

STATE OF NORTH CAROLINA

File No.

22-cvs-

98

BRUNSWICK

County

FILED

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name Of Plaintiff **BALD HEAD ISLAND LIMITED, LLC and
BALD HEAD ISLAND TRANSPORTATION, INC.**

Address
106 LIGHTHOUSE WYND

City, State, Zip
BALD HEAD ISLAND, NC
28461

VERSUS

Name Of Defendant(s)
VILLAGE OF BALD HEAD ISLAND

2023 JAN 11 P 2:50

CIVIL SUMMONS

☐ ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
VILLAGE OF BALD HEAD ISLAND
C/O CHRIS McCALL, VILLAGE MANAGER
106 LIGHTHOUSE WYND
BALD HEAD ISLAND, NC 28461

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, **DO NOT** throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. **¡NO TIRE** estos papeles!
 Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea Inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

MICHAEL MURCHISON
MURCHISON, TAYLOR & GIBSON, PLLC
1979 EASTWOOD RD., STE. 101
WILMINGTON, NC. 28403

Date Issued

1-19-23

Time

2:50

☐ AM

☐ PM

Signature

Ray Edwards

☒ Deputy CSC

☐ Assistant CSC

☐ Clerk Of Superior Court

☐ ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

☐ AM

☐ PM

Signature

☐ Deputy CSC

☐ Assistant CSC

☐ Clerk Of Superior Court

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

STATE OF NORTH CAROLINA

BRUNSWICK COUNTY

BALD HEAD ISLAND LIMITED, LLC and
BALD HEAD ISLAND
TRANSPORTATION, INC.

Plaintiffs,

v.

VILLAGE OF BALD HEAD ISLAND,

Defendant.

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2023 JAN 19 P 2:50

22 CVS 98

BRUNSWICK CO., C.S.C.

BY

COMPLAINT

Plaintiffs Bald Head Island Transportation, Inc. ("Transportation") and Bald Head Island Limited LLC ("Limited") (Transportation and Limited, collectively, "Plaintiffs"), complaining of Defendant Village of Bald Head Island ("Defendant" or the "Village"), allege and say:

INTRODUCTION

This is an action pursuant to N.C. Gen. Stat. §1-253, *et seq.*, for a declaration that the Village had no rights, and Transportation and Limited had no obligations, under that certain Right of First Refusal agreement dated August 21, 1999 (the "ROFR") among the Village, Transportation and Limited because a condition precedent had not been fulfilled. In the alternative, Plaintiffs seek a determination that if such rights and obligations ever existed, they have terminated. This dispute arises out of the Village's baseless, continuing insistence that it has an enforceable right to purchase certain ferry and other infrastructure assets owned by Transportation and Limited under the ROFR, in spite of clear, undisputable facts to the contrary. For the reasons which follow, Transportation and Limited seek (A) declaratory and quiet title judgments that the ROFR never became effective and is unenforceable because the ROFR was never approved by the North Carolina Public Utilities Commission ("NCUC" or the "Utilities Commission") as required

by its clear and express terms, and (B) declaratory and quiet title judgments that, to the extent the Village had any rights thereunder, the Village has forfeited those rights by failing to avail itself of an offer extended by Limited and Transportation on September 6, 2022 to purchase those transportation assets on the same terms as set forth in a *bona fide* third party offer.

PARTIES, JURISDICTION, AND VENUE

1. Transportation is a North Carolina corporation which has its principal office and place of business in Bald Head Island, Brunswick County, North Carolina.

2. Limited is a limited liability company organized under Texas law with its principal office and place of business in Bald Head Island, Brunswick County, North Carolina (“Bald Head Island” or the “Island”).

3. The Village is a municipal corporation that is governed by laws of the state of North Carolina and operating under the charter granted to it by the North Carolina General Assembly.

4. Venue is proper in this Court pursuant to N.C. Gen. Stat. §§ 1-79 and 1-82.

5. This Court has jurisdiction over these parties and this dispute pursuant to N.C. Gen. Stat. §§ 1-75.4 and 1-253.

FACTS

6. Since 1983, Limited has made substantial financial investment in Bald Head Island that significantly contributed to its success and development, including, without limitation, the construction and maintenance of substantially all main roadways, water/sewer plants, transportation systems and other infrastructure and commercial and residential development.

7. Transportation, a subsidiary of Limited, owns and operates a ferry service (the “Ferry Operations”) that transports passengers between the Deep Point ferry terminal in Southport, North Carolina and the ferry terminal on Bald Head Island. Transportation also owns and operates an on-

Island tram service (the “Tram Operations”) that transports ferry passengers between the Island ferry terminal and their final, on-Island destination.

8. The Ferry Operations and Tram Operations are both subject to the regulatory authority of the Utilities Commission, including the disposition of those operations and their associated assets.

9. Limited owns and operates (i) the parking lots and related real property located at the Deep Point ferry terminal in Southport, North Carolina (the “Parking Operations”) and (ii) the freight barge operations (the “Barge Operations”) which transport vehicles, goods, supplies, and equipment to the Island. In addition, Limited owns and leases to Transportation the real property assets associated with the Ferry Operations and Tram Operations.

10. Pursuant to an application filed by the Village with the Utilities Commission, on December 30, 2022 the Utilities Commission asserted regulatory control over the Parking Operations and the Barge Operations, including the disposition of those operations and their associated assets.

11. For ease of reference, the assets relating to the Ferry Operations, the Tram Operations, the Parking Operations and the Barge Operations described in paragraphs 7 and 9 are referred to collectively as the “Transportation Assets”, because they are so identified in the ROFR.

12. On August 21, 1999, Transportation, the Village and Limited entered into the ROFR, under the terms of which Transportation purported to give the Village a right of first refusal to purchase the Transportation Assets, at the same price and under the same terms as included in an arm’s length, *bona fide* offer to purchase those assets from a third party.

13. The ROFR was filed with the Brunswick County Register of Deeds on September 10, 1999 at Book 1329, Page 932. A true and accurate copy of the ROFR is attached hereto as Exhibit A and incorporated herein by reference.

14. Neither the right of first refusal nor the ROFR itself ever became effective because of a significant condition precedent described below which was never fulfilled.

15. Section 7 of the ROFR states as follows:

7. This agreement shall **become effective only upon** approval by the North Carolina Public Utilities Commission.
(emphasis added)

16. The Village has never obtained approval of the ROFR by the Utilities Commission.

17. Upon information and belief, the Village has not sought such approval. There is no evidence of record in Docket A-41 of the Commission – assigned to matters relating to Bald Head Island Ferry – of any filings, by any person or entity, related to the ROFR or consideration of it by the Utilities Commission.

18. By letter dated May 11, 2021 directed to counsel for Transportation and Limited, the Utilities Commission has confirmed that no such approval had been given. A true and accurate copy of this letter is attached hereto as Exhibit B and incorporated herein reference.

19. Notwithstanding the absence of Utilities Commission approval of the ROFR, the Village has on multiple occasions publicly maintained that it possesses contractual rights under the ROFR.

20. For a number of years since the death of its founder, George P. Mitchell, in 2013, Transportation and Limited have sought to divest themselves of the Transportation Assets.

21. In December 2020, Transportation and Limited reached a final agreement to sell those Transportation Assets for the sum of \$47,750,000 to the Bald Head Island Transportation Authority (the “Authority”), a newly created public transportation authority authorized by unanimous action of the North Carolina General Assembly.

22. The Authority was created by the unanimous approvals of the key regional government entities – the Village, the City of Southport, and Brunswick County – for the express

purpose of acquiring, owning and operating the Transportation Assets. Each of the above three government entities has representation on the Board of Trustees of the Authority.

23. In the ensuing months, the Village, as well as some members of the Board of the Authority who served as Village representatives, openly opposed the sale of the Transportation Assets to the Authority at price of \$47,750,000, insisting the purchase price exceeded fair market value in spite of multiple appraisals that confirmed otherwise.

24. As the Village became increasingly vocal in its opposition to the Authority, the Village publicly announced its intention to pursue its own acquisition of the Transportation Assets. A true and authentic copy of the Village's March 22, 2021 letter informing the North Carolina Local Government Commission (the "LGC") of its intention is attached hereto as Exhibit C and incorporated by reference.

25. The Village's opposition, and its decision to compete with the Authority instead of support it, effectively derailed the sale when the LGC failed to place on its agenda the Authority's application for approval of its bond financing from the LGC.

26. With their plan to sell the Transportation Assets to the Authority scuttled by the Village, on May 17, 2022, Transportation and Limited entered into an asset purchase agreement ("Asset Purchase Agreement") with SharpVue Capital, LLC ("SharpVue"), a *bona fide* third-party purchaser.

27. Under the Asset Purchase Agreement's terms, Transportation and Limited agreed to sell the Transportation Assets for the sum of \$56 million and certain other supplemental assets and businesses of Limited (the "Non-Transportation Assets") for the additional sum of \$11.2 million (the "Transaction").

28. Shortly after signing the Asset Purchase Agreement, representatives of Transportation and Limited apprised representatives of the Village of the Transaction, including the purchase price, at an in-person meeting.

29. A press release regarding the Transaction was also made publicly available. A true and accurate copy of the press release is attached hereto as Exhibit D and incorporated herein by reference.

30. Thereafter, representatives of Transportation, Limited and SharpVue met with representatives of the Village and engaged in discussions regarding the Transportation Assets. After approximately two months, the Village ended those discussions in discussions in August, 2022.

31. On September 6, 2022, Plaintiffs sent the Village a letter (the "ROFR Notice") with a fully executed copy of the Asset Purchase Agreement so that the Village could see all of the terms and conditions under which the sale to SharpVue would occur.

32. A true and accurate copy of the ROFR Notice is attached as Exhibit E and incorporated herein by reference.

33. In the ROFR Notice, Plaintiffs afforded the Village 60 days to purchase the Transportation Assets on the same price, terms, and conditions as prevailed in the Transaction, and committed to closing within 180 days.

34. As the ROFR Notice makes clear, Plaintiffs specifically reserved their position that the ROFR was ineffective but nevertheless, in good faith and in an attempt to avoid future doubt and litigation, extended to the Village the opportunity to purchase the Transportation Assets on the same terms and conditions set forth in the Asset Purchase Agreement with SharpVue.

35. In addition, and in a further exercise of good faith, the ROFR Notice extended to the Village the opportunity to purchase the Non-Transportation Assets, consisting primarily of certain

unrelated parcels of real property, marina slips and the golf cart parking and rental operation, for the additional sum of \$11,200,000, consistent with the terms extended to SharpVue under the Asset Purchase Agreement.

