



## TOWN OF KILL DEVIL HILLS

*Land Where Flight Began*

MEMORANDUM

January 11, 2021

TO: Mayor and Board of Commissioners

FROM: Debora P. Diaz, Town Manager

REF: New Business

**2. Offer received for purchase of Town-owned property and consideration of Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue (Attached NB-2)**

In December, the Town received an offer to purchase the property described above and depicted in the materials included with this memorandum. The offer from MPF Investment Company, L.P, in the total amount of \$1,505,000, including the required 5% bid deposit, was submitted in accordance with the *Upset bids* statute. The Town Attorney has reviewed the offer and determined it to be submitted in compliance with North Carolina law.

An offer submitted under this provision of the General Statutes is subject to the following procedure:

- Upset bids. NCGS 160A-269.
  - An offer to purchase real property is received, including a 5% bid deposit.
  - Announcement of the offer is made and if the BOC is satisfied with the offer, then a resolution is adopted accepting the offer and authorizing the upset bid procedure.
  - Advertisement for upset bids is published.
  - A qualifying upset bid must be an amount of at least 10% of the first \$1,000 of the original offer and 5% of the remaining amount.
  - Bidders must submit qualifying upset bids within 10 days after the date of advertisement and must be accompanied by a 5% bid bond or deposit.
  - If a qualifying upset bid is received then the advertisement and upset bid process must be repeated until no additional qualifying upset bid is received, then the award can be made to the highest bidder, or all bids may be rejected.

At the October 12, 2020 meeting, Staff was directed that upon receipt of a valid bid for the property this matter was to return to the BOC for further consideration, along with a *Resolution Authorizing the Upset Bid Process for Sale of 2011 South Croatan Highway and 0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue*, for authorization of

the upset bid process. The attached draft resolution has also been reviewed by the Town Attorney and deemed to be satisfactory.

Staff recommends that prior to taking action on the resolution, the Board of Commissioners authorize the Town Manager and Town Attorney to obtain an up-to-date appraisal so that there is knowledge and understanding of the current market value of the site.

A motion will be in order.





**East Eighth Street Properties — Cumulative tax value: \$496,800;**

**Use is vacant; 43,500 total square feet**



**Resolution Authorizing the Upset Bid Process for  
Sale of 2011 South Croatan Highway and  
0 South Croatan Highway Adjacent Thereto, and 2032 Wrightsville Avenue**

WHEREAS, the Town of Kill Devil Hills (the "Town") owns certain property, identified as Dare County Tax Parcels:

- # 026186000;
- # 008351000;
- # 008350000;

and,

WHEREAS, North Carolina General Statute §160A-269 permits the Town to sell property by upset bid, after receipt of any offer for the property; and

WHEREAS, the Town has received an offer, including the required 5% bid deposit, from MPF Investment Company, LP, of 102 West Airstrip Road, Kill Devil Hills, NC, to purchase the three parcels identified in the first paragraph, above; and

WHEREAS, these parcels contain a total of 43,500 square feet and are located along US 158/Croatan Highway, and East Eighth Street in Kill Devil Hills, described in instruments recorded in the Dare County Register of Deeds, as follows:

- # 026186000 – Book 1641: Page 0063
- # 008351000 – Book 1641: Page 0063
- # 008350000 – Book 1641: Page 0062

WHEREAS, MPF Investment Company, LP, has paid the required 5% deposit with the offer;

NOW, THEREFORE, BE IT RESOLVED, that

1. The Board of Commissioners of the Town of Kill Devil Hills authorizes the sale of the property described above through the upset bid procedure of North Carolina General Statute §160A-269.

2. The Town Clerk shall cause a notice of the proposed sale to be published. The notice shall describe the property and the amount of the offer, and shall state the terms under which the offer may be upset.
3. Persons wishing to upset the offer than has been received shall submit a sealed bid and their offer to the Office of the Kill Devil Hills Finance Department within 10 days after the notice of sale is published. At the conclusion of the 10-day period, the Town Clerk shall open all bids received, if any, and the highest such bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer.
4. If a qualifying higher bid is received, the Town Clerk shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Board of Commissioners.
5. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first \$1,000.00 of that offer and five percent (5%) of the remainder of that offer.
6. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid; the deposit may be made in cash, cashier's check, or certified check. The Town will return the deposit of the final high bidder at closing.
7. The terms of the final sale are that:
  - A. The Board of Commissioners must approve the final high offer before the sale is closed, which it will do within 30 days after the final upset bid period has passed.
  - B. The buyer must pay with cash, cashier's check, or certified check at the time of closing.
8. The Town reserves the right to withdraw the property from sale at any time before the final high bid is accepted, and also reserves the right to reject any and all bids at any time.

