

No. COA24-127

NORTH CAROLINA COURT OF APPEALS

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STATE OF NORTH CAROLINA ex  
rel. UTILITIES COMMISSION;  
BALD HEAD ISLAND  
TRANSPORTATION, INC.,  
Applicant; BALD HEAD ISLAND  
LIMITED, LLC, Applicant; BALD  
HEAD ISLAND FERRY  
TRANSPORTATION, LLC, Applicant,

Appellees,

v.

VILLAGE OF BALD HEAD ISLAND,

Intervenor-Appellant.

From the North Carolina Utilities  
Commission

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**APPELLEES' BRIEF**

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VILLAGE OF BALD HEAD ISLAND,

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From the North Carolina Utilities  
Commission

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**APPELLEES' BRIEF**

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The North Carolina Utilities Commission is the public body tasked with determining what is in the public interest regarding regulated public utilities. That responsibility includes determining when, and under what conditions, a utility can merge or be acquired. Here, the seven-member Commission conducted a multi-day hearing, considered extensive evidence, and unanimously determined that a certain transfer of ownership was in the public interest. Moreover, the Public Staff of the Utilities Commission, an

independent state agency representing the “using and consuming public,” investigated the transaction, conducted extensive discovery, testified at the hearing, and concluded that the transfer was in the public interest and should be approved with conditions to which the buyer agreed.

In this appeal, a third-party intervenor (that itself wants to buy the utility rather than have it bought by the intended purchaser) asks this Court for an appellate “do-over.” That is improper. Although the intervenor repeats the mantra “legal errors,” in reality, the intervenor simply disagrees with the Commission’s decision. Because the decision was supported by abundant evidence and well within the Commission’s statutory discretion as the agency regulating utilities, this Court should affirm.

### **STATEMENT OF FACTS**

The one-sided recitation of the facts by Appellant Village of Bald Head Island assumes that the evidence should be taken in the light most favorable to it. But because the Commission’s decision is statutorily deemed to be just and reasonable (as discussed below), the facts should be analyzed in the light of the actual findings made by the Commission in reaching its decision—not how the Village wishes this Court to rehear the evidence. Those facts show the following.

Bald Head Island (“Island”) is the southernmost barrier island in North Carolina, sitting off the coast of Southport. (T(2) p 33). The Island was

purchased out of receivership by George P. Mitchell in 1983. (*Id.*). Mr. Mitchell, an avid conservationist, pursued responsible and sustainable development while preserving the Island's natural environment. (T(2) pp 33, 56-57). He formed Bald Head Island Limited, LLC ("Limited") to oversee that development and set aside 10,000 acres on the Island as a permanent nature reserve. (*Id.*). The Island remains accessible only by boat, and on-Island transportation is largely restricted to trams, golf carts, and bicycles. (T(2) pp 33-34). The Village is the local government on the Island, managed by a council and a mayor. (*See* T(4) p 75).

In 1993, Limited formed Bald Head Island Transportation, Inc. ("Transportation") as a subsidiary to operate the passenger ferry and on-Island tram system. (T(2) p 34). Transportation was granted a Certificate of Authority by the Commission for these operations in 1995. (*Id.*). Transportation currently owns four passenger ferries and 23 trams. (*Id.*). The ferries run between the City of Southport and the Island, and the trams transport passengers between the Island ferry terminal and their on-Island destinations. (*Id.*).

Transportation's parent company, Limited, owns the ferry terminals in Southport and on the Island; the ferry terminals are leased to Transportation. (*Id.*). Limited also owns and operates the parking lots adjacent to the Southport ferry terminal as well as the barge that is used to transport vehicles

between the Island and the mainland. (*Id.* at 34, 38-40). Limited, however, was not named in the Certificate of Authority, and its parking and barge operations were not historically regulated by the Commission.<sup>1</sup>

Mr. Mitchell died in 2013. (R p 839). Knowing that the transportation assets would have to be transferred before his estate could be closed, Limited began looking for potential buyers. (R p 839). Hoping to preserve Mr. Mitchell's vision for the Island, Limited focused on finding a buyer with not only the financial wherewithal and experience to ensure a seamless transition but also with an appreciation of the Island's importance to North Carolina. (T(2) p 43).

In 2017, the General Assembly passed the Ferry Transportation Authority Act, which authorized the creation of regional ferry authorities to provide ferry transportation services. *See* N.C. Gen. Stat. §§ 160A-680 to 689; (T(2) p 42). The Village, the City of Southport, and Brunswick County promptly formed the Bald Head Island Transportation Authority (the

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<sup>1</sup> The scope of the Commission's regulatory jurisdiction (or lack thereof) over the parking and barge functions is the subject of a pending appeal before this Court in docket number COA23-424. Shortly before the agreement between SharpVue and Limited was finalized, the Village filed a complaint asking the Commission to regulate the parking and barge services for the first time. On 30 December 2022, in a split decision, the Commission entered an order in that proceeding concluding that it had jurisdiction over the parking and barge functions. The Commission also concluded that it would not decide until a later proceeding how to address the rates for those services because all parties were satisfied with both the rates and services.

“Transportation Authority”). (R p 839; T(2) p 42). That same year, the Transportation Authority negotiated an agreement to purchase the ferry, tram, parking, and barge operations from Limited and Transportation. (*Id.*).

But then, the Village decided that it wanted to purchase these assets for itself and sought to upend a smooth transfer to any other buyer. (*See, e.g.*, T(4) pp 123-25). For example, before the Transportation Authority could consummate the sale, it had to obtain approval by the Local Government Commission. (R p 839; T(2) p 42). The Village objected to the sale, and the Local Government Commission withheld approval. (T(2) pp 42, 101-02). The Village then conducted a \$54 million bond referendum, but the Village ultimately concluded that it could not afford to purchase the system at its fair market price. (*See, e.g.*, T(4) pp 123-25).

Needing to sell the assets to close Mr. Mitchell’s estate (which had now been open for several years), Limited resumed its search for other buyers. (*See* T(2) p 42)). Limited hoped to find a buyer (preferably based in North Carolina) that would purchase all of the transportation assets to maintain a seamless operation, even though selling the assets separately would yield more money. (*Id.*; T(9) p 118). In 2022, Limited found a buyer based in Raleigh that exemplified the Mitchell family’s legacy and vision: SharpVue Capital, LLC (“SharpVue”), managed by Lee Roberts and Doug Vaughn. (T(2) p 43).

Prior to signing the asset purchase agreement, SharpVue found investors who were attracted to the long-term nature of this investment. (T(3) pp 14, 21, 65, 82; T(9) pp 20, 110; R p 853). While SharpVue presented shorter-term alternative scenarios to potential investors, it was always understood that SharpVue intended to hold the assets for the long-term. (*Id.*; *see also* R p 852). SharpVue set up a holding company (Pelican Legacy Holdings) and three subsidiaries: Appellee Bald Head Island Ferry Transportation, LLC (“BHIFT”) (which would own the regulated assets), Pelican Logistics, LLC (which would own the non-regulated assets), and Pelican Real Property, LLC (which would own the real estate to be leased for the transportation services). (R p 834). This structure largely mirrored the previous ownership structure under the Mitchell family: Limited (which owned the unregulated assets and real property) and Transportation (which owns the regulated assets). (T(9) p 38). A purchase price was agreed upon and supported by previous appraisals done for the Transportation Authority as well as by subsequent appraisals for SharpVue’s lenders. (T(3) p 153; T(9) pp 25-26).

Transportation and BHIFT then filed an application with the Utilities Commission to transfer the Certificate of Authority. (R p 3). The Village quickly intervened in this proceeding. (R p 48). The Public Staff, representing the using and consuming public, was made a party to the proceeding by statute. N.C. Gen. Stat. § 62-15(d) [App. 6]. The parties engaged in extensive discovery

and pre-filed direct, response, and reply testimony pursuant to the Commission's scheduling order. (*See R* pp 59-132, 140-239, 397-417).

On 1 November 2022, the Commission conducted a public witness hearing in Brunswick County. Then, the Commission received testimony and other evidence over the course of a week at an evidentiary hearing in March 2023. In its presentation, the Village struggled to articulate its reason for opposing the transfer, offering nothing more than its belief that it was a more appropriate buyer<sup>2</sup> in light of SharpVue's status as a private equity firm that the Village feared would prioritize profits over service. (T(4) pp 146, 161-64). The Village recognized that Mr. Mitchell's estate could not own the assets indefinitely and that some transfer was necessary, but the Village maintained that it was best suited to run the ferry (even though it could not afford the purchase). (T(4) pp 130, 141, 146). At the same time, the Village endorsed SharpVue's operational plans, stating that if the Village were able to buy the system, it would take the same approach. (T(4) pp 140-41).

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<sup>2</sup> Neither Limited nor Transportation entered into an agreement to sell assets to the Village, (*see* T(4) pp 150-51), and the only issue before the Commission was whether the transfer to SharpVue was permissible pursuant to N.C. Gen. Stat. § 62-111. The General Statutes do not provide a mechanism for the Commission to pick and choose among potential transferees. Fundamental freedom-of-contract principles allow a willing seller to enter into a purchase agreement with whatever willing buyer it selects at an agreed-upon price. The Commission's role is to determine whether that particular transfer of a utility is in the public interest.



When pressed by Commissioners, the Village's Mayor Pro Tem admitted that the Village had no objection to a third party operating the ferry system so long as the Commission was satisfied that the system was safe, reliable, and reasonably priced and that the Commission would continue to provide oversight. (T(4) pp 130-31, 142). He also agreed that the current parking and barge rates are reasonable. (T(4) pp 151-52).

Following the hearing, the applicants and the Public Staff agreed to terms on which the transfer approval should be conditioned and jointly submitted the conditions to the Commission. (R pp 527-45). Among other things, these conditions prevented ferry rate increases for at least one year following the sale and prevented parking and barge rate increases (with the exception of inflation adjustments) for six years. (R pp 840, 862, 867).

