

STATE OF NORTH CAROLINA

OPTION TO PURCHASE AGREEMENT

COUNTY OF BRUNSWICK

**THIS OPTION TO PURCHASE AGREEMENT** (this “Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between **BALD HEAD ISLAND LIMITED, LLC**, a Texas limited liability company with a mailing address of 6 Marina Wynd, Bald Head Island, North Carolina 28461 (hereinafter referred to as the “Optionor”), and **BALD HEAD ISLAND TRANSPORTATION AUTHORITY**, a public body corporate and politic of the State of North Carolina, established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes with a mailing address of 1029 North Howe Street, Suite “Authority Office”, Southport, North Carolina 28461 (hereinafter referred to as the “Optionee”).

WITNESSETH:

That for and in consideration of the mutual agreements and undertakings set forth herein, including the purchase price, option fee and other good and valuable consideration paid to Optionor by Optionee, the receipt of which is hereby acknowledged, Optionor, on behalf of itself and its successors and assigns, does hereby give, bargain, grant and convey unto Optionee and its successors and assigns, the exclusive right and option (the “Option”) to purchase from Optionor that certain tract or parcel of property and all associated improvements located in or near the City of Southport, Brunswick County, North Carolina containing approximately \_\_\_\_\_ acres and more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the “Property”), subject to the following terms and conditions:

1. **Option Period.** This Option shall exist and continue from the Effective Date until 5:00 P.M. on the date which is thirty (30) years from the Effective Date (the “Option Period”).

2. **Option Fee.** Simultaneously with the Effective Date and the closing of the transactions contemplated by the Asset Purchase Agreement dated as of January \_\_\_\_, 2021 by and among the Optionee, the Optionor and Bald Head Island Transportation, Inc., a North Carolina corporation, Optionee shall pay Optionor the non-refundable and non-creditable amount of One Hundred and No/100 Dollars (\$100.00) (the “Option Fee”).

3. **Exercise of Option.** Optionee may exercise the Option at any time during the Option Period by providing written notice of such intent to Optionor (an “Exercise Notice”). In the event Optionee timely provides an Exercise Notice to Optionor in accordance with the terms hereof, Optionor shall be obligated to sell the Property to Optionee, and Optionee shall be obligated to purchase the Property from Optionor, on the terms and conditions provided in this Agreement.

4. **Purchase Price and Time of Payment.** The purchase price for the Property (the “Purchase Price”) shall be a sum equal to Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00); provided that the Purchase Price shall be increased on the sixth (6<sup>th</sup>) anniversary date of the Effective Date by an amount equal to six percent (6%) of the Purchase Price, and the Purchase Price shall be further increased on each third (3<sup>rd</sup>) anniversary date thereafter by an amount equal to six percent (6%) of the prior Purchase Price. The Purchase Price shall be payable in United States currency by way of federal wire transfer to the trust account of the attorney conducting the Closing (as defined herein), subject to proration and other adjustments at Closing as set forth herein. The parties agree that the Option Fee shall not be credited against the Purchase Price.

5. **Title.** In the event Optionee exercises the Option as provided herein, Optionor will convey to Optionee at Closing fee simple marketable title by a general warranty deed (the “Deed”), free and clear of all liens and encumbrances, except for ad valorem taxes for the Closing year and subsequent years; but subject to any restrictions, covenants, rights of way, easements and other matters of record in Optionor’s chain of title; and all governmental land use laws, rules, regulations, and ordinances applicable to the Property. Notwithstanding the foregoing, any monetary liens, mortgages or deeds of trust shall be removed by Optionor at or before Closing.

6. **Changes Prior To Closing.** During the term of this Agreement, Optionor shall not, without the express written consent of Optionee, cause or allow any liens or encumbrances with respect to the Property that may adversely affect the Property or transfer any interest in the Property except as otherwise permitted herein.

7. **Closing.** The consummation of the sale and purchase hereunder (the “Closing”) shall take place at a mutually convenient time and place on or before the date which is no more than thirty (30) days after the date of the Exercise Notice. Exclusive possession of the Property or applicable portion thereof shall be delivered to Optionee at Closing. Optionor also agrees to provide at Closing, an executed owner’s affidavit or other document(s) reasonably required by Optionee’s title insurance company as a condition to the issuance of a final title insurance policy in favor of Optionee with affirmative coverage against the possible lien claims of mechanics, laborers and materialmen.

8. **Closing Costs.** At Closing, Optionor shall furnish and pay the expense of preparation of the Deed, any documentary or transfer tax stamps and the fees and costs of Optionor’s own attorney. Optionor shall also be responsible for and discharge prior to Closing all assessments (special or otherwise), rollback or deferred taxes and charges placed against or applicable to the Property, whether or not same are due and payable prior to Closing. At Closing, Optionee shall pay for the expense of recording the Deed, any title insurance premium for coverage insuring Optionee’s title to the Property and the fees and costs of Optionee’s own attorney. Ad valorem property taxes respecting the Property for the calendar year in which the Closing occurs shall be prorated and accounted for between Optionor and Optionee at Closing on a calendar year basis.

