# AGREEMENT TO AMEND CONTRACT

OF THIS AGREEMENT
The Town of Holden Beach, a municipal corporation, as Buyer, and
Holden Beach Fishing Pier, Inc. an active North Carolina Corporation by and through President Guilford W. Bass, Sr.
as Seller, have entered into a contract on the Offer to Purchase and Contract (form 2-T) or the Offer to Purchase and Contract
Vacant Lot/Land (form 12-T) ("Contract") regarding the purchase and sale of the following property (insert property address): 44
Ocean Blvd Holden Beach, NC 28462("Property").
Buyer and Seller hereby agree to amend the Contract as set forth below [check applicable box(es)]:
Purchase Price. The Purchase Price is hereby changed from: \$
☑ (Additional) Earnest Money. The (Additional) Earnest Money Deposit is hereby changed from: \$25,000.00 to: \$35,000.00.
☐ (Additional) Earnest Money Deposit Date: The date by which the (Additional) Earnest Money Deposit shall be paid to Escrov Agent is hereby changed to extend through 5:00 p.m. on:
☐ Building Deposit. The Building Deposit is hereby changed from: \$ to
□ Due Diligence Period. The expiration date of the Due Diligence Period is hereby changed to extend through 5:00 p.m. of, TIME BEING OF THE ESSENCE. □ Escrow Agent. The Escrow Agent is hereby changed to:
NOTE: use the ESCROW AGENT ACKNOWLEDGMENT OF RECEIPT OF EARNEST MONEY DEPOSIT
Settlement Date. The Settlement Date is hereby changed to: March 28, 2022. (check only if the following also will apply) The Delay in Settlement/Closing paragraph in the Contract is hereby amended for the sole purpose of changing the permitted time a Delaying Party may delay in completing Settlement and Closing from seven (7) days to four (4) days.
Expenses. The amount Seller shall pay at Settlement toward Buyer's expenses associated with the purchase of the Property is to:
<ul> <li>☐ Home Warranty. The Home Warranty paragraph of the Contract is hereby changed to provide as follows:</li> <li>☐ No home warranty is to be provided by Seller.</li> <li>☐ Buyer may obtain a one-year home warranty at a cost not to exceed \$ which includes sales tax and Seller agrees to pay for it at Settlement.</li> </ul>
All terms and conditions of the Contract not specifically amended herein shall remain in full force and effect.
Page 1 of 2

REALIOR®

This form jointly approved by:
North Carolina Bar Association

North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.

Buyer Initials:

Seller Initials:



FORM 4-T Revised 7/2021 © 7/2021 THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

Buyer:	Date	Seller:	Date
Buyer:	Date	Seller:	Date
Entity Buyer The Town of Holden Beach (Name of LLC/Corporation/Partnership)  By:  Name: Rick Smith	/Trust/etc.)	Entity Seller:  Holden Beach Fish (Name of LLC/Corp  By:  Name: Guilford W.	poration/Partnership/Trust/etc.)
Title: Mayor Pro Tem  Date: 2 16 22		Title: <u>President</u>	25. 202

## **Heather Finnell**

From:

Joe Futima < Joe.Futima@nctreasurer.com>

Sent:

Wednesday, February 2, 2022 3:26 PM

To:

Heather Finnell

Subject:

RE: Holden Beach Property Purchase

Thank you Heather.

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812

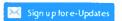


Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: Heather Finnell < heather@hbtownhall.com>

Sent: Wednesday, February 2, 2022 3:16 PM
To: Joe Futima < Joe. Futima@nctreasurer.com>
Subject: RE: Holden Beach Property Purchase

Mr. Futima,

Attached is a copy of the contract and amendment for the purchase of the pier. The Board should also be discussing the contract terms today so if anything changes, I will let you know.

Heather Finnell, CMC, NCCMC

Town Clerk
Town of Holden Beach
heather@hbtownhall.com
telephone: (910) 842-6488

From: David Hewett < david.hewett@hbtownhall.com>

Sent: Wednesday, February 2, 2022 2:53 PM
To: Heather Finnell < heather@hbtownhall.com >
Subject: Fwd: Holden Beach Property Purchase

Sent from my iPhone

Begin forwarded message:

From: Joe Futima < Joe. Futima@nctreasurer.com >

Date: February 2, 2022 at 10:57:12 AM EST

To: David Hewett < david.hewett@hbtownhall.com > Subject: RE: Holden Beach Property Purchase

David,

Sorry for the delay. With the February meeting over we have been able to refocus on this. Do you happen to have a draft of the sales contract we take a look at? Thanks,

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812

North Carolina ——
Department of State Treasurer

Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604

www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: David Hewett < david.hewett@hbtownhall.com>

Sent: Tuesday, February 1, 2022 11:50 AM
To: Joe Futima < Joe. Futima@nctreasurer.com >
Subject: RE: Holden Beach Property Purchase

#### Joe

Just following up to see if internal LGC discussions had provided for further guidance for the Town? David

From: Joe Futima < <u>Joe.Futima@nctreasurer.com</u>>
Sent: Thursday, January 27, 2022 12:17 PM

To: David Hewett < david.hewett@hbtownhall.com > Subject: RE: Holden Beach Property Purchase

Sorry David. I had started a draft of an email and hit send by accident. There will be one forthcoming as we discuss the financing more internally.

Joe Futima

Financial Analyst State and Local Government Finance Division 3200 Atlantic Avenue, Raleigh, NC 27604

Phone: (919) 814 4284 Fax: (919) 855 5812



Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com





Sign up for e-Updates

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: David Hewett < david.hewett@hbtownhall.com >

Sent: Thursday, January 27, 2022 12:15 PM
To: Joe Futima < Joe. Futima@nctreasurer.com >
Subject: RE: Holden Beach Property Purchase

Joe

There isn't any text in your email to me?

From: Joe Futima < <u>Joe.Futima@nctreasurer.com</u>>
Sent: Thursday, January 27, 2022 11:06 AM

To: David Hewett < david.hewett@hbtownhall.com >

Subject: Holden Beach Property Purchase

David,

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Phone: (919) 814 428 Fax: (919) 855 5812

North Carolina — Department of State Treasurer

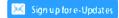
Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604

www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

## OFFER TO PURCHASE AND CONTRACT

For valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Buyer offers to purchase and Seller upon acceptance agrees to sell and convey the Property on the terms and conditions of this Offer To Purchase and Contract and any addendum or modification made in accordance with its terms (together the "Contract").

- 1. TERMS AND DEFINITIONS: The terms listed below shall have the respective meaning given them as set forth adjacent to each
  - (a) "Seller": Holden Beach Fishing Pier Inc., an active North Carolina Corporation by and through President Guilford W. Bass Sr.
  - (b) "Buyer": The Town of Holden Beach, a municipal corporation established pursuant to N.C.G.S
  - (c) "Property": The Property shall include all that real estate described below together with all appurtenances thereto including the improvements located thereon and the fixtures and personal property listed in Paragraphs 2 and 3 below.

Street Address: 441 Ocean Blvd. City: Holden Beach Zip: 28462

County: Brunswick, North Carolina

NOTE: Governmental authority over taxes, zoning, school districts, utilities and mail delivery may differ from address shown.

Legal Description:

Lot One:

Being Approximately 2.5 Acres as shown on Plat Book/Slide 6 at Page: 7

The PIN/PID or other identification number of the Property is: 246DB001

Other description: Being 300 feet of ocean frontage lying between said Ocean Boulevard and the Atlantic Ocean

Some or all of the Property may be described in Deed Book 150 at Page 179

Some or all of the Property is shown on Attachment A to this Contract.

Lot Two:

Being Approximately.30 Acres as shown on Plat Book 2.5 at Page 240

The PIN/PID or other identification number of the Property is: 246DB002

Other description: Being 50 feet of ocean frontage lying between said Ocean Boulevard and the Atlantic Ocean

Some or all of the Property may be described in Deed Book 174 at Page 182

Some or all of the Property is shown on Attachment A to this Contract.

(d) "	Purc	hase	Pr	ice"	:
-------	------	------	----	------	---

<i>,</i>	dichase frice .	
\$_	3,250,000.00	paid in U.S. Dollars upon the following terms:
\$_	25,000.00	BY DUE DILIGENCE FEE made payable and delivered to Seller by the Effective
\$_	25,000.00	Date BY INITIAL EARNEST MONEY DEPOSIT made payable and delivered to Escrow Agent named in Paragraph 1(f) by a cash personal check official bank check wire transfer, electronic transfer, EITHER with this offer OR within five
\$_		(5) days of the Effective Date of this Contract.  BY (ADDITIONAL) EARNEST MONEY DEPOSIT made payable and delivered to
		Escrow Agent named in Paragraph I(f) by cash, official bank check, wire transfer or electronic transfer no later than 5 p.m. on, TIME BEING OF THE ESSENCE.
<b>\$</b> _		BYASSUMPTION of the unpaid principal balance and all obligations of Seller on the existing loan(s) secured by a deed of trust on the Property in accordance with the
\$_		attached Loan Assumption Addendum (Standard Form 2A6-T).  BY SELLER FINANCING in accordance with the attached Seller Financing Addendum (Standard Form 2A5-T).
\$_	3,200,000.00	BALANCE of the Purchase Price in cash at Settlement (some or all of which may be paid with the proceeds of a new loan)

Should Buyer fail to deliver either the Due Diligence Fee or any Initial Earnest Money Deposit by their due dates, or should any check or other funds paid by Buyer be dishonored, for any reason, by the institution upon which the payment is drawn, Buyer shall have one (1) banking day after written notice to deliver cash, official bank check, wire transfer or electronic transfer to the payee. In the event Buyer does not timely deliver the required funds, Seller shall have the right to terminate this Contract upon written notice to Buyer.

