Brunswick County--Register of Deeds
Robert J. Robinson
Inst #24941 Book 1329Page 932
09/10/1999 03:06pm Rec# 24275

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

RIGHT OF FIRST REFUSAL

THIS AGREEMENT, made and entered into this the 21 day of August, 1999, by and between **BALD HEAD ISLAND TRANSPORTATION, INC.**, hereinafter referred to as "TRANSPORTATION"; the **VILLAGE OF BALD HEAD ISLAND**, hereinafter referred to as "VILLAGE"; and **BALD HEAD ISLAND LIMITED**, hereinafter referred to as "LIMITED":

WITNESSETH

THAT WHEREAS, the VILLAGE was granted certain rights with regard to the Bald Head Island transportation system, hereinafter defined; and

WHEREAS, substantial questions exist with regard to rights and obligations of the parties hereto with regard to such transportation system, and

WHEREAS, rather than engaging in lengthy and costly litigation regarding those issues, the parties hereto desire to resolve all outstanding questions between them by the execution of this agreement;

NOW, THEREFORE, for and in consideration of the sum of TEN DOLLARS ($10.00) paid to TRANSPORTATION by the VILLAGE, the receipt and sufficiency of which is hereby acknowledged, and further in consideration of the covenants, stipulations and agreements herein contained, the parties hereto do agree, covenant and stipulate as follows:

1. That VILLAGE be and hereby is granted a Right of First Refusal, pursuant to the terms and conditions of this agreement, to purchase the Bald Head Island Transportation System or any portion thereof.

"The Bald Head Island Transportation System" (hereinafter referred to as "Transportation System") shall be defined as those assets, tangible and intangible, directly and integrally used in the transportation of persons and property to and from Bald Head Island and, further, in the transportation of such goods or persons while on Bald Head Island, and any and all substitutions thereof and any and all reasonably related accessories thereto, including but not limited to ferries, boats, tugboats, barges, trams, motor vehicles to pull trams, and any and all other personal property, titled or untitled motor vehicles and all accessories thereto, and any real property owned or leased comprising docking or parking facilities, administrative facilities, or facilities designed to facilitate the transfer of individuals to and from the ferry and ground transportation, including a means of access from such real estate to and from a public right-of-way, including any and all improvements to such real estate. Specifically, this Right of First Refusal shall include those parcels of real estate described as follows:

RCT Bill Fairley
TOTAL 16.00 REV TC#
REC# 02 CK AMT 37.46 CK# 4824
CASH REF BY CS

(a) Tracts 2, 3 and 4 (consisting of 1.03 acres, 0.2 acres, and 1.19 acres, respectively) as shown on a map entitled "Plat of Survey for Bald Head Island Limited" by Brunswick Surveying, Inc., dated 8/25/99, and recorded in Map Cabinet 21, Instrument 500 of the Brunswick County Registry, a copy of which is attached hereto.

(b) That tract or parcel of land lying and being in or near the City of Southport, Smithville Township, Brunswick County, North Carolina, and more particularly described as follows: BEING approximately 76.39 acres, more or less, as described on a plat of survey made by Thomas W. Morgan, R.L.S., of Brunswick Surveying, Inc. and recorded in Map Cabinet 20 at Page 414 of the Brunswick County Registry, to which plat reference is made and which is incorporated herein by reference for greater certainty of description.

This Right of First Refusal shall further include, but not be limited to, the right to assignment by LIMITED of the non-exclusive easement retained by LIMITED for the use of and for ingress, egress and regress over, across and through those properties described by deed recorded in Book 778 at Page 61 of the Brunswick County Registry, and the riparian rights appurtenant thereto, for all purposes deemed appropriate by LIMITED, its successors and assigns, including without limitation the operation of ferries, barges, boats and trams.

This Right of First Refusal shall not apply to sale, conveyance or other transfer of any assets comprising the Transportation System where such assets are sold by TRANSPORTATION in the usual course of business due to obsolescence or other reasons relating to the continued usefulness of such asset to the system. Further, this Right of First Refusal shall not be applicable to a transfer of the system or any assets therein so long as such sale shall be a transfer to any entity owned as a corporation or other entity owned by LIMITED, George Mitchell or any of George Mitchell's children or immediate family so long as such asset remains dedicated to use as an operating portion of the system.

2. The purchase price to be paid by VILLAGE for the Transportation System and the terms of such purchase shall be equal to the price of the assets comprising the Transportation System and the terms of purchase as shall be contained in any *bona fide* offer from a third party dealing at arm's length with TRANSPORTATION or any successor in title to TRANSPORTATION.

3. TRANSPORTATION agrees that it shall notify VILLAGE at such time as TRANSPORTATION begins to contemplate the sale of the Transportation System or any portion thereof, other than such sales as shall be exempt from this Right of First Refusal pursuant to paragraph 1 hereof.

4. Upon receipt by TRANSPORTATION of any acceptable offer to purchase the Transportation System or any portion thereof, TRANSPORTATION shall notify VILLAGE of the existence of an offer acceptable to it for the sale of such asset or assets. Notice shall be delivered in

Inst # 24941 Book 1329Page: 933

writing to the Village Manager and shall include notice to the VILLAGE of the existence of an offer to purchase the Transportation System or a portion thereof and shall identify the following.

(1) The asset or assets which are the subject of such offer;
(2) The identity of the individual or entity making such offer;
(3) The proposed purchase price and terms including any conditions on sale; and
(4) The proposed closing date.

