

EXHIBIT B

FORM OF IP ASSIGNMENT

## INTELLECTUAL PROPERTY BILL OF SALE AND ASSIGNMENT AGREEMENT

This Intellectual Property Bill of Sale and Assignment Agreement (this “*Agreement*”) is made as of [•], 2020 (the “*Effective Date*”), by and among Bald Head Island Transportation, Inc., a North Carolina corporation, and Bald Head Island Limited, LLC, a Texas limited liability company (collectively, the “*Assignors*”), on the one hand, and Bald Head Island Transportation Authority, a public body corporate and politic of the State of North Carolina, established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes (“*Assignee*”). Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in that certain Asset Purchase Agreement dated as of the date hereof by and among Assignors and Assignee (“*Purchase Agreement*”).

### RECITALS

**WHEREAS**, pursuant to the Purchase Agreement Assignors have agreed to sell, assign, convey, transfer and deliver to Assignee, and Assignee has agreed to purchase and acquire from Assignors, certain rights, title, and interest in and to the Intellectual Property Rights owned by Assignors (the “*Sellers’ Intellectual Property Rights*”); and

**WHEREAS**, pursuant to the Purchase Agreement, Assignors have agreed to execute this Agreement in order to effectively assign, transfer, and convey to Assignee such assets.

**NOW THEREFORE**, in consideration of the foregoing and the representations, warranties and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors and Assignee, intending to be legally bound, hereby agree as follows:

1. Assignment of Intellectual Property Rights. Upon the terms set forth in the Purchase Agreement, Assignors hereby sell, convey, assign, transfer, deliver and set over to Assignee and its successors and assigns all of Assignors’ right, title and interest in and to any and all of the Sellers’ Intellectual Property Rights, including but not limited to those identified on Schedule A attached hereto, and including all goodwill associated therewith, to be held and enjoyed by Assignee for its own use and benefit and for the use and benefit of its subsidiaries, affiliates, successors, assigns, licensees and legal representatives, including all rights to sue for any past infringement or unauthorized use of any of the foregoing and to recover all damages therefrom for its own use and behalf and for the use and behalf of its successors and assigns or other legal representatives as such rights would have been held and enjoyed by Assignors had this Agreement not been made. In order to enable the use by Assignee of the website names and addresses set forth on Schedule A hereto (“*Domain Names*”), Assignors agree to provide Assignee, on the Effective Date, with any account information with any Person with whom the Domain Names are registered, if any, including any user names and passwords of Assignors relating thereto.

2. Further Assurances. Assignors and Assignee agree to execute and deliver such other assignment agreements and other instruments of conveyance and assignment and will do such other acts and things, at the requesting party’s expense, in each case as that party may reasonably request, as shall be reasonably necessary to vest in Assignee such title to such Sellers’ Intellectual Property Rights, and to fulfill and discharge each party’s obligations of conveyance and discharge hereunder and under the Purchase Agreement.

3. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina without giving effect to conflict of law provisions thereof.

4. Purchase Agreement. This Agreement is executed and delivered pursuant to Section 10.1(d) of the Purchase Agreement, and is subject to the terms of the Purchase Agreement, and nothing contained herein is intended to alter, modify, expand or diminish the terms set forth in the Purchase Agreement.

5. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Copies (including delivery by facsimile, electronic mail (PDF) or other electronic transmission or original) of signatures to this Agreement shall be deemed to be originals and shall be binding to the same extent as original signatures.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

**BALD HEAD ISLAND  
TRANSPORTATION, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**BALD HEAD ISLAND LIMITED, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**BALD HEAD ISLAND  
TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_  
Name:  
Title:

## Schedule A

### Domain Names:

1. Website: [www.bhita.org](http://www.bhita.org) (renews January 27, 2021)
2. Website: [www.baldheadislandferry.com](http://www.baldheadislandferry.com) (renews February 1, 2023)
3. Website: [www.bhitauthority.com](http://www.bhitauthority.com) (renews April 5, 2021)
4. Website: [www.bhibarge.com](http://www.bhibarge.com) (renews July 31, 2023)
5. Website: [www.gobaldy.com](http://www.gobaldy.com) (renews February 1, 2023)
6. Website: [www.bhiferry.com](http://www.bhiferry.com) (renews February 1, 2023)

### Social Media Account:

<https://www.facebook.com/pages/On-the-Bald-Head-Island-Ferry/148467978510153>

### Unregistered Trademarks:

BALD HEAD ISLAND TRANSPORTATION

All copyright rights in content on all websites listed above and all copyright rights of Sellers in content on the Social Media Account listed above to extent such rights are transferrable by Sellers.

EXHIBIT C

FORM OF OPERATING AGREEMENT

**BALD HEAD ISLAND TRANSPORTATION SYSTEM OPERATING AND  
TRANSITION SERVICES AGREEMENT  
AMONG  
BALD HEAD ISLAND TRANSPORTATION AUTHORITY,  
BALD HEAD ISLAND TRANSPORTATION, INC.  
AND  
BALD HEAD ISLAND LIMITED, LLC**

**THIS BALD HEAD ISLAND TRANSPORTATION SYSTEM OPERATING AND TRANSITION SERVICES AGREEMENT** (this “*Agreement*”), dated as of [November 1], 2020, is made by and among **BALD HEAD ISLAND TRANSPORTATION AUTHORITY**, a public body corporate and politic of the State of North Carolina (the “*Authority*”), established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes (the “*Enabling Act*”), **BALD HEAD ISLAND TRANSPORTATION, INC.**, a North Carolina corporation (“*BHIT*”), and **BALD HEAD ISLAND LIMITED, LLC**, a Texas limited liability company (“*BHIL*”, and together with BHIT, collectively referred to herein as “*Operator*”).

**WITNESSETH:**

**WHEREAS**, BHIL is the parent company of BHIT and, together, BHIL and BHIT owned and operated a ferry and barge transportation system that provides ferry and barge transportation services to and from Bald Head Island, North Carolina (the “*Island*”), an island and municipality only accessible by vessel, consisting of the following transportation, barge and freight and parking business operations and related assets: (i) the transportation of passengers via ferry to and from the Island and Southport, North Carolina; (ii) the on-island tram transportation of ferry passengers; (iii) the vehicle parking operation at Deep Point Marina in Southport, North Carolina, and (iv) the tug and freight barge operation which carries supplies and equipment upon which the Island depends; and

**WHEREAS**, pursuant to the terms of an Asset Purchase Agreement dated as of [November \_\_], 2020 by and among the Authority, BHIL and BHIT (the “*Purchase Agreement*”), which is expected to close on [November \_\_], 2020 (the “*Closing Date*”) the Authority intends to purchase all real and personal property, structures, improvements, buildings, equipment, maritime vessels, vehicles, vehicle parking, trams, shuttle buses, docks, terminals, and other facilities currently used in connection with the maintenance and operation of the Authority’s ferry transportation service (the “*Facilities*,” which term includes all additions, replacements, improvements and extensions thereto and any such other facility, building structure, terminal or any other matter or thing which the Authority is authorized under the Enabling Act to acquire, construct, equip, maintain or operate or to finance by the issuance of bonds); and

**WHEREAS**, the Authority intends to finance the purchase of the Facilities through the issuance of its Bald Head Island Transportation Authority Transportation System Revenue

Bonds, Series 2020 in the aggregate principal amount of \$\_\_\_\_\_ (the “**Bonds**”) which will be issued pursuant to a General Trust Indenture (the “**Indenture**”) dated as of [November 1], 2020 between the Authority and U.S. Bank National Association, as trustee (the “**Trustee**”); and

**WHEREAS**, all capitalized terms used but not defined herein shall have the meaning assigned to them in the Indenture; and

**WHEREAS**, the Authority, BHIL and BHIT are entering into this Agreement pursuant to the terms of the Purchase Agreement in order for Operator to operate the Facilities immediately following the purchase of the Facilities by the Authority, including without limitation vessel operations, vessel maintenance, parking management, barge and freight and tram and passenger delivery services and ticket sales (collectively, the “**Ferry System Operations**”), and the employment and furnishing of employees and the required personnel to safely operate the Facilities, until the employees and operations of the Facilities can be smoothly and efficiently transferred to the Authority during the term of this Agreement; and

**WHEREAS**, in order to ensure an orderly transition of the Ferry System Operations to the Authority, BHIL will provide and make available to the Authority, on a consulting basis, the services of the Chief Executive Officer and Chief Financial Officer of BHIL;

**NOW, THEREFORE**, in consideration of these premises and the covenants and agreements hereinafter set forth, the parties hereby agree as follows:

## **ARTICLE I SERVICES PROVIDED BY OPERATOR**

**Section 1.01 Ferry System Operations**. Immediately following the transfer of the Facilities to the Authority, subject to the terms in this Agreement, Operator will utilize the Facilities to continue to conduct the Ferry System Operations, for and on behalf of the Authority, in a manner consistent with how the Ferry System Operations were operated prior to the Closing Date, during the term of this Agreement. The Ferry System Operations shall include, without limitation, the services described on **Exhibit A** attached hereto and made a part hereof.

**Section 1.02 Employees**. The services to be performed by Operator hereunder shall initially be performed by the Operator’s employees and such services shall be performed in a manner consistent with past practices, all as further set forth in Section 6.01. Operator shall be responsible, subject to payments and reimbursement by the Authority as provided herein, for all human resources relating to the Ferry System Operations, as further set forth on **Exhibit B**. It is anticipated that prior to the or upon the termination of this Agreement, employees of Operator that are essential to the operation of the System will become employees of the Authority, as further set forth in Section 6.02.

**Section 1.03 Financial Operations**. Operator shall oversee the operations of the Ferry System Operations as described in **Exhibit C**, which shall be handled in a manner consistent with past practices.

**Section 1.04 Leased Employees**. BHIL shall lease to Operator its Chief Executive Officer (namely, Charles A. Paul III) and its Chief Financial Officer (namely Shirley A.



Mayfield) in order for them to provide oversight of the Ferry System Operations for the benefit of the Authority (the “*Leased Employees*”). The parties acknowledge and agree that the management, financial and consulting services to be performed by the Leased Employees hereunder shall be substantially the same functions and services as performed by them for the benefit of the Ferry System Operations prior to the Closing Date and such services shall be performed in a manner consistent with past practices.

**Section 1.05 Reporting Requirements.** Operator will immediately notify the Authority’s Designated Representative (as defined in Section 10.17) by telephone of any major occurrence, such as a collision, grounding, major mechanical failure or major medical emergency. In addition, Operator will provide the following written reports to the Authority’s Designated Representative via electronic transmission, in a form reasonably acceptable to the Authority:

- (i) Daily passenger log reports. These reports shall be submitted on a weekly basis.
- (ii) Weekly reports of certain non-statistical information including but not limited to material safety and customer service issues and any material mechanical problems or issues as they relate to the Vessels and the ferry terminals.
- (iii) Monthly reports of all ticket revenue, cash and ticket revenue reconciliations.

**Section 1.06 Information Technology.** Operator shall retain the information technology system in effect immediately prior to the Closing Date, and shall maintain such systems in a manner consistent with past practices. [Need to identify which of these systems will eventually transfer to the Authority] The information technology systems to be [temporarily] retained by Operator include, without limitation, the systems set forth on Exhibit D.

## ARTICLE II OBLIGATIONS OF THE AUTHORITY

**Section 2.01 Provision of Facilities.** The Authority will make the Facilities (both currently existing and those added to the Ferry System Operations in the future) available to Operator and Operator shall have such rights of possession and control over the Facilities as is necessary for Operator to carry out the terms of this Agreement.

**Section 2.02 Finance Officer.** The Authority shall appoint and provide a finance officer who will work with Operator in the handling of the financial operations of the Ferry System Operations.

**Section 2.03 Insurance carried by Authority. [TO COME]**

**ARTICLE III**  
**RECEIPT AND DISBURSEMENT OF FUNDS**

**Section 3.01 Revenues.** Operator hereby agrees to collect all revenues, fees, deposits and other payments received from the Ferry System Operations, and to promptly deposit all such amounts into the Revenue Fund held by the Trustee pursuant to the Indenture. To the extent possible, such deposits into the Revenue Fund shall take place electronically at the end of each Business Day, and in any case not later than the third (3<sup>rd</sup>) Business Day following the receipt thereof by the Operator. Any insurance proceeds or condemnation awards actually received by Operator with regard to the Ferry System Operations shall be deposited into the Construction Fund created under the Indenture, or as otherwise directed by the Authority, no later than the third (3<sup>rd</sup>) Business Day following the receipt thereof by Operator. “**Business Day**” means any day other than (i) a Saturday or Sunday, (ii) a day on which commercial banks in the State, or the city in which the designated corporate office of the Trustee is located, are authorized by law to close, or (iii) a day on which the New York Stock Exchange is closed. Notwithstanding anything herein to the contrary, in the event of a hurricane or other event that results in closure of the commercial banks in the area where the Facilities are located, then any deposits of cash or insurance proceeds required hereunder shall be made on the next Business Day that the commercial banks are open.

**Section 3.02 Development of Annual Budget.** Operator shall recommend to the Authority a line-item operating and capital budget for the Ferry System Operations for the first Fiscal Year of the Authority starting on the Closing Date and ending on June 30, 2021, and for each Fiscal Year thereafter (the “**Annual Budget**”) generally in the form described in **Exhibit E** attached hereto which shows, on a month-by-month basis, in reasonable detail, each line item of anticipated income and expense [(on an accrual basis)], broken out to include all Operating and Maintenance Expenses, (ii) an explanation of anticipated changes to charges, payroll rates and positions, non-wage cost increases, and all other factors differing from the current year, (iii) any proposed changes in operational programs, policies and procedures and the emergency response plans; and (iv) such other information, including a description of plans, contracts, agreements, governmental approvals and other matters, as may be necessary or reasonable in order to inform the Authority of all matters relevant to the ownership, operation and management of the Ferry System Operations or any portion thereof, and to otherwise allow the Authority to make an informed decision with respect to the adoption of the Budget. In developing the Annual Budget, the Authority and the Operator shall ensure that the System will produce Net Revenues in each Fiscal Year in an amount equal to [125%] of the Annual Principal and Interest Requirements on all Bonds Outstanding in such Fiscal Year, determined as set forth in Section 5.02 of the Indenture. Such Annual Budget shall include a calculation of the Operating and Maintenance Reserve Fund Requirement and the Capital Improvement Fund Requirement, both determined in accordance with the requirements of the Indenture. Amounts needed to fund the Operating and Maintenance Reserve Fund and the Capital Improvement Fund to the levels of such requirements shall be included in the Annual Budget. From time to time during the term, Operator shall have the right to recommend that the Authority modify the Annual Budget, which amendment shall be subject to the Authority's consent, and shall be made in accordance with the Local Government Budget and Fiscal Control Act, Article 3 of Chapter 159, as amended, of the General Statutes of North Carolina (the “**Local Government and Fiscal Control Act**”). Operator and the Authority

shall comply with the Annual Budget in managing, operating, and providing routine maintenance and repairs for the Facilities during each Fiscal Year.

**Section 3.03 Funding of and Disbursements from Operating Account.** At Closing, the Authority shall have funded an operating account (the “*Operating Account*”) with \$ \_\_\_\_\_. No later than the fifth Business Day before the end of each month, the Trustee is directed in the Indenture to transfer moneys in the Revenue Fund to the Operating and Maintenance Fund in an amount such that the balance on deposit in the Operating and Maintenance Fund will be equal to the amount required to be on deposit in the Operating and Maintenance Fund in the next ensuing month, based on the Annual Budget. On or before the last Business Day of each calendar month, the Authority shall transfer funds out of the Operating and Maintenance Fund to the Operating Account in amount sufficient to cover the “Operating and Maintenance Expenses” (as described in the Indenture and as shown on the approved Annual Budget) budgeted for the upcoming calendar month. Operator shall have the right to use and disburse funds out of the Operating Account at such times and in such amounts as Operator, in the exercise of its business judgment, determines to be reasonably necessary or appropriate to pay in a timely manner all operating and payroll costs and expenses incurred in connection with the Ferry System Operations, including compensation, benefits and other payroll costs of the Operator Employees, so long as such expenses are reflected in the Annual Budget. To the extent any Operating and Maintenance Expenses exceed the amounts reflected in the Annual Budget, Operator shall notify the Authority, and request a transfer of funds from the Surplus Fund and the Operating and Maintenance Reserve Fund established under the Indenture to pay such expenses. Upon approval of such expenses by an Authorized Officer of the Authority, Operator may, but shall not be required to, advance funds to cover Operating and Maintenance Expenses of the Ferry System Operations, and amounts transferred to the Operating Account may be used to reimburse Operator for any Operating and Maintenance Expenses that may have been paid by advancement of funds from Operator (based on written evidence satisfactory to the Authority of the amount and purpose for such advances). All draws, disbursements or transfers of funds in the Operating Account shall be made only with the approval or authorization of an authorized signatory or representative of Operator, who shall be one or more of the Leased Employees or Operator Employees selected from time to time by the Operator.

**Section 3.04 Funding of and Disbursements from Capital Improvement Fund.** In the event the Authority, at the request of the Operator, approves capital costs for the Facilities, including major repairs, replacements or maintenance items of a type not recurring annually or costs of reconstruction of parts of the Facilities, or other capital expenditures, repairs or maintenance costs and expenses that are not reflected in the approved Annual Budget (“*Additional CapEx Items*”), then the Authority shall requisition funds from the Capital Improvement Fund held by the Trustee under the Indenture and provide such funds to Operator by making deposits to the Operating Account in amounts sufficient to fund such Additional CapEx Items. Operator shall have the right to use and disburse funds out of the Operating Account at such times and in such amounts as Operator, in the exercise of its business judgment, determines to be reasonably necessary or appropriate to pay for (1) approved (as shown on the approved Annual Budget) capital expenditures, repairs and maintenance costs and expenses incurred in connection with the Ferry System Operations; and (2) Additional CapEx Items. All draws, disbursements or transfers of funds from the Operating Account to pay Additional CapEx Items shall be made only with the approval or authorization of an authorized signatory or

representative of Operator, who shall be one or more of the Leased Employees or Operator Employees selected from time to time by the Operator. Notwithstanding anything in this Agreement to the contrary, if any emergency or critical repairs become necessary to avoid material disruption of the normal operations of the ferries, trams, terminals or other systems of the Ferry System Operations, Operator shall have the power and authority to make such repairs promptly, without the prior approval of the Authority, and to pay for such emergency repairs out of the Operating Account, or, in Operator's sole discretion and with Operator having a right to be fully reimbursed by the Authority, by use of Operator's own funds. Operator shall notify the Authority in writing of the amount(s) so paid from the Operating Account or with the Operator's own funds, and shall request the Authority to requisition such amounts from the Capital Improvements Fund held by the Trustee under the Indenture.

**Section 3.05 Books and Records.** Operator shall maintain separate and complete books and records in connection with the Ferry System Operations (which shall be supported by sufficient documentation to ascertain that such entries are properly and accurately recorded) in a manner consistent with past practices, including all contracts, agreements, and all Operating and Maintenance Expenses (as defined in the Indenture) incurred with respect to the Ferry System Operations, as well as information regarding the status of the Facilities. Such books and records shall be kept in a safe and secure manner, and shall be inclusive of those books and records identified and requested by the Authority so it will have the information sufficient to respond to the Authority's requirements for financial information, including, without limitation, financial reporting requirements of the Authority's lender(s) and auditors. All such books and records shall be maintained at the Authority's offices or as otherwise approved in writing by the Authority and be available for inspection, upon request, by the Authority and the Trustee (as defined in the Indenture) on any Business Day (or, if kept at Operator's offices, then any Business Day following reasonable advance notice to Operator). Operator shall exercise such control over accounting and financial transactions as is reasonably required to protect the Authority's assets from theft, error or fraudulent activity on the part of Operator's employees or agents including losses arising from theft of assets by Operator's employees or other agents, or penalties and/or interest of a material nature.

