skyline Property, and upon such notice of termination and the expiration of the 90-day notice period, any removal of the Encroaching Wall by SSRC would be at SSRC's sole cost and expense. The notice from SSRC to the then-owner of the 13 Skyline Property to terminate the Wall Encroachment Easement would specify exactly what the SSRC plans to remove. SSRC agrees to refrain from giving a notice to terminate the Encroaching Wall Easement for a period of six (6) months after the Effective Date of this Agreement.

7. **Easement for Maintenance of Existing Shrubs; Replacement Vegetative Buffer.**

a. SSRC grants to Town, its successors and assigns, an exclusive appurtenant easement for the continued encroachment a row of existing mature evergreen shrubs (the "Encroaching Shrubs") currently located on the SSRC Property parallel to and immediately to the south of the Encroaching Wall ("the Vegetation Easement"). Town, its successors and assigns, shall maintain the Encroaching Shrubs in a good and safe condition at its sole expense. The Vegetation Easement may be unilaterally terminated by SSRC with 90-day advance written notice to Town or the then-owner of the 13 Skyline Property, and upon such notice of termination and the expiration of the 90-day notice period, any removal of the Encroaching Shrubs by SSRC would be at SSRC's sole cost and expense. The notice from SSRC to the then-owner of the 13 Skyline Property to terminate the Vegetation Easement would specify exactly what the SSRC plans to remove. SSRC agrees to refrain from giving a notice to terminate the

Encroaching Shrubs for a period of six (6) months after the Effective Date of this Agreement.

b. At such time as SSRC removes the Encroaching Shrubs as provided above, SSRC also agrees to replace the Encroaching Shrubs by installing, planting and maintaining a new vegetative buffer ("Replacement Vegetative Buffer") between the Structure and any future road or driveway which SSRC may install on the SSRC Property adjacent to the 13 Skyline Property. The size and types of plantings included in the Replacement Vegetative Buffer shall be at the sole discretion of SSRC. SSRC shall install and maintain any such Replacement Vegetative Buffer at SSRC's sole cost and expense.

8. **Indemnification.** Town and its successors and assigns will indemnify and hold SSRC harmless for any damages, claims, liability related to the use or occupancy of the Structure Encroachment.

9. **Notices.** Notices hereunder shall be effective and deemed given when deposited in the United States Mail, postage prepaid, certified mail with return receipt requested. Alternatively, the Party may use a nationally recognized commercial overnight delivery service. Notices shall be addressed to the address for each Party provided on Page 1 of this Agreement. 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.

A copy of all notices to SSRC shall be provided to the following:

Maynard Nexsen PC
4141 Parklake Avenue, Suite 200
Raleigh, NC 27612
Attn: Tonya B. Powell

A copy of all notices to the Town shall be provided to the following:

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

10. **Miscellaneous.** This Agreement constitutes the entire agreement between the Parties on this subject matter. No modification or amendment of this Agreement shall be binding unless in writing and signed by the Party against which it is sought to be enforced. No waiver of any right or remedy shall be effective unless in writing and nevertheless shall not operate as a waiver of any other right or remedy or of the same right or remedy on a future occasion. The provisions and terms of this Agreement shall be fully enforceable as against the Parties and their successors and assigns in ownership to the properties respectively. The provisions of this Agreement shall operate as a covenant running with the titles to both the SSRC Property and the 13 Skyline Property. This Agreement shall be binding upon and shall inure to the benefit of the parties and their successors and assigns. This Agreement shall be construed in accordance with the laws of the State of North Carolina without giving effect to its conflict of laws principles. All words and phrases used in this Agreement in any one number or gender shall be construed to include any other number or gender as the context requires. In the event either Party shall

institute an action to enforce the provisions of this Agreement, the Party 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. The waiver by either party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision of this Agreement. The headings, subheadings and captions in this Agreement and in any exhibit hereto are for reference purposes only and shall not affect the meaning or interpretation of this Agreement. The invalidity or unenforceability for any reason of any particular provision or provisions of this Agreement shall not affect the other provisions hereof, and the Agreement shall be construed in all respects as if such invalid and unenforceable provisions were omitted.

[The remainder of this page is intentionally blank. Signature pages follow]

IN WITNESS WHEREOF, this Agreement was executed and delivered as of the Effective Date.

