

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

PUBLIC WATER ACCESS MEMORANDUM OF AGREEMENT

This agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, 2011, between the Town of Sunset Beach, a North Carolina municipal corporation, 700 Sunset Blvd. N, Sunset Beach, NC 28468, herein "Town"; and the North Carolina Wildlife Resources Commission, an agency of the State of North Carolina, 1720 Mail Service Center, Raleigh, NC 27699-1720, herein "Commission";

WITNESSETH:

That Whereas, Town has purchased Tracts 1 & 2, Section A, Twin Lakes Development, Sunset Beach, as shown in Map Cabinet 33 at Page 202 of the Brunswick County Registry, and has acquired by gift deed that certain property more particularly described in Book 2840 at Page 392 of the Brunswick County Registry, all of which is hereinafter called "Premises" or "Property"; and

Whereas, Town proposes to partner with the Commission for development of the property by the Wildlife Resources Commission as a public boat launching facility and public water access site, with Commission by the terms hereof being bound to install launching ramps, docks, parking areas, access roads and other facilities and improvements for purposes of operating, maintaining and managing a public water access and boat launching site on the properties subject to approval of regulatory agencies and issuance of all necessary permits; and

Whereas, Town and Commission have agreed upon the terms of the Agreement regarding the development of the Water Access site on the aforementioned Property, and now desire to incorporate the same in this Agreement;

Now, therefore, in consideration of the mutual terms and conditions set forth herein, the completion of the improvements by Commission to the Property, and the benefits to the Town and the general public from the Public Water Access Facility, Town and Commission agree as follows:

1. Premises. Subject to the following terms and conditions, Town does hereby agree to partner with the North Carolina Wildlife Resources Commission for the development of a Public Water Access Facility in the Town of Sunset Beach, Brunswick

County, North Carolina, more particularly described as follows:

BEING all of Tracts 1 & 2, Section A, Twin Lakes Development, Sunset Beach, as shown in Map Cabinet 33 at Page 202 of the Brunswick County Registry, and as more particularly described by deed to the Town of Sunset Beach recorded in Book 2840 at Page 389 of the Brunswick County Registry, together with that certain property conveyed to the Town of Sunset Beach by gift deed recorded in Book 2840 at Page 392 of the Brunswick County Registry, all of which is hereinafter called "Premises" or "Property".

A conceptual site plan showing the lot and the proposed layout of the Water Access Facility is attached hereto as **Exhibit A** and incorporated herein by reference. **In the event that Commission desires to modify this site plan attached hereto, Commission shall notify Town in writing and Town shall have 30 days from such notification to review and approve the proposed revision, such approval not to be unreasonably withheld.**

Town reserves the right of ingress, egress and regress over, across and through the Property for its employees, officers, agents, and members of the public, provided, however, that Commission shall have the right to develop, manage and administer the premises as part of a free public boating access including vehicle and trailer parking on a 24 hour, 7 days a week basis with no closure of the site except for repairs and improvements or in times or emergencies. Commission shall have control over the site for purposes of operating the Boating Access Site including but not limited to parking regulations, speed restrictions, and other use regulations.

During the term of this agreement and any renewal thereof, Town shall continue to have the use of and access to, for public and recreational purposes, those portions of the premises not used by or needed as part of the site plan by the North Carolina Wildlife Resources Commission. On such lands or areas not needed by Commission for Water Access Site purposes, Town and its authorized agents may place docks, structures, parking facilities, fishing piers, picnic tables and other improvements so long as the same does not interfere with Commission's water access facility use or the safety of boaters, vehicles, property or patrons of the Site.

2. Term. The initial term of the agreement shall be for 99 years beginning \_\_\_\_\_, 2011 and terminating \_\_\_\_\_, 2109. Said agreement is subject to automatic renewals for 3 terms of 50 years each thereafter unless either Commission or Town notifies the other in writing not less than 12 months prior to the proposed renewal date that the agreement will not be renewed.

3. Permissible Uses. Without first obtaining the written consent of Town, Commission shall only use the Premises during the term of this lease for a regional public boat launching and water access facility, **together with** recreational uses, water access programs and parking lot purposes in conjunction with boat launch and **water access**. Any uses other than those enumerated herein shall first require the prior written consent of Town, which consent shall not be unreasonably withheld. Town shall likewise have the right to use the parking lots and leased areas of Property for its ongoing recreational programs at such times as the same does not interfere with the Commissions programs.