9. If no qualifying bid is received after the initial public notice, the offer is hereby accepted as to price, with the remainder of the contractual terms being subject to negotiation between the Town and the offeror. The appropriate officials of the Town of Kill Devil Hills are authorized to execute the instruments necessary to convey the property to MPF Investment Company, LP, or his designee.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

SEAL

\_\_\_\_\_  
Ben A. Sproul, Mayor, Town of Kill Devil Hills

ATTEST:

\_\_\_\_\_  
James Michael O'Dell, Deputy Town Clerk



## DEPOSIT AGREEMENT

This Agreement is made this 10<sup>th</sup> day of December, 2020 by **Town of Kill Devil Hills**, (hereinafter "Town"), and **MPF Investment Company, L.P.**, (hereinafter "LP"), with regard to a proposed purchase of Town-owned property located at 2011 S. Croatan Highway (PIN: 02618600), 2032 Wrightsville Boulevard (PIN: 008351000), and 0 S. Croatan Highway, Kill Devil Hills, North Carolina (PIN: 008350000) (hereinafter "Property").

### RECITALS

WHEREAS, Town is the owner of the Property referenced directly above; and

WHEREAS, LP desires to make an offer to purchase the Property, which offer, if accepted by the Kill Devil Hills Board of Commissioners, will be subject to an upset bid period pursuant to N.C.G.S. 160A-269; and

WHEREAS, the terms of the initial offer being made by LP will be limited solely to the purchase price of \$1,505,000.00 which offer will require a deposit of \$75,250.00 (the "Deposit") with the Town Clerk pursuant to statutory provisions governing the transaction; and

WHEREAS, in the event the Kill Devil Hills Board of Commissioners votes to accept the offer and initiate the requisite upset bid period, and said upset period results in LP becoming the high bidder for the purchase of the Property, LP desires to enter into negotiations with the Town concerning other various and specific terms associated with LP's purchase of the Property; and

WHEREAS, the Town is amenable to said negotiation efforts upon expiration of the upset period showing LP as the high bidder; and

WHEREAS, it is agreed by the parties hereto that the Deposit shall be fully refundable in the event LP is not the high bidder or in the event LP becomes the high bidder and is unable to reach an agreement on the additional terms of purchase with the Town; and

NOW THEREFORE, LP and the Town enter into this agreement to establish certain terms associated with LP's statutory deposit as it pertains to the circumstances described directly above.

### TERMS

1. The parties to this agreement acknowledge the accuracy of the mutual recitals above and consider the same valuable consideration for this Agreement, said recitals being incorporated herein by reference.
2. The parties acknowledge and agree that LP is making an offer to purchase the Property in the amount of \$1,505,000.00, and that pursuant to N.C.G.S. 160A-269, the Deposit must be made by LP with the Town Clerk upon submittal of said offer.
3. The parties acknowledge and agree that LP's offer to purchase shall be subject to a statutory upset bid period of ten (10) days from the date that notice of LP's offer to purchase the Property is posted by the Town Clerk.

4. The parties acknowledge and agree that if LP does not become the high bidder, and LP makes no further bids on the Property, the Deposit will be returned in full to LP by the Town.
5. The parties acknowledge and agree that if LP becomes the high bidder, then further negotiations on other various and specific terms of the Property purchase, including, but not limited to, an appropriate period for LP to examine the Property, conduct due diligence, and seek zoning entitlements, all to be embodied in a definitive purchase agreement, shall ensue between the Town and LP.
6. The parties acknowledge and agree that in the event the Town and LP are unable to agree on a definitive purchase agreement within forty-five (45) days from the date upon which LP becomes the high bidder, then the Deposit shall be fully refundable to LP and contractual obligations associated with the Property purchase shall cease to exist between the parties hereto.
7. The parties acknowledge that this agreement shall be binding upon the executors, heirs, devisees, and any successors in interests to LP.

**THIS AGREEMENT HAS BEEN EXECUTED** as an agreement between the parties hereto, this the 10<sup>th</sup> day of December, 2020.


TOWN OF KILL DEVIL HILLS



By: Debora F. Diaz, Town



MPF INVESTMENT COMPANY, L.P.



(SEAL)

By: Jeff Fabrikant, General Partner



MPE INVESTMENT COMPANY LP  
OPERATING ACCOUNT  
PO BOX 71125  
BETHESDA MD 20813

001

68-894/514

PAY TO THE  
ORDER OF

Town of Kill Devil Hills

DATE

12/10/20

\$ 75,250.00

DOLLARS

Seventy-five thousand & no hundred & fifty

 TOWNE BANK

MEMO END / 2011 S. Creation

