



# The Village of Bald Head Island

October 25, 2021

Chad:

I acknowledge receipt of your letter of October 22 and wish to clarify a few points.

The letter incorrectly states that, “The 1999 Agreement ... by its terms only applies to assets of Transportation (and not real estate and other assets of Limited)”. In fact, both Bald Head Island Limited (BHIL) and Bald Head Island Transportation, Inc. (BHIT) are signatory parties to the Agreement. The Agreement expressly applies to all real estate, parking and other assets used by the Transportation System. Section 1 of the Right of First Refusal Agreement (ROFR Agreement) provides:

**“The Bald Head Island Transportation System” (hereinafter referred to as the “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.**

The letter also makes arguments concerning the enforceability of the ROFR Agreement. The Village has considered and respectfully disagrees with those arguments, which appear to reflect an overly narrow reading of the purpose and intent of the agreement. For example, the letter claims the ROFR Agreement is void for lack of NC Utilities Commission approval. To the contrary, our understanding is that the NC Utilities Commission does not approve agreements of this type which are non-operational in nature. The Commission, however, may accept an agreement such as this for filing. The Village disagrees that there are any preconditions to the Agreement’s effectiveness. The Village acknowledges that if a dispute arose, it would be up to a court to make the final determination. A negotiated resolution of any dispute would be best for the Island and all parties.

Finally, the Village Council has not pursued eminent domain and has not contested BHIL’s or BHIT’s ability to dispose of its assets. However, the Village owes a duty to the public to make sure that the Island’s and Village’s rights and interests are protected. We look forward to continuing a productive dialogue with BHIL, BHIT and the BHITA towards that goal.

Sincerely,

J. Andrew Sayre, Mayor

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