The Premises shall be an official North Carolina Wildlife Resources Commission

Public Boat Launching Facility and therefore subject to Commission's usual operations and management programs and guidelines. Commission for purposes of managing the Premises shall have control and regulatory authority of the areas for purposes of establishing and enforcing rules and regulations regarding uses, times of operations and other particulars of the area.

Town shall be required to obtain the written consent of Commission prior to adding any additional parks and recreation facilities to the premises so that such additional facilities do not interfere with the Commission's water access facility use or the safety of boaters, vehicles, property, or patrons of the site, which consent shall not be unreasonably withheld. Commission's enforcement personnel shall not be required to provide enforcement services for any additional parks and recreation facilities added by Town.

4. Commission's Alterations. The proposed conceptual site layout attached as Exhibit A shows and illustrates the location and type of improvements contemplated to be completed by Commission on the Property. Commission shall upon execution of this agreement complete design work and prepare and forward to Town its plans for construction of boat ramps, docks, parking areas, access lanes, bulkheading, buildings and parking facilities and other improvements on the Property. Commission shall forthwith proceed in due haste and within a reasonable time frame to apply for and secure all necessary permits and approvals from state and federal agencies for the water access facilities and improvements and upon issuance of the permits, shall provide the funds, contracting for and means of completion of the facilities in accordance with the plans.

Commission will design with special emphasis storm water management for the effective control of storm water in accordance with all applicable laws and ordinances, and will design and maintain an attractive parking area and landscaping features so as to enhance the Site.

Upon completion of the improvements contemplated by the parties for the Public Launching Ramps and Water Access Site **as shown on the conceptual site layout attached hereto as Exhibit A**, Commission shall make no other significant structural alterations or improvements to the premises without first obtaining the written approval and consent of Town. **Specifically, it is acknowledged that this proposed layout does not include restroom facilities and that the addition of restrooms will require the prior written approval of Town, such approval not to be unreasonably withheld.** Structural alterations or improvements that do not significantly impact the operation and layout of the site, including necessary repair and renovation work, shall not require written approval and consent of Town. All improvements, changes or additions carried out by Commission shall be at the sole expense of the Commission and shall be promptly paid for. Commission shall indemnify and hold Town harmless from any liability or expenses resulting from Commission's failure to pay for any improvements, construction, alterations or additions to the leased premises, and shall supply Town upon request evidence that all costs incurred for such improvements, changes, alterations or additions have been paid.

5. Maintenance. Commission shall be responsible for maintaining the boat ramps, bulkheads, docks, basin, entrance canal, parking lots, storm water system features and facilities, lights, buildings and other major improvements unless Town

agrees to assume one or more maintenance duties. Town will be responsible for the daily and routine maintenance of mowing, cleaning restrooms, trash collection, and upkeep of landscaping areas. All maintenance costs shall be timely paid by the responsible party. The parties agree to facilitate a written program to oversee maintenance so as to protect the investment and make the site safe and attractive.

6. Fixtures. The Commission shall have the right to install and use on the premises lighting fixtures **in accordance with applicable town ordinances** for safety of patrons and the public and shall be responsible for payment of the same.

7. Return of Premises. Upon expiration of this agreement, Commission shall return the premises to Town in as good condition as when **the agreement took effect**, normal wear and tear only excepted. Upon expiration of this **agreement**, all permanently affixed improvements to the premises shall belong to Town and may not be removed by Commission.

8. Property and Liability Insurance. Commission shall provide self insurance through the North Carolina Tort Claims Act and under North Carolina law with regard to payment of claims for property damage, injuries, or death, resulting from any accident or occurrence in or about the premises, in such amounts and limits as are provided for other similar Public Water Access Facilities owned by Commission.

Commission shall not be responsible for providing property and liability insurance for additional parks and recreational facilities located on the premises that are added by and owned by Town. Town shall maintain adequate insurance coverage on any such additional facilities owned by Town.

9. Compliance With Ordinances, Laws and Regulations. Commission and Town shall at all times comply with all local, state and federal rules and regulations regarding operations, maintenance and use of the premises. Commission will install appropriate signage permitted under Town's ordinances indicating the location of the site and that it is a joint or multi-agency partnership that made the regional access facility possible.