**Section 3.06 Cooperation with the Authority's Accountants and Auditors.** Operator will cooperate in good faith with the Authority's finance officer and/or accountants and auditors in the preparation of annual financial statements and the Authority's annual audits, in the manner reasonably requested by the Authority. Operator shall furnish the Authority with a report setting forth in sufficient detail all data and information regarding the delivery of its services hereunder as shall be required to enable the Authority to prepare its federal, state and local income tax returns.

**Section 3.07 Bonding Requirement for Operator.** The Leased Employees and all employees of Operator who handle or are responsible for the safekeeping of any monies of the Authority are to be covered under the State of North Carolina Master Honesty Bond or its equivalent insuring against employee dishonesty, including theft of client property with limits of \$3,000,000 per occurrence. Operator shall timely deliver copies of such bonds to the Authority and the Trustee, and any amounts recoverable with respect to such bonds in connection with the Ferry System Operations shall be received and held in trust by Operator and promptly delivered to the Trustee for application in accordance with the Indenture.

**ARTICLE IV**  
**TRANSITION OF FERRY SYSTEM OPERATIONS TO AUTHORITY**

**Section 4.01 Transition.** During the term of this Agreement, Operator shall work closely with the Authority's Designated Representative to transfer responsibility for the Ferry System Operations to the Authority. Such transfer is anticipated to occur in phases, such that by the end of the term of this Agreement, the Authority will be in a position to operate all aspects of the Ferry System Operations. The Ferry System Operations to be transitioned include the following:

(i) The employees and all related human resources functions, including payroll, benefits, employment manuals, as further described in **Exhibit B**, and the parties agree to use commercially reasonable efforts to complete this transition on or before June 30, [2022].

(ii) Information technology functions, including electronic ticket and parking sales, website maintenance and design, and other informational technology, as further described in **Exhibit D**;

(iii) Accounting and maintenance of books and records as further described in **Exhibit C**;

(iv) Security of the Facilities, as further described as item (ix) in **Exhibit A**;

(v) Emergency Response, as further described as item (ix) in **Exhibit A**; and

(vi) All other aspects of operating the Ferry System Operations, as further described in **Exhibit A**.

As various operations of the Ferry System Operations are transferred during the term of this Agreement from Operator to the Authority, Operator agrees to continue to provide the remaining services to the Authority to assist it in the Ferry System Operations. To the extent the transfer of Ferry System Operations contemplated by this section is not complete on or before June 30, [2022], the parties may agree to amend this Agreement upon terms mutually acceptable to the parties to describe the Ferry System Operations that Operator will continue to perform, and thereby continue the term of this Agreement on a month-to-month basis until such transfer is complete.

## ARTICLE V COMPENSATION OF OPERATOR

It is the intent of the parties that Operator not make a profit nor incur a loss in providing the services necessary to operate the Ferry System Operations during the term of this Agreement. Consequently, the Authority shall (1) make available to Operator sufficient funds of the Authority to cover all liabilities, obligations, costs and expenses set forth in the Annual Budget, as amended from time to time; (2) reimburse Operator for any and all compensation, employee and welfare benefits, payroll taxes and other liabilities, costs and expenses incurred by Operator and relating to the Operator Employees in accordance with the Annual Budget, as amended from time to time, and (3) pay or reimburse Operator for (to the extent Operator advances funds as provided in this Agreement) liabilities, obligations, costs or expenses relating to or otherwise associated with the operation of the Ferry Transportation System, except for those arising out of the negligence or willful misconduct of Operator or the Leased Employees. The Authority shall be solely responsible for all transfer, sales or use Taxes imposed or assessed as a result of the provision of services by Operator.

## ARTICLE VI OPERATOR EMPLOYEES

**Section 6.01 Responsibilities for Operator Employees.** All employees of the Operator used in the operation of the Ferry System Operations immediately prior to the Closing Date will remain employees of Operator (the “*Operator Employees*”) until transfer of such employees to the Authority as set forth herein. An initial list of the Operator Employees is attached hereto as **Exhibit F**. The Leased Employees and the Operator Employees shall not be deemed to be employees of the Authority for any purpose unless and until such employees are transferred to the Authority as set forth in this Agreement, and Operator shall be solely responsible for administration and provision of payment, subject to Operator’s rights under this Agreement, of all compensation (e.g. wages, bonuses, commissions, etc.) employee and welfare benefits (including without limitation, health, severance and worker’s compensation), and the withholding and payment of applicable Taxes relating to such employment, consistent with the practice in effect prior to the Closing Date, until such employees are transferred to the Authority pursuant to the terms of this Agreement. Until the Operator Employees are transitioned to the Authority as set forth herein:

(i) The Authority agrees that the Leased Employees, the Operator Employees and any third-party service operators or subcontractors who provide services to the Operator or the Ferry System Operations shall be given, at no cost or risk to the Operator, access to the Facilities, assets and books and records of the Authority, in all cases to the full extent necessary for the Leased Employees, the Operator Employees and any third-party operators or subcontractors to operate the Facilities or for those parties to perform their duties and functions for the Authority.

(ii) The Operator shall be responsible for assuring that the Operator Employees and any third-party service operators and subcontractors, when on the Facilities or when given access to any equipment, computers, software, network or files owned or controlled by the Authority, conform to the policies and procedures of the

Authority concerning health, safety and security. Notwithstanding the preceding sentence to the contrary, until the Authority develops its own policies and procedures concerning health, safety and security, Operator will utilize its existing policies and procedures.

(iii) At all times during the period the Operator Employees are employees of the Operator and the Leased Employees are providing services to Operator, the Operator shall obtain and keep in force and effect insurance coverages on the Operator Employees and the Leased Employees, as applicable, consistent with the coverages in effect prior to the Closing Date, all of which shall be included in the Annual Budget. Upon request, the Operator shall provide evidence of such coverages to the Authority.

(iv) The Operator and the Authority each agree that both the Operator and the Authority will protect the privacy and security of any Operator Employee PII, Personal Data, Individually Identifiable Health Information (as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information) that they may receive through performance under the terms of this Agreement in accordance with all applicable Laws, including, but not limited to, those Laws adopted pursuant to the Health Insurance Portability and Accountability Act ("HIPAA").

(v) The Authority shall comply with all applicable Laws applicable to the Leased Employees utilized by the Authority, including all Laws applicable to the use and operation of the Facilities, all health and safety laws and OSHA standards, and all labor and equal employment opportunity Laws.

(vi) The Authority shall provide to Operator or to any third-party contracted to provide payroll processing services, as applicable, such reports or information in the Authority's possession or control required for the timely processing of payroll, filing of any required Tax returns or reports and any other regulatory filing requirements.

**Section 6.02 Operator Employees to become Authority employees.** Prior to or upon the termination of this Agreement, the Operator Employees that the Authority wishes to hire in connection with the operation of the System shall become employees of the Authority. In connection with any such transfer of Operator Employees, the Authority shall use its best efforts to provide wages and benefits that are consistent with the wages and benefits provided to the Operator Employees when employed by the Operator, taking into account the experience and tenure of each such employee with the Operator.

## **ARTICLE VII PROHIBITION AGAINST LIENS**

**Section 7.01 No Liens.** Neither Operator nor the captain or crew of the Vessels shall have the right, power or authority to create, incur or permit any lien of whatsoever kind or nature to be placed or imposed on the Vessels, except that which may be imposed by law for necessities or true salvage rendered by persons other than and not affiliated with Operator. Operator shall defend, indemnify and hold the Authority and its successors, assigns, directors, officers, employees and agents, in both their official and individual capacities, harmless, from and against any and all liens, claims or liabilities of any nature asserted against the Vessels that

may arise from or out of any negligent acts or omissions or willful misconduct of Operator. Should any process issue against the Vessels or should any such lien or claim be asserted against the Vessels as a result of Operator's negligence or willful misconduct, Operator shall forthwith cause the Vessel to be released from the lien and the lien or liens to be discharged. Notwithstanding the foregoing, Operator shall have no duty to defend, indemnify and hold the Authority harmless with respect to any and all liens, claims or liabilities asserted against the Vessels that may arise from or out of any acts or omissions of the Authority.

## **ARTICLE VIII INDEMNIFICATION**

**Section 8.01 Indemnification by Operator.** Operator shall indemnify and hold the Authority and its successors, assigns, commissioners, directors, officers, employees and agents, in both their official and individual capacities, harmless against any and all Losses (as defined in the Purchase Agreement) arising out of the acts and/or omissions of Operator, its employees, agents, or operators or the Leased Employees including negligence, vicarious liability and strict liability in tort, and for all expenses reasonably incurred by the Authority in the defense, settlement or satisfaction thereof, including reasonable attorneys' fees arising in connection therewith.

Termination or expiration of this Agreement shall not release Operator from its respective obligations hereunder and neither the enumeration in this Agreement of particular risks assumed by Operator or of particular claims for which it is responsible shall be deemed: (A) to limit the effect of the provisions of this section or of any other sections of this Agreement relating to such risks or claims; or (B) to limit the risks, which Operator shall have been deemed to assume, or the claims for which it would be responsible in the absence of such enumerations.

**Section 8.02 Indemnification by the Authority.** To the extent provided by applicable law, the Authority agrees to indemnify, defend and hold harmless Operator, its officers, members, managers, employees, agents and affiliates and the Leased Employees from any and all Losses arising out of or resulting from (1) the Authority's breach of this Agreement or any of its obligations hereunder, and (2) any employment-related claims asserted by any of the Operator Employees and arising out of negligent actions or omissions by the Authority or its employees from and after the Closing Date.

Termination or expiration of this Agreement shall not release the Authority from its respective obligations hereunder.

**Section 8.03 Limitation of Liability.** IN NO EVENT SHALL ANY PARTY HAVE ANY LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT FOR ANY PUNITIVE, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES, INCLUDING LOSS OF FUTURE REVENUE OR INCOME, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY RELATING TO THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT, OR DIMINUTION OF VALUE OR ANY DAMAGES BASED ON ANY TYPE OF MULTIPLE, WHETHER BASED ON STATUTE, CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT, OR CONCURRENT NEGLIGENCE, STRICT LIABILITY,



CRIMINAL LIABILITY OR OTHER FAULT. EACH PARTY ACKNOWLEDGES THAT THE SERVICES TO BE PROVIDED TO IT HEREUNDER ARE SUBJECT TO, AND THAT ITS REMEDIES UNDER THIS AGREEMENT ARE LIMITED BY, THE APPLICABLE PROVISIONS OF THIS AGREEMENT.

## ARTICLE IX TERMINATION

**Section 9.01 Termination of Agreement.** This Agreement shall terminate in its entirety on the earliest to occur of (a) the date upon which the Ferry System Operations have been fully transitioned to the Authority pursuant to Article IV, (b) the date of termination in accordance with Section 9.02 or Section 9.03, or (c) June 30, 2022; provided, however, that as provided in Section 4.01, if the transfer of Ferry System Operations contemplated herein is not completed on or before June 30, 2022, the term of this Agreement shall continue on a month-to-month basis until such transition is complete.

**Section 9.02 Breach.** The Authority may terminate this Agreement, (a) immediately upon written notice to Operator if Operator fails to perform any of its material obligations under this Agreement, and (b) upon written notice to Operator if Operator fails to perform any non-material obligation under this Agreement and such failure shall have continued without cure for a period of fifteen (15) days after receipt by Operator of a written notice of such failure from the Authority, provided that if such failure cannot reasonably be cured within fifteen (15) days after receipt of such written notice, then Operator shall have thirty (30) days to cure such failure, provided Operator diligently pursues such cure to completion.<sup>1</sup>

**Section 9.03 Insolvency.** In the event that either party hereto shall (i) file a petition in bankruptcy, (ii) become or be declared insolvent, or become the subject of any proceedings (not dismissed within sixty (60) days) related to its liquidation, insolvency or the appointment of a receiver, (iii) make an assignment on behalf of all or substantially all of its creditors, or (iv) take any action for its winding up or dissolution, then the other party shall have the right to terminate this Agreement by providing written notice of termination to the other party.

**Section 9.04 Effect of Termination.** Upon termination of this Agreement in its entirety pursuant to Section 9.01, all obligations of the parties hereto shall terminate, except for the provisions of Section 8.01, Section 8.02 and Section 8.03, which shall survive any termination or expiration of this Agreement.

## ARTICLE X MISCELLANEOUS

**Section 10.01 No Assignment.** Neither party may assign its rights or obligations under this Agreement to any third party without the express written consent of the other party.

**Section 10.02 No Third Party Beneficiaries.** Nothing contained in this Agreement is intended for the benefit of third persons.

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<sup>1</sup> Still open: Operator's right to terminate if Authority does not reimburse Operator on a timely basis.

**Section 10.03 Materiality of Obligations/Covenant of Timely Performance.** The obligations of Operator under this Agreement for the timely and faithful performance of all of Operator's obligations hereunder are material covenants of Operator. Operator hereby covenants and agrees that it will perform the services and other acts required of it under this Agreement within the times and to the standards of performance exercised by Operator and the Leased Employees prior to the Closing Date, and Operator recognizes that such covenant and agreement form an essential inducement to the Authority to enter into this Agreement.

**Section 10.04 Representation of Operator.** Operator hereby represents and warrants to the Authority that Operator is intimately familiar with the Ferry System Operations, and will operate the Ferry System Operations for the Authority under this Agreement in the same professional and competent manner that Operator operated the Ferry System Operations prior to the Closing Date. As required by NCGS § 143-48.5, Operator also certifies that it and any of its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of each of its employees through the federal E-verify Facilities.

**Section 10.05 No Commissions.** No person or selling agency has been employed or retained by Operator to solicit or secure this Agreement on the understanding that a commission percentage, brokerage contingent or other fee will be payable to such person or selling agency.

**Section 10.06 Modifications.** No modification of this Agreement shall be effective unless in writing and signed by all of the parties.

**Section 10.07 Force Majeure.** The time for the Authority or Operator, as the case may be, to perform any of their respective obligations hereunder shall be extended if and to the extent that the performance thereof shall be prevented due to any strikes, lockouts, civil commotion (including protests), warlike operations, invasions, rebellions, hostilities, military or usurped power, governmental regulations or controls, inability to obtain labor or materials despite due diligence, acts of God, unusually severe weather or similar events, quarantine requirements, epidemics, pandemics or other causes beyond the reasonable control of the party whose performance is required. The party claiming the benefit of this section shall give prompt written notice thereof to the other party.

**Section 10.08 Governing Law/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Venue and jurisdiction for purposes of any litigation between the parties hereto shall be proper in the state and federal courts of North Carolina, and the parties hereby waive all defenses of venue and jurisdiction in connection with legal proceedings brought by either party against the other in such courts.

**Section 10.09 Partial Invalidity.** If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the fullest extent permitted by law.

**Section 10.10 Interpretation/Conflicts.** The captions, headings and titles in this Agreement are solely for convenience of reference and shall not affect its interpretation. This

Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. All terms and words used in this Agreement, regardless of the number or gender, in which they are used, shall be deemed to include any other number and any other gender as the content may require.

**Section 10.11 Non-Discrimination.** Operator hereby covenants and agrees to and with the Authority that its operations and policies shall conform in all respects to the following:

(i) No person shall be deprived of the right to occupy or use any portion of the Vessels or the Facilities by reason of race, sex, color, creed, national origin, disability or religion; and

(ii) There shall not be effected or executed by Operator or anyone acting on its behalf, any agreement, lease or other instrument whereby the use or occupancy of any portion of the Facilities, or any part thereof, is restricted upon the basis of race, sex, creed, color, national origin, disability or religion in a way that would violate applicable law.

**Section 10.12 Equal Employment Opportunity.** During the performance of this Agreement:

(i) Operator shall not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin, and shall take affirmative action to ensure that they are afforded equal employment opportunities without discrimination because of race, creed, sex, color, national origin, disability or religion. Such action shall be taken with reference to, but not be limited to, recruitment, employment, job assignments, promotions, upgrading, demotions, transfers, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(ii) Operator shall post in conspicuous places, available to employees and applicants for employment, such notices as requested by the Authority, setting forth the substance of the provisions set forth above.

(iii) Operator shall state, in all solicitations or advertisements for employees placed by or on behalf of Operator, that all qualified applicants will be afforded equal employment opportunities without discrimination.

**Section 10.13 Access to Records and Right to Audit.** During the term of this Agreement, the Authority shall have access, during normal business hours and upon reasonable notice, to all records and documents of Operator, which relate to this Agreement. Operator shall permit the authorized representatives of the Authority to inspect and audit all data and records of

Operator relating to the Ferry System Operations and funds collected or expended by Operator on behalf of the Authority.

**Section 10.14 Non Waiver.** No waiver of any breach of this Agreement by either party shall be deemed to be a waiver of any other or any subsequent breach.

**Section 10.15 Accountants.** Operator shall engage, at the Authority's sole cost and expense, an experienced certified public accounting firm approved by the Authority to review Operator's books and records in connection with this Agreement.

**Section 10.16 Notices.** All invoices, notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.16):

If to Operator:

Bald Head Island Limited, LLC  
Bald Head Island Transportation, Inc.  
6 Marina Wynd  
Bald Head Island, North Carolina  
Attention: Charles A. Paul, III  
Telephone: (910) 297-6600  
Email: [cpaul@bhisland.com](mailto:cpaul@bhisland.com)

Murchison Taylor & Gibson PLLC  
1979 Eastwood Road, Suite 101  
Wilmington, North Carolina 28403  
Attention: G. Stephen Diab, Esq.  
Phone: (910) 763-2426  
Email: [sdiab@murchisontaylor.com](mailto:sdiab@murchisontaylor.com)

If to the Authority:

Bald Head Island Transportation Authority  
1029 North Howe Street, Suite "Authority Office"  
Southport, North Carolina 28461  
Attention: Susan Rabon  
Telephone: (919) 434-5660  
Email: [susanrabon@gmail.com](mailto:susanrabon@gmail.com)

With a copy to:

McGuireWoods LLP  
501 Fayetteville Street, Suite 500  
Raleigh, North Carolina 27601  
Attention: Mary Nash Rusher, Esq.  
Phone: (919) 755-6600  
Email: [mrusher@mcguirewoods.com](mailto:mrusher@mcguirewoods.com)

Section 10.17 **Designated Representative**. Operator, on one hand, and the Authority, on the other hand, shall each nominate one or more representatives to act as the primary contact for the provision of each specific categories of services contemplated by this Agreement (collectively, the “*Designated Representatives*”). The initial Designated Representatives are listed on **Exhibit G**. Operator and the Authority shall advise each other in writing of any change in a Designated Representative. Operator and the Authority agree that all communications relating to the provision of the services contemplated by this Agreement shall be directed to the Designated Representatives. The respective Designated Representatives shall meet to discuss the performance of the services as often as reasonably necessary to ensure the orderly provision of the services, and shall have authority to address and remedy problems related to the provision of the services. Each party shall designate successor Designated Representatives in the event that a designated individual is not available to perform such role hereunder. Each party may rely upon all actions taken or omitted to be taken by the Designated Representatives pursuant to this Agreement, all of which actions or omissions shall be legally binding upon the party represented by the Designated Representative.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date first shown above.

**AUTHORITY:**

BALD HEAD ISLAND TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_  
Susan Rabon, Chair

**BHIL:**

BALD HEAD ISLAND LIMITED, LLC

By: \_\_\_\_\_  
Charles A. Paul, III, CEO and Manager

**BHIT:**

BALD HEAD ISLAND TRANSPORTATION, INC.

By: \_\_\_\_\_  
Charles A. Paul, III, President

## Exhibit A

### FERRY SYSTEM OPERATIONS

For the services listed in this Exhibit A, the parties agree that such services shall be performed by Operator in a manner consistent with the way such services were performed prior to the Closing Date.

(i) *Vessels and Terminal Sites*: The vessels to be operated by Operator under this Agreement will consist of the Transferred Vessels as that term is defined in the Purchase Agreement, and any substitute or replacement vessels furnished by the Authority during the term hereof (collectively, the “*Vessels*”). The terminal sites for the Vessels shall be located at the Deep Point Marina north of Southport, North Carolina and the Bald Head Island Marina at Bald Head Island, North Carolina (the “*Terminal Sites*”). Operator is responsible for keeping the Terminal Sites in a safe, clean and presentable fashion.