The Commission accepted post-hearing proposed orders and briefs from the parties. (R pp 546-86, 702-811). The applicants and the Public Staff, on behalf of the using and consuming public, submitted a joint proposed order recommending approval of the sale to SharpVue with the conditions that they had agreed upon. (R pp 546-86). On 22 August 2023, after three months of deliberation, the Commission unanimously entered its 28-page order approving the transfer and incorporating the seven pages of conditions proposed by the applicants and the Public Staff. (R pp 833-67). Specifically, the Commission concluded that the transfer to SharpVue "is in the public

interest, is justified by the public convenience and necessity, and should be granted subject to all of the terms, conditions, and provisions of this Order.” (R p 859). This conclusion followed numerous findings of facts, based upon evidence in the record, detailing the benefits of the transfer and how the potential costs and risks were being minimized to benefit the public. (R pp 840-43). Among other things, the Commission found that the transfer and the proposed conditions were the best way to ensure that the ferry system’s operations remained safe, reliable, and reasonably priced. (R pp 841-43). And, the Commission recognized its continuing oversight of the utility. (R p 840).

The Village now appeals.

### **ARGUMENT**

#### **I. THE GENERAL ASSEMBLY ENTRUSTED THE UTILITIES COMMISSION WITH THE REGULATION OF PUBLIC UTILITIES AND ALLOWED LIMITED APPELLATE REVIEW OF ITS DECISIONS.**

Our legislature has determined that “the rates, services and operations of public utilities . . . are affected with the public interest” and that “the availability of an adequate and reliable [utility service] . . . to the people, economy and government of North Carolina is a matter of public policy.” N.C. Gen. Stat. § 62-2(a) [App. 2]. Accordingly, the General Assembly conferred upon the Utilities Commission the authority “to regulate public utilities generally, their rates, services and operations, and their expansion.” *Id.* § 62-

2(b) [App. 3]. The Public Utilities Act mandates that the Commission “shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary.” *Id.* § 62-30 [App. 9]. The Commission is also “vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service.” *Id.* § 62-32(b) [App. 10].

“The Commission is considered an administrative board or agency of the General Assembly . . . .” *State ex rel. Utils. Comm’n v. Carolina Water Serv., Inc. of N.C.*, 225 N.C. App. 120, 133, 738 S.E.2d 187, 196 (2013) (citing N.C. Gen. Stat. § 62-23 [App. 8]). By enacting the Public Utilities Act, “our General Assembly conferred broad powers to regulate public utilities and to compel their operation in accordance with the policy of the State.” *Id.* at 133-34, 738 S.E.2d at 196. One of the Commission’s duties is “to ensure that utility companies provide adequate and reliable service to the people of North Carolina.” *State ex rel. Utils. Comm’n v. Carolina Power & Light Co.*, 359 N.C. 516, 526, 614 S.E.2d 281, 288 (2005).

Among other responsibilities, the Commission oversees the process of transferring ownership of a public utility. The criteria for approval of a transfer are set out in the Public Utilities Act. *State ex rel. Utils. Comm’n v. Estes Exp. Lines*, 33 N.C. App. 174, 176, 234 S.E.2d 624, 626 (1977). Generally, a public utility seeking to transfer its franchise must obtain written approval

by the Commission, “which approval shall be given if justified by the public convenience and necessity.” N.C. Gen. Stat. § 62-111(a) [App. 13]. This standard is not high. *See Estes Exp. Lines*, 33 N.C. App. at 106, 234 S.E.2d at 632-33 (holding that the standard was satisfied when the transferor company “was actively and continuously engaged in transportation under the authority sought to be transferred”). This low standard for a *transfer* can be contrasted with the higher standard for a new, competing utility—which looks at public need, service already being provided, and the effect on existing operations. *See State ex rel. Utils. Comm’n v. Carolina Coach Co.*, 269 N.C. 717, 721-22, 153 S.E.2d 461, 464-65 (1967).

Because of the broad scope of the Commission’s authority over utilities, appellate review of its discretionary decisions is limited. By statute, any “finding, determination, or order made by the Commission” is considered “prima facie just and reasonable.” N.C. Gen. Stat. § 62-94(e) [App. 12]. “This means that the Court may not replace the Commission’s judgment with its own when there are two reasonably conflicting views of the evidence.” *State ex rel. Utils. Comm’n v. Carolina Water Serv., Inc.*, 165 N.C. App. 163, 166, 598 S.E.2d 179, 182 (2004) (internal quotation omitted). Nor is the purpose of review “to determine whether there is evidence to support a position the Commission did not adopt.” *Cooper*, 366 N.C. at 490-91, 739 S.E.2d at 545. Rather, “the test upon appeal is whether the Commission’s findings of fact are supported by

competent, material and substantial evidence in view of the entire record.” *Id.*; *see also State ex rel. Utils. Comm’n v. Vill. of Pinehurst*, 99 N.C. App. 224, 226, 393 S.E.2d 111, 113 (1990) (“The essential test to be applied is whether the Commission’s order is affected by errors of law or is unsupported by competent, material, and substantial evidence in view of the entire record as submitted.”), *aff’d*, 331 N.C. 278, 415 S.E.2d 199 (1992) (per curiam).

“[J]udicial reversal of an order of the Utilities Commission is a serious matter for the reviewing court, which may be justified only by strict adherence to the statutory guidelines governing appellate review.” *State ex rel. Utils. Comm’n v. Carolina Util. Customers Ass’n*, 163 N.C. App. 46, 48, 592 S.E.2d 221, 223 (2004). Those guidelines are set forth in N.C. Gen. Stat. § 62-94 [App. 11]. The Commission’s decision “will be upheld on appeal unless it is assailable on one of the statutory grounds” set forth in the statute. *State ex rel. Utils. Comm’n v. Carolina Util. Customers Ass’n*, 348 N.C. 452, 459, 500 S.E.2d 693, 699 (1998).

“The burden is on the appellant to demonstrate an error of law in the proceedings. To be arbitrary and capricious, the Commission’s order would have to show a lack of fair and careful consideration of the evidence or fail to display a reasoned judgment.” *State ex rel. Utils. Comm’n v. Piedmont Nat. Gas Co.*, 346 N.C. 558, 573, 488 S.E.2d 591, 601 (1997) (internal citation omitted).

## **II. THE COMMISSION'S FINDINGS ARE ADEQUATELY SUPPORTED AND THEREFORE CONCLUSIVE ON APPEAL.**

The Village does not directly challenge any of the Commission's findings. That strategic decision makes sense, because the well-settled law is that "where there is substantial evidence supporting the Commission's findings and conclusions, we will not second guess the Commission's determination." *State ex rel. Utils. Comm'n v. Friesian Holdings, LLC*, 281 N.C. App. 391, 397-98, 869 S.E.2d 327, 332-33 (2022). "Substantial evidence is defined as any relevant evidence that would permit a reasonable mind to support a conclusion." *State ex rel. Utils. Comm'n v. Thrifty Call, Inc.*, 154 N.C. App. 58, 68, 571 S.E.2d 622, 629 (2002). As the Supreme Court has clarified, "substantial evidence is not uncontradicted evidence." *State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n*, 337 N.C. 236, 241, 446 S.E.2d 348, 351 (1994).

Supported findings "are binding upon this Court," *State ex rel. Utils. Comm'n v. Cooper*, 368 N.C. 216, 223, 775 S.E.2d 809, 814 (2015), and "are considered to be conclusive on appeal," *State ex rel. Utils. Comm'n v. Carolina Water Service, Inc. of N.C.*, 225 N.C. App. 120, 125, 738 S.E.2d 187, 191 (2013). Thus, the Commission's decision "may not be reversed even if [this Court] would have reached a different conclusion upon the evidence." *State ex rel. Utils. Comm'n v. Va. Elec. & Power Co.*, 381 N.C. 499, 515, 873 S.E.2d 608, 618 (2022). In other words, findings made by the Commission "may not be reversed

or modified by a reviewing court merely because the court would have reached a different finding or determination upon the evidence.” *State ex rel. Utils. Comm’n v. Stanly Solar, LLC*, 283 N.C. App. 160, 166, 873 S.E.2d 34, 39 (2022).

Nevertheless, the Village does assert—repeatedly—that the Commission should have credited its evidence over the evidence presented by everyone else (even the Public Staff).<sup>3</sup> For example, the Village argues (at 20-21) that the Commission erred in relying on “SharpVue’s management’s testimony” rather than “the Village’s expert in private equity financing” and complains that “the Commission failed to give adequate consideration to the Village’s evidence and arguments.”<sup>4</sup> Yet, the Village cites no authority for the proposition that the Commission was *required* to believe the Village’s evidence. It is the role of the hearing tribunal to consider the respective weight and credibility of conflicting

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<sup>3</sup> The Village also ignores the testimony of its own witnesses that contradicts the narrative it now advances. For example, the Village argues (at 18-21) that SharpVue plans to sell the assets in the near term and (at 28) that the current parking and barge rates are excessive. But in addition to the testimony of the other parties, the Village’s own Mayor Pro Tem recognized that the Commission would have ongoing oversight over the utility (including approval of any later proposed transfer) and admitted that the current parking and barge rates are reasonable. (T(4) pp 151-52, 162-64).

<sup>4</sup> Again, the Village’s argument ignores evidence in the record. For example, Robert Hinton, Director of Economic Research for the Public Staff, testified: “I believe very confidently [SharpVue’s lender] would be a likely source of additional capital. I was very overwhelmingly impressed with the conversation that we incurred [sic] that day when we spoke with them.” (T(6) p 208 [App. 20]; see also T(7) p 10 [App. 22] (recounting a conversation with a regional president of SharpVue’s lender for the financing.))

testimony and to base its decision on the evidence that it feels has more persuasive value. That is precisely what the Commission did in this proceeding. As with previous dissatisfied litigants, the Village erroneously asks that *this* Court “consider the weight and credibility of the evidence before the Commission” and substitute its judgment for that of the Commission. *State ex rel. Utils. Comm’n v. Wardlaw*, 179 N.C. App. 582, 592, 634 S.E.2d 898, 903 (2006). That, however, is not the role of a reviewing appellate court.

Indeed, the Village’s entire approach to the order on appeal is improper. This Court’s review “is limited to whether or not the Commission considered the factors required by law and whether its findings are supported by competent, substantial and material evidence in view of the whole record.” *Id.* (internal quotation omitted).