- (e) "Earnest Money Deposit": The Initial Earnest Money Deposit, the Additional Earnest Money Deposit and any other earnest monies paid or required to be paid in connection with this transaction, collectively the "Earnest Money Deposit", shall be deposited and held in escrow by Escrow Agent until Closing, at which time it will be credited to Buyer, or until this Contract is otherwise terminated. In the event: (1) this offer is not accepted; or (2) a condition of any resulting contract is not satisfied, then the Earnest Money Deposit shall be refunded to Buyer. In the event of breach of this Contract by Seller, the Earnest Money Deposit shall be refunded to Buyer upon Buyer's request, but such return shall not affect any other remedies available to Buyer for such breach. In the event of breach of this Contract by Buyer, the Earnest Money Deposit shall be paid to Seller. The payment of the Earnest Money Deposit to Seller and the retention of any Due Diligence Fee by Seller (without regard to their respective amounts, including zero) together shall serve as liquidated damages ("Liquidated Damages") and as Seller's sole and exclusive remedy for such breach, but without limiting Seller's rights under Paragraphs 4(e) and 4(f) for damage to the Property. It is acknowledged by the parties that the amount of the Liquidated Damages is compensatory and not punitive, such amount being a reasonable estimation of the actual loss that Seller would incur as a result of a breach of this Contract by Buyer. The payment to Seller and/or retention by Seller of the Liquidated Damages shall not constitute a penalty or forfeiture but actual compensation for Seller's anticipated loss, both parties acknowledging the difficulty determining Seller's actual damages for such breach. If legal proceedings are brought by Buyer or Seller against the other to recover the Earnest Money Deposit, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.
- (f) "Escrow Agent": Richard F. Green Attorney at Law, PLLC 2998 Holden Beach Rd SW. Holden Beach, NC 28462

  Buyer and Seller consent to disclosure by the Escrow Agent of any material facts pertaining to the Earnest Money Deposit to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

NOTE: In the event of a dispute between Seller and Buyer over the disposition of the Earnest Money Deposit held in escrow, a licensed real estate broker ("Broker") is required by state law (and Escrow Agent, if not a Broker, hereby agrees) to retain the Earnest Money Deposit in the Escrow Agent's trust or escrow account until Escrow Agent has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. Alternatively, if a Broker or an attorney licensed to practice law in North Carolina ("Attorney") is holding the Earnest Money Deposit, the Broker or Attorney may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

THE PARTIES AGREE THAT A REAL ESTATE BROKERAGE FIRM ACTING AS ESCROW AGENT MAY PLACE THE EARNEST MONEY DEPOSIT IN AN INTEREST BEARING TRUST ACCOUNT AND THAT ANY INTEREST EARNED THEREON SHALL BE DISBURSED TO THE ESCROW AGENT MONTHLY IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

- (g) "Effective Date": The date that: (1) the last one of Buyer and Seller has signed or initialed this offer or the final counteroffer, if any, and (2) such signing or initialing is communicated to the party making the offer or counteroffer, as the case may be. The parties acknowledge and agree that the initials lines at the bottom of each page of this Contract are merely evidence of their having reviewed the terms of each page, and that the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement.
- (h) "Due Diligence": Buyer's opportunity to investigate the Property and the transaction contemplated by this Contract, including but not necessarily limited to the matters described in Paragraph 4 below, to decide whether Buyer, in Buyer's sole discretion, will proceed with or terminate the transaction.
- (i) "Due Diligence Fee": A negotiated amount, if any, paid by Buyer to Seller with this Contract for Buyer's right to terminate the Contract for any reason or no reason during the Due Diligence Period. It shall be the property of Seller upon the Effective Date and shall be a credit to Buyer at Closing. The Due Diligence Fee shall be non-refundable except in the event of a material breach of this Contract by Seller, or if this Contract is terminated under Paragraph 11(n) or as otherwise provided in any addendum hereto. Buyer and Seller each expressly waive any right that they may have to deny the right to conduct Due Diligence or to assert any defense as to the enforceability of this Contract based on the absence or alleged insufficiency of any Due Diligence Fee, it being the intent of the parties to create a legally binding contract for the purchase and sale of the Property without regard to the existence or amount of any Due Diligence Fee.
- (j) "Due Diligence Period": The period beginning on the Effective Date and extending through 5:00 p.m. on OCTOBER 1, 2021
- (k) "Settlement": The proper execution and delivery to the closing attorney of all documents necessary to complete the transaction contemplated by this Contract, including the deed, settlement statement, deed of trust and other loan or conveyance documents, and the closing attorney's receipt of all funds necessary to complete such transaction.

(l) "Settlement Date": The parties agree that Settlement will take place on OCTOBER 29, 2021 (the "Settlement Date"), unless otherwise agreed in writing, at a time and place designated by Buyer.

NOTE: See paragraph, DELAY IN SETTLEMENT/CLOSING for conditions under which Settlement may be delayed.

(m) "Closing": The completion of the legal process which results in the transfer of title to the Property from Seller to Buyer, which includes the following steps: (1) the Settlement (defined above); (2) the completion of a satisfactory title update to the Property following the Settlement; (3) the closing attorney's receipt of authorization to disburse all necessary funds; and (4) recordation in the appropriate county registry of the deed(s) and deed(s) of trust, if any, which shall take place as soon as reasonably possible for the closing attorney after Settlement. Upon Closing, the proceeds of sale shall be disbursed by the closing attorney in accordance with the settlement statement and the provisions of Chapter 45A of the North Carolina General Statutes. If the title update should reveal unexpected liens, encumbrances or other title defects, or if the closing attorney is not authorized to disburse all necessary funds, then the Closing shall be suspended and the Settlement deemed delayed under Paragraph "Delay in Settlement/Closing".

#### 2. FIXTURES AND EXCLUSIONS:

WARNING: THE PARTIES SHOULD NOT ASSUME THAT AN ITEM WILL OR WILL NOT BE INCLUDED IN THE SALE BASED ON AN ORAL OR WRITTEN STATEMENT OR UNDERSTANDING THAT IS NOT A PART OF THIS CONTRACT. BUYER AND SELLER SHOULD BE SPECIFIC WHEN NEGOTIATING WHAT ITEMS WILL BE INCLUDED OR EXCLUDED FROM THE SALE.

- (a) Fixtures Are Included in Purchase Price: ALL EXISTING FIXTURES ARE INCLUDED IN THE SALE AS PART OF THE PURCHASE PRICE, FREE OF LIENS, UNLESS EXCLUDED IN SUBPARAGRAPHS (d) OR (e).
- (b) Specified Items: Buyer and Seller agree that the following items shall be included in the sale as part of the Purchase Price free of liens, unless excluded in subparagraphs (d) or (e) below. ALL ITEMS LISTED BELOW INCLUDE BOTH TRADITIONAL AND "SMART" VERSIONS AND ANY EXCLUSIVELY DEDICATED, RELATED EQUIPMENT AND/OR REMOTE CONTROL DEVICES.
  - Alarm and security systems (attached) for security, fire, smoke, carbon monoxide or other toxins with all related access codes, sensors, cameras, dedicated monitors, hard drives, video recorders, power supplies and cables; doorbells/chimes
  - All stoves/ranges/ovens; built-in appliances; attached microwave oven; vent hood
  - · Antennas; satellite dishes and receivers
  - Basketball goals and play equipment (permanently attached or in-ground)
  - Ceiling and wall-attached fans; light fixtures (including existing bulbs)
  - Fireplace insert; gas logs or starters; attached fireplace screens; wood or coal stoves
  - Floor coverings (attached)
  - Fuel tank(s) whether attached or buried and including any contents that have not been used, removed or resold to the fuel provider as of Settlement. NOTE: Seller's use, removal or resale of fuel in any fuel tank is subject to Seller's obligation under to provide working, existing utilities through the earlier of Closing or possession by Buyer. NOTE: State law provides that it is unlawful for any person, other than the supplier or the owner of a fuel supply tank, to disconnect, interrupt or fill the supply tank with liquefied petroleum gas (LP gas or propane) without the consent of the supplier.

- · Garage door openers
- Generators that are permanently wired
- Invisible fencing with power supply
- Landscape and outdoor trees and plants (except in moveable containers); raised garden; landscape and foundation lighting; outdoor sound systems; permanent irrigation systems; rain barrels; landscape water features; address markers
- Mailboxes; mounted package and newspaper receptacles
- Mirrors attached to walls, ceilings, cabinets or doors; all bathroom wall mirrors
- Storage shed; utility building
- · Swimming pool (excluding inflatable); spa; hot tub
- Solar electric and solar water heating systems
- Sump-pumps, radon fans and crawlspace ventilators; dehumidifiers that are permanently wired
- Surface-mounting brackets for television and speakers; recess-mounted speakers; mounted intercom system
- Thermostats
- Water supply equipment, including filters, conditioning and softener systems; re-circulating pumps; well pumps and tanks
- Window/Door blinds and shades, curtain and drapery rods and brackets, door and window screens and combination doors, awnings and storm windows

(c) Unpairing/deleting data from devices: Prior to Closing, Seller shall "unpair" any devices that will convey from any personal property devices (hubs, intelligent virtual assistants, mobile devices, vehicles, etc.) with which they are paired, delete personal data from any devices that will convey, and restore all devices to factory default settings unless otherwise agreed.

NOTE: ANY FIXTURE OR OTHER ITEM DESCRIBED IN SUBPARAGRAPHS (a) AND (b) THAT WILL NOT BE A PART OF THE SALE SHOULD BE IDENTIFIED IN SUBPARAGRAPHS (d) OR (e), AS APPLICABLE.

(d) Items Leased or Not Owned: Any item which is leased or not owned by Seller, such as fuel tanks, antennas, satellite dishes at receivers, appliances, and alarm and security systems must be identified here and shall not convey:			
(c) Other Items That Do Not Convey: The following items shall not convey (identify those items to be excluded un subparagraphs (a) and (b)):			
Seller shall repair any damage caused by removal of any items excluded above.			
3. PERSONAL PROPERTY: The following personal property shall be transferred to Buyer at no value at closing:			
NOTE: ANY PERSONAL PROPERTY THAT WILL BE A PART OF THE SALE SHOULD BE IDENTIFIED IN THIS			

PARAGRAPH. Buyer is advised to consult with Buyer's lender to assure that the Personal Property items listed above can be included in this Contract.

# 4. BUYER'S DUE DILIGENCE PROCESS:

WARNING: BUYER IS STRONGLY ENCOURAGED TO CONDUCT DUE DILIGENCE DURING THE DUE DILIGENCE PERIOD. If Buyer is not satisfied with the results or progress of Buyer's Due Diligence, Buyer should terminate this Contract, PRIOR TO THE EXPIRATION OF THE DUE DILIGENCE PERIOD, unless Buyer can obtain a written extension from Seller. SELLER IS NOT OBLIGATED TO GRANT AN EXTENSION. Although Buyer may continue to investigate the Property following the expiration of the Due Diligence Period, Buyer's failure to deliver a Termination Notice to Seller prior to the expiration of the Due Diligence Period will constitute a waiver by Buyer of any right to terminate this Contract based on any matter relating to Buyer's Due Diligence. Provided however, following the Due Diligence Period, Buyer may still exercise a right to terminate if Seller fails to materially comply with any of Seller's obligations under this Contract or for any other reason permitted under the terms of this Contract or North Carolina law.

(a) Loan: Buyer, at Buyer's expense, shall be entitled to pursue qualification for and approval of the Loan if any.

(b) Property Investigation: Buyer or Buyer's agents or representatives, at Buyer's expense, shall be entitled to conduct all desired tests, surveys, appraisals, investigations, examinations and inspections of the Property as Buyer deems appropriate, including but NOT limited to the following:

(i) Inspections: Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, conducting timber cruises, and surveying the Property; provided, however, that Buyer shall not conduct any invasive testing of any nature without the prior express written approval of Seller as to each specific invasive test intended to be conducted by Buyer. Buyer shall conduct all such on-site inspections, examinations, testing, timber cruises and surveying of the Property in a good and workmanlike manner, at Buyer's expense, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours Seller's or any tenant's business is open to the public. Buyer shall provide Seller or any tenant (as applicable) reasonable advance notice of and Buyer shall cause its agents or representatives and third party service providers (e.g. inspectors, surveyors, etc.) to give reasonable advance notice of any entry onto the Property. Buyer shall be obligated to observe and comply with any terms of any tenant lease which conditions access to such tenant's space at the Property. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other

agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law, and the same shall be regarded as confidential, to any person, except to its attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself and its agents or representatives in exercising its rights under this Section and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Except as provided above, Buyer shall have from the Contract Date through the end of the Due Diligence Period to perform the above inspections, examinations and testing. IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE DUE DILLIGENCE, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.