36. The ROFR Notice requested the Village to act in good faith and notify Plaintiffs of Village's exercise of the opportunity to purchase the Transportation Assets within the 60 days afforded or, alternatively, to disclaim or waive the Village's purported rights under the ROFR to allow the SharpVue Transaction to go forward.

37. By its terms, the ROFR only requires the notice to the Village to identify (a) the asset or assets subject to the offer, (b) the identity of the individual or entity making the offer, (3) the proposed purchase price and terms including any conditions of sale, and (4) the proposed closing date.

38. By supplying the Village with a full copy of the Asset Purchase Agreement and all related schedules and disclosure schedules, the ROFR Notice far exceeded what would have been required of Plaintiffs (were the ROFR effective) and provided the Village with a comprehensive understanding of the terms and conditions of the sale to SharpVue.

39. In addition, the ROFR Notice's extension of the opportunity to purchase the Non-Transportation Assets also went beyond any requirements set forth in the ROFR.

40. Presented with this opportunity to purchase the Transportation Assets– the very thing the Village could have secured had the ROFR been effective- the Village did not accept the proposed offer.

41. Instead, by letters dated September 20, 2022 and November 2, 2022 to Plaintiffs, with copy to SharpVue, the Village interposed objections concerning whether Plaintiffs' notice comported with the requirements of the ROFR, including a request to specify the purchase price and

identity of the assets even though the Asset Purchase Agreement and accompanying schedules provided to the Village with the ROFR Notice fully disclosed this information.

42. The Village also asked for certain due diligence materials with respect to the Non-Transportation Assets.

43. Plaintiffs responded to the Village's September 20, 2022 letter on September 28, 2022, pointing out that the schedules to the Asset Purchase Agreement fully disclosed the purchase price for the Transportation Assets and the Non-Transportation Assets.

44. In its September 28, 2022 letter, Plaintiffs also offered, despite being under no obligation to do so, to allow the Village to access facilities, assets and properties for the purpose of conducting its own inspections and due diligence – an offer of which the Village never availed itself.

45. True and accurate copies of the above letters dated September 20, 2022, September 28, 2022 and November 2, 2022 between Plaintiffs and the Village are attached hereto as Exhibits F, G and H and incorporated herein by reference.

46. The ROFR contained a provision that would have allowed the Village to exercise its option to match SharpVue's offer subject to approval by the LGC of any required financing to consummate the purchase.

47. The Village knew that, if the Village exercised the ROFR, obtaining LGC approval of the financing to purchase the Transportation Assets for \$56 Million would be in direct conflict with the Village's prior position that the purchase price of \$47.75 Million proposed to be paid by the Authority exceeded the fair market value of such assets.

48. On December 19, 2022, Plaintiffs sent the Village a letter detailing the history of the correspondence between Plaintiffs and the Village regarding Plaintiffs' offer to allow the Village

the opportunity to purchase the Transportation Assets and Non-Transportation Assets at the fair market price set forth in the Asset Purchase Agreement.

49. A true and accurate copy of the December 19, 2022 letter is attached hereto as Exhibit I and incorporated herein by reference.

50. The December 19, 2022 letter notified the Village that more than 60 days had elapsed and that the Village's opportunity to purchase those assets had expired. The letter demanded the Village to acknowledge publicly that any rights it might have under the ROFR had expired and to remove the cloud on title which the Village's position created.

51. In a letter to Plaintiffs dated December 28, 2022, with copy to SharpVue, the Village declined to comply with Plaintiffs' demand and continued to assert, for unspecified reasons, that the Village continued to enjoy rights under the ROFR. In that letter, the Village states that it "will defend its rights under the ROFR Agreement, through litigation if necessary."

52. A true and accurate copy of the Village's December 28, 2022 letter is attached hereto as Exhibit J and incorporated herein by reference.

53. SharpVue has represented to Plaintiffs that it is ready, willing and able to close the Transaction, and that its lender stands ready to finance the Transaction once title insurance is in place. SharpVue, in consultation with Transportation and Limited, repeatedly sought a commitment of title insurance to accompany its purchase and financing of the Transaction but has been unable to secure such policy because of the Village's continued claims that the ROFR is valid and should remain part of the public record. SharpVue in turn has informed Plaintiffs that it may not close the Transaction without title insurance.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment that the ROFR is Not Effective Because of Lack of Utilities Commission Approval)

54. Plaintiffs reallege and incorporate by reference all allegations of the Complaint stated in paragraphs 1 through 53.

55. Limited and Transportation own the Transportation Assets.

56. The Transportation Assets are under binding contract, as evidenced by the Asset Purchase Agreement, to be sold to SharpVue and its affiliates.

57. The ROFR is filed in the records of the Brunswick County Register of Deeds at Book 1329, Page 932 and is readily identifiable in any title searches conducted by a buyer of the Transportation Assets.

58. The ROFR has not been approved by the Utilities Commission, as is expressly required by its terms, and therefore neither it nor any purported rights or obligations in the ROFR are effective, valid, or binding.

59. Notwithstanding this, the Village continues to claim that it “possesses contractual rights” under the ROFR which it “expressly reserves and does not waive” and has declined requests to disclaim any purported rights arising from the ROFR.

60. The Village’s statements and actions present a “live,” though unjustified, dispute about the meaning of the ROFR.

61. Plaintiffs are entitled to a declaration under N.C. Gen. Stat. § 1-253 that the ROFR is not effective, having not been approved by the Utilities Commission.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment that the Village Has Forfeited Any Rights It Might Have Had under the ROFR)

62. Plaintiffs reallege and incorporate by reference all allegations of the Complaint stated in paragraphs 1 through 61.

63. Plaintiffs, though not required to do so, and out of an abundance of caution, gave Village the opportunity to acquire the Transportation Assets on the same terms as set forth in the bona fide purchase offer from SharpVue and, in doing so, fully complied with the requirements of the ROFR, had it been effective.

64. The Village failed to match SharpVue's offer within the requisite 60-day period as required by the ROFR and, as a result, the Village has waived and forfeited any rights it might have had under the ROFR to purchase the Transportation Assets.

65. Plaintiffs are entitled to a declaration under N.C.G.S. § 1-253 that Plaintiffs have complied with the ROFR to the extent either or both of them might be said to have any obligation whatsoever to comply, and by virtue of its actions, the Village has forfeited any and all rights it might have under the ROFR and that the ROFR has been fulfilled and is no longer operative.

THIRD CLAIM FOR RELIEF

(Action to Quiet Title)

66. Plaintiffs repeat and reallege and incorporate by reference all allegations of the Complaint stated in paragraphs 1 through 65.

67. For the reasons set forth in the First and Second Claims for Relief, the Village's continued insistence that it maintains contractual rights under the ROFR, combined with its refusal to terminate the ROFR on the public record, creates a cloud on Plaintiffs' title to the Transportation

Assets, which has materially delayed and prevented the closing of the Transaction with SharpVue within the time period set forth in the Asset Purchase Agreement.

68. Plaintiffs are entitled to a decree that removes such cloud of title with respect to the Transportation Assets and declares that the Village has no rights under the ROFR and that the Village shall promptly terminate the ROFR on the public record.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter the following relief:

1. That the Court enter a judgment pursuant to N.C. Gen. Stat. § 1-253 that the ROFR is invalid because Utilities Commission approval was never obtained and the condition precedent was therefore unsatisfied or, in the alternative, that the Village has been afforded and now forfeited any rights it might claim to have under the ROFR; and
2. That the Court enter a judgment, consistent with the declaration sought above, removing the cloud on title with respect to the Transportation Assets created by the Village's statements regarding its rights under the ROFR.
3. That the Court award Plaintiffs such other and further relief as the Court deems just and proper.

This the 19th day of January, 2023.

MURCHISON, TAYLOR & GIBSON PLLC



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*Attorneys for Bald Head Island Transportation, Inc.
and Bald Head Island Limited, LLC*

Exhibit A

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

Brunswick County--Register of Deeds
Robert J. Robinson
Inst #24941 Book 1329Page 932
09/10/1999 03:06pm Rec# 24275

RIGHT OF FIRST REFUSAL

THIS AGREEMENT, made and entered into this the 21 day of August, 1999, by and between **BALD HEAD ISLAND TRANSPORTATION, INC.**, hereinafter referred to as "TRANSPORTATION"; the **VILLAGE OF BALD HEAD ISLAND**, hereinafter referred to as "VILLAGE"; and **BALD HEAD ISLAND LIMITED**, hereinafter referred to as "LIMITED":

WITNESSETH

THAT WHEREAS, the VILLAGE was granted certain rights with regard to the Bald Head Island transportation system, hereinafter defined; and

WHEREAS, substantial questions exist with regard to rights and obligations of the parties hereto with regard to such transportation system, and

WHEREAS, rather than engaging in lengthy and costly litigation regarding those issues, the parties hereto desire to resolve all outstanding questions between them by the execution of this agreement;

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS (\$10.00) paid to TRANSPORTATION by the VILLAGE, the receipt and sufficiency of which is hereby acknowledged, and further in consideration of the covenants, stipulations and agreements herein contained, the parties hereto do agree, covenant and stipulate as follows:

1. That VILLAGE be and hereby is granted a Right of First Refusal, pursuant to the terms and conditions of this agreement, to purchase the Bald Head Island Transportation System or any portion thereof.

"The Bald Head Island Transportation System" (hereinafter referred to as "Transportation System") shall be defined as those assets, tangible and intangible, directly and integrally used in the transportation of persons and property to and from Bald Head Island and, further, in the transportation of such goods or persons while on Bald Head Island, and any and all substitutions thereof and any and all reasonably related accessories thereto, including but not limited to ferries, boats, tugboats, barges, trams, motor vehicles to pull trams, and any and all other personal property, titled or untitled motor vehicles and all accessories thereto, and any real property owned or leased comprising docking or parking facilities, administrative facilities, or facilities designed to facilitate the transfer of individuals to and from the ferry and ground transportation, including a means of access from such real estate to and from a public right-of-way, including any and all improvements to such real estate. Specifically, this Right of First Refusal shall include those parcels of real estate described as follows:

RET Bill Fairley
TOTAL 10.00 REV TCN
REC# 02 CH AMT 37.4 CH# 4824
CASH REF BY CS

(a) Tracts 2, 3 and 4 (consisting of 1.03 acres, 0.2 acres, and 1.19 acres, respectively) as shown on a map entitled "Plat of Survey for Bald Head Island Limited" by Brunswick Surveying, Inc., dated 8/25/99, and recorded in Map Cabinet 21, Instrument 500, of the Brunswick County Registry, a copy of which is attached hereto.