Public witness testimony and expert testimony are the types of evidence that are sufficient to support the Commission’s findings. *State ex rel. Utils. Comm’n v. Cooper*, 367 N.C. 741, 748, 767 S.E.2d 305, 309 (2015). The Village presented its own evidence, but there is nothing surprising about the Commission believing one set of evidence over another. *See, e.g., State ex rel. Utils. Comm’n v. Carolina Util. Customers Ass’n*, 351 N.C. 223, 234-35, 524 S.E.2d 10, 18-19 (2000); *State ex rel. Utils. Comm’n v. Cooper*, 367 N.C. 644, 649-50, 766 S.E.2d 827, 830-31 (2014). “The Commission may agree with a single witness—if the evidence supports his position—no matter how many



opposing witnesses might come forward.” *State ex rel. Utils. Comm’n v. Thrifty Call, Inc.*, 154 N.C. App. 58, 69, 571 S.E.2d 622, 630 (2002).

Further, the Village gets the presumption backwards. The Village assumes that the Commission erred by not explicitly addressing all of the Village’s evidence, but in reality our courts *presume* that the Commission “has given proper consideration to all competent evidence presented.” *Carolina Water Serv.*, 225 N.C. App. at 125-26, 738 S.E.2d at 191; *see also State ex rel. Utils. Comm’n v. Thrifty Call, Inc.*, 154 N.C. App. 58, 65, 571 S.E.2d 622, 627 (2002) (“The presumption is that the Commission gave proper consideration to all competent evidence and reached a just and reasonable conclusion.”). The Commission is not required to list all of the evidence it finds unpersuasive. Rather, when the whole record supports a finding of fact, “we cannot disturb this finding.” *State ex rel. Utils. Comm’n v. Carolina Water Serv., Inc. of N.C.*, 328 N.C. 299, 303, 401 S.E.2d 353, 355 (1991).

Even assuming the Village had valid reasons for why the Commission should have reached a different conclusion, “they are not sufficient to show that the Commission’s decision was not based on competent, material, and substantial evidence.” *Carolina Water Serv.*, 225 N.C. App. at 129, 738 S.E.2d at 193. “Even if we disagree with the Commission’s rationale, we are not empowered to overturn its order when that order is based on competent evidence.” *Id.*

Here, the Commission's order "demonstrated a thorough consideration of the record evidence [and] adequately explained the reasons for the decision that the Commission did make." *Va. Elec.*, 381 N.C. at 525, 873 S.E.2d at 624. Accordingly, there is "no legal basis for disturbing the Commission's order." *Id.* at 526, 873 S.E.2d at 625. The Village's appeal "amounts to little more than a belief that the Commission should have weighed the evidence differently and reached a different result." *Id.* "While reasonable minds may disagree about the Commission's judgment call, the applicable standard of review does not afford this Court the authority to second guess the Commission's determination in this regard." *Friesian Holdings*, 281 N.C. App. at 406, 869 S.E.2d at 338 (internal quotation omitted); *see also State ex rel. Utils. Comm'n v. Carolina Coach Co.*, 260 N.C. 43, 54, 132 S.E.2d 249, 257 (1963) ("Upon the same facts we might have reached a different result. But it is not for this Court to find the facts or to regulate utilities.").

### **III. THE COMMISSION APPROPRIATELY DETERMINED THAT TRANSFER OF THIS UTILITY IS IN THE PUBLIC INTEREST.**

"What constitutes 'public convenience and necessity' is primarily an administrative question with a number of imponderables to be taken into consideration." *Piedmont Nat. Gas*, 346 N.C. at 568, 488 S.E.2d at 598. Therefore, "it is for the Commission to weigh and balance a myriad of factors in an effort to protect the interests and welfare of the general public." *Id.* "No

law prohibits the Commission from giving one factor greater weight than any other.” *Id.* at 573, 488 S.E.2d at 601; *see also State ex rel. Utils. Comm’n v. Thornburg*, 111 N.C. App. 903, 906, 433 S.E.2d 790, 792 (1993) (explaining that the Commission is responsible for “[t]he weighing of evidence and judgment thereon”—including “the determination of what is in the public interest”).

This discretion makes sense. “The doctrine of convenience and necessity is a relative or elastic theory,” and “[t]he facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with.” *Carolina Coach*, 260 N.C. at 52, 132 S.E.2d at 255 (1963).

The Village presents several arguments for why the transfer should not be permitted, but none of those arguments is sufficient to reverse the Commission’s order.

**A. The Commission’s Order Followed Previous Precedent.**

The Village repeatedly asserts (at 16-17, 23, 33) that the Commission did not consider “all aspects” of the proposed transfer, but saying something “does not make it so.” *Biggers v. Matthews*, 147 N.C. 299, 304, 61 S.E. 55, 57 (1908). The obligation to “inquire into all aspects of anticipated service and rates” does not mean the Commission’s order has to address every document and statement entered into evidence. *Vill. of Pinehurst*, 99 N.C. App. at 231, 393 S.E.2d at 116. That approach would not be manageable or practical. Instead,

the Commission's decision is sufficient if it explains its rationale—which the order on appeal certainly does.

The Village also asserts (at 17) that a “summary disposition” is insufficient. However, the Commission's unanimous order is thorough and detailed. The Village cannot plausibly assert that the single-spaced, 28-page order (with an additional 7 pages of imposed conditions) is a “summary disposition.”

To be sure, the Village (a competing suitor) believes that it would be better if the transfer did not occur so that it could purchase the system. “However, it is not and should not be this Court's role to determine the merits of policy positions adopted or rejected by the Commission.” *State ex rel. Utils. Comm'n v. Pub. Staff*, 123 N.C. App. 43, 46, 472 S.E.2d 193, 196 (1996). “The General Assembly has given the Commission, not the courts, the authority to regulate the operations of public utilities.” *Id.*

Three decisions discussing and affirming that authority in the transfer/merger context are instructive.

In *Village of Pinehurst*, the Court affirmed a Commission decision approving a utility transfer. 99 N.C. App. 224, 393 S.E.2d 111. The Court reviewed the record and determined that “the Commission satisfied the public convenience and necessity inquiry in approving this transfer.” *Id.* at 233, 393 S.E.2d at 117. Regarding its determination of public convenience and

necessity, the Court explained that a transfer order is sufficient if the Commission “adequately inquired into and properly resolved the questions” of whether the transferee “could provide adequate, reliable service, and whether the transfer would occasion or engender a change in rates.” *Id.* at 230, 393 S.E.2d at 115. That is true even if there were “evidentiary gaps” or the Commission “could have made further inquiry.” *Id.* at 231, 393 S.E.2d at 116.

In *In re Utilities, Inc.*, this Court likewise affirmed the Commission’s order authorizing a transfer. 147 N.C. App. 182, 555 S.E.2d 333 (2001). The Court reiterated that “[a]ll findings of fact made by the Commission which are supported by competent, material and substantial evidence are conclusive.” *Id.* at 186, 555 S.E.2d at 337. The Court also explained that when considering transfer of a public utility, the Commission should “inquire into all aspects of anticipated service and rates occasioned and engendered by the proposed transfer.” *Id.* at 188, 555 S.E.2d at 338.

Third, although the case dealt with a merger rather than a transfer (both of which are governed by section 62-111), this Court’s decision in *In re Duke Energy Corp.*, 232 N.C. App. 573, 755 S.E.2d 382 (2014), is also relevant and helpful precedent. There, two intervenors appealed from the Commission’s order approving a merger between Duke Energy and Progress Energy. In affirming the Commission’s order, this Court rejected the argument that the Commission had insufficient evidence to determine whether the merger was

justified by public convenience and necessity. *Id.* at 580, 755 S.E.2d at 387. The Court also rejected the argument that there was insufficient evidence of benefits to the public. *Id.* at 583, 755 S.E.2d at 388. In refusing to adopt a position similar to the Village's here, the Court stated what bears repeating: "It is not this Court's role to second guess the determination of the Commission where its findings and conclusions are supported by the evidence." *Id.* at 585, 755 S.E.2d at 390.

As with those three cases, the Commission likewise exercised its discretion here to allow for a transfer.<sup>5</sup> "In sum, given the substantial, competent, and material evidence presented on these and all other issues presented to the Commission, which support its finding of facts and which in turn support its conclusions of law, we can find no error in the Commission's order." *State ex rel. Utils. Comm'n v. Town of Kill Devil Hills*, 194 N.C. App. 561, 573, 670 S.E.2d 341, 349, *aff'd*, 363 N.C. 739, 686 S.E.2d 151 (2009) (*per curiam*).

Transfers and mergers of utilities happen with some regularity. *See, e.g.,* [Joint Application of Frontier Nat. Gas Co. & Ullico Hearthstone Holdco LLC](#)

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<sup>5</sup> The Village has not challenged the Asset Purchase Agreement itself, but regardless the Commission's "authority to regulate includes the prerogative to recognize private agreements that may have been entered into between parties with respect to the operation of a public utility," since "such agreements may be in the interest of the public." *In re Application by C&P Enters., Inc.*, 126 N.C. App. 495, 499, 486 S.E.2d 223, 226 (1997) (internal quotation omitted).

for Approval of Stock Transfer and Sale, No. G-40, Sub 160 (N.C.U.C. 2021); Application for Transfer of Bear Den Acres Dev., Inc. to Red Bird Util. Operating Co., No. W-1328, Sub 4 (N.C.U.C. 2020); Joint Application of Dominion Energy, Inc. & SCANA Corp. to Engage in a Bus. Combination Transaction, No. E-22, Sub 551 (N.C.U.C. 2018); Duke Energy Corp. & Piedmont Nat. Gas to Engage in Bus. Combination Transaction, No. G-9, Sub 682 (N.C.U.C. 2016). But there are very few appeals challenging such orders under section 62-111, because of the common recognition that the Commission is in the best position to regulate transfers of public utilities. Indeed, the undersigned are not aware of *any* appellate decision that has reversed the Commission's approval of a transfer. Ever. This Court should decline the Village's invitation to interject uncertainty into this long-established approval process and upend settled law.

**B. The Village's Speculations Are Not a Basis for Reversal.**

The Village's principal rebuttal is to rely on what it perceives as *potential* risks of the transfer—that the transferee *might* raise prices (at 21) or *might* not hold the assets long term (at 18). This argument is misplaced for several reasons.

