

**BOARD OF TRUSTEES
OF THE BALD HEAD ISLAND TRANSPORTATION AUTHORITY**

**RESOLUTION APPROVING ASSET PURCHASE
AGREEMENT AND OPERATING AND TRANSITION
SERVICES AGREEMENT**

WHEREAS, the Bald Head Island Transportation Authority (the “Authority”) is authorized to acquire, own and operate the ferry and ground transportation assets and services provided to Bald Head Island, North Carolina (the “Island”) including, but not limited to, (i) the transportation of passengers via ferry to and from the Island and Southport, North Carolina; (ii) the on-island tram transportation of ferry passengers; (iii) the vehicle parking operation at Deep Point Marina in Southport, North Carolina, and (iv) the tug and freight barge operation which carries supplies and equipment to and from the Island (collectively, as further defined herein, the “System”); and

WHEREAS, the Authority and Bald Head Island Transportation, Inc., a North Carolina corporation (“BHIT”), and Bald Head Island Limited, LLC, a Texas limited liability company (“BHIL”, and together with BHIT, collectively referred to herein as “Seller”) are in the process of negotiating an Asset Purchase Agreement (the “APA”), pursuant to which the Authority will purchase the real and personal property, structures, improvements, buildings, equipment, maritime vessels, vehicles, vehicle parking, trams, shuttle buses, docks, terminals, and other facilities used in the operation of the System (the “Facilities”); and

WHEREAS, in connection with the purchase of the Facilities, the Authority expects to enter into a Ferry and Barge Facilities Operating and Transition Services Agreement with Seller, acting as the Management Company, pursuant to which Seller will continue to operate the System for a period of time after the closing of the transaction contemplated by the APA until such operations can be transitioned to the Authority (the “Transition Operating Agreement”); and

WHEREAS, the Authority proposes to issue its Transportation System Revenue Bonds (the “Series 2021 Bonds”) (a portion of which may be issued as taxable bonds) pursuant to the Ferry Transportation Authority Act, Article 29 of Chapter 160A of the General Statutes of North Carolina, as amended (the “Enabling Act”) and The State and Local Government Revenue Bond Act, General Statutes of North Carolina Section 159-80 et seq. (the “Revenue Bond Act”), and a bond order to be adopted by the Authority (the “Bond Order”), and to apply the proceeds of the Series 2021 Bonds to (a) pay the purchase price for the acquisition of the Facilities from the Seller; (b) fund a debt service reserve and operating and maintenance reserve fund; (c) fund working capital for the Authority; (d) pay capitalized interest on the Series 2021 Bonds; and (e) fund certain costs of issuance of the Series 2021 Bonds (collectively, the “Project”); and

WHEREAS, the proposed form of the APA and the Transition Operating Agreement have been presented to the Board;

NOW, THEREFORE, the Board of Trustees of the Authority, in a special meeting duly called and held on December 8, 2020, does hereby resolve as follows:

1. The APA and the Transition Operating Agreement, and all other exhibit documents attached and to be attached to the APA, are hereby approved, and the Chairman, the Vice Chairman, the Secretary and the Treasurer of the Authority (each, an "Authorized Officer," and collectively, the "Authorized Officers") are authorized to execute the APA and the Transition Operating Agreement, and all other exhibit documents attached and to be attached to the APA, in substantially the form presented to this meeting, with such changes as the Authorized Officers, with advice from counsel to the Authority and the Authority's financial advisor, may approve, their approval to be evidenced by their execution of such documents. The APA and the Transition Operating Agreement and any other exhibit documents attached and to be attached to the APA will not be effective until the Series 2021 Bonds have been issued.

2. All actions of the officers of the Authority in furtherance of this resolution are hereby ratified and confirmed. This resolution shall take effect immediately.

The foregoing resolution was adopted by the Bald Head Island Transportation Authority Board of Trustees, at a special meeting duly called and held on the 8th day of December, 2020.

Susan Rabon, Chair

ATTEST:

Authority Clerk

Trustee _____ moved to approve the foregoing, Trustee _____ seconded, and the motion was passed by the following vote:

Ayes: _____

Nays: _____

Not Voting: _____

Board Action Control Number: _____

ASSET PURCHASE AGREEMENT

by and among

**BALD HEAD ISLAND TRANSPORTATION, INC.
AND BALD HEAD ISLAND LIMITED, LLC,**

as Sellers,

and

BALD HEAD ISLAND TRANSPORTATION AUTHORITY,

as Buyer

Dated as of

January __, 2021

SCHEDULES

Schedule 1.1(a)	Personal Property
Schedule 1.1(b)	Owned Real Properties
Schedule 1.1(c)	Intellectual Property Rights
Schedule 1.1(e)(1)	Transferred Vehicles
Schedule 1.1(e)(2)	Transferred Vessels
Schedule 1.1(f)	Permits
Schedule 1.1(g)	Assumed Contracts
Schedule 2.1	Expense Reimbursement
Schedule 2.3	Allocation of Purchase Price
Schedule 4.1(c)	No Violation
Schedule 4.1(d)	Financial Statements
Schedule 4.1(f)	No Litigation
Schedule 4.1(g)	Compliance with Laws and Orders
Schedule 4.1(h)	Permits Matters
Schedule 4.1(i)	Environmental Matters
Schedule 4.1(j)	Title to Assets; Liens
Schedule 4.1(k)	Real Property Matters
Schedule 4.1(l)	Assumed Contracts Matters
Schedule 4.1(m)	Employee Matters
Schedule 4.1(n)	Benefit Plans
Schedule 4.1(r)	Material Suppliers
Schedule 4.1(s)	Insurance
Schedule 4.1(t)	Intellectual Property Agreements
Schedule 7.5	Required Consents
Schedule 9.2(a)(iv)	Special Indemnity Matters
Schedule 10.1(e)	Licensed Trademarks

EXHIBITS

Exhibit A	Definitions
Exhibit B	IP Assignment
Exhibit C	Form of Transition Operating Agreement
Exhibit D	RWI Policy
Exhibit E	Form of Bill of Sale and Assignment
Exhibit F	Form of Special Warranty Deed
Exhibit G	Form of Assignment and Assumption Agreement
Exhibit H	Forms of New Leases
Exhibit I	Form of Affirmation Regarding Declaration of Easements and Covenants of Bald Head Island Marina Association Declaration
Exhibit J	Form of Amendment to Deep Point Declaration of Easements
Exhibit K	Form of Right of First Refusal Agreement
Exhibit L	Form of Title Commitment/Title Pro Forma

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is entered into as of January __, 2021 by and among **BALD HEAD ISLAND TRANSPORTATION, INC.**, a North Carolina corporation (“BHIT”), **BALD HEAD ISLAND LIMITED, LLC**, a Texas limited liability company (“BHIL”) (BHIT and BHIL, collectively, the “Sellers”), and **BALD HEAD ISLAND TRANSPORTATION AUTHORITY**, a public body corporate and politic of the State of North Carolina, established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes (the “Buyer”).

RECITALS:

A. BHIL is the parent company of BHIT and, together, the Sellers own and operate a ferry transportation system that provides ferry transportation services to and from Bald Head Island, an island and municipality only accessible by vessel, consisting of the following transportation, barge and freight and parking business operations (collectively, the “Business”): (1) BHIL’s non-regulated tug and freight barge department that operates the roll-on roll-off (RoRo) tug and barge services that transport all cargo and vehicles moving to and from Bald Head Island, (2) BHIL’s non-regulated parking operations at the Deep Point terminal facilities, (3) BHIT’s publicly regulated utility company consisting of on-island tram services and passenger ferry transportation services to and from Bald Head Island, and (4) BHIT’s non-regulated marine maintenance department.

B. Sellers, collectively, own the real property and improvements, including Sellers’ Warehouse and Sellers’ information technology building located at the Deep Point terminal facilities and the Bald Head Island terminal, tram and barge landing facilities, used and useful in and relating to the operation of the Business as shown on Schedule 1.1(b) attached hereto (the “Owned Real Properties”). The Owned Real Properties include the real property and improvements at the Deep Point terminal facilities relating to the parking operations for the Business, the Deep Point terminal facilities and Bald Head Island terminal and tram facilities, the retail and office space at the Deep Point terminal facilities and the freight and barge landing area at Bald Head Island.

C. Subject to the terms and conditions hereof, the Sellers desire to sell to the Buyer, and Buyer desires to purchase from Sellers, all of the properties, assets, rights and privileges used and useful in and relating to the Business owned or held by the Sellers (the “Transaction”).

D. The Buyer and the Sellers have each authorized the Transaction, this Agreement, and the transactions contemplated hereby.

E. Capitalized terms used in this Agreement shall have the meanings ascribed to such terms in the Sections in which such terms first appear or as defined in Exhibit A.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE 1.

ASSETS AND ASSUMED LIABILITIES

1.1 Sale of Assets. Upon the terms and subject to the conditions set forth in this Agreement, at Closing, Sellers shall sell, transfer and assign to Buyer, and Buyer shall purchase and receive, all of Sellers' rights, title and interests in and to the assets of Sellers used and useful in the Business (collectively, the "Assets"), including, without limitation, the following assets, free and clear of all Liens other than Permitted Liens:

(a) All furniture, fixtures, machinery, equipment, vehicles and other tangible personal property owned by Sellers and used and useful in the operation of the Business and listed on Schedule 1.1(a) (collectively, the "Personal Property");

(b) The Owned Real Properties listed on Schedule 1.1(b);

(c) The intellectual property rights and assets listed on Schedule 1.1(c) (including trademarks, service marks, internet domain names (including without limitation baldheadislandferry.com), web addresses, web pages, websites and related content, software and firmware (to the extent owned or licensed by Sellers)), together with any data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation used in the operation of the Business (the "Intellectual Property Rights");

(d) All of the supplies and other consumable items not intended for retail sale, spare parts and equipment and tools on hand at Closing and used exclusively in the operation of the Business at Closing;

(e) Those trams, trailers, golf carts and other vehicles used by Sellers in the operation of the Business and listed on Schedule 1.1(e)(1) (the "Transferred Vehicles") and the barge, four passenger ferries, the tugboat and other vessels used by Sellers in the operation of the Business and listed on Schedule 1.1(e)(2) (the "Transferred Vessels");

(f) To the extent transferable as determined in good faith by Sellers and Buyer, the Permits listed on Schedule 1.1(f);

(g) The Contracts, including (i) licenses, leases and rental agreements in respect of real and personal property utilized by the Sellers in the operation of the Business and (ii) the Intellectual Property Agreements, in each case set forth on Schedule 1.1(g) (the "Assumed Contracts");

(h) All records and documentation of Sellers relating to passengers, distributors and suppliers of the Business including, without limitation, passenger data, distributor and supplier lists, and all other business records of Sellers with respect to the Business, other than Sellers' Records (collectively, the "Books and Records");

(i) To the extent transferrable, all refunds, reimbursements or rights or claims to any refunds or reimbursements from NCUC fuel surcharge/reserve funds relating to any period or portion thereof ending prior to the Closing; and

(j) Any inventory of Sellers to the extent associated exclusively with the Business.

(k) All of the Sellers' goodwill associated with the Business.

1.2 Excluded Assets. For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, the Sellers shall not sell, convey, assign, transfer or deliver to the Buyer, and the Buyer shall not purchase or acquire from the Sellers (and the Assets do not include), any of the following assets and properties of the Sellers (collectively, the "Excluded Assets"):

(a) Any and all assets and properties of the Sellers relating to the other businesses, investments, holdings, enterprises and divisions of the Sellers (including without limitation, the cargo handling business of BHIL operated from and located at Sellers' Warehouse), in each case that are not used or held for use solely and exclusively in the Business, except for those assets and properties expressly listed or identified in Section 1.1;

(b) Improvements and equipment not owned by Sellers and therefore not part of the Assets or subject to this Agreement that may be situated at the Owned Real Properties, including, without limitation, ice vending machines, drink vending machines, Island Times Café and other third-party tenant equipment;

(c) Any vehicles and vessels owned by the Sellers, except for any Transferred Vehicles and Transferred Vessels listed on Schedules 1.1(e)(1) and (2);

(d) The Sellers' tax returns and supporting documentation related thereto, corporate franchise, stock and ownership record books, record books containing minutes of meetings of members, managers, directors and stockholders, organizational documents of Sellers and such other records as have to do exclusively with the Sellers' organization or equity interests (collectively, the "Sellers' Records");

(e) Any and all cash, cash equivalents, uncollected checks, deposits, bank deposits and accounts, certificates of deposit, governmental obligations, marketable securities, and all other securities and monies of the Sellers;

(f) Any accounts receivable and notes receivable not associated with the Business;

(g) All personnel records and other records that are part of the Books and Records that the Sellers are required by Law to retain in its possession (provided copies of any such records shall be provided to the Buyer at the Closing, to the extent permitted by Law);

(h) All security deposits, bonds, letters of credit and amounts held in escrow or trust, including but not limited to those posted or deposited by or on behalf of the Sellers with or in favor of any Governmental Entity to support Sellers' financial responsibility or bonding requirements under any Permits;

(i) All refunds, reimbursements or rights or claims to any refunds or reimbursements from any Governmental Entity including, without limitation, any federal, state, local or foreign Taxes paid or payable by the Sellers or relating to any period or portion thereof ending prior to the Closing or refunds or reimbursements;

(j) All claims, lawsuits and causes of action, and all monies recovered by Sellers as a result of pending or future legal actions;

(k) All rights, responsibilities and obligations of BHIL as "developer", "owner", or "declarant", or any similar designation, under or with respect to Bald Head Island and the Excluded Assets;

(l) All rights which accrue or will accrue to Sellers under this Agreement or any documents executed or delivered in connection herewith;

(m) All of the Benefit Plans and each trust, insurance or annuity contract or other funding arrangement established with respect thereto; and

(n) All insurance policies and contracts of insurance of Sellers and the premiums therefor and proceeds thereof, and all prepaid insurance, and all rights to applicable claims and proceeds thereunder, except for insurance claims with respect to Assets damaged by casualty prior to the Closing and for which repairs have not been completed as of the Closing.