(ii) *Coordination and Scheduling of Ferry Services*: Operator shall provide ferry and barge service on the schedule in effect on the Closing Date. Any changes to the ferry and barge service schedule shall be approved by the Authority, except in the case of an emergency or as required by a government agency, in which case, Operator will promptly notify the Authority’s Designated Representative.

(iii) *Control and Supervision of Ferry Services*: Operator will provide trained and qualified personnel for manning the Vessels and will manage and oversee the operation of the Ferry System Operations on a day-to-day basis. The Authority shall not be required to provide any staff or to oversee any part of the day-to-day operation of the Ferry System Operations, but will have at all times the right of inspection, observation, and the latitude to comment on all such operations.

(iv) *Ticket Sales and Fare Collection*: Operator shall conduct ticket sales and fare collections for the Authority, including online ticket sales and fare collections. Operator shall provide all necessary cashiers and ticket sales personnel at the Terminal Sites. Ticket booths will be provided by the Authority. Operator shall also man the phones, which includes but is not limited to responding to customer service calls.

(a) Ticket prices and fares shall be established by the Authority, and the Authority will review ticket prices and fares from time to time.

(b) Operator may accept major credit cards or other commercially accepted forms of payment for transactions.

(v) *Parking*: Operator will manage and operate the parking lot and related facilities at the Deep Point Marina, and will collect all parking fees and revenues for Authority.

(a) Parking fees and charges shall be established by the Authority, and the Authority will review the fees and charges for parking from time to time.

(vi) *Tram and Baggage Services:* Operator will also manage, maintain and operate all trams and tram transportation at the Bald Head Island marina terminal and on Bald Head Island, including without limitation pickup and delivery of all passengers and baggage at the Bald Head Island marina terminal and on Bald Head Island to and from passengers' homes, residences, vacation and temporary places of visitation and other points of final destination. Operator will also handle all passenger baggage at the Deep Point marina terminal and the Bald Head Island terminal to and from passengers' final points of destination.

(vii) *Information Technology Services:* Operator will also provide, operate, maintain and manage all information technology services necessary and/or appropriate for the Facilities.

(viii) *Human Resources and Accounting:* Operator will also provide, maintain and manage all human resources services, insurance and other benefits for the employees of Operator on the same terms and at the same levels as provided before the Closing Date, and Operator will also maintain and provide all bookkeeping and accounting services necessary and/or appropriate for the Authority and the Ferry System Operations.

(ix) *Security and Emergency Response:* Operator will also maintain and manage all security necessary and appropriate for the Facilities, at the Deep Point Marina, Bald Head Island marina, on ferries and barges, and at all parking and tram areas. [It is understood by Operator that the Vessels which are passenger ferries will be operated as a vessel that carries 149 passengers or less, and are therefore not required to be Marine Transportation Security Act compliant. Should the USCG, Department of Homeland Security or the Authority determine that a vessel security and/or facility security plan is required, then all costs associated with vessel security and/or facility infrastructure improvements will be borne by the Authority.]

(x) *Damage and/or Claims:* Operator shall keep an accurate record of all accidents, injuries or damages to persons and/or property involving the Vessels and/or the Docking Sites and shall provide notice of all such matters and of any and all claims, suits or actions to the Authority immediately when possible but at least within twenty-four (24) hours. Operator shall take all steps necessary to record all reports of injuries, accidents, damages, claims and legal proceedings, and shall perform such investigations, inspections and keep such records as may be necessary to document all such matters.

(xi) *Cleaning:* Cleaning shall be performed by Operator so that the Vessels, trams, ramps, booths, and passenger queuing areas are, at all times, neat, orderly, free of litter, oil, and dust, and in accordance with the cleaning as per industry standards.

(xii) *Vessel and Terminal Site Maintenance:* Operator is responsible for the cleaning and regular maintenance ("Regular Maintenance") for the Vessels as well as



Regular Maintenance of the ferry terminal offices located at the Terminal Sites. The costs for Regular Maintenance shall be paid by the Authority as per the approved Annual Budget.

Notwithstanding the preceding sentence, Regular Maintenance shall also include any repairs which are predictable and/or which can be handled in-house by Operator. Operator shall supply the labor or hire an outside contractor or vendor to perform all Regular Maintenance. Operator shall provide copies of all daily maintenance logs to the Authority on a monthly basis and in a format acceptable to the Authority.

(xiii) *Vessel Repairs*: Operator shall notify the Authority's Designated Representative promptly if Operator believes that repairs, which are outside the scope of Regular Maintenance, are needed for a Vessel. The Authority shall then make its own determination regarding the need for such repairs and that determination shall be final. Vessel repairs outside the scope of Regular Maintenance will be paid for by the Authority.

(xiv) *Inspections*: On behalf of the Authority, Operator will arrange to have all necessary inspections performed on the Vessels, including, but not limited to, bi-annual topside and hull inspections and all required US Coast Guard inspections. Both parties will agree on a third party agency to annually inspect the vessels for structural soundness and insure that the vessels can be safely operated on their intended route.

(xv) *Industry Standards*: Operator shall exercise its best efforts to maintain industry standards and common marine practices, as well as use reasonable care in operating the Vessels, not limited to those tasks outlined above. It is Operator's responsibility to alert the Authority to tasks required in order to maintain safe, secure and efficient Vessels.

(xvi) *Fueling and Waste-Disposal*: Fueling for the Vessels, as well as trash and garbage disposal (including liquid and solid waste) will be accomplished in a safe and environmentally sound manner, in compliance with all applicable federal, state and local laws.

(xvii) *Customer Service*: Operator shall maintain customer service at all times at a level consistent with past practices, including servicing passengers, answering phones, working with the Authority, and coordinating and supporting hospitality partners in the region. Customer service shall be implemented in a manner selected by Operator and satisfactory to the Authority.

(xviii) *Marketing*: Operator will be responsible for marketing the Ferry System Operations. Operator will assist in the development of a marketing plan as needed or requested. All marketing expenses shall be part of the Annual Budget and paid for by the Authority.

(xix) *Insurance*: Operator shall maintain and keep the following insurance coverage in effect throughout the term of this Agreement and any extensions or renewals

thereof. Each of the required policies shall provide that it shall not be canceled without at least thirty (30) days prior written notice to the Authority and each policy shall be issued by an insurer of recognized responsibility approved by the Authority. At least thirty (30) days prior to the date on which any such policy shall expire, a signed duplicate of a renewal policy, or an insurer's certificate thereof, shall be delivered by Operator to the Authority. Each policy shall be in such form as the Authority may from time to time reasonably require. Each policy should name the Authority as an additional insured.

(a) Insurance against Operator's liabilities under the Workmen's Compensation Law, the Longshoremen's and Harbor Worker's Act, and other like state and federal liability statutes, in an amount not less than \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars; and<sup>2</sup>

(b) A maritime endorsement and or Protection & Indemnity policy against Operator's liabilities under the Jones Act, in an amount not less than \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars; and

(c) All insurance required by any regulatory commission or other governmental agency to be carried by a passenger boat service, including but not limited to pollution coverage, in such form and minimum amounts as so required; and such policy shall name the Authority as an additional insured. Any such insurance, and any other insurance required to be carried hereunder shall not exclude any private or public livery operations or claims arising there from; and

(d) Commercial general liability insurance and/or MGL policy in an amount not less than \_\_\_\_\_ (\$ \_\_\_\_\_) combined single limit, or the equivalent, with respect to Bodily and Personal Injury and Property Damage in any one occurrence, to which the Authority shall be named as an additional insured; and

(e) Hull & Machinery coverage in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), and Protection & Indemnity coverage in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) for each Vessel and the Terminal Sites. Operator shall name the Authority as the Authority in the policy, as well as additional insured for the Vessel and loss payee; and

(f) Operator will carry excess coverage and or umbrella policy of at least \_\_\_\_\_ (\$ \_\_\_\_\_), and will name the Authority as an additional insured.

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<sup>2</sup> To be completed based on past practices.

**Exhibit B**

**HUMAN RESOURCES**

(i) Payroll and withholding processing, reporting and personnel/administration assistance, to the extent necessary. Such services may be handled directly or through a reputable third party provider.

(ii) Records maintenance/transition of policies and procedures.

(iii) Provide 2020 W-2s, as applicable, either directly or through a reputable third party provider.

(iv) Provision of health insurance and 401(k) type savings plan benefits to employees in a manner consistent with past practices.

(v) Employees will be required to comply with existing policies as per the Employee Information Handbook, as adopted and maintained by the Operator.

(vi) Operator is responsible for recruitment and training of all employees required to perform the scope of work specified in this Agreement, which shall be carried out in a manner consistent with past practices.

(vii) Such other human resource services utilized and provided by the Operator to and for its employees prior to the Closing Date.

## Exhibit C

### FINANCIAL OPERATIONS

Except as expressly requested by the Authority, the Operator shall perform all of the same financial operations it or BHIL performed prior to the Closing Date and in a manner consistent with prior practices, including, without limitation, the following:

- (i) Assist with data transfer, conversion to and use of financial software applications (general ledger, AP, AR, invoicing, credit collection)
- (ii) The following treasury and cash management services:
  - (a) Receipt and recording of customer payments
  - (b) Transition of payroll processing functions, including issuance of payroll checks and/or direct deposit setup with employees
  - (c) The following G/L, month-end close and fixed assets related services:
    - (i) Recording of general ledger transactions as and when directed by the Authority's Designated Representative
    - (ii) Performing month-end closing of the general ledger and account reconciliations in accordance with past practices
    - (iii) Recording fixed asset purchases, depreciation and dispositions; preparing standard system activity reports
  - (d) Preparation of detailed trial balances and transaction detail reports for submission to the Authority's finance and accounting department.

**Exhibit D**

**INFORMATION TECHNOLOGY**

(i) Network and telecommunication connectivity to the extent provided by the Operator prior to the Closing Date, including:

(a) Telephone

(b) Internet access

(c) Email – note: access to shared mailboxes will need to be walled-off as of the Closing Date; the Authority will have no access to or ownership of any emails of the Operator or the Leased Employees created prior to the Closing Date, unless approved by Operator in advance.

(ii) Computer Systems

(iii) Maintenance (hardware/software/servers/system) and hosting

(a) To the extent software is nontransferable, the Operator will use its best efforts to provide necessary accommodations until the Authority has secured appropriate licenses

(iv) Security, including virus protection

(v) File backup and access to off-site backup tapes

(vi) Remote connections (continue on a walled-off basis)

(vii) Any outsourced IT support services need to be provided on similar terms as utilized by the Operator prior to the Closing Date.

(viii) Provide details and specifications (and access to the current IT support personnel) for all telephone, architecture, server security, asset, configurations, applications, licensing and support contracts, knowledge transfer

**Exhibit E**

**FORM OF ANNUAL BUDGET**

**Exhibit F**

**LIST OF INITIAL OPERATOR EMPLOYEES**

**Exhibit G**

**DESIGNATED REPRESENTATIVES**

**FOR THE AUTHORITY:**

Susan Rabon

**FOR THE OPERATOR:**

Charles A. Paul III



**EXHIBIT D**

**RWI POLICY**  
**(see attached)**

[To be in accordance with non-binding indication letter from AIG dated September 15, 2020.]



Mergers & Acquisitions Insurance  
 175 Water Street, 7<sup>th</sup> Floor  
 New York, NY 10038  
 www.aig.com

September 15, 2020

Bald Head Island Transportation Authority  
 c/o Michael Wakefield  
 CAC Specialty

Re: Non-Binding Indication Letter for Buyer-Side R&W Insurance: Project BHIT

Dear Michael:

Based on our preliminary review of certain documents provided to us by you, we are pleased to provide you with this Non-Binding Indication Letter (this "NBIL") for Buyer-Side Representations and Warranties Insurance, which would (A) be provided on a form of policy based upon (i) a recently negotiated policy precedent or (ii) if no such policy exists, our standard model policy form and (B) be modified to account for the terms of the Agreement and any particular risks identified during our underwriting and due diligence review. Capitalized terms used but not defined herein shall have the respective meanings assigned thereto in the Agreement. All dollar amounts are intended to be expressed in USD.

OPTION	POLICY LIMIT	RETENTION	(NSI) / (LSI)	PREMIUM
1	\$10,000,000	1.0% of the enterprise value	LSI	\$270,000

All limits and retentions are quoted in the aggregate.

All premiums are quoted *inclusive* of broker commission of 15% of the Premium.

If excess coverage is sought, we may be willing to provide additional limits on an excess basis.

Retention drop down. To the extent that the then-remaining Retention is greater than 0.50% of the enterprise value on the 12-month anniversary of the Closing, the Retention shall be reduced to 0.50% of the enterprise value, in the aggregate, on such date.

1. Covered Provisions:	We will endeavor to underwrite coverage for (i) all of the representations and warranties set forth in Section 4.1(e) of the MW 8-20-20 draft of the Asset Purchase Agreement (the " <u>Agreement</u> ") and (ii) a customary indemnity for pre-Closing taxes of the target (other than seller taxes, transfer taxes, taxes accurately accrued or otherwise reflected on the books and records of the target and its subsidiaries as of the Closing and any matters disclosed in the disclosure schedules to the Agreement), in each case, except as set forth below (the " <u>Covered R&amp;W</u> ").
2. Exclusions and Other Areas of Heightened Risk:	<u>Exclusions</u> In addition to any transaction-specific exclusions resulting from our underwriting and due diligence review and the standard representations and warranties insurance policy exclusions set forth in Section 4 of the form of policy, such policy would exclude any losses arising out of, resulting from or to the extent increased by the failure to protect any employee, contractor, officer, director, manager, agent, customer, client, supplier, distributor or any other person from the transmission of a novel coronavirus, including the coronavirus disease (COVID-19) or any evolution thereof.

	<p>[Notwithstanding the foregoing, such policy would also exclude any losses arising out of, resulting from or to the extent increased by a Breach that first occurred during the Interim Period or at the Closing arising out of, resulting from or to the extent increased by (a) the presence, transmission, or threat of a novel coronavirus, including the coronavirus disease (COVID-19) or any evolution thereof, and/or (b) any mandatory or advisory restriction issued, or action ordered or threatened, by any public authority, regulatory body or government in connection therewith including any federal, state, local or foreign regulation, rule, statute or law.]<sup>1</sup></p> <p><u>Heightened Risks</u></p> <p>Our coverage of the following is subject to satisfactory underwriting:</p> <ul style="list-style-type: none"> <li>• COVID-19 impact</li> <li>• Condition of assets</li> <li>• Environmental matters</li> <li>• Cyber breach and data privacy / security matters</li> <li>• Regulatory matters</li> </ul>
<p>3. Expiry Date:</p>	<p><u>General Representations</u>. The three-year anniversary of the Closing.</p> <p><u>Fundamental Representations, Tax Representations and Pre-Closing Tax Indemnity</u>. The six-year anniversary of the Closing.</p> <p>For purposes of this NBIL, the "<u>Fundamental Representations</u>" shall be comprised of the representations set forth in Sections 4.1(a) (Due Organization and Power), 4.1(b) (Authority), 4.1(e) (Tax Matters), and 4.1(o) (Broker Fees) of the Agreement.<sup>2</sup></p> <p>The "<u>General Representations</u>" shall constitute all of the Covered R&amp;W other than the Fundamental Representations.</p> <p><u>Inception at Signing</u></p> <p>If the period between the execution of the Agreement ("<u>Signing</u>") and Closing is not expected to be longer than 120 days, we are willing to incept coverage at the time of Signing, subject to the following mechanics: (i) receipt of a non-refundable 10% deposit as of the Signing, (ii) exclusion from coverage of breaches that first arise and that are discovered between Signing and Closing ("<u>Interim Breaches</u>"), (iii) receipt of "No Claims Declarations" as of Signing and Closing, and (iv) access to the deal team members to conduct bring down due diligence prior to Closing.</p>
<p>4. Enhanced Damages:</p>	<p>The terms set forth herein assume that we will remove our multiplied and consequential damages exclusions, provided that the Agreement is silent as to the availability of such losses, diminution in value and lost profits; <b><i>provided, however, that removal of our multiplied damages exclusion is subject to our understanding of buyer's valuation methodologies.</i></b></p>
<p>5. Agreement Comments:</p>	<p>For the purposes of any policy issued in connection with this NBIL, with respect to the Agreement:</p> <ul style="list-style-type: none"> <li>(i) the words "received any notice of" in Section 3(l) (Assumed Contracts) and Section 3(r) (Suppliers) shall be deemed qualified by "in writing";</li> <li>(ii) the following shall be deemed deleted: (a) the words "and have no reason to believe" in Section 3(r) (Suppliers); and (b) Section 3.1(v) (Provision of Information and Full Disclosure).</li> </ul> <p><b>The terms set forth herein are subject to our receipt and review of a negotiated draft of the Agreement.</b></p> <p>To the extent applicable, where the target group is treated as a partnership for tax purposes, we would expect the buyer to seek a covenant in the Agreement that a push out</p>

<sup>1</sup> This exclusion may be narrowed and/or removed at Closing following satisfactory bring-down due diligence on the bring-down call.

<sup>2</sup> We can cover both Section 4.1(i) (Environmental Matters) and 4.1(j) (Title to Assets; Liens) as Fundamental Representations for \$10k additional premium.

	election will be made.
<b>6. Materiality Scrape:</b>	We would be willing to recognize the materiality scrape set forth in the Agreement. For the avoidance of doubt, the materiality scrape will not apply to the word "Material" in defined terms such as Material Suppliers or the representation that there has been no Material Adverse Effect.
<b>7. Fraud; Subrogation:</b>	We will require the right to subrogate against the seller(s) for fraud, and that there be no limitation on such right, or buyer's rights of recovery, in the Agreement in the event of such fraud.
<b>8. Taxes:</b>	The Premium does not include any applicable surplus lines or premium tax or any other applicable tax, fee or surcharge.  If coverage is offered and purchased, it will be the Named Insured's responsibility to pay any applicable surplus lines or premium tax and any other applicable tax, fee or surcharge.
<b>9. Not an Offer of Insurance:</b>	This NBIL provides only a summary of contemplated coverage and is not an offer of insurance. We make no commitment other than to analyze the risks associated with issuing a policy in connection with this transaction and we will perform this analysis in a manner we deem appropriate under the circumstances. No commitment to bind insurance shall exist until a binder or policy, as the case may be, is issued and executed by the parties thereto.
<b>10. Termination:</b>	This NBIL will immediately and automatically terminate without further action if it has not been signed and returned to us by email 30 calendar days after the date above.
<b>11. Additional Costs:</b>	<u>Outside Counsel Fee</u>  We will utilize outside counsel to review the transaction. Therefore, we require receipt of \$35,000 which is payment of fees charged by outside counsel for this service (the " <u>Outside Counsel Fee</u> ") following the execution of this NBIL and prior to continuing our underwriting efforts. The Outside Counsel Fee is non-refundable and is due whether or not coverage is purchased. If coverage is purchased from us in connection with this NBIL, the Outside Counsel Fee will be in addition to, and not a part of, the Premium and will not be subject to any brokerage commission.
<b>12. Counterparts; Amendments; Binding Sections:</b>	This NBIL may be executed in counterparts, each of which shall be deemed to be an original copy of this NBIL and all of which, when taken together, shall constitute one and the same agreement. This NBIL may be amended or modified, in whole or in part, only by an agreement in writing executed by the parties hereto and which makes reference to this NBIL. Notwithstanding any reference to the "non-binding" nature of this NBIL, this Section and Section titled "Additional Costs" set forth above are intended to be binding on the signatories hereto, and shall survive any termination or rescission of this NBIL.
<b>13. Next Steps:</b>	If you would like us to continue our underwriting review and engage outside counsel, please (i) have an authorized person of the Named Insured sign this NBIL in the space provided below and return it to us and (ii) remit the Costs set forth above (see invoice on <u>Exhibit A</u> attached hereto).  List of required documents to be provided to AIG for its underwriting is available upon request.