First, the Village made these same arguments to the Commission, and the Commission unanimously rejected them. As it has in previous cases, the Commission “carefully evaluated the strengths and weaknesses” of the

proposal. *See State ex rel. Utils. Comm’n v. N.C. Gas Serv.*, 128 N.C. App. 288, 292, 494 S.E.2d 621, 624 (1998). After all, “[t]he Commission has been given the ability to exercise its discretion and judgment in furtherance of its authority and responsibility of regulating public utilities.” *Id.* at 292, 494 S.E.2d at 624. As such, the Commission “weighs and balances many factors in order to protect the interests and welfare of the general public.” *Id.* The fact that the Village does not like the result of this balancing is not a basis to overturn it.<sup>6</sup> “The Commission’s decision is supported by both evidence and reason. Even assuming that a different decision could have been reached, that is no basis for reversing the decision that was made.” *State ex rel. Utils. Comm’n v. Centel Cellular Co.*, 103 N.C. App. 731, 737, 407 S.E.2d 257, 261 (1991).

Second, speculative assertions of risk are not a basis to deny a transfer application. The Village had an opportunity to present any evidence of risks; the Commission just didn’t find it compelling.

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<sup>6</sup> Contrary to the Village’s assertions, the Commission did not ignore the evidence; it merely drew different conclusions. For example, the Village contends (at 18) that “[t]he Commission never addressed the substantial evidence demonstrating that SharpVue has no intention of holding the utility assets long-term.” In reality, the Commission addressed the evidence in detail and concluded that SharpVue does in fact intend to hold the assets for the long term, as supported by the testimony of Lee Roberts, SharpVue’s principal. (R pp 20-21).



Third, the Village's argument ignores the role of the Public Staff. As the Village points out (at 6), "[h]undreds of thousands of people" rely on the ferry system every year. But the Village does not represent those hundreds of thousands of people; it only represents the governing body of the Island and the full-time residents of the Island who vote for them. It is the Public Staff that is tasked with representing "the using and consuming public." N.C. Gen. Stat. § 62-15(b) [App. 5]. And here, the Public Staff heard these same concerns and informed the Commission that it believed the transfer "is in the public interest and will serve the public convenience and necessity," and that the "proposed transfer satisfies the requirements of N.C.G.S. § 62-111 and should be approved by the Commission." (R p 532). The Public Staff also explained that "the transaction should have no adverse impact on customers," that "the utility's customers should be protected as much as possible from potential costs and risks resulting from the transaction," and that "there should be sufficient benefits from the proposed transaction to offset the potential costs and risks." (R p 533).

The Commission had an adequate basis to approve the transfer in spite of the purported risks presented by the Village.

**C. The Village's Argument about the Appropriate "Standard" Is a Red Herring.**

Nor is the Village's argument regarding the standard applied by the Commission (at 13, Sections I.A-I.B.1) persuasive. The law is unsettled on whether the transfer of a ferry utility is governed by N.C. Gen. Stat. § 62-111(a) [App. 13] (governing most utility transfers) or N.C. Gen. Stat. § 62-111(e) [App. 14] (governing transfers of motor carrier franchises that has previously been applied to other ferry transfer proceedings). However, there is no need for this Court to address the distinction. Even if section 62-111(a) applies (as the Village strenuously asserts), the Commission applied *both* standards and concluded that *each* was met. Specifically, the Commission expressly concluded:

Even under the Commission's three-prong test applied to other utility mergers [pursuant to N.C.G.S. § 62-111(a)], the **Commission concludes that the Transfer is also justified under *this* test and is in the public convenience and necessity.**

(R p 857 (emphasis added)).

Further, the Commission appropriately interpreted its governing statutes. Although not *binding*, "[t]he interpretation of a statute by an agency created to administer that statute is traditionally accorded some deference." *Stanly Solar*, 283 N.C. App. at 170, 873 S.E.2d at 41. "[T]he same deference is applicable to an agency's determination a statute was complied with." *Id.* This

deference is particularly appropriate for a decision like the one at issue here, since the Commission's public necessity standard "is a relative or elastic theory rather than an abstract or absolute rule." *Friesian Holdings*, 281 N.C. App. at 398, 869 S.E.2d at 333 (quoting *State ex rel. N.C. Utils. Comm'n v. Casey*, 245 N.C. 297, 302, 96 S.E.2d 8, 12 (1957)). When the question is whether some act is in the public interest, courts routinely defer to the agency with the expertise. See *State ex rel. Utils. Comm'n v. NUI Corp.*, 154 N.C. App. 258, 265-66, 572 S.E.2d 176, 181-82 (2002).

The Village does not "offer any reason for this Court to deviate from the deferential standard of review applicable to any discretionary decision by the Commission." *Friesian Holdings*, 281 N.C. App. at 404, 869 S.E.2d at 336. Its argument about the applicable "standard" is simply irrelevant.

**D. The Village's Concerns about Rates Are Not At Issue Here and Unfounded.**

The Village also makes several arguments about the *rates* charged for the transportation system (at 18, Section I.B.2). To be sure, the Commission conducts entire rate case proceedings.<sup>7</sup> See N.C. Gen. Stat. §§ 62-81, 62-130 to 159.2. "The Commission is vested with full power to regulate the rates charged

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<sup>7</sup> Incidentally, the Commission's decisions in general rate cases are appealable directly to the Supreme Court rather than this Court. N.C. Gen. Stat. § 7A-29(b) [App. 1].

by public utilities.” *State ex rel. Utils. Comm’n v. Carolina Indus. Grp. for Fair Util. Rates*, 130 N.C. App. 636, 639, 503 S.E.2d 697, 700 (1998).

However, this appeal is not about rates. The Village’s concern (at 24) that the Commission has “left ratepayers at risk of rate increases in the future” is unfounded, speculative, and simply misplaced for purposes of this proceeding. The Village made this exact same argument before the Commission below, (R pp 646-55), and the Commission expressly rejected it:

The Commission, in its Sub 21 Order, allowed the current parking and barge rates charged by BHIL to continue, and the Commission finds that BHIFT should be allowed to maintain those rates following closing, with the opportunity to adjust them to accommodate for inflation. The Commission therefore concludes that (1) the existing rates are reasonable such that there is no need to “establish” new rates at this time pursuant to N.C.G.S. § 62-133, and (2) a rate base determination is not necessary at this time because new rates are not being established.

(R p 849).

Likewise, the Village’s concern about an acquisition adjustment (at 21-24) is also premature and speculative. As the Commission concluded, there is “no need to establish a rate base for the Parking and Barge Operations in the present proceeding, and consequently no need to address the question of an acquisition premium.” (R p 858). That question will only become relevant if and when a future owner, in a future rate case, seeks to adjust rates to recover

that claimed premium—something that will not happen for at least six years from the transfer, if ever. (*See* R p 862).

Even if the Commission had been inclined to reach these issues now, the Village's arguments are wrong. The evidence in the record supported the Commission's determination that the current rates are appropriate. First, ferry and tram rates will be subject to a full rate case that cannot be brought for at least a year after the transfer. (R p 867). Second, the Village conceded in sworn testimony that the current parking and barge rates are reasonable. (T(4) pp 151-52 [App. 17-18]). And third, expert testimony cited by the Commission showed that the parking rates are below market rates. (T(7) pp 102-05 [App. 23-26]). The Commission "[gave] weight to the testimony of the witnesses that the resulting level of rates has been reasonable and to the fact that no party has taken the position that the current level of rates is unreasonable." (R p 849).

Moreover, our Supreme Court has reiterated that "ratemaking activities of the Commission are a legislative function." *Va. Elec.*, 381 N.C. at 523, 873 S.E.2d at 624. Accordingly, a decision on rates is subject to the same tests and standards as any other "legislative enactment issued under the state's police power." *State ex rel. Utils. Comm'n v. N.C. Nat. Gas Corp.*, 323 N.C. 630, 644, 375 S.E.2d 147, 166 (1989). To the extent the order deals with rates at all, it

is due the same deference as other legislative decisions. It is not the Village's prerogative to exercise the legislative functions granted the Commission.

**E. There Is No Confusion about Corporate Control.**

The Village's final argument (at 31, Section I.C) about the substance of the order is that no transfer can be approved without showing "to *whom* control would be transferred and how that control will be exerted." Yet, the Village spends (at 7-8) multiple paragraphs (and even a graphic) in its brief describing the corporate structure of the transferee. This argument is, therefore, perplexing. Moreover, the Public Staff fully investigated the ownership structure of SharpVue and its affiliates, and its witnesses had no problem articulating it in their testimony. (T(6) pp 133, 135-41 ("Q: Please describe issues of ownership, management and control relating to the Proposed Transaction.")). Finding of Fact 6 in the Commission's order specifically addressed corporate control (R p 837), supported by the Evidence and Conclusions for that Finding (R p 843), and the first four paragraphs of the approved conditions that were part of the Commission's order assure accountability and enforceability of those conditions. (R p 843). There is no basis for the Village to assert that the Commission lacked sufficient information about the control of the utility when the Village itself describes that information in its brief to this Court and the approved regulatory

conditions are worded to apply to all those in control. And again, this corporate structure is similar to the one that has already been in place for years.

#### **IV. THE COMMISSION'S IMPOSED CONDITIONS ARE APPROPRIATE AND WITHIN ITS DISCRETION.**

In the exercise of its discretion, the Commission imposed several conditions on the transfer. Those terms safeguard the public interest. The Village's objections to a few of those conditions (at 24, Section I.B.3)—*i.e.*, that the Commission didn't agree with the Village's witnesses—fail for the same reason that its objection to the approval of the entire transfer fails: it is the Commission's role to weigh the evidence and determine whether the transaction is in the public interest. The Commission explained its reasoning in its decision:

The Regulatory Conditions apply to SharpVue's affiliates and contain requirements regarding affiliated agreements and transfer pricing, notice of BHIFT-related investments, and limitations on distributions. The Commission concludes that these conditions are appropriate and are in compliance with the statutory provisions and should sufficiently protect consumers in this context.