1.3 Excluded Liabilities; Assumed Liabilities.

(a) Except as otherwise expressly provided in Section 1.3(b), the Buyer shall not assume, in connection with the Transaction, any Liability of the Sellers whatsoever, and the Sellers shall retain all of their respective Liabilities, whether or not accrued and whether or not disclosed, as of or on the Closing Date (the "Excluded Liabilities"). Excluded Liabilities include, without limitation, all of the following:

(i) All liabilities and obligations of Sellers or their Affiliates to any third party under any of the Assumed Contracts assumed by Buyer hereunder that arises out of or relates to any breach by Sellers or their Affiliates that occurred prior to the Closing Date;

(ii) All liabilities and obligations of Sellers or their Affiliates for any Pre-Closing Taxes;

(iii) All liabilities and obligations of Sellers or their Affiliates for the cost of worker's compensation indemnity payments with respect to injuries occurring prior to the Closing Date;

(iv) All liabilities and obligations for occupational injury or disease which arise out of or are in any manner connected with an accident or exposure to an occupational hazard which occurred or existed during the period of any employee's employment with the Sellers or their Affiliates prior to the Closing;

(v) All liabilities and obligations incurred by the Sellers in connection with their negotiation, execution and performance of this Agreement;

(vi) All liabilities and obligations of the Sellers or any of their Affiliates for, under or in respect of any of the Benefit Plans including, without limitation for (i) accrued and unpaid benefits or premiums, (ii) severance or termination benefits and (iii) health, life, dental, disability and worker's compensation insurance premiums of the employees and retirees of Sellers or their Affiliates;

(vii) The Sellers' liabilities to Employees for payroll, paid-time off, vacation, sick leave or other compensation earned and accrued through the Closing Date; and

(viii) All other liabilities and obligations of Sellers or their Affiliates arising out of or relating to Sellers' ownership, operation and/or use of the Business and the Assets prior to the Closing Date.

(b) As the sole exception to the provisions of Section 1.3(a), upon the transfer and delivery of the Assets at the Closing, the Buyer shall assume and agree to pay or discharge when due in accordance with their respective terms the following Liabilities arising out of the conduct of the Business (the "Assumed Liabilities"):

(i) The executory obligations of payment and/or performance under the Assumed Contracts, but only to the extent such Liabilities arise or relate to events, circumstances or periods first occurring on or after the Closing Date;

(ii) all Liabilities for Taxes relating to the Business, the Assets or the Assumed Liabilities for any period beginning on or after the Closing Date and any Taxes for which Buyer is liable under this Agreement; and

(iii) all other Liabilities first arising out of or relating to Buyer's ownership, operation and/or use of the Business and the Assets, on or after the Closing Date.

(c) The assumption of any Liabilities by any Party shall not enlarge any rights of third parties under Contracts with the Buyer or the Sellers and nothing herein shall prevent any Party from contesting in good faith any of said Liabilities as against any third party.

ARTICLE 2.

PURCHASE PRICE, ALLOCATION AND ADJUSTMENTS

2.1 Purchase Price; Expense Reimbursement to BHIL. As consideration for the Assets, the Buyer shall pay to the Sellers, collectively, an aggregate amount equal to Forty-Seven Million Seven Hundred Fifty Thousand and No/100 Dollars (\$47,750,000.00) (the “Purchase Price”), plus Buyer’s assumption of the Assumed Liabilities. In addition to payment of the Purchase Price, Buyer shall pay BHIL an aggregate amount (the “Expense Reimbursement”) necessary to fully reimburse BHIL for the pre-closing expenses reflected on Schedule 2.1 attached hereto (to be updated immediately prior to Closing) that have been paid or funded by BHIL prior to Closing, either by direct payment of such pre-closing expenses by BHIL on behalf of Buyer or through the advancement of funds by BHIL to Buyer. The Expense Reimbursement shall be paid in U.S. Dollars via wire transfer of immediately available funds to one or more accounts specified by Sellers’ Representative in writing to the Buyer no later than two (2) Business Days after the Closing Date.

2.2 Payment of Purchase Price. At the Closing, the Buyer shall pay, or cause to be paid, to Sellers’ Representative, an amount equal to the Purchase Price minus the Holdback Amount, as follows: (a) to the carrier for the RWI Policy, all premiums, costs and expenses related to binding and issuance of the RWI Policy; and (b) the balance in U.S. Dollars via wire transfer of immediately available funds to one or more accounts specified by Sellers’ Representative in writing to the Buyer no later than two (2) Business Days prior to the Closing Date, but subject, however, to the proration of taxes and other items set forth in Section 6.1(c) below.

2.3 Allocation. For U.S. federal and applicable state and local income Tax purposes, the Purchase Price (including any assumed liabilities and any other amounts treated as taxable consideration for income Tax purposes) shall be allocated among the Assets in accordance with the schedule set forth as Schedule 2.3 (the “Allocation Schedule”), which is consistent with Section 1060 of the Code. The Parties shall file all federal, state, and other Tax Returns in accordance with the Allocation Schedule. Neither the Buyer nor the Sellers shall take any position (whether in audits, Tax Returns or otherwise) that is inconsistent with such allocation unless required to do so by applicable Law.

2.4 Withholding. Buyer shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement all amounts required under applicable Law to be deducted and withheld. Any amounts so deducted or withheld by Buyer shall be treated for all purposes of this Agreement as having been paid to the applicable Seller.

2.5 Holdback Amount. Buyer shall withhold and retain from the Purchase Price the Holdback Amount at Closing as set forth in Section 2.2. On the date that is twelve (12) months

following the Closing Date, Buyer shall pay Sellers an amount equal to the remaining balance of the Holdback Amount as of such date less (a) the amount of any claims for indemnification under Article 9 of any Buyer Indemnified Party that have been settled, but against which the Holdback Amount has not yet been applied and (b) an amount sufficient to satisfy any then-pending claims for indemnification under Article 9 of the Buyer Indemnified Parties for which the Holdback Amount is a proper source of payment. Any amounts not released under clause (b) above due to any such then-pending claim shall be (x) retained by Buyer, upon the resolution of such claim in favor of Buyer, or (y) paid to Sellers within ten (10) Business Days after the resolution of all such then-pending claims, in each case, in accordance with the terms of this Agreement. Any payment made pursuant to clause (y) of the preceding sentence shall be made by wire transfer of immediately available funds to accounts designated in writing in advance by the Sellers' Representative.

ARTICLE 3.

CLOSING AND CLOSING DATE

The consummation of the Transaction and other transactions contemplated by this Agreement (the "Closing") shall take place on or before the tenth (10th) Business Day following the date on which all of the conditions set forth in Article 7 and Article 8 have been satisfied or waived by the appropriate Party, but in no event later than the Outside Date, at such place and time set by mutual agreement of the Parties. The Closing may take place remotely via electronic exchange of documents and signatures. The Closing shall be deemed effective for all purposes at 9:00 a.m. Eastern time on the Closing Date. The actual date of the Closing is referred to in this Agreement as the "Closing Date."

ARTICLE 4.

REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Sellers. Sellers hereby make the following representations and warranties to the Buyer.

(a) Due Organization and Power. BHIT is duly incorporated and validly organized and existing under the laws of the State of North Carolina. BHIL is duly formed and validly organized and existing under the laws of the State of Texas, qualified as a foreign limited liability company to transact business in North Carolina. Each Seller has all requisite power to own, operate and lease its properties and to carry on the Business as and where the Business is currently conducted by it. Each Seller is duly qualified or licensed to do business as a foreign organization in each jurisdiction wherein the character of the properties owned by it and used in the Business, or the nature of the Business, makes such licensing or qualification necessary, except as would not cause a Material Adverse Effect.

(b) Authority. Each Seller has full authority and power to enter into this Agreement and each agreement, document and instrument to be executed and delivered by such Seller pursuant to this Agreement and to perform its obligations hereunder and

thereunder. The execution and delivery by each Seller of this Agreement and the other documents and instruments to be executed and delivered by each Seller pursuant hereto and the consummation by each Seller of the transactions contemplated hereby and thereby have been duly authorized by the board of directors or managers, as applicable, or other such governing body of each Seller. No other organizational act or proceeding on the part of any Seller is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by each Seller pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by the Sellers pursuant hereto will constitute, valid and binding agreements of each Seller, as the case may be, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or other Laws affecting creditors' rights generally, and by general equitable principles.

(c) No Violation. Except for the Required Consents or as set forth in Schedule 4.1(c), neither the execution and delivery by the Sellers of this Agreement or the other documents and instruments to be executed and delivered by the Sellers pursuant hereto nor the consummation by the Sellers of the transactions contemplated hereby and thereby (i) will violate any Law or Order applicable to the Sellers, (ii) will require any authorization, consent or approval by, filing with or notice to any Governmental Entity, or (iii) will violate or conflict with, or constitute a default (or an event that, with notice or lapse of time, or both, would constitute a default) under, or will result in the termination of, or accelerate the performance required by, or result in the creation of any Liens (other than Permitted Liens) upon any of the Assets under, (A) any term or provision of the Articles of Incorporation, Articles of Organization, operating agreement, bylaws, or similar organizational documents of the Sellers, as applicable, or (B) any of the express terms of any Assumed Contract.

(d) Financial Statements. Schedule 4.1(d) contains (i) unaudited balance sheet(s) of BHIT as of December 31, 2020 (the "Recent Balance Sheet") and unaudited statement(s) of income for the Business for the twelve months then ended, (ii) reviewed balance sheet(s) of BHIT as of June 30, 2020 and reviewed statement(s) of income for the Business for the six months then ended, (iii) audited statements of revenues and direct expenses for BHIL's Barge Department and Parking Department (which relate to the parking and barge operations portions of the Business) for the fiscal years ending 2015, 2016, 2017, 2018 and 2019, (iv) audited balance sheet(s) of BHIT as of December 31, 2015, December 31, 2016, December 31, 2017, December 31, 2018 and December 31, 2019, together with audited statements of income, statements of stockholders' deficit and statements of cash flows for BHIT for the periods ended December 31, 2015, 2016, 2017, 2018 and 2019 (collectively, items (i), (ii), (iii) and (iv), the "Financial Statements"). The Financial Statements have been prepared from and are in accordance with the books and records of the Sellers and the Financial Statements fairly present, in all material respects, the financial position and results of operations of the Sellers relating to the Business as of their respective dates and for the respective periods covered thereby.

(e) Tax Matters.

(i) All Tax Returns required to be filed by or on behalf of the Sellers or in respect of the Assets on or prior to the date of this Agreement have been timely filed and, when filed, were complete and accurate in all material respects. All Taxes due and owing by the Sellers in all respects (whether or not shown as due on any filed Taxed Returns) have been timely paid.

(ii) There is no audit examination, deficiency or proposed adjustment pending or, to the Knowledge of the Sellers, threatened with respect to any Taxes due and owing. No claim has been made by a governmental entity in a jurisdiction where any Seller does not file Tax Returns that such Seller is or may be subject to taxation by that jurisdiction.

(iii) The Sellers have not waived any statute of limitations with respect to any Taxes or agreed to an extension of time with respect to any Tax assessment or deficiency.

(iv) Sellers (A) have no Liabilities for Taxes of any other Person by operation of applicable Law or otherwise, (B) are not currently under any contractual obligation to indemnify any Person with respect to Taxes, and (C) are not a party to any Tax sharing agreement or any other agreement providing for payments by the Sellers with respect to Taxes.

(v) Sellers have withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any Employee, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Laws.

(vi) There are no Liens for Taxes upon any of the Assets, other than for current Taxes not yet due or payable. None of the Assets constitute “tax-exempt bond financed property” or “tax-exempt use property” within the meaning of Code Section 168, and none of the Assets are subject to a lease, safe harbor lease, or other arrangement as a result of which such assets are required for federal income Tax purposes to be treated as owned by a person other than the applicable Seller.

(f) No Litigation. Except as set forth in Schedule 4.1(f), there is no Claim or investigation pending or, to the Knowledge of the Sellers, threatened against the Business or affecting the Assets, and there are no outstanding Orders against Sellers relating to or adversely affecting the Business or the Assets.

(g) Compliance with Laws and Orders. Except as set forth in Schedule 4.1(g), the Sellers are not conducting and have not conducted the Business in material violation of any applicable Laws or Orders.

(h) Permits. Schedule 4.1(h) sets forth all material Permits required for the conduct of the Business as currently conducted by the Sellers. All such Permits have been

validly issued to the Sellers, and the Sellers are in compliance in all material respects with all such Permits. Sellers shall make commercially reasonable efforts to transfer to the Buyer all Permits set forth on Schedule 4.1(h) at the Closing. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth on Schedule 1.1(f) and transferred to the Buyer at the Closing.

(i) Environmental Matters. The Sellers have delivered true and complete copies of the Environmental Reports set forth in Schedule 4.1(i) to Buyer. Except as set forth in Schedule 4.1(i):

(i) The Owned Real Properties and the operations conducted thereon by the Sellers are and have been in material compliance with all applicable Environmental Laws.

(ii) The Sellers hold all material Permits that are required pursuant to Environmental Laws for the operation of the Business as currently conducted.

(iii) Neither of the Sellers has received any currently unresolved written notice from a Governmental Entity of any material violation of Environmental Laws relating to the Owned Real Properties or the Business, other than those related to investigatory, corrective or remedial obligations under Environmental Laws set forth in Schedule 4.1(i), and except as set forth on Schedule 4.1(i), no Hazardous Material exists on the Owned Real Properties to the Knowledge of Sellers which would reasonably be expected to form the basis for a Claim or Liability under Environmental Laws against either of the Sellers.

(iv) To the Knowledge of Sellers, no Hazardous Material is present in, on or under any of the Owned Real Properties in violation of any Environmental Law and no releases of Hazardous Material in, on, under or from any Owned Real Property has occurred that currently requires or is likely to require investigatory, corrective or remedial action under Environmental Laws by any of Sellers except as set forth in Schedule 4.1(i).

(v) In connection with operation of the Business, Sellers have not arranged for off-site disposal of any Hazardous Material at any disposal site for which the Sellers have, or would have in the future, any Liability under Environmental Laws, including any toxic tort Liability for exposure to Hazardous Material, or any obligation to undertake any investigation, cleanup or remedial action pursuant to Environmental Laws.

(vi) To the Knowledge of Sellers, there are no underground storage tanks or related piping, active or abandoned, at any of the Owned Real Properties in a condition that now or as of the Closing Date requires or will require any remedial action by the Sellers pursuant to any Environmental Law.

(vii) The Sellers have not contractually assumed or agreed to indemnify any other Person with respect to any material Liability arising under any Environmental Law and relating to the Owned Real Properties or the Business.