*[Signature page follows.]*

Sincerely,

Mergers & Acquisitions Insurance Group

By: \_\_\_\_\_  
Name:  
Title:

Accepted and Agreed:

Named Insured: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:



**Mergers &  
Acquisitions  
Insurance Group**

175 Water Street, 7<sup>th</sup> Fl.  
New York, NY 10038  
Facsimile: 866-244-1731

## INVOICE

September 15, 2020

Bill to: Bald Head Island Transportation Authority

Description	Additional Costs in connection with Project BHIT
Amount	US \$35,000 (subject to adjustment as set forth in the Additional Costs section of the NBIL)
Remit to Bank Name	JP Morgan Chase Bank, NA
Bank address	270 Park Ave NY, NY 10071
ABA #	021-000-021
For Credit to	AIG Specialty Insurance Company (f/k/a Chartis Specialty Insurance Company)
Account #	6019-005062

**EXHIBIT E**

**FORM OF BILL OF SALE AND ASSIGNMENT**

## BILL OF SALE AND ASSIGNMENT AGREEMENT

This Bill of Sale and Assignment Agreement (this "*Agreement*") is made as of [\_\_\_\_], 2020 pursuant to Section 10.1(a) of that certain Asset Purchase Agreement (the "*Purchase Agreement*") dated [\_\_\_\_], 2020 by Bald Head Island Transportation, Inc., a North Carolina corporation ("*BHIT*"), and Bald Head Island Limited, LLC, a Texas limited liability company ("*BHIL*"), and together with BHIT, the "*Assignors*", and each, an "*Assignor*") to Bald Head Island Transportation Authority, a public body corporate and politic of the State of North Carolina, established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes (the "*Assignee*").

**WHEREAS**, pursuant to the Purchase Agreement, Assignors have agreed to sell, assign, convey, transfer and deliver to Assignee, and Assignee has agreed to purchase and acquire from Assignors, all of Assignors' rights, title and interests in and to the Assets that are tangible personal property (other than the Excluded Assets);

**WHEREAS**, simultaneously with the execution of this Agreement, Assignors and Assignee are also entering into an Assignment and Assumption Agreement, pursuant to which Assignors are selling, assigning, conveying, transferring and delivering to Assignee all of Assignors' rights, title and interests in and to all of the Assets that are intangible personal property, in each case all as described therein; and

**WHEREAS**, pursuant to Section 10.1(a) of the Purchase Agreement, Assignors have agreed to enter into this Agreement.

1. Definitions. Capitalized terms used, but not otherwise defined, herein have the respective meanings given to them in the Purchase Agreement.

2. Transfer of Assets. For the consideration set forth in the Purchase Agreement and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, each Assignor hereby sells, assigns, conveys and transfers to Assignee, its successors and assigns, all right, title and interest of such Assignor in, to and under the Assets that are tangible personal property, excluding the Excluded Assets (the "*Assigned Assets*").

3. Further Assurances. Assignors hereby covenant and agree that they shall, at any time after the date hereof at the reasonable request of Assignee, execute and deliver such further instruments of sale, assignment, conveyance, transfer, delivery and assumption, as applicable, as shall be reasonably necessary or appropriate to more effectively consummate the assignments and assumptions contemplated hereby.

4. Intentionally Omitted.

5. Successors and Assigns. The terms and provisions of this Agreement shall be binding upon Assignors and their successors and assigns, and shall inure to the benefit of Assignee and its successors and assigns.

6. Terms of the Purchase Agreement. Assignors acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded, amended or expanded hereby, but shall remain in full force and effect to the extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms and provisions of the Purchase Agreement shall govern.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Copies (including delivery by facsimile, electronic mail (PDF) or other electronic transmission or original) of



signatures to this Agreement shall be deemed to be originals and shall be binding to the same extent as original signatures.

8. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina, without regard to any laws regarding conflicts of law that would require the application of laws of any other jurisdiction.

*[Signature page follows.]*

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement effective as of the date first set forth above.

**ASSIGNORS:**

BALD HEAD ISLAND TRANSPORTATION, INC.

By: \_\_\_\_\_  
Name:  
Title:

BALD HEAD ISLAND LIMITED, LLC

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT F**

**FORM OF SPECIAL WARRANTY DEED**

**NORTH CAROLINA SPECIAL WARRANTY DEED**

Excise Tax: \$ \_\_\_\_\_

Parcel Identifier No. Verified by \_\_\_\_\_ County on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Mail/Box to: \_\_\_\_\_

This instrument was prepared by: McGuireWoods LLP, 300 N. Third St. Suite 320, Wilmington, NC 28401

Brief description for the Index: Parcel Numbers 2380000302, 2380003 and

THIS DEED made this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between

GRANTOR

BALD HEAD ISLAND LIMITED, LLC, a Texas  
limited liability company

GRANTEE

BALD HEAD ISLAND TRANSPORTATION  
AUTHORITY, a public body corporate and politic  
of the State of North Carolina, established pursuant  
to Article 29 of Chapter 160A of the North Carolina  
General Statutes

1029 North Howe Street, Suite "Authority Office"  
Southport, North Carolina 28461

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land situated in Brunswick County, North Carolina and more particularly described as follows:

SEE ATTACHED EXHIBIT "A"

The property hereinabove described was acquired by Grantor by instrument recorded in Book \_\_\_\_\_, Page \_\_\_\_\_.

All or a portion of the property herein conveyed \_\_\_ includes or X does not include the primary residence of a Grantor.

A map showing a portion of the above described property is recorded in Map Cabinet 119, Pages 1-4, and Map Cabinet \_\_\_\_, Page(s) \_\_\_\_ - \_\_\_\_, Brunswick County Register of Deeds.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title against the lawful claims of all persons claiming by, under or through Grantor, other than the following exceptions:

1. 2020 and subsequent years' ad valorem taxes;
2. Easements, restrictions and rights of way of record; and
3. Applicable zoning and land use ordinances and regulations.

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

BALD HEAD ISLAND LIMITED, LLC, a Texas  
limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

---

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is the Manager of BALD HEAD ISLAND LIMITED, LLC, a Texas limited liability company, and that he/she in such representative capacity voluntarily signed this document for the purposes stated therein.

Witness my hand and official stamp or notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Notary Public  
Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

[SEAL]

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EXHIBIT "A"

**Deep Point Marina:**

All of that certain tract or parcel of land, lying and being in Smithville Township, Brunswick County, North Carolina, more particularly described as follows:

BEING ALL of "Tract 2" containing 52.60 acres, more or less, all as shown on that certain plat entitled "Subdivision Survey for Bald Head Island Limited" prepared by ESP Associates, Inc. and recorded in Map Cabinet 119, Pages 1-4, Brunswick County Registry.

Together with and subject to those rights and obligations described in the Declaration of Easements: Deep Point Marina, recorded in Book 4307, Page 746, Brunswick County Registry, as amended from time to time.

And together with and subject to those rights and obligations in the Easement from the State of North Carolina recorded in Book 1185, Page 930, Brunswick County Registry.

**Bald Head Island Marina:**

All of that certain tract or parcel of land, lying and being in Smithville Township, Brunswick County, North Carolina, more particularly described as follows:

BEING ALL of "Parcel A" containing 5.577 acres, more or less, all as shown on that certain plat entitled "Recombination Plat for a Portion of Bald Head Island Landing" prepared by ESP Associates, Inc. and recorded in Map Cabinet \_\_\_\_\_, Pages \_\_\_-\_\_\_, Brunswick County Registry.

**Deep Point Submerged Lands (the "Deep Point Submerged Lands"):**

**Grantor also conveys all rights, title and interest in and to the following described real property but makes no warranty with respect to such real property:**

The "Marina Channel Basin" containing 3.76 acres, more or less, all as shown on that certain plat entitled "Subdivision Survey for Bald Head Island Limited" prepared by ESP Associates, Inc. and recorded in Map Cabinet 119, Pages 1-4, Brunswick County Registry.

EXHIBIT G

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "*Assignment Agreement*") is executed as of [\_\_\_\_], 2020, by and among Bald Head Island Transportation, Inc., a North Carolina corporation ("*BHIT*"), Bald Head Island Limited, LLC, a Texas limited liability company ("*BHIL*", and together with BHIT, the "*Assignors*", and each, an "*Assignor*") and Bald Head Island Transportation Authority, a public body corporate and politic of the State of North Carolina, established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes (the "*Assignee*"). Capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in that certain Asset Purchase Agreement dated as of [\_\_\_\_], 2020 (the "*Purchase Agreement*"), by and among Assignors and Assignee.

### RECITALS

**WHEREAS**, pursuant to the Purchase Agreement, Assignors have agreed to sell, assign, convey, transfer and deliver to Assignee, and Assignee has agreed to purchase and acquire from Assignors, all of Assignors' rights, title and interests in and to the Assigned Assets (defined below);

**WHEREAS**, simultaneously with the execution of this Assignment Agreement, Assignors are delivering a Bill of Sale to Assignee, pursuant to which Assignors are selling, assigning, conveying, transferring and delivering to Assignee all of Assignors' rights, title and interests in and to all of the Assets that are tangible personal property, all as defined and described therein; and

**WHEREAS**, pursuant to Section 10.1(c) of the Purchase Agreement, Assignors have agreed to enter into this Assignment Agreement.

### AGREEMENT

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors and Assignee, intending to be legally bound, hereby agree as follows:

1. Assignment of Assets. Upon the terms set forth in the Purchase Agreement, Assignors hereby sell, assign, convey, transfer and deliver to Assignee, and Assignee hereby purchases and acquires from Assignors, all of Assignors' rights, title and interests in and to the Assets that are intangible personal property, excluding the Excluded Assets (collectively, the "*Assigned Assets*").

2. Assumption of Liabilities. Assignee hereby assumes and agrees to discharge, pay and perform any Assumed Liabilities related to the Assigned Assets as and when such liabilities become due.

3. Excluded Liabilities. Notwithstanding anything to the contrary in this Assignment Agreement, nothing in this Assignment Agreement shall be construed to impose on Assignee, and Assignee shall not assume or be obligated to pay, perform or otherwise discharge, the Excluded Liabilities. The Excluded Liabilities are hereby expressly retained by Assignors, and Assignors shall discharge, pay and perform the Excluded Liabilities in accordance with the terms of the Purchase Agreement as and when such liabilities become due.

4. Further Assurances. Assignors and Assignee hereby covenant and agree that they shall, at any time after the date hereof at the reasonable request of any other party hereto, execute and deliver such further instruments of sale, assignment, conveyance, transfer, delivery and assumption, as applicable, as shall be reasonably necessary or appropriate to more effectively consummate the assignments and assumptions contemplated hereby.



5. Intentionally Omitted.

6. Amendments. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Assignee and Assignors.

7. Successors and Assigns. The terms and provisions of this Assignment Agreement shall be binding upon, and inure to the benefit of, Assignors and Assignee, and each of their respective successors and assigns.

8. Terms of the Purchase Agreement. Assignors and Assignee acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded, amended or expanded hereby, but shall remain in full force and effect to the extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms and provisions of the Purchase Agreement shall govern.

9. Counterparts. This Assignment Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Copies (including delivery by facsimile, electronic mail (PDF) or other electronic transmission or original) of signatures to this Assignment Agreement shall be deemed to be originals and shall be binding to the same extent as original signatures.

10. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina, without regard to any laws regarding conflicts of law that would require the application of laws of any other jurisdiction.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement to be duly executed as of the date first set forth above.

**ASSIGNORS:**

BALD HEAD ISLAND TRANSPORTATION, INC.

By: \_\_\_\_\_  
Name:  
Title:

BALD HEAD ISLAND LIMITED, LLC

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

BALD HEAD ISLAND TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT H**

**FORMS OF NEW LEASES**

**COMMERCIAL LEASE AGREEMENT**  
**DEEP POINT MARINA WAREHOUSE FACILITY**

**Date of Lease:** \_\_\_\_\_, 2020

**Commencement Date of Lease:** \_\_\_\_\_, 2020

**Ending Date of Lease:** \_\_\_\_\_, 2023

**Tenant:** Bald Head Island Limited LLC, a Texas limited liability company

**Tenant's SSN or TIN:** xx-xxx0414

**Tenant's telephone number:** 910-457-5000

**Tenant's notice address:** P.O. Box 3069, Bald Head Island, North Carolina 28403

**Tenant's e-mail address:** cpaul@bhisland.com

**Premises:** See attached Schedule A

**Personal Property:** See attached Schedule B

**Base Rent:** \$6,000 per month or \$72,000 per year

**Security Deposit:** None

\*\*\*\*\*

BALD HEAD ISLAND TRANSPORTATION AUTHORITY, a North Carolina public corporation (referred to hereinafter as the "Landlord"), whose mailing address is 1029 North Howe Street, Suite "Authority Office", Southport, North Carolina 28461, does agree with BALD HEAD ISLAND LIMITED LLC, a Texas limited liability company authorized to do business in North Carolina (referred to hereinafter as "Tenant") as follows:

1. DEMISE. Landlord does hereby let and lease unto Tenant the real property commonly known as "Deep Point Marina warehouse facility" as shown and described on **Schedule A** ("Premises") and the personalty (if any) described on **Schedule B**, both attached hereto, according to the terms and conditions set forth herein. In addition, Landlord hereby grants to Tenant and its successors and assigns a non-exclusive easement and license to use, in common with others (including Landlord), all vehicular and pedestrian access ways, streets, roads, entrances and exits, driveways, paths and sidewalks, whether existing or as may be created or modified hereafter, located on the property constituting the Deep Point Marina complex where the Premises are located, as well as all stairwells, entrances and exits, elevators and other such facilities located in or serving the Premises.

2. RENTAL AMOUNT. Tenant shall pay Base Rent to Landlord in the sum of Six Thousand and no/100 Dollars (\$6,000.00) per month, due and payable as follows: beginning on the Commencement Date, Tenant shall pay said Base Rent and all such other sums of money as shall become due hereunder (collectively, "rent" or "Rent") in advance on or before the first day of each calendar month during the Term at the address for Landlord set forth in this Lease or at such other address as Landlord may direct in writing. If any monthly Rent hereunder is payable for less than a full calendar month (e.g., if the Commencement Date or Ending Date falls on a day other than the first day of a calendar month), then the installments of Rent and any adjustments thereto for such month or months shall be prorated, based on the number of days in such month or months.

3. TERM. The initial term of this Lease shall commence on the Commencement Date

and terminate at 11:59 o'clock P.M. on the Ending Date (the "Initial Term"), subject to any early termination provisions contained herein. If the Tenant remains in possession of the Premises beyond the end of the Initial Term or any Renewal Term (as defined below) (or the earlier termination of this Lease) with or without the express consent of Landlord, such possession by Tenant shall be deemed to be a month-to-month tenancy upon the same terms and conditions contained herein, terminable on thirty (30) days' written notice given at any time by either party; provided that the Base Rent during any such month-to-month tenancy shall be equal to two hundred percent (200%) of the amount of monthly rent immediately prior to such end of the Initial Term or any Renewal Term (or the earlier termination of this Lease), payable on the first day of each month beginning the month of the holdover, unless the parties otherwise agree in writing.

4. RENEWAL OPTION(S). Tenant shall have the right and option to renew this Lease after the initial Ending Date for up to three (3) additional successive periods of three (3) years each (each such three (3) year period, if any, a "Renewal Term" and, to the extent exercised and collectively with the Initial Term and subject to any early termination provisions contained herein, the "Term"), which Tenant may exercise by giving written notice to Landlord a minimum of ninety (90) days, but not more than one hundred twenty (120) days, prior to the expiration of the then-current Term. All terms, conditions, and provisions during the Renewal Term(s) shall remain as set out herein, with the exception of the rental amount. Rent applicable during each subsequent Renewal Term shall be increased so that it equals (a) the prior Lease Year's amount plus (b) an amount equal to six percent (6.0%) of the prior Lease Year's amount.

5. USE RESTRICTIONS. Tenant may use the Premises only for those purposes set out on **Schedule C** attached hereto and other lawful purposes reasonably related thereto and for no other purpose whatsoever without the prior, written consent of Landlord. Tenant's use of the Premises shall be in compliance with the statutes, laws and ordinances of the state, county and municipality in which the Premises are sited, and shall not unreasonably interfere in any manner with Landlord's operations of a ferry transportation system at Deep Point Marina. Tenant shall not invite the general public to the Premises, and no goods, products or services shall be sold at the Premises.

6. UTILITIES. Tenant shall pay for the following specific utilities furnished to the Premises: electricity, water, and sewer or septic, internet, wi-fi, cable and telephone services, all of which shall be placed in Tenant's name, if possible. However, if any utilities are jointly metered with other portions of Deep Point Marina, Landlord shall promptly pay such costs and Tenant shall reimburse Landlord its proportionate share based on Tenant's usage. Landlord shall not be responsible for the failure or stoppage of any utility service due to causes or forces outside Landlord's control. Tenant shall further be responsible at its sole cost for all trash/garbage pickups from the Premises.

7. PARKING. During the term of this Lease, Landlord warrants and represents that Tenant, and its guests and invitees, shall have available for their use at all times during the term of this Lease at least nine (9) spaces in "Parking Area D" located north of the Premises in the Deep Point Marina complex, as such spaces are shown on the drawing attached hereto as **Schedule A-2**, at Tenant's sole cost and expense (in addition to any rent due hereunder) at the parking rates for such spaces as they may be changed from time to time.

8. SIGNS. Tenant may, at Tenant's sole expense, install sign(s) that are visible from the outside of the Premises, identifying Tenant's operations. Said sign(s) shall be in the number, form, size, and of the materials and colors approved in advance by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be hung or posted at reasonable location(s) specified by Landlord. Tenant shall obtain any governmental permits or approvals for such signs and Landlord shall cooperate as necessary in connection with the same. Tenant shall also maintain its signage in a good and slightly condition, and shall remove same at the end of this Lease unless otherwise agreed in writing by Landlord.

9. COMPLIANCE WITH LEGAL REQUIREMENTS. Tenant shall comply with all legal requirements of any governmental or quasi-governmental body, including municipal, state or federal agencies having jurisdiction, respecting any operation conducted, or any use of Tenant's equipment, installations, trade fixtures or other property placed upon, in or about the Premises. Tenant shall neither create nor knowingly permit the creation of any nuisance upon, in or about the Premises. Tenant shall further comply with any health and environmental regulations imposed upon the Premises by federal, state or local government; provided, however, in the event that any structural changes to the Premises are located are required in order to comply with any legal requirements as set forth in this section, Landlord shall be responsible for promptly completing such structural changes at its sole cost and expense.

10. MAINTENANCE AND REPAIR.

a. Tenant shall keep and maintain the Premises are located, including the plumbing, electrical, heating, ventilation and air-conditioning systems, in good order, condition and repair. Landlord shall keep and maintain the Premise's exterior walls, doors and windows, the roof, and the structural components of internal walls and ceilings, in good order, condition and repair, all without additional cost to Tenant. However, Landlord shall have no obligation to repair or replace any part of the Premises, improvements, fixtures or appurtenances which may be damaged as a result of the acts or omissions of Tenant or Tenant's agents, employees or invitees, and Tenant shall be responsible for any such damage.

b. Landlord shall keep the parking areas, the private drives and sidewalks accessing the Premises, and any structures and improvements associated therewith useable and in a good state of cleanliness and repair, all without additional cost to Tenant; provided that Tenant shall maintain all docks and ramps serving the Premises usable and in a good state of cleanliness and repair, at its sole cost.

c. Tenant shall maintain the interior of the Premises and Tenant's equipment and trade fixtures at the Premises in good order, condition and repair, and shall further maintain any floor coverings and interior wall coverings, such as paint or wallpaper, at the Premises. Tenant shall keep all trash and debris in appropriate receptacles and keep the Premises in "broom-clean" condition at all times. Tenant shall replace HVAC filters at regular intervals.

d. At the end of the tenancy, Tenant will deliver the Premises to Landlord in substantially the same condition as received at the Commencement Date of the Initial Term of the Lease, normal wear and tear excepted, and subject to Landlord's obligations herein and subject to any permitted improvements made during the Term.

