



TOWN OF KILL DEVIL HILLS
Land Where Flight Began

MEMORANDUM

June 13, 2022

TO: Mayor and Board of Commissioners

FROM: Debora P. Díaz, Town Manager 

REF: Ongoing Business

1. Offer to purchase 3315 North Virginia Dare Trail and Resolution Authorizing the Upset Bid Process (Attached OB-1)

The Town received a written offer on March 21, 2022, to purchase a parcel located at 3315 North Virginia Dare Trail, Pin #988509056311, depicted on the individual tax map, along with the individual deed, attached to this memorandum. Sand Life, LLC, offered \$5,400.00 for the property, which was deeded to the Town as a gift in 2001. The property is an unbuildable vacant lot; Staff has communicated with the offeror and detailed the potential limitations of the parcel. The offeror's residence is located across from the property at 3316 North Virginia Dare Trail.

Sand Life, LLC, submitted a deposit of 5% of the purchase price with the Town, and the at its April 27, 2022, meeting, the Board approved a *Resolution Authorizing the Upset Bid Process for Sale of 3315 North Virginia Dare Trail*, and pursuant to N.C.G.S. 160A-269, the Town conducted an upset bid process; the Town received no qualifying bids.

The Town Attorney has drafted an Agreement for Purchase and Sale of Real Estate, in which the property located at 3315 North Virginia Dare Trail will be transferred to Sand Life, LLC, and the sale price and all associated transactional costs will be borne by the offeror.

A motion will be in order.

AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE

SAND LIFE, LLC, a North Carolina Limited Liability Company, as Buyer, with an address of 3316 N. Virginia Dare Trail, Kill Devil Hills, North Carolina 27949, hereby agrees to purchase and **TOWN OF KILL DEVIL HILLS, a North Carolina municipal corporation**, as Seller, hereby agrees to sell and convey all of that plot, piece or parcel of unimproved land described in Paragraph 1 below, referred to in this agreement as the "Property." The following terms and conditions will apply to this transaction:

RECITALS

WHEREAS, the Buyer has made an offer to the Seller proposing the purchase of municipal-owned real estate located in Kill Devil Hills, North Carolina, which is more particularly described in Paragraph 1 directly below, for the price of \$5,400.00; and

WHEREAS, the Board of Commissioners for the Town of Kill Devil Hills, at their April 27th, 2022 public meeting, accepted the Buyer's offer and entered a resolution which authorized the upset bid process for the sale of the property described herein; and

WHEREAS, the Buyer tendered the amount of \$5,400.00 to the Seller as a valid bid following entry of the aforesaid resolution; and

WHEREAS, the upset bid period has now expired, evidencing no valid upset bids being made; and

NOW, THEREFORE, pursuant to authorization of the Board of Commissioners for the Town of Kill Devil Hills, the Seller and Buyer are now reducing the Buyer's offer to writing in accordance with the requirements of N.C.G.S. 160A. The below terms shall amount to the entire agreement on purchase of 3315 N. Virginia Dare Trail, Kill Devil Hills, North Carolina and shall be binding on each party. The parties acknowledge the valuable consideration existing in support of this agreement.

1. **REAL PROPERTY:** Being located in Dare County, North Carolina within the municipal limits of Kill Devil Hills, and being those unimproved oceanfront parcels of land described as follows:

All those certain lots of land lying and being on the Ocean Beach near Kill Devil Hills, Dare County, NC, and being Lots No. 3 and 4 in Block 1 of the subdivision known as Orville Beach, as shown on that map or plat of said subdivision made by J. L. Foy, Registered Surveyor, dated August 1947 and duly recorded in Map Book 1, Page 138 in the office of the Register of Deeds of Dare County, NC, reference to which is hereby made for a more particular description of the lands above described.

Also known as: 3315 N. Virginia Dare Trail, North Carolina; Dare County Parcel Number: 000054000.

2. **PURCHASE PRICE:** The purchase price is Five Thousand and Four Hundred (\$5,400) Dollars, which will be payable as follows:

A) The entire Purchase Price shall be due and payable at the time of closing in cash or other good funds.