SSRC:

SOUTHERN SHORES REALTY COMPANY, INC.
a North Carolina corporation

By: *Michael K. Stone*

Name: Michael K. Stone

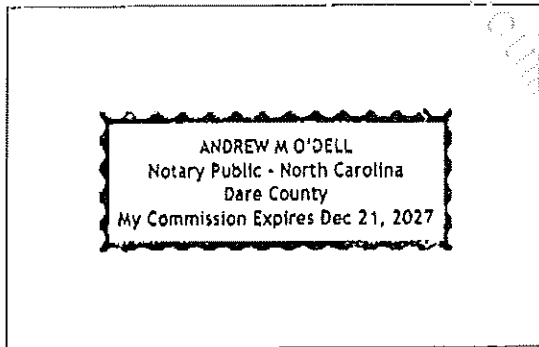
Title: Vice President / Secretary

STATE OF NORTH CAROLINA

COUNTY OF Dare

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: Mike Stone

Witness my hand and seal this 21 day of September, 2023.



Affix Notary Seal Inside This Box

Andrew Michael O'Dell
Signature of Notary Public

Andrew Michael O'Dell
Typed or printed name of Notary Public

My commission expires: 12/21/27

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 Town Manager, 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 5 day of September, 2023, all the day and year first above written.

TOWN OF SOUTHERN SHORES

By: [Signature]
Cliff Ogburn, Town Manager

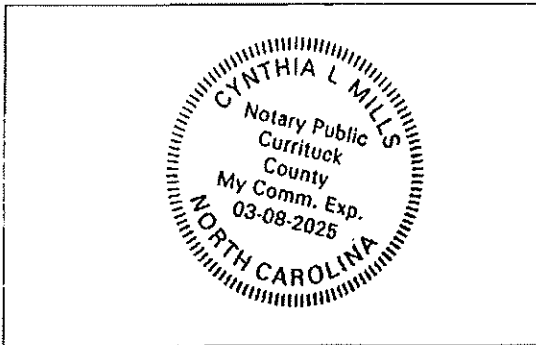
ATTEST:
[Signature]
Sheila Kane, Town Clerk



STATE OF NORTH CAROLINA, COUNTY OF DARE

I, Cynthia L Mills, a Notary Public of the County and State aforesaid, certify that Cliff Ogburn personally came before me this day and acknowledged that he is 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 Sheila Kane, its Town Clerk.

Witness my hand and seal this 5th day of September, 2023.



Affix Notary Seal Inside This Box

[Signature]
Signature of Notary Public

Cynthia L Mills
Typed or printed name of Notary Public

My commission expires: 03/08/2025

EXHIBIT A

Barnette Survey

(See attached)

NOTES

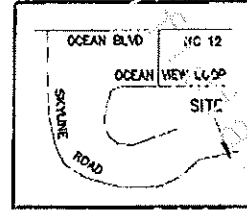
-THIS SURVEY DEPICTS THIS PROPERTY, AS DESCRIBED IN DB 1746, PG 326(PC C, SL 104C), DB 348, PG 1031 DESCRIBES THE ENCROACHING PROPERTY SHOWN.

-PROPERTY IS LOCATED IN A F.I.R.M. ZONE X (SUBJECT TO CHANGE BY F.E.M.A.)