(j) Title to Assets; Liens. Except as set forth in Schedule 4.1(j), (i) the Sellers own (with record and marketable fee simple title in the case of the Owned Real Properties) or validly lease all of the Assets, and (ii) the Assets are held free and clear of any Liens other than Permitted Liens.

(k) Real Property. Except as set forth on Schedule 4.1(k):

(i) There are no written leases, concessions or other Contracts granting to any Person the right to use or occupy any Owned Real Property or any portion thereof, other than pursuant to an Assumed Contract.

(ii) There are no outstanding purchase and sale contracts, options, rights of first offer, rights of first refusal to purchase, or rights of repurchase or forfeiture of or with respect to any Owned Real Property or any portion thereof or interest therein, other than the right of Buyer pursuant to this Agreement.

(iii) The Sellers have not received any written notice of Proceedings pending and, to the Knowledge of Sellers, there are no Proceedings threatened against or affecting, any of the Owned Real Properties or any portion thereof or interest therein in the nature of or in lieu of condemnation or eminent domain proceedings.

(iv) The Owned Real Properties (A) constitute all parcels of real property necessary for the conduct of the Business as currently conducted, (B) are sufficient for the continued conduct of the Business in substantially the same manner as conducted prior to the Closing and (C) are in compliance in all material respects with all applicable restrictions and land use and zoning laws and ordinances.

(l) Assumed Contracts. The Assumed Contracts constitute all of the Contracts by which the Sellers are bound which are necessary to the operation of the Business as currently conducted. Except as set forth in Schedule 4.1(l), each Assumed Contract is in full force and effect and is valid and enforceable against the applicable Seller, and, to the Knowledge of the Sellers, the other party or parties thereto in accordance with its terms, except as such may be limited by bankruptcy, insolvency, reorganization or other Laws affecting creditors' rights generally, and by general equitable principles. Except as set forth in Schedule 4.1(l), the applicable Seller is in compliance in all material respects with all terms and requirements of each Assumed Contract and no material breach or default by such Seller of any provision thereof, nor any condition or event that, with notice or lapse of time or both, would constitute such a breach or default, has occurred. To the Knowledge of the Sellers, and except as set forth in Schedule 4.1(l), no material breach or default by any other party to any Assumed Contract of any provision thereof, nor any condition or event that, with notice or lapse of time or both, would constitute

such a breach or default, has occurred. Except as set forth in Schedule 4.1(l), the Sellers have not received any notice of any materially adverse modification, termination, cancellation or nonrenewal (but excluding expiration in accordance with its terms) of any Assumed Contract and, to the Knowledge of Sellers, knows of no intent to affect the same. Except as set forth in Schedule 4.1(l), there is no current dispute with any party under any Assumed Contract that, if decided in a manner adverse to the applicable Seller, would have a Material Adverse Effect. The Sellers have delivered to the Buyer true, correct and complete copies of each written Assumed Contract.

(m) Employee Matters. Schedule 4.1(m) sets forth a list of the employees of Sellers necessary to the operation of the Business as of the date hereof (the “Employees”), setting forth for each of the Employees the name, title, employment or engagement commencement date, status as full or part time, annual base salary or hourly wage rate, bonus, incentive, or commission terms, fringe benefits, Fair Labor Standards Act and state law overtime classification (exempt or non-exempt), active, leave or layoff status (including type of leave, if any, and expected return date) during years 2019 and 2020. Except as set forth on Schedule 4.1(m), there are no commitments, contracts, agreements or obligations of Sellers (oral or written) to provide any term of employment or otherwise alter the at-will employment relationship for any Employees, or to provide Employee benefits or compensation to any employee or independent contractor of either of the Sellers, including any employment, severance or retention agreements, nor are there any other arrangements (oral or written) between Sellers and any Employees of Sellers. Except as set forth on Schedule 4.1(m), (i) the Sellers currently do not employ any employee or engage any independent contractor who cannot be terminated, now or after the Closing contemplated by this Agreement, without notice or cause and without further liability to the Sellers, (ii) neither of the Sellers has been party to or bound by any collective bargaining agreement, labor contract, or other written or oral agreement or understanding with any union or labor organization covering wages, hours, or terms or conditions of employment; (iii) no union or labor organization claims to represent any Employee of the Sellers, and, to the Knowledge of Sellers, there are no organizational campaigns, demands, petitions or proceedings pending or threatened by any union, labor organization, or group of employees seeking recognition or certification as collective bargaining representative of any group of Employees of either of the Sellers; and (iv) neither of the Sellers has experienced or been affected by any labor strike, work stoppage, or lockout and, to the Knowledge of Sellers, no labor strike, work stoppage or lockout has been threatened against Sellers.

All workers of Sellers are and have been properly classified and treated by the Sellers in accordance with all applicable laws with respect to compensation (including minimum and overtime pay) and with respect to being either an employee or an independent contractor.

The Sellers (a) have paid all wages, salaries, overtime pay, commissions, bonuses, fees, and other compensation which have come due and payable to its current and former workers under applicable law, contract or policy; and (b) are not liable for any amounts, fines, taxes, interest, or other penalties for any failure to pay or delinquency in paying such compensation.

The Sellers are and have been in compliance in all material respects with all applicable laws related to labor and employment, occupational safety and health, immigration, plant closings, mass layoffs, wages, hours, minimum wage, overtime, classification as an independent contractor or as an employee, leave, accommodations, discrimination, harassment, retaliation, hiring, termination, and workers' compensation and to the knowledge of Sellers there is no reasonable basis for a claim by anyone that Sellers or any of its agents violated any of the foregoing.

All current Employees of Sellers who work in the United States of America are, and all former employees of Sellers who worked in the United States of America whose employment terminated, within the three years prior to Closing, were legally authorized to work in the United States of America. At all times prior to the Closing, Sellers have been in material compliance with both the employment verification provisions (including the paperwork and documentation requirements) and the anti-discrimination provisions of the Immigrant Reform and Control Act of 1986.

Schedule 4.1(m) sets forth a list of complaints filed by Employees with the Equal Employment Opportunity Commission in the last seven years. Except as set forth in Schedule 4.1(m), there is no labor or employment related charge, complaint, grievance, or investigation pending, or to the knowledge of Sellers, threatened, with or by any employee, worker, or governmental body or before any arbitrator, nor has there been within the last three years, and no reasonable basis exists for any charge, complaint, grievance or investigation and Seller is not currently subject to any judgments, orders, decrees, awards, decisions of any court, agency, arbitrator or other legal tribunal relating to labor or employment matters.

(n) Benefit Plans. Except as would not have a Material Adverse Effect, each of the Benefit Plans has been operated in all material respects in conformity with applicable plan documents, the Code, applicable regulations thereunder and under ERISA and has met all reporting requirements thereunder. Schedule 4.1(n) lists each of the Benefit Plans and the plan administrator, plan sponsor, plan provider and trustee thereof. Each Retirement Plan that is intended to be "qualified" under Section 401 of the Code is so qualified and has received a favorable determination letter from the Internal Revenue Service to such effect and no fact, circumstance or event has occurred since the date of such determination letter or exists that would reasonably be expected to adversely affect the qualified status of any such Retirement Plan.

(o) Broker Fees. Sellers have not paid and are not obligated to pay any fees or commissions to any broker or finder in connection with the negotiation of this Agreement or the closing of transactions contemplated by this Agreement.

(p) Condition and Sufficiency of Assets. All tangible property (including the improvements located on the Owned Real Properties) included as part of the Assets are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear and normal, routine maintenance excepted, and are usable in the Ordinary Course of Business. The Assets are sufficient for the continued conduct of the Business as of and immediately after the Closing in substantially the same manner as conducted

prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the operation of the Business.

(q) Reserved.

(r) Suppliers. Schedule 4.1(r) sets forth with respect to the Business (i) each supplier to whom Sellers has paid annual consideration for goods and services rendered in an amount greater than or equal to \$25,000 for each of the three most recent fiscal years (collectively, the “Material Suppliers”); and (ii) the amount of purchases from each Material Supplier during such periods. Sellers have not received any notice, and have no reason to believe, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business after the Closing.

(s) Insurance. Schedule 4.1(s) sets forth (i) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers’ compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by Sellers or their Affiliates and relating to the Business, the Assets or the Assumed Liabilities (collectively, the “Insurance Policies”); and (ii) with respect to the Business, the Assets or Assumed Liabilities, a list of all pending claims and the claims history for the Sellers since January 1, 2016.

(t) Intellectual Property.

(i) Schedule 4.1(t) lists all Intellectual Property Agreements. Sellers have provided Buyer with true and complete copies of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on the applicable Seller in accordance with its terms and is in full effect, and none of the Sellers or, to the Knowledge of the Sellers, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any Intellectual Property Agreement. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Intellectual Property Agreement or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder.

(ii) The Intellectual Property Rights constitute all of the intellectual property necessary to operate the Business as presently conducted. Except as disclosed in Schedule 4.1(t), the consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of Buyer’s right to own, use or hold for use any of the Intellectual Property Rights as owned, used or held for use in the conduct of the Business as currently conducted.

(u) Data Privacy and Security.

(i) Sellers have complied with all Data Privacy and Security Laws applicable to Customer Information, Employee PII and other Personal Data collected, stored or used by the Sellers in connection with the operation of the Business. In the five (5) years immediately prior to the Closing Date, there has been no unauthorized access to or other misuse of Customer Information, Employee PII or other Personal Data collected by the Sellers in connection with the operation of the Business and in such time no claims have been asserted or, to the knowledge of Sellers, threatened against a Seller by any Person alleging a violation of any applicable Data Privacy and Security Laws.

(ii) Sellers have established and are in compliance with their currently posted privacy policy and terms of use available on their website (and have been in compliance with all historically posted privacy policies and terms of use) pertaining to the access, storage and use of Customer Information, Employee PII and other Personal Data.

(v) Provision of Information and Full Disclosure

(i) Sellers have made available to Buyer all information in their possession or control pertaining to the use, operation, condition and treatment of the Assets or the operation of the Business as currently conducted, including without limitation all reports, studies, analyses, and tests relating to the present and future operation of the ferry, barge and tram systems operated by the Sellers.

(ii) Sellers have not made any untrue material representation to the Buyer relating to this Agreement, Sellers, the Business or omitted to state to the Buyers any material fact relating to this Agreement, Sellers, the Business or the Assets that is necessary in order to make the information given by Sellers to the Buyer or its representatives not materially misleading.

4.2 Representations and Warranties of the Buyer. Buyer hereby makes the following representations and warranties to Sellers:

(a) Due Organization and Power. The Buyer is a public body corporate and politic of the State of North Carolina, duly formed and established pursuant to Article 29 of Chapter 160A of the North Carolina General Statutes and validly existing under the laws of the State of North Carolina. The Buyer has all requisite power to own, operate and lease its properties and to carry on its business as and where currently conducted by it.

(b) Authority. The Buyer has full authority and power to enter into this Agreement and each agreement, document and instrument to be executed and delivered by the Buyer pursuant to this Agreement and to perform its obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and the other documents and instruments to be executed and delivered by Buyer pursuant hereto and the consummation by Buyer of the transactions contemplated hereby and thereby have

been duly authorized by the Board of Trustees of the Buyer. No other organizational act or proceeding on the part of Buyer is necessary to authorize this Agreement or the other documents and instruments to be executed and delivered by Buyer pursuant hereto or the consummation of the transactions contemplated hereby and thereby. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Buyer pursuant hereto will constitute, valid and binding agreements of Buyer, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or other Laws affecting creditors' rights generally, and by general equitable principles.

(c) No Violation. Neither the execution and delivery by the Buyer of this Agreement or the other documents and instruments to be executed and delivered by the Buyer pursuant hereto nor the consummation by the Buyer of the transactions contemplated hereby and thereby (i) will violate any Law or Order applicable to the Buyer, (ii) will require any authorization, consent or approval by, filing with or notice to any Governmental Entity, or (iii), will violate or conflict with, or constitute a default (or an event that, with notice or lapse of time, or both, would constitute a default) under, or will result in the termination of, or accelerate the performance required by, or result in the creation of any Liens upon any of the assets of Buyer under, (A) any term or provision of the certificate of incorporation, bylaws, or similar organizational documents of the Buyer or (B) any of the express terms of any Contract to which Buyer is a party or by which its assets are bound.

(d) Broker Fees. Neither the Buyer nor any of its Affiliates has paid or is obligated to pay any fees or commissions to any broker or finder in connection with the negotiation of this Agreement or the closing of transactions contemplated by this Agreement.

(e) Litigation. There is no Claim or investigation pending or, to Buyer's knowledge, threatened against the Buyer that (i) challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or the other documents and instruments to be executed and delivered by Buyer pursuant hereto, or (ii) would reasonably be expected to materially impair the ability of Buyer to perform its obligations under this Agreement or the other documents and instruments to be executed and delivered by Buyer pursuant hereto.

(f) Sophisticated Purchaser. Buyer has, or has engaged one or more financial advisors who have, significant experience in the industry in which the Business operates, has conducted its own independent investigation, review and analysis of the Business and the Assets, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records, and other documents and data of the Sellers for such purpose.

ARTICLE 5.

COVENANTS PRIOR TO CLOSING

5.1 Access to Information; Confidentiality.

(a) Access to Information. The Sellers shall, during the period commencing on the date of this Agreement and ending on the Closing Date or sooner termination of this Agreement, furnish or cause to be furnished to the Buyer and its representatives, at reasonable times and upon reasonable notice, (a) such access, during normal business hours, to the Owned Real Properties and the other Assets as the Buyer from time to time reasonably requests with due regard to minimizing disruption of the conduct of the Business and (b) such access to the books, records and other information and data of the Business as the Buyer from time to time reasonably requests.

(b) Confidentiality. All of the information provided pursuant to this Section 5.1 shall be treated as confidential information pursuant to the terms and for all purposes of the Confidentiality Agreements, except for information which may become public knowledge or becomes subject to disclosure under the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1 et. seq. Effective upon the Closing, the Confidentiality Agreements shall terminate automatically without further action by the Parties, except as to confidential information provided prior to the Closing pursuant to this Section 5.1.