3. **REPRESENTATIONS AND CONDITIONS:**

- (a) The Buyer has inspected or had the opportunity to inspect the property and it is the express understanding and agreement of the Seller and the Buyer that the Property is transferred and conveyed "as is" and "with all fault" and the Seller has not made, does not make, and hereby disclaims any and all express or implied representations and warranties regarding or relating to the condition, suitability for a particular purpose, susceptibility to flooding, value, marketability or zoning of the Property, or with respect to use and occupancy restrictions, compliance with environmental laws and laws and regulations relating to hazardous substances, toxic wastes and underground storage tanks, and all legal requirements affecting or relating to the Property. The Buyer acknowledges that no such representations or warranties, express or implied, have been made. The terms and covenants of this paragraph will survive the closing and the delivery of the deed and any other instruments or transfers and will also survive any termination of the contract without closing.
- (b) The Buyer acknowledges and accepts that the parcels of land subject of this agreement exist as unbuildable vacant lots.
- (c) The Buyer acknowledges that the Seller makes no representation as to the delineation of public trust land adjacent to the parcels of real property subject of this agreement.
- (d) Title must be delivered at closing by GENERAL WARRANTY DEED and must be fee simple marketable title, free of all encumbrances except: ad valorem taxes for the current year, utility easements and rights-of-way of record, matters visible from an inspection of the property or reflected on an accurate survey of the property and such other encumbrances as may be assumed or specifically approved by Buyer.

4. **PRORATIONS AND ADJUSTMENTS:** Ad valorem taxes shall be paid in full and/or assumed in full by the Buyer at closing of this transaction.

5. **CLOSING EXPENSES:** Buyer shall pay for any and all costs associated with this transaction including, but not limited to, costs of closing services for Seller and Buyer, recordation of the deed, transfer taxes, and for all other documents or services necessary to facilitate the transaction subject of this agreement.

6. **EVIDENCE OF TITLE:** Seller agrees to use its best efforts to deliver to Buyer as soon as reasonably possible after the complete execution of this agreement, copies of all title information in possession of Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust and easements relating to Property, if any exist in the possession of the Town of Kill Devil Hills.

7. **LABOR AND MATERIAL:** Seller shall furnish at closing an affidavit and indemnification agreement in form satisfactory to Buyer showing that all labor and materials, if any, furnished to the Property within 120 days prior to the date of closing have been paid for and agreeing to indemnify Buyer against all loss from any cause or claim arising therefrom.
8. **SPECIAL ASSESSMENTS:** Seller warrants that it has no knowledge of any governmental special assessments, either pending or confirmed, for sidewalks, paving, water, sewer or other improvements on or adjoining the Property, with the exception of any assessments placed on the Property as a result of the Property's inclusion in a Municipal Service District created for the purposes of funding beach nourishment efforts.
9. **CLOSING:** Closing shall be defined as the date and time of recording of the deed. All parties agree to execute any and all documents and papers necessary in connection with closing and transfer of title on or before **June __, 2022** at a place designated by the closing attorneys.
10. **POSSESSION:** It is acknowledged by the parties hereto that the Buyer will assume possession of the premises at the time closing occurs.
11. **AGENCY AND COMMISSIONS:** The Buyer and the Seller represent and warrant to each other that no brokerage fee or real estate commission will be due as a result of the sale of the Property or as a result of the respective actions on either the Buyer or the Seller. Each party agrees to indemnify, defend and hold the other party harmless from and against any and all claims, damages or liability (including reasonable attorneys fees) resulting from or relating to the breach of the foregoing representation. The terms and covenants of this paragraph will survive the closing.
12. **RISK OF LOSS:** The risk of loss or damage by fire or other casualty prior to closing shall be upon Seller. If the Property is materially damaged prior to closing, Buyer may terminate this contract by written notice delivered to Seller and all deposits will be returned to Buyer.
13. **ASSIGNMENTS:** This contract may not be assigned without the written consent of all parties, but if assigned by agreement, then this contract shall be binding on the assignee and his heirs and successors.
14. **PARTIES:** This contract shall be binding upon and shall inure to the benefit of the parties, (i.e. Buyer and Seller) and their respective heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
15. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.
16. **ENTIRE AGREEMENT:** This contract contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed herein. All

changes, additions or deletions hereto must be in writing and signed by all parties

17. EXECUTION; COUNTERPARTS: This offer shall become a binding contract when signed by both Buyer and Seller. This contract is executed under seal in signed multiple originals, all of which together constitute one and the same instrument, with a signed original being retained by each party and the parties adopt the word "SEAL" beside their signatures below.

In witness whereof, the parties have executed this agreement as set forth herein below.

BUYER:

SELLER:

SAND LIFE, LLC

TOWN OF KILL DEVIL HILLS

(SEAL)
By: _____, Member/Manager

(SEAL)
By: Debora P. Diaz, Town Manager

DATE: _____

DATE: _____