11. ADDITIONS, ALTERATIONS, CHANGES AND IMPROVEMENTS. Tenant may make "Minor Alterations" in the Premises without Landlord's prior written consent, but with prior notification to Landlord. As used in this lease, "Minor Alterations" are alterations: (A) of a cosmetic nature such as painting, wallpapering, hanging pictures, and installing carpeting; (B) not visible from outside the Premises; (C) that do not affect the structure of the Premises; and (D) that do not require work to be performed inside the walls or above the ceiling of the Premises. Tenant shall provide Landlord with at least seven (7) days' notice prior to commencing any Minor Alterations, which notice shall include a general description of the nature and estimated cost of the proposed Minor Alteration, and the anticipated completion dates for such work.

Except for Minor Alterations, Tenant shall not make and shall not have the right to make structural alterations, changes or improvements in or to the Premises without Landlord's prior written consent, which consent will not be unreasonably withheld; provided, however, should Landlord consent, all alterations, changes and improvements shall be made by a licensed contractor approved by Landlord, and Tenant shall promptly pay for same. All structural alterations, changes and improvements to the Premises, including all upfitting improvements, become the property of Landlord at the expiration or termination of the tenancy. Tenant shall not allow any liens to attach to the Premises or to Tenant's interest therein in connection with any work performed by or on behalf of Tenant. Landlord shall have the right to require Tenant to provide such assurances as Landlord shall reasonably require (such as bonds, escrows, etc.) to protect Landlord and the Premises against unpaid work.

12. TENANT OWNED PROPERTY. Tenant shall be permitted to install trade fixtures and IT equipment inside the Premises. Upon termination of the tenancy for any reason, including expiration of its Term, all movable equipment, trade fixtures, IT equipment, personal property, furniture, or any other items that can be removed without material harm to the Premises will remain Tenant's property (collectively, the "Tenant Owned Property") and shall not become the property of Landlord but shall be removed by Tenant, at its sole cost and expense, within seven (7) days following the termination of the tenancy. Tenant shall repair at its sole cost and expense all damage caused to the Premises by the removal of any alterations or Tenant Owned Property. Should Tenant fail to do so, all Tenant Owned Property shall become the property of Landlord and Landlord may keep or remove the same and restore the Premises. Such costs shall be collectable by Landlord in the same manner as rent hereunder or as otherwise allowed by law.

13. AD VALOREM TAXES. Tenant shall pay all ad valorem taxes on interior fixtures and improvements owned, made or installed by Tenant, including trade fixtures, and on all personalty owned by Tenant in or about the Premises. Landlord shall be responsible for paying all ad valorem real property taxes on the real property and Premises.

14. LANDLORD'S INSURANCE OBLIGATIONS.

a. Landlord shall keep the Premises insured to the extent of not less than 100% of the Premises' full insurable replacement cost value against loss or damage by all hazards (including fire and windstorm and flood) with extended coverage.

b. Landlord shall keep and maintain commercial general liability insurance

(ISO CGL Form 2007 or broader), including contractual liability, in an amount no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

c. Landlord shall keep and maintain umbrella liability insurance coverage with a limit of no less than \$5,000,000 which automatically triggers over the primary limits stated hereinabove.

15. TENANT'S INSURANCE OBLIGATIONS.

a. Tenant shall maintain insurance against loss or damage by all hazards (including fire and windstorm) with extended coverage, as to all improvements made and trade fixtures installed by Tenant within the Premises. Tenant shall also be responsible for insuring, at Tenant's election, all personalty (including Tenant's supplies, stock and inventory) located within the Premises.

b. Tenant shall carry, in the minimum, at Tenant's expense, a commercial general liability policy, including bodily injury and property damage liability, of one million dollars (\$1,000,000.00) each occurrence, two million dollars (\$2,000,000.00) general aggregate, two million dollars (\$2,000,000.00) products/completed operations aggregate, one million dollars (\$1,000,000.00) personal/advertising liability, five hundred thousand dollars (\$500,000.00) fire legal liability, and ten thousand dollars (\$10,000.00) medical payments, with applicable endorsements and extensions.

c. The policies of insurance described in Section 14 and 15 shall have Landlord, Tenant and all parties holding an encumbrance on the Premises as named insureds thereunder as their interests appear. Insurance coverage shall be primary and non-contributory, shall be evidenced to the other party by a certificate of insurance upon request, and shall provide thirty (30) days advance written notice of cancellation or non-renewal. Such insurance shall be placed with reputable insurance companies licensed in the State of North Carolina and having at least an "A" rating by a recognized rating service.

16. INDEMNITY AND WAIVER OF SUBROGATION. Tenant shall indemnify Landlord and hold it harmless from and against all losses, expenses, or claims arising out of injury to, or damage to property of, Tenant, its employees, officers, directors, agents, customers, guests, invitees, or any other person on or about the Premises except to the extent caused in whole or in part by any gross negligence or willful acts of Landlord, its employees, officers, directors, agents, customers, guests, invitees. Tenant hereby waives any and all rights of recovery against Landlord for loss or damage occurring in connection with or arising out of Tenant's business operations to the extent such loss or damage is covered by proceeds received from insurance required to be carried under this Lease as provided in Section 15 above. This waiver of subrogation shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss, damage or injury to person or property. Inasmuch as this waiver will preclude the assignment of any claims by way of subrogation to an insurance company, the parties shall immediately give, to each insurance company providing policy coverage pursuant to this Lease, written notice of the terms of this waiver of subrogation, and shall have each policy properly endorsed as may be needed to prevent the invalidation of coverage by reason of said waiver. Landlord shall indemnify Tenant and hold it harmless from and against all losses,



expenses, or claims arising out of injury to, or damage to property of, Landlord, its employees, officers, directors, agents, customers, guests, invitees, or any other person on or about the Premises except to the extent caused in whole or in part by any act(s) or omission(s) of Tenant, its employees, officers, directors, agents, customers, guests, invitees. Landlord hereby waives any and all rights of recovery against Tenant for loss or damage occurring in connection with or arising out of Landlord's business operations to the extent such loss or damage is covered by proceeds received from insurance required to be carried under this Lease as provided in Section 14 above. This waiver of subrogation shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss, damage or injury to person or property. Inasmuch as this waiver will preclude the assignment of any claims by way of subrogation to an insurance company, the parties shall immediately give, to each insurance company providing policy coverage pursuant to this Lease, written notice of the terms of this waiver of subrogation, and shall have each policy properly endorsed as may be needed to prevent the invalidation of coverage by reason of said waiver.

19. DAMAGE AND DESTRUCTION. If the Premises become inaccessible or are damaged by fire, the elements, or other casualty (a "Casualty Event"), Tenant shall promptly notify Landlord. Landlord and Tenant shall each have the right to terminate this Lease if: (a) Landlord is not permitted by law to rebuild the Premises in substantially the same form as existed before the Casualty Event; (b) Landlord's insurance company prohibits use of the insurance proceeds for reconstruction of the Premises; (c) Landlord's recovery of insurance proceeds is insufficient to reconstruct the Premises; (d) the Premises have been materially damaged and there is less than one (1) year of the Term remaining on the date of the Casualty Event; or (e) it can be reasonably estimated that more than six (6) months will be required for Landlord to cause the Premises to be returned to a condition ready for occupancy. Landlord or Tenant may exercise its right to terminate this Lease under this Section 19 by providing written notice thereof to the other party within thirty (30) days after the occurrence of the Casualty Event or within thirty (30) days after such party receives the information necessary to determine that the applicable condition(s) set out in subsections (a) through (e) above are true, if later. If neither Landlord nor Tenant elects to terminate this Lease in accordance with this Section 19, Landlord shall promptly commence and proceed with all due diligence to repair and restore the Premises to substantially the same condition as existed prior to the Casualty Event; provided, however that Landlord's restoration obligations shall be limited to the casualty insurance proceeds available to Landlord as a result of the Casualty Event. During any period of time that all or a material portion of the Premises is rendered untenantable as a result of a Casualty Event that is not caused by the gross negligence or willful misconduct of Tenant, rent otherwise due hereunder shall abate for all of the Premises or the portion thereof that is untenantable, as applicable.

20. HAZARDOUS MATERIALS. Tenant shall insure that no hazardous material or substance, or any other material or substance which, if manufactured, spilled or discharged, would be regulated under the laws of the United States or the laws of the State of North Carolina ("Hazardous Materials"), will be manufactured, spilled or discharged on the Premises in violation of any applicable law as a result of the acts or omissions of Tenant or anyone under Tenant's reasonable control, including its employees, agents, or invitees. Tenant shall indemnify and hold Landlord free and harmless from liability for all costs, including (but not limited to) attorneys' fees incurred, in connection with any violation of this provision. Landlord shall indemnify and hold Tenant free and harmless from liability for all costs, including (but not limited to) attorneys' fees,

incurred, and liabilities of any kind arising from the manufacture, spillage or discharge of Hazardous Materials on or about the Premises at any time by Landlord or any person or entity other than Tenant or those under Tenant's reasonable control.

21. CONDEMNATION.

a. If any portion of the Premises shall be appropriated and taken by virtue of any condemnation proceeding for any public or quasi-public use or purposes so as to render the remaining portion unfit for tenancy (as reasonably determined by Tenant), either Tenant or Landlord may terminate this Lease by notifying Landlord in writing of Tenant's election so to do before or within ten (10) days after the date when possession of the Premises shall be required by the condemning authority. This Lease shall terminate effective the date stated in such notice and Landlord shall refund to Tenant any rent prepaid by Tenant hereunder, prorated to such termination date. All damages awarded for the acquisition or condemnation of the Premises, or any part thereof, shall become the sole and absolute property of Landlord, regardless of whether such damages are awarded for diminution in value of the leasehold or for the loss of the fee. Tenant shall be entitled to that portion of any condemnation award that is expressly stated to have been given to Tenant for the loss of business and the loss of value to and the cost of removal of any stock, furniture, fixtures and equipment owned by Tenant.

b. If neither party timely exercises its right to terminate the Lease as provided in this Section 21, the Lease shall remain in full force in effect and the rent due hereunder for the remainder of the Term shall abate in an amount bearing the same proportion to the rent otherwise due as the condemned portion of the Premises bears to the whole.

22. RIGHT OF ENTRY. Landlord shall have the right to enter the Premises during reasonable hours to inspect and examine same, and to ensure that all maintenance and repairs required of Tenant are effected properly. Except in the case of emergency endangering life or property, Landlord shall give notice to Tenant at least twenty-four (24) hours prior to entering the Premises. Entry hereunder by Landlord, Landlord's agents, or employees as provided herein shall not constitute an eviction or deprivation of any right conferred upon Tenant hereunder.

23. SAFETY AND EMERGENCIES. Tenant shall comply with all safety regulations imposed by governmental authorities on Tenant and on the Premises, as well as such reasonable rules for the safety and security of the Premises and Deep Point Marina as may be adopted by Landlord from time-to-time. Tenant shall cooperate with and take reasonable direction from Landlord's security personnel at the Deep Point facility. Tenant shall provide Landlord with the name and contact information of an individual who will be available in the event of an emergency at the Premises, and shall keep such information current during the Term of this Lease.

24. ASSIGNMENT AND SUBLETTING. Landlord shall have the right at any time to sell the Premises, in whole or in part, and to assign its interest in the Premises or in this Lease. Tenant may sublease a portion of the Premises to Bald Head Island Club, a North Carolina nonprofit corporation, for receiving, warehousing, storing, and shipping goods and products on Bald Head Island, North Carolina, and Tenant may not assign or sublease the Premises to any other person or entity without the express written prior consent of Landlord, which will not be unreasonably withheld; provided that Tenant shall remain liable and obligated for all payment of

rent and other obligations of Tenant contained in this Lease after any such subleasing, assigning or licensing, and Tenant shall not be released from any such obligations. Tenant's sublessees, assignees, and licensees, if any, shall comply with all terms of this Lease which are applicable to their use of the Premises.

25. TENANT'S DEFAULT.

- a. In the event of failure by Tenant to:
- (i) pay any rent within ten (10) days after due date; or,
  - (ii) perform any other obligation imposed upon Tenant, or abide by any rule, regulation, or restriction placed upon Tenant herein, within thirty (30) days following written demand to do so given by Landlord to Tenant, or within such longer period as may reasonably be required to remedy the default, but not longer than ninety (90) days in any event,

Landlord shall have the absolute legal right, with or without process, to immediately terminate this Lease, or re-enter and attempt to relet without terminating and, with prior written notice to Tenant, may remove all persons and property from the Premises. Landlord shall have the right to use summary ejectment proceedings under North Carolina law to gain possession of the Premises.

b. Landlord shall also be entitled to enjoin any breach by Tenant of any covenant, condition, rule or regulation hereunder and may invoke any right or remedy allowed by law, in equity, or by statute or otherwise, without being restricted to those remedies provided for in this Lease, and each right and remedy provided for in this Lease shall be cumulative, and not alternative, and may be exercised in addition to every other right or remedy provided in this Lease or now or hereafter existing at law or in equity, by any right or otherwise; and the exercise of any right or the pursuit of any remedy by Landlord shall not preclude the simultaneous or later exercise or pursuit by Landlord of any other right or remedy.

c. In the event any party hereto brings a suit in law or equity to enforce its rights under this Lease, or to recover damages for its breach, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees incurred in the prosecution or defense thereof.

26. RESERVED.

27. QUIET ENJOYMENT. Landlord warrants and represents to Tenant that Landlord has full right and power to execute this Lease and that Tenant, upon payment of the rent and performance of the terms and conditions contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the term of this Lease.

28. NOTICE. Any notice given between Landlord and Tenant hereunder shall be deemed effectively given and received: (a) upon personal delivery to the party to be notified; (b) upon delivery by electronic or facsimile transmission with confirmation of receipt before 5:00 p.m. local time on a business day, and if not, then the next business day; (c) three (3) days after deposit

with the United States Post Office, by registered or certified mail, postage prepaid; or (d) one (1) business day after deposit with a nationally recognized overnight courier service, and sent to the addresses set out on the first page of this Lease. The addresses hereinabove set forth may be changed from time to time by written notice as provided herein.

29. SUBORDINATION. Tenant accepts this Lease subject and subordinate to any existing or subsequent mortgage, deed of trust, or other lien, or the renewal or extension thereof, upon the Premises, provided however, that any mortgagee in such mortgage or deed of trust shall agree to and deliver a non-disturbance agreement granting Tenant the right to remain in peaceful possession of the Premises and to continue to enjoy all of Tenant's rights under this Lease so long as Tenant is not in default of the terms, conditions and provisions hereof. Landlord shall hold Tenant harmless from any claim made against Tenant, or any loss suffered by Tenant, due to the default by Landlord in any of its obligations to a lender, which obligations are secured by a mortgage or deed of trust on the Premises. The mortgagee may at any time subordinate the mortgage, deed of trust, or other lien to this Lease.

30. RIGHTS CUMULATIVE. The rights and remedies of Landlord and Tenant under this Lease are cumulative. The exercise or use of any one or more thereof shall not bar Landlord or Tenant from exercise of use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise or use of any right or remedy by Landlord or Tenant waive any other right or remedy provided for herein or by law.

31. WAIVER. No waiver by either party of any provision of this Lease shall be deemed a waiver of any other provision hereof or of any subsequent or continuing breach of the same or any other provision by the other party. Landlord's consent to or approval of any act by Tenant or any plans submitted by Tenant shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act. No agreement to accept Tenant's surrender of the Premises shall be valid unless in writing and signed by Landlord.

32. ESTOPPEL AGREEMENTS. Tenant agrees that from time to time, at reasonable intervals, within ten (10) days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord or such other party as Landlord may designate, a certificate stating: (i.) that this Lease is in full force and effect and has not been modified, supplemented or amended, except as indicated in such certificate; (ii.) that all conditions and agreements under this Lease to be performed by Landlord have been satisfied or performed, except as set forth in said certificate; (iii.) that there are no existing defenses or offsets, except as indicated in said certificate; (iv.) that Tenant has not paid any rental in advance, except as indicated in said certificate; and (v.) that Tenant is not in default in the payment of rent or any of the other obligations required of Tenant under this Lease.

33. MODIFICATION. This Lease may not be changed or modified orally, but only by an agreement in writing signed by both parties to this Lease.

34. MISCELLANEOUS.

a. Personalty. No personalty provided by Landlord (if any) shall be removed from the Premises without the prior, written consent of Landlord.

b. CONDITION. THE PREMISES AND ANY PERSONALTY INCLUDED HEREUNDER ARE LEASED IN "AS-IS / WHERE-IS" CONDITION, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, UNLESS OTHERWISE SPECIFIED HEREIN. TENANT ACKNOWLEDGES THAT TENANT, HAVING BEEN THE PRIOR OWNER OF THE PREMISES, HAS HAD THE OPPORTUNITY TO FULLY INSPECT THE PREMISES TO TENANT'S SATISFACTION, AND TENANT HEREBY ACCEPTS THE PREMISES WITHOUT EXCEPTION, RESERVATION OR RECOURSE AGAINST LANDLORD.

c. Paragraph Headings. The paragraph headings used in this Lease are for convenience of reference only, and shall not be considered terms of this Lease.

d. Law Applicable. This Lease is entered into in North Carolina and shall be construed under the laws, statutes and ordinances of such jurisdiction.

e. Number, Gender. As the context herein may require, the singular shall be deemed to include the plural, the masculine form shall be deemed to include the feminine and neuter, and the neuter form shall be deemed to include the masculine and feminine.

f. Additional Instruments. Landlord and Tenant shall execute and deliver any instruments necessary to carry out any agreement, term, condition or assurance in this Lease whenever the occasion shall arise and the request for such instrument shall be made.

g. Presumptions. There shall be no presumption against either party as a result of drafting, causing to be drafted, or participating in the drafting of this instrument.

h. Identity of Interests. The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between Landlord and Tenant any relationship of principal and agent, partnership, or relationship other than that of landlord and tenant.

i. Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, representatives, executors, administrators, successors and assigns, when permitted hereunder; PROVIDED, however, the parties agree that the term "Landlord", as used in this Lease, means only the owner or the lessor for the time being of the Premises, so that in the event of any sale or sales of said Premises or any assignment or lease thereof, the Landlord named herein shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder accruing thereafter, provided that the purchaser or assignee has assumed and agreed in writing to carry out any and all covenants and obligations of Landlord during the period after which such person or entity has taken possession or ownership of the Premises.

j. Execution. This Lease Agreement may be executed in counterparts, and when so executed, shall be deemed executed as one agreement. Facsimile signatures and electronically transmitted signatures may be used in place of original signatures on this Agreement, and the

parties intend to be bound by such signatures.

35. TIME. Time is of the essence in all provisions of this Lease and all rights hereunder.

SIGNATURES FOLLOW ON NEXT PAGE

Witness the parties' execution of this Commercial Lease Agreement, the day and year first above written.

LANDLORD:

BALD HEAD ISLAND TRANSPORTATION AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_, 2020

TENANT:

BALD HEAD ISLAND LIMITED LLC

By: \_\_\_\_\_

Name: Charles A. Paul, III

Title: Manager and CEO

Date: \_\_\_\_\_, 2020

## SCHEDULE A

### DESCRIPTION OF PREMISES

All of the land shown and highlighted on the drawing attached hereto as **Schedule A-1**, together with all structures and improvements thereon and appurtenances thereto, including (without limitation) the Deep Point Marina Warehouse Building consisting of approximately \_\_\_\_\_ square feet, and its entry bays and docks and the access ways to the barge landing, all located within the Deep Point Marina located at 1301 Ferry Road, City of Southport, Brunswick County, North Carolina.



**SCHEDULE A-1**

Sketch of Land and Warehouse Building

**To attach**

**SCHEDULE A-2**

Parking Space Site Plan

**To attach**

**SCHEDULE B**  
PERSONAL PROPERTY

None.

