

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Director  
Dare County Tourism Board

\_\_\_\_\_  
Finance Director  
Town of Nags Head

**AGREEMENT FOR PURCHASE AND SALE OF LAND**  
(Soundside Event Site)

**THIS AGREEMENT**, including any and all addenda attached hereto (“Agreement”), is by and between the Dare County Tourism Board, a North Carolina public authority created by the North Carolina General Assembly (“Buyer”), and the Town of Nags Head, a North Carolina municipal corporation (“Seller”).

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

**Section 1. Terms and Definitions:** The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) **“Property”**: See attached Exhibit A, together with all buildings and improvements thereon and all fixtures and appurtenances thereto.

(b) **“Purchase Price”** shall mean the sum of \$2,336,107.00. The Purchase Price shall be paid over the time period set forth on the attached Exhibit A. Upon receipt of each payment toward the Purchase Price, Seller shall convey to Buyer a Special Warranty deed for the undivided interests associated with such payment, all as set forth on Exhibit A.

(c) **“Closing”** shall mean the date of completion of the process detailed in Section 11 of this Agreement. Closing shall occur on the dates set forth on Exhibit A. The term “Closing” shall include all closing dates set forth on Exhibit A. Time is of the essence as to each and every Closing date set forth on Exhibit A.

(d) **“Contract Date”** means the date this Agreement has been fully executed by both Buyer and Seller.

(e) **“Seller’s Notice Address”** shall be as follows: Attention Town Manager, PO Box 99, 5401 S. Croatan Hwy. Nags Head, NC 27959, email andy.garman@nagsheadnc.gov; with a required copy to Robert B. Hobbs, Jr., Hornthal, Riley, Ellis & Maland, LLP, 2502 S. Croatan Hwy, Nags Head, NC 27959, rhobbs@hrem.com; all except as same may be changed pursuant to Section 12.

(f) **“Buyer’s Notice Address”** shall be as follows: Attention Executive Director, 1 Visitors Center Circle, Manteo, NC 27954, email nettles@outerbanks.org; with a required copy to W. Jay Wheless, Wheless & Wheless, PLLC, P.O. Box 500, 101 S, Hwy 64, Manteo, NC 27954, jay@whelesslawfirm.com; all except as same may be changed pursuant to Section 12.

**Section 2. Sale of Property and Payment of Purchase Price:** Seller agrees to sell, and Buyer agrees to buy the Property for the Purchase Price as set forth on Exhibit A.

**Section 3. Proration of Expenses and Payment of Costs:** The Property is exempt from ad valorem property taxes. The sale contemplated by this Agreement is exempt from the State and County excise tax/transfer tax. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller’s obligations under this Agreement. Buyer shall pay recording costs, costs of any title search, title insurance, survey, and the cost of any inspections or investigations undertaken by Buyer under this Agreement, Each party shall pay its own attorney’s fees.

**Section 4. Memorandum of Understanding.** The Parties previously entered into a Memorandum of Understanding dated April 14, 2015 (the “MOU”) pertaining to the ownership and management of the Property. The terms and provisions of the MOU are incorporated herein by reference and shall continue to remain in full force and effect during the term of this Agreement unless expressly provided otherwise in this Agreement. In the event of a conflict in terms between the MOU and this Agreement with regard to the operation, management and development of the Property during the term of this Agreement, the MOU shall control. In the event of a conflict in terms between the MOU and this Agreement with respect to the Seller’s sale of its interest in the Property to the Buyer during the term of this Agreement, this Agreement shall control.

**Section 5. Evidence of Title:** Seller agrees to convey marketable fee simple insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than the following: utility easements and unviolated covenants, conditions or restrictions that do not materially affect the value of the Property; and such other liens, encumbrances or defects as may be assumed or specifically approved by Buyer in writing (collectively the "Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

**Section 6. Conditions:** This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property. In the event that such title examination shall show that Seller's title is not fee simple insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement. If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(b) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement, or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

(c) **Intentionally deleted.**

**Section 7. No Leases.** Buyer and Seller represent that the Property is not encumbered by or subject to any long-term leases. No one has any right of possession of the Property other than Seller and Buyer, except for third parties holding short-term public events on the Property as authorized by Seller and/or Buyer in the ordinary course of operating the Property.