(b) That tract or parcel of land lying and being in or near the City of Southport, Smithville Township, Brunswick County, North Carolina, and more particularly described as follows: BEING approximately 76.39 acres, more or less, as described on a plat of survey made by Thomas W. Morgan, R.L.S., of Brunswick Surveying, Inc. and recorded in Map Cabinet 20 at Page 414 of the Brunswick County Registry, to which plat reference is made and which is incorporated herein by reference for greater certainty of description.

This Right of First Refusal shall further include, but not be limited to, the right to assignment by LIMITED of the non-exclusive easement retained by LIMITED for the use of and for ingress, egress and regress over, across and through those properties described by deed recorded in Book 778 at Page 61 of the Brunswick County Registry, and the riparian rights appurtenant thereto, for all purposes deemed appropriate by LIMITED, its successors and assigns, including without limitation the operation of ferries, barges, boats and trains.

This Right of First Refusal shall not apply to sale, conveyance or other transfer of any assets comprising the Transportation System where such assets are sold by TRANSPORTATION in the usual course of business due to obsolescence or other reasons relating to the continued usefulness of such asset to the system. Further, this Right of First Refusal shall not be applicable to a transfer of the system or any assets therein so long as such sale shall be a transfer to any entity owned as a corporation or other entity owned by LIMITED, George Mitchell or any of George Mitchell's children or immediate family so long as such asset remains dedicated to use as an operating portion of the system.

2. The purchase price to be paid by VILLAGE for the Transportation System and the terms of such purchase shall be equal to the price of the assets comprising the Transportation System and the terms of purchase as shall be contained in any *bona fide* offer from a third party dealing at arm's length with TRANSPORTATION or any successor in title to TRANSPORTATION.

3. TRANSPORTATION agrees that it shall notify VILLAGE at such time as TRANSPORTATION begins to contemplate the sale of the Transportation System or any portion thereof, other than such sales as shall be exempt from this Right of First Refusal pursuant to paragraph 1 hereof.

4. Upon receipt by TRANSPORTATION of any acceptable offer to purchase the Transportation System or any portion thereof, TRANSPORTATION shall notify VILLAGE of the existence of an offer acceptable to it for the sale of such asset or assets. Notice shall be delivered in

writing to the Village Manager and shall include notice to the VILLAGE of the existence of an offer to purchase the Transportation System or a portion thereof and shall identify the following.

- (1) The asset or assets which are the subject of such offer;
- (2) The identity of the individual or entity making such offer;
- (3) The proposed purchase price and terms including any conditions on sale; and
- (4) The proposed closing date.

Upon receipt of notice from TRANSPORTATION as to the existence of an offer acceptable to TRANSPORTATION, the VILLAGE shall have a period of sixty (60) days from the date of receipt of such notice to determine whether to match such offer. The VILLAGE shall inform TRANSPORTATION, in writing, of its decision within sixty (60) days of the receipt of notice. In the event that VILLAGE shall fail to respond in writing to TRANSPORTATION within sixty (60) days of the receipt of notice, such failure shall constitute a waiver of the Right of First Refusal herein contained by the VILLAGE. If the VILLAGE elects to exercise its option to match the offer, the VILLAGE shall close upon the purchase of such assets within a period of time equal to one hundred eighty (180) days from the date that VILLAGE exercises its Right of First Refusal or the closing date as set forth in the proposed offer, whichever date shall be later.

The VILLAGE may exercise its Right of First Refusal subject to approval by the Local Government Commission of any financing required to consummate the purchase of the Transportation System and further subject to any other governmental approvals that would be necessary for the VILLAGE to purchase and operate the Transportation System and to finance the purchase price thereof.

5. With regard to the existence of real estate which shall be the subject of this Right of First Refusal, the parties agree to record the original of this Right of First Refusal or a memorandum thereof, together with a description of such real estate, in the office of the Register of Deeds for Brunswick County. In the event that TRANSPORTATION desires to sell any real estate subject hereto, the VILLAGE shall release such real estate from this Right of First Refusal upon (1) designation by TRANSPORTATION of a suitable substitute therefor and (2) upon determination by the VILLAGE that the proposed substitute real estate is substantially equivalent or superior to the released property for the purposes for which the released property has been used in the Transportation System. The parties shall then execute such documents as shall release the original property from this Right of First Refusal and subject the substituted property thereto.

6. The terms and conditions of this agreement supersede any and all other offers, contracts or rights of first refusal of the VILLAGE to purchase any or all of the assets which are the subject of this agreement heretofore existing between the VILLAGE and Bald Head Island Limited. This instrument constitutes the entire agreement between the parties and shall be governed by and interpreted under the laws of the State of North Carolina. The parties stipulate that the venue of any litigation arising herefrom shall be in the Superior Court of Brunswick County.

7. This agreement shall become effective only upon approval by the North Carolina Public Utilities Commission.

8. Any notice required to be given herein shall be sent by certified mail, return receipt requested, to the parties as follows:

TRANSPORTATION: Bald Head Island Transportation, Inc.
P. O. Box 3069
Bald Head Island, NC 28461

ATTENTION: Woody Fulton

VILLAGE: Village of Bald Head Island
P. O. Box 3009
Bald Head Island, NC 28461

ATTENTION: Manager

LIMITED: Bald Head Island Limited
P. O. Box 3069
Bald Head Island, NC 28461

ATTENTION: M. Kent Mitchell

Inst # 21941 Book 1329Page: 935

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in triplicate originals as of the date first above written.

(CORPORATE SEAL)

BALD HEAD ISLAND TRANSPORTATION, INC

BY: [Signature]

Vice President

ATTEST:

B. J. German
Assistant Secretary



Joanna A. Campanello
Clerk

VILLAGE OF BALD HEAD ISLAND

BY: [Signature]

Mayor

BALD HEAD ISLAND LIMITED (SEAL)

BY: [Signature]

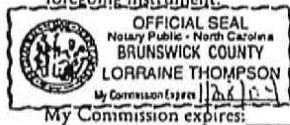
Attorney-in-Fact

(SEAL)

Inst # 24941 Book 1329 Page: 936

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Lorraine Thompson, a Notary Public, do hereby certify that Kenneth M. Kirkman, Vice President personally appeared before me this 23rd day of August, 1999 and acknowledged the due execution of the foregoing instrument.



Lorraine Thompson
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Josann A Campanello, a Notary Public, do hereby certify that Kenneth M. Kirkman, Mayor personally appeared before me this 21 day of August, 1999 and acknowledged the due execution of the foregoing instrument.



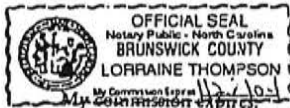
Josann A. Campanello
Notary Public

STATE OF NORTH CAROLINA
County of Brunswick

I, Lorraine Thompson, a Notary Public for said County and State, do hereby certify that Kenneth M. Kirkman attorney in fact for Bald Head Island Limited personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said Bald Head Island Limited, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Brunswick, State of North Carolina, in Deed Book 1143 at Page 916, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said Kenneth M. Kirkman acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said Bald Head Island Limited.

WITNESS my hand and official seal, this the 23rd day of August, 1999



Lorraine Thompson
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of LORRAINE THOMPSON JOSANN A CAMPANELLO

Notary(ies) Public is (are) Certified to be Correct.

This Instrument was filed for Registration on this 1st Day of September, 1999
in the Book and Page shown on the First Page hereof.

Robert J. Robinson
ROBERT J. ROBINSON, Register of Deeds

Exhibit B



State of North Carolina Utilities Commission

COMMISSIONERS

Charlotte A. Mitchell, Chair

ToNola D. Brown-Bland
Lyons Gray
Daniel G. Clodfelter

Kimberly W. Duffley
Jeffrey A. Hughes
Floyd B. McKissick, Jr.

May 11, 2021

M. Gray Styers, Jr.
434 Fayetteville Street, Ste. 2800
Raleigh, NC 27601

RE: Request for Public Record regarding Bald Head Island Transportation, Inc.
1999 Right of First Refusal

Dear Mr. Styers:

The purpose of this letter is to respond to your Public Records Act request of March 25, 2021, received via mail.

The Commission has searched its electronic mail system and other records for documents responsive to your request. The Commission has identified no responsive documents regarding an approval of the purported "Right of First Refusal" by and between Bald Head Island Transportation Company and the Village of Bald Head Island, and Bald Head Island Limited, dated August 21, 1999.

Regards,

/s/ Sam Watson

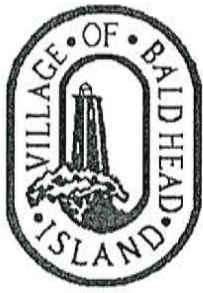
Sam Watson, General Counsel, North Carolina Utilities Commission

STREET ADDRESS:
430 North Salisbury Street • Raleigh, NC 27603

MAILING ADDRESS:
4325 Mail Service Center • Raleigh, NC 27699-4300

Telephone: (919) 733-4249
Facsimile: (919) 733-7300

Exhibit C



The Village of Bald Head Island

March 22, 2021

The Local Government Commission
North Carolina Department of State Treasurer
Attention: Dale R. Folwell, CPA
Chairman
3200 Atlantic Avenue
Raleigh, North Carolina 27604

Re: Bald Head Island Transportation Authority ("Authority")
Application for Approval of Bald Head Island Transportation Authority
Transportation System Revenue Bond Findings ("Application")

Dear Mr. Folwell:

The Village of Bald Head Island ("Village") appreciates the Authority's work, its conducting a public informational meeting concerning the proposed purchase transaction on February 17, 2021 and its making diligence and transaction documents publicly available. However, after much consideration and public input, the Village Council is unanimously committed to pursuing the Village's acquisition of the Transportation System, as defined in the proposed transaction, to include all ferry, barge and parking operations. The Village will work closely with the Seller, the Authority and The Local Government Commission to close the transaction quickly.

Factors compelling the Village's conclusion include:

- The Transportation System exists to serve the property owners, visitors, non-profits and businesses that compose the unique community of Bald Head Island;
- Village ownership is expected to achieve significant economic advantage for the Transportation System, BHI homeowners, and users of the System;
- Lower debt level provides the Village the flexibility to prioritize and implement rate/fee changes and capital improvements in order to meet public needs;
- Council has fiduciary responsibility to pursue the economic benefits and public oversight with purchasing the System; and
- Council acts as stewards of the Island and is in the best position to develop short-term and long-term initiatives for the successful operation of the Transportation System.

The Local Government Commission
North Carolina Department of State Treasurer
Attention: Dale R. Folwell, CPA
Chairman

Page 2
March 22, 2021

The Village has a history of successfully acquiring and operating assets, including its acquisition of the Island's water and sewer plant from Bald Head Island Limited, LLC and Bald Head Island Utilities, Inc. The Village Council is prepared to negotiate, finance and close the acquisition of the Transportation System in the public interest.