(R p 855). While the Village disagrees with the Commission's imposed conditions on factual or policy grounds, the Commission's considered judgment in this regard (as explained in the "Conclusions and Evidence" portion of the order) is appropriate and proper. Even if the Commission "could have made further inquiry" into a particular condition or could have articulated its

reasoning in greater detail, the caselaw is well established that this possibility does not constitute reversible error. *Vill. of Pinehurst*, 99 N.C. App. at 231, 393 S.E.2d at 116. Moreover, it was reasonable for the Commission to rely upon the recommendation of the Public Staff, as the entity representing the using and consuming public, to decide whether a condition is in the public interest. ***All*** of the conditions imposed by the Commission in this case were recommended by the Public Staff.

The Village's challenge to specific conditions is similarly meritless.

For example, Condition 8 limits distributions of cash to SharpVue and SharpVue's affiliates, regardless of the amount of retained earnings on the balance sheet. This type of condition is common in certificate transfer orders. The fact that the Village would have preferred a different percentage is irrelevant, and no precedent supports the Village's position on this issue.

Likewise, in imposing Condition 4, the Commission concluded (in exercising its legislative function regarding rates) that limiting future price increases for parking and barge operations to the rate of inflation for at least six years is "a reasonable approach to protect consumers and to ensure the reasonableness of the parking and barge rates." (R p 849). In support of this conclusion, the Commission explained:

In the Stipulation reached by the Applicants and Public Staff, the parties have agreed that it is unnecessary to adjust the parking and barge rates at this time and have agreed



that a six-year prohibition on rate increases above the annual rate of inflation sufficiently protects the public's interest and ensures reasonable rates. A six-year period of parking rates with increases at no more than the annual rate of inflation was also agreed upon by the parties in BHIT's last rate case in Docket No. A-41, Sub 7. . . . Given that the [current] rates are reasonable for the services provided and in light of the Applicants' obligation to request advance approval of affiliated leases prior to closing of the Transfer and the Applicants' need for certainty on the issue of rates to allow the closing of the Proposed Transaction, which is in the public interest, the Commission agrees.

(R p 849).

This approach by the Commission to find a solution that is in the public interest is an appropriate exercise of its discretion and judgment in a utility certificate transfer proceeding under section 62-111. As noted above, the Commission concluded that there was no need to establish new rates at this time; this docket is not a rate case proceeding subject to the formal requirements of that statute, as the Village's arguments suggest. In fact, allowing for rate-of-inflation adjustments enables the current reasonable level of parking and barge rates—in terms of real (as opposed to nominal) dollars—to stay in place for six years, without a rate case, and this policy determination by the Commission need not be second-guessed.

Finally, the Village objects to the Commission allowing SharpVue to separate ownership of the real estate from the utility operational assets—even though this type of arrangement is how the assets were previously owned by

Limited and leased to Transportation for almost thirty years. (*See* R p 838).

Contrary to the Village's concerns, the Commission explained why this separation is appropriate:

It is reasonable for BHIFT to acquire rights to possess and utilize the real estate and infrastructure assets which are used and useful in providing Parking and Barge Operations via long-term leases. The leases will be filed in this docket and subject to advance approval by the Commission pursuant to N.C.G.S. § 62-153, which will occur prior to closing of the Transfer and before any rents are paid. Such filing and approval are conditions precedent for consummation of the Transfer.

(R p 841; *see also* R p 850 for "Evidence and Conclusions" supporting this Finding (including that leases must meet "the statutory requirements of N.C.G.S. § 62-153 that, among other things, the charges and terms are fair to the utility and not an unwarranted dissipation of its funds by an affiliate"))).

The Commission was well aware that Limited owned the real estate separate from the ferry operations, and the Commission obviously knew about its own regulatory authority to protect the public interest. The findings of fact made by the Commission, and the explanations and evidence supporting those findings were sufficient to support the Commission's determination in this regard, notwithstanding the Village's arguments to the contrary.

**V. THE COMMISSION DID NOT PERMIT THE TRANSFEREE TO IMPROPERLY PLEDGE REGULATED ASSETS.**

Although the premise of Section II of the Village’s brief (at 33) is correct—that a utility should not be allowed to pledge regulated assets in support of unregulated lines of business—it has no bearing in this case. The applicants never requested, and the Commission never granted, any such authority. The pledging of assets was approved in Finding of Fact 49 “[t]o finance the acquisition” of utility assets “within the limitations, and pursuant to the requirements, of the Regulatory Conditions,” (R p 842), and “such financing is approved [in decretal paragraph 2] pursuant to N.C.G.S. §§ 62-160 and 62-161.” (R p 859). As all parties understood, those conditions and statutory provisions prevent the scenario that the Village portends. The Commission’s order expressly noted that “SharpVue affirms that the debt . . . will only be incurred for a lawful objective *within the corporate purposes of the utility.*” (R p 855 (emphasis added)).

To be sure, neither the application nor the approving order contained an explicit definition or delineation of the utility assets or operations. However, the principle relied on by the Village is so axiomatic as to make such a definition unnecessary.

Indeed, if there were any doubt about the meaning of the Commission’s order, it has now been laid to rest. SharpVue has now purchased virtually all

of the unregulated assets in question *without* the pledging of utility assets—disproving the basis of the Village’s concocted argument. The unregulated assets that SharpVue has already purchased include the Chandler Building, the golf cart parking lot, the Deep Point marina, and the Deep Point excess development land.<sup>8</sup> [App. 27-58].

The Village’s concern about improperly pledging regulated assets is simply unfounded.

## **VI. THE VILLAGE CANNOT SHOW THAT THE COMMISSION’S UNANIMOUS DECISION WAS ARBITRARY AND CAPRICIOUS.**

The Village recites the standard of review (at 13) for whether a decision is arbitrary and capricious. And the Village asserts in passing (at 29) that the Commission’s decision was arbitrary and capricious. But these bare statements are insufficient to present a real argument. *See* N.C. R. App. P. 28(b)(6) (“Issues . . . in support of which no reason or argument is stated, will be taken as abandoned.”).

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<sup>8</sup> The deeds for these purchases have been recorded, and this Court can take judicial notice of such facts under Rule 201 of the Rules of Evidence. *See, e.g., State v. Surratt*, 241 N.C. App. 380, 385, 773 S.E.2d 327, 331 (2015). In particular, it is proper to take judicial notice of documents recorded in a county’s register of deeds. *Alexander v. Becker*, 280 N.C. App. 131, 136 n.3, 866 S.E.2d 525, 529 n.3 (2021); *In re Cornblum*, 220 N.C. App. 100, 106, 727 S.E.2d 338, 342 (2012); *In re Hackley*, 212 N.C. App. 596, 601-02, 713 S.E.2d 119, 123 (2011).

Further, “[t]he arbitrary and capricious standard is a difficult one to meet.” *Pub. Staff*, 123 N.C. App. at 50, 472 S.E.2d at 198. A decision is not arbitrary and capricious merely because someone “disagrees with the Commission on factual or policy grounds.” *Carolina Water Serv.*, 225 N.C. App. at 130, 738 S.E.2d at 194. Rather, for a decision to be deemed arbitrary and capricious, “it must lack fair and careful consideration or fail to display a reasoned judgment.” *Id.* at 131, 738 S.E.2d at 195.

That characterization is in sharp contrast to what occurred in this case. A unanimous decision by the seven-member Commission—after conducting both a public witness hearing and a four-day evidentiary hearing (at which numerous expert witnesses testified and many exhibits were introduced), receiving post-hearing proposed orders and briefs, deliberating over several months, and then issuing a 28-page, single-spaced order (with seven additional pages of conditions)—cannot be considered “arbitrary and capricious.” Instead, the order represents the fair and careful consideration and well-reasoned judgment of the Commission. Once again, the Village’s disappointment with the outcome is not a basis to invalidate the Commission’s decision.

### CONCLUSION

For the foregoing reasons, the decision of the Commission should be affirmed.

This the 13th day of May, 2024.

FOX ROTHSCHILD LLP

Electronically submitted

Kip David Nelson

N.C. Bar No. 43848

knelson@foxrothschild.com

N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

M. Gray Styers, Jr.

N.C. State Bar No. 16844

gstyers@foxrothschild.com

Elizabeth Sims Hedrick

N.C. State Bar No. 38513

ehedrick@foxrothschild.com

434 Fayetteville Street, Suite 2800

Raleigh, NC 27601

Telephone: (919) 755-8700

Facsimile: (919) 755-8800

*Attorneys for Appellees Bald Head Island Transportation, Inc. and Bald Head Island Limited, LLC*

David P. Ferrell

N.C. State Bar No. 23097

dferrell@maynardnexsen.com

MAYNARD NEXSEN PC

4141 Parklake Avenue, Suite 200

Raleigh, NC 27612

Telephone: (919) 755-1800

Facsimile: (919) 890-4540

*Attorneys for Bald Head Island Ferry Transportation, LLC*

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 28(j) of the Rules of Appellate Procedure, counsel for the Appellees certifies that the foregoing brief contains less than 8,750 words (excluding the cover, caption, index, table of authorities, signature block, certificate of service, and this certificate of compliance) as reported by the word-processing software.

This the 13th day of May, 2024.

/s/ Kip D. Nelson  
Kip D. Nelson

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date indicated below, a copy of the foregoing document was served by email, as follows:

David P. Ferrell  
Maynard Nexsen PC  
4141 Parklake Avenue, Suite 200  
Raleigh, NC 27612  
[dferrell@maynardnexsen.com](mailto:dferrell@maynardnexsen.com)  
*Attorney for Bald Head Island Ferry  
Transportation, LLC*

Daniel C. Higgins  
Burns Day & Presnell, P.A.  
P.O. Box 10867  
Raleigh, NC 27605  
[dhiggins@bdppa.com](mailto:dhiggins@bdppa.com)

*Attorney for BHI Club*

Lucy Edmondson  
Gina C. Holt  
William E.H. Creech  
4326 Mail Service Center  
Raleigh, NC 27699-4300  
[Lucy.edmondson@psncuc.nc.gov](mailto:Lucy.edmondson@psncuc.nc.gov)  
[Gina.holt@psncuc.nc.gov](mailto:Gina.holt@psncuc.nc.gov)  
[Zeke.creech@psncuc.nc.gov](mailto:Zeke.creech@psncuc.nc.gov)  
*North Carolina Utilities Commission  
– Public Staff*

Edwards S. Finley, Jr.  
2024 White Oak Road  
Raleigh, NC 27608  
[Edfinley98@aol.com](mailto:Edfinley98@aol.com)  
*Attorney for Bald Head Association*

Marcus W. Trathen  
Amanda S. Hawkins  
Brooks, Pierce, McLendon,  
Humphrey & Leonard, LLP  
P.O. Box 1800  
Raleigh, NC 27602  
[mtrathen@brookspierce.com](mailto:mtrathen@brookspierce.com)  
[ahawkins@brookspierce.com](mailto:ahawkins@brookspierce.com)  
*Attorneys for the Village of Bald  
Head Island*

Sam Watson  
4325 Mail Service Center  
Raleigh, NC 27699-4300  
[swatson@ncuc.net](mailto:swatson@ncuc.net)  
*North Carolina Utilities Commission*

This the 13th day of May, 2024.

