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October 13, 2022

Ms. A. Shonta Dunston Chief Clerk North Carolina Utilities Commission 430 N. Salisbury Street Room 5063 Raleigh, NC 27603 FILED

OCT 13 REC'D

Clerk's Office
N.C. Utilities Commission

Re: In the Matter of

Village of Bald Head Island v. Bald Head Island Transportation, Inc. and Bald Head Island Limited, LLC; NCUC Docket No. A-41, Sub 21 Charles A. Paul, III Redirect Exhibits

Dear Ms. Dunston:

On behalf of Bald Head Island Transportation, Inc. and Bald Head Island Limited, LLC, Respondents in the above referenced matter, attached are Charles A. Paul, III Redirect Exhibits 1A, 1B, and 2 through 4 for filing in the docket.

Thank you in advance for your assistance with this filing. If you should have any questions concerning this submittal, please contact me.

Sincerely,

Isl W. Gray Styers, Ir.
M. Gray Styers, Jr.

pbb

Enclosures

A Pennsylvania Limited Liability Partnership

California Colorado Delaware District of Columbia Florida Georgia Illinois Minnesota Nevada **New Jersey** New York North Carolina Pennsylvania South Carolina Texas Washington Ms. A. Shonta Dunston Page Two October 13, 2022

cc: NC Public Staff
Commission Staff
Counsel and Parties of Record

Brunswick County, NC Register of Beeds page 1 of 8

Return to Bald	Head CIL	TYPETS
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- Document contains seds verified by original instrument that cannot be reproduced or copied.

DECLARATION OF EASEMENTS FOR DEEP POINT MARINA

Prepared by: MURCHISON, TAYLOR, & GIBSON, PLLC 1979 Eastwood Road, Suite 101, Wilmington, NC 28403

STATE OF NORTH CAROLINA

Ĩ.

COUNTY OF BRUNSWICK

THIS DECLARATION OF EASEMENTS FOR DEEP POINT MARINA (this "Declaration") is made and entered into as of the 23th day of ANNAPA, 2020, by BALD HEAD ISLAND LIMITED LLC, a Texas limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the sole owner of that certain real property lying and being in the City of Southport, Brunswick County, North Carolina, which real property is more particularly identified as "Tract 1," "Tract 2" and the "Marina Chanel Basin" as shown on that plat of survey recorded in Map Cabinet 119, Pages 001- of the Brunswick County Registry (the "Plat"); and

WHEREAS, each of Tract 1, Tract 2, and the Marina Channel Basin may be referred to herein individually as a "Tract" and collectively as the "Tracts"; and

WHEREAS, Declarant has determined that use and enjoyment of the Tracts will be facilitated by the grant and reservation of certain easements for the benefit of Declarant and various successor owners of the Tracts (each, an "Owner" and collectively, the "Owners"), all in accordance with the terms and conditions hereinafter set forth;

NOW THEREFORE, the Declarant, as the current owner of all of the Tracts, does hereby encumber the Tracts with the following easements and covenants, it being the intent of the Declarant that the Tracts shall be owned, conveyed and used subject to all of the provisions of this Declaration, which provisions shall run with the title to the Tracts and be binding upon all persons now or hereafter having any right, title, or interest in any portion of the Tracts, their heirs, successors, successors-in-title and assigns, to wit:

