



**RESOLUTION AUTHORIZING SALE BY UPSET BID PURSUANT TO  
N.C. GEN. STAT. SECTION 160A-269**

WHEREAS, the Town of Nags Head owns certain property located at 430 W. Health Center Drive, Nags Head, Dare County, N.C. 27959, being all of those parcel(s) with the following Tax Identification Number(s): PIN: 989205173779LH (Parcel No.: 00403000); and PIN: 989205173779 (Parcel No.: 004033001) and more particularly described on Exhibit A attached hereto and incorporated herein by reference, (the "Property"); and

WHEREAS, North Carolina General Statute 160A-269 permits a Town to receive and propose to accept an offer to purchase property and advertise it for upset bids; and

WHEREAS, the Town has received an offer from the Peak Realty Nags Head LLC ("Peak") to purchase the property; and

WHEREAS, the Property is subject to a lease by which the Town is the Lessor and Peak Resources Nags Head LLC is the Lessee (the "Lease"); and

WHEREAS, the Board of Commissioners for the Town of Nags Head (the "Board") wishes to ensure that the Property will continue to be used as a long-term skilled care nursing facility or to otherwise ensure that a long-term skilled care nursing facility remains located somewhere in Dare County, North Carolina;

WHEREAS, the Board will only consider transferring ownership to the Property under conditions that ensure a long-term skilled care nursing facility will remain in operation at the Property or elsewhere in Dare County, North Carolina;

WHEREAS, the Board of Commissioners for Nags Head wishes to accept the offer received from Peak;

WHEREAS, the Town has determined that the Property should be sold through an upset bid process and that the Town should advertise the offer received for upset bids.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for the Town that:

1. The Town of Nags Head proposes to accept the offer of Peak Realty Nags Head LLC to purchase the Property on all of the following terms:
  - A. Payment to the Town of an amount not less than \$4,000.00.
  - B. Buyer shall complete the capital improvements to the Property in an amount not less than \$2,609,591.00 (which amount includes the Tar River Expenditures) as set forth in that Lease Amendment dated October 7, 2016 (a copy of the Lease, and amendment, being attached to this resolution as Exhibit B);
  - C. Buyer shall assume and honor the Lease;
  - D. Buyer, its successors and assigns, will agree to re-convey, for \$100, fee simple title to the Property, but not the Certificate of Need issued in connection with the Property (the "CON"), in the event that prior to October 1, 2051:
    - (i) The Property is used for any purpose other than the Use specified in Paragraph 26 of the Lease, as amended from time to time, but Buyer, its successors or assigns operates a long-term skilled care nursing facility located elsewhere in Dare County, North Carolina; or
    - (ii) The Property is voluntarily closed (i.e. operations as a skilled nursing facility cease and/or removal of furniture, fixtures and equipment) for a period in excess of ninety (90) consecutive days (except for reasons of casualty, rebuilding, repairing or re-fixturing or other matters beyond Buyer's

reasonable control), but the CON is used in connection with a long-term skilled nursing care facility located elsewhere in Dare County, North Carolina.

- E. Buyer, its successors and assigns, will re-convey for \$100, fee simple title to the Property, along with the Certificate of Need issued in connection with the Property (the "CON"), in the event that prior to October 1, 2051:
- (i) The Property is used for any purpose other than the permitted Use specified in Paragraph 26 of the Lease, as amended from time to time, and the CON is not used in connection with a long-term skilled care nursing facility located elsewhere in Dare County, North Carolina; or
  - (ii) The Property is voluntarily closed (i.e. removal of furniture, fixtures and equipment) for a period in excess of ninety (90) consecutive days (except for reasons of casualty, rebuilding, repairing or refixturing or other matters beyond Buyer's reasonable control), and the CON is not used in connection with a long-term skilled care nursing facility located elsewhere in Dare County, North Carolina.
- F. Pursuant to the Lease Amendment referenced in Section 1(B) above and Exhibit B attached hereto, Buyer shall at its sole cost and expense, complete the Capital Improvements, and (ii) reimburse Lessee, within 30 days of such closing, for all amounts invested by Lessee in the completion of Capital Improvements, including, without limitation, the Tar River Expenditures. For example, assume that on November 1, 2016, Lessor transfers title to the Property to a third party purchaser ("Purchaser/New Lessor"). If, as of such closing date, Lessee had invested \$2,000,000.00 in the Capital Improvements then Purchaser/New Lessor shall, thereafter: (i) complete, at its sole expense, all remaining Capital Improvements according to **Schedule B** of the Lease and, (ii) by December 1, 2016, reimburse Lessee for the \$2,000,000.00 actually expended by Lessee in connection with the Capital Improvements. However, in no event shall Lessor have any obligation to collect the reimbursement amount set forth above or to enforce the reimbursement provisions of this section.
- G. The North Carolina Department of Commerce must authorize and/or approve the Town's transfer of the Colony Ridge Facility without violating any provisions of the Building Reuse Program Grant or requiring any payment from the Town in connection with such transfer.

This offer shall be subject to the upset bid procedure set forth in N.C. Gen. Stat. Section 160A-269.

2. The Clerk to the Board of Commissioners shall cause publication of a notice of the receipt of an offer to purchase the Property subject to the upset bid procedure. The notice shall describe the property and the amount and other material terms of the offer received, and shall state the terms under which the offer may be upset.
3. Persons wishing to upset the offer that has been received shall submit a sealed bid with their offer to the office of the Clerk to the Board of Commissioners by 5:00 p.m. on the 10th day after the notice is published. At the conclusion of the 10-day period, the Clerk to the Board of Commissioners shall open the bids, 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.
5. If a qualifying higher bid is received, the Clerk to the Board of Commissioners 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.
6. A qualifying higher bid is one that includes all of the material terms set forth in Paragraph 1 B through G above and raises the existing offer set forth in Paragraph 1 A above by not less than 10 percent (10%) of the first \$1,000 of that offer and 5 percent (5%) of the remainder of that offer.
7. 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 without interest the deposit on any bid not accepted, and will return without interest the deposit on an offer subject to upset if a qualifying higher bid is received. The Town will return the deposit of the final high bidder without interest at closing.

8. The terms of the final sale are that the buyer must pay for purchase of the Property with cash, cashier's check or certified check at the time of closing, the Buyer accepts all of the material terms set forth in Paragraph 1 B through G above, and that the Property is sold by special warranty deed and is sold AS IS and subject to the Lease.

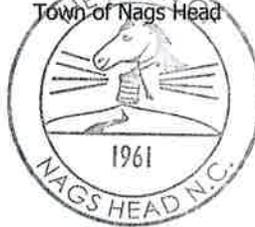
9. The Town reserves the right to withdraw the property from sale at any time and the right to reject any and all offers at any time.

10. The North Carolina Department of Commerce must authorize and/or approve the Town's transfer of the Colony Ridge Facility without violating any provisions of the Building Reuse Program Grant or requiring any payment from the Town in connection with such transfer.

11. This resolution is effective upon its adoption.

ADOPTED the 2<sup>nd</sup> day of November 2016.

  
Robert C. Edwards, Mayor  
Town of Nags Head



ATTEST:

  
Carolyn E. Morris, Town Clerk