5.2 Conduct of Business Pending the Closing. From the date of this Agreement until the earlier to occur of the Closing Date or the termination of this Agreement, except as required or contemplated by the transactions contemplated by this Agreement or otherwise consented to by the Buyer in writing, the Sellers shall cause each of the following to occur with respect to the Business:

(a) the Sellers shall operate the Business only in the usual, regular and ordinary manner, on a basis consistent with past practice;

(b) the Sellers shall use commercially reasonable efforts to keep the Business and Owned Real Properties and other Assets substantially intact, including the present operations, physical facilities, working conditions, and relationships with Employees;

(c) the Sellers shall not grant any increase in the compensation, salaries or wages payable to any Employees, except for reasonable increases in the Ordinary Course of Business or as a result of contractual arrangements or sales compensation plans existing on the date of this Agreement;

(d) the Sellers shall not sell, lease or otherwise transfer or dispose of any material properties or assets, including, without limitation, the Assets, of the Business, except for the sale, consumption, retirement or disposal of properties and assets in the Ordinary Course of Business; and

(e) the Sellers shall not create any easement, restriction or other encumbrance on the Owned Real Properties not contemplated by this Agreement that would reasonably

be expected to have a Material Adverse Effect, grant any Lien (other than a Permitted Lien) or security interest on any portion of the Owned Real Properties to secure any indebtedness or performance obligation.

5.3 Further Actions. The Parties shall use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby, including using all commercially reasonable efforts to obtain prior to the Closing Date all licenses, Permits, Required Consents and any other approvals, authorizations, qualifications and orders of Governmental Entities and third parties with respect to the Business that are necessary for the consummation of the transactions contemplated hereby.

5.4 Certain Filings. The Buyer and the Sellers shall make or cause to be made, as promptly as practicable, all filings with Governmental Entities that are necessary to obtain the Required Consents and any other authorizations, consents, orders and approvals required for the consummation of the transactions contemplated hereby. The Buyer and the Sellers shall share equally the cost of all filing and similar fees arising in connection with such filings.

5.5 Exclusivity. During the period commencing on the date of this Agreement and expiring on the earlier of the Closing Date or the date on which this Agreement is terminated, neither of the Sellers nor any of their respective Affiliates shall, directly or indirectly, solicit, make, respond to (other than to decline), discuss with any third party or negotiate the terms of any offer or proposal from or to any Person (other than from or to the Buyer or its Affiliates) relating to any acquisition of direct or indirect control of the Business, any purchase of any amount of the Assets (other than in the Ordinary Course of Business consistent with past practice), or any change-of-control or business combination or similar transaction involving the Business, including any merger, consolidation, acquisition, purchase, re-capitalization or other transaction that would have a similar result as the transactions contemplated by this Agreement.

5.6 Representations and Warranties Insurance Policy. Buyer has obtained as of the date of this Agreement a buyer-side representations and warranties insurance policy to insure against Losses incurred by the Buyer or any Buyer Indemnified Party, a copy of which is attached hereto as Exhibit D (the “RWI Policy”), and prior to or at Closing, Sellers shall pay or cause to be paid, all premiums, costs and expenses related to binding and issuance of the RWI Policy that are required to be paid prior to Closing.

5.7 Title. Sellers, at their sole cost and expense, have obtained a commitment for title insurance (each, a “Commitment”) to be issued by Chicago Title Insurance Company (the “Title Company”) with regard to the Owned Real Properties, which shall commit the Title Company to provide an owner’s title insurance policy in substantially the form of the pro forma title policy attached hereto as Exhibit L.

5.8 Surveys. Sellers have, at their own expense, ordered one or more surveys of the Owned Real Properties and have provided true and complete copies of the same to Buyer, which shall be satisfactory to Buyer.

ARTICLE 6.

ADDITIONAL COVENANTS

6.1 Tax Matters.

(a) Cooperation. After the Closing Date, the Buyer and the Sellers shall make available to the other, as reasonably requested, and to any Governmental Entity upon written request (but only to the extent such Governmental Entity is legally permitted to receive pursuant to its subpoena power or its equivalent) all information, records or documents relating to Liabilities for Taxes or potential Liabilities for Taxes of the Business for all periods prior to or including the Closing Date and shall preserve all such information, records and documents until the expiration of any applicable statute of limitations for assessment or refund of Taxes or extensions thereof. After the Closing Date, the Buyer and the Sellers shall cooperate fully, as and to the extent reasonably requested by the other (and as to the Buyer only to the extent permitted by Law), in connection with the filing of Tax Returns and any audit, litigation, appeal, hearing, or other proceeding with respect to Taxes. Such cooperation shall include providing the information, records, and documents described above and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided. Each Party shall bear its own expenses in complying with the foregoing provisions. Notwithstanding the provisions of this Section 6.1(a), while the existence of an adversarial proceeding between the Parties will not abrogate or suspend the provisions of this Section 6.1(a), as to such records or other information directly pertinent to such dispute, the Parties may not utilize this Section 6.1(a) to obtain such pertinent information, records or documents but rather, absent agreement, must utilize the rules of discovery.

(b) Transfer Taxes. Regardless of which Party is liable for such Taxes under applicable Law, Sellers shall pay and be responsible for (or, if the Buyer is required by applicable Law to pay, then the Sellers shall promptly reimburse the Buyer) sales Tax, use Tax, revenue stamps or real property transfer Tax, or recording expense or notarial fee attributable to, imposed upon or arising from the transactions contemplated hereby. The Sellers shall file all Tax Returns with respect to such Taxes and the Buyer shall provide reasonable assistance in connection with such filings. The Buyer shall timely execute and deliver to the Sellers such certificates, forms or other documentation as may be necessary and appropriate for the Sellers to establish an exemption from (or otherwise reduce) such Taxes.

(c) Proration of Taxes and Other Items. Annual personal property Taxes, real property Taxes, charges for utilities, and other periodic charges, lease and rental payments relating to the Assets shall be pro-rated as of the Closing Date, with the Sellers liable to the extent such items relate to any time period (or portion thereof) up to and including the Closing Date (“Pre-Closing Charges”) and the Buyer liable to the extent such items relate to periods (or any portion thereof) subsequent to the Closing Date. Because such Taxes and other charges involve a period that begins before and ends after the Closing Date (a “Straddle Period”), the Pre-Closing Charges shall be calculated by

multiplying the amount of such Taxes and other charges for the entire Straddle Period by a fraction, the numerator of which is the number of days in the Straddle Period from the first day of the Straddle Period through and including the Closing Date, and the denominator of which is the number of days in the entire Straddle Period. In addition, any prepaid parking, ferry and barge tickets and passes shall be prorated between Sellers and Buyer, as appropriate, as of the Closing Date. The Buyer and the Sellers shall furnish to the other such documents and other records as they may reasonably request to confirm such proration calculations. Any amounts owed by the Sellers pursuant to this Section 6.1(c) shall either be (i) paid by the Sellers within fifteen (15) calendar days of receipt by the Sellers of a written request therefor or five (5) calendar days prior to the date on which such Liability is due, whichever is later, or (ii) paid out of the Purchase Price at the Closing.

6.2 Employee Matters.

(a) Offers of Employment to Sellers' Employees. It is the Buyer's intention and desire to have all of Sellers' current Employees available to provide services for the continued operation of the Business pursuant to the terms of the Transition Operating Agreement. During the term of the Transition Operating Agreement, Buyer may, but is and will not be obligated to, offer employment to any and all Employees. All such offers of employment that are timely accepted by the Employees shall commence when and as stated in the offer of employment and, except as otherwise set forth in this Section 6.2, be contingent on and subject to Buyer's standard policies, practices, procedures related to the hiring of new employees, including, but not limited to, drug screening and background checks, and other normal terms and conditions of employment with Buyer. The Sellers shall encourage all of the Sellers' Employees who are offered employment with Buyer to accept such employment offer. The Sellers shall assist the Buyer in effecting the change of employment of the Transferring Employees in an orderly fashion.

(b) Transferring Employees. Those of the Sellers' Employees who are offered, accept, and then commence employment with Buyer after the Closing Date are hereinafter collectively referred to as "Transferring Employees" and each individually is referred to as a "Transferring Employee." For purposes of clarity, an Employee of the Sellers employed on the Closing Date shall not be deemed thereby to be a Transferring Employee merely by reason of the consummation of the Closing, but rather shall only be a Transferring Employee if offered employment by the Buyer, such offer is accepted and employment begins as stated in Section 6.2(a).

(c) Communications to Sellers' Employees. The Sellers, subject to the approval of the Buyer which shall not be unreasonably withheld, shall distribute communications to all Employees prior to the Closing concerning the effect of the transactions contemplated by this Agreement on their terms and conditions of employment, including but not limited to how the Buyer may contact, interview and/or extend offers of employment and hire any or all of such Employees in its sole discretion as stated in Section 6.2(a).

(d) COBRA. The Sellers shall be solely responsible for all notices and other obligations under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (“COBRA”) with respect to any Employee of the Business or qualified beneficiary thereof whose “qualifying event” for COBRA purposes regarding any group insurance coverage provided by the Sellers has occurred at any time on or prior to the Closing.

(e) WARN Act. Each Seller agrees to assume full responsibility for compliance with any “plant closing” or “mass layoff” as defined in the Worker Adjustment and Retraining Notification Act (the “WARN Act”) and any other applicable state Law, including WARN Act notices and similar notices required under other applicable state Laws, if any, that may be required as a result of any employment losses caused by the transactions contemplated hereunder or by reason of any events occurring at or before the Closing. Each Seller further agrees to assume full liability for any failure to comply with the WARN Act or any other similar applicable state Law.

(f) General Obligations and Indemnification Regarding the Sellers’ Employees. Except as may be otherwise expressly provided in this Agreement, the Sellers shall be solely responsible for providing for payment of all final compensation, accrued and unused paid-time off, vacation and/or sick leave as of the Closing Date, as well as all benefits, severance pay and other obligations that may have accrued or arisen prior to the Closing as a result of the employment or termination of employment of the Employees with the Sellers. Excluded Liabilities shall include any of the foregoing payments or other obligations from any claim, lawsuit or other legal action (including those under federal or state Law for discrimination, harassment, retaliation, wrongful discharge, breach of contract, tortious interference with contract, defamation, wage payment violations, or workers’ compensation laws of North Carolina or any other state) that has been or in the future is brought against Sellers or Buyer and arising from any actions or inactions on or before the Closing Date by any of the Sellers’ directors, officers, members, managers, employees, representatives or agents.

(g) Sellers’ Employees Are Not Third Party Beneficiaries. The Sellers and the Buyer do not intend for the Employees to be considered or deemed to be third party beneficiaries of this Agreement, and such Employees shall have no rights hereunder or against the Buyer or Sellers by reason of this Agreement.

6.3 Post-Closing Operation of the Business and Access to Information. Sellers shall operate the Business on behalf of Buyer and continue to employ the Employees after the Closing pursuant to the terms of the Transition Operating Agreement. In addition, for a period of five (5) years after the Closing Date, the Sellers shall provide, and shall cause its appropriate personnel to provide, when reasonably requested to do so by the Buyer, access to all Tax, financial and accounting records of or relating to the Assets, the Assumed Liabilities, or the Business and the right to make copies or extracts therefrom at its expense. During such five (5) year period, the Sellers shall not, nor shall it permit its Affiliates to, intentionally dispose of, alter or destroy any such books, records and other data without giving thirty (30) calendar days’ prior written notice to the Buyer and permitting the Buyer, at Buyer’s expense, to examine, duplicate or repossess such records, files, documents and correspondence.

6.4 Insurance and Casualty. The Sellers shall keep the Assets insured, at the Sellers' expense, with such policy types and coverage amounts as Sellers maintain in the Ordinary Course of Business until Closing or termination of this Agreement. If there is any material damage to or destruction of the Owned Real Properties or other Assets or any portion thereof before Closing, the Closing shall, at the Buyer's option, nevertheless proceed; except that, at the Buyer's option, unless before Closing the same shall have been remedied and restored to substantially the same condition as it was on the date hereof, at the Closing the Sellers shall pay over or assign to the Buyer any net insurance proceeds due the Sellers as a result of such damage or destruction (without recourse to the Sellers) and the Buyer shall assume responsibility for such repair.

6.5 Condemnation. If, before Closing, any part of the Owned Real Properties is taken, or noticed for taking, by eminent domain, the Sellers shall promptly give the Buyer written notice thereof and the Closing shall at the Buyer's option nevertheless proceed; except that at the Buyer's option, the Sellers shall, at the Closing, deliver to the Buyer the net proceeds of any award or other proceeds of such taking which may have been collected by the Sellers before the Closing or, if the award or other proceeds have not been fully collected, deliver to the Buyer an assignment (without recourse to the Sellers) of the Sellers' right to any such award or other proceeds which may be payable as a result of any such taking, and the Buyer shall pay the full Purchase Price without offset or reduction.

6.6 Further Assurances. From time to time after the Closing Date, upon request of the other Party and without further consideration, each Party shall execute and deliver to the requesting Party such documents and take such action as the requesting Party reasonably requests to consummate more effectively the intent and purpose of the Parties under this Agreement and the transactions contemplated hereby.

6.7 Contact with Business Relations. During the period from the date of this Agreement until the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, the Buyer hereby agrees that it is not authorized to and shall not (and shall not permit any of its employees, agents, representatives or Affiliates to) contact any employee (excluding executive officers), customer, supplier, dealer, material supplier, distributor or other material business relation of the Sellers regarding the Sellers or the Business without the prior consent of the Sellers.

ARTICLE 7.

CONDITIONS PRECEDENT TO THE BUYER'S OBLIGATIONS

The obligations of the Buyer to close the transactions contemplated by this Agreement is subject to the satisfaction (or written waiver by the Buyer) prior to or at the Closing Date of each of the following conditions:

7.1 Accuracy of Representations and Warranties. Each of the representations and warranties of the Sellers made in this Agreement that is qualified as to materiality shall be true and correct in all respects at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, and each of such representations

and warranties that is not qualified as to materiality shall be true and correct in all material respects at and as of the Closing Date, as though such representations and warranties were made or given on and as of the Closing Date, except for inaccuracies the circumstances of any representation or warranty in Section 4.1(d), (l), (m), (n), (r) or (s) giving rise to which, individually or in the aggregate, do not constitute and would not reasonably be expected to have a Material Adverse Effect, without giving effect to any “materiality” or “Material Adverse Effect” qualifications set forth therein; provided, that any representations and warranties that are specifically made as of a particular date shall instead be true and correct as of such date. Sellers shall have delivered to the Buyer a certificate dated the Closing Date and executed by an authorized officer of each Seller confirming the foregoing.