/s/ Kip D. Nelson  
Kip D. Nelson



NORTH CAROLINA COURT OF APPEALS

\*\*\*\*\*

STATE OF NORTH CAROLINA ex  
rel. UTILITIES COMMISSION;  
BALD HEAD ISLAND  
TRANSPORTATION, INC.,  
Applicant; BALD HEAD ISLAND  
LIMITED, LLC, Applicant; BALD  
HEAD ISLAND FERRY  
TRANSPORTATION, LLC, Applicant,

Appellees,

v.

VILLAGE OF BALD HEAD ISLAND,

Intervenor-Appellant.

From The North Carolina Utilities  
Commission

\*\*\*\*\*

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## § 7A-29. Appeals of right from certain administrative agencies, NC ST § 7A-29



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Proposed Legislation

West's North Carolina General Statutes Annotated  
Chapter 7A. Judicial Department  
Subchapter II. Appellate Division of the General Court of Justice  
Article 5. Jurisdiction (Refs & Annos)

### N.C.G.S.A. § 7A-29

#### § 7A-29. Appeals of right from certain administrative agencies

Effective: April 25, 2017

[Currentness](#)

(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b) of this section, the Department of Health and Human Services under [G.S. 131E-188\(b\)](#), the North Carolina Industrial Commission, the North Carolina State Bar under [G.S. 84-28](#), the Property Tax Commission under [G.S. 105-290](#) and [G.S. 105-342](#), the Commissioner of Insurance under [G.S. 58-2-80](#), the State Board of Elections under [G.S. 163-127.6](#), the Office of Administrative Hearings under [G.S. 126-34.02](#), or the Secretary of Environmental Quality under [G.S. 104E-6.2](#) or [G.S. 130A-293](#), appeal as of right lies directly to the Court of Appeals.

(b) From any final order or decision of the Utilities Commission in a general rate case, appeal as of right lies directly to the Supreme Court.

#### Credits

Added by Laws 1967, c. 108, § 1. Amended by Laws 1971, c. 703, § 5; Laws 1975, c. 582, § 12; Laws 1979, c. 584, § 1; Laws 1981, c. 704, § 28; Laws 1983, c. 526, § 1; Laws 1983, c. 761, § 188; Laws 1983 (Reg. Sess., 1984), c. 1000, § 2; Laws 1983 (Reg. Sess., 1984), c. 1087, § 2; Laws 1983 (Reg. Sess., 1984), c. 1113, § 2; Laws 1985, c. 462, § 3; Laws 1987, c. 850, § 2; Laws 1991, c. 546, § 2; Laws 1991, c. 679, § 2; Laws 1993, c. 501, § 2, eff. July 23, 1993; Laws 1995, c. 115, § 1; Laws 1995, c. 504, § 2, eff. July 28, 1995; Laws 1995, c. 509, § 2, eff. Oct. 1, 1995; S.L. 1997-443, §§ 11A.118(a), 11A.119(a), eff. July 1, 1997; S.L. 2003-63, § 1, eff. May 20, 2003; S.L. 2006-155, § 1.1, eff. Jan. 1, 2007; S.L. 2013-382, § 6.4, eff. Aug. 21, 2013; S.L. 2015-241, § 14.30(v), eff. July 1, 2015.

#### N.C.G.S.A. § 7A-29, NC ST § 7A-29

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

End of Document

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West's North Carolina General Statutes Annotated  
Chapter 62. Public Utilities (Refs & Annos)  
Article 1. General Provisions

N.C.G.S.A. § 62-2

§ 62-2. Declaration of policy

Effective: October 10, 2023

[Currentness](#)

(a) Upon investigation, it has been determined that the rates, services and operations of public utilities as defined herein, are affected with the public interest and that the availability of an adequate and reliable supply of electric power and natural gas to the people, economy and government of North Carolina is a matter of public policy. It is hereby declared to be the policy of the State of North Carolina:

- (1) To provide fair regulation of public utilities in the interest of the public;
- (2) To promote the inherent advantage of regulated public utilities;
- (3) To promote adequate, reliable and economical utility service to all of the citizens and residents of the State;
- (3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills;
- (4) To provide just and reasonable rates and charges for public utility services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices and consistent with long-term management and conservation of energy resources by avoiding wasteful, uneconomic and inefficient uses of energy;
- (4a) To assure that facilities necessary to meet future growth can be financed by the utilities operating in this State on terms which are reasonable and fair to both the customers and existing investors of such utilities; and to that end to authorize fixing of rates in such a manner as to result in lower costs of new facilities and lower rates over the operating lives of such new facilities by making provisions in the ratemaking process for the investment of public utilities in plants under construction;
- (5) To encourage and promote harmony between public utilities, their users and the environment;

- (6) To foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare as expressed in the State energy policy;
- (7) To seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development;
- (8) To cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply;
- (9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of expansion funds for natural gas local distribution companies or gas districts to be administered under the supervision of the North Carolina Utilities Commission; and
- (10) To promote the development of clean energy and energy efficiency through the implementation of a Clean Energy and Energy Efficiency Portfolio Standard (CEPS) that will do all of the following:
  - a. Diversify the resources used to reliably meet the energy needs of consumers in the State.
  - b. Provide greater energy security through the use of indigenous energy resources available within the State.
  - c. Encourage private investment in clean energy and energy efficiency.
  - d. Provide improved air quality and other benefits to energy consumers and citizens of the State.

(b) To these ends, therefore, authority shall be vested in the North Carolina Utilities Commission to regulate public utilities generally, their rates, services and operations, and their expansion in relation to long-term energy conservation and management policies and statewide development requirements, and in the manner and in accordance with the policies set forth in this Chapter. Nothing in this Chapter shall be construed to imply any extension of Utilities Commission regulatory jurisdiction over any industry or enterprise that is not subject to the regulatory jurisdiction of said Commission.

Because of technological changes in the equipment and facilities now available and needed to provide telephone and telecommunications services, changes in regulatory policies by the federal government, and changes resulting from the court-ordered divestiture of the American Telephone and Telegraph Company, competitive offerings of certain types of telephone and telecommunications services may be in the public interest. Consequently, authority shall be vested in the North Carolina Utilities Commission to allow competitive offerings of local exchange, exchange access, and long distance services by public utilities defined in [G.S. 62-3\(23\)a.6.](#) and certified in accordance with the provisions of [G.S. 62-110](#), and the Commission is further authorized after notice to affected parties and hearing to deregulate or to exempt from regulation under any or all provisions of this Chapter: (i) a service provided by any public utility as defined in [G.S. 62-3\(23\)a.6.](#) upon a finding that such service is competitive and that such deregulation or exemption from regulation is in the public interest; or (ii) a public utility as defined

in [G.S. 62-3\(23\)](#)a.6., or a portion of the business of such public utility, upon a finding that the service or business of such public utility is competitive and that such deregulation or exemption from regulation is in the public interest.

Notwithstanding the provisions of [G.S. 62-110\(b\)](#) and [G.S. 62-134\(h\)](#), the following services provided by public utilities defined in [G.S. 62-3\(23\)](#)a.6. are sufficiently competitive and shall no longer be regulated by the Commission: (i) intraLATA long distance service; (ii) interLATA long distance service; and (iii) long distance operator services. A public utility providing such services shall be permitted, at its own election, to file and maintain tariffs for such services with the Commission up to and including September 1, 2003. Nothing in this subsection shall limit the Commission's authority regarding certification of providers of such services or its authority to hear and resolve complaints against providers of such services alleged to have made changes to the services of customers or imposed charges without appropriate authorization. For purposes of this subsection, and notwithstanding [G.S. 62-110\(b\)](#), "long distance services" shall not include existing or future extended area service, local measured service, or other local calling arrangements, and any future extended area service shall be implemented consistent with Commission rules governing extended area service existing as of May 1, 2003.

The North Carolina Utilities Commission may develop regulatory policies to govern the provision of telecommunications services to the public which promote efficiency, technological innovation, economic growth, and permit telecommunications utilities a reasonable opportunity to compete in an emerging competitive environment, giving due regard to consumers, stockholders, and maintenance of reasonably affordable local exchange service and long distance service.

(b1) Broadband service provided by public utilities as defined in [G.S. 62-3\(23\)](#)a.6. is sufficiently competitive and shall not be regulated by the Commission.

(c) The policy and authority stated in this section shall be applicable to common carriers of passengers by motor vehicle and their regulation by the North Carolina Utilities Commission only to the extent that they are consistent with the provisions of the Bus Regulatory Reform Act of 1985.

#### Credits

Added by Laws 1963, c. 1165, § 1. Amended by Laws 1975, c. 877, § 2; Laws 1977, c. 691, § 1; Laws 1983 (Reg. Sess., 1984), c. 1043, § 1; Laws 1985, c. 676, § 3; Laws 1987, c. 354; Laws 1989, c. 112, § 1; [Laws 1991, c. 598, § 1](#); [Laws 1995, c. 27, § 1](#), eff. July 1, 1995; [Laws 1995 \(Reg. Sess., 1996\), c. 742, §§ 29 to 32](#), eff. June 21, 1996; [S.L. 1998-132, § 18](#), eff. Sept. 9, 1998; [S.L. 2003-91, § 1](#), eff. May 30, 2003; [S.L. 2005-95, § 1](#), eff. June 21, 2005; [S.L. 2007-397, § 1](#), eff. Jan. 1, 2008; [S.L. 2021-23, § 25](#), eff. May 17, 2021; [S.L. 2023-138, § 1\(b\)](#), eff. Oct. 10, 2023.