(ii) Review of Documents: Review of the Declaration of Restrictive Covenants, Bylaws, Articles of Incorporation, Rules and Regulations, and other governing documents of any applicable owners' association and/or subdivision. If the Property is subject to regulation by an owners' association, it is recommended that Buyer review the completed Residential Property and Owners' Association Disclosure Statement provided by Seller prior to signing this offer. It is also recommended that the Buyer determine if the owners' association or its management company charges fees for providing information required by Buyer's lender or confirming restrictive covenant compliance.

(iii) Insurance: Investigation of the availability and cost of insurance for the Property.

(iv) Appraisals: An appraisal of the Property.

(v) Survey: A survey to determine whether the property is suitable for Buyer's intended use and the location of easements, setbacks, property boundaries and other issues which may or may not constitute title defects.

(vi) Zoning and Governmental Regulation: Investigation of current or proposed zoning or other governmental regulation that may affect Buyer's intended use of the Property, adjacent land uses, planned or proposed road construction, and school attendance zones.

(vii) Flood Hazard: Investigation of potential flood hazards on the Property, and/or any requirement to purchase flood insurance in order to obtain the Loan

(viii) Utilities and Access: Availability, quality, and obligations for maintenance of utilities including water, sewer, electric, gas, communication services, stormwater management, and means of access to the Property and amenities.

(ix) Streets/Roads: Investigation of the status of the street/road upon which the Property fronts as well as any other street/road used to access the Property, including: (1) whether any street(s)/road(s) are public or private, (2) whether any street(s)/road(s) designated as public are accepted for maintenance by the State of NC or any municipality, or (3) if private or not accepted for public maintenance, the consequences and responsibility for maintenance and the existence, terms and funding of any maintenance agreements.

(x) Fuel Tank: Inspections to determine the existence, type and ownership of any fuel tank located on the Property.

(xi) Business Records: Seller shall provide any financial documentation requested by the Town, including but not limited to profit and loss statements and reported sales tax submissions of the last 10 years. These documents and information shall remain confidential between the Buyer and Seller and will not be disclosed by the Town as permitted by law.

- (c) Sale/Lease of Existing Property: As noted in herein, unless otherwise provided in an addendum, this Contract is not conditioned upon the sale/lease or closing of other property owned by Buyer. Therefore, if Buyer must sell or lease other real property in order to qualify for a new loan or to otherwise complete the purchase of the Property, Buyer should seek to close on Buyer's other property prior to the end of the Due Diligence Period or be reasonably satisfied that closing on Buyer's other property will take place prior to the Settlement Date of this Contract.
- (d) Repair/Improvement Negotiations/Agreement: Buyer acknowledges and understands that unless the parties agree otherwise, THE PROPERTY IS BEING SOLD IN ITS CURRENT CONDITION. Buyer and Seller acknowledge and understand that they may, but are not required to, engage in negotiations for repairs/improvements to the Property. Buyer is advised to make any repair/improvement requests in sufficient time to allow repair/improvement negotiations to be concluded prior to the expiration of the Due Diligence Period. Any agreement that the parties may reach with respect to repairs/improvements shall be considered an obligation of the parties and is an addition to this Contract and as such, must be in writing and signed by the parties in accordance with the terms and conditions contained herein.

NOTE: See Paragraph "Access to Property" and Paragraph "Negotiated Repairs/Improvements."

(e) Buyer's Obligation to Repair Damage: Buyer shall, at Buyer's expense, promptly repair any damage to the Property resulting from any activities of Buyer and Buyer's agents and contractors, but Buyer shall not be responsible for any damage caused by accepted practices either approved by the N.C. Home Inspector Licensure Board or applicable to any other N.C. licensed professional performing reasonable appraisals, tests, surveys, examinations and inspections of the Property. This repair obligation shall survive any termination of this Contract.

- (f) Indemnity: Buyer will indemnify and hold Seller harmless from all loss, damage, claims, suits or costs, which shall arise out of any contract, agreement, or injury to any person or property as a result of any activities of Buyer and Buyer's agents and contractors relating to the Property except for any loss, damage, claim, suit or cost arising out of pre-existing conditions of the Property and/or out of Seller's negligence or willful acts or omissions. This indemnity shall survive this Contract and any termination hereof.
- (g) Buyer's Right to Terminate: Buyer shall have the right to terminate this Contract for any reason or no reason, by delivering to Seller written notice of termination (the "Termination Notice") during the Due Diligence Period (or any agreed-upon written extension of the Due Diligence Period), TIME BEING OF THE ESSENCE. If Buyer timely delivers the Termination Notice, this Contract shall be terminated and the Earnest Money Deposit shall be refunded to Buyer.
- (h) CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE PROPERTY IN ITS THEN EXISTING CONDITION UNLESS PROVISION IS OTHERWISE MADE IN WRITING.
- 5. DELIVERIES: Seller agrees to use best efforts to deliver to Buyer, as soon as reasonably possible after the execution of the Contract copies of all material information relevant to the Property in the possession of Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all hard copy materials delivered by Seller to Buyer if any, and shall, upon Seller's request, following release of the Earnest Money, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof. Notwithstanding the above provisions regarding delivery and return of information and documentation, should there exist a separate non-disclosure, confidentiality, or similar agreement between Buyer and Seller, the terms of which conflict with this provision insofar as delivery and return of information and documentation, then the terms of such non-disclosure, confidentiality, or similar agreement shall control as to the delivery and return of information and documentation.

# 6. LEASES (Check one of the following, as applicable):

- ☐ If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.
- ☐ If this box is checked, Seller discloses that there are one or more leases affecting the Property ("Leases"), and the following provisions are hereby made a part of this Agreement.
- (a) A list of all Leases shall be set forth and attached to this Contract as **EXHIBIT A**. Seller represents and warrants that, as of the Contract Date, there are no other Leases, oral or written, recorded or not, nor any subleases affecting the Property, except as set forth on **EXHIBIT A**
- (b) Scller shall deliver copies of any Leases to Buyer as if the Leases were listed therein;
- (c) Seller represents and warrants that, as of the Contract Date, there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant, could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with this provision. Seller agrees not to commit a Lease Default as Landlord after the Contract Date; and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.
- (d) In addition to the conditions provided in this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease). Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. The assignment shall provide: (i) that Seller shall defend, indemnify and hold Buyer harmless from claims, losses, damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Buyer which are caused by or the result of any default by Seller under any Lease prior to the date of Closing, and (ii) that Buyer shall defend, indemnify and hold Seller harmless from claims, losses,

damages and liabilities (including, without limitation, court costs and attorneys' fees) asserted against or incurred by Seller which are caused by or the result of any default by Buyer under any Lease after the date of Closing.

- (e) Seller also agrees to work diligently to obtain any tenant signatures on any estoppel certificates in such form as Buyer may reasonably request and to work diligently to obtain any subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.
- 7. ENVIORNMENTAL: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings 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 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 has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

#### 8. BUYER REPRESENTATIONS:

- (a) LOAN: Buyer DOES intend to obtain a loan. Pursuant to NCGS 159-148, any financing agreement must be approved by the North Carolina Local Government Commission (hereinafter "LGC"). This Purchase Contract IS CONDITIONED upon the Town of Holden Beach obtaining final approval from the LGC. The Town of Holden Beach hereby agrees to act as prudent as possible in obtaining such approval so as not to delay the Closing. The Seller hereby agrees that should the Town of Holden Beach be denied final approval by the LGC, regardless of whether such denial comes after the Due Diligence Date, the Seller hereby agrees to refund the Earnest Money Deposit within 5 days of receipt of the Town's written intent to terminate, but shall be entitled to keep the Due Diligence Fee.
- (b) Other Property: Buyer DOES X DOES NOT have to sell or lease other real property in order to qualify for a new loan or to complete the purchase.
- (c) Performance of Buyer's Financial Obligations: To the best of Buyer's knowledge, there are no other circumstances or conditions existing as of the date of this offer that would prohibit Buyer from performing Buyer's financial obligations in accordance with this Contract, except as may be specifically set forth herein.
- (d) Mineral and Oil and Gas Rights Mandatory Disclosure Statement (check only one):
- ☐ Buyer has received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to the signing of this offer.
- X Buyer has NOT received a signed copy of the N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement prior to the signing of this offer and shall have the right to terminate or withdraw this Contract without penalty (including a refund of any Due Diligence Fee) prior to WHICHEVER OF THE FOLLOWING EVENTS OCCURS FIRST: (1) the end of the third calendar day following receipt of the Disclosure Statement; (2) the end of the third calendar day following the Effective Date; or (3) Settlement or occupancy by Buyer in the case of a sale or exchange.
- Exempt from N.C. Mineral and Oil and Gas Rights Mandatory Disclosure Statement because (SEE GUIDELINES):

Buyer's receipt of a Mineral and Oil and Gas Rights Mandatory Disclosure Statement does not modify or limit the obligations of Seller under this Contract and shall not constitute the assumption or approval by Buyer of any severance of mineral and/or oil and gas rights, except as may be assumed or specifically approved by Buyer in writing.

### 9. BUYER OBLIGATIONS:

- (a) Responsibility for Proposed Special Assessments: Buyer shall take title subject to all Proposed Special Assessments.
- (b) Responsibility for Certain Costs: Buyer shall be responsible for all costs with respect to:
  - (i) any loan obtained by Buyer, including charges by an owners association and/or management company as agent of an owners' association for providing information required by Buyer's lender;
  - (ii) charges required by an owners' association declaration to be paid by Buyer for Buyer's future use and enjoyment of the Property, including, without limitation, working capital contributions, membership fees, or charges for Buyer's use of the common elements and/or services provided to Buyer, such as "move-in fees";
  - (iii) determining restrictive covenant compliance;
  - (iv) appraisal;
  - (v) title search;
  - (vi) title insurance;

- (vii) any fees charged by the closing attorney for the preparation of the Closing Disclosure, Seller Disclosure and any other settlement statement;
- (viii) recording the deed; and
- (ix) preparation and recording of all instruments required to secure the balance of the Purchase Price unpaid at Settlement.
- (c) Authorization to Disclose Information: Buyer authorizes the Buyer's lender(s), the parties' real estate agent(s) and closing attorney: (1) to provide this Contract to any appraiser employed by Buyer or by Buyer's lender(s); and (2) to release and disclose any buyer's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).

## 10. SELLER REPRESENTATIONS:

- (a) Ownership: Seller represents that Seller:
- X has owned the Property for at least one year.
- ☐ has owned the Property for less than one year.
- does not yet own the Property.

(b) Lead-Based Paint (check if applicable):

- The Property is residential and was built prior to 1978 (Attach Lead-Based Paint or Lead-Based Paint Hazards Disclosure Addendum (Standard Form 2A9-T)).
- (c) <u>Seller Knowledge/Assessments</u>: Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

Note: For purposes of this Agreement: (i) a "special assessment" is defined as a charge against the Property by a governmental authority in addition to ad valorem taxes and recurring governmental service fees levied with such taxes, or by an owners' association in addition to any regular assessment (dues), either of which may be a lien against the Property; a special assessment may be either pending or confirmed; (ii) .a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether, at the time of Closing, it is payable in a lump sum or future installments; (iii) a "pending" special assessment is defined as an assessment that is under formal consideration by a governmental agency or an owners' association but which has not been approved prior to Closing. Seller shall pay, in full at Closing, all confirmed governmental or association special assessments, provided that the amount thereof can be reasonably determined or estimated. The payment of such determined or estimated amount shall be the final payment between Buyer and Seller as to any confirmed special assessments. If the amount of any special assessment cannot be reasonably determined or estimated, the special assessment shall be deemed a pending special assessment. Buyer shall take title subject to all pending special assessments disclosed by Seller herein, if any.