7.2 Performance of Obligations. The Sellers shall have performed and complied with their respective agreements and obligations under this Agreement that are to be performed or complied with by the Sellers prior to or on the Closing Date and the Sellers shall have delivered to the Buyer a certificate dated the Closing Date and executed by an authorized officer of each Seller confirming the foregoing.

7.3 No Injunctions or Restraints. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that is in effect and makes consummation of the transactions contemplated by this Agreement illegal or that otherwise restrains, enjoins or otherwise prohibits consummation of the transactions contemplated by this Agreement.

7.4 Delivery of Documents. The Sellers shall have delivered, or caused to have been delivered, to the Buyer the documents listed in Section 10.1.

7.5 Consents. All of the consents of third parties and Governmental Entities set forth on Schedule 7.5 shall have been obtained (the “Required Consents”). The Required Consents include, without limitation, evidence satisfactory to the Buyer that the LGC has approved the sale and issuance of the Revenue Bonds, and any required notice being provided as required by Law to NCUC relating to the transactions contemplated hereby.

7.6 Monetary Liens. The Sellers shall have paid and discharged all Monetary Liens (as defined in the definition of Permitted Liens).

7.7 Financing Contingency. The Parties hereby understand and acknowledge that the Buyer intends to finance payment of the Purchase Price and other capital and other financial needs of the Buyer through the sale and issuance of the Revenue Bonds. Accordingly, all of the conditions for the Buyer’s sale and issuance of the Revenue Bonds shall have been fulfilled to the reasonable satisfaction of the Buyer and its underwriters and bond counsel such that, at Closing, the Buyer shall have sold the Revenue Bonds and received minimum gross proceeds from the sale and issuance of the Revenue Bonds in the aggregate amount of [REDACTED] and [REDACTED] /100 Dollars (\$ [REDACTED]).

7.8 RWI Policy. The RWI Policy shall, subject to the satisfaction of the conditions set forth therein, be in full force and effect as of the Closing on the terms set forth in Exhibit D.

7.9 Title Policy. The Sellers shall have paid all premiums, charges and fees and satisfied all conditions of the Title Company required for issuance of the Title Policy in favor of the Buyer in accordance with the Commitments, and Buyer shall have received the Title Policy, satisfactory to Buyer in its sole discretion.

7.10 No Material Change. Since the date hereof, there shall not have occurred any Material Adverse Effect.

7.11 FIRPTA Certificate. A non-foreign affidavit of each Seller in form and substance required under Section 1.1445-2(b) of the Treasury Regulations stating that such Seller is not a “foreign person” as defined in Section 1445 of the Code (the “FIRPTA Certificates”).

ARTICLE 8.

CONDITIONS PRECEDENT TO THE SELLERS’ OBLIGATIONS

The obligations of the Sellers to close the transactions contemplated by this Agreement are subject to the satisfaction (or written waiver by the Sellers) prior to or at the Closing Date of each of the following conditions:

8.1 Accuracy of Representations and Warranties. Each of the representations and warranties of the Buyer made in this Agreement that is qualified as to materiality shall be true and correct in all respects at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, and each of such representations and warranties that is not qualified as to materiality shall be true and correct in all material respects at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, except for representations and warranties that speak as of a specific date or time (which need be true and correct only as of such date or time); the Buyer shall have delivered to the Sellers a certificate dated the Closing Date and executed by an authorized officer of the Buyer confirming the foregoing.

8.2 Performance of Obligations. The Buyer shall have performed and complied with its agreements and obligations under this Agreement that are to be performed or complied with by the Buyer prior to or on the Closing Date and the Buyer shall have delivered to the Sellers a certificate dated the Closing Date and executed by an authorized officer of the Buyer confirming the foregoing.

8.3 No Injunctions or Restraints. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that is in effect and makes consummation of the transactions contemplated by this Agreement illegal or that otherwise restrains, enjoins or otherwise prohibits consummation of the transactions contemplated by this Agreement.

8.4 Delivery of Documents. The Buyer shall have delivered, or caused to have been delivered, to Seller the documents described in Section 10.2.

8.5 Consents. All of the Required Consents of third parties and Governmental Entities shall have been obtained.

8.6 RWI Policy. The RWI Policy shall, subject to the satisfaction of the conditions set forth therein, be in full force and effect as of the Closing on the terms set forth in Exhibit D, other than with respect to any amendments, modifications or changes thereto that do not and could not reasonably be expected to materially prejudice the rights or increase the obligations of Sellers under Article 9.

ARTICLE 9.

INDEMNIFICATION

9.1 Survival of Representations and Warranties and Covenants. The representations and warranties of the Sellers and the Buyer contained in this Agreement shall survive the Closing until the Cutoff Date, except that (a) the Seller Fundamental Representations shall survive until the sixth anniversary of the Closing Date, and (b) the Buyer Fundamental Representations shall survive until the sixth anniversary of the Closing Date. In addition, Sellers' obligation to indemnify the Buyer Indemnified Parties pursuant to Section 9.2(a)(iv) shall survive until the sixth anniversary of the Closing Date. The covenants contained in this Agreement shall survive the Closing and remain in full force and effect until fully performed in accordance with their terms. Notwithstanding the foregoing, any claim made under and in accordance with this Article 9 prior to the expiration of the applicable survivability period above shall survive until such claim is finally resolved.

9.2 Indemnification by the Sellers.

(a) General. Subject to the terms, conditions and limitations set forth in this Article 9, if the Closing occurs, the Sellers shall, jointly and severally, indemnify, defend, and hold harmless the Buyer Indemnified Parties, from and against all Losses that any Buyer Indemnified Party may suffer, sustain or incur and that result from, arise out of, relate to, or are caused by, any of the following:

(i) any breach or inaccuracy of any of the representations and warranties of the Sellers set forth in this Agreement (disregarding all materiality qualifications for purposes of determining a breach and calculating the applicable Losses);

(ii) any failure by one or more of the Sellers to perform or comply with any covenant or agreement of any one or more of Sellers contained in this Agreement;

(iii) any Excluded Liabilities; and

(iv) any matter specifically excluded from coverage under the RWI Policy [and]¹ listed in Schedule 9.2(a)(iv) (collectively, the "Special Indemnity Matters").

¹ TBD after review of RWI Policy.

(b) Limitations. Notwithstanding anything in this Agreement to the contrary, the obligations of the Sellers under Section 9.2(a) shall be subject to the following limitations:

(i) [Reserved].

(ii) Caps. Except for any Liability for Losses arising from fraud, the aggregate amount of Losses claimed or recovered under Section 9.2(a)(i) by the Buyer Indemnified Parties shall not exceed the coverage provided by the RWI Policy; provided, however, that Losses for breaches of Seller Fundamental Representations shall be capped at the amount of the Purchase Price. In addition, the aggregate amount of Losses claimed or recovered under Section 9.2(a)(iv) by the Buyer Indemnified Parties shall not exceed the Indemnity Cap, except that the Indemnity Cap shall not be applicable to any Liability for Losses arising from fraud.

(iii) Source of Payments. All amounts owing to the Buyer Indemnified Parties pursuant to Section 9.2(a)(i) shall be satisfied (A) first, from the Holdback Amount pursuant to the terms of this Agreement; (B) second, to the extent such Losses exceed the available Holdback Amount and are not listed on Schedule 9.2(a)(iv), by recovery under the RWI Policy; and (C) third, solely for breaches of Seller Fundamental Representations and only to the extent such Losses exceed the available Holdback Amount and the amount of coverage available, if any, under the RWI Policy, by Sellers' wire transfer of immediately available funds to Buyer within ten (10) Business Days after the final determination thereof, in all cases subject to any applicable limitations set forth in this Article 9. All amounts owing to the Buyer Indemnified Parties pursuant to Section 9.2(a)(ii), Section 9.2(a)(iii) or Section 9.2(a)(iv) shall be paid by Sellers' wire transfer of immediately available funds to Buyer within ten (10) Business Days after the final determination thereof, in all cases subject to the Indemnity Cap and any other limitations set forth in this Article 9.

(iv) Other Limitations on Liability. Notwithstanding anything to the contrary in this Agreement, Buyer, on behalf of itself and the Buyer Indemnified Parties, acknowledges and agrees that, after exhaustion of the Holdback Amount, (1) the sole and exclusive remedy of any Buyer Indemnified Party for any Losses claimed or recovered under Section 9.2(a)(i), other than for breaches of Seller Fundamental Representations, shall be to make a claim against the RWI Policy; and (2) no remedy other than making a claim against the RWI Policy shall be available to any Buyer Indemnified Party for any Losses claimed or recovered under Section 9.2(a)(i) with respect to breaches of Seller Fundamental Representations until the amount of coverage available, if any, has been exhausted. Buyer, on behalf of itself and any Buyer Indemnified Party, further acknowledges and agrees that the provisions of this Section 9.2(b)(iv) shall apply regardless of whether (A) Buyer maintains following Closing the RWI Policy, (B) the RWI Policy is revoked, cancelled or modified in any manner after issuance, or (C) any Buyer Indemnified Party makes a claim under the RWI Policy and such

claim is denied by the insurer. In addition, Buyer, on behalf of itself and the Buyer Indemnified Parties, acknowledges and agrees that, to the extent a Buyer Indemnified Party suffers a Loss or series of related Losses that could be claimed or recovered under multiple subsections of Section 9.2(a) and Section 9.2(a)(i) is one of the subsections pursuant to which such claim could be made, the Buyer Indemnified Party shall pursue recovery for such Losses, first, by making claim under the RWI Policy. Notwithstanding anything herein to the contrary, in no event may a Buyer Indemnified Party recover amounts from the Sellers and pursuant to the RWI Policy for any claim for the same Loss or series of related Losses for which indemnification is provided under the RWI Policy.

9.3 Indemnification by the Buyer. Subject to the terms and conditions of this Article 9, the Buyer shall indemnify, defend, and hold harmless the Seller Indemnified Parties, from and against all Losses that any Seller Indemnified Party may suffer, sustain or incur and that result from, arise out of, relate to, or are caused by, any of the following (a) any breach or inaccuracy of any of the representations and warranties of Buyer set forth in this Agreement (disregarding all materiality qualifications for purposes of determining a breach and calculating the applicable Losses); (b) any failure by Buyer to perform or comply with any covenant or agreement of Buyer contained in this Agreement, (c) the Assumed Liabilities, or (d) the operation, ownership and/or use of the Assets or the Business from and after the Closing Date (except in each case to the extent the Buyer is entitled to indemnification for such Losses under Section 9.2(a)).

9.4 Procedures Relating to Indemnification Between the Buyer and the Sellers. Following the discovery of any facts or conditions that could reasonably be expected to give rise to a Loss or Losses for which indemnification under this Article 9 can be obtained, the Party seeking indemnification under this Article 9 (the “Indemnified Party”) shall, reasonably promptly thereafter, provide written notice to the Party from whom indemnification is sought (the “Indemnifying Party”), setting forth the specific facts and circumstances, in reasonable detail, relating to such Loss or Losses, the amount of Loss or Losses (or a non-binding, reasonable estimate thereof if the actual amount is not known or not capable of reasonable calculation) and the specific Section(s) of this Agreement upon which the Indemnified Party is relying in seeking such indemnification (an “Indemnification Notice”); *provided, however*, that any delay or failure in providing the Indemnification Notice shall not preclude the Indemnified Party from seeking indemnification except to the extent the Indemnifying Party is prejudiced thereby.

9.5 Procedures Relating to Indemnification for Third Party Claims.

(a) Notice. In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement arising out of or involving a claim or demand made by any third party, including any Governmental Entity (a “Third Party Claim”), the Indemnified Party must provide an Indemnification Notice to the Indemnifying Party relating to the Third Party Claim reasonably promptly after the Indemnified Party’s receipt of notice of the Third Party Claim, but in no event more than fifteen (15) Business Days after being served with any summons, complaint or similar legal process; *provided, however*, failure to give timely notice shall not release the

Indemnifying Party of its obligations hereunder except if, and only to the extent that, the Indemnifying Party suffers actual prejudice as a proximate result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, within ten (10) Business Days after the Indemnified Party's receipt thereof, copies of all notices and documents, including all court papers, received by the Indemnified Party relating to the Third Party Claim.

(b) Defense. If a Third Party Claim is made against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in the defense thereof and, if the Indemnifying Party so chooses, to assume the defense thereof with counsel selected by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnifying Party shall be liable for the reasonable fees and expenses of counsel employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof. If the Indemnifying Party so elects to assume the defense of a Third Party Claim, then the Indemnifying Party shall not be liable to the Indemnified Party for the reasonable fees and expenses of counsel subsequently incurred by the Indemnified Party in connection with the defense thereof; *provided, however*, that prior to assuming the defense of such Third Party Claim, the Indemnifying Party fully acknowledges in writing its indemnification obligations to the Indemnified Party. If the Indemnifying Party assumes such defense, then the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood, however, that the Indemnifying Party shall control such defense. If the Indemnifying Party chooses to defend any Third Party Claim, it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party and the Parties shall cooperate in all such actions. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records that are reasonably relevant to such Third Party Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. If the Indemnifying Party has not within fifteen (15) Business Days after receipt of an Indemnification Notice relating to a Third Party Claim, chosen to assume defense of a Third Party Claim or fails to defend such Third Party Claim actively and in good faith, then the Indemnified Party shall (upon further written notice) have the right to defend and, subject to Section 9.5(c), compromise or settle such Third Party Claim or consent to the entry of judgment with respect to such Third Party Claim, in each case at the cost and expense of the Indemnifying Party.

(c) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned, or delayed), except to the extent such settlement does not provide for liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 9.5(b), it shall not agree to any settlement without the prior written consent of the

Indemnifying Party (which consent shall not be unreasonably withheld or delayed), and no such settlement shall be determinative of the Indemnifying Party's obligations under this Article 9.

9.6 Insurance. The obligation of the Indemnifying Party to indemnify the Indemnified Party against any Losses under this Article 9 shall be reduced by the amount of any insurance proceeds actually received by the Indemnified Party from third party insurers with respect to such Losses, net of the amount of any annual increase in premiums.

9.7 Payments. Subject to the limitations expressly set forth in Section 9.2(b), any amounts payable by the Sellers pursuant to this Article 9 shall be paid and satisfied by Sellers' wire transfer of immediately available funds to Buyer within ten (10) Business Days after the final determination thereof.