## **SCHEDULE C**

### **PERMITTED USES**

Tenant and permitted sublessees may use the Premises for receiving, warehousing, storing, and shipping goods and products to be sold by Tenant and such sublessees or used in Tenant's or such sublessees' business operations on Bald Head Island, North Carolina, and for operating a business to receive, warehouse, store and ship goods and products between the Premises and Bald Head Island for other businesses and individuals.

**COMMERCIAL LEASE AGREEMENT**  
**ADVERTISING SPACE**

**Date of Lease:** \_\_\_\_\_, 2020

**Commencement Date of Lease:** \_\_\_\_\_, 2020

**Ending Date of Lease:** \_\_\_\_\_, 2023

**Tenant:** Bald Head Island Limited LLC, a Texas limited liability company

**Tenant's SSN or TIN:** xx-xxx0414

**Tenant's telephone number:** 910-457-5000

**Tenant's notice address:** P.O. Box 3069, Bald Head Island, North Carolina 28403

**Tenant's e-mail address:** cpaul@bhisland.com

**Premises:** See attached Schedule A

**Personal Property:** See attached Schedule B

**Base Rent:** \$250 per month or \$3,000 per year

**Security Deposit:** None

\*\*\*\*\*

BALD HEAD ISLAND TRANSPORTATION AUTHORITY, a North Carolina public corporation (referred to hereinafter as the "Landlord"), whose mailing address is \_\_\_\_\_, \_\_\_\_\_, does agree with BALD HEAD ISLAND LIMITED LLC, a Texas limited liability company authorized to do business in North Carolina (referred to hereinafter as "Tenant") as follows:

1. DEMISE. Landlord does hereby let and lease unto Tenant the real property commonly known as "Deep Point Marina advertising space" as shown and described on **Schedule A** and **Schedule A-1** (the "Premises") and the personalty (if any) described on **Schedule B**, both attached hereto, according to the terms and conditions set forth herein. In addition, Landlord hereby grants to Tenant and its successors and assigns a non-exclusive easement and license to use, in common with others (including Landlord), all vehicular and pedestrian access ways, streets, roads, entrances and exits, driveways, paths and sidewalks located on the property constituting the Deep Point Marina complex where the Premises are located, as well as all common areas, stairwells, entrances and exits, elevators and other such facilities located in or serving the Deep Point Marina terminal building (the "Building") in which the Premises are located (whether existing or as may be created or modified hereafter, collectively, the "Public Common Areas"). Landlord also hereby grants to Tenant and its successors and assigns a non-exclusive easement and license to use, in common with others (including Landlord), the "Deck", "Lounge", "Men's Toilet" and "Women's Toilet" highlighted on the attached **Schedule A-1** (the "Non-Public Common Areas").

2. RENTAL AMOUNT. Tenant shall pay Base Rent to Landlord in the sum of Two Hundred Fifty and no/100 Dollars (\$250.00) per month, due and payable as follows: beginning on the Commencement Date, Tenant shall pay said Base Rent and all such other sums of money as shall become due hereunder (collectively, "rent" or "Rent") in advance on or before the first day of each calendar month during the Term at the address for Landlord set forth in this Lease or at such other address as Landlord may direct in writing. If any monthly Rent hereunder is payable for less than a full calendar month (e.g., if the Commencement Date or Ending Date falls on a day

other than the first day of a calendar month), then the installments of Rent and any adjustments thereto for such month or months shall be prorated, based on the number of days in such month or months.

3. TERM. The initial term of this Lease shall commence on the Commencement Date and terminate at 11:59 o'clock P.M. on the Ending Date (the "Initial Term"), subject to any early termination provisions contained herein. If the Tenant remains in possession of the Premises beyond the Ending Date (or the earlier termination of this Lease) with or without the express consent of Landlord, such possession by Tenant shall be deemed to be a month-to-month tenancy upon the same terms and conditions contained herein, terminable on thirty (30) days' written notice given at any time by either party, and the Base Rent shall be the same amount of monthly rent as applicable immediately prior to the Ending Date, payable on the first day of each month beginning the month of the holdover, unless the parties otherwise agree in writing.

4. RENEWAL OPTION(S). Tenant shall have the right and option to renew this Lease after the initial Ending Date for up to three (3) additional successive periods of three (3) years each (each such three (3) year period, if any, a "Renewal Term" and, to the extent exercised and collectively with the Initial Term and subject to any early termination provisions contained herein, the "Term"), which Tenant may exercise by giving written notice to Landlord a minimum of ninety (90) days, but not more than one hundred twenty (120) days, prior to the expiration of the then-current Term. All terms, conditions, and provisions during the Renewal Term(s) shall remain as set out herein, with the exception of the rental amount. Rent applicable during each subsequent Renewal Term shall be increased so that it equals (a) the prior Lease Year's amount plus (b) the prior Lease Year's amount multiplied by the percentage increase, if any, in the CPI (as defined below) in effect on the beginning of such Lease Year from that in effect on the beginning of the immediately preceding Lease Year. CPI will mean the Department of Labor, Bureau of Labor Statistics, All Items Consumer Price Index for All Urban Consumers (CPI-U) for the US City Average, 1982-84 = 100. If at any time there is no CPI, Landlord and Tenant shall cooperate in good faith to substitute any official index published by the Bureau of Labor Statistics or by such successor or similar governmental agency as may then be in existence and shall be most nearly equivalent thereto.

5. USE RESTRICTIONS. Tenant may use the Premises only for those purposes set out on **Schedule C** attached hereto and other lawful purposes reasonably related thereto and for no other purpose whatsoever without the prior, written consent of Landlord. Tenant's use of the Premises shall be in compliance with the statutes, laws and ordinances of the state, county and municipality in which the Premises are sited, and shall not unreasonably interfere in any manner with Landlord's operations of a ferry transportation system at Deep Point Marina.

6. UTILITIES. Except as otherwise expressly set forth herein, Landlord shall pay for the following specific utilities furnished to the Premises and to the Building in which the Premises are located, at no additional cost to Tenant, to wit: water, and sewer or septic. Tenant shall pay for the following specific utilities furnished to the Premises: electricity, internet, wi-fi, cable and telephone services, all of which shall be placed in Tenant's name, if possible. However, if any of those utilities are jointly metered with other portions of the Building in which the Premises is located, Landlord shall promptly pay such costs and Tenant shall reimburse Landlord its proportionate share based on Tenant's usage. Landlord shall not be responsible for the failure or stoppage of any

utility service due to causes or forces outside Landlord's control. Landlord shall further be responsible at its sole cost for ordinary, periodic site trash/garbage pickups from the Premises at reasonable intervals, no less than once per week. In the event Tenant's operations result in an increase of five (5%) percent or greater in Landlord's usual and ordinary cost for periodic trash/garbage pickup from the Building in which the Premises are located, Tenant shall be responsible for the increased cost, and such cost may be assessed as additional rent due and payable to Landlord.

7. PARKING. During the term of this Lease, Landlord warrants and represents that Tenant, and its guests and invitees, shall have available for their use at all times during the term of this Lease at least \_\_\_\_\_ ( ) spaces in "Parking Area \_\_\_\_" located \_\_\_\_\_ of the Premises in the Deep Point Marina complex, as such spaces are shown on the drawing attached hereto as Schedule A-2.

8. SIGNS. Tenant may, at Tenant's sole expense, install sign(s) that are visible from the outside of the Premises, identifying Tenant's operations. Said sign(s) shall be in the number, form, size, and of the materials and colors approved in advance by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be hung or posted at reasonable location(s) specified by Landlord. Tenant shall obtain any governmental permits or approvals for such signs and Landlord shall cooperate as necessary in connection with the same. Tenant shall also maintain its signage in a good and sightly condition, and shall remove same at the end of this Lease unless otherwise agreed in writing by Landlord.

9. COMPLIANCE WITH LEGAL REQUIREMENTS. Tenant shall comply with all legal requirements of any governmental or quasi-governmental body, including municipal, state or federal agencies having jurisdiction, respecting any operation conducted, or any use of Tenant's equipment, installations, trade fixtures or other property placed upon, in or about the Premises. Tenant shall neither create nor knowingly permit the creation of any nuisance upon, in or about the Premises. Tenant shall further comply with any health and environmental regulations imposed upon the Premises by federal, state or local government; provided, however, in the event that any structural changes to the Building in which said Premises are located are required in order to comply with any legal requirements as set forth in this section, Landlord shall be responsible for promptly completing such structural changes at its sole cost and expense.

10. MAINTENANCE AND REPAIR.

a. Landlord shall keep and maintain the Building in which the Premises are located, including the plumbing, electrical, heating, ventilation and air-conditioning systems, in good order, condition and repair. Landlord shall further keep and maintain the Building's exterior walls, doors and windows, the roof, and the structural components of internal walls and ceilings, in good order, condition and repair, all without additional cost to Tenant. However, Landlord shall have no obligation to repair or replace any part of the Premises, improvements, fixtures or appurtenances which may be damaged as a result of the acts or omissions of Tenant or Tenant's agents, employees or invitees, and Tenant shall be responsible for any such damage.

b. Landlord shall keep the parking areas, the private drives and sidewalks accessing the Premises, and any structures and improvements associated therewith (including,

without limitation, docks and ramps) useable and in a good state of cleanliness and repair, all without additional cost to Tenant.

c. Tenant shall maintain the interior of the Premises and Tenant's equipment and trade fixtures at the Premises in good order, condition and repair, and shall further maintain any floor coverings and interior wall coverings, such as paint or wallpaper, at the Premises. Tenant shall keep all trash and debris in appropriate receptacles and keep the Premises in "broom-clean" condition at all times. Tenant shall replace HVAC filters at regular intervals.

d. At the end of the tenancy, Tenant will deliver the Premises to Landlord in substantially the same condition as received at the Commencement Date of the Initial Term of the Lease, normal wear and tear excepted, and subject to Landlord's obligations herein and subject to any permitted improvements made during the Term.

11. ADDITIONS, ALTERATIONS, CHANGES AND IMPROVEMENTS. Tenant may make "Minor Alterations" in the Premises without Landlord's prior written consent, but with prior notification to Landlord. As used in this lease, "Minor Alterations" are alterations: (A) of a cosmetic nature such as painting, wallpapering, hanging pictures, and installing carpeting; (B) not visible from outside the Premises; (C) that do not affect the structure of the Building; and (D) that do not require work to be performed inside the walls or above the ceiling of the Premises]. Tenant shall provide Landlord with at least seven (7) days' notice prior to commencing any Minor Alterations, which notice shall include a general description of the nature and estimated cost of the proposed Minor Alteration, and the anticipated completion dates for such work.

Except for Minor Alterations, Tenant shall not make and shall not have the right to make structural alterations, changes or improvements in or to the Premises without Landlord's prior written consent, which consent will not be unreasonably withheld; provided, however, should Landlord consent, all alterations, changes and improvements shall be made by a licensed contractor approved by Landlord, and Tenant shall promptly pay for same. All structural alterations, changes and improvements to the Premises, including all upfitting improvements, become the property of Landlord at the expiration or termination of the tenancy. Tenant shall not allow any liens to attach to the Premises or to Tenant's interest therein in connection with any work performed by or on behalf of Tenant. Landlord shall have the right to require Tenant to provide such assurances as Landlord shall reasonably require (such as bonds, escrows, etc.) to protect Landlord and the Premises against unpaid work.

12. TENANT OWNED PROPERTY. Tenant shall be permitted to install trade fixtures and IT equipment inside the Premises. Upon termination of the tenancy for any reason, including expiration of its Term, all movable equipment, trade fixtures, IT equipment, personal property, furniture, or any other items that can be removed without material harm to the Premises will remain Tenant's property (collectively, the "Tenant Owned Property") and shall not become the property of Landlord but shall be removed by Tenant, at its sole cost and expense, within seven (7) days following the termination of the tenancy. Tenant shall repair at its sole cost and expense all damage caused to the Premises by the removal of any alterations or Tenant Owned Property. Should Tenant fail to do so, all Tenant Owned Property shall become the property of Landlord and Landlord may keep or remove the same and restore the Premises. Such costs shall be collectable by Landlord in the same manner as rent hereunder or as otherwise allowed by law.



13. AD VALOREM TAXES. Tenant shall pay all ad valorem taxes on interior fixtures and improvements owned, made or installed by Tenant, including trade fixtures, and on all personalty owned by Tenant in or about the Premises. Landlord shall be responsible for paying all ad valorem real property taxes on the real property and Premises, including the Building in which the Premises are located.

14. LANDLORD'S INSURANCE OBLIGATIONS.

a. Landlord shall keep the Premises insured to the extent of not less than 100% of the Premises' full insurable replacement cost value against loss or damage by all hazards (including fire and windstorm and flood) with extended coverage.

b. Landlord shall keep and maintain commercial general liability insurance (ISO CGL Form 2007 or broader), including contractual liability, in an amount no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

d. Landlord shall keep and maintain umbrella liability insurance coverage with a limit of no less than \$5,000,000 which automatically triggers over the primary limits stated hereinabove.

15. TENANT'S INSURANCE OBLIGATIONS.

a. Tenant shall maintain insurance against loss or damage by all hazards (including fire and windstorm) with extended coverage, as to all improvements made and trade fixtures installed by Tenant within the Premises. Tenant shall also be responsible for insuring, at Tenant's election, all personalty (including Tenant's supplies, stock and inventory) located within the Premises.

b. Tenant shall carry, in the minimum, at Tenant's expense, a commercial general liability policy, including bodily injury and property damage liability, of one million dollars (\$1,000,000.00) each occurrence, two million dollars (\$2,000,000.00) general aggregate, two million dollars (\$2,000,000.00) products/completed operations aggregate, one million dollars (\$1,000,000.00) personal/advertising liability, five hundred thousand dollars (\$500,000.00) fire legal liability, and ten thousand dollars (\$10,000.00) medical payments, with applicable endorsements and extensions.

c. The policies of insurance described in Section 14 and 15 shall have Landlord, Tenant and all parties holding an encumbrance on the Premises as named insureds thereunder as their interests appear. Insurance coverage shall be primary and non-contributory, shall be evidenced to the other party by a certificate of insurance upon request, and shall provide thirty (30) days advance written notice of cancellation or non-renewal. Such insurance shall be placed with reputable insurance companies licensed in the State of North Carolina and having at least an "A" rating by a recognized rating service.

16. INDEMNITY AND WAIVER OF SUBROGATION. Tenant shall indemnify Landlord and hold it harmless from and against all losses, expenses, or claims arising out of injury

to, or damage to property of, Tenant, its employees, officers, directors, agents, customers, guests, invitees, or any other person on or about the Premises except to the extent caused in whole or in part by any act(s) or omission(s) of Landlord, its employees, officers, directors, agents, customers, guests, invitees. Tenant hereby waives any and all rights of recovery against Landlord for loss or damage occurring in connection with or arising out of Tenant's business operations to the extent such loss or damage is covered by proceeds received from insurance required to be carried under this Lease as provided in Section 15 above. This waiver of subrogation shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss, damage or injury to person or property. Inasmuch as this waiver will preclude the assignment of any claims by way of subrogation to an insurance company, the parties shall immediately give, to each insurance company providing policy coverage pursuant to this Lease, written notice of the terms of this waiver of subrogation, and shall have each policy properly endorsed as may be needed to prevent the invalidation of coverage by reason of said waiver. Landlord shall indemnify Tenant and hold it harmless from and against all losses, expenses, or claims arising out of injury to, or damage to property of, Landlord, its employees, officers, directors, agents, customers, guests, invitees, or any other person on or about the Premises except to the extent caused in whole or in part by any act(s) or omission(s) of Tenant, its employees, officers, directors, agents, customers, guests, invitees. Landlord hereby waives any and all rights of recovery against Tenant for loss or damage occurring in connection with or arising out of Landlord's business operations to the extent such loss or damage is covered by proceeds received from insurance required to be carried under this Lease as provided in Section 14 above. This waiver of subrogation shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss, damage or injury to person or property. Inasmuch as this waiver will preclude the assignment of any claims by way of subrogation to an insurance company, the parties shall immediately give, to each insurance company providing policy coverage pursuant to this Lease, written notice of the terms of this waiver of subrogation, and shall have each policy properly endorsed as may be needed to prevent the invalidation of coverage by reason of said waiver.

19. DAMAGE AND DESTRUCTION. If the Premises become inaccessible or are damaged by fire, the elements, or other casualty (a "Casualty Event"), Tenant shall promptly notify Landlord. Landlord and Tenant shall each have the right to terminate this Lease if: (a) Landlord is not permitted by law to rebuild the Premises or the Building in substantially the same form as existed before the Casualty Event; (b) Landlord's insurance company prohibits use of the insurance proceeds for re-construction of the Premises or the Building; (c) Landlord's recovery of insurance proceeds is insufficient to re-construct the Premises or the Building; (d) the Premises have been materially damaged and there is less than one (1) year of the Term remaining on the date of the Casualty Event; or (e) it can be reasonably estimated that more than six (6) months will be required for Landlord to cause the Premises to be returned to a condition ready for occupancy. Landlord or Tenant may exercise its right to terminate this Lease under this Section 19 by providing written notice thereof to the other party within thirty (30) days after the occurrence of the Casualty Event or within thirty (30) days after such party receives the information necessary to determine that the applicable condition(s) set out in subsections (a) through (e) above are true, if later. If neither Landlord nor Tenant elects to terminate this Lease in accordance with this Section 19, Landlord shall promptly commence and proceed with all due diligence to repair and restore the Premises and/or the Building to substantially the same condition as existed prior to the Casualty Event; provided, however that Landlord's restoration obligations shall be limited to the casualty insurance

proceeds available to Landlord as a result of the Casualty Event. During any period of time that all or a material portion of the Premises is rendered untenable as a result of a Casualty Event that is not caused by the gross negligence or willful misconduct of Tenant, rent otherwise due hereunder shall abate for all of the Premises or the portion thereof that is untenable, as applicable.

20. HAZARDOUS MATERIALS. Tenant shall insure that no hazardous material or substance, or any other material or substance which, if manufactured, spilled or discharged, would be regulated under the laws of the United States or the laws of the State of North Carolina ("Hazardous Materials"), will be manufactured, spilled or discharged on the Premises in violation of any applicable law as a result of the acts or omissions of Tenant or anyone under Tenant's reasonable control, including its employees, agents, or invitees. Tenant shall indemnify and hold Landlord free and harmless from liability for all costs, including (but not limited to) attorneys' fees incurred, in connection with any violation of this provision. Landlord shall indemnify and hold Tenant free and harmless from liability for all costs, including (but not limited to) attorneys' fees, incurred, and liabilities of any kind arising from the manufacture, spillage or discharge of Hazardous Materials on or about the Premises at any time by Landlord or any person or entity other than Tenant or those under Tenant's reasonable control.

21. CONDEMNATION.

a. If any portion of the Premises shall be appropriated and taken by virtue of any condemnation proceeding for any public or quasi-public use or purposes so as to render the remaining portion unfit for tenancy (as reasonably determined by Tenant), Tenant may terminate this Lease by notifying Landlord in writing of Tenant's election so to do before or within ten (10) days after the date when possession of the Premises shall be required by the condemning authority. This Lease shall terminate effective the date stated in such notice and Landlord shall refund to Tenant any rent prepaid by Tenant hereunder, prorated to such termination date. All damages awarded for the acquisition or condemnation of the Premises, or any part thereof, shall become the sole and absolute property of Landlord, regardless of whether such damages are awarded for diminution in value of the leasehold or for the loss of the fee. Tenant shall be entitled to that portion of any condemnation award that is expressly stated to have been given to Tenant for the loss of business and the loss of value to and the cost of removal of any stock, furniture, fixtures and equipment owned by Tenant.

b. If Tenant does not timely exercise its right to terminate the Lease as provided in this Section 21, the Lease shall remain in full force in effect and the rent due hereunder for the remainder of the Term shall abate in an amount bearing the same proportion to the rent otherwise due as the condemned portion of the Premises bears to the whole.

