



October 22, 2021

J. Andrew Sayre, Mayor
Village of Bald Head Island
106 Lighthouse Wynd
Bald Head Island, NC 28461

RE: *Right of First Refusal Agreement dated August 21, 1999 (the 1999 Agreement) with the Village of Bald Head Island (the Village) and other clarifications*

Dear Mayor Sayre:

Bald Head Island Limited, LLC (Limited) and Bald Head Island Transportation, Inc. (Transportation) would like to set the record straight as it pertains to statements and representations made by members of the Village Council at its public informational meeting on October 13, 2021 and subsequently on social media.

1. References to the Village of Bald Head Island constructing the Marsh Bridge are patently false. Limited designed and constructed the Marsh Bridge...not the Village. The Mitchell's envisioned tying the Harbour Village and Marina to the Island's Historic District...not the Village.
2. The 1999 Agreement, by its express terms, never became effective because the North Carolina Utilities Commission has not approved it (reference enclosed August 21 1999 Agreement and May 11, 2021 correspondence from the North Carolina Utilities Commission). Section 7 of the 1999 Agreement reads, **“This agreement shall become effective only upon approval by the North Carolina Public Utilities Commission.”**¹
3. The 1999 Agreement, which by its terms only applies to assets of Transportation (and not real estate and other assets of Limited), merely granted the Village a right to *acquire* a right of first refusal, not an actual right of first refusal. As a consequence, the failure to require that it be perfected within the statutory period required under North Carolina law - North Carolina Statute of Perpetuities voids any interest not tied to a measuring

¹ In a May 11, 2021, letter to Transportation's regulatory counsel, the NCUC stated: "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."

life and which otherwise extends beyond 21 years (August 21, 2020 would be the statutory expiration date) - caused the entire 1999 Agreement, and all purposed rights under it, to be void from the outset.

4. We interpret statements by Village Council members in public informational meetings and on social media as tantamount to threats to condemn assets of Limited and Transportation, intended to disrupt ongoing negotiations and effectively block a transaction by Limited and Transportation with the Bald Head Island Transportation Authority or third parties. These threats are misguided for a number of reasons. First, any condemnation would require immediate payment of current fair market value, and we are confident that, based on our operating results during the 2018-2021 period, the current fair market value would exceed our 2018 enterprise market value of more than \$56,000,000. Second, there is substantial legal question as to whether the Village could condemn Transportation assets on Bald Head Island or in Southport that are subject to the Transportation Lease as approved by the North Carolina Utilities Commission and fully incorporated into the rate-base of all ferry tariffs as set by the North Carolina Utilities Commission. The Transportation Lease serves as the principal underlying component associated with the *Certificate of Convenience and Necessity - Common Carrier Certificate No. A-41* as issued to Transportation by the North Carolina Utilities Commission. Furthermore, the Village faces significant legal impediments in its ability to condemn off-island assets located in other municipal jurisdictions, and even if it could, any such condemnation would necessarily be limited to real property assets and would not include vessels or other critical operating components of the transportation system, including personnel. Conversely, any, such partial condemnation would be viewed as an effective taking of the entire system for which “just compensation” must be paid.

Sincerely,

Bald Head Island Limited, LLC



Charles A. Paul, III
Chief Executive Officer

Bald Head Island Transportation, Inc.



Charles A. Paul, III
President

Attachments:

- cc: Susan Rabon, Chair of the Bald Head Island Transportation Authority (via email)
Michael Brown, Mayor Pro-Tem (via email)
Peter Quinn, Council Member (via email)
Emily Hill, Council Member (via email)
Scott Gardner, Council Member (via email)