Thank you for your consideration.

Respectfully,

Village of Bald Head Island Council

/s/ J. Andrew Sayre

Mayor

/s/ Michael Brown

Mayor Pro Tempore

/s/ Scott Gardner

Councilor

/s/ Emily Hill

Councilor

/s/ Peter Quinn

Councilor

pc: Sharon Edmundson, Deputy Treasurer
Tim Romocki, Director, Debt Management
Anna Yount, Executive Assistant to the Treasurer
K. Christopher McCall, Village Manager
Susan Rabon, Chair, Bald Head Island Transportation Authority
Chad Paul, CEO, Bald Head Island Limited, LLC

Exhibit D

FOR IMMEDIATE RELEASE

CONTACT: Chad Paul
Bald Head Island Limited, LLC
910-457-7358
cpaul@bhisland.com

CONTACT: Lee Roberts
SharpVue Capital, LLC
919-890-0517
lee.roberts@sharpvuecap.com

**Bald Head Island Limited, LLC and SharpVue Capital, LLC
Announce Signing of Asset Sale/Purchase Agreement**

Bald Head Island, NC (May 31, 2022) - Bald Head Island Limited, LLC ("Limited") has executed a definitive agreement to sell substantially all of the remaining Mitchell Family operations and associated real estate assets relating to the Island to SharpVue Capital, LLC ("SharpVue"). The \$67.7 million transaction includes \$56 million for the regulated Ferry & Tram System, and the non-regulated Tug & Freight Barge operation, and Deep Point Parking facility in Southport. The acquisition of the regulated Ferry & Tram System is tied to approval of ownership transfers by the North Carolina Utilities Commission.

"The George P. Mitchell family established and grew these infrastructure operations and assets to aid the Island's development and this agreement transitions them to a reputable and experienced owner and operator with deep ties to North Carolina," said Chad Paul, CEO of Limited. "Our team is committed to ensuring a smooth and seamless transition, for the benefit of islanders, employees, and the greater community," said Paul.

"We recognize the responsibility of operating critical infrastructure in a safe, reliable, and cost-effective manner," said Lee Roberts, managing partner of SharpVue. Roberts emphasized, "We plan to continue the legacy of stewardship and high-quality service the Mitchells have established, and we're pleased that the excellent employees and long-standing management team will remain in place to ensure seamless continuity of day-to-day operations."

About Bald Head Island

Bald Head Island is a ferry-accessed community located two miles off the coast of Southport, NC. Transportation on the island is restricted to trams, golf carts, bicycles, and pedestrian traffic. Of the island's 12,000 acres, 10,000 acres will remain undeveloped. To learn more about the island, visit baldheadisland.com.

About SharpVue Capital, LLC

SharpVue Capital is based in Raleigh, N.C., and operates private real estate and private credit and equity funds on behalf of institutional investors and qualified individuals. For more information, visit sharpvuecapital.com.

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Exhibit E

Bald Head Island Limited, LLC
c/o Charles A. Paul, III, CEO
1979 Eastwood Road, Suite 101, Wilmington, NC 28403
Email: cpaul@bhisland.com

September 6, 2022

VIA HAND DELIVERY & U.S. CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Village of Bald Head Island
c/o Peter Quinn, Mayor
106 Lighthouse Wynd
Bald Head Island, NC 28461

Village of Bald Head Island
Attn: Manager
P. O. Box 3009
Bald Head Island, NC 28461

RE: Right of First Refusal dated August 21, 1999 (the "1999 Agreement")

Dear Mayor Quinn:

On behalf of Bald Head Island Limited, LLC and Bald Head Island Transportation, Inc. (collectively "Sellers"), and subject to the terms of that certain Confidentiality and Non-Disclosure Agreement among the Village of Bald Head Island (the "Village"), Sellers and SharpVue Capital, LLC ("SharpVue") dated June 7, 2022 (the "Confidentiality Agreement")¹, I am delivering to you a fully executed copy of the Asset Purchase Agreement dated May 17, 2022 (the "APA"), among Sellers, SharpVue and its affiliated entities, together with the related Schedules and Disclosure Schedules. Capitalized terms used but not otherwise defined in this letter shall have the meanings ascribed to such terms in the APA.

Sellers deliver the APA in satisfaction of the notice and other requirements set forth in the 1999 Agreement and hereby extend to the Village an opportunity to exercise the right of first refusal granted by the 1999 Agreement on the same terms and conditions as in the enclosed APA; provided, however, the Village may exercise its right of first refusal only with respect to the businesses and assets covered by the APA that relate to the Transportation System (as defined in the 1999 Agreement), which consist of the Regulated Business, the Non-Regulated Business and the Assets relating to those businesses, but excludes the Supplemental Businesses and the Supplemental Assets, for a purchase price of \$56,000,000 and at a closing to occur within 180 days following timely and proper exercise of the right of first refusal.²

¹ The Confidentiality Agreement applies to and protects the confidential nature of the provisions of the APA for the benefit of Sellers and SharpVue. Should the Village believe public disclosure is necessary at some point, please advise Sellers so that the parties can agree, in advance, on when and what provisions of the APA require disclosure.

² In the alternative, the Village may exercise its right of first refusal with respect to all of the businesses and assets covered by the APA, consisting of the Regulated Business, the Non-Regulated Business, the Supplemental Businesses and the Supplemental Assets for a purchase price of \$67,200,000. Should the Village wish to do so, please promptly let me know and we can modify the Notice and Acceptance accordingly.

The 60-day period (the "Option Period") relating to the right of first refusal granted by the 1999 Agreement will expire at 5:00 P.M. on the date that is sixty (60) days following the Village's receipt of this notice. Sellers have signed the attached Notice of Right of First Refusal, Exercise and Acceptance form ("Notice and Acceptance"). To properly exercise the right of first refusal to "match the offer" of SharpVue as set forth in the APA relating to the Transportation System (as defined in the 1999 Agreement), the Village should countersign the Notice and Acceptance and return it to Sellers prior to expiration of the Option Period via hand delivery and email at the above address of Sellers. It is important to note that, as stated in the Notice and Acceptance, Section 8.7 of the APA requires the Village Litigation to be resolved to the satisfaction of the Sellers. In order to fulfill that requirement, the Village must dismiss the Village Litigation at a time and in a format acceptable to Sellers, in their sole discretion.

In spite of the express purpose of the 1999 Agreement³, the Village initiated regulatory litigation regarding the Transportation System (as defined in the 1999 Agreement). Sellers provide this letter, not as an acknowledgement of the validity or enforceability of the 1999 Agreement, but in an effort to avoid doubt and further litigation over this matter. Sellers respectfully request that the Village act in good faith and timely as to the exercise or non-exercise of its rights under the 1999 Agreement. Consequently, Sellers reserve their objections and defenses to the legality and enforceability of the 1999 Agreement⁴ unless the Village, prior to expiration of the Option Period, either (1) terminates the 1999 Agreement on the public record, or (2) executes and delivers the Notice and Acceptance to Sellers.

In the alternative, should the Village be willing to terminate the 1999 Agreement and the right of first refusal granted thereunder, Sellers are prepared to pay a convenience fee of \$100,000 to the Village if a termination, in form and substance acceptable to Sellers, is executed by the parties and recorded in the Brunswick County Registry no later than September 15, 2022.

Your prompt attention and response to this letter would be greatly appreciated.

Sincerely,

Bald Head Island Limited, LLC

By: 

Charles A. Paul, III, CEO

Bald Head Island Transportation, Inc.

By: 

Charles A. Paul, III, President

cc: Charles Baldwin, Esq. (e/encl.)

³ The third recital of 1999 Agreement expressly stated that the parties entered into the 1999 Agreement "rather than engaging in lengthy and costly litigation regarding those issues."

⁴ Including, that the Village's failure to obtain NCUC approval renders the 1999 Agreement ineffective.

NOTICE OF RIGHT OF FIRST REFUSAL, EXERCISE AND ACCEPTANCE

THIS NOTICE OF RIGHT OF FIRST REFUSAL, EXERCISE AND ACCEPTANCE (this "Notice and Acceptance") is made to be effective as of September 6, 2022 (the "Effective Date"), by and among Bald Head Island Limited, LLC and Bald Head Island Transportation, Inc. (collectively "Sellers"), and the Village of Bald Head Island (the "Village").

1. Pursuant to a letter from Sellers to the Village of even date herewith, the Village hereby acknowledges receipt of a fully executed copy of that certain Asset Purchase Agreement dated May 17, 2022 (the "APA"), among Sellers, SharpVue Capital, LLC ("SharpVue") and its affiliated entities, together with the related Schedules and Disclosure Schedules. Capitalized terms used but not otherwise defined or modified in this Notice and Acceptance shall have the meanings ascribed to such terms in the APA.

2. Sellers hereby extend a right of first refusal to the Village, in accordance with and pursuant to that certain Right of First Refusal dated August 21, 1999 between Sellers and the Village and recorded in Book 1329 at Page 932 of the Brunswick County Registry (the "1999 Agreement"), to acquire the businesses and assets described in the APA that relate to the Transportation System (as defined in the 1999 Agreement), which consist of the Regulated Business, the Non-Regulated Business and the Assets relating to those businesses (collectively, the "Transportation System Assets"), excluding the Supplemental Businesses and the Supplemental Assets, for a purchase price of \$56,000,000.

3. The Village hereby acknowledges receipt of proper notice of its right of first refusal from Sellers as required by the 1999 Agreement. The Village hereby exercises its right of first refusal under the 1999 Agreement and agrees to be bound by all of the terms and conditions of the APA with Sellers upon the following terms and conditions:

A. The Village is hereby substituted as the "Buyer", in place of SharpVue and its affiliated entities, with respect to the Transportation System Assets.

B. The purchase price for the Transportation System Assets shall be \$56,000,000, with \$1,000,000 of Operating Cash to be delivered by the Sellers to the Village at the Closing.

C. The Excluded Assets and the Excluded Liabilities shall include, in addition to those identified in the APA, all assets and liabilities relating to the Supplemental Businesses and the Supplemental Assets.

D. A closing condition for the benefit of both the Village and Sellers, in addition to those set forth in the APA, shall be approval of the Local Government Commission ("LGC") of any financing required by the Village to close the acquisition of the Transportation System Assets. For the avoidance of doubt, approval of both the LGC and the NCUC of the transactions contemplated by the APA between the Village and Sellers are required closing conditions for the benefit of all parties.