- 1. Cross-Access Easement. The Declarant hereby declares, creates and establishes for each of the Owners and their respective tenants, licensees, invitees, successors and assigns, a perpetual, mutual, reciprocal and non-exclusive easement for ingress, egress and regress, to, from and between the Tracts and public rights-of-way and/or bodies of water, over, upon and under all pedestrian and/or vehicular access ways, streets, roads, entrances and exits, driveways, paths, and sidewalks, whether now existing as shown on the Plat, or as may be created or modified in the future, subject to the terms hereof (collectively, the "Access Easement Areas"). It is Declarant's intent that the cross-access easement described in this paragraph (the "Cross-Access Easement") shall be an appurtenance to all of the Tracts and shall run with the titles thereto. Notwithstanding the foregoing, Declarant does not intend to establish, by virtue of this Declaration, any right or easement for the Owners to utilize parking spaces within the boundaries of the Tracts they do not own.
- 2. <u>Utility Easement</u>. The Declarant hereby declares, creates and establishes for each of the Owner of Tract 1 and the Owner of the Marina Channel Basin Tract (the "<u>MCB Tract</u>"), and their respective successors and assigns, a perpetual and non-exclusive easement over, upon and under all Access Easement Areas, along with all sanitary sewer lines, water lines, drainage lines and underground conduit lines located within the boundaries of Tract 2, as such lines are shown on the Plat, along with ten (10) feet on either side of such existing lines (collectively, the "<u>Utility Easement Areas</u>") for the purposes of installation, construction, operation, maintenance, inspection, repair and replacement of all utilities (including, without limitation, stormwater drainage, gas, water, sewer, electrical, telephone, cable and dredging) necessary or appropriate to service Tract 1 and/or the MCB Tract, respectively. It is Declarant's intent that the utility easement described in this paragraph (the "<u>Utility Easement</u>") shall be an appurtenance to and benefit for Tract 1 and the MCB Tract, and it shall burden and run with the title to Tract 2.
- Spoil Easement. The Declarant hereby declares, creates and establishes for each of the 3. Owner of Tract 1 and the Owner of the MCB Tract, and their respective successors and assigns, a perpetual and non-exclusive easement over, upon and under the area within the boundaries of Tract 2 that is designated as "Spoil Basin" on the Plat, along with an additional ten (10) feet around the entire perimeter of such Spoil Basin (collectively, the "Spoil Easement Area") for the purposes of depositing and/or burying dredging and spoil materials as may be necessary or appropriate to service Tract 1 and/or MCB Tract, respectively. To the extent not already granted pursuant to the Cross-Access Easement and Utility Easement described above, the Declarant also hereby declares, grants, creates and establishes for each of the Owners of Tract 1 and the MCB Tract, such additional access and utility easements on, across and over Tract 2 (but not through any buildings or structures) as shall be reasonably necessary for those Owners to access the Spoil Easement Area for the purposes established by this Declaration. It is Declarant's intent that the easements described in this paragraph (collectively, the "Spoil Easement") shall be an appurtenance to and benefit for Tract 1 and the MCB Tract, and it shall burden and run with the title to Tract 2.

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Signage Easement. The Declarant hereby declares, creates and establishes for each of the Owner of Tract 1 and the Owner of the MCB Tract, and their respective successors and assigns, a perpetual and non-exclusive easement over, upon and under the existing monument sign structure (the "Sign Structure)" located at the intersection of the public right-of-way known as Ferry Road and the most westerly entrance to Tract 2, identified as "WS4 NAIL & CAP" on the Plat, and within the boundaries of Tract 2 (the location of the Sign, together with five (5) feet around such sign, being the "Sign Easement Area") for the purposes of installing, maintaining, repairing and replacing signage as may be appropriate to provide direction and advertisement for Tract 1 and/or the MCB Tract, respectively. It is Declarant's intent that the signage easement described in this paragraph (the "Signage Easement") shall be an appurtenance to and benefit for Tract 1 and the MCB Tract, and it shall burden and run with the title to Tract 2.

The Owner of Tract 2 shall not make any material changes to the Sign Structure without the written consent of the owner of Tract 1 and the owner of the MCB Tract. Unless the parties agree otherwise, each of the Owners of Tract 1 and Tract 2 shall have the right to utilize 1/2 of the signage space or panels on the Sign Structure and shall, by mutual agreement, determine the equitable location of each Tracts' signage.

- Use of the Easement Areas. All uses of the Access Easement Areas, the Utility Easement 5. Areas, the Spoil Easement Area and the Signage Easement Area (collectively, the "Easement Areas") by the benefitted Owners and their respective tenants, licensees, invitees, successors and assigns shall be in compliance with all applicable laws, rules, codes, ordinances and other governmental regulations. Each Owner hereby reserves the right to use its respective Tract, and to grant others the right to use its respective Tract, for any purposes not inconsistent with the easement rights granted under this Declaration and which will not unreasonably interfere with the enjoyment of the benefits of the Easements established hereunder, including, without limitation, the right of the Owner to install utility improvements and landscaping improvements therein. No Owner will allow any walls, fences or other physical conditions or barriers which unreasonably interfere with the use and enjoyment of the easements established and granted in this Declaration; provided however, Owners are not prohibited from utilizing fences and gates so long as reasonable access is granted to the other benefitted tracts in accordance with the terms hereof.
- Modification to Easement Areas. In no event shall the locations or dimensions of the 6. Easement Areas be altered or changed in any material respect without the written consent of the Owners of all of the Tracts, except where such alteration or change is required for compliance with law or governmental regulation, in which case the altering Owner shall provide reasonable advance notice of the proposed alteration to the other Owners, and alternative access of similar type and quality. Provided, however, nothing contained herein shall prevent Declarant, or any other future Owner of any Tract, from installing, as said Declarant or Owner deems necessary or desirable; additional pedestrian or vehicular access ways, streets, roads, entrances and exits, driveways, paths and sidewalks, curbing, paving and lighting, utilities, infrastructure, landscaping or signage within the respective Owner's Tract, without the permission or consent of the other Owners, as long as the rights granted in the Access Easement, Utility Easement, Spoil Easement and Signage Easement (collectively, the "Easements") are not unreasonably disturbed.

