

STATE OF NORTH CAROLINA
DARE COUNTY

SPONSORSHIP AGREEMENT FOR IN-KIND DONATION

This Sponsorship Agreement (this "Agreement") is entered into this the 23rd day of April, 2019 by and between the Town of Kill Devil Hills, a political subdivision of the State of North Carolina (the "Town") and Daryl Davies, individual or _____ organized and existing under the laws of the State of North Carolina.

RECITALS

WHEREAS, the Town is the owner of a parcel of property located at 120 Veterans Dr. Kill Devil Hills North Carolina that the Town intends to develop a disc golf course on said property; and

WHEREAS, the Town is interested in obtaining sponsors to help share the development cost and maintenance of the disc golf course; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Town agrees to construct the disc golf course on the property described above, in accord with plans developed and approved by the Town provided sufficient funds in the amount of \$51,150.00 or donation of in-kind services/materials to offset costs not covered by

overnight delivery service and addressed as follows:

To: Town of Kill Devil Hills Debora P. Diaz, Town Manager
To: Daryl Davies Sponsor

Either party may change its address by giving notice to the other party in writing stating its new address.

7. Miscellaneous Provisions.

a. Survival of Provisions. The covenants, acknowledgements, representations, agreements, and obligations contained in this Agreement shall survive the consummation of the transactions contemplated by this Agreement.

b. Relationship. Neither party shall become the agent of the other party for any purpose and this Agreement shall not create a partnership or joint venture. Nothing herein shall be construed to give Daryl Davies any control or responsibility over the events to be held at the disc golf course.

c. Construction of Agreement. Each party acknowledges that it has participated in the negotiation of this Agreement and no provision of this Agreement shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. The Town and Daryl Davies at all times had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement, and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to the execution and delivery thereof, No representations or warranties have

been made by or on behalf of the Town or relied upon by Daryl Davies pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. This Agreement embodies the entire agreement and understanding among the parties relating to the subject matter hereof and supersedes all prior proposals, negotiations, agreements and understandings relating to such subject matter.

d. Pronouns. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender shall include all other genders. The singular shall include the plural and vice versa.

e. Governing Law. This Agreement, its execution, interpretation and performance, shall be governed by and construed in accordance with the laws of the State of North Carolina. Any controversy or claim arising out of or in any way related to this Agreement or the relationship established by it, or the alleged breach thereof, whether at common law, in contract, in tort, or under statute, shall be governed by the laws of the State of North Carolina. Legal proceedings involving such controversy or claim may be instituted only in the state courts for Dare County, North Carolina or in the United States District Court for the Eastern District of North Carolina, and the Town and Daryl Davies hereby irrevocably consent to the jurisdiction of such courts over their persons and waive any defense based on improper or inconvenient venue or lack of personal jurisdiction, and waive any defense based upon improper or insufficient process or service of process.

f. Headings. The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof or thereof.

g. No Assignment. The rights and obligations of the parties hereunder may not be assigned, or transferred to any person or entity.

h. No Modifications. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing signed by the party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted.

i. Invalid Provision to Affect no Others. If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any transaction related thereto shall be held invalid, then such provision only shall be deemed invalid and the remainder of this Agreement shall remain operative and in full force and effect.

j. In-Kind Donations. The Town makes no representation or guarantee that any in-kind donation qualifies as a charitable donation and the responsibility for establishing the fair market value of the donation is solely the responsibility of the donor. For the purposes of establishing the sponsorship, the Town and sponsor shall agree upon a retail value for the services or materials provided, which may differ from fair market value established by sponsor for tax purposes.

k. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement under seal, as of the day and year first above written.

TOWN OF KILL DEVIL HILLS

By: DARRELL DAVIES

Its: [Signature]

Date: 4/23/19

By: _____

Its: _____

Date: _____

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

[Signature] 4/24/19
Finance Officer Date