E. The Earnest Money Deposit required of the Village shall be \$560,000, instead of \$672,000, to be delivered by the Village to Sellers as required by Section 2.7 of the APA within two (2) Business Days of the Village's execution and delivery of this Notice and Acceptance.

F. As between the Village and the Sellers, the Effective Date of the APA shall be the Effective Date of this Notice and Acceptance. The Inspection Period shall expire sixty (60) days after the Effective Date. The Village has been notified by Sellers that, in order to satisfy the condition set forth in Section 8.7 for the benefit of Sellers, Sellers shall require that the Village, prior to expiration of the Inspection Period, terminate the Village ROFR on the public record and cause the NCUC to dismiss the Village Litigation on terms and conditions acceptable to Sellers, in their sole discretion, as expressly required by the APA.


G. The parties agree that the Outside Date set forth in the APA shall be the date which is 180 days following the date this Notice and Acceptance has been signed by the Village and timely and properly delivered to Sellers.

H. This Notice and Acceptance does not impact or restrict the disposition of the remaining Assets described in the APA that are not Transportation System Assets. Accordingly, the APA shall remain in full force and effect with SharpVue and its affiliated entities as to the Supplemental Businesses and Supplemental Assets.


IN WITNESS WHEREOF, the parties hereto have caused this Notice and Acceptance to be executed and delivered by their duly authorized representatives, to be effective as of the Effective Date.

Sellers:

BALD HEAD ISLAND LIMITED, LLC

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

BALD HEAD ISLAND TRANSPORTATION, INC.

By: 
Name: Charles A. Paul, III
Title: President

Village:

THE VILLAGE OF BALD HEAD ISLAND

By: _____
Name: _____
Title: _____

Exhibit F



The Village of Bald Head Island

September 20, 2022

VIA Email and Certified Mail-Return Receipt Requested

Bald Head Island Limited, LLC
Attention: Mr. Charles A. Paul, III, CEO
Post Office Box 3069
Bald Head Island, North Carolina 28461
cpaul@bhisland.com

Bald Head Island Transportation, Inc.
Attention: Mr. Charles A. Paul, III, President
Post Office Box 3069
Bald Head Island, North Carolina 28461
cpaul@bhisland.com

Re: Right of First Refusal dated August 21, 1999 ("ROFR")

Dear Chad:

Thank you for your letter dated September 6, 2022. In this letter, Bald Head Island Limited, LLC ("Limited") and Bald Head Island Transportation, Inc. ("BHIT") "extend to the Village an opportunity to exercise the right of first refusal granted by the 1999 Agreement on the same terms and conditions as in the enclosed APA." Your letter further states that this opportunity is limited to "the businesses and assets covered by the APA that relate to the Transportation System (as defined in the 1999 Agreement)" and that the purchase price for that subset of assets is \$56,000,000. But in footnote 1, you also state that the Village may exercise its right of first refusal with respect to all of the business and assets covered by the APA – not just the Transportation Assets.

As you know, the Village has previously publicly stated its interest in acquiring the Transportation System. But we are also interested in evaluating the totality of the transaction as described in footnote 1. By this letter, the Village of Bald Head Island ("Village") is seeking additional information necessary to consider your offer, as it pertains to both the Transportation System businesses and assets and to all the properties and assets included in SharpVue's \$67,200,000.00 Asset Purchase Agreement.

P.O. Box 3009 • BALD HEAD ISLAND, NC 28461
(910) 457-9700 • FAX (910) 457-6206 • WEBSITE: <http://www.villagebhi.org>

First, the Village requests that you provide the offer from SharpVue relating to the purchase of the Transportation System properties and assets. The Village's need for this information is consistent with the ROFR requirements. Section 2 of the ROFR provides that, "The purchase price to be paid by VILLAGE for the Transportation System and the terms of such purchase shall be equal to the price of the assets comprising the Transportation System and the terms of purchase as shall be contained in any *bona fide* offer from a third party dealing at arm's length with TRANSPORTATION or any successor in title to TRANSPORTATION." The Village has not received a third party offer specifying the "price of the assets comprising the Transportation System," and the Asset Purchase Agreement ("APA") from SharpVue that you provided states a \$67,200,000.00 purchase price that includes numerous real properties and other assets, additional to those of the Transportation System.

Second, with regard to the properties and assets other than the Transportation System assets and properties, please provide all appraisals, reports and studies in the possession, custody or control of Limited, BHIT and/or you pertaining to those properties and assets. This information is necessary to support the Village's ability to evaluate purchasing and financing those assets.

Finally, given your letter, the Village is assuming that all assets subject to the SharpVue APA are currently owned by Limited and BHIT and that no conveyance of these assets has occurred or will occur until the Village's rights under the ROFR and any time period thereunder have expired. If this assumption is not correct, please let me know as soon as possible.

We appreciate your communication and look forward to receiving the information necessary for the Village to evaluate and respond to the proposal.

Very truly yours,



Peter C. Quinn
Mayor, Village of Bald Head Island

pc: SharpVue Capital, LLC
Attn: Mr. Lee Roberts, Managing Partner (via email)

Exhibit G

Bald Head Island Limited, LLC

c/o Charles A. Paul, III, CEO

P. O. Box 3069

Bald Head Island, North Carolina 28461

Email: cpaul@bhisland.com

September 28, 2022

VIA HAND DELIVERY

Village of Bald Head Island

c/o Peter Quinn, Mayor

106 Lighthouse Wynd

Bald Head Island, NC 28461

RE: Right of First Refusal dated August 21, 1999 (the "1999 Agreement")

Dear Mayor Quinn:

I am responding to your letter of September 20, 2022 from the Village of Bald Head Island (the "Village") to Bald Head Island Limited, LLC and Bald Head Island Transportation, Inc. (collectively "Sellers"). As you are fully aware, Sellers have entered into a binding, definitive Asset Purchase Agreement dated May 17, 2022 (the "APA"), with SharpVue Capital, LLC ("SharpVue") and its affiliated entities. For convenience, capitalized terms used but not otherwise defined in this letter will have the meanings ascribed to such terms in the APA.

The period to exercise the right of first refusal expires on November 7, 2022. I want to make it clear that Sellers will vigorously challenge any attempt by the Village to assert that the September 6, 2022 letter (the "ROFR Letter") did not provide the requisite notice required by the 1999 Agreement. The delivery of the APA, the related Schedules and Disclosure Schedules to the Village, along with the ROFR Letter itself, clearly and unequivocally fulfilled all of the notice and information requirements relating to the Village's purposed right of first refusal under the 1999 Agreement.¹ To support the \$56,000,000 purchase price set forth in the ROFR Letter for the Transportation System (as defined in the 1999 Agreement), I have attached Schedule 2.3 to the APA, which sets forth the proposed purchase price allocation and methodology. While the specific allocation among classes of assets remains subject to final agreement of Sellers and SharpVue, the total consideration to be allocated to and paid by SharpVue to acquire the Transportation System will not change from the \$56,000,000 purchase price set forth in the ROFR Letter. In addition, and for purposes of clarity, the secondary offer set forth in footnote

¹ By delivering a full copy of the APA, the related schedules and the Notice and Acceptance with the ROFR letter, Sellers provided the Village with (1) the Transportation System assets (see schedules referenced in Section 1.1 of APA), (2) identified SharpVue and its affiliates as the parties making the offer contained in the APA, (3) provided the purchase price of \$56,000,000 for the Transportation System assets (see ROFR Letter), as well as the full set of conditions of sale embodied throughout the APA, and (4) the closing date and the Outside Date (see, among others, Articles 3 and 11 of the APA). In fact, Sellers provided the Village substantially more information than the Village was entitled to receive under the 1999 Agreement, such as providing information regarding the RWI Policy, the Holdback Amount, the Deductible and the full indemnity obligations of the parties, thereby giving the Village an opportunity to make a fully informed decision as to its decision to exercise or not exercise any purported rights under the 1999 Agreement.

1 of the ROFR Letter was outside the scope of the 1999 Agreement, was gratuitously extended by Sellers, and did not diminish in any manner the effectiveness of the notice provided under the ROFR Letter.

With regard to the Village's request for all appraisals, reports and studies in our possession, Sellers will not provide such proprietary information to you as the 1999 Agreement does not require such delivery. However, subject to the Village's compliance with the next paragraph, Sellers will provide the Village appropriate access to facilities in order for the Village to conduct, at the Village's sole cost and expense, physical inspections, appraisals and other due diligence.

I will reiterate a point that I have personally mentioned to you and that Sellers expressly made clear in the ROFR Letter to the Village. Should the Village fail to resolve the North Carolina Utilities Commission proceeding on regulating parking and barge (referenced as the "Village Litigation" in the APA) prior to the October 10, 2022 scheduled hearing and to the sole satisfaction of Sellers, and thereafter attempt to exercise the right of first refusal and become a party to the APA, the Village will be **incapable** of satisfying a material closing condition for Sellers' benefit in Section 8.7 of the APA. An intentional refusal to satisfy a material closing condition within the Village's exclusive control would constitute a willful breach of the APA, thereby resulting in the Village's forfeiting its deposit and subjecting it to substantial damages for acting in "bad faith" for the purpose of interfering with a binding agreement between Sellers and SharpVue.

The APA contains no financing contingency for the benefit of the buyer. In light of past statements by the North Carolina State Treasurer and State Auditor, the Village should be prepared to provide clear evidence, at the time of exercise of the purported right of first refusal, that it has adequate sources of financing available to close on the transactions contemplated by the APA in the time frames outlined in the ROFR and the APA.

In light of the Village's past and deliberate actions to block a previous sale of the transportation system by Sellers to the Bald Head Island Transportation Authority (the "Authority"), Sellers share the belief of the Authority and SharpVue that the Village has consistently engaged in conduct for the purpose of delaying, hindering or blocking the sale to the Authority and now SharpVue. The Village communications uncovered through discovery, as well as the attached letter of September 30, 2021 from Messrs. Blau and Carey to the LGC (highlights added) and public presentations made by the Village, clearly support that position. Why else would the Village, having agreed previously to terminate its purported right of first refusal to acquire the system for \$47,750,000, now express interest in acquiring the same assets for \$56,000,000, when bond issuance costs and interest rates are considerably higher and after the Village has expended considerable public funds attempting to have the NCUC regulate a system that would not be regulated if the Village acquires it. Both the Authority and SharpVue have advised Sellers that, notwithstanding the ROFR Letter, they have reserved and retained all rights to pursue any and all legal and equitable remedies directly against the Village by reason of its conduct (including, without limitation, challenging the enforceability of the 1999 Agreement without prior NCUC approval).