**Section 8. Environmental/Physical Aspects of Property:** Seller makes no representations or warranties concerning the presence or disposal, except as in accordance with applicable law, within any structures on the Property or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to: those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317), (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller makes no representations or warranties concerning any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

**Section 9. Risk of Loss/Damage/Repair:** The MOU designates the Buyer as the party solely responsible for the management and development of the Property as well as "all financial responsibility" for the Property and all "liability as to the uses and activities made" on the Property during the term of the MOU. As a result, the Parties reaffirm that the sole risk of loss, liability or damage to the Property shall be borne by Buyer during the term of this Agreement. Seller shall have no responsibility for managing or insuring the Property. Seller shall have no responsibility of liability with respect to use, repairs or replacement of improvements installed or constructed on the Property, all pursuant to the MOU.

**Section 10. Intentionally deleted.**

**Section 11. Closings:** At or before each of the Closing Dates set forth on Exhibit A, Seller shall deliver to Buyer a special warranty deed for the undivided interests specified or calculated according to Exhibit A and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall cause to be delivered the funds necessary to pay to Seller the Purchase Price. All of the Closings shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Until the entire Purchase Price is paid in full, possession of the Property by the parties shall continue under the arrangement in existence between the parties prior to the Contract Date. The Purchase Price and other funds to be

disbursed pursuant to this Agreement shall not be disbursed until the Buyer's attorney's (or other designated settlement agent's) receipt of authorization to disburse all necessary funds.

**Section 12. Notices:** Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing (which shall include electronic mail) and shall be deemed to have been properly given and received (i) on the date delivered in person or (ii) the date deposited in the United States mail, registered or certified, return receipt requested, to the addresses set out in Section 1(e) as to Seller, and in Section 1(f) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith, (iii) at such time as the sender performs the final act to send such transmission, in a form capable of being processed by the receiving party's system, to any electronic mail address or facsimile number, if any, provided in Section 1(e) as to Seller, and in Section 1(f) as to Buyer or (iv) on the date deposited with a recognized overnight delivery service, addressed to the addresses set out in Section 1(e) as to Seller, and in Section 1(f) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith. If a notice is sent by more than one method, it will be deemed received upon the earlier of the dates of receipt pursuant to this Section.

**Section 13. Counterparts; Entire Agreement:** This Agreement may be executed in one or more counterparts, which taken together, shall constitute one and the same original document. Copies of original signature pages of this Agreement may be exchanged via facsimile or e-mail, and any such copies shall constitute originals. This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

**Section 14. Enforceability:** This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that notice given in accordance with Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

**Section 15. Intentionally deleted.**

**Section 16. Other Documents and Instruments.** Seller shall, at or within ninety (90) days after each Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

**Section 17. Applicable Law:** This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

**Section 18. No Assignment:** This Agreement may not be assigned without the written consent of all parties, but if assigned by agreement, then this Agreement shall be binding on the assignee and assignee's heirs and successors.

**Section 19. Intentionally deleted.**

**Section 20. Memorandum of Contract:** Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

**Section 21. Authority:** Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

**Section 22. No Brokers:** Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

**Section 23. Attorneys' Fees:** If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys' fees and court costs incurred in connection with the proceeding.

**Section 24. Limitation on Buyer's Obligation:** Should local, state or federal laws prohibit the Buyer's performance, disband the Buyer or repeal the Buyer's enabling legislation, then the Buyer shall have no obligation to fulfill the terms and obligations of this Agreement, including, but not limited to closing any purchase transaction or paying sums outlined herein. If the Buyer's authority hereunder is limited or terminated, then this Agreement shall be void as of the effective date of said ordinance, law or regulation and the Buyer shall be forgiven all performance obligations that are its responsibility under this Agreement. Nothing in this Section 24 shall be interpreted to mean that the Board of Directors or Executive Director of the Buyer has the power or authority to unilaterally limit or terminate the Buyer's obligations under this Agreement; the term "local laws" as used in this Section 24 is intended to mean laws enacted by a public body having jurisdiction that is neither the Seller nor Buyer.