22. RIGHT OF ENTRY. Landlord shall have the right to enter the Premises during reasonable hours to inspect and examine same, and to ensure that all maintenance and repairs required of Tenant are effected properly. Except in the case of emergency endangering life or property, Landlord shall give notice to Tenant at least twenty-four (24) hours prior to entering the Premises. Entry hereunder by Landlord, Landlord's agents, or employees as provided herein shall not constitute an eviction or deprivation of any right conferred upon Tenant hereunder.

23. SAFETY AND EMERGENCIES. Tenant shall comply with all safety regulations imposed by governmental authorities on Tenant and on the Premises, as well as such reasonable rules for the safety and security of the Premises and Deep Point Marina as may be adopted by Landlord from time-to-time. Tenant shall cooperate with and take reasonable direction from Landlord's security personnel at the Deep Point facility. Tenant shall provide Landlord with the name and contact information of an individual who will be available in the event of an emergency at the Premises, and shall keep such information current during the Term of this Lease.

24. ASSIGNMENT AND SUBLETTING. Landlord shall have the right at any time to sell the Premises, in whole or in part, and to assign its interest in the Premises or in this Lease. Tenant shall have the right at any time to assign and/or sublet the Premises or any portion(s) thereof or any interest therein without Landlord's consent. Without limiting the foregoing, Tenant may use the Premises for the contracting or rental (i.e. the subleasing, assigning or licensing) of space in the Premises to various third persons and business entities for receiving, warehousing, storing, and shipping goods and products to be sold by them or used in their business operations on Bald Head Island, North Carolina. Tenant's sublessees, assignees, and licensees, if any, shall comply with all terms of this Lease which are applicable to their use of the Premises. Landlord agrees to release Tenant from liability under this Lease upon Tenant's full assignment of this Lease.

25. TENANT'S DEFAULT.

a. In the event of failure by Tenant to:

- (i) pay any rent within ten (10) days after due date; or,
- (ii) perform any other obligation imposed upon Tenant, or abide by any rule, regulation, or restriction placed upon Tenant herein, within thirty (30) days following written demand to do so given by Landlord to Tenant, or within such longer period as may reasonably be required to remedy the default,

Landlord shall have the absolute legal right, with or without process, to immediately terminate this Lease, or re-enter and attempt to relet without terminating and, with prior written notice to Tenant, may remove all persons and property from the Premises. Landlord shall have the right to use summary ejectment proceedings under North Carolina law to gain possession of the Premises.

b. Landlord shall also be entitled to enjoin any breach by Tenant of any covenant, condition, rule or regulation hereunder and may invoke any right or remedy allowed by law, in equity, or by statute or otherwise, without being restricted to those remedies provided for in this Lease, and each right and remedy provided for in this Lease shall be cumulative, and not alternative, and may be exercised in addition to every other right or remedy provided in this Lease or now or hereafter existing at law or in equity, by any right or otherwise; and the exercise of any right or the pursuit of any remedy by Landlord shall not preclude the simultaneous or later exercise or pursuit by Landlord of any other right or remedy.

c. In the event any party hereto brings a suit in law or equity to enforce its rights under this Lease, or to recover damages for its breach, the prevailing party in any such legal

action shall be entitled to recover its reasonable attorney's fees incurred in the prosecution or defense thereof.

26. LANDLORD'S DEFAULT. Upon any failure by Landlord to perform when due any promise or obligation under this Lease, Tenant shall deliver written notice of such failure to Landlord and Landlord shall have ten (10) days thereafter to cure such failure. If Landlord fails to cure such failure within said ten (10) day period, Landlord shall be deemed to have committed a material breach under this Lease and Tenant shall have the right to enjoin such breach by Landlord of any covenant, condition, rule or regulation hereunder and may invoke any right or remedy allowed by law, in equity, or by statute or otherwise, without being restricted to those remedies provided for in this Lease, and each right and remedy available to Tenant shall be cumulative, and not alternative, and may be exercised in addition to every other right or remedy provided in this Lease or now or hereafter existing at law or in equity, by any right or otherwise; and the exercise of any right or the pursuit of any remedy by Tenant shall not preclude the simultaneous or later exercise or pursuit by Tenant of any other right or remedy.

27. QUIET ENJOYMENT. Landlord warrants and represents to Tenant that Landlord has full right and power to execute this Lease and that Tenant, upon payment of the rent and performance of the terms and conditions contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the term of this Lease.

28. NOTICE. Any notice given between Landlord and Tenant hereunder shall be deemed effectively given and received: (a) upon personal delivery to the party to be notified; (b) upon delivery by electronic or facsimile transmission with confirmation of receipt before 5:00 p.m. local time on a business day, and if not, then the next business day; (c) three (3) days after deposit with the United States Post Office, by registered or certified mail, postage prepaid; or (d) one (1) business day after deposit with a nationally recognized overnight courier service, and sent to the addresses set out on the first page of this Lease. The addresses hereinabove set forth may be changed from time to time by written notice as provided herein.

29. SUBORDINATION. Tenant accepts this Lease subject and subordinate to any existing or subsequent mortgage, deed of trust, or other lien, or the renewal or extension thereof, upon the Premises, provided however, that any mortgagee in such mortgage or deed of trust shall agree to and deliver a non-disturbance agreement granting Tenant the right to remain in peaceful possession of the Premises and to continue to enjoy all of Tenant's rights under this Lease so long as Tenant is not in default of the terms, conditions and provisions hereof. Landlord shall hold Tenant harmless from any claim made against Tenant, or any loss suffered by Tenant, due to the default by Landlord in any of its obligations to a lender, which obligations are secured by a mortgage or deed of trust on the Premises. The mortgagee may at any time subordinate the mortgage, deed of trust, or other lien to this Lease.

30. RIGHTS CUMULATIVE. The rights and remedies of Landlord and Tenant under this Lease are cumulative. The exercise or use of any one or more thereof shall not bar Landlord or Tenant from exercise of use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise or use of any right or remedy by Landlord or Tenant waive any other right or remedy provided for herein or by law.

31. WAIVER. No waiver by either party of any provision of this Lease shall be deemed a waiver of any other provision hereof or of any subsequent or continuing breach of the same or any other provision by the other party. Landlord's consent to or approval of any act by Tenant or any plans submitted by Tenant shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act. No agreement to accept Tenant's surrender of the Premises shall be valid unless in writing and signed by Landlord.

32. ESTOPPEL AGREEMENTS. Tenant agrees that from time to time, at reasonable intervals, within ten (10) days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord or such other party as Landlord may designate, a certificate stating: (i.) that this Lease is in full force and effect and has not been modified, supplemented or amended, except as indicated in such certificate; (ii.) that all conditions and agreements under this Lease to be performed by Landlord have been satisfied or performed, except as set forth in said certificate; (iii.) that there are no existing defenses or offsets, except as indicated in said certificate; (iv.) that Tenant has not paid any rental in advance, except as indicated in said certificate; and (v.) that Tenant is not in default in the payment of rent or any of the other obligations required of Tenant under this Lease.

33. MODIFICATION. This Lease may not be changed or modified orally, but only by an agreement in writing signed by the party against whom enforcement or waiver of the change, modification or discharge is sought.

34. MISCELLANEOUS.

a. Personalty. No personalty provided by Landlord (if any) shall be removed from the Premises without the prior, written consent of Landlord.

b. Condition. The Premises and any personalty included hereunder are leased in "as-is / where-is" condition, with all faults, and without any representation or warranty whatsoever, unless otherwise specified herein. Tenant acknowledges that Tenant, having been the prior owner of the Premises, has had the opportunity to fully inspect the Premises to Tenant's satisfaction, and Tenant hereby accepts the Premises without exception, reservation or recourse against Landlord.

c. Paragraph Headings. The paragraph headings used in this Lease are for convenience of reference only, and shall not be considered terms of this Lease.

d. Law Applicable. This Lease is entered into in North Carolina and shall be construed under the laws, statutes and ordinances of such jurisdiction.

e. Number, Gender. As the context herein may require, the singular shall be deemed to include the plural, the masculine form shall be deemed to include the feminine and neuter, and the neuter form shall be deemed to include the masculine and feminine.

f. Additional Instruments. Landlord and Tenant shall execute and deliver any instruments necessary to carry out any agreement, term, condition or assurance in this Lease whenever the occasion shall arise and the request for such instrument shall be made.

g. Presumptions. There shall be no presumption against either party as a result of drafting, causing to be drafted, or participating in the drafting of this instrument.

h. Identity of Interests. The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between Landlord and Tenant any relationship of principal and agent, partnership, or relationship other than that of landlord and tenant.

i. Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, representatives, executors, administrators, successors and assigns, when permitted hereunder; PROVIDED, however, the parties agree that the term "Landlord", as used in this Lease, means only the owner or the lessor for the time being of the Premises, so that in the event of any sale or sales of said Premises or any assignment or lease thereof, the Landlord named herein shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder accruing thereafter, provided that the purchaser or assignee has assumed and agreed in writing to carry out any and all covenants and obligations of Landlord during the period after which such person or entity has taken possession or ownership of the Premises.

j. Execution. This Lease Agreement may be executed in counterparts, and when so executed, shall be deemed executed as one agreement. Facsimile signatures and electronically transmitted signatures may be used in place of original signatures on this Agreement, and the parties intend to be bound by such signatures.

35. TIME. Time is of the essence in all provisions of this Lease and all rights hereunder.

SIGNATURES FOLLOW ON NEXT PAGE

Witness the parties' execution of this Commercial Lease Agreement, the day and year first above written.

LANDLORD:  
BALD HEAD ISLAND TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2020

TENANT:  
BALD HEAD ISLAND LIMITED LLC

By: \_\_\_\_\_  
Name: Charles A. Paul, III  
Title: Manager and CEO

Date: \_\_\_\_\_, 2020



## SCHEDULE A

### DESCRIPTION OF PREMISES

All of that \_\_\_\_\_ square feet of improved commercial space designated in yellow as “Exclusive Tenant Use” on the architectural drawing attached hereto as **Schedule A-1**, and located within the Deep Point Marina terminal building (the “Building”) within the Deep Point Marina complex located at 1301 Ferry Road, City of Southport, Brunswick County, North Carolina, together with all structures and improvements thereon and appurtenances thereto.

**SCHEDULE A-1**

**Sketch of Premises**

**To attach**

**SCHEDULE A-2**

Parking Space Site Plan

**To attach**

**SCHEDULE B**  
PERSONAL PROPERTY

None.

## SCHEDULE C

### PERMITTED USES

Tenant may use the Premises for all general office purposes including but not limited to advertising, marketing, promoting, disseminating and offering to the public, in any reasonable manner and form, information related to Tenant, Tenant's services, business operations and activities, and those of its affiliates and other entities with which Tenant is or may become associated.

**COMMERCIAL LEASE AGREEMENT**  
**DEEP POINT MARINA IT DATA CENTER**

**Date of Lease:** \_\_\_\_\_, 2020  
**Commencement Date of Lease:** \_\_\_\_\_, 2020  
**Ending Date of Lease:** \_\_\_\_\_, 2023  
**Tenant:** Bald Head Island Limited LLC, a Texas limited liability company  
**Tenant's SSN or TIN:** xx-xxx0414  
**Tenant's telephone number:** 910-457-5000  
**Tenant's notice address:** P.O. Box 3069, Bald Head Island, North Carolina 28403  
**Tenant's e-mail address:** cpaul@bhisland.com  
**Premises:** See attached Schedule A  
**Personal Property:** See attached Schedule B  
**Base Rent:** \$750 per month or \$9,000 per year  
**Security Deposit:** None

\*\*\*\*\*

BALD HEAD ISLAND TRANSPORTATION AUTHORITY, a North Carolina public corporation (referred to hereinafter as the "Landlord"), whose mailing address is \_\_\_\_\_, \_\_\_\_\_, does agree with BALD HEAD ISLAND LIMITED LLC, a Texas limited liability company authorized to do business in North Carolina (referred to hereinafter as "Tenant") as follows:

1. DEMISE. Landlord does hereby let and lease unto Tenant the real property commonly known as "IT Data Center" as shown and described on **Schedule A** ("Premises") and the personalty (if any) described on **Schedule B**, both attached hereto, according to the terms and conditions set forth herein. In addition, Landlord hereby grants to Tenant and its successors and assigns a non-exclusive easement and license to use, in common with others (including Landlord), all vehicular and pedestrian access ways, streets, roads, entrances and exits, driveways, paths and sidewalks, whether existing or as may be created or modified hereafter, located on the property constituting the Deep Point Marina complex where the Premises are located.

2. RENTAL AMOUNT. Tenant shall pay Base Rent to Landlord in the sum of Nine Hundred Fifty and No/100 Dollars (\$950.00) per month, due and payable as follows: beginning on the Commencement Date, Tenant shall pay said Base Rent and all such other sums of money as shall become due hereunder (collectively, "rent" or "Rent") in advance on or before the first day of each calendar month during the Term at the address for Landlord set forth in this Lease or at such other address as Landlord may direct in writing. If any monthly Rent hereunder is payable for less than a full calendar month (e.g., if the Commencement Date or Ending Date falls on a day other than the first day of a calendar month), then the installments of Rent and any adjustments thereto for such month or months shall be prorated, based on the number of days in such month or months.

3. TERM. The initial term of this Lease shall commence on the Commencement Date and terminate at 11:59 o'clock P.M. on the Ending Date (the "Initial Term"), subject to any early

termination provisions contained herein. If the Tenant remains in possession of the Premises beyond the Ending Date (or the earlier termination of this Lease) with or without the express consent of Landlord, such possession by Tenant shall be deemed to be a month-to-month tenancy upon the same terms and conditions contained herein, terminable on thirty (30) days' written notice given at any time by either party, and the Base Rent shall be the same amount of monthly rent as applicable immediately prior to the Ending Date, payable on the first day of each month beginning the month of the holdover, unless the parties otherwise agree in writing.

4. RENEWAL OPTION(S). Tenant shall have the right and option to renew this Lease after the initial Ending Date for up to three (3) additional successive periods of three (3) years each (each such three (3) year period, if any, a "Renewal Term" and, to the extent exercised and collectively with the Initial Term and subject to any early termination provisions contained herein, the "Term"), which Tenant may exercise by giving written notice to Landlord a minimum of ninety (90) days, but not more than one hundred twenty (120) days, prior to the expiration of the then-current Term. All terms, conditions, and provisions during the Renewal Term(s) shall remain as set out herein, with the exception of the rental amount. Rent applicable during each subsequent Renewal Term shall be increased so that it equals (a) the prior Lease Year's amount plus (b) the prior Lease Year's amount multiplied by the percentage increase, if any, in the CPI (as defined below) in effect on the beginning of such Lease Year from that in effect on the beginning of the immediately preceding Lease Year. CPI will mean the Department of Labor, Bureau of Labor Statistics, All Items Consumer Price Index for All Urban Consumers (CPI-U) for the US City Average, 1982-84 = 100. If at any time there is no CPI, Landlord and Tenant shall cooperate in good faith to substitute any official index published by the Bureau of Labor Statistics or by such successor or similar governmental agency as may then be in existence and shall be most nearly equivalent thereto.

5. USE RESTRICTIONS. Tenant may use the Premises only for those purposes set out on **Schedule C** attached hereto and other lawful purposes reasonably related thereto and for no other purpose whatsoever without the prior, written consent of Landlord. Tenant's use of the Premises shall be in compliance with the statutes, laws and ordinances of the state, county and municipality in which the Premises are sited, and shall not unreasonably interfere in any manner with Landlord's operations of a ferry transportation system at Deep Point Marina.

6. UTILITIES. Tenant shall pay for the following specific utilities furnished to the Premises: electricity, water, and sewer or septic, internet, wi-fi, cable and telephone services, all of which shall be placed in Tenant's name, if possible. However, if any utilities are jointly metered with other portions of Deep Point Marina, Landlord shall promptly pay such costs and Tenant shall reimburse Landlord its proportionate share based on Tenant's usage. Landlord shall not be responsible for the failure or stoppage of any utility service due to causes or forces outside Landlord's control. Tenant shall further be responsible at its sole cost for all trash/garbage pickups from the Premises.

7. PARKING. During the term of this Lease, Landlord warrants and represents that Tenant, and its guests and invitees, shall have available for their use at all times during the term of this Lease at least three (3) spaces in "Parking Area \_\_\_\_\_" located in the Deep Point Marina complex, as such spaces are shown on the drawing attached hereto as Schedule A-2.

8. SIGNS. Tenant may, at Tenant's sole expense, install sign(s) that are visible from the outside of the Premises, identifying Tenant's operations. Said sign(s) shall be in the number, form, size, and of the materials and colors approved in advance by Landlord, which approval shall not be unreasonably withheld, conditioned or delayed, and shall be hung or posted at reasonable location(s) specified by Landlord. Tenant shall obtain any governmental permits or approvals for such signs and Landlord shall cooperate as necessary in connection with the same. Tenant shall also maintain its signage in a good and slightly condition, and shall remove same at the end of this Lease unless otherwise agreed in writing by Landlord.

9. COMPLIANCE WITH LEGAL REQUIREMENTS. Tenant shall comply with all legal requirements of any governmental or quasi-governmental body, including municipal, state or federal agencies having jurisdiction, respecting any operation conducted, or any use of Tenant's equipment, installations, trade fixtures or other property placed upon, in or about the Premises. Tenant shall neither create nor knowingly permit the creation of any nuisance upon, in or about the Premises. Tenant shall further comply with any health and environmental regulations imposed upon the Premises by federal, state or local government; provided, however, in the event that any structural changes to the Premises are required in order to comply with any legal requirements as set forth in this section, Landlord shall be responsible for promptly completing such structural changes at its sole cost and expense.

10. MAINTENANCE AND REPAIR.

a. Landlord shall keep and maintain the Premises, including the plumbing, electrical, heating, ventilation and air-conditioning systems, in good order, condition and repair. Landlord shall further keep and maintain the Premise's exterior walls, doors and windows, the roof, and the structural components of internal walls and ceilings, in good order, condition and repair, all without additional cost to Tenant. However, Landlord shall have no obligation to repair or replace any part of the Premises, improvements, fixtures or appurtenances which may be damaged as a result of the acts or omissions of Tenant or Tenant's agents, employees or invitees, and Tenant shall be responsible for any such damage.

b. Landlord shall keep the parking areas, the private drives and sidewalks accessing the Premises, and any structures and improvements associated therewith (including, without limitation, docks and ramps) useable and in a good state of cleanliness and repair, all without additional cost to Tenant.

c. Tenant shall maintain the interior of the Premises and Tenant's equipment and trade fixtures at the Premises in good order, condition and repair, and shall further maintain any floor coverings and interior wall coverings, such as paint or wallpaper, at the Premises. Tenant shall keep all trash and debris in appropriate receptacles and keep the Premises in "broom-clean" condition at all times. Tenant shall replace HVAC filters at regular intervals.

d. At the end of the tenancy, Tenant will deliver the Premises to Landlord in substantially the same condition as received at the Commencement Date of the Initial Term of the Lease, normal wear and tear excepted, and subject to Landlord's obligations herein and subject to any permitted improvements made during the Term.



11. ADDITIONS, ALTERATIONS, CHANGES AND IMPROVEMENTS. Tenant may make "Minor Alterations" in the Premises without Landlord's prior written consent, but with prior notification to Landlord. As used in this lease, "Minor Alterations" are alterations: (A) of a cosmetic nature such as painting, wallpapering, hanging pictures, and installing carpeting; (B) not visible from outside the Premises; (C) that do not affect the structure of the Premises; and (D) that do not require work to be performed inside the walls or above the ceiling of the Premises]. Tenant shall provide Landlord with at least seven (7) days' notice prior to commencing any Minor Alterations, which notice shall include a general description of the nature and estimated cost of the proposed Minor Alteration, and the anticipated completion dates for such work.