Sincerely,

Bald Head Island Limited, LLC

By: 

Charles A. Paul, III, CEO

Bald Head Island Transportation, Inc.

By: 

Charles A. Paul, III, President

cc: Senator William Rabon
Representative Frank Iler
Representative Charles W. Miller
Lee Roberts, Managing Partner SharpVue Capital, LLC
Bald Head Island Transportation Authority Board of Trustees, c/o Susan Rabon, Chair
Brunswick County Board of Commissioners, c/o Patricia Sykes, Chair
City of Southport Board of Aldermen, c/o Mayor Joe Pat Hatem
Bald Head Island Association, c/o Robert Drumheller
Charles Baldwin, Esq.

Attachment 1

See attached letter dated September 30, 2021 to
The Honorable Dale R. Folwell, CPA from Robert T. Blau and J. Paul Carey

September 30, 2021

The Honorable Dale R. Folwell, CPA
North Carolina State Treasurer

The Honorable Beth A. Wood, CPA
North Carolina State Auditor

Dear Treasurer Folwell and Auditor Wood:

We are writing with a modest proposal for resolving the on-going dispute over the Bald Head Island Transportation Authority's (BHITA) proposal to acquire the BHI ferry transportation system (System) from its current owner, Bald Head Limited (BHL) for \$47.75M, and to finance the deal through a \$56.1M revenue bond issue. For reasons highlighted in our July 21 letter, and subsequent developments including a second highly flawed real estate appraisal conducted for the BHITA, we continue to believe that LGC approval of BHITA's revenue bond issue will result in BHITA over-paying for the System, thereby harming System users who will bear the cost of servicing that debt through significantly higher ferry, parking, and barge fees (e.g., **20% higher according to BHITA's bond application**), and by subjecting Bald Head Island and the State to unnecessary default risk.

As you know, the Village of Bald Head Island (Village) has voiced similar concerns about BHITA's proposed deal with BHL, and has asked the LGC to approve a \$52M general obligation (GO) bond issue that it would use to acquire the System and operate it as a municipally-owned, unregulated public utility going forward. The Village's bond application does not explicitly indicate how much of its \$52M bond issue would be used to pay BHL, in part because the Village believes that some of that debt capital may be needed to pay for capital improvements to the System that BHL has neglected in recent years.

Like BHITA, the Village does not know what the System would likely sell for if placed on the open market. Figuring that out would require that independent business valuation experts be given access to prior-year financial statements for the System which BHL has refused to disclose publicly. As a consequence, both BHITA and the Village have focused on how much public debt either could borrow, in order to pay BHL, and obtain LGC approval of their respective bond applications. The Village notes further that because it would borrow less capital than BHITA (i.e., \$52M vs. \$56.1M) at a lower interest rate (i.e., by issuing GO bonds vs. BHITA's revenue bonds), its annual debt service costs also would be significantly lower which, of course, would be paid for through smaller increases in ferry, barge, and parking fees.

Under North Carolina law, the Village's GO bond issue must be approved by a majority of BHI voters. They will have that opportunity in the upcoming municipal election on November 2.

Recently, members of the LGC were copied on coordinated, back-to-back letters from the Mitchell Family Corporation, which owns BHL, and the Bald Head Association (BHA) Board of Directors to the Mayor of Bald Head Island opposing the sale of the System to the Village. Since the Village's purchase price may end up being less than BHITA's \$47.75M offer, depending on immediate capital spending needs and, hopefully, a better understanding of what the transportation System might actually be worth, BHL and the Mitchell Family Corporation understandably favor BHITA's bond proposal over the Village's.

In an effort to curry support on the island for BHITA's offer, BHL has stated, at least publicly, that it will not sell the System to the Village. And that if the LGC does not immediately approve BHITA's \$56.1M revenue bond issue, the Mitchell Family Corporation will "pursue a competitive sale process for the disposition of the

remaining operation that we have relating to Bald Head Island, to include ferry, parking, and barge and transportation-related real estate assets.”¹

BHA’s Board of Directors apparently interprets this to mean that if BHITA’s bond application is not approved soon, the System will be broken up and BHL’s ferry, parking and barge operations would be sold to the highest commercial bidder. An outcome the BHA Board asserts would be “a disaster for our members,” and unfair to the Mitchell Family Corporation who current BHA Board members expressly regard as “the owners, financial providers, and developers of our island paradise.”²

Remarkably, the BHA Board of Directors letter goes on to note:

In a business world situation, people may negotiate for months, or years, litigate, appeal and treat it like a chess game or business as usual. That is not what this is. Bald Head Island is where we live. This is our little paradise that we have worked for all our lives to reach. This is where we come to get away from the business games and hassles. We are surrounded here by friends and family. We want to live here in peace with all.³

Apparently, the BHA Board does not care that BHITA is asking the LGC to approve a bond issue that, including interest paid on \$56.1M of public debt, will cost the 2,000 or so property owners on BHI upwards of \$100M over the next 30 years. \$100M that will be in addition to what it will cost to keep the transportation System running, in good working order. Similarly, were the System to fall into the financial tank, and further disrepair, because either BHITA or the Village borrowed more debt than the System can comfortably handle, the BHA Board apparently doesn’t care what might happen to property values on the island, or to BHI as a resort community more generally.

While somewhat embarrassing, all of this, in our view, is nothing more than thinly veiled posturing designed to: 1) frighten BHI voters into opposing the Village’s bond referendum; and 2) pressure the LGC into approving BHITA’s bond application, thereby effectuating BHL’s rent-seeking, sales-price-maximization scheme that we detailed in our July 21 letter to you.

Accordingly, we would like to offer the following modest suggestion that, we believe, would help break through this current turtle jam. Given circumstances surrounding the disposition of BHL’s transportation assets, certainly including the need to find a new owner/operator, the LGC should inform BHITA and the Village that it will finalize its review of their respective bond applications if, but only after, BHL has publicly disclosed prior-year financial statements that are essential to determining how much the transportation System might actually be worth.

A very basic problem underlying this entire process has to do with the fact that after nearly five years of deliberation between BHL, BHITA and, more recently, the Village, the transportation System’s fair market value remains a mystery. This is unfortunate since the mystery has bred a considerable amount of fear and mistrust among BHI property owners -- all because BHL has not been required to disclose prior-year financial data that are essential to estimating the System’s fair market value as a going concern which, for the sake of BHI, it better be. As a consequence, the LGC is now being asked to approve one of two bond applications that ostensibly are based on two highly flawed real estate appraisals done for BHITA, and two detailed cash flow

¹ See September 15, 2021 letter from the Mitchell Family Corporation to J. Andrew Sayre, Mayor, Village of Bald Head Island, p. 1.

² See September 24, 2021 letter from Bald Head Association Board of Directors to The Honorable J. Andrew Sayre, Mayor, Village of Bald Head Island, p. 2.

³ *Ibid*

projections that estimate how much public debt either BHITA or the Village could conceivably borrow, in order to pay BHL, while maintaining an investment grade bond rating.

We continue to believe this is an inexcusable situation, particularly given that either BHITA or Village would finance the acquisition of BHL's transportation assets – in their entirety -- using tax-exempt public debt; public debt that would be: a) paid for by raising unregulated user fees for monopoly ferry, parking and barge services, and b) backed, or effectively guaranteed, by the State in the case of BHITA's revenue bonds, or some combination of the State and local property taxpayers in the case of the Village's GO bonds.

In our view, the use of tax-exempt public debt for this purpose should come with conditions. One of those conditions should involve protecting taxpayers against unnecessary default risk. Because default risk underlying either BHITA's or the Village's proposed bond issues will necessarily go up with the amount of debt that either BHITA or the Village ends up borrowing, in order to pay BHL, the LGC should insist that BHL's prior-year financial data for the System be publicly disclosed and vetted as a condition for the LGC reviewing either of the bond applications. Failing that, either BHITA's or the Village's bond issues will likely be significantly higher than they need to be and, thus, will carry unnecessary default risk.

If BHL prefers not to disclose its financial data publicly, it would remain perfectly free to sell the System to another commercial operator who, no doubt, would insist on reviewing these same data. BHL would make that data available subject to the would-be buyer's willingness to sign the same type of non-disclosure agreement (NDA) that members of the BHITA Board of Trustees erroneously agreed to sign.

Unlike a commercial buyer, however, BHITA Board members should not have signed BHL's NDA precisely because in acquiring BHL's System with 100 percent public debt financing, they were putting taxpayer money at risk, not their own. Similarly, once they did sign the NDA, BHL's prior-year financials and the System's actual financial performance were effectively excluded from BHITA's valuation process simply because those data could not be used in BHITA's real estate appraisals or its bond application since that would have resulted in the data being disclosed. Instead, and by its own admission, BHITA and its financial advisors were left to focus exclusively on how much public debt it could borrow to pay BHL and obtain LGC approval.⁴

Were BHITA to end up defaulting on its bond payments, because it borrowed more than the System could handle, members of the BHITA Board of Trustees also knew that they could simply walk away, knowing that the LGC would step in and clean up the mess. Similarly, were the Village to over pay for the System and get into financial trouble as a result, elected members of the BHI Village Council might get tossed out of office, but they too would be held financially harmless. If, on the other hand, a commercial buyer purchased the system and subsequently defaulted on debt used to finance its deal with BHL, a bankruptcy judge would take whatever was left of the owner's equity and give it to the owner's creditors.

The latter difference is obviously very significant to any price negotiation between a buyer and a seller. In this instance, the difference also is of considerable potential value to BHL. Claims to the contrary, BHL will not refuse to disclose its prior-year financials should the LGC insist on it. BHL may object, but it will comply. It will do so simply because it understands that either BHITA or the Village will pay a significantly higher price for the System than BHL could obtain from a commercial buyer. This would be true if the System were sold as a going concern, or broken up, as BHL has threaten to do, and its ferry, parking and barge operations were sold separately to one or more commercial operators.

There are two basic reasons why either BHITA or the Village could and would pay considerably more for the System than a commercial buy(s). First, if either BHITA or the Village acquires the System, the BHI passenger

⁴ See BHITA response to LGC "must answer" Question 10 in BHITA's July 6, 2021 letter to LGC.

ferry, which accounts for roughly 60 percent of the System's annual operating revenues, would no longer be regulated. If sold to another commercial operator, the passenger ferry would remain regulated by the NC Utilities Commission and the price of ferry tickets would remain pretty much were they are today. Were that to occur, the System as a whole would generate far less cash flow going forward and, thus, would be worth less to any would-be commercial operator(s). Second, because neither BHITA or the Village would be putting their own investment capital at risk, their incentives or insistence in getting the System's purchase price down to its fair market value would be considerably less acute or focused than those of a commercial operator who would be putting his/her own capital at risk.