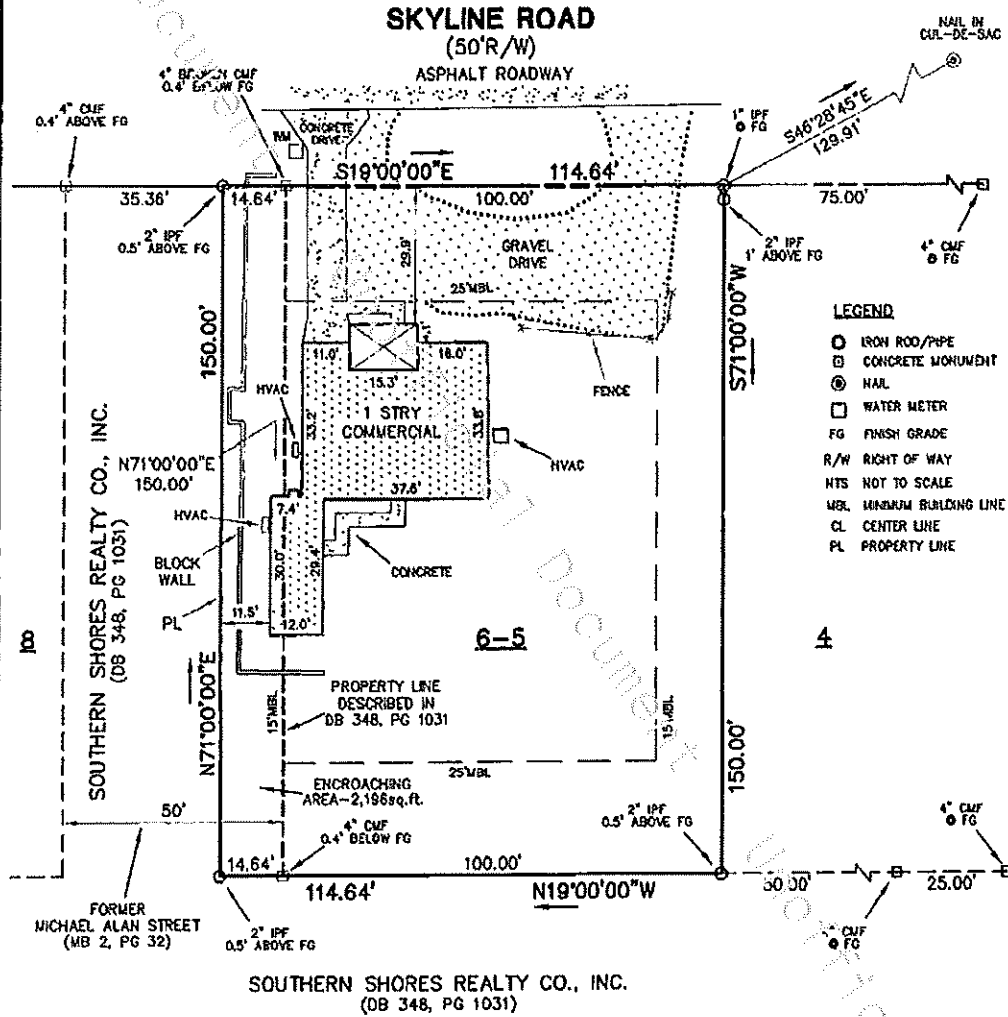
-AREA -17,186sq.ft.(COORD)

-MIN. BUILDING LINES PER CURRENT ZONING

-DARE CC. P.A.# 8877(17) 01 1801



VICINITY MAP
NTS



LEGEND

- IRON ROD/PPIPE
- CONCRETE MONUMENT
- ⊙ NAIL
- WATER METER
- FG FINISH GRADE
- R/W RIGHT OF WAY
- NTS NOT TO SCALE
- MBL MINIMUM BUILDING LINE
- CL CENTER LINE
- PL PROPERTY LINE

THIS MAP MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.

MB REV. 5/17/23-ADJONER REFERENCE

I, MARTIN BARNETTE CERTIFY THAT UNDER MY SUPERVISION THIS PLAT WAS DRAWN FROM AN ACTUAL FIELD LAND SURVEY. THAT THE RATIO OF PRECISION WAS CALCULATED IS 1/100,000. THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH N.C.A.C. TITLE 21, CHAPTER 36, SECTION 1600. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NO. AND SEAL THIS 16th DAY OF MAY 2023

MARTIN BARNETTE, PLS (6-3740)

THE SURVEYOR MAKES NO CERTIFICATION AS TO ZONING AND OR OTHER DEVELOPMENT RESTRICTIONS THAT MAY APPLY TO THE OTHER MIN. BUILDING LINES. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.

SURVEY FOR:

TOWN OF SOUTHERN SHORES

LOTS 5-6 & PART OF RIGHT OF WAY, BLOCK A, SECTION 1 SOUTHERN SHORES

AS REC'D: DB 1746, PG 326/PC C, SL 104C/MB 2, PG 32/MB 1, PG 91

SOUTHERN SHORES ATLANTIC TWSP. DARE CO. N. CAROLINA

SCALE 1"=30' FILE NO. 4689 CAD FILE 4689A DATE 5/16/23

B. I. L. D.
BARNETTE INTEGRATED LAND DEVELOPMENT
POB 7159 KDH, NC 27848 (252)441-5154 F-0594