Maintenance of Easement Areas. Except as provided in Section 11 below, each Owner shall, at its own cost and expense, clean, repair, maintain in good condition, order and appearance, and replace, as necessary, the Easement Areas and all improvements located thereon within each Owner's respective Tract, all in accordance with applicable laws, permits, rules and regulations. Such maintenance shall include, but shall not be limited to, paving, cleaning, clearing, snow and ice removal, repairs and replacements, including resurfacing and restriping, maintenance of lights and light standards, landscaping, and all other functions necessary for the good and proper upkeep and operation of the Easement Areas. Notwithstanding anything to the contrary contained in this Declaration, in the event repairs or maintenance is required on an Owner's Tract as a result of any act (including, without limitation, construction-related activities), omission or negligence of any other Owner or its employees, contractors or agents, that other Owner shall be solely responsible for such repairs or maintenance.

For a period of five (5) years following the recordation of this Declaration, and provided that Declarant still owns any portion of the Tracts, Declarant reserves the right to establish: (i) one or more cost-sharing arrangement(s) between or among the Tract Owners, to which said Owners shall be bound, for the repair, maintenance, dredging and/or insuring of any or all of the Easement Areas, which agreement may be unrecorded and may, at Declarant's option and in Declarant's sold discretion, require that certain maintenance obligations be assigned to an (incorporated or unincorporated) owners' association, which association will accept such obligations and assess all Owners for their share of the same, and in the event Declarant assigns any maintenance or repair obligations to an owners' association, all easements described herein shall automatically inure to the benefit of said association without the need for additional grants or conveyances; and (ii) one or more cost sharing arrangement(s) between or among the Tract Owners, to which said Owners shall be bound, for the repair, replacement, maintenance, dredging and/or insuring of any submerged lands, bulkheads, channel walls and associated structures that may be located within the Tracts. In the event Declarant establishes one or more of the arrangements described in this paragraph, Declarant shall record evidence of the same in the Brunswick County Registry, by either amending or supplementing this Declaration or by recording a new Declaration or agreement, any or all of which Declarant shall be entitled to record unilaterally without the consent or joinder or any other Tract Owner.

8. Insurance. Each Owner shall maintain in full force and effect, at its sole cost and expense, commercial general liability insurance policy(ies) with coverage limits of not less than \$1,000,000.00 combined single limit, per occurrence, covering all activities of that Owner and its agents, contractors, employees, tenants, licensees and invitees in and around the Easement Areas: Each Owner (for itself and its insurer[s]) hereby waives any rights, including rights of subrogation, such Owner may have against the other Owners for compensation for any loss or damage arising from any risk generally covered by insurance actually carried or required to be carried by the Owners under this Declaration. The foregoing waivers of subrogation shall be operative only so long as available in the State of North Carolina and only so long as the same do not invalidate any insurance coverage maintained by the Owners.