BHL, and the Mitchell Family Corporation, understand this perfectly well and will sell the System, as a going concern, to the Village should the LGC favor the Village's bond application's over BHITA's. It will do so simply because the Village could and would outbid any commercial buyer(s).

For its part, BHITA has expressed no willingness to reconsider its \$47.75M offer price to BHL, or its proposed \$56.1M bond issue. As explained in our July 21 letter, BHITA's offer represents the highest price it could possibly pay BHL, and finance through an investment grade, state-backed revenue bond issue. The practical consequences of the LGC approving BHITA's current bond application, therefore, would be twofold: 1) privatize the transportation System's future unregulated monopoly profits that would immediately accrue to BHL, and the Mitchel Family Company, pretty much in their entirety, thru an inflated \$47.75M purchase price; and 2) socialize the added financial/default risk that would result from BHITA borrowing \$56.1M through a bond issue rated BBB- (one notch above junk) and, in doing so, tapping out its ability to raise more debt capital should unanticipated capital spending requirements arise, which they likely will.

As a matter of public policy, there is absolutely nothing fair, economically efficient, or, in our view, responsible about this type of wealth transfer. Quite to the contrary. Economists refer to it as a dead weight loss for a reason. It would be far better if either BHITA or the Village figured out the System's fair market value, borrowed only what is needed to pay BHL that amount, and got on with making much needed improvements to the BHI transportation System.

Respectfully yours,

Robert T. Blau, CFA
5 Starrush Trail, BHI

J. Paul Carey
611 Currituck Way, BHI

cc: Honorable Ronald Penny, NC Secretary of Revenue
Honorable Elaine Marshall, NC Secretary of State
Honorable Mike Philbeck, NC Speaker of House
Mr. Joshua Bass
Ms. Viola Harris
Mr. Scott Padgett
Mr. Edward Munn
Ms. Sharon Edmundson, NC Deputy Treasurer
Mr. Timothy Romocki, Director, Debt Management, NC Department of State Treasurer
Ms. Susan Rabon, Chair, Bald Head Island Transportation Authority
Mr. J. Andrew Sayre, Mayor, Village of Bald Head Island

Schedule 2.3
Allocation Methodology

Type of Asset	For Supplemental Businesses and Related Assets of BHIL	For Non-Regulated Business and Related Assets of BHIL	For Regulated Business and Related Assets of BHIT
Class I (Cash and general Deposits)	50% of Operating Cash	None	50% of Operating Cash
Class II (Actively-traded personal property)	None	None	None
Class III (Debt instruments and A/R)	None	None	None
Class IV (Inventory)	BHIL's actual cost	BHIL's actual cost	None
Class V (All other assets)	Fair market value based on an independent valuation to be obtained by Buyer, or as mutually agreed between Sellers and Buyer	Fair market value based on an independent valuation to be obtained by Buyer, or as mutually agreed between Sellers and Buyer	Fair market value based on an independent valuation to be obtained by Buyer, or as mutually agreed between Sellers and Buyer
Class VI (Section 197 Intangibles)	Fair market value at Closing as mutually agreed between Sellers and Buyer	Fair market value at Closing as mutually agreed between Sellers and Buyer	Fair market value at Closing as mutually agreed between Sellers and Buyer
Class VII (Goodwill and going concern value)	Balance	Balance	Balance
	\$11,200,000	\$45,700,000	\$10,300,000

Exhibit H



The Village of Bald Head Island

November 2, 2022

VIA Email, Hand-Delivery, and Certified Mail-Return Receipt Requested

Bald Head Island Limited, LLC
Attention: Mr. Charles A. Paul, III, CEO
Post Office Box 3069
Bald Head Island, North Carolina 28461
cpaul@bhisland.com

Bald Head Island Transportation, Inc.
Attention: Mr. Charles A. Paul, III, President
Post Office Box 3069
Bald Head Island, North Carolina 28461
cpaul@bhisland.com

Re: Right of First Refusal dated August 21, 1999

Dear Mr. Paul:

This letter responds to your correspondence dated September 6, 2022 and September 28, 2022. In that correspondence, you purported to provide notice of a contemplated transaction between Bald Head Island Limited, LLC ("Limited"), Bald Head Island Transportation, Inc. ("Transportation"), and SharpVue Capital, LLC and its affiliates ("SharpVue") embodied in an Asset Purchase Agreement dated May 17, 2022 ("APA"). You claimed that the September 6, 2022 letter constituted full and adequate notice, pursuant to the 1999 Right of First Refusal Agreement between Transportation, Limited, and the Village ("ROFR"), of the Village's right to purchase assets of Transportation and Limited on the terms stated in the APA.

The Village disputes that your September 6 or September 28 letters constituted adequate or sufficient notice to the Village under the terms of the ROFR. The reasons include, but are not limited to, the following: (a) the Village was not timely notified that Transportation and Limited had received an acceptable offer to purchase pursuant to Section 3 of the ROFR; indeed, the Village was not provided the APA dated May 17, 2022 until September 7, 2022, despite the APA containing an Outside Date for Closing of September 1, 2022 (since amended to November 18, 2022); (b) the APA did not include a price for the specific Transportation System assets; and (c) the

*P.O. Box 3009 • BALD HEAD ISLAND, NC 28461
(910) 457-9700 • FAX (910) 457-6206 • WEBSITE: <http://www.villagebhi.org>*

November 2, 2022

APA fails to identify any specific assets as the Transportation System assets supposedly to be sold for \$56,000,000.00. This list is not intended to be an exhaustive response to the statements made in your September 28 letter, many of which the Village disputes. Upon the Village receiving reasonable and adequate notice and information as required under the ROFR, the Village will be pleased to review same and to acknowledge that the sixty (60) day period for Village review of the ROFR offer has then commenced.

I further note that the Village requested information, including but not limited to appraisals, concerning the assets being offered so that it could properly evaluate the proposed transaction. The Village understands that such information was provided to SharpVue so that it could perform its due diligence. However, you have refused to provide the Village with the requested information. Absent such materials, the Village is unable to perform necessary diligence and meaningfully analyze the terms presented.

For the foregoing reasons, the Village cannot accept the terms proposed in your correspondence. However, it does not waive its rights to proper notice under the ROFR. Nor does it waive its rights to timely notice and to exercise the ROFR with respect to any amended or separate terms that may be agreed between Transportation, Limited, and either SharpVue or any other party.

Very truly yours,



Peter C. Quinn
Mayor, Village of Bald Head Island

pc: The Honorable Dale R. Folwell, CPA, State Treasurer
The Honorable Beth A. Wood, CPA, State Auditor
Senator William Rabon
Representative Frank Iler
Representative Charles W. Miller
Lee Roberts, Managing Partner, SharpVue Capital, LLC
Bald Head Island Transportation Authority Board of Trustees, c/o Susan Rabon, Chair
Brunswick County Board of Commissioners, c/o Patricia Sykes, District 3
City of Southport Board of Aldermen, c/o Mayor Joe Pat Hatem
Bald Head Island Association, c/o Alan Briggs

Exhibit I

Bald Head Island Limited, LLC

c/o Charles A. Paul, III, CEO

P. O. Box 3069

Bald Head Island, North Carolina 28461

Email: cpaul@bhisland.com

December 19, 2022

VIA HAND DELIVERY

Village of Bald Head Island

c/o Peter Quinn, Mayor

106 Lighthouse Wynd

Bald Head Island, NC 28461

RE: Right of First Refusal dated August 21, 1999 (the "1999 Agreement")

Dear Mayor Quinn:

I received your letter of November 2, 2022 from the Village of Bald Head Island (the "Village") to Bald Head Island Limited, LLC ("Limited") and Bald Head Island Transportation, Inc. ("Transportation") (collectively, "Sellers"). I have discussed the Village's assertions in the letter with our legal counsel. In our opinion, the statements and assertions in your letter are inaccurate and without merit, both factually and legally.

To provide some history, in 1999, Limited, Transportation and the Village entered into a Right of First Refusal Agreement (the "1999 Agreement") with respect to a sale by Transportation (not Limited) of the Bald Head "Transportation System" assets. The 1999 Agreement clearly specified that it would "become effective only upon approval by the North Carolina Public Utilities Commission", an event that inarguably has never occurred. For this and other reasons, the 1999 Agreement is ineffective and unenforceable.

Notwithstanding the unenforceability of the 1999 Agreement, on September 6, 2022, Sellers delivered to you a copy of the fully executed copy of the Asset Purchase Agreement dated May 17, 2022 (the "APA") under which SharpVue Capital, LLC (together with its affiliates, "SharpVue") committed to purchase the businesses and assets comprising the Transportation System for the sum of \$56,000,000. In that communication, Sellers extended to the Village a 60-day period to exercise any and all purchase rights it could possibly have had under the 1999 Agreement with respect to the Transportation System assets and committed to closing within 180 days.

The intent of that September 6 communication was -- in the spirit of Limited-Village cooperation that has defined the Mitchell family's stewardship of the assets -- to afford the Village an opportunity to purchase the assets in a manner consistent with whatever rights it *could have had* under the 1999 Agreement. Because the Village took purposeful steps to derail an asset sale to BHITA and has opposed the transfer of the ferry/tram certificate to SharpVue, the

offer set forth in our September 6 letter sought to settle – once and for all – whether the Village actually wants to purchase these assets on the same terms that an arm's length purchaser has agreed to.

The 1999 Agreement only required the notice to Village to identify the (1) assets which are the subject of the offer (2) the identity of the entity making the offer (3) the proposed purchase price and terms including any conditions on sale and (4) the proposed closing date. By supplying the Village with a full copy of the APA and all related schedules and disclosure schedules, the September 6 notice far exceeded what was required by the terms of the 1999 Agreement and provided the Village with a comprehensive understanding of the terms and conditions of the sale. In addition, in a further exercise of good faith and cooperation, Sellers also extended to the Village a separate option to acquire all of the assets subject to the APA, including the Supplemental Businesses and Supplemental Assets (as identified in the APA) that SharpVue had committed to purchase for the additional sum of \$11,200,000. In addition, Sellers supplied the Village with a proposed notice for exercise of the right of first refusal.

On September 20, 2022, you responded to the September 6 letter. In your response, you stated the Village was interested in evaluating the totality of the transaction and was seeking additional information as it pertained both to the Transportation System assets and the additional Supplemental Businesses and Supplemental Assets which were not covered by the 1999 Agreement. Specifically, you asked the Sellers to disclose the offer from SharpVue specifying the price of the assets comprising the Transportation System, notwithstanding that the September 6 letter clearly stated that the price being paid by SharpVue for the Transportation System assets was \$56,000,000. You also asked, with respect to properties and assets other than the Transportation System assets, for copies of all appraisals, reports and studies in Sellers' possession in order to evaluate purchasing and financing of those assets.