**Section 25. Limitation on Seller's Obligation:** Should local, state or federal laws prohibit the Seller's performance, disband the Seller or repeal the Seller's charter, then the Seller shall have no obligation to fulfill the terms and obligations of this Agreement, including, but not limited to closing any purchase transaction or paying sums outlined herein. If the Seller's authority hereunder is limited or terminated, then this Agreement shall be void as of the effective date of said ordinance, law or regulation and the Seller shall be forgiven all performance obligations that are its responsibility under this Agreement. Nothing in this Section 25 shall be interpreted to mean that the Board of Commissioners or Town Manager of the Seller has the power or authority to unilaterally limit or terminate the Seller's obligations under this Agreement; the term "local laws" as used in this Section 25 is intended to mean laws enacted by a public body having jurisdiction that is neither the Seller nor Buyer.

**BUYER:**

DARE COUNTY TOURISM BOARD

BY: \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_\_\_

Title: \_\_\_\_\_

**SELLER:**

TOWN OF NAGS HEAD

BY: \_\_\_\_\_ Date: \_\_\_\_\_, 20\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**(See attached)**

**EXHIBIT A**

**Outline of Transaction between the Town of Nags Head and the Dare County Tourism Board for the Soundside Event Site**

<b>Seller:</b> Town of Nags Head	<b>Buyer:</b> Dare County Tourism Board
<b>Property:</b> Lots 1, 2 and 3, Forbes Commercial Lots (6906-6900-6800 S. Croatan Highway, Nags Head, NC) (Dare County Tax Parcels 012422000, 012422001 and 008854000)	
<b>Purchase Price:</b> \$2,336,107.00	<b>Initial Closing Date:</b> June 30, 2021

Parcel	Agreed Percentage of the Sales Price <sup>1</sup>	Seller's Current Interest	Buyer's Current Interest
012422000 (Lot 1) and 012422001 (Lot 2)	41.33%	17.949%	82.051%
008854000 (Lot 3)	58.67%	34.783%	65.217%

Closing Date <sup>2</sup>	Minimum Payment <sup>3</sup>	Form of Consideration	Seller's Undivided Interest (Percentage) Conveyance of Lots 1 & 2 <sup>3</sup>	Seller's Undivided Interest (Percentage) Conveyance of Lot 3 <sup>3</sup>
6/30/2021	\$600,000.00	Cash	4.610%	8.934%
6/30/2022	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid
6/30/2023	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid
6/30/2024	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid
6/30/2025	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid
6/30/2026	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid

**EXHIBIT A**

**Outline of Transaction between the Town of Nags Head and the Dare County Tourism Board for the Soundside Event Site**

Closing Date <sup>2</sup>	Minimum Payment <sup>3</sup>	Form of Consideration	Seller's Undivided Interest (Percentage) Conveyance of Lots 1 & 2 <sup>3</sup>	Seller's Undivided Interest (Percentage) Conveyance of Lot 3 <sup>3</sup>
6/30/2027	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid
6/30/2028	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid
6/30/2029	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid
6/30/2030	\$100,000.00	Cash	Percentage to be calculated based on actual amount paid	Percentage to be calculated based on actual amount paid
6/30/2031	Balance remaining of \$2,336,107.00	Cash	Balance remaining of 17.949%	Balance remaining of 34.783%
<b>Totals</b>	<b>\$2,336,107.00</b>		<b>17.949%</b>	<b>34.783%</b>

<sup>1</sup> Calculated based on relative ad valorem Dare County property tax values of 24.93% for Lot 1, 16.40% for Lot 2, and 58.67% for Lot 3 as of the Contract Date.

<sup>2</sup> The Closing Date may be earlier than June 30 if requested by Buyer and with reasonable advance written notice to Seller. If June 30 of any stated year falls on a Saturday, Sunday or holiday, the Closing Date shall be the last business day of the then-current fiscal year ending June 30.

<sup>3</sup> Buyer may pay more than the minimum annual payment, and to the extent a larger payment is made, the undivided interest percentage to be conveyed by the Seller to the Buyer for that year will be calculated accordingly. For example, the percentages associated with the initial payment of \$600,000 were calculated as follows:

\$600,000 is 25.684% of the Purchase Price  
 Lots 1 & 2: 17.949% \* 25.684% = 4.610%  
 Lot 3: 34.783% \* 25.684% = 8.934%