- 9. Indemnities. Each Owner (the "Indemnifying Owner") shall indemnify, defend and hold harmless the other Owners (the "Indemnified Owners") of, from, for and against any and all demands, losses, claims, costs, damages, expenses or liabilities, including without limitation reasonable attorneys' fees and costs, imposed upon or suffered by any of the Indemnified Owners as a result of (i) the Indemnifying Owner's breach or default under the terms of this Declaration, or (ii) arising out of any personal injury or property damage, to the extent caused by the acts or omissions of the Indemnifying Owner. An Indemnifying Owner shall not be responsible for claims, demands, causes of action, or damages arising out of any personal injury or property damage to the extent caused by an Indemnified Owner arising out of this Declaration. Notwithstanding the foregoing, each Owner hereby waives all claims against the other Owners for consequential, incidental, special, exemplary and punitive damages arising out of or relating to this Declaration, except to the extent such damages are recoverable by a third party with respect to whom an Indemnifying Owner is obligated to indemnify an Indemnified Owner. Subject to the immediately preceding sentence, the Indemnifying Owner's liability under this section shall be limited to actual damages and in no event will the Indemnifying Owner otherwise be obligated for punitive, incidental or consequential damages.
- Remedies. If any Owner refuses or neglects to repair, replace, or maintain the improvements 10. that such Owner is obligated to maintain hereunder in accordance with the terms and conditions of this Declaration within thirty (30) days after receipt of notice from another Owner, then the Owner having given such notice shall have the right, but not the obligation, to enter upon the non-performing Owner's Tract for purposes of completing such repairs or performing such maintenance or replacements (the "Work") on behalf of and for the account of the non-performing Owner. If an Owner performs any Work on the other Owner's behalf and for the other Owner's account as contemplated in this section, then the non-performing Owner shall, upon demand and receipt of reasonable documentation supporting the expenditures, pay to the Owner performing such Work all reasonable costs and expenses incurred in completing such Work. In the event of any other breach or default of any term or provision hereof or obligation hereunder, if such breach or default is not cured within thirty (30) days after notice thereof is given to the breaching or defaulting Owner by the non-defaulting Owner (provided; however, that if such breach or default cannot reasonably be cured within thirty (30) days, then the breaching Owner shall not be deemed in default if the curing is commenced within; ten (10) days after said Owner receives of notice of default and thereafter diligently pursued to completion), the nondefaulting Owner shall have any and all rights and remedies available pursuant to this Declaration, or existing at law or in equity, including, without limitation, the right to an injunction or specific performance. Provided further, if a breach or default by an Owner results in an emergency condition (such as a lack of access to a tract or an unreasonable interruption in utility service), then the affected Owner, acting in good faith, shall have the right to perform the Work necessary to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, if notice is given as soon as reasonably possible thereafter. The remedies permitted or available pursuant to the provisions of this Declaration, at law or in equity, shall be cumulative.

- Dedication to Public/Owner's Association. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of or interest in the Tracts to the general public or for the general public or for any public purpose whatsoever, and this Declaration shall be strictly limited to and for the purposes expressed herein. Notwithstanding the foregoing, nothing contained in this Declaration shall be interpreted to preclude any Owner from dedicating and/or conveying any or all of the Easement Areas to another financially responsible entity, private or public, or to one or more owner's association(s), provided that such transfer by dedication or conveyance shall not adversely affect the use and enjoyment of the Easements described herein. In the event of any such transfer, the transferring Owner shall assign to the transferee all of said Owner's obligations hereunder, including without limitation the Owner's maintenance and repair obligations, and the transferee shall assume the same. Upon such assignment and the assumption of such obligations by the transferee in an instrument placed of record in the Brunswick County Public Registry, the transferring Owner shall be released from further liability or obligation for any and all repair and maintenance obligations accruing hereunder from and after the effective date of the recording of such assignment and assumption.
- 12. Priority Consents. The Easements described herein shall be superior to all leases, sales, conveyances, transfers, assignments, contracts, deeds of trust or other encumbrances, instruments and documents that are recorded after the recordation date of this Declaration and which affect the Tracts in any way, and any person foreclosing any such junior deed of trust, lien or encumbrance and all other persons or entities acquiring title to or an interest in any Tract shall acquire and hold title to such property subject to the Easements and other terms of this Declaration.
- 13. Relationship. The Easements and rights established and granted in this Declaration are intended to create a property interest or right only in the Owners of fee simple title to the Tracts, and their respective heirs, successors in title, and assigns. Neither this Declaration nor the obligations hereunder shall constitute a partnership or joint venture between the Owners, nor shall it create any relationship of principal-agent, master-servant, or employer-employee. Each Owner hereby agrees that it will not represent or hold out to any third person that any such relationship exists by reason of this Declaration.
- 14. Covenants to Run with Land; Binding on Successors and Assigns. The Easements and rights established and granted in this Declaration and the various terms, conditions, reservations and restrictions set forth herein, are (i) easements and covenants running with the Tracts, (ii) easements appurtenant to the Tracts, and (iii) binding upon and shall inure to the benefit of the respective Owners of fee simple title to each of the respective Tracts, and their respective heirs, successors and assigns in title and all those claiming by, through or under each such Owner or its, his or her heirs, successors and assigns in title. Every person, including a mortgagee, acquiring or holding any interest or estate in any portion of the Tracts shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration; and in accepting such interest or estate in, or a security interest with respect to, any portion of any of the Tracts, such person shall be deemed to have assented to this Declaration and all of the terms and provisions hereof.