On September 28, 2022, I responded to your September 20, 2022 letter. In that response, I attached the purchase price allocation, Schedule 2.3 to the APA, which again confirmed the price for the Transportation System assets at \$56,000,000. I also confirmed that there would be no adjustment to that purchase price. I pointed out that, by providing the Village with the entire APA and related schedules and disclosure schedules, Sellers had provided the Village with substantially more information than required by the 1999 Agreement, that this information clearly and fully disclosed the purchase price and identity of the assets available for purchase and that this information should enable the Village to make a fully informed decision. With respect to your request for appraisals, reports and studies with respect to the non-Transportation System assets (consisting primarily of certain unrelated parcels of real property, marina slips and the golf cart parking and rental operation), I reminded the Village that the 1999 Agreement did not require Sellers to provide these materials, but nevertheless offered to provide the Village with appropriate access to the facilities in order for the Village to conduct its own inspections, appraisals and other due diligence. Moreover, the Village had access to a substantial amount of due diligence materials by reason of its participation on the Board of Trustees of the Bald Head Island Transportation Authority.

On November 2, 2022, you responded to my September 28, 2022 letter. In that response, you reiterated the Village's position that the APA did not include a price for the Transportation

System assets and failed to specifically identify those assets. You also raised a new objection, i.e. that the Village did not receive timely notification of the APA. Finally, you stated that Sellers' refusal to provide appraisals and other due diligence information caused the Village to be unable to perform the necessary due diligence and to meaningfully analyze the terms presented. Notably, neither in this correspondence nor before did the Village avail itself of the Sellers' offer to inspect and conduct due diligence with respect to any of the assets being sold to SharpVue.

The Village's assertion that the September 6 notice did not include a price for the Transportation System assets is indisputably false. Those assets, which are defined in the APA as comprising both the Regulated Business and the Non-Regulated Business Assets, clearly have a price of \$56,000,000, as set forth in Schedule 2.3 to the APA and clearly stated in my letter of September 6. This price, coincidentally, is consistent with the appraisal from Mercator, a copy of which was provided to the Village on multiple occasions during the negotiations with the Bald Head Island Transportation Authority, and is the price disclosed to the Village in our negotiations with the Village during June and July of this year. The further assertion that the APA does not specifically identify those assets is also patently inaccurate. Section 1.1 of the APA and the accompanying schedules to Section 1.1 provide a very detailed and clear identification of those assets, in the same manner and with the same or greater specificity as would be customarily provided in an asset purchase agreement. These identified assets include the marina real properties listed in Attachment 1 to Schedule 1.1(k), the ferry vessels set forth in Schedule 1.1(k) and numerous other items of identified property appropriate to the operation of the Transportation System. As evidenced by the signing of the APA, the identification of the assets to be purchased was sufficient for two unrelated parties in an arms-length transaction, and there is no justification for the Village and its counsel to have harbored any doubts as to what was included. In the same vein, the objection that the Village did not receive timely notification conveniently ignores the fact that Sellers did apprise you of the SharpVue offer prior to the formal notification in September, but waited to give formal notice precisely for the purpose of enabling discussions with the Village regarding possible purchase of all or certain parts of the Transportation System assets. These discussions spanned over two months before the Village ended negotiations and relayed that it felt the assets were too expensive. Notably, the 1999 Agreement does not prescribe how long the Sellers have to convey an offer to the Village, nor is this time period relevant. What is relevant is that the Sellers must give the Village a full 60 days to consider and exercise its right and then, in the event of exercise, 180 days to close on the purchase. The Sellers' notice clearly satisfied those conditions. Finally, the complaint about not getting due diligence materials has no bearing on the adequacy of the Sellers' notice, since the 1999 Agreement does not require Sellers to provide such materials, and, in any event, the Sellers did, in good faith, try to address these purported concerns by allowing the Village to make inspections and engage in due diligence at its expense. In summary, Limited has afforded the Village the opportunity it declined to preserve for itself: to purchase Transportation System assets on terms offered by a third-party buyer.

The Village has now had a full 60 days to exercise any rights it might have had under the 1999 Agreement with respect to purchase of the Transportation System assets (even if you measure the 60-day period to take into account my September 28 letter) and that opportunity has now expired and is no longer operative. Your letter of November 6, and the Village's conduct and statements over the last 24 months, plainly evince that the Village wants something other

than an opportunity to purchase these assets at a fair market price. After the Village's rejection of a consensus, regional government model to manage and regulate the assets in the public interest, our September 6 offer is all that Limited can offer (or will ever offer) to the Village – and it was done so directly and transparently in an effort to elicit a definite position from the Village. That the Village elected to respond to that concrete offer with further objections that it did not meet the terms of an agreement that the Village never sought to effectuate brings to a close Limited's long-standing effort to discern what the Village wants, when it wants it, and why it rails so consistently against circumstances of its own making.

Consequently, the Village must formally and promptly remove any "cloud" on the title to any of Sellers' properties and assets. Sellers hereby demand that the Village acknowledge publicly and in writing to Sellers, within 15 days from the date of this letter, that it declined to exercise any rights it may have had under the 1999 Agreement and that those rights and the 1999 Agreement have terminated. [Enclosed is such a written termination – please sign and return to us for filing.] Sellers will construe any failure of the Village to respond with said acknowledgement and termination within the 15-day period to constitute an admission by the Village that all rights it might have under the 1999 Agreement have terminated.

If the Village persists with any contention that it has purchase rights under the 1999 Agreement, after failing to preserve them and nonetheless being afforded the opportunity to purchase the assets at a fair market value established by a third-party buyer, it is unnecessarily and intentionally placing a cloud on the title of the Transportation System assets without justification. Should the pending sale to SharpVue fail to close by reason of the Village's failure to cooperate in removal of the 1999 Agreement from the public record, Sellers will pursue legal claims against the Village for considerable monetary damages.

We look forward to your response.

Sincerely,

Bald Head Island Limited, LLC

By: 

Charles A. Paul, III, CEO

Bald Head Island Transportation, Inc.

By: 

Charles A. Paul, III, President

Enclosure

TERMINATION OF RIGHT OF FIRST REFUSAL AGREEMENT

NORTH CAROLINA

BRUNSWICK COUNTY

THIS TERMINATION OF RIGHT OF FIRST REFUSAL (this "Termination") is made effective as of _____, 20____, by the **Village of Bald Head Island ("Village")**, for the benefit of **Bald Head Island Transportation, Inc.**, a North Carolina corporation ("Transportation") and **Bald Head Island Limited LLC**, a Texas limited liability company ("Limited").

WITNESSETH:

WHEREAS, Village, Transportation and Limited entered into that Right of First Refusal Agreement dated August 21, 1999 and recorded in Book 1329, Page 932, Brunswick County Registry (the "Agreement"), whereby Transportation and/or Limited indicated a willingness to grant a right of first refusal to Village with regard to the Bald Head Island Transportation System (as defined therein), subject to the express condition that prior approval of the North Carolina Public Utilities Commission ("NCUC") be obtained; and

WHEREAS, Village received written notice from Transportation and Limited of its receipt of a binding offer to sell the Bald Head Island Transportation System (as defined in the Agreement) and related assets to SharpVue Capital, LLC (together with its affiliates) and Village declined to exercise its right of first refusal to purchase the Bald Head Island Transportation System and related assets; and

WHEREAS, at Transportation and Limited's request, Village has agreed to execute this Termination to reflect on the public record that the Agreement is terminated and no longer of any force or effect.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS that Village, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby irrevocably remises, releases, waives and relinquishes any and all rights, title, interests, benefits and privileges which Village had, has or may have under the Agreement. In furtherance of the foregoing, Village confirms (i) it has released, waived and terminated, and hereby does release, waive and terminate all rights of first refusal or any similar rights to purchase it may have with respect to the Bald Head Island Transportation System and (ii) that the Agreement and any rights of first refusal described therein are terminated and are of no further force or effect.

IN TESTIMONY WHEREOF, Village has duly executed and delivered this Termination as of the day and year first above written.

- SIGNATURE PAGE FOLLOWS -

Village of Bald Head Island

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____
(County where acknowledgment taken)

I, a Notary Public, certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: _____

[Insert name of person signing, not title]

Today's Date: _____, 2020.

[Notary's signature as name appears on seal]

[Notary's printed name as name appears on seal]

My commission expires: _____.

[Affix Notary Seal in Space Above]

Exhibit J



The Village of Bald Head Island

December 28, 2022

VIA Email, Hand-Delivery, and Certified Mail-Return Receipt Requested

Bald Head Island Limited, LLC
Attention: Mr. Charles A. Paul, III, CEO
Post Office Box 3069
Bald Head Island, North Carolina 28461
cpaul@bhisland.com

Bald Head Island Transportation, Inc.
Attention: Mr. Charles A. Paul, III, President
Post Office Box 3069
Bald Head Island, North Carolina 28461
cpaul@bhisland.com

Re: Right of First Refusal dated August 21, 1999 ("ROFR Agreement")

Dear Mr. Paul:

This letter responds to the correspondence from Bald Head Island Limited, LLC ("BHIL") and Bald Head Island Transportation, Inc. ("BHIT") dated December 19, 2022. That correspondence contains a number of legal and factual assertions that the Village has already disputed and continues to dispute. The letter further purports to require the Village to acknowledge that its rights under the ROFR Agreement have lapsed, and claims that any failure by the Village to do so will be considered an "admission" that the Village's rights under the ROFR Agreement have terminated.

The Village rejects the false choice presented in your letter. BHIL and BHIT cannot unilaterally force the Village to acknowledge the termination of its rights under the ROFR Agreement, which remains a valid and binding agreement. The Village will defend its rights under the ROFR Agreement, through litigation if necessary. However, we hope that is not necessary and an amicable resolution can be reached.

Very truly yours,

Peter C. Quinn
Mayor, Village of Bald Head Island

pc: The Honorable Dale R. Folwell, CPA, State Treasurer
The Honorable Beth A. Wood, CPA, State Auditor
Senator William Rabon
Representative Frank Iler
Representative Charles W. Miller
Lee Roberts, Managing Partner, SharpVue Capital, LLC
Bald Head Island Transportation Authority Board of Trustees, c/o Susan Rabon, Chair
Brunswick County Board of Commissioners, c/o Patricia Sykes, Chair
City of Southport Board of Aldermen, c/o Mayor Joe Pat Hatem
Bald Head Island Association, c/o Alan Briggs