Except for Minor Alterations, Tenant shall not make and shall not have the right to make structural alterations, changes or improvements in or to the Premises without Landlord's prior written consent, which consent will not be unreasonably withheld; provided, however, should Landlord consent, all alterations, changes and improvements shall be made by a licensed contractor approved by Landlord, and Tenant shall promptly pay for same. All structural alterations, changes and improvements to the Premises, including all upfitting improvements, become the property of Landlord at the expiration or termination of the tenancy. Tenant shall not allow any liens to attach to the Premises or to Tenant's interest therein in connection with any work performed by or on behalf of Tenant. Landlord shall have the right to require Tenant to provide such assurances as Landlord shall reasonably require (such as bonds, escrows, etc.) to protect Landlord and the Premises against unpaid work.

12. TENANT OWNED PROPERTY. Tenant shall be permitted to install trade fixtures and IT equipment inside the Premises. Upon termination of the tenancy for any reason, including expiration of its Term, all movable equipment, trade fixtures, IT equipment, personal property, furniture, or any other items that can be removed without material harm to the Premises will remain Tenant's property (collectively, the "Tenant Owned Property") and shall not become the property of Landlord but shall be removed by Tenant, at its sole cost and expense, within seven (7) days following the termination of the tenancy. Tenant shall repair at its sole cost and expense all damage caused to the Premises by the removal of any alterations or Tenant Owned Property. Should Tenant fail to do so, all Tenant Owned Property shall become the property of Landlord and Landlord may keep or remove the same and restore the Premises. Such costs shall be collectable by Landlord in the same manner as rent hereunder or as otherwise allowed by law.

13. AD VALOREM TAXES. Tenant shall pay all ad valorem taxes on interior fixtures and improvements owned, made or installed by Tenant, including trade fixtures, and on all personalty owned by Tenant in or about the Premises. Landlord shall be responsible for paying all ad valorem real property taxes on the real property and Premises.

14. LANDLORD'S INSURANCE OBLIGATIONS.

a. Landlord shall keep the Premises insured to the extent of not less than 100% of the Premises' full insurable replacement cost value against loss or damage by all hazards (including fire and windstorm and flood) with extended coverage.

b. Landlord shall keep and maintain commercial general liability insurance (ISO CGL Form 2007 or broader), including contractual liability, in an amount no less than

\$1,000,000 per occurrence and \$2,000,000 in the aggregate.

d. Landlord shall keep and maintain umbrella liability insurance coverage with a limit of no less than \$5,000,000 which automatically triggers over the primary limits stated hereinabove.

15. TENANT'S INSURANCE OBLIGATIONS.

a. Tenant shall maintain insurance against loss or damage by all hazards (including fire and windstorm) with extended coverage, as to all improvements made and trade fixtures installed by Tenant within the Premises. Tenant shall also be responsible for insuring, at Tenant's election, all personalty (including Tenant's supplies, stock and inventory) located within the Premises.

b. Tenant shall carry, in the minimum, at Tenant's expense, a commercial general liability policy, including bodily injury and property damage liability, of one million dollars (\$1,000,000.00) each occurrence, two million dollars (\$2,000,000.00) general aggregate, two million dollars (\$2,000,000.00) products/completed operations aggregate, one million dollars (\$1,000,000.00) personal/advertising liability, five hundred thousand dollars (\$500,000.00) fire legal liability, and ten thousand dollars (\$10,000.00) medical payments, with applicable endorsements and extensions.

c. The policies of insurance described in Section 14 and 15 shall have Landlord, Tenant and all parties holding an encumbrance on the Premises as named insureds thereunder as their interests appear. Insurance coverage shall be primary and non-contributory, shall be evidenced to the other party by a certificate of insurance upon request, and shall provide thirty (30) days advance written notice of cancellation or non-renewal. Such insurance shall be placed with reputable insurance companies licensed in the State of North Carolina and having at least an "A" rating by a recognized rating service.

16. INDEMNITY AND WAIVER OF SUBROGATION. Tenant shall indemnify Landlord and hold it harmless from and against all losses, expenses, or claims arising out of injury to, or damage to property of, Tenant, its employees, officers, directors, agents, customers, guests, invitees, or any other person on or about the Premises except to the extent caused in whole or in part by any act(s) or omission(s) of Landlord, its employees, officers, directors, agents, customers, guests, invitees. Tenant hereby waives any and all rights of recovery against Landlord for loss or damage occurring in connection with or arising out of Tenant's business operations to the extent such loss or damage is covered by proceeds received from insurance required to be carried under this Lease as provided in Section 15 above. This waiver of subrogation shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss, damage or injury to person or property. Inasmuch as this waiver will preclude the assignment of any claims by way of subrogation to an insurance company, the parties shall immediately give, to each insurance company providing policy coverage pursuant to this Lease, written notice of the terms of this waiver of subrogation, and shall have each policy properly endorsed as may be needed to prevent the invalidation of coverage by reason of said waiver. Landlord shall indemnify Tenant and hold it harmless from and against all losses, expenses, or claims arising out of injury to, or damage to property of, Landlord, its employees, officers,

directors, agents, customers, guests, invitees, or any other person on or about the Premises except to the extent caused in whole or in part by any act(s) or omission(s) of Tenant, its employees, officers, directors, agents, customers, guests, invitees. Landlord hereby waives any and all rights of recovery against Tenant for loss or damage occurring in connection with or arising out of Landlord's business operations to the extent such loss or damage is covered by proceeds received from insurance required to be carried under this Lease as provided in Section 14 above. This waiver of subrogation shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss, damage or injury to person or property. Inasmuch as this waiver will preclude the assignment of any claims by way of subrogation to an insurance company, the parties shall immediately give, to each insurance company providing policy coverage pursuant to this Lease, written notice of the terms of this waiver of subrogation, and shall have each policy properly endorsed as may be needed to prevent the invalidation of coverage by reason of said waiver.

19. DAMAGE AND DESTRUCTION. If the Premises become inaccessible or are damaged by fire, the elements, or other casualty (a "Casualty Event"), Tenant shall promptly notify Landlord. Landlord and Tenant shall each have the right to terminate this Lease if: (a) Landlord is not permitted by law to rebuild the Premises in substantially the same form as existed before the Casualty Event; (b) Landlord's insurance company prohibits use of the insurance proceeds for reconstruction of the Premises; (c) Landlord's recovery of insurance proceeds is insufficient to reconstruct the Premises; (d) the Premises have been materially damaged and there is less than one (1) year of the Term remaining on the date of the Casualty Event; or (e) it can be reasonably estimated that more than six (6) months will be required for Landlord to cause the Premises to be returned to a condition ready for occupancy. Landlord or Tenant may exercise its right to terminate this Lease under this Section 19 by providing written notice thereof to the other party within thirty (30) days after the occurrence of the Casualty Event or within thirty (30) days after such party receives the information necessary to determine that the applicable condition(s) set out in subsections (a) through (e) above are true, if later. If neither Landlord nor Tenant elects to terminate this Lease in accordance with this Section 19, Landlord shall promptly commence and proceed with all due diligence to repair and restore the Premises to substantially the same condition as existed prior to the Casualty Event; provided, however that Landlord's restoration obligations shall be limited to the casualty insurance proceeds available to Landlord as a result of the Casualty Event. During any period of time that all or a material portion of the Premises is rendered untenable as a result of a Casualty Event that is not caused by the gross negligence or willful misconduct of Tenant, rent otherwise due hereunder shall abate for all of the Premises or the portion thereof that is untenable, as applicable.

20. HAZARDOUS MATERIALS. Tenant shall insure that no hazardous material or substance, or any other material or substance which, if manufactured, spilled or discharged, would be regulated under the laws of the United States or the laws of the State of North Carolina ("Hazardous Materials"), will be manufactured, spilled or discharged on the Premises in violation of any applicable law as a result of the acts or omissions of Tenant or anyone under Tenant's reasonable control, including its employees, agents, or invitees. Tenant shall indemnify and hold Landlord free and harmless from liability for all costs, including (but not limited to) attorneys' fees incurred, in connection with any violation of this provision. Landlord shall indemnify and hold Tenant free and harmless from liability for all costs, including (but not limited to) attorneys' fees, incurred, and liabilities of any kind arising from the manufacture, spillage or discharge of

Hazardous Materials on or about the Premises at any time by Landlord or any person or entity other than Tenant or those under Tenant's reasonable control.

21. CONDEMNATION.

a. If any portion of the Premises shall be appropriated and taken by virtue of any condemnation proceeding for any public or quasi-public use or purposes so as to render the remaining portion unfit for tenancy (as reasonably determined by Tenant), Tenant may terminate this Lease by notifying Landlord in writing of Tenant's election so to do before or within ten (10) days after the date when possession of the Premises shall be required by the condemning authority. This Lease shall terminate effective the date stated in such notice and Landlord shall refund to Tenant any rent prepaid by Tenant hereunder, prorated to such termination date. All damages awarded for the acquisition or condemnation of the Premises, or any part thereof, shall become the sole and absolute property of Landlord, regardless of whether such damages are awarded for diminution in value of the leasehold or for the loss of the fee. Tenant shall be entitled to that portion of any condemnation award that is expressly stated to have been given to Tenant for the loss of business and the loss of value to and the cost of removal of any stock, furniture, fixtures and equipment owned by Tenant.

b. If Tenant does not timely exercise its right to terminate the Lease as provided in this Section 21, the Lease shall remain in full force in effect and the rent due hereunder for the remainder of the Term shall abate in an amount bearing the same proportion to the rent otherwise due as the condemned portion of the Premises bears to the whole.

22. RIGHT OF ENTRY. Landlord shall have the right to enter the Premises during reasonable hours to inspect and examine same, and to ensure that all maintenance and repairs required of Tenant are effected properly. Except in the case of emergency endangering life or property, Landlord shall give notice to Tenant at least twenty-four (24) hours prior to entering the Premises. Entry hereunder by Landlord, Landlord's agents, or employees as provided herein shall not constitute an eviction or deprivation of any right conferred upon Tenant hereunder.

23. SAFETY AND EMERGENCIES. Tenant shall comply with all safety regulations imposed by governmental authorities on Tenant and on the Premises, as well as such reasonable rules for the safety and security of the Premises and Deep Point Marina as may be adopted by Landlord from time-to-time. Tenant shall cooperate with and take reasonable direction from Landlord's security personnel at the Deep Point facility. Tenant shall provide Landlord with the name and contact information of an individual who will be available in the event of an emergency at the Premises, and shall keep such information current during the Term of this Lease.

24. ASSIGNMENT AND SUBLETTING. Landlord shall have the right at any time to sell the Premises, in whole or in part, and to assign its interest in the Premises or in this Lease. Tenant shall have the right at any time to assign and/or sublet the Premises or any portion(s) thereof or any interest therein without Landlord's consent. Landlord agrees to release Tenant from liability under this Lease upon Tenant's full assignment of this Lease.

25. TENANT'S DEFAULT.

- a. In the event of failure by Tenant to:
- (i) pay any rent within ten (10) days after due date; or,
  - (ii) perform any other obligation imposed upon Tenant, or abide by any rule, regulation, or restriction placed upon Tenant herein, within thirty (30) days following written demand to do so given by Landlord to Tenant, or within such longer period as may reasonably be required to remedy the default,

Landlord shall have the absolute legal right, with or without process, to immediately terminate this Lease, or re-enter and attempt to relet without terminating and, with prior written notice to Tenant, may remove all persons and property from the Premises. Landlord shall have the right to use summary ejectment proceedings under North Carolina law to gain possession of the Premises.

b. Landlord shall also be entitled to enjoin any breach by Tenant of any covenant, condition, rule or regulation hereunder and may invoke any right or remedy allowed by law, in equity, or by statute or otherwise, without being restricted to those remedies provided for in this Lease, and each right and remedy provided for in this Lease shall be cumulative, and not alternative, and may be exercised in addition to every other right or remedy provided in this Lease or now or hereafter existing at law or in equity, by any right or otherwise; and the exercise of any right or the pursuit of any remedy by Landlord shall not preclude the simultaneous or later exercise or pursuit by Landlord of any other right or remedy.

c. In the event any party hereto brings a suit in law or equity to enforce its rights under this Lease, or to recover damages for its breach, the prevailing party in any such legal action shall be entitled to recover its reasonable attorney's fees incurred in the prosecution or defense thereof.

26. LANDLORD'S DEFAULT. Upon any failure by Landlord to perform when due any promise or obligation under this Lease, Tenant shall deliver written notice of such failure to Landlord and Landlord shall have ten (10) days thereafter to cure such failure. If Landlord fails to cure such failure within said ten (10) day period, Landlord shall be deemed to have committed a material breach under this Lease and Tenant shall have the right to enjoin such breach by Landlord of any covenant, condition, rule or regulation hereunder and may invoke any right or remedy allowed by law, in equity, or by statute or otherwise, without being restricted to those remedies provided for in this Lease, and each right and remedy available to Tenant shall be cumulative, and not alternative, and may be exercised in addition to every other right or remedy provided in this Lease or now or hereafter existing at law or in equity, by any right or otherwise; and the exercise of any right or the pursuit of any remedy by Tenant shall not preclude the simultaneous or later exercise or pursuit by Tenant of any other right or remedy.

27. QUIET ENJOYMENT. Landlord warrants and represents to Tenant that Landlord has full right and power to execute this Lease and that Tenant, upon payment of the rent and performance of the terms and conditions contained in this Lease, shall peaceably and quietly have, hold and enjoy the Premises during the term of this Lease.

28. NOTICE. Any notice given between Landlord and Tenant hereunder shall be

deemed effectively given and received: (a) upon personal delivery to the party to be notified; (b) upon delivery by electronic or facsimile transmission with confirmation of receipt before 5:00 p.m. local time on a business day, and if not, then the next business day; (c) three (3) days after deposit with the United States Post Office, by registered or certified mail, postage prepaid; or (d) one (1) business day after deposit with a nationally recognized overnight courier service, and sent to the addresses set out on the first page of this Lease. The addresses hereinabove set forth may be changed from time to time by written notice as provided herein.

29. SUBORDINATION. Tenant accepts this Lease subject and subordinate to any existing or subsequent mortgage, deed of trust, or other lien, or the renewal or extension thereof, upon the Premises, provided however, that any mortgagee in such mortgage or deed of trust shall agree to and deliver a non-disturbance agreement granting Tenant the right to remain in peaceful possession of the Premises and to continue to enjoy all of Tenant's rights under this Lease so long as Tenant is not in default of the terms, conditions and provisions hereof. Landlord shall hold Tenant harmless from any claim made against Tenant, or any loss suffered by Tenant, due to the default by Landlord in any of its obligations to a lender, which obligations are secured by a mortgage or deed of trust on the Premises. The mortgagee may at any time subordinate the mortgage, deed of trust, or other lien to this Lease.

30. RIGHTS CUMULATIVE. The rights and remedies of Landlord and Tenant under this Lease are cumulative. The exercise or use of any one or more thereof shall not bar Landlord or Tenant from exercise of use of any other right or remedy provided herein or otherwise provided by law, nor shall exercise or use of any right or remedy by Landlord or Tenant waive any other right or remedy provided for herein or by law.

31. WAIVER. No waiver by either party of any provision of this Lease shall be deemed a waiver of any other provision hereof or of any subsequent or continuing breach of the same or any other provision by the other party. Landlord's consent to or approval of any act by Tenant or any plans submitted by Tenant shall not be deemed to render unnecessary the obtaining of Landlord's consent to or approval of any subsequent act. No agreement to accept Tenant's surrender of the Premises shall be valid unless in writing and signed by Landlord.

32. ESTOPPEL AGREEMENTS. Tenant agrees that from time to time, at reasonable intervals, within ten (10) days after written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord or such other party as Landlord may designate, a certificate stating: (i.) that this Lease is in full force and effect and has not been modified, supplemented or amended, except as indicated in such certificate; (ii.) that all conditions and agreements under this Lease to be performed by Landlord have been satisfied or performed, except as set forth in said certificate; (iii.) that there are no existing defenses or offsets, except as indicated in said certificate; (iv.) that Tenant has not paid any rental in advance, except as indicated in said certificate; and (v.) that Tenant is not in default in the payment of rent or any of the other obligations required of Tenant under this Lease.

33. MODIFICATION. This Lease may not be changed or modified orally, but only by an agreement in writing signed by the party against whom enforcement or waiver of the change, modification or discharge is sought.

34. MISCELLANEOUS.

a. Personalty. No personalty provided by Landlord (if any) shall be removed from the Premises without the prior, written consent of Landlord.

b. Condition. The Premises and any personalty included hereunder are leased in "as-is / where-is" condition, with all faults, and without any representation or warranty whatsoever, unless otherwise specified herein. Tenant acknowledges that Tenant, having been the prior owner of the Premises, has had the opportunity to fully inspect the Premises to Tenant's satisfaction, and Tenant hereby accepts the Premises without exception, reservation or recourse against Landlord.

c. Paragraph Headings. The paragraph headings used in this Lease are for convenience of reference only, and shall not be considered terms of this Lease.

d. Law Applicable. This Lease is entered into in North Carolina and shall be construed under the laws, statutes and ordinances of such jurisdiction.

e. Number, Gender. As the context herein may require, the singular shall be deemed to include the plural, the masculine form shall be deemed to include the feminine and neuter, and the neuter form shall be deemed to include the masculine and feminine.

f. Additional Instruments. Landlord and Tenant shall execute and deliver any instruments necessary to carry out any agreement, term, condition or assurance in this Lease whenever the occasion shall arise and the request for such instrument shall be made.

g. Presumptions. There shall be no presumption against either party as a result of drafting, causing to be drafted, or participating in the drafting of this instrument.

h. Identity of Interests. The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between Landlord and Tenant any relationship of principal and agent, partnership, or relationship other than that of landlord and tenant.

i. Successors and Assigns. Except as otherwise provided in this Lease, all of the covenants, conditions and provisions of this Lease shall be binding on and inure to the benefit of the parties hereto and their respective heirs, representatives, executors, administrators, successors and assigns, when permitted hereunder; PROVIDED, however, the parties agree that the term "Landlord", as used in this Lease, means only the owner or the lessor for the time being of the Premises, so that in the event of any sale or sales of said Premises or any assignment or lease thereof, the Landlord named herein shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder accruing thereafter, provided that the purchaser or assignee has assumed and agreed in writing to carry out any and all covenants and obligations of Landlord during the period after which such person or entity has taken possession or ownership of the Premises.

j. Execution. This Lease Agreement may be executed in counterparts, and when

so executed, shall be deemed executed as one agreement. Facsimile signatures and electronically transmitted signatures may be used in place of original signatures on this Agreement, and the parties intend to be bound by such signatures.

35. TIME. Time is of the essence in all provisions of this Lease and all rights hereunder.

SIGNATURES FOLLOW ON NEXT PAGE



Witness the parties' execution of this Commercial Lease Agreement, the day and year first above written.

LANDLORD:  
BALD HEAD ISLAND TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_, 2020

TENANT:  
BALD HEAD ISLAND LIMITED LLC

By: \_\_\_\_\_  
Name: Charles A. Paul, III  
Title: Manager and CEO  
Date: \_\_\_\_\_, 2020

## SCHEDULE A

### DESCRIPTION OF PREMISES

All of the land shown and highlighted on the drawing attached hereto as **Schedule A-1**, together with all structures and improvements thereon and appurtenances thereto, including (without limitation) the "IT Data Center" consisting of approximately \_\_\_\_ square feet, located within the Deep Point Marina located at 1301 Ferry Road, City of Southport, Brunswick County, North Carolina.

**SCHEDULE A-1**

Sketch of Land and IT Data Center

**To attach**

**SCHEDULE A-2**

Parking Space Site Plan

**To attach**

**SCHEDULE B**  
PERSONAL PROPERTY

None.

## SCHEDULE C

### PERMITTED USES

Tenant may use the Premises for all general office purposes including but not limited to the housing, operating, using, inspecting, maintaining, repairing, and replacing computer servers and related information technology, fixtures and equipment held and/or used in connection with Tenant's business operations on Bald Head Island and in Southport, North Carolina.

EXHIBIT I

FORM OF AMENDMENT TO BALD HEAD ISLAND MARINA ASSOCIATION  
DECLARATION