15. <u>Termination of Liability</u>. No Owner shall remain liable for any default or breach hereof occurring after such Owner's conveyance of its fee title in its respective Tract, and such Owner's successor shall be deemed to have assumed all of the duties and obligations arising under this Declaration relative to such successor's Tract.

16. Miscellaneous.

- (a) <u>Law Governing</u>. This Declaration shall be governed by and construed in accordance with the laws of the State of North Carolina.
- (b) Entire Agreement: Amendment. This Declaration contains the entire agreement relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated. This Declaration may not be amended orally but only by setting same forth in a document duly executed by the Declarant and duly recorded in the Brunswick County Registry. Without limiting the foregoing, any amendments, supplements or related agreements described in or contemplated by Section 7 of this Declaration shall not require the joinder of any other Owner(s) of the Tracts.
- (c) <u>Severability</u>. This Declaration is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Declaration or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Declaration and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- (d) No Public Dedication: No Third Party Beneficiaries or Consents. Notwithstanding any public trust doctrine or otherwise, this Declaration is not intended, and shall not be construed (i) as a dedication to the public of any interests in the Tracts, (ii) to give any member of the public, or any person other than as provided herein, any right whatsoever herein or therein or (iii) to require any consent or other action of any other person other than as expressly provided herein to any amendment to or waiver of any provision of this Declaration.
- (e) <u>Waiver</u>: This Declaration may not be waived orally or impliedly, but only by written document executed by the party against which such waiver is sought. Neither the failure of a party to complain of any violation of this Declaration, regardless of how long such failure continues, nor the failure of a party to invoke (or the election by a party not to invoke) any right, remedy or recourse for a violation hereof, shall extinguish, waive or in any way diminish the rights, remedies and recourses of the party with respect to such violation. No waiver by a party of any provision of this Declaration shall be deemed to be a waiver of any other provision hereof.
- (f) <u>Reconfiguration of Tracts.</u> Unless Declarant consents, this Declaration shall not be terminated, waived or otherwise altered in the event that the Tracts, or any portion of each, are recombined, subdivided or otherwise reconfigured.

- No Merger. Notwithstanding that all or any portion of the Tracts may be held in common ownership from time to time, such common ownership shall not act as a merger of the estates created in this Declaration and shall not cause a partial or whole termination of this Declaration.
- Notice. All notices and other communications given pursuant to this Declaration (h) shall be in writing and shall either be mailed by first class mail, postage prepaid, registered or certified with return receipt requested, or delivered in person to the intended addresses, or sent by overnight mail. Notice by mail shall be effective upon the expiration of three (3) business days after its deposit. Notice given in any other manner shall be effective only if and when received by the addressee. For purpose of notice, the parties' addresses shall be as listed with their Tracts in the Brunswick County land records.

IN TESTIMONY WHEREOF, the Declarant has set its hand to be effective as of the day and year first above written.

> BALD HEAD ISLAND LIMITED LLC, a Texas limited liability company

Name: Charles A. Paul III

Title: Manager

STATE OF NORTH CAROLINA **BRUNSWICK COUNTY**

1. ELEN MICHELE MUDHAN _ a Notary Public for said County and State, do hereby certify that Charles A. Paul, III, Manager of Bald Head Island Limited LLC, personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing instrument for and on behalf of said Bald Head Island Limited LLC.

WITNESS my hand and official seal, this the 28day of January, 2020.

OFFICIAL SEAL LLEN MICHELE WINDHAM COUNTY OF BRUNSWICK

Notary Public

My commission expires: Nov. 13, 2021

CAP REDIRECT EXHIBIT 1B - A-41 SUB 21