9.8 Tax Treatment of Indemnity Payments. Any indemnity payment under this Agreement shall be treated as an adjustment to the Purchase Price unless there is no reasonable basis for doing so under applicable Tax Law.

9.9 Duty to Mitigate. In all cases in which an Indemnified Party is entitled to be indemnified in accordance with this Agreement, such Indemnified Party and its Affiliates shall be under a duty to take commercially reasonable measures to mitigate all Losses and to make and pursue collection of any amount available under applicable insurance coverage, including the RWI Policy, for any Losses for which an indemnity claim is being made. For the avoidance of doubt, this Section 9.9 shall not limit an Indemnified Party's right to seek indemnification under this Article 9.

9.10 Pursuit of Claims under RWI Policy. With respect to any Losses for which any Buyer Indemnified Party is entitled to indemnification under Section 9.2, the Buyer shall (and shall cause its Affiliates to) use commercially reasonable efforts to diligently make and pursue claims for such Losses under the RWI Policy. The Buyer (for itself and on behalf of the Buyer Indemnified Parties) acknowledges and agrees that in the event a claim under the RWI Policy is denied and the Buyer or any Buyer Indemnified Party's actions (or inaction) is the sole cause of such denial, the Buyer Indemnified Parties shall not be entitled to indemnity from the Sellers to the extent materially prejudiced thereby.

9.11 Exclusive Remedy; No Consequential Damages, etc. Except in the case of fraud, if Closing occurs, then the indemnification provisions of this Article 9 shall be the sole and exclusive remedy with respect to any and all claims arising out of or relating to a Party's breach of its representations and warranties contained in this Agreement.

ARTICLE 10.

CLOSING DELIVERIES

10.1 Items to be Delivered by the Sellers. At the Closing, the Sellers shall deliver to the Buyer the following documents, in each case duly executed or otherwise in proper form:

- (a) A bill of sale and assignment in the form attached hereto as Exhibit E, duly executed by Sellers;
- (b) A special warranty deed(s) with respect to the Owned Real Properties, in the form attached hereto as Exhibit F, duly executed by Sellers;
- (c) An Assignment and Assumption Agreement in form and substance reasonably acceptable to the Sellers and the Buyer in the form attached hereto as Exhibit G (the “Assignment and Assumption Agreement”), duly executed by Sellers;
- (d) An Intellectual Property Assignment (the “IP Assignment”) in the form attached as Exhibit B, duly executed by the Sellers;
- (e) A trademark and service mark license agreement, duly executed by BHIL, granting Buyer a perpetual royalty-free, non-exclusive right and license to use certain trademarks of BHIL set forth on Schedule 10.1(e) (the “Trademark License”), which Trademark License shall be in form and substance reasonably acceptable to Sellers and Buyer;
- (f) Any payoff letters evidencing the full release of all Liens on any of the Assets other than Permitted Liens;
- (g) A certificate of an authorized officer or other company official of each Seller which shall certify (i) the resolutions adopted by its governing body authorizing such Seller to consummate the Transaction and all of the other transactions contemplated hereby, and (ii) the names of the officers or other company officials of such Seller authorized to sign this Agreement and the other documents, instruments or certificates to be delivered pursuant to this Agreement by the Sellers, together with the true signatures of such officers or other company officials;
- (h) Certificates of Title for any Transferred Vehicle properly endorsed over to Buyer, and titles and/or other documentation for any documented Transferred Vessels;
- (i) The Books and Records of the Sellers pursuant to Section 1.1(h) hereof;
- (j) All of the Required Consents;
- (k) All affidavits, gap indemnity agreements and other documents reasonably and customarily required by the Title Company to induce the Title Company to issue its Title Policy, with extended coverage, to the Buyer;
- (l) The Ferry and Barge Facilities Operating and Transition Services Agreement, in the form attached hereto as Exhibit C, duly executed by Sellers (the “Transition Operating Agreement”);
- (m) The New Leases, duly executed by BHIL;

(n) The Amendment to Deep Point Declaration of Easements and the Affirmation Regarding Declaration of Easements and Covenants of Bald Head Island Marina Association, duly executed by Sellers and any other required third parties, together with any joinder, admission agreement or other documents required for Buyer to be admitted as a member of the Bald Head Island Marina Association as of the Closing satisfactory to Buyer in its sole and absolute discretion, duly executed by all required parties other than Buyer;

(o) The Right of First Refusal Agreement;

(p) Assignments of the Permits satisfactory to Buyer and executed by Sellers;

(q) The FIRPTA Certificates;

(r) The certificate of Sellers specified in Section 7.1 executed by Sellers; and

(s) Such other agreements, documents or specific instruments of transfer, conveyance and assignment as the Buyer or its counsel may reasonably request.

10.2 Items to be Delivered by the Buyer. At the Closing, the Buyer shall deliver the following payments and documents to the Sellers, in each case duly executed or otherwise in proper form:

(a) The Assignment and Assumption Agreement, duly executed by the Buyer;

(b) The Trademark License, duly executed by the Buyer;

(c) The Purchase Price in the manner provided in Section 2.2;

(d) The Transition Operating Agreement duly executed by Buyer;

(e) The New Leases, duly executed by the Buyer;

(f) The Amendment to Deep Point Declaration of Easements and the Affirmation Regarding Declaration of Easements and Covenants of Bald Head Island Marina Association Declaration, duly executed by the Buyer and any other required third parties;

(g) The Right of First Refusal Agreement;

(h) A certificate of an authorized officer of the Buyer which shall certify (i) the resolutions adopted by its Board of Trustees authorizing the Buyer to consummate all of the transactions contemplated hereby (including the acquisition of the Assets), and (ii) the names of the officers of the Buyer authorized to sign this Agreement and the other documents, instruments or certificates to be delivered pursuant to this Agreement by the Buyer or any of its officers, together with the true signatures of such officers;

(i) The certificate of Buyer set forth in Section 8.1 executed by Buyer; and

(j) Such other agreements, documents or specific instruments of transfer, conveyance and assignment as Sellers or their counsel may reasonably request.

ARTICLE 11.

TERMINATION

11.1 General. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, only as follows:

(a) By the written agreement of the Buyer and the Sellers;

(b) By the (i) Buyer if any of the conditions set forth in Article 7 have not been satisfied or fulfilled as required therein, or if the Closing has not occurred, on or before **March 1, 2021** (the “Outside Date”); provided, however that the right to terminate this Agreement under this Section 11.1(b)(i) shall not be available to the Buyer if the Buyer’s failure to fulfill any obligation under this Agreement has been a significant cause of, or results in, the failure of the Closing to occur on or before the Outside Date; or (ii) the Sellers if any of the conditions set forth in Article 8 have not been satisfied or fulfilled as required therein, or if the Closing has not occurred, on or before the Outside Date; provided, however, that the right to terminate this Agreement under this Section 11.1(b)(ii) shall not be available to the Sellers if the Sellers’ failure to fulfill any obligation under this Agreement has been a significant cause of, or results in, the failure of the Closing to occur on or before the Outside Date;

(c) By the Buyer or the Sellers if any Governmental Entity shall have enacted, issued, promulgated, enforced or entered any Law or Order, or refused to grant any required consent or approval, that has the effect of making the consummation of the transactions contemplated hereby illegal or that otherwise prohibits consummation of such transactions;

(d) By the Sellers, upon written notice to the Buyer, if there has been a breach of any representation or warranty of the Buyer in Section 4.2 or failure to perform any covenant or agreement on the part of the Buyer set forth in this Agreement (or if any of the representations or warranties of the Buyer set forth in Section 4.2 shall fail to be true) which breach or failure (i) would cause any of the conditions set forth in Article 8 not to be satisfied and (ii) shall not have been cured within fifteen (15) days following receipt by the Buyer of written notice of such breach or failure to perform from the Sellers or which by its nature or timing cannot reasonably be cured by the Outside Date;

(e) By the Buyer, upon written notice to the Sellers, if there has been a breach of any representation or warranty of the Sellers in Section 4.1 or failure to perform any covenant or agreement on the part of the Sellers set forth in this Agreement (or if any of the representations or warranties of the Sellers set forth in Section 4.1 shall fail to be true) which breach or failure (i) would cause any of the conditions set forth in Article 7 not to be satisfied and (ii) shall not have been cured within fifteen (15) days following receipt

by the Sellers of written notice of such breach or failure to perform from the Buyer or which by its nature or timing cannot reasonably be cured by the Outside Date; or

(f) By the Buyer as provided in Section 5.7(a), 5.7(b) or 5.8, as applicable.

11.2 Post-Termination Obligations; Deliverables. To terminate this Agreement as provided in subclause (b), (c), (d) or (e) of Section 11.1, the terminating Party shall provide the other Party with written notice of its election to terminate this Agreement, and upon delivery of such written notice in accordance with Section 12.6:

(a) The transactions contemplated hereby shall be terminated, without further action by any Party;

(b) The Buyer shall return all documents and copies and other materials received from or on behalf of the Sellers relating to the transactions contemplated hereby, whether so obtained before, on or after the execution and delivery of this Agreement, to the Sellers; and

(c) All information received or accumulated by the Buyer or its representatives relating to the Business shall be treated as being subject to the Confidentiality Agreements, notwithstanding the termination of this Agreement.

11.3 No Liabilities in Event of Termination. If this Agreement is terminated as provided in Section 11.1, then this Agreement shall forthwith become wholly void and of no further force and effect, and there shall be no Liability under this Agreement on the part of the Buyer or the Sellers, except that the respective obligations of the Buyer or the Sellers, as the case may be, under Sections 11.2 and 12.1 shall remain in full force and effect, and except for Liability of any Party for any failure to perform any of its obligations under this Agreement prior to such termination (including any failure by a Party to consummate the transactions contemplated by this Agreement if it is obligated to do so hereunder).

ARTICLE 12.

MISCELLANEOUS

12.1 Publicity. The Parties agree that, from and after the date of this Agreement, no public release, written statement or announcement concerning the transactions contemplated hereby shall be issued or made without the prior written consent of all Parties, except for (i) the content of any such release or announcement that is required by applicable Law or judicial Order, which release or announcement shall be made available to the other Parties for their review as soon as reasonably practicable prior to such disclosure, or (ii) any release, written statement or announcement made in Buyer's public meetings and subject to North Carolina public records laws. Notwithstanding the foregoing, any Party may issue a press release on the Closing Date, provided that such Party shall allow the other Party reasonable time to comment on such release in advance of, and approve, such issuance (which approval shall not be unreasonably withheld, delayed or conditioned).

12.2 Assignment. Except to the extent otherwise expressly set forth in this Agreement, no Party may assign, transfer or encumber this Agreement, or its rights or obligations hereunder, in whole or in part, voluntarily or by operation of Law, without the prior written consent of the other Party, and any attempted assignment, transfer or encumbrance without such consent shall be void and without effect.

12.3 Parties in Interest. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective permitted successors and assigns.

12.4 Amendment. No modifications, amendments or supplements to this Agreement shall be valid and binding unless set forth in a written agreement executed and delivered by the Parties.

12.5 Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless set forth in a written instrument executed and delivered by the Party so waiving. Except as provided in the preceding sentence, no action taken pursuant to this Agreement shall be deemed to constitute a waiver by the Party taking such action of compliance with any representations, warranties, covenants or agreements contained in this Agreement and in any documents delivered or to be delivered pursuant to this Agreement and in connection with the Closing under this Agreement. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

12.6 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by facsimile or other electronic means, by a nationally recognized overnight courier or by registered or certified mail (postage prepaid, return receipt requested) to the other Parties as follows:

TO THE BUYER:

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

With copy (which shall not constitute notice) to:

McGuireWoods LLP
300 North Third Street, Suite 320
Wilmington, NC 28401
Attn: J. Dickson McLean, Esq.
Telephone: (910) 254-3810
Facsimile: (910) 254-3900
Email: dmclean@mcguirewoods.com

and

McGuireWoods LLP
504 Fayetteville Street, Suite 500
Raleigh, NC 27601
Attn: Mary Nash K. Rusher, Esq.
Telephone: (919) 755-6694
Facsimile: (919) 755-6613
Email: mnrusher@mcguirewoods.com

TO THE SELLERS:

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

With a copy (which shall not constitute notice) to:

Murchison, Taylor & Gibson, PLLC
1979 Eastwood Road, Suite 101
Wilmington, NC 28403
Attn: G. Stephen Diab, Esq. and
Amanda K. Miars, Esq.
Telephone: (910)763-2426
Facsimile: (910)763-6561
Email: sdiab@murchisontaylor.com
amiars@murchisontaylor.com

or to such other person or address as any Party shall have specified by like notice in writing to the other Party. If personally delivered, then such communication shall be deemed delivered upon actual receipt; if sent by facsimile or electronic transmission, then such communication shall be deemed delivered the day of transmission or, if transmission is not made by 5:00 p.m., North Carolina time on a Business Day, the first Business Day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier, then such communication shall be deemed delivered upon receipt; and if sent by U.S. mail, then such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant

postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal.

12.7 Expenses. Regardless of whether or not the transactions contemplated hereby are consummated and except to the extent otherwise expressly set forth in this Agreement, all expenses incurred by the Parties shall be borne solely and entirely by the Party that has incurred such expenses.

12.8 Section Headings; Table of Contents. The Section headings contained in this Agreement and the Table of Contents to this Agreement are for reference and convenience purposes only and shall not affect the meaning or interpretation of this Agreement.

12.9 Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, then such provisions shall be construed so that the remaining provisions of this Agreement shall not be affected, but shall remain in full force and effect, and any such illegal, void or unenforceable provisions shall be deemed, without further action on the part of any person or entity, to be modified, amended and/or limited, but only to the extent necessary to render the same valid and enforceable in the applicable jurisdiction.