N.C.G.S.A. § 62-2, NC ST § 62-2

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

West's North Carolina General Statutes Annotated  
Chapter 62. Public Utilities (Refs & Annos)  
Article 2. Organization of Utilities Commission

N.C.G.S.A. § 62-15

§ 62-15. Office of executive director; Public Staff, structure and function

Effective: October 10, 2023

[Currentness](#)

(a) There is established in the Commission the office of executive director, whose salary and longevity pay shall be the same as that fixed for members of the Commission. "Service" for purposes of longevity pay means service as executive director of the Public Staff. The executive director shall be appointed by the Governor subject to confirmation by the General Assembly by joint resolution. The name of the executive director appointed by the Governor shall be submitted to the General Assembly on or before May 1 of the year in which the term of his office begins. The term of office for the executive director shall be six years, and the initial term shall begin July 1, 1977. The executive director may be removed from office by the Governor in the event of his incapacity to serve; and the executive director shall be removed from office by the Governor upon the affirmative recommendation of a majority of the Commission, after consultation with the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources of the General Assembly. In case of a vacancy in the office of executive director for any reason prior to the expiration of his term of office, the name of his successor shall be submitted by the Governor to the General Assembly, not later than four weeks after the vacancy arises. If a vacancy arises in the office when the General Assembly is not in session, the executive director shall be appointed by the Governor to serve on an interim basis pending confirmation by the General Assembly.

(b) There is established in the Commission a Public Staff. The Public Staff shall consist of the executive director and such other professional, administrative, technical, and clerical personnel as may be necessary in order for the Public Staff to represent the using and consuming public, as hereinafter provided. All such personnel shall be hired, supervised, and directed by the executive director, as provided by law. The Public Staff shall not be subject to the supervision, direction, or control of the Commission, the chairman, or members of the Commission.

(c) Except for the executive director, the salaries and compensation of all such personnel shall be fixed in the manner provided by law for fixing and regulating salaries and compensation by other State agencies, except that the Public Staff and its employees are exempt from the classification and compensation rules established by the State Human Resources Commission pursuant to [G.S. 126-4\(1\)](#) through [\(4\)](#); [G.S. 126-4\(5\)](#) only as it applies to hours and days of work, vacation, and sick leave; [G.S. 126-4\(6\)](#) only as it applies to promotion and transfer; [G.S. 126-4\(10\)](#) only as it applies to the prohibition of the establishment of incentive pay programs; and Article 2 of Chapter 126 of the General Statutes, except for [G.S. 126-7.1](#).

(d) It shall be the duty and responsibility of the Public Staff to:

- (1) Review, investigate, and make appropriate recommendations to the Commission with respect to the reasonableness of rates charged or proposed to be charged by any public utility and with respect to the consistency of such rates with the

## - App. 6 -

### § 62-15. Office of executive director; Public Staff, structure and function, NC ST § 62-15

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public policy of assuring an energy supply adequate to protect the public health and safety and to promote the general welfare;

- (2) Review, investigate, and make appropriate recommendations to the Commission with respect to the service furnished, or proposed to be furnished by any public utility;
- (3) Intervene on behalf of the using and consuming public, in all Commission proceedings affecting the rates or service of any public utility;
- (4) When deemed necessary by the executive director in the interest of the using and consuming public, petition the Commission to initiate proceedings to review, investigate, and take appropriate action with respect to the rates, operations, or service of public utilities;
- (5) Intervene on behalf of the using and consuming public in all certificate applications filed pursuant to the provisions of [G.S. 62-110.1](#), and provide assistance to the Commission in making the analysis and plans required pursuant to the provisions of [G.S. 62-110.1](#) and [62-155](#);
- (6) Intervene on behalf of the using and consuming public in all proceedings wherein any public utility proposes to reduce or abandon service to the public;
- (7) Investigate complaints affecting the using and consuming public generally which are directed to the Commission, members of the Commission, or the Public Staff and where appropriate make recommendations to the Commission with respect to such complaints;
- (8) Make studies and recommendations to the Commission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of [G.S. 62-43](#); provided, however, that the Public Staff shall have no duty, responsibility, or authority with respect to the enforcement of natural gas pipeline safety laws, rules, or regulations;
- (9) When deemed necessary by the executive director, in the interest of the using and consuming public, intervene in Commission proceedings with respect to transfers of franchises, mergers, consolidations, and combinations of public utilities pursuant to the provisions of [G.S. 62-111](#);
- (10) Repealed by [S.L. 2021-23](#), § 3, eff. May 17, 2021.
- (11) Review, investigate, and make appropriate recommendations to the Commission with respect to contracts of public utilities with affiliates or subsidiaries, pursuant to the provisions of [G.S. 62-153](#);
- (12) When deemed necessary by the executive director, in the interest of the using and consuming public, advise the Commission with respect to securities, regulations, and transactions, pursuant to the provisions of Article 8 of this Chapter.



(13) When deemed necessary by the executive director in the interest of the using and consuming public, appear before State and federal courts and agencies in matters affecting public utility service.

(e) The Public Staff shall have no duty, responsibility, or authority with respect to the laws, rules or regulations pertaining to the physical facilities or equipment of common, contract and exempt carriers, the registration of vehicles or of insurance coverage of vehicles of common, contract and exempt carriers; the licensing, training, or qualifications of drivers or other persons employed by common, contract and exempt carriers, or the operation of motor vehicle equipment by common, contract and exempt carriers in the State.

(f) The executive director representing the Public Staff shall have the same rights of appeal from Commission orders or decisions as other parties to Commission proceedings.

(g) Upon request, the executive director shall employ the resources of the Public Staff to furnish to the Commission, its members, or the Attorney General, such information and reports or conduct such investigations and provide such other assistance as may reasonably be required in order to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation.

(h) The executive director is authorized to employ, subject to approval by the State Budget Officer, expert witnesses and such other professional expertise as the executive director may deem necessary from time to time to assist the Public Staff in its participation in Commission proceedings, and the compensation and expenses therefor shall be paid by the utility or utilities participating in said proceedings. Such compensation and expenses shall be treated by the Commission, for ratemaking purposes, in a manner generally consistent with its treatment of similar expenditures incurred by utilities in the presentation of their cases before the Commission. An accounting of such compensation and expenses shall be reported annually to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Senate Appropriations Committee on Agriculture, Natural, and Economic Resources, and the chairs of the House of Representatives Appropriations Committee on Agriculture and Natural and Economic Resources and to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.

(i) The executive director, within established budgetary limits, and as allowed by law, shall authorize and approve travel, subsistence, and related necessary expenses of the executive director or members of the Public Staff, incurred while traveling on official business.

#### Credits

Added by Laws 1963, c. 1165, § 1. Amended by Laws 1977, c. 468, § 4; Laws 1981, c. 475, § 1; Laws 1983, c. 717, § 12.1; Laws 1985, c. 499, § 4; Laws 1989, c. 781, § 41.3; [Laws 1989 \(Reg. Sess., 1990\), c. 1024, § 13](#); [S.L. 1999-237, § 28.21A](#), eff. July 1, 1999; [S.L. 2011-291, §§ 2.8, 2.9](#), eff. June 24, 2011; [S.L. 2017-57, § 14.1\(p\)](#), eff. July 1, 2017; [S.L. 2021-23, §§ 3, 24, 25](#), eff. May 17, 2021; [S.L. 2023-134, § 11.16\(b\)](#), eff. July 1, 2023; [S.L. 2023-138, § 6\(b\)](#), eff. Oct. 10, 2023.

N.C.G.S.A. § 62-15, NC ST § 62-15

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

## - App. 8 -

### § 62-23. Commission as an administrative board or agency, NC ST § 62-23

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West's North Carolina General Statutes Annotated  
Chapter 62. Public Utilities (Refs & Annos)  
Article 2. Organization of Utilities Commission

#### N.C.G.S.A. § 62-23

#### § 62-23. Commission as an administrative board or agency

##### Currentness

The Commission is hereby declared to be an administrative board or agency of the General Assembly created for the principal purpose of carrying out the administration and enforcement of this Chapter, and for the promulgation of rules and regulations and fixing utility rates pursuant to such administration; and in carrying out such purpose, the Commission shall assume the initiative in performing its duties and responsibilities in securing to the people of the State an efficient and economic system of public utilities in the same manner as commissions and administrative boards generally. In proceedings in which the Commission is exercising functions judicial in nature, it shall act in a judicial capacity as provided in [G.S. 62-60](#). The Commission shall separate its administrative or executive functions, its rule making functions, and its functions judicial in nature to such extent as it deems practical and advisable in the public interest.

##### Credits

Added by Laws 1963, c. 1165, § 1.

#### N.C.G.S.A. § 62-23, NC ST § 62-23

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

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West's North Carolina General Statutes Annotated  
Chapter 62. Public Utilities (Refs & Annos)  
Article 3. Powers and Duties of Utilities Commission

N.C.G.S.A. § 62-30

§ 62-30. General powers of Commission

Currentness

The Commission shall have and exercise such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws providing for their regulation, and all such other powers and duties as may be necessary or incident to the proper discharge of its duties.

**Credits**

Added by Laws 1963, c. 1165, § 1.

N.C.G.S.A. § 62-30, NC ST § 62-30

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

West's North Carolina General Statutes Annotated  
Chapter 62. Public Utilities (Refs & Annos)  
Article 3. Powers and Duties of Utilities Commission

N.C.G.S.A. § 62-32

§ 62-32. Supervisory powers; rates and service

Currentness

(a) Under the rules herein prescribed and subject to the limitations hereinafter set forth, the Commission shall have general supervision over the rates charged and service rendered by all public utilities in this State.

(b) Except as provided in this Chapter for bus companies, the Commission is hereby vested with all power necessary to require and compel any public utility to provide and furnish to the citizens of this State reasonable service of the kind it undertakes to furnish and fix and regulate the reasonable rates and charges to be made for such service.

**Credits**

Added by Laws 1963, c. 1165, § 1. Amended by Laws 1985, c. 676, § 5.