- (d) <u>Compliance</u>: To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.
- (e) Owners' Association(s) and Dues: Seller authorizes and directs any owners' association, any management company of the owners' association, any insurance company and any attorney who has previously represented the Seller to release to Buyer, Buyer's agents, representative, closing attorney or lender true and accurate copies of the following items affecting the Property, including any amendments:
- Seller's statement of account
- master insurance policy showing the coverage provided and the deductible amount
- Declaration and Restrictive Covenants
- Rules and Regulations
- Articles of Incorporation
- Bylaws of the owners' association
- current financial statement and budget of the owners' association
- parking restrictions and information
- architectural guidelines

(specify name of association):	Militara magnilar
assessments ("dues") are \$ per the owners' association or the association manager is:	. The name, address and telephone number of the president of
Owners' association website address, if any:	

### 11. SELLER OBLIGATIONS:

(a) Evidence of Title, Payoff Statement(s) and Non Foreign Status:

(i) Seller agrees to use best efforts to provide to the closing attorney as soon as reasonably possible after the Effective Date, copies of all title information in possession of or available to Seller, including but not limited to: title insurance policies, attorney's opinions on title, surveys, covenants, deeds, notes and deeds of trust, leases, and easements relating to the Property.

(ii) Seller shall provide to the closing attorney all information needed to obtain a written payoff statement from any lender(s) regarding any security interest in the Property as soon as reasonably possible after the Effective Date, and Seller designates the closing attorney as Seller's agent with express authority to request and obtain on Seller's behalf payoff statements and/or

short-pay statements from any such lender(s).

- (iii) If Seller is not a foreign person as defined by the Foreign Investment in Real Property Tax Act, Seller shall also provide to the closing attorney a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act). In the event Seller shall not provide a non-foreign status affidavit, Seller acknowledges that there may be withholding as provided by the Internal Revenue Code.
- (b) Authorization to Disclose Information: Seller authorizes: (i) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; (ii) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys and (iii) the closing attorney to release and disclose any seller's closing disclosure, settlement statement and/or disbursement summary, or any information therein, to the parties to this transaction, their real estate agent(s) and Buyer's lender(s).
- (c) Access to Property: Seller shall provide reasonable access to the Property through the earlier of Closing or possession by Buyer, including, but not limited to, allowing Buyer and/or Buyer's agents or representatives, an opportunity to (i) conduct Due Diligence, (ii) verify the satisfactory completion of negotiated repairs/improvements, and (iii) conduct a final walk-through inspection of the Property. Seller's obligation includes providing existing utilities operating at Seller's cost, including any connections and de-winterizing.

NOTE: See WARNING in above for limitation on Buyer's right to terminate this Contract as a result of Buyer's continued investigation of the Property following the expiration of the Due Diligence Period.

- (d) Removal of Seller's Property: Seller shall remove, by the date possession is made available to Buyer, all personal property which is not a part of the purchase and all garbage and debris from the Property.
- (e) Affidavit and Indemnification Agreement: Seller shall furnish at Settlement an affidavit(s) and indemnification agreement(s) in form satisfactory to Buyer and Buyer's title insurer, if any, executed by Seller and any person or entity who has performed or furnished labor, services, materials or rental equipment to the Property within 120 days prior to the date of Settlement and who may be entitled to claim a lien against the Property as described in N.C.G.S. §44A-8 verifying that each such person or entity has been paid in full and agreeing to indemnify Buyer, Buyer's lender(s) and Buyer's title insurer against all loss from any cause or claim arising therefrom.
- (f) Designation of Lien Agent, Payment and Satisfaction of Liens: If required by N.C.G.S. §44A-11.1, Seller shall have designated a Lien Agent, and Seller shall deliver to Buyer as soon as reasonably possible a copy of the appointment of Lien Agent. All deeds of trust, deferred ad valorem taxes, liens and other charges against the Property, not assumed by Buyer, must be paid and satisfied by Seller prior to or at Settlement such that cancellation may be promptly obtained following Closing. Seller shall remain obligated to obtain any such cancellations following Closing.
- (g) Good Title, Legal Access: Seller shall execute and deliver a GENERAL WARRANTY DEED for the Property in recordable form no later than Settlement, which shall convey fee simple marketable and insurable title, without exception for mechanics' liens, and free of any other liens, encumbrances or defects, including those which would be revealed by a current and accurate survey of the Property, except: ad valorem taxes for the current year (prorated through the date of Settlement); 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. The Property must have legal access to a public right of way.

- (h) Deed, Taxes and Fees: Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Contract, and for state and county excise taxes, and any deferred, discounted or rollback taxes, and local conveyance fees required by law. The deed is to be made to: The Town of Holden Beach
- (i) Agreement to Pay Buyer Expenses: Seller shall pay at Settlement \$ toward any of Buyer's expenses associated with the purchase of the Property, at the discretion of Buyer and/or lender, if any, including any FHA/VA lender and inspection costs that Buyer is not permitted to pay.
- (j) Owners' Association Fees/Charges: Seller shall pay: (i) any fees required for confirming Seller's account payment information on owners' association dues or assessments for payment or proration; (ii) any fees imposed by an owners' association and/or a\_management company as agent of the owners' association in connection with the transaction contemplated by this Contract other than those fees required to be paid by Buyer as stated above; and (iii) fees incurred by Seller in completing the Residential Property and Owners' Association Disclosure Statement, and resale or other certificates related to a proposed sale of the Property.
- (k) Payment of Confirmed Special Assessments: Seller shall pay, in full at Settlement, all Confirmed Special Assessments, whether payable in a lump sum or future installments, provided that the amount thereof can be reasonably determined or estimated. The payment of such estimated amount shall be the final payment between the Parties.
- (1) Late Listing Penalties: All property tax late listing penalties, if any, shall be paid by Seller.
- (m) Negotiated Repairs/Improvements: Negotiated repairs/improvements shall be made in a good and workmanlike manner and Buyer shall have the right to verify same prior to Settlement.
- (n) Seller's Failure to Comply or Breach: If Seller fails to materially comply with any of Seller's obligations under this Contract or Seller materially breaches this Contract, and Buyer elects to terminate this Contract as a result of such failure or breach, then the Earnest Money Deposit and the Due Diligence Fee shall be refunded to Buyer and Seller shall reimburse to Buyer the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence without affecting any other remedies. If legal proceedings are brought by Buyer against Seller to recover the Earnest Money Deposit, the Due Diligence Fee and/or the reasonable costs actually incurred by Buyer in connection with Buyer's Due Diligence, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorney fees and court costs incurred in connection with the proceeding.
- 12. PRORATIONS AND ADJUSTMENTS: Unless otherwise agreed, the following items shall be prorated, with Seller responsible for the prorated amounts through the date of Settlement, and either adjusted between the parties or paid at Settlement:
  - (a) Taxes on Real Property: Ad valorem taxes and recurring governmental service fees levied with such taxes on real property shall be prorated on a calendar year basis;
  - (b) Taxes on Personal Property: Ad valorem taxes on personal property for the entire year shall be paid by Seller unless the personal property is conveyed to Buyer, in which case, the personal property taxes shall be prorated on a calendar year basis;
  - (c) Rents: Rents, if any, for the Property;
  - (d) Dues: Owners' association regular assessments (dues) and other like charges.
- 13. RISK OF LOSS/CONDITION OF PROPERTY AT CLOSING: The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. Seller is advised not to cancel existing insurance on the Property until after confirming recordation of the deed. Buyer's obligation to complete the transaction contemplated by this Contract shall be contingent upon the Property being in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted. If the Property is not in substantially the same or better condition at Closing as on the date of this offer, reasonable wear and tear excepted, Buyer may terminate this Contract by written notice delivered to Seller and the Earnest Money Deposit shall be refunded to Buyer. If the Property is not in such condition and Buyer does NOT elect to terminate this Contract, Buyer shall be entitled to receive, in addition to the Property, the proceeds of any insurance claim filed by Seller on account of any damage or destruction to the Property. In the event of a natural disaster, hurricane or other "act of God" that causes the Property not to be in substantially the same condition

AT CLOSING as of the date of the offer then Buyer may elect to terminate this Agreement and receive a return of the Earnest Money.

14. DELAY IN SETTLEMENT/CLOSING: Absent agreement to the contrary in this Contract or any subsequent modification thereto, if a party is unable to complete Settlement by the Settlement Date but intends to complete the transaction and is acting in good faith and with reasonable diligence to proceed to Settlement ("Delaying Party"), and if the other party is ready, willing and able to complete Settlement on the Settlement Date ("Non-Delaying Party") then the Delaying Party shall give as much notice as possible to the Non-Delaying Party and closing attorney and shall be entitled to a delay in Settlement. If the parties fail to complete Settlement and Closing within fourteen (14) days of the Settlement Date (including any amended Settlement Date agreed to in writing by the parties) or to otherwise extend the Settlement Date by written agreement, then the Delaying Party shall be in breach and the NonDelaying Party may terminate this Contract and shall be entitled to enforce any remedies available to such party under this Contract for the breach.

15. ADDENDA: CHECK ALL STANDARD ADDENDA THAT MAY ATTACH HERETO. ITEMIZE ALL OTHER ADDENDA TO THIS CONT	' BE A PART OF THIS CONTRACT, IF ANY, AND FRACT, IF ANY, AND ATTACH HERETO.
□ Additional Provisions Addendum (Form 2A11-T) □ Additional Signatures Addendum (Form 3-T) □ Back-Up Contract Addendum (Form 2A1-T) □ FHA/VA Financing Addendum (Form 2A4-T) □ Lead-Based Paint Or Lead-Based Paint Hazard Addendum (Form 2A9-T) □ Loan Assumption Addendum (Form 2A6-T) □ Identify other attorney or party drafted addenda:	<ul> <li>New Construction Addendum (Form 2A3-T)</li> <li>○ Owners' Association Disclosure and Condominium Resale Statement Addendum (Form 2A12-T)</li> <li>○ Seller Financing Addendum (Form 2A5-T)</li> <li>○ Short Sale Addendum (Form 2A14-T)</li> <li>○ Vacation Rental Addendum (Form 2A13-T)</li> </ul>
= 135mily office another of party drafted addenda:	

- 16. ASSIGNMENTS: This Contract may not be assigned without the written consent of all parties except in connection with a tax-deferred exchange, but if assigned by agreement, then this Contract shall be binding on the assignee and assignee's heirs and successors.
- 17. PARTIES: This Contract shall be binding upon and shall inure to the benefit of 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.
- 18. 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.
- 19. 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. Nothing contained herein shall alter any agreement between a REALTOR® or broker and Seller or Buyer as contained in any listing agreement, buyer agency agreement, or any other agency agreement between them.
- 20. CONDUCT OF TRANSACTION: The parties agree that any action between them relating to the transaction contemplated by this Contract may be conducted by electronic means, including the signing of this Contract by one or more of them and any notice or communication given in connection with this Contract. Any written notice or communication may be transmitted to any mailing address, e-mail address or fax number set forth in the "Notice Information" section below. Any notice or communication to be given to a party herein, and any fee, deposit or other payment to be delivered to a party herein, may be given to the party or to such party's agent. Delivery of any notice to a party via means of electronic transmission shall be deemed complete 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 address provided for such party in the "Notice Information" section below. Seller and Buyer agree that the "Notice Information" and "Acknowledgment of Receipt of Monies" sections below shall not constitute a material part of this Contract, and that the addition or modification of any information therein shall not constitute a rejection of an offer or the creation of a counteroffer.
- 21. EXECUTION: This Contract may be signed in multiple originals or counterparts, all of which together constitute one and the same instrument.
- 22. COMPUTATION OF DAYS/TIME OF DAY: Unless otherwise provided, for purposes of this Contract, the term "days" shall mean consecutive calendar days, including Saturdays, Sundays, and holidays, whether federal, state, local or religious. For the purposes of calculating days, the count of "days" shall begin on the day following the day upon which any act or notice as provided in this Contract was required to be performed or made. Any reference to a date or time of day shall refer to the date and/or time of day in the State of North Carolina.