9. **Default.** In the event of a breach of this Agreement by Optionor, Optionee shall be entitled, after ten (10) days’ prior written notice and failure to cure such breach by Optionor,

to either (i) terminate this Agreement and, notwithstanding anything to the contrary herein, obtain a refund of the Option Fee, or (ii) the remedy of specific performance. In the event of a breach of this Agreement by Optionee, Optionor, as its sole right and remedy, shall, after ten (10) days' prior written notice and failure to cure such breach by Optionee, be entitled to retain the Option Fee as liquidated damages. The parties hereby agree that the amount of the liquidated damages provided in the immediately preceding sentence is a reasonable estimate of Optionor's damages in the event of Optionee's default, the actual amount of such damages being difficult or impractical to determine.

10. **Brokerage.** Optionor and Optionee represent and warrant each to the other that they have not dealt with any broker in connection with this transaction.

11. **Notices.** Any notices, requests, or other communications required or permitted to be given hereunder shall be in writing, shall be delivered by hand, delivered by overnight delivery service (e.g., Federal Express), or mailed by United States registered mail, return receipt requested, postage prepaid, and addressed to each party at the applicable addresses set forth in the introductory paragraph of this Agreement. Notice by personal delivery shall be effective on the day of personal delivery. Notice deposited in the mail in the manner hereinabove described shall be deemed received by the intended recipient and effective on the date that is three (3) calendar days after it is so deposited. Notice by overnight delivery service shall be effective on the first business day after said notice is sent. By giving at least ten (10) days' prior written notice thereof, any party hereto may, from time to time and at any time, change its mailing address hereunder.

12. **Assignment; Time is of the Essence.** Optionee reserves the right to assign its rights under this Agreement to any corporation, partnership, limited liability company or other entity which is owned or controlled by the Optionee. The consent of Optionor shall not be required for any such assignment by Optionee. TIME IS OF THE ESSENCE with respect to this Agreement.

13. **Recordation of Memorandum of Option.** This Option to Purchase Agreement may not be recorded by any party hereto. Instead, a memorandum of this Agreement in the form attached hereto as Exhibit B and incorporated herein by reference may be recorded in the Office of the Register of Deeds of Brunswick County, North Carolina. The costs of the recordation of such memorandum shall be borne by Optionee.

*[Execution page follows]*

IN TESTIMONY WHEREOF, the parties have executed this Agreement through their duly authorized agents as of the day and year first above written.

OPTIONOR:

**BALD HEAD ISLAND LIMITED, LLC**

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

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

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

OPTIONEE:

**BALD HEAD ISLAND  
TRANSPORTATION AUTHORITY**

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

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

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

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Authority Finance Officer

Exhibit A

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

BEING ALL of "Tract 1A" containing 2.21 acres, more or less, all as shown on that certain plat entitled "Subdivision Survey for Bald Head Island Limited" prepared by ESP Associates, Inc. and recorded in Map Cabinet [REDACTED], Pages [REDACTED] - [REDACTED], Brunswick County Registry.

Exhibit B

Memorandum of Option to Purchase

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

MEMORANDUM OF  
OPTION TO PURCHASE

IN CONSIDERATION OF the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, **BALD HEAD ISLAND LIMITED, LLC**, a Texas limited liability company (the “Grantor”), does hereby grant to **BALD HEAD ISLAND TRANSPORTATION AUTHORITY**, a public body corporate and politic of the State of North Carolina, established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes (the “Grantee”), an option (the “Option”) to purchase the property described in Exhibit A attached hereto and incorporated herein by reference (the “Property”), on the terms and conditions provided in that certain Option to Purchase Agreement (the “Option Agreement”) between Grantor and Grantee of even date herewith (the terms of which Option Agreement are incorporated in this memorandum as if fully set forth herein).

The Option shall terminate if Grantee does not exercise the Option prior to the date which is thirty (30) years from the date of the Option Agreement.

{Signatures appear on the following two (2) pages.}

WITNESS our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

GRANTOR:

**BALD HEAD ISLAND LIMITED, LLC**

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

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

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

STATE OF NORTH CAROLINA

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

(County where acknowledgment taken)

I, \_\_\_\_\_, a Notary Public in and for \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is \_\_\_\_\_ of **BALD HEAD ISLAND LIMITED, LLC**, a Texas limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed in its name by him/her as its \_\_\_\_\_.

WITNESS my hand and official seal this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]

GRANTEE:

**BALD HEAD ISLAND TRANSPORTATION  
AUTHORITY**

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

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

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

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_  
(County where acknowledgment taken)

I, \_\_\_\_\_, a Notary Public in and for \_\_\_\_\_ County, North Carolina, certify that \_\_\_\_\_ personally came before me this day and acknowledged that he/she is \_\_\_\_\_ of **BALD HEAD ISLAND TRANSPORTATION AUTHORITY**, a public body corporate and politic of the State of North Carolina, established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes, and that by authority duly given and as the act of the authority, the foregoing instrument was signed in its name by him/her as its \_\_\_\_\_.

WITNESS my hand and official seal this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

[NOTARIAL SEAL]

Exhibit A  
to  
Memorandum of Option to Purchase

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

BEING ALL of "Tract 1A" containing 2.21 acres, more or less, all as shown on that certain plat entitled "Subdivision Survey for Bald Head Island Limited" prepared by ESP Associates, Inc. and recorded in Map Cabinet [REDACTED], Pages [REDACTED] - [REDACTED] Brunswick County Registry.