Upon receipt of notice from TRANSPORTATION as to the existence of an offer acceptable to TRANSPORTATION, the VILLAGE shall have a period of sixty (60) days from the date of receipt of such notice to determine whether to match such offer. The VILLAGE shall inform TRANSPORTATION, in writing, of its decision within sixty (60) days of the receipt of notice. In the event that VILLAGE shall fail to respond in writing to TRANSPORTATION within sixty (60) days of the receipt of notice, such failure shall constitute a waiver of the Right of First Refusal herein contained by the VILLAGE. If the VILLAGE elects to exercise its option to match the offer, the VILLAGE shall close upon the purchase of such assets within a period of time equal to one hundred eighty (180) days from the date that VILLAGE exercises its Right of First Refusal or the closing date as set forth in the proposed offer, whichever date shall be later.

The VILLAGE may exercise its Right of First Refusal subject to approval by the Local Government Commission of any financing required to consummate the purchase of the Transportation System and further subject to any other governmental approvals that would be necessary for the VILLAGE to purchase and operate the Transportation System and to finance the purchase price thereof.

5. With regard to the existence of real estate which shall be the subject of this Right of First Refusal, the parties agree to record the original of this Right of First Refusal or a memorandum thereof, together with a description of such real estate, in the office of the Register of Deeds for Brunswick County. In the event that TRANSPORTATION desires to sell any real estate subject hereto, the VILLAGE shall release such real estate from this Right of First Refusal upon (1) designation by TRANSPORTATION of a suitable substitute therefor and (2) upon determination by the VILLAGE that the proposed substitute real estate is substantially equivalent or superior to the released property for the purposes for which the released property has been used in the Transportation System. The parties shall then execute such documents as shall release the original property from this Right of First Refusal and subject the substituted property thereto.

6. The terms and conditions of this agreement supersede any and all other offers, contracts or rights of first refusal of the VILLAGE to purchase any or all of the assets which are the subject of this agreement heretofore existing between the VILLAGE and Bald Head Island Limited. This instrument constitutes the entire agreement between the parties and shall be governed by and interpreted under the laws of the State of North Carolina. The parties stipulate that the venue of any litigation arising herefrom shall be in the Superior Court of Brunswick County.

Inst # 24941 Book 1329Page: 934

7. This agreement shall become effective only upon approval by the North Carolina Public Utilities Commission.

8. Any notice required to be given herein shall be sent by certified mail, return receipt requested, to the parties as follows:

TRANSPORTATION:
Bald Head Island Transportation, Inc.
P. O. Box 3069
Bald Head Island, NC 28461

ATTENTION: Woody Fulton

VILLAGE:
Village of Bald Head Island
P. O.Box 3009
Bald Head Island, NC 28461

ATTENTION: Manager

LIMITED:
Bald Head Island Limited
P. O. Box 3069
Bald Head Island, NC 28461

ATTENTION: M. Kent Mitchell

Inst # 21941 Book 1329Page: 935

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in triplicate originals as of the date first above written.

BALD HEAD ISLAND TRANSPORTATION, INC

(CORPORATE SEAL)

BY: _____
Vice President

ATTEST:
B.O. German
Assistant Secretary

VILLAGE OF BALD HEAD ISLAND

(MUNICIPAL SEAL)

BY: _____
Mayor

ATTEST:
Joann A. Campanello
Clerk

BALD HEAD ISLAND LIMITED (SEAL)

BY: _____ (SEAL)
Attorney-in-Fact

Inst # 24941 Book 1329Page: 936

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Lorraine Thompson, a Notary Public, do hereby certify that Kenneth M. Kirkman, Vice President personally appeared before me this 23rd day of August, 1999 and acknowledged the due execution of the foregoing instrument.

OFFICIAL SEAL
Notary Public - North Carolina
BRUNSWICK COUNTY
LORRAINE THOMPSON
My Commission Expires 12-8-04

Lorraine Thompson
Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Josann A Campanello, a Notary Public, do hereby certify that Kathryn E. Henson, Mayor personally appeared before me this 21 day of August, 1999 and acknowledged the due execution of the foregoing instrument.

NOTARY PUBLIC
BRUNSWICK COUNTY, NC

Josann A Campanello
Notary Public

My Commission expires: 12-8-2001

STATE OF NORTH CAROLINA
County of Brunswick

I, Lorraine Thompson, a Notary Public for said County and State, do hereby certify that Kenneth M. Kirkman attorney in fact for Bald Head Island Limited personally appeared before me this day, and being by me duly sworn, says that he executed the foregoing and annexed instrument for and in behalf of the said Bald Head Island Limited, and that his authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds in the County of Brunswick, State of North Carolina, in Deed Book 1143 at Page 916, and that this instrument was executed under and by virtue of the authority given by said instrument granting him power of attorney.

I do further certify that the said Kenneth M. Kirkman acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said Bald Head Island Limited.

WITNESS my hand and official seal, this the 23rd day of August, 1999

OFFICIAL SEAL
Notary Public - North Carolina
BRUNSWICK COUNTY
LORRAINE THOMPSON
My Commission Expires 12-8-04

Lorraine Thompson
Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of LORRAINE THOMPSON JOSANN A CAMPANELLO

Notary(ies) Public is (are) Certified to be Correct.
This Instrument was filed for Registration on this 10th Day of September, 1999
in the Book and Page shown on the First Page hereof.

ROBERT J. ROBINSON, Register of Deeds