This offer shall become a binding contract on the Effective Date. Unless specifically provided otherwise, Buyer's failure to timely deliver any fee, deposit or other payment provided for herein shall not prevent this offer from becoming a binding contract, provided that any such failure shall give Seller certain rights to terminate the contract as described herein or as otherwise permitted by law.

Holden Beach Fishing Pier, an active NC Corp.	The Town of Holden Beach
Ву	By By
Name: Sulled W. Bass Se.	Name: Gerald Drown Mayor Proton
Title: Degard Bass Sr.	Print Name Title:
Date: 7-30-21	Date: 7-8-21

# WIRE FRAUD WARNING

TO BUYERS: BEFORE SENDING ANY WIRE, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO VERIFY THE INSTRUCTIONS. IF YOU RECEIVE WIRING INSTRUCTIONS FOR A DIFFERENT BANK, BRANCH LOCATION, ACCOUNT NAME OR ACCOUNT NUMBER, THEY SHOULD BE PRESUMED FRAUDULENT. DO NOT SEND ANY FUNDS AND CONTACT THE CLOSING ATTORNEY'S OFFICE IMMEDIATELY.

TO SELLERS: IF YOUR PROCEEDS WILL BE WIRED, IT IS RECOMMENDED THAT YOU PROVIDE WIRING INSTRUCTIONS AT CLOSING IN WRITING IN THE PRESENCE OF THE ATTORNEY. IF YOU ARE UNABLE TO ATTEND CLOSING, YOU MAY BE REQUIRED TO SEND AN ORIGINAL NOTARIZED DIRECTIVE TO THE CLOSING ATTORNEY'S OFFICE CONTAINING THE WIRING INSTRUCTIONS. THIS MAY BE SENT WITH THE DEED, LIEN WAIVER AND TAX FORMS IF THOSE DOCUMENTS ARE BEING PREPARED FOR YOU BY THE CLOSING ATTORNEY. AT A MINIMUM, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE TO PROVIDE THE WIRE INSTRUCTIONS. THE WIRE INSTRUCTIONS SHOULD BE VERIFIED OVER THE TELEPHONE VIA A CALL TO YOU INITIATED BY THE CLOSING ATTORNEY'S OFFICE TO ENSURE THAT THEY ARE NOT FROM A FRAUDULENT SOURCE.

WHETHER YOU ARE A BUYER OR A SELLER, YOU SHOULD CALL THE CLOSING ATTORNEY'S OFFICE AT A NUMBER THAT IS INDEPENDENTLY OBTAINED. TO ENSURE THAT YOUR CONTACT IS LEGITIMATE, YOU SHOULD NOT RELY ON A PHONE NUMBER IN AN EMAIL FROM THE CLOSING ATTORNEY'S OFFICE, YOUR REAL ESTATE AGENT OR ANYONE ELSE.

# **NOTICE INFORMATION**

NOTE: INSERT AT LEAST ONE ADDRESS AND/OR ELECTRONIC DELIVERY ADDRESS EACH PARTY AND AGENT APPROVES FOR THE RECEIPT OF ANY NOTICE CONTEMPLATED BY THIS CONTRACT. INSERT "N/A" FOR ANY WHICH ARE NOT APPROVED.

Mailing Address: 441 Ocean Blvd. West Holden Beach NC 28462  Buyer Fax#:  Buyer E-mail:	Mailing Address: 110 Rothschild Street Holden Beach NC 28462  Seller Fax#: 910-842-9315  Seller E-mail: heather@hbtownhall.com
CONFIRMATION OF A	GENCY/NOTICE ADDRESSES
Listing Firm Name: Acting as Seller's Agent	
Firm License #:	
Mailing Address:	
Individual Selling Agent:	
Sciling Agent License #:	
Selling Agent Phone #:	
Selling Agent Fax #:	
Selling Agent E-mail:	

[THIS SPACE INTENTIONALLY LEFT BLANK]

ACKNOW;	LEDGMENT OF RECEIPT OF MONIES
Seller: Holden Beach Fis	hing Pier
Buyer: Town of Holden	Bew.h
Property Address: 441 Octan	RIVE (1) Holds Raid 1/1
I LISTING AGENT ACKNOWLEDGMENT O	OF RECEIPT OF DUE DILIGENCE FEE
to Seller of a Due Diligence Fee in the amount of \$_	of RECEIPT OF DUE DILIGENCE FEE  ict between Buyer and Seller for the sale of the Property provides for the payme, receipt of which Listing Agent hereby acknowledges.
Date	
	Firm:
	By:(Signature)
	(Print name)
SELLER ACKNOWLEDGMENT OF RECED	
to Seller of a Due Diligence Fee in the amount of \$	t between Buyer and Seller for the sale of the Property provides for the paymer , receipt of which Seller hereby acknowledges.
<b>.</b> .	(Signature)
Date	Seller:
	(Signature)
O ESCION Agent of an Initial Engage Manage	between Buyer and Seller for the sale of the Property provides for the payment in the amount of \$\frac{25}{00}\$. Escrow Agent as identified in Paragraph converges receipt of the Initial Earnest Money Deposit and agrees to hold and
Date_8 · 10 · 2021	Firm: Richard F. Green Attorny Atlaw PLLC
	By: The Alles
	Kotherine Moderne
	(Print name)
Escrow Agent of an /Additional Family	RECEIPT OF (ADDITIONAL) EARNEST MONEY DEPOSIT  etween Buyer and Seller for the sale of the Property provides for the payment  eposit in the amount of \$  Escrow Agent as identified in  the terms of the Offer to Purchase and Canada Earnest Money Deposit and
	to the contract.
ate:	Firm:
ne:	By:
	(Signature)
	(Print name)

STANDARD FORM 2-T Revised 7/2021 © 7/2021

# REQUEST TO AMEND CONTRACT AND ALTERNATIVELY INTENT TO TERMINATE

Holden Beach Fishing Pier, Inc. an active North Carolina Corporation by and through President Guilford W. Bass Sr.; as SELLER, and, The Town of Holden Beach, a municipal corporation established pursuant to NCGS, as BUYER, have entered into a contract on the Offer to Purchase and Contract (hereinafter described as "CONTRACT") regarding the purchase and sale of the following property (hereinafter described as "PROPERTY"):

Street Address:

441 Ocean Blvd. West Holden Beach NC 28462

Legal Description:

### LOT ONE:

Being Approximately 2.5 Acres as shown on Plat Book 6 at Page 7 and being 300 feet of ocean frontage lying between said Ocean Boulevard and the Atlantic Ocean The PIN/PID or identification number of the Property: 246DB001 Some or all of the Property may be described in Deed Book 150 at Page 179

### LOTTWO:

Being Approximately .30 Acres as shown on Plat Book 2.5 at Page 240 and being 50 feet of ocean frontage lying between said Ocean Boulevard and the Atlantic Ocean The PIN/PID or other identification number of the Property is: 246DB002 Some or all of the Property may be described in Deed Book 174 at Page 182

Thus, as stated herein, the BUYER hereby requests to amend the Contract as set forth below:

- (A) The BUYER requests to change the expiration date of Due Diligence to extend through 5:00PM on Friday, November 19, 2021 TIME BEING OF THE ESSENCE.
- (B) The BUYER requests to change the Settlement date to Monday, February 28, 2022, with Paragraph 14 "Delay in Settlement/Closing" remaining in full force and effect as stated in the Contract.

In consideration for granting BUYER's requests stated in paragraphs (A) and (B), above, SELLER requests that BUYER pay an additional Due Diligence Fee of \$50,000.00, to be governed by the terms and provisions of paragraph 1(i) of the CONTRACT which is incorporated herein by reference.

Furthermore, this request is valid until 12:00PM on Friday, October 1, 2021. If there has been no written response to this request by way of acceptance, rejection or counter offer received by Town Attorney Katherine Madon by 12:01PM on Friday, October 1, 2021, the SELLER is hereby notified that the BUYER is therein exercising their unilateral right to terminate the Contract and requesting the release of their Earnest Money Deposit. No further notice of intent toterminate will be required by the BUYER to effectively and fully comply with any written noticerequirement as required in the Contract, specifically as required in Paragraph 4(g).

All terms and conditions of the Contract remain in full force and effect except as modified specifically herein. Particularly, the conditional clause as stated in Paragraph 8(a) regarding North Carolina Local Government (hereinafter "LGC") approval of any financing agreement remains in full force and effect.

Written notice of acceptance, rejection or counter-offer shall be sent to Town Attorney Katherine Madon at kmadon@atmc.net or by way of hand delivery at 2998 Holden Beach Rd SW Holden Beach NC 28462 or by hand delivery to Holden Beach Town Hall located at 110 Rothschild Street Holden Beach NC 28462.

THE TOWN OF HOLDEN BEACH				
By:	42			
Gerald Brown	Mayor Pro-Pem			
Date: 412412021				

I, Guilford W. Bass, as President of Holden Beach Fishing Pier, Inc., and having the full authority to lawfully bind the Corporation and SELLER hereby agree to Amend the Contract as stated above as indicated as my signature below.

HOLDEN BEACH FISHING PIER, INC.

- ) · <u>- 12 · 2</u>	Iw. Bonn	L.
Guildford W	. Bass, President	
Date: /pl.	2121	
Time: 4.45	AM/PM	

The Town of Holden Beach, as BUYER, as indicated by the signature of Mayor Pro-Tem below, hereby agrees to pay the SELLER the consideration as requested herein. The Due Diligence Fee of \$50,000.00 will be governed by the terms and provisions of paragraph 1(i) of the Contract.

THE TOWN OF HOLDEN BEACH	
By: Gerald Brown, Mayor Pro-Tem	12:35
Date:	

## **Heather Finnell**

From:

**David Hewett** 

Sent:

Wednesday, January 19, 2022 3:36 PM

To:

alan holden; Rick Smith; Gerald Brown; Brian Murdoch; Pat K; dawgdr@hotmail.com

Cc:

Richard at Law; Christy Ferguson; Heather Finnell

Subject:

Fwd: LGC Agenda

BOC - fyi

Email from joe Futima -LGC- advising the towns application will not be placed on the Feb agenda. Will coordinate with town attorney, bond counsel and finance advisor for consequences and options.