12.10 No Strict Construction. Notwithstanding the fact that this Agreement has been drafted or prepared by one of the Parties, each Party confirms that both it and its counsel have reviewed, negotiated and adopted this Agreement as the joint agreement and understanding of the Parties. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

12.11 Governing Law; Jurisdiction; Venue. The Parties agree that this Agreement and all matters arising from or relating to this Agreement shall be governed by and construed in accordance with the Laws of North Carolina, without regard to the conflict of law principles thereof. The Parties hereto irrevocably and unconditionally submit to the exclusive jurisdiction of the United States District Court for the Eastern District, Southern Division of the State of North Carolina and/or the Superior Court of Brunswick County, North Carolina, in any action or proceeding arising out of or relating to this Agreement, and each of the Parties hereto irrevocably and unconditionally agrees that all Claims in respect of any such action or proceeding may be heard and determined in such state court or, to the fullest extent permitted by applicable Law, in such federal court. Without limitation of other means of service, the Parties hereto agree that service of any process, summons, notice or document with respect to any action, suit or proceeding may be served on it in accordance with the notice provisions set forth in Section 12.6. The Parties hereto irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

12.12 Sellers' Representative. The Sellers' Representative hereby is appointed, authorized and empowered to act, on behalf of each Seller, in connection with the activities to be performed after the Closing on the Sellers' behalf under this Agreement and the documents

delivered pursuant hereto, for the purposes and with the powers and authority set forth in this Section 12.12 and elsewhere in this Agreement, which will include the power and authority:

(a) to execute and deliver such amendments, waivers and consents in connection with this Agreement and the documents delivered pursuant hereto as the Sellers' Representative, in its reasonable discretion, may deem necessary or desirable to give effect to the intentions of this Agreement and the documents delivered pursuant hereto;

(b) to enforce and protect the Sellers' rights and interests arising out of or under or in any manner relating to this Agreement and the documents delivered pursuant hereto;

(c) to refrain from enforcing any right of any Seller and/or of the Sellers' Representative arising out of or under or in any manner relating to this Agreement and the documents delivered pursuant hereto;

(d) to make, execute, acknowledge and deliver all such other contracts, agreements, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other writings, and, in general, to do any and all things and to take any and all action that Sellers' Representative, in his or her sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the activities described herein;

(e) to collect, hold and disburse the Purchase Price and any other amounts paid in accordance with the terms of this Agreement and the documents delivered pursuant hereto;

(f) to engage special counsel, accountants and other advisors and incur such other expenses on behalf of the Sellers in connection with any matter arising under this Agreement; and

(g) in general, to do any and all things and to take any and all action that the Sellers' Representative, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the transactions contemplated by this Agreement.

12.13 Other Sellers' Representative Provisions.

(a) All of the indemnities, immunities and powers granted to the Sellers' Representative under this Agreement shall survive the Closing.

(b) The Buyer may rely upon all actions taken or omitted to be taken by the Sellers' Representative pursuant to this Agreement, all of which actions or omissions shall be legally binding upon the Sellers.

(c) The grant of authority provided for herein (i) is coupled with an interest and shall be irrevocable and survive the death, incompetency, bankruptcy or liquidation

of any Seller, and (ii) shall survive the consummation of the Closing, and any action taken by the Sellers' Representative pursuant to the authority granted in this Agreement shall be effective and absolutely binding on each Seller notwithstanding any contrary action of or direction from such Seller, except for actions or omissions of the Sellers' Representative constituting gross negligence or willful misconduct.

(d) Sellers, acting together, shall have the right, exercisable from time to time upon written notice delivered to Sellers' Representative and Buyer, to remove Sellers' Representative, with or without cause, and to appoint a successor Sellers' Representative. Any such replacement of Sellers' Representative shall be effective only upon receipt of written notice, together with reasonable evidence of such replacement, by Buyer in accordance with Section 12.6. Any successor appointed in accordance with the foregoing shall be the "Sellers' Representative" for all purposes under this Agreement.

(e) Sellers, jointly and severally, shall indemnify Sellers' Representative against any Losses (except such Losses resulting from Sellers' Representative's gross negligence or willful misconduct) that Sellers' Representative may suffer or incur in connection with any action or omission as Sellers' Representative. Sellers' Representative shall not be liable to any Seller with respect to any action or omission taken or omitted to be taken by Sellers' Representative pursuant to Section 12.12, except for Sellers' Representative's gross negligence or willful misconduct.

12.14 Entire Agreement. This Agreement, together with the Schedules and Exhibits attached hereto, constitute the entire agreement between the Parties, and supersede all prior agreements and understandings, oral and written, between the Parties, with respect to the subject matter hereof; there are no conditions to this Agreement that are not expressly stated in this Agreement.

12.15 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, except as set forth in this Section 12.15, time is of the essence. In the computation of any period of time provided for in this Agreement or by Law, the day of the act or event from which the period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday in the State of North Carolina, in which case the period shall be deemed to run until the end of the next day which is not a Saturday, Sunday or legal holiday. Furthermore, if Closing does not occur on the Closing Date because of the occurrence of a "Force Majeure", the Closing Date shall be extended to the next practical business day subsequent to such occurrence. For purposes of this Agreement, the term "Force Majeure" means acts of God (including, but not limited to tornadoes, floods, hurricanes or other natural disasters), pandemics, expropriation or confiscation of facilities by any Governmental Entity, compliance with any order or request of any Governmental Entity, strikes, lockouts, riots, or other labor troubles or a national emergency, or similar causes not within a Party's reasonable control.

12.16 Counterparts. This Agreement may be executed in one or more counterparts or counterpart signature pages, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; all counterpart signature pages will be read as though one, and they will have the same force and effect as though all of the signers had signed a

single signature page. Any facsimile or emailed signature attached hereto will be deemed to be an original and will have the same force and effect as an original signature.

[The next page is the signature page.]

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed as of the date set forth above by their duly authorized representatives.

BUYER:

**BALD HEAD ISLAND
TRANSPORTATION AUTHORITY**

By: _____
Name: Susan Rabon
Title: Chair

SELLERS:

**BALD HEAD ISLAND
TRANSPORTATION, INC.**

By: _____
Name: _____
Title: _____

BALD HEAD ISLAND LIMITED, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

DEFINITIONS

For all purposes of this Agreement, the following terms shall have the following respective meanings:

“Affiliate” means any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by Contract or otherwise and, in any event and without limitation of the previous sentence, any Person owning 20% or more of the voting securities of another Person shall be deemed to control that Person.

“Affirmation Regarding Declaration of Easements and Covenants of Bald Head Island Marina Association” means an affirmation to the Bald Head Island Marina Association Declaration recorded in Book 3514 at Page 1105 in the office of the Register of Deeds of Brunswick County, North Carolina regarding the admission of Buyer as a member of the Bald Head Island Marina Association at Closing, substantially in the form attached hereto as Exhibit I, and which shall be recorded in the office of the Register of Deeds of Brunswick County, North Carolina at Closing.

“Agreement” has the meaning set forth in the preamble of this Agreement.

“Amendment to Deep Point Declaration of Easements” means an amendment to the Declaration of Easements for Deep Point Marina recorded in Book 4307 at Page 746 in the office of the Brunswick County, North Carolina Register of Deeds pursuant to which BHIL and the Buyer shall agree upon their respective rights and obligations relating to the sharing of (1) the right to use the Deep Point terminal facilities, the Deep Point entrance channel, the Deep Point marina basin and the related spoil basin/island, including for depositing and/or burying dredging and spoil, and (2) the costs and expenses associated with the maintenance, repair and/or dredging of the marina basin and entrance channel, the spoil basin/island, and any related jetties or groins, seawalls or pilings, substantially in the form attached hereto as Exhibit J, and which shall be recorded in the office of the Register of Deeds of Brunswick County, North Carolina at Closing.

“Assets” has the meaning set forth in Section 1.1.

“Assignment and Assumption Agreement” has the meaning set forth in Section 10.1(c).

“Assumed Contracts” has the meaning set forth in Section 1.1(g).

“Assumed Liabilities” has the meaning set forth in Section 1.3(b).

“Benefit Plans” means each Retirement Plan, whether written or unwritten or subject to ERISA, as well as each employee benefit or compensation plan, arrangement or agreement (whether written or unwritten) and each employment, consulting, bonus, supplemental income, collective-bargaining, incentive or deferred compensation, vacation, equity or equity-based, severance, termination, retention, change-in-control, profit-sharing, fringe benefit, workers’

compensation, voluntary employees' beneficiary association, health, welfare, accident, sickness, death benefit, hospitalization, insurance, personnel policy, disability benefit or other similar plan, program, agreement, arrangement or commitment (whether or not written) for the benefit of any current, former or retired employee, consultant, independent contractor or other service provider of either Seller or any ERISA Affiliate entered into, maintained, sponsored or contributed to by either Seller or any ERISA Affiliate or to which either Seller or any ERISA Affiliate has any liability, contingent or otherwise.

“Books and Records” has the meaning set forth in Section 1.1(h).

“Business” has the meaning set forth in the recitals of this Agreement.

“Business Day” means any day other than Saturday, Sunday or other day on which commercial banks in the State of North Carolina are authorized or required by Law to be closed.

“Buyer” has the meaning set forth in the preamble of this Agreement.

“Buyer Fundamental Representations” mean the representations and warranties of the Buyer set forth in Sections 4.2(a), 4.2(b), and 4.2(d).

“Buyer Indemnified Parties” means, collectively, Buyer, its trustees, officers, employees, successors and assigns.

“Buyer Notice” has the meaning set forth in Section 5.7(a).

“CERCLA” means the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended.

“Claim” means any claim, cause of action, demand, litigation, action, suit, arbitration, proceeding, or right in action.

“Closing” has the meaning set forth in Article 3.

“Closing Date” has the meaning set forth in Article 3.

“COBRA” has the meaning set forth in Section 6.2(d).

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Commitment” and “Commitments” have the meanings set forth in Section 5.7(a).

“Confidentiality Agreements” means those certain confidentiality agreements by and between Sellers and Buyer and those certain confidentiality agreements between Sellers and one or more representatives of Buyer.

“Contract” means any indenture, mortgage, deed of trust, lease, licensing agreement, contract, instrument or other agreement (whether written or oral, and whether express or implied), that is legally binding.

“Customer Information” means all information data: (i) supplied by or on behalf of a customer to any of the Sellers for processing, storing or use, (ii) collected, stored or processed by any of the Sellers during the course of providing services to a customer which can be used to identify an individual or (iii) created or derived by Sellers from such information or data or otherwise in connection with services provided to or performed for a customer which can be used to identify an individual.

“Cutoff Date” means the second anniversary of the Closing Date.

“Data and Privacy Security Laws” means any Law governing (a) the proper use, collection, recording, storing, altering, retrieving, consulting, transferring, disclosing (whether authorized or unauthorized) or otherwise processing personally identifiable information regarding an individual who can be identified from such data or from such data and other information in the possession of the Sellers (e.g., customer name, street address, telephone number, e-mail addresses, credit card or other payment information, social security numbers, driver’s license numbers or biometric data), (b) notification to individuals or Governmental Entities upon loss, unauthorized access or other misuse of personal data and (c) the administrative, technical, or physical controls that protect personally identifiable information from unauthorized access, use or disclosure. Data Privacy and Security Laws shall also specifically include (i) the Payment Card Industry Standard (PCI DSS), which ensures the security of credit card transactions and related personal financial information, even in jurisdictions where PCI DSS has not been expressly adopted by the legislature and (ii) the standards promulgated by the National Institute of Standards and Technology (NIST) as it relates to the protection and security of personal data.

“Defect” has the meaning set forth in Section 5.7(a).

“Employee PII” means any personally identifying information of the Employees.

“Employees” has the meaning set forth in Section 4.1(m).

“Environmental Law” means any Laws related to pollution or the protection of the environment, or health or safety, as the same may be amended from time to time.

“Environmental Reports” means and includes all material documents, records and information in Sellers’ possession or reasonable control, concerning environmental conditions, compliance with or potential Liability under Environmental Laws or the exposure of any Person to any Hazardous Material in any way associated with Sellers, the Business, and/or the Owned Real Properties, including previously conducted environmental compliance audits, environmental site assessments, documents regarding any Release or disposal of Hazardous Materials at, upon or from the Owned Real Properties, spill control plans and environmental reports and correspondence.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any regulations or rulings issued thereunder.

“ERISA Affiliate” means (i) any entity that is a member of a controlled group with the Sellers, as described in Code Section 414(b), or that is under common control with the Sellers,

for the purposes of Code Section 414(c), (ii) any entity that is part of an affiliated service group with the Sellers as described in Code Section 414(m), or (iii) any entity that is required to be aggregated with the Sellers pursuant to Code Section 414(o).

“Excluded Assets” has the meaning set forth in Section 1.2.

“Excluded Liabilities” has the meaning set forth in Section 1.3(a).

“Financial Statements” has the meaning set forth in Section 4.1(d).

“Force Majeure” has the meaning set forth in Section 12.15.

“Governmental Entity” means any court, arbitrator, department, commission, board, bureau, agency, authority, instrumentality or other body, whether federal, state, local, foreign or other.

“Hazardous Material” means any pollutant, contaminant, toxic substance, hazardous waste, hazardous material, or hazardous substance, or any oil, petroleum, or petroleum product, which is or becomes prior to the Closing regulated under, or defined as a “hazardous substance,” “pollutant,” “contaminant,” “toxic chemical,” “hazardous material,” “toxic substance” “hazardous chemical,” or “petroleum” under any Environmental Law, including (i) CERCLA, (ii) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 et seq., (iii) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., (iv) the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., (v) the Solid Waste Disposal Act, 42 U.S.C. Section 6901 et seq., (vi) regulations promulgated under any of the above statutes, or (vii) any other applicable federal, state or local statute, ordinance, rule or regulation that has a scope or purpose similar to those identified above, as amended, or any other Environmental Law existing as of the date hereof.

“Holdback Amount” means Four Hundred Seventy-Seven Thousand Five Hundred and No/100 Dollars (\$477,500.00).

“Indemnification Notice” has the meaning set forth in Section 9.4.

“Indemnified Party” has the meaning set forth in Section 9.4.

“Indemnifying Party” has the meaning set forth in Section 9.4.

“Indemnity Cap” means the sum of Four Million Seven Hundred Seventy-Five Thousand and No/100 Dollars (\$4,775,000.00).

“Intellectual Property Agreements” means all licenses, sublicenses, consent to sue agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to any Intellectual Property Rights.

“Intellectual Property Rights” has the meaning set forth in Section 1.1(c).

“IRS” means the United States Internal Revenue Service.

“Knowledge of Sellers” (or similar terms) means the actual knowledge, after due inquiry, of the following persons: Charles A. Paul, III, Shirley Mayfield, Judith Ward, Claude McKernan (Manager of Transportation), Howard Frazier (Assistant Transportation Manager), Willie Carraway (Assistant Transportation Manager), Belinda Carraway (HR Administrator), Timothy Nelson (IT Manager) [and] Cheryl Napier (Support Services Supervisor) and Dan O’Reilly (Parking Supervisor).