10. Default. In the event the Commission shall fail to carry out the design, construction and completion of a public boat and water access facility as contemplated herein in a reasonable period, or should it fail to correct defaults in the design, construction, completion and maintenance of said facilities, or fail to comply with any of the terms and conditions of this agreement for a period of thirty days after notice is given by the Town, such notice to be effective as of the date that the Town mails notice to Commission's headquarters in Raleigh, NC, or as of the date that Town places such notice in the United States mail properly addressed to the Commission's business location, by certified mail, return receipt requested, or if the Commission shall abandon or vacate the premises before the end of the term of this agreement, or if the Commission ceases to have funding for the site, then and in any case the Town may terminate this agreement and/or lawfully enter into and upon the said premises or any part thereof in the name of the whole, and repossess the same, without prejudice to any other remedies which might otherwise be used for breach of contract or covenant. Commission covenants that in case of such termination it will indemnify and save Town harmless against any losses which Town may incur by reason of such termination, during the residue of the term above specified.

11. Waiver. In the event Town waives Commission's breach or indulges Commission from time to time as to the completion or performance of any responsibilities hereunder, this shall not be a waiver by Town of any subsequent breach or imply any future indulgence for Commission.

12. Indemnification of Other. Each party agrees to indemnify and hold the other harmless from any and all liability or claims for injury or damages to persons or property which result from either intentional or negligent acts or omissions of one party hereto or its guests or invitees which are not covered by liability insurance.

13. Town's Default. In the event Town fails to discharge any duty or condition imposed upon Town herein, then Commission upon giving 30 days written notice to Town specifying Town's default, may cure the default if possible through the expenditure of separate funds and Town shall be obligated to reimburse Commission its cost within 30 days thereafter.

14. Assignment. Tenant shall not assign **its rights and obligations under this agreement** without the prior written permission of Town.

15. Entire Agreement and Binding Effect. This document contains the entire agreement and contract between the Commission and Town and neither party to this agreement makes any representations to the other party not contained herein and this agreement supersedes, nullifies and makes void any prior oral or written representations or dealings between the parties not herein specifically set out. As used herein the singular shall include the plural and masculine gender shall include the feminine and neuter genders as deemed appropriate. This agreement shall be binding upon and inure to the benefits of the parties hereto and their heirs, successors in interest and assigns.

16. Reimbursement. In the event either party makes any payments for insurance, utilities or other expenses pursuant to the terms of this agreement for which said party is entitled to reimbursement, then the other party shall reimburse the party for its expenses so made within a period of 30 days following notification of the amount of reimbursement required. Failure to reimburse within said thirty days shall constitute default hereunder.

17. Severability. In the event any term or provision of this agreement is hereafter determined by a court of competent jurisdiction to be invalid or void, then this agreement shall continue in effect notwithstanding said Court ruling unless the term or provision so stricken is so substantial and material to the agreement so as to defeat the intent or purpose of the parties, in which event this agreement shall terminate.

18. Counterpart. This agreement shall be executed in duplicate originals, each of which shall be an original, but all of which together shall constitute but one and the same instrument.

In witness hereof the Parties have executed this agreement effective as of the date above referenced.

TOWN OF SUNSET BEACH

\_\_\_\_\_  
By Mayor

Attest: \_\_\_\_\_  
Town Clerk

NORTH CAROLINA WILDLIFE  
RESOURCES COMMISSION

\_\_\_\_\_  
Executive Director, Gordon Myers

\_\_\_\_\_  
Division Chief Engineering Services,  
Erik Christofferson

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for the County and State aforesaid, certify that \_\_\_\_\_, Chair of the North Carolina Wildlife Resources Commission appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2011.

Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for the County and State aforesaid, certify that \_\_\_\_\_, Mayor of the Town of Sunset Beach, a

municipal Corporation, and \_\_\_\_\_, as town clerk, personally appeared before me this day and acknowledged the execution of the foregoing instrument, and that the Town Clerk did affix the seal of the Town, all by authority of the Town Council of Sunset Beach.

Witness my hand and official stamp or seal, this the \_\_\_\_ day of \_\_\_\_\_, 2011.

My Commission Expires:

**Exhibit A**