David

Sent from my iPhone

Begin forwarded message:

From: Joe Futima < Joe. Futima@nctreasurer.com>

Date: January 19, 2022 at 2:48:22 PM EST

To: David Hewett <david.hewett@hbtownhall.com>

Cc: dcarter@decassociatesinc.com, acarter@decassociatesinc.com, Jennifer Wimmer

<Jennifer.Wimmer@nctreasurer.com>

Subject: LGC Agenda

David,

I have reviewed around half of the 260 pages of emails received as part of the public hearing and there is a lot of public opposition to the pier purchase. There is an even greater opposition to the parking plan which is mentioned as a potential source for additional funding for the pier purchase which compounds the issue. In addition there were many concerns about the underwater portion of the pier evaluation not being done and the payback assumptions being less than certain. This is also not to mention the concerns voiced that the Mayor's real estate company is representing the seller in the transaction.

At this point we will not be able to place this item on the LGC agenda for February. These concerns are taken seriously by the Commission and there needs to be more time for the Town to better address them. We will reevaluate the application for a March placement.

Thanks,

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812



Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604

www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

# **Heather Finnell**

From:

Heather Finnell

Sent:

Friday, January 14, 2022 10:18 AM

To:

Joe.Futima@nctreasurer.com

Subject:

Holden Beach Pier Plan

Attachments:

pierplanfinal.pdf; 8Januarypierplan.pdf

Mr. Futima,

David asked me to send the attached plans to you. The first file was approved at the December 21st meeting of the Board of Commissioners and the second one is on the Board's January 18th agenda.

Have a great day!

Heather Finnell, CMC, NCCMC Town Clerk Town of Holden Beach heather@hbtownhall.com

telephone: (910) 842-6488

### **Heather Finnell**

From:

David Hewett

Sent:

Wednesday, March 9, 2022 12:22 PM

To:

Heather Finnell

Subject:

Fwd: Additional Information Request

Sent from my iPhone

Begin forwarded message:

From: Joe Futima < Joe. Futima@nctreasurer.com>

Date: February 23, 2022 at 3:06:59 PM EST

To: David Hewett <david.hewett@hbtownhall.com>

**Subject: RE: Additional Information Request** 

Thanks David.

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284
Fax: (919) 855 5812

North Carolina ——
Department of State Treasurer

Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







Sign up for e-Updates

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: David Hewett <david.hewett@hbtownhall.com>

Sent: Tuesday, February 22, 2022 8:07 PM

To: Joe Futima < Joe. Futima@nctreasurer.com > Subject: Re: Additional Information Request

Joe

The Town Attorney is preparing responses in accordance with your request below. I believe he will have them completed by Thursday.

Thank you.

David

Sent from my iPhone

On Feb 21, 2022, at 3:21 PM, Joe Futima < Joe. Futima@nctreasurer.com > wrote:

David.

As a part of the required documentation for LGC approval of the Town's debt application, please ask the Town Attorney to do the following:

- Add an opinion (as part of the standard attorney letter or as a separate opinion letter) that the sale of the property to the Town:
  - does not violate any applicable laws governing conflicts of interest or ethics, including but not limited to N.C. Gen. Stat. § 14-234, and
  - does not violate any applicable Town ethics or conflicts of interest resolutions, policies or ordinances.
- Acknowledge in the attorney opinion that the Mayor's sworn affidavit dated February 10, 2022 is a sufficient assurance to the Town Attorney that no ethics or conflicts of interest laws, Town resolutions, Town policies, or Town ordinances are being violated. (We noted that items 4, 5, 7, 8, 9, 10 and 13 on the February 10, 2022 affidavit are lacking dates. Is the Mayor able to supply specific dates for those events?)
- Or if the affidavit is not sufficient assurance to the Town attorney, please have the Mayor sign one that the Town Attorney is satisfied with.

The LGC attorney has noted that a public official's spouse is also prohibited from benefiting from a public contract under N.C. Gen. Stat. § 14-234, and the affidavit is silent on that issue. We are looking for statements from the Mayor and the Mayor's spouse (if any) and the Town attorney's opinion that neither the Mayor nor the Mayor's spouse (if any) is receiving any financial benefit from the contract, from having a financial interest either in the real estate listing company or in the seller corporation. (See N.C. Gen. Stat. § 14-234(a1)(4).)

Please submit the above items as soon as possible. Let me know if you have any questions.

Thank you,

Joe Futima

Financial Analyst State and Local Government Finance Division 3200 Atlantic Avenue, Raleigh, NC 27604 Phone: (919) 814 4284

Fax: (919) 855 5812

North Carolina Department of State Treasurer

Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







Sign up for e-Updates

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

## **Heather Finnell**

From:

**David Hewett** 

Sent:

Wednesday, March 9, 2022 12:21 PM

To:

**Heather Finnell** 

Subject:

Fwd: Holden Beach

Sent from my iPhone

Begin forwarded message:

From: Joe Futima < Joe.Futima@nctreasurer.com>
Date: February 16, 2022 at 3:42:02 PM EST
To: Heather Finnell < heather@hbtownhall.com>
Cc: David Hewett < david.hewett@hbtownhall.com>

Subject: RE: Holden Beach

Thanks. We will review and be in touch.

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812

North Carolina ——
Department of State Treasurer

Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: Heather Finnell <heather@hbtownhall.com>
Sent: Wednesday, February 16, 2022 3:35 PM
To: Joe Futima <Joe.Futima@nctreasurer.com>
Cc: David Hewett <david.hewett@hbtownhall.com>

Subject: Holden Beach

Mr. Futima,

Attached is the Town of Holden Beach's response to your email dated January 19, 2022. Please let us know if you need anything further or if you have any questions.

## Thanks!

Heather Finnell, CMC, NCCMC Town Clerk Town of Holden Beach heather@hbtownhall.com telephone: (910) 842-6488

### **Heather Finnell**

From:

**David Hewett** 

Sent:

Wednesday, March 9, 2022 12:21 PM

To:

**Heather Finnell** 

Subject:

Fwd: Holden Beach - Application requested items

### Sent from my iPhone

## Begin forwarded message:

From: Joe Futima < Joe. Futima@nctreasurer.com>

Date: February 16, 2022 at 1:51:36 PM EST

To: Andrew Carter <acarter@decassociatesinc.com>

Cc: David Hewett <david.hewett@hbtownhall.com>, Christy Ferguson

<Christy.Ferguson@hbtownhall.com>, Scott Leo <scottleo@parkerpoe.com>, Carlos Manzano

<carlosmanzano@parkerpoe.com>

Subject: RE: Holden Beach - Application requested items

#### Thanks.

Joe Futima Financial Analyst State and Local Government Finance Division 3200 Atlantic Avenue, Raleigh, NC 27604 Phone: (919) 814 4284

Phone: (919) 814 4284 Fax: (919) 855 5812



Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com

\_\_\_\_

Sign up for e-Updates

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: Andrew Carter <acarter@decassociatesinc.com>

Sent: Wednesday, February 16, 2022 1:41 PM
To: Joe Futima < Joe. Futima@nctreasurer.com>

Cc: David Hewett <david.hewett@hbtownhall.com>; Christy Ferguson

<christy.ferguson@hbtownhall.com>; Scott Leo <scottleo@parkerpoe.com>; Carlos Manzano

<carlosmanzano@parkerpoe.com>

Subject: Holden Beach - Application requested items

Joe,

Attached are some of the items for Holden Beach you requested. Few more items still to come.

Reach out with any questions.

- 1. Bank Bid tab from original bids on January 7, 2022
- 2. Publisher's Affidavit
- 3. Joint Legislative Letter

Andrew Carter Director

DEC Associates Inc. 2133 Southend Drive, Unit 306 Charlotte, NC 28203

(704) 334-7480 (Office) (704) 334-7481 (Fax) (704) 995-3490 (Cell) acarter@decassociatesinc.com

# **Heather Finnell**

From:

David Hewett

Sent:

Wednesday, March 9, 2022 12:21 PM

To:

Heather Finnell

Subject:

Fwd: Holden Beach Property Purchase

Sent from my iPhone

Begin forwarded message:

From: David Hewett <david.hewett@hbtownhall.com>

Date: March 9, 2022 at 12:20:34 PM EST

To: Heather Finnell <heather@hbtownhall.com>
Subject: Fwd: Holden Beach Property Purchase

Sent from my iPhone

Begin forwarded message:

From: Joe Futima < Joe. Futima@nctreasurer.com > Date: February 14, 2022 at 3:32:56 PM EST

To: David Hewett <david.hewett@hbtownhall.com>
Subject: RE: Holden Beach Property Purchase

Thanks David. That will work, we can discuss further later this week.

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812

North Carolina — Department of State Treasurer

Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: David Hewett <david.hewett@hbtownhall.com>

Sent: Monday, February 14, 2022 3:27 PM
To: Joe Futima < Joe. Futima@nctreasurer.com > Subject: RE: Holden Beach Property Purchase

#### Joe,

I am informed that the Board of Commissioners will be further addressing parking and the pier at tomorrow night's meeting. Believe it presumptuous for me to further attempt answering the Commission's concerns until I better understand the HB Board's desire and receive additional guidance on how they wish to proceed on what has now transmuted into a political issue. In the interim please find attached the Mayor's affidavit disavowing any financial interest in the property. I will reengage later this week after the Board meets to compare notes if that is okay.

Thanks David

From: Joe Futima < Joe. Futima @nctreasurer.com >

Sent: Monday, February 7, 2022 9:09 AM

To: David Hewett < david.hewett@hbtownhall.com>

Cc: Jennifer Wimmer < Jennifer.Wimmer@nctreasurer.com >; Sharon Edmundson

<Sharon.Edmundson@nctreasurer.com>
Subject: RE: Holden Beach Property Purchase

### David,

We also wanted follow up on some items that came up in our earlier discussions but will likely also need to be addressed more thoroughly going forward. During the phone call it was mentioned that the purchase was primarily about the ocean front land (public/emergency access) and the pier was just an additional fixture that may or may not be repaired. This makes sense analytically as the cost seems to be justified by the land purchase alone and a plan for maintenance/repair would then be less important to the transaction. Since then, some Town residents have organized an effort in support of the purchase and have called and sent emails to that effect. The majority of them voiced support for keeping or saving the pier with that specifically being the main topic of support. So this raises the question as to whether there would be as much support for the purchase if the pier was more of an afterthought to the transaction. The public perception whether for or against is tied to the pier itself. In this regard we will need to flesh out a little more of the Town's plan for expected usage and the anticipated costs and payback plan.

Thanks,

Joe Futima
Financial Analyst
State and Local Government Finance Division

3200 Atlantic Avenue, Raleigh, NC 27604

Phone: (919) 814 4284 Fax: (919) 855 5812



Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: David Hewett < david.hewett@hbtownhall.com >

Sent: Monday, February 7, 2022 7:24 AM

To: Joe Futima < Joe. Futima@nctreasurer.com >

**Cc:** Sharon Edmundson <<u>Sharon.Edmundson@nctreasurer.com</u>>; Jennifer Wimmer <<u>Jennifer.Wimmer@nctreasurer.com</u>>; Richard at Law <<u>rgreenatty@atmc.net</u>>; Scott

Leo <scottleo@parkerpoe.com>

Subject: Re: Holden Beach Property Purchase

Joe,

We are working on a thorough response to address the 14-234 issues concerning Mayor Holden's role in the proposed transaction in addition to those previously communicated to us. I am optimistic that it will be submitted to you by the end of the week or at latest early next week.