“Law(s)” means any federal, state, local, foreign or other statute, law, ordinance, treaty, rule or regulation.

“LGC” shall mean the North Carolina Local Government Commission, a division of the Department of State Treasurer, and includes any authorized representative of the LGC.

“Liability” or “Liabilities” means and include any direct or indirect liability or obligation that a Person owes to or at the behest of any other party, fixed or unfixed, known or unknown, asserted or unasserted, liquidated or unliquidated, secured or unsecured, joint or several, absolute or contingent, accrued or unaccrued, whether called a liability, obligation, indebtedness, guaranty, endorsement, claim or responsibility or otherwise.

“Lien” means any mortgage, lien, pledge, charge, security interest or encumbrance of any kind.

“Loss” means (i) all debts, Liabilities owed to or at the behest of any other Person, (ii) all losses, damages, judgments, awards, penalties and settlements, (iii) all Claims, whether or not ultimately determined to be valid, and (iv) all costs and expenses (including interest (but excluding prejudgment interest in any litigated or arbitrated matter other than that payable to a third party), court costs and reasonable fees and expenses of attorneys and expert witnesses) of investigating, defending or asserting any of the foregoing.

“Material Adverse Effect” means any state of facts, change, event, violation, inaccuracy, effect, condition, circumstance, occurrence or development that, individually or taken together, are materially adverse to the business, operations, properties, results of operations, assets, Liabilities or condition (including financial condition) of the Business or the Assets or prevent the consummation of the transactions contemplated hereby; *provided, however*, that Material Adverse Effect shall exclude any adverse changes or conditions as and to the extent such changes or conditions relate to or result from: (a) public or industry knowledge of the transactions contemplated by this Agreement, (b) the announcement or consummation of the transactions contemplated by this Agreement, (c) any actions by Buyer, (d) changes in interest rates, financial or capital markets, applicable accounting standards, principles or interpretations of general application, (e) changes in general legal, tax, regulatory or political conditions that, in each case, generally affect the industry of the Sellers as a whole and that do not adversely affect the Sellers to a materially greater extent than its competitors in the industry, (f) the current or outbreak of a new pandemic, the outbreak of war or the occurrence of acts of terrorism or other national emergencies, or (g) compliance by Sellers with the terms of, or the taking of any action contemplated or permitted by, this Agreement; provided, however, that in the case of clauses (d),

(e) and (f) above if such matter or effect disproportionately affects the Sellers as compared to other similarly situated participants in the industries or markets in which the Sellers operate, then the disproportionate aspect of such matter or effect may be taken into account in determining whether a Material Adverse Effect has occurred.

“Material Suppliers” has the meaning set forth in Section 4.1(r).

“New Leases” means the Commercial Lease Agreement – Deep Point Marina Warehouse Facility pursuant to which BHIL shall lease the land, buildings and improvements comprising the Sellers’ Warehouse from Buyer, the Commercial Lease Agreement – Deep Point Marina IT Data Center pursuant to which BHIL will lease the IT Data Center located at Deep Point Marina from Buyer, and Commercial Lease Agreement – Advertising Space pursuant to which BHIL will lease certain advertising space located at the Deep Point facility from Buyer, all substantially in the forms attached hereto as Exhibit H.

“NCUC” means the North Carolina Utilities Commission.

“Order” means any order, writ, injunction, judgment, plan or decree of any Governmental Entity.

“Ordinary Course of Business” means, with respect to any Sellers, the ordinary course of business of the Sellers consistent with past custom and practice (including with respect to quantity and frequency).

“Outside Date” has the meaning set forth in Section 11.1(b).

“Owned Real Properties” means, collectively, all of the parcels of land, together with all buildings, structures, improvements and fixtures located thereon, and all easements and other rights and interests appurtenant thereto, owned by one or more Sellers, and an “Owned Real Property” means any of the foregoing, as are more fully set forth on Schedule 1.1(b).

“Party” or “Parties” means the Buyer and/or the Sellers, as the case may be.

“Permits” means licenses, sublicenses, permits, approvals, certifications, endorsements, qualifications, accreditations, consents and authorizations of all Governmental Entities.

“Permitted Liens” means (i) mechanic’s, materialmen’s, carriers’, repairers’ and other Liens arising or incurred in the Ordinary Course of Business for amounts that are not yet delinquent, (ii) Liens for Taxes, assessments or other governmental charges not yet due and payable as of the Closing Date, (iii) encumbrances (other than liens for voluntary indebtedness not otherwise subject to a payoff letter) and restrictions on real property (including easements, covenants, conditions, rights of way and similar restrictions) which, taken individually or as a whole, are not material, and that do not adversely interfere with the present uses or occupancy of such real property by the owner or lessee thereof, (iv) Liens granted to any lender at the Closing in connection with any financing by Buyer of the transactions contemplated hereby, (v) zoning, building codes and other land use Laws regulating the use or occupancy of real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property but excluding any violations of any such Laws which materially interfere

with the present uses or occupancy of such real property by the owner or lessee thereof, (vi) matters that would be disclosed by an accurate survey or inspection of the real property, or that are of record and which do not materially interfere with, directly or indirectly, in an operational manner, financial manner or otherwise, the present uses or occupancy of such real property by the owner, assignee lessee, or sublessee thereof, (vii) Liens described on any title commitment issued to Buyer pursuant to Section 5.7, exclusive of Monetary Liens which must be paid and discharged by Sellers at or prior to Closing, and (viii) any right, interest, Lien or title of a licensor, sublicensee, licensee, sublicensee, lessor or sublessor under any license or lease agreement or in the property being leased or licensed which is assumed by Buyer at Closing. If the Closing occurs, for purposes of determining the liability of Sellers under this Agreement after the Closing for any Loss arising out of or related to any Lien affecting any Owned Real Property (whether for breach of contract, indemnification, an action at Law or otherwise under this Agreement, except, in each case, for the fraud of any of Sellers), “Permitted Liens” shall include any Lien of record as of the Closing Date, except for any Liens of a definite or ascertainable monetary nature (“Monetary Lien”) required to be removed or satisfied under this Agreement as of the Closing Date and other encumbrances that Sellers expressly agree to satisfy after Closing.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, trust or unincorporated organization or Governmental Entity.

“Personal Data” means any information pertaining to an individual, including (a) data that identifies or, alone or in combination with other available information, could reasonably be used to identify a natural person, whether living or deceased, and (b) any other information pertaining to a specific individual that is regulated or protected by one or more Data and Privacy Security Laws.

“Personal Property” has the meaning set forth in Section 1.1(a).

“Pre-Closing Charges” has the meaning set forth in Section 6.1(c).

“Pre-Closing Taxes” shall mean any Taxes of or with respect to Sellers for (i) any and all tax periods ending on or prior to the Closing Date; (ii) the portion of any Straddle Period ending on the Closing Date; and (iii) Transfer Taxes allocated to and payable by the Sellers pursuant to Section 6.1(b).

“Proceeding” means any action, suit, claim, assessment, hearing, proceeding, arbitration, investigation, audit, inquiry, or mediation by or before any Governmental Entity or other Person.

“Purchase Price” has the meaning set forth in Section 2.1.

“Recent Balance Sheet” has the meaning set forth in Section 4.1(d).

“Release(s)” has the meaning set forth in CERCLA.

“Required Consents” has the meaning set forth in Section 7.5.

“Retirement Plans” means any employee pension benefit plan (including, without limitation, any multi-employer pension plan) as defined in Section 3(2) of ERISA or under any

other state or federal statute regulating pension plans which either Seller has maintained, sponsored, participated in or made contributions to on behalf of any of the Employees or has any liability, contingent or otherwise.

“Revenue Bonds” means the revenue bonds to be issued by Buyer in connection with the Closing of the Transaction, subject to obtaining all Required Consents relating to the issuance thereof, consisting of the Series 2021A Revenue Bonds and the Series 2021B Revenue Bonds.

“Right of First Refusal Agreement” means the Right of First Refusal Agreement substantially in the form attached hereto as Exhibit K.

“RWI Policy” has the meaning set forth in Section 5.6.

“Seller Fundamental Representations” mean the representations and warranties of Sellers set forth in Sections 4.1(a), 4.1(b), 4.1(e), 4.1(j), and 4.1(o).

“Seller Indemnified Parties” means, collectively, the Sellers, their Affiliates and their respective shareholders, directors, members, managers, officers, employees and successors and assigns.

“Sellers” has the meaning set forth in the preamble of this Agreement.

“Sellers’ Records” has the meaning set forth in Section 1.2(d).

“Sellers’ Representative” means Charles A. Paul, III, or the Person named as a successor in accordance with the provisions of Section 12.13.

“Sellers’ Warehouse” means the warehouse of BHIL located at the Deep Point terminal facilities, which is part of the Owned Real Properties and will be the subject of the applicable New Lease between Buyer and BHIL.

“Series 2021A Revenue Bonds” means the Bald Head Island Transportation Authority Transportation System Revenue Bonds, Series 2021A to be issued by Buyer at Closing.

“Series 2021B Revenue Bonds” means the Bald Head Island Transportation Authority Transportation System Revenue Bonds, Series 2021B (Taxable) to be issued by Buyer at Closing.

“Special Indemnity Matters” has the meaning set forth in Section 9.2(a)(iv).

“Straddle Period” has the meaning set forth in Section 6.1(c).

“Tax” or “Taxes” means any and all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, escheat, unclaimed property, or other tax of any kind whatsoever, whether

computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other Person.

“Tax Return” means any return, declaration, report, estimate, claim for refund, or information return or statement relating to, or required to be filed in connection with, any Taxes, including any schedule, form, attachment or amendment.

“Third Party Claim” has the meaning set forth in Section 9.5(a).

“Title Company” has the meaning set forth in Section 5.7(a).

“Title Objection Date” has the meaning set forth in Section 5.7(a).

“Title Policy” means the owner’s title insurance policy issued to Buyer on the Closing Date for the Owned Real Properties by the Title Company.

“Transaction” has the meaning set forth in the recitals of this Agreement.

“Transferred Vehicles” has the meaning set forth in Section 1.1(e).

“Transferred Vessels” has the meaning set forth in Section 1.1(e).

“Transferring Employee” has the meaning set forth in Section 6.2(b).

“Transition Operating Agreement” has the meaning set forth in Section 10.1(l).

Where any group or category of items or matters is defined collectively in the plural number, any item or matter within such definition may be referred to using such defined term in the singular number, and vice versa.

EXHIBIT B
FORM OF IP ASSIGNMENT

EXHIBIT C

FORM OF TRANSITION OPERATING AGREEMENT

EXHIBIT D

RWI POLICY
(see attached)

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

EXHIBIT E

FORM OF BILL OF SALE AND ASSIGNMENT

EXHIBIT F

FORM OF SPECIAL WARRANTY DEED

EXHIBIT G

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT H
FORMS OF NEW LEASES

EXHIBIT I

**FORM OF AFFIRMATION REGARDING DECLARATION OF EASEMENTS AND
COVENANTS OF BALD HEAD ISLAND MARINA ASSOCIATION**

EXHIBIT J

FORM OF AMENDMENT TO DEEP POINT DECLARATION OF EASEMENTS

EXHIBIT K

FORM OF RIGHT OF FIRST REFUSAL AGREEMENT

EXHIBIT L

FORM OF TITLE COMMITMENT/TITLE PRO FORMA

Draft of November 2, 2020

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

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

WITNESSETH:

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

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

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

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

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

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

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

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

ARTICLE I SERVICES PROVIDED BY OPERATOR

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

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

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

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

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

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

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

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

ARTICLE II OBLIGATIONS OF THE AUTHORITY

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

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

Section 2.03 Insurance carried by Authority. [TO COME]

ARTICLE III
RECEIPT AND DISBURSEMENT OF FUNDS

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

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

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

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

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

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

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

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

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

ARTICLE IV
TRANSITION OF FERRY SYSTEM OPERATIONS TO AUTHORITY

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

- (i) The employees and all related human resources functions, including payroll, benefits, employment manuals, as further described in **Exhibit B**, and the parties agree to use commercially reasonable efforts to complete this transition on or before June 30, [2022].
- (ii) Information technology functions, including electronic ticket and parking sales, website maintenance and design, and other informational technology, as further described in **Exhibit D**;
- (iii) Accounting and maintenance of books and records as further described in **Exhibit C**;
- (iv) Security of the Facilities, as further described as item (ix) in **Exhibit A**;
- (v) Emergency Response, as further described as item (ix) in **Exhibit A**; and
- (vi) All other aspects of operating the Ferry System Operations, as further described in **Exhibit A**.

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

ARTICLE V COMPENSATION OF OPERATOR

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

ARTICLE VI OPERATOR EMPLOYEES

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

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

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

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

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

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

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

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

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

ARTICLE VII PROHIBITION AGAINST LIENS

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

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

ARTICLE VIII INDEMNIFICATION

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

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

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

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

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

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

ARTICLE IX TERMINATION

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

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

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

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

ARTICLE X MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If to Operator:

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

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

If to the Authority:

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

With a copy to:

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

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

[Remainder of page intentionally left blank]

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

AUTHORITY:

BALD HEAD ISLAND TRANSPORTATION
AUTHORITY

By: _____
Susan Rabon, Chair

BHIL:

BALD HEAD ISLAND LIMITED, LLC

By: _____
Charles A. Paul, III, CEO and Manager

BHIT:

BALD HEAD ISLAND TRANSPORTATION, INC.

By: _____
Charles A. Paul, III, President

Exhibit A

FERRY SYSTEM OPERATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Insurance against Operator's liabilities under the Workmen's Compensation Law, the Longshoremen's and Harbor Worker's Act, and other like state and federal liability statutes, in an amount not less than _____ (\$ _____) Dollars; and²

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

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

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

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

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

² To be completed based on past practices.

Exhibit B

HUMAN RESOURCES

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

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

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

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

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

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

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

Exhibit C

FINANCIAL OPERATIONS

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

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

Exhibit D

INFORMATION TECHNOLOGY

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

(a) Telephone

(b) Internet access

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

(ii) Computer Systems

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

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

(iv) Security, including virus protection

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

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

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

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

Exhibit E

FORM OF ANNUAL BUDGET

Exhibit F

LIST OF INITIAL OPERATOR EMPLOYEES

Exhibit G

DESIGNATED REPRESENTATIVES

FOR THE AUTHORITY:

Susan Rabon

FOR THE OPERATOR:

Charles A. Paul III