Sincerely David Hewett

Sent from my iPhone

On Feb 3, 2022, at 1:04 PM, Joe Futima < <u>Joe.Futima@nctreasurer.com</u>> wrote:

David,

It has come to our attention that the State Auditor has recently released a report detailing her investigation of a real estate transaction in the Town of Ocean Isle Beach that involved the Mayor and the sale of a Town property.

The report can be found here: https://www.auditor.nc.gov/media/4056/open.

While the details of the transaction differed in a few ways, the findings elucidate our concerns regarding the Mayor's role in the proposed transaction presented to us. A couple of statutory references must be addressed:

Pursuant to North Carolina General Statutes §14-234(a1)(4), a public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract. [Emphasis Added]

Pursuant to North Carolina General Statutes §14-234(a1)(3), a public officer or employee is involved in making a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action.

One particular question we need is answered is whether Mayor Holden's firm is receiving a commission/compensation for the sale of the property even if he is not as an individual agent.

The recent release of the State Auditor's report concerning the Town of Ocean Isle Beach, along with public scrutiny expressed through the public hearing, are matters of concern that the Local Government Commission (of which State Auditor Wood is a member) takes seriously and will take into consideration when contemplating the approval of this financing. We, as staff to the LGC, would highly recommend a thorough response on the part of the Town and Mayor as to the concerns stated in this email.

Thanks,

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812



Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 <a href="https://www.NCTreasurer.com">www.NCTreasurer.com</a>







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

#### STATE OF NORTH CAROLINA

### AFFIDAVIT OF JOHN ALAN HOLDEN

# COUNTY OF BRUNSWICK TOWN OF HOLDEN BEACH

I, John Alan Holden (herein "Affiant"), after first being duly sworn hereby swears or affirms as follows:

- 1. I am the Mayor of the Town of Holden Beach, having been re-elected to that position on November 2, 2021.
- 2. I am the owner, operator, and Broker in charge of Re/Max at the Beach.
- 3. Holden Beach Fishing Pier, Inc. (hereinafter "HBFPI") is an active North Carolina Corporation acting through its president, Guilford W. Bass, Sr.
- 4. At some point HBFPI decided to offer for sale several ocean front lots owned by the Corporation.
- 5. Mr. Bass contracted me to have those lots listed for sale by Re/Max at the Beach.
- 6. Upon the sale of those lots, Re/Max at the Beach would normally receive a seller's commission.
- 7. At some point the Holden Beach Board of Commissioners began to consider the possibility of purchasing some of the properties owned by HBFPI which were listed for sale.
- 8. I advised the Attorney representing the Board of Commissioners that I would not, in any event, accept any real estate commission should the Board decide to purchase any of the lots.
- 9. I further advised the Board of Commissioners in open session that I would not participate in any discussion by the Board involving purchase of the lots owned by HBFPI.
- 10. In addition, I ceased having any communication with Mr. Bass regarding the Board of Commissioners' discussions regarding purchase of the lots.

- 11. On September 23, 2021 the Board, through Mayor Pro tem, Gerald Brown signed an offer to purchase (Lot One) consisting of 2.5 acres as shown on Plat Map 6 at Page 7 (Parcel Id No. 246DB001), and (Lot Two) consisting of approximately .30 acres as shown on Plat Map 2.5 at Page 240 (Parcel Id No. 246DB002) for a total purchase price of \$3,250,000.00.
- 12. I have not received, nor will I, my company or any of my employees ever receive any monetary compensation or other benefit pursuant to the listing agreement with HBFPI, or from the sale of these lots to the Town of Holden Beach.
- 13. Further, as stated above, I have refrained from having any discussions involving the Town Council regarding the prospective purchase of these lots.

This the | day of February, 2022

Signature of Affiant

SWORN TO AND SUBSCRIBED BEFORE ME THIS THE 10 DAY OF FEBRUARY, 2022.

Meather Rose Finneso

MY COMMISSION EXPIRES: 72023

From:

David Hewett

Sent:

Wednesday, March 9, 2022 12:21 PM

To:

Heather Finnell

Subject:

Fwd: Holden Beach Property Purchase

Sent from my iPhone

Begin forwarded message:

From: Joe Futima <Joe.Futima@nctreasurer.com>

Date: February 14, 2022 at 3:32:56 PM EST

To: David Hewett <david.hewett@hbtownhall.com>
Subject: RE: Holden Beach Property Purchase

Thanks David. That will work, we can discuss further later this week.

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812



Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604

www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: David Hewett <david.hewett@hbtownhall.com>

Sent: Monday, February 14, 2022 3:27 PM

**To:** Joe Futima < Joe. Futima@nctreasurer.com > **Subject:** RE: Holden Beach Property Purchase

Joe,

I am informed that the Board of Commissioners will be further addressing parking and the pier at tomorrow night's meeting. Believe it presumptuous for me to further attempt answering the Commission's concerns until I better understand the HB Board's desire and receive additional guidance on how they wish to proceed on what has now transmuted into a political issue. In the interim please find attached the Mayor's affidavit disavowing any financial interest in the property. I will reengage later this week after the Board meets to compare notes if that is okay.

Thanks David

From: Joe Futima < Joe. Futima@nctreasurer.com >

Sent: Monday, February 7, 2022 9:09 AM

To: David Hewett < david.hewett@hbtownhall.com >

Cc: Jennifer Wimmer < <a href="mailto:Jennifer.Wimmer@nctreasurer.com">Jennifer.Wimmer@nctreasurer.com</a>; Sharon Edmundson

<<u>Sharon.Edmundson@nctreasurer.com</u>> **Subject:** RE: Holden Beach Property Purchase

### David,

We also wanted follow up on some items that came up in our earlier discussions but will likely also need to be addressed more thoroughly going forward. During the phone call it was mentioned that the purchase was primarily about the ocean front land (public/emergency access) and the pier was just an additional fixture that may or may not be repaired. This makes sense analytically as the cost seems to be justified by the land purchase alone and a plan for maintenance/repair would then be less important to the transaction. Since then, some Town residents have organized an effort in support of the purchase and have called and sent emails to that effect. The majority of them voiced support for keeping or saving the pier with that specifically being the main topic of support. So this raises the question as to whether there would be as much support for the purchase if the pier was more of an afterthought to the transaction. The public perception whether for or against is tied to the pier itself. In this regard we will need to flesh out a little more of the Town's plan for expected usage and the anticipated costs and payback plan.

Thanks,

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604

Phone: (919) 814 4284 Fax: (919) 855 5812

North Carolina Department of State Treasurer

Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From: David Hewett <david.hewett@hbtownhall.com>

Sent: Monday, February 7, 2022 7:24 AM To: Joe Futima < Joe. Futima@nctreasurer.com >

Cc: Sharon Edmundson <Sharon.Edmundson@nctreasurer.com>; Jennifer Wimmer <<u>Jennifer.Wimmer@nctreasurer.com</u>>; Richard at Law <<u>rgreenatty@atmc.net</u>>; Scott Leo

<scottleo@parkerpoe.com>

Subject: Re: Holden Beach Property Purchase

### Joe,

We are working on a thorough response to address the 14-234 issues concerning Mayor Holden's role in the proposed transaction in addition to those previously communicated to us. I am optimistic that it will be submitted to you by the end of the week or at latest early next week.

Sincerely **David Hewett** 

Sent from my iPhone

On Feb 3, 2022, at 1:04 PM, Joe Futima <a href="mailto:Joe.Futima@nctreasurer.com">Joe.Futima@nctreasurer.com</a> wrote:

David,

It has come to our attention that the State Auditor has recently released a report detailing her investigation of a real estate transaction in the Town of Ocean Isle Beach that involved the Mayor and the sale of a Town property.

The report can be found here: https://www.auditor.nc.gov/media/4056/open.

While the details of the transaction differed in a few ways, the findings elucidate our concerns regarding the Mayor's role in the proposed transaction presented to us. A couple of statutory references must be addressed:

Pursuant to North Carolina General Statutes §14-234(a1)(4), a public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract. [Emphasis Added]

Pursuant to North Carolina General Statutes §14-234(a1)(3), a public officer or employee is involved in making a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is

also involved in making a contract if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action.

One particular question we need is answered is whether Mayor Holden's firm is receiving a commission/compensation for the sale of the property even if he is not as an individual agent.

The recent release of the State Auditor's report concerning the Town of Ocean Isle Beach, along with public scrutiny expressed through the public hearing, are matters of concern that the Local Government Commission (of which State Auditor Wood is a member) takes seriously and will take into consideration when contemplating the approval of this financing. We, as staff to the LGC, would highly recommend a thorough response on the part of the Town and Mayor as to the concerns stated in this email.

Thanks,

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812

North Carolina — Department of State Treasurer

Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From:

David Hewett

Sent:

Wednesday, March 9, 2022 12:20 PM

То:

Heather Finnell

Subject:

Fwd: LGC Agenda

Sent from my iPhone

Begin forwarded message:

From: Joe Futima < Joe. Futima@nctreasurer.com>

Date: January 19, 2022 at 2:48:22 PM EST

Subject: LGC Agenda

David,

I have reviewed around half of the 260 pages of emails received as part of the public hearing and there is a lot of public opposition to the pier purchase. There is an even greater opposition to the parking plan which is mentioned as a potential source for additional funding for the pier purchase which compounds the issue. In addition there were many concerns about the underwater portion of the pier evaluation not being done and the payback assumptions being less than certain. This is also not to mention the concerns voiced that the Mayor's real estate company is representing the seller in the transaction.

At this point we will not be able to place this item on the LGC agenda for February. These concerns are taken seriously by the Commission and there needs to be more time for the Town to better address them. We will reevaluate the application for a March placement.

Thanks,

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue, Raleigh, NC 27604
Phone: (919) 814 4284

Fax: (919) 855 5812

North Carolina ——
Department of State Treasurer

Dale R. Folwell, CPA State Treasurer of North Carolina

3200 Atlantic Avenue, Raleigh, NC 27604 www.NCTreasurer.com







E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law. It may be subject to monitoring and disclosed to third parties, including law enforcement personnel, by an authorized state official. IMPORTANT: When sending confidential or sensitive information, encryption should be used.

From:

Heather Finnell

Sent:

Friday, February 25, 2022 12:16 PM

To:

Christy Ferguson

Subject:

FW: Opinion Letter - Town of Holden Beach

**Attachments:** 

20220225095305124.pdf

Heather Finnell, CMC, NCCMC Town Clerk Town of Holden Beach heather@hbtownhall.com telephone: (910) 842-6488

---Original Message----From: Heather Finnell

Sent: Friday, February 25, 2022 11:16 AM

To: Alan Holden <alan@alanholdenrealty.com>; Rick Smith <rsmith9431@gmail.com>; Brown <geraldbrowngb365@gmail.com>; vccbrian@gmail.com; Page Dyer <dawgdr@hotmail.com>;

pattykwi@gmail.com

Cc: David Hewett <david.hewett@hbtownhall.com> Subject: FW: Opinion Letter - Town of Holden Beach

Dear Commissioners and Mayor Holden,

Please see the note below from Rick. Have a good weekend.

Heather Finnell, CMC, NCCMC Town Clerk Town of Holden Beach heather@hbtownhall.com telephone: (910) 842-6488

—Original Message—

From: Richard Green Attorney at Law <rgreenatty@atmc.net>

Sent: Friday, February 25, 2022 10:54 AM
To: Heather Finnell <heather@hbtownhall.com>
Subject: Fw: Opinion Letter - Town of Holden Beach

Hi Heather,

Please forward this email containing the attachment to the Mayor, the Commissioners, and to David.

Thanks,

Rick Green

----Original Message----

From: Richard Green Attorney at Law

Sent: Friday, February 25, 2022 10:50 AM

To: Joe.Futima@nctreasurer.com

Subject: Opinion Letter - Town of Holden Beach

Dear Joe,

Attached is my opinion letter as requested in your email dated February 21, 2022 sent to Holden Beach Town Manager, David Hewett. I am also sending to you a hard copy of this letter in today's outgoing mail.

Rick Green Attorney for the Town of Holden Beach

----Original Message----From: NOREPLY@atmc.net

Sent: Friday, February 25, 2022 9:53 AM

To: Richard Green

Subject: Message from "MP5055"

This E-mail was sent from "MP5055" (MP 5055).

Scan Date: 02.25.2022 09:53:05 (-0500)

Queries to: NOREPLY@atmc.net

# Richard F. Green

# Attorney at Law, PLLC

2998 Holden Beach Road, SW Holden Beach, NC 28462 greenlaw@atmc.nct

Phone (910) 842-1857

Fax (910)842-1859

February 11, 2022

Joe Futima
Financial Analyst
State and Local Government Finance Division
3200 Atlantic Avenue
Raleigh, NC 27604

Re: Opinion Letter

Dear Mr. Futima:

This will respond to your email of February 21, 2022 transmitted to David Hewett, Manager of the Town of Holden Beach. That email requested my opinion as Town Attorney regarding the ethics and legality of the prospective purchase of the "Holden Beach Pier Property" particularly as it relates to Mayor Alan Holden. That is, Mayor Holden and/or his real estate firm formerly held the real estate listings for properties for sale by Holden Beach Fishing Pier, Inc., (hereinafter "HBFP") which included some of the properties the Town of Holden Beach intends to purchase. I have been present during Town meetings when Mayor Holden has stated publicly that he will receive no commission, benefit or other renumeration from the purchase by the Town of lots currently owned by HBFP.

In support of this opinion, I have reviewed NCGS Section 14-234 as well as other conflict of interest laws including NCGS Section 133-1 et seq. I have also reviewed applicable conflict of interest Sections of the Town of Holden Beach Code of Ordinances including "Standards of Conduct for Town Officials", Sections 30.35 through 30.44.

My opinion of this transaction in general, and particularly, as it relates to Mayor Holden, is as follows:

- (a) That no applicable North Carolina laws governing conflict of interest or ethics, including NCGS Section 14-234, and related State statutes, have been violated;
- (b) That no Town of Holden Beach ethics or conflict of interest ordinances have been violated;
- (c) That Mayor Holden's sworn affidavit dated February 10, 2022 contains sufficient assurances for me as the attorney for the Town of Holden Beach, that no ethics or conflicts of interest laws, policies or ordinances are being violated; and
- (d) That to my knowledge, Mayor Holden is unmarried; thus, the statutory spousal benefit provisions would not apply.

I would add that for the last 10 years I have been the attorney for the Brunswick County Board of Education. In that capacity I have been consulted on several conflicts of interest issues.

Should additional information be needed, certainly feel free to contact me.

Sincerely,

Richard F. Green

RFG/rtc

From:

**Heather Finnell** 

Sent:

Wednesday, February 16, 2022 3:35 PM

To: Cc:

Joe.Futima

**David Hewett** Holden Beach

Subject: Attachments:

DOC715.pdf

Mr. Futima,

Attached is the Town of Holden Beach's response to your email dated January 19, 2022. Please let us know if you need anything further or if you have any questions.

# Thanks!

Heather Finnell, CMC, NCCMC

Town Clerk Town of Holden Beach heather@hbtownhall.com telephone: (910) 842-6488 Joe

Below are responses to the four areas of concern you have previously provided in addition to the mayor's affidavit shared earlier.

### I. Questions Regarding Opposition to the Pier Purchase

While the town understands the LGC received public comments that outlined opposition to the purchase, there are many citizens in favor of pursuing this investment. This is an issue that has strong opinions on either side; however, the town was contacted by several residents after the last public hearing to say they saw no need to attend. Their explanation conveyed a thought process that after the first hearing in July, and a contract in play, the issue was resolved. In a previous public hearing (July 8, 2021) several supporters voiced their appreciation for the historic and iconic element the property brings and suggested that the pier represents critical coastal infrastructure. It has also been brought to the town's attention that an email was sent to your agency yesterday reaffirming a "silent" support for the pier purchase with over 600 signatures. Much of the opposition appeared to be centered around a lack of a published plan from the town. The Board of Commissioners have unanimously produced and revised a pier plan and adopted a revised pier plan at the January meeting to minimize these concerns and participated in a question-and-answer session with the public regarding the plan.

### II. Parking Plan

While there is an element of paid parking in the pier plan that the town presented, the pier purchase and the parking plan are two separate issues. The public outcry over paid parking predominantly centered around the total number of parking spaces that were identified on the island. Residents voiced concerns they did not want 900 paid parking spaces identified on the island, even though they exist today under current non-paid standards. Subsequent meetings reduced that number significantly and last night's meeting had minimal comments on final draft documents. The town plans to utilize approximately 80 parking spaces in the pier parking lot and some additional spaces in the 800 block of OBW to offset the debt service for the pier in upcoming fiscal years (as outlined in the pier plan). Currently the spaces at the pier have been removed from this year's paid parking initiative because we would not own the pier in time to include them. In addition, the 800-block parking is not included this year's we do not anticipate being able to ready the property for parking before the summer season begins. It was untimely that both parking and the pier purchase appeared on the agenda the same evening. Had these items not fallen on the same agenda, many of the emails you received regarding the paid parking plan would probably have never arrived. These are two different issues only linked by the ultimate intent to use parking revenue for debt payment.

### III. <u>Underwater Inspection and Uses</u>

The Town conducted an inspection of the above water portion of the pier and the pier building itself. Bad weather and rough seas prevented the underwater inspection that had been planned and due to a tight due diligence timeline, the Town did not consider it possible to bring a dive team in a second. Applied Technology Management (ATM), our coastal consulting engineering firm, has been contacted to see what the turnaround time would be for the underwater inspection. The Town plans to approach repairs to the pier as is convenient based on annual budget appropriations. In the unlikely event that the underwater inspection revealed deterioration, parts of the pier could be closed until those repairs

could be accomplished. That said, the value of the property is not in the pier or pier building itself but the coastal waterfront lots that it sits on. To further understand this a brief history is included below.

The seller (Mr. Bass and associates) has previously let visitors park at the pier property for free and this is a priority destination for day trippers. The site also currently includes a non-exclusive license for the town to use a 20-foot section as an emergency access point. If the property is sold to a private investor, these provisions cannot be guaranteed. The value of the land itself in providing public access to the 400+ canal property owners that live in the streets across from the pier, as well as the many day trippers from off the island that visit the site is paramount in the consideration of the purchase. The board had extensive conversations about these issues before making the decision to move forward with a contract to purchase. The emergency access that the 50-foot lot will provide to aid in public safety and the ability to access the beach with large equipment for beach nourishment projects are also points of consideration for the purchase. If this access is lost, many of the 400 properties along the canal streets across from the pier will have to traverse approximately ½ mile to the next closest public access point and there will be no significant sized parking lot on the island west of the bridge.

# IV. Public support tied to the Pier, anticipated costs and payback

The pier complex to include that portion extending into the ocean is an iconic representation of access to the public trust beach and state waters. As such it is part and parcel of the entire property and its importance to the whole is symbiotic in that while it will need <u>some</u> repair to be put into operation as a regional public facility it's value — though minimal via the appraisal-lies in the fact that it is currently permitted and can be repaired. Ocean piers are few/far between and almost impossible to permit anew. The Town will ensure that the pier complex is properly assayed and any required repairs to the existing structures and desired upgrades/improvements thereto will be accomplished in accordance with the public sentiment to retain the pier.

The Town is financially solid; the General Fund is strong with an available fund balance of \$3,538,385 resulting in an available General Fund Balance ratio of 114% well more than its established minimum of 40%. The Beach, Parks, Access, Recreation and Tourism Fund (BPART) which houses occupancy tax collections likewise is strong if not stronger with a year ending fund balance more than \$5.2 million. For the third year running occupancy tax collections have exceeded ad valorem tax collections. Occupancy tax revenues have exploded with the Covid crises. People have abandoned the inner cities and escaped to the beach hence a tremendous increase in the town's collection of occupancy taxes over the course of the last 18 months. Before Covid the Town could expect to collect around 2 million dollars per year having incurred steady growth in that funding stream of roughly 3 percent per year for the last ten years. Actual occupancy tax collected revenues for the last fiscal year ended surpassed \$3 million and are on pace to eclipse \$3.6 million by the end of this fiscal year. Even without parking revenue, I am confident that any shortfall in the pier complex budget can be accommodated from within existing resources as may be provided via the annual budgetary and prioritization of programs process.

A revenues and expenses matrix based on the assumptions derived from the Board approved pier plan follows:

		Expenses					Revenues			
	Debt	•	Repair	Total -	CAMA	Pier	Paid	RV	tot	Delta
year	Service 	Insure	Maint	Expenses	Grant	Lease	Parking	Revenue	revenues	
1	310,750	5000	260000	575751	180460	0		9600	190060	-385691
2	304,700	10000	260000	574702	0	50000	37000	38400	125400	-449302
3	298,650	10000	260000	568653	0	52500	110500	38400	201400	-367253
4	292,600	10000	260000	562604	0	55125	121500	38400	215025	-347579
5	286,550	10000	260000	556555	0	57881.25	121500	38400	217781.3	-338774
6	280,500	30000	0	310506	0	60775.31	121500	38400	220675.3	-89830.7
7	274,450	10000	0	284457	0	63814.08	121500	38400	223714.1	-60742.9
8	268,400	10000	0	278408	0	67004.78	121500	38400	226904.8	-51503.2
9	262,350	10000	0	272359	0	70355.02	121500	38400	230255	-42104
10	256,300	10000	0	266310	0	73872.77	121500	38400	233772.8	-32537.2
11	250,250	30000	0	280261	0	77566.41	121500	38400	237466.4	-42794.6
12	244,200	10000	0	254212	0	81444.73	121500	38400	241344.7	-12867.3
13	238,150	10000	0	248163	0	85516.97	121500	38400	245417	-2746.03
14	232,100	10000	0	242114	0	89792.82	121500	38400	249692.8	7578.816
15	226,050	10000	0	236065	0	94282.46	121500	38400	254182.5	18117.46

While not included above the Town is actively engaged in pursuing several large grants that may help offset the acquisition costs.

Thank you for the opportunity to provide clarity to these issues. Please feel free to contact me if there are additional insights I may provide.

The Henest David W. Hewett **Town Manager** 

Holden Beach