N.C.G.S.A. § 62-32, NC ST § 62-32

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

West's North Carolina General Statutes Annotated  
Chapter 62. Public Utilities (Refs & Annos)  
Article 5. Review and Enforcement of Orders (Refs & Annos)

N.C.G.S.A. § 62-94

§ 62-94. Record on appeal; extent of review

Effective: June 23, 2023

[Currentness](#)

(a) On appeal the court shall review the record and the issues raised in accordance with the rules of appellate procedure, and any alleged irregularities in procedures before the Commission, not shown in the record, shall be considered under the rules of appellate procedure.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any Commission action. The court may affirm or reverse the decision of the Commission, declare the decision null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the appellants have been prejudiced because the Commission's findings, inferences, conclusions, or decisions are any of the following:

- (1) In violation of constitutional provisions.
- (2) In excess of statutory authority or jurisdiction of the Commission.
- (3) Made upon unlawful proceedings.
- (4) Affected by other errors of law.
- (5) Unsupported by competent, material, and substantial evidence in view of the entire record as submitted.
- (6) Arbitrary or capricious.

(c) In making these determinations, the court shall review the whole record or the portions of it that are cited by any party, and due account shall be taken of the rule of prejudicial error. The appellant shall not be permitted to rely upon any grounds for relief on appeal that were not set forth specifically in the appellant's notice of appeal filed with the Commission.

(d) The court shall also compel action of the Commission unlawfully withheld or unlawfully or unreasonably delayed.

## - App. 12 -

### § 62-94. Record on appeal; extent of review, NC ST § 62-94

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(e) Upon any appeal, the rates fixed or any rule, finding, determination, or order made by the Commission under this Chapter is prima facie just and reasonable.

#### Credits

Added by Laws 1963, c. 1165, § 1. Amended by Laws 1969, c. 614; Laws 1975, c. 391, § 14; [S.L. 2023-54, § 10](#), eff. June 23, 2023.

N.C.G.S.A. § 62-94, NC ST § 62-94

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

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End of Document

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KeyCite Yellow Flag - Negative Treatment  
Proposed Legislation

West's North Carolina General Statutes Annotated  
Chapter 62. Public Utilities (Refs & Annos)  
Article 6. The Utility Franchise

N.C.G.S.A. § 62-111

§ 62-111. Transfers of franchises; mergers, consolidations and combinations of public utilities

Effective: June 30, 2023

[Currentness](#)

(a) No franchise now existing or hereafter issued under the provisions of this Chapter other than a franchise for motor carriers of passengers shall be sold, assigned, pledged or transferred, nor shall control thereof be changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any public utility be made through acquisition of control by stock purchase or otherwise, except after application to and written approval by the Commission, which approval shall be given if justified by the public convenience and necessity. Provided, that the above provisions shall not apply to regular trading in listed securities on recognized markets.

(b) No certificates issued under the provisions of this Chapter for motor carriers of passengers shall be sold, assigned, pledged, transferred, or control changed through stock transfer or otherwise, or any rights thereunder leased, nor shall any merger or combination affecting any motor carrier of passengers be made through acquisition of control by stock purchases or otherwise, except after application to and written approval by the Commission as in this section provided, provided that the above provisions shall not apply to regular trading in listing securities on recognized markets. The applicant shall give not less than 10 days' written notice of such application by registered mail or by certified mail to all connecting and competing carriers. When the Commission is of the opinion that the transaction is consistent with the purposes of this Chapter the Commission may, in the exercise of its discretion, grant its approval, provided, however, that when such transaction will result in a substantial change in the service and operations of any motor carrier of passengers party to the transaction, or will substantially affect the operations and services of any other motor carrier, the Commission shall not grant its approval except upon notice and hearing as required in [G.S. 62-262.1](#) for bus companies upon an application for an original certificate. In all cases arising under the subsection it shall be the duty of the Commission to require the successor carrier to satisfy the Commission that the operating debts and obligations of the seller, assignor, pledgor, lessor or transferor, including taxes due the State of North Carolina or any political subdivision thereof are paid or the payment thereof is adequately secured. The Commission may attach to its approval of any transaction arising under the section such other conditions as the Commission may determine are necessary to effectuate the purposes of this Article.

(c) No sale of a franchise for a motor carrier of household goods shall be approved by the Commission until the seller shall have filed with the Commission a statement under oath of all debts and claims against the seller, of which such seller has any knowledge or notice, (i) for gross receipts, use or privilege taxes due or to become due the State, as provided in the Revenue Act, (ii) for wages due employees of the seller, other than salaries of officers and in the case of motor carriers, (iii) for unremitted C.O.D. collections due shippers, (iv) for loss of or damage to goods transported, or received for transportation, (v) for overcharges on property transported, and, (vi) for interline accounts due other carriers, together with a bond, if required by the Commission, payable to the State, executed by a surety company authorized to do business in the State, in an amount double the aggregate of all such debts and claims conditioned upon the payment of the same within the amount of such bond as the

amounts and validity of such debts and claims are established by agreement of the parties, or by judgment. This subsection shall not be applicable to sales by personal representatives of deceased or incompetent persons, receivers or trustees in bankruptcy under court order.

(d) No person shall obtain a franchise or certificate for the purpose of transferring the same to another, and an offer of such transfer within one year after the same was obtained shall be prima facie evidence that such franchise or certificate was obtained for the purpose of sale.

(e) The Commission shall approve applications for transfer of motor carrier franchises made under this section upon finding that said sale, assignment, pledge, transfer, change of control, lease, merger, or combination is in the public interest, will not adversely affect the service to the public under said franchise, will not unlawfully affect the service to the public by other public utilities, that the person acquiring said franchise or control thereof is fit, willing and able to perform such service to the public under said franchise, and that service under said franchise has been continuously offered to the public up to the time of filing said application or in lieu thereof that any suspension of service exceeding 30 days has been approved by the Commission as provided in [G.S. 62-112\(b\)\(5\)](#). Provided, however, the Commission shall approve, without imposing conditions or limitations, applications for the transfer of a bus company franchise made under this section upon finding that the person acquiring the franchise or control of the franchise is fit, willing and able to perform services to the public under that franchise.

(f) The following provisions apply to an application for the grant or transfer of a certificate of public convenience and necessity for a water or wastewater system:

(1) Within 30 days of the filing of such application, the Commission shall (i) determine whether or not the application is complete and notify the applicant accordingly and (ii) if the Commission determines an application is incomplete, specify all such deficiencies in the notice to the applicant. The applicant may file an amended application or supplemental information to cure the deficiencies identified by the Commission for the Commission's review. If the Commission fails to issue a notice as to whether or not the application is complete within the requisite 30-day period, the application shall be deemed complete. Within 300 days of the filing of a completed application, the Commission shall issue an order approving the application upon finding that the proposed grant or transfer, including adoption of existing or proposed rates for the transferring utility, is in the public interest, will not adversely affect service to the public under any existing franchise, and the person acquiring said franchise or certificate of public convenience and necessity has the technical, managerial, and financial capabilities necessary to provide public utility service to the public. The requirements of this subdivision shall apply to any applications for grants or transfers of a water or wastewater system sought as a result of a proposed sale of a privately owned water or wastewater system to a public or private entity, except with respect to those applications governed by subdivision (2) of this subsection.

(2) Within 30 days of the filing of such application, the Commission shall (i) determine whether or not the application is complete and notify the applicant accordingly and (ii) if the Commission determines an application is incomplete, specify all such deficiencies in the notice to the applicant. The applicant may file an amended application or supplemental information to cure the deficiencies identified by the Commission for the Commission's review. If the Commission fails to issue a notice as to whether or not the application is complete within the requisite 30-day period, the application shall be deemed complete. Within 210 days of the filing of a completed application, the Commission shall issue an order approving the application upon finding that the proposed grant or transfer, including adoption of existing or proposed rates for the transferring utility, is in the public interest, will not adversely affect service to the public under any existing franchise, and the person acquiring said franchise or certificate of public convenience and necessity has the technical, managerial, and financial capabilities necessary to provide public utility service to the public. The requirements of this subdivision shall apply to any applications for grants or transfers of a water or wastewater system sought as a result



of a proposed sale of a privately owned water or wastewater system to a public or private entity, where the water or wastewater system has an unresolved notice of violation issued by the Department of Environmental Quality within the 24-month period immediately preceding the date of application.

- (3) Prior to submittal of an application, and within 90 days of entering into an offer to purchase agreement for a water or wastewater system, a proposed purchaser shall have a pre-application conference with the Commission and Public Staff to clarify application requirements, information on assets that must be provided, and associated matters.
- (4) An applicant for the grant or transfer of a certificate of public convenience and necessity for a water or wastewater system may waive any deadline for determination of an application's completeness, or issuance of an order approving an application, set forth in subdivision (1) or (2) of this subsection.

#### Credits

Added by Laws 1963, c. 1165, § 1. Amended by Laws 1967, c. 1202; Laws 1985, c. 676, § 10, 11; [Laws 1995, c. 523, § 2, eff. July 29, 1995](#); [S.L. 2021-23, § 13, eff. May 17, 2021](#); [S.L. 2023-67, § 1\(a\), eff. June 30, 2023](#).

N.C.G.S.A. § 62-111, NC ST § 62-111

The statutes and Constitution are current through the end of the 2023 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

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CONFIDENTIAL Apr 13 2023

PLACE: Dobbs Building, Raleigh, North Carolina  
DATE: Wednesday, March 8, 2023  
TIME: 1:39 p.m. - 5:31 p.m.  
DOCKET NO.: A-41, Sub 22  
BEFORE: Commissioner Kimberly W. Duffley, Presiding  
Chair Charlotte A. Mitchell  
Commissioner ToNola D. Brown-Bland  
Commissioner Daniel G. Clodfelter  
Commissioner Jeffrey A. Hughes  
Commissioner Floyd B. McKissick, Jr.  
Commissioner Karen M. Kemerait

IN THE MATTER OF:

Joint Application of

Bald Head Island Transportation, Inc., and  
Bald Head Island Ferry Transportation, LLC, for  
Approval of Transfer of Common Carrier Certificate to  
Bald Head Island Ferry Transportation, LLC, and  
Permission to Pledge Assets

VOLUME: 4

discussed, that's purely hypothetical at this point?

A. Correct.

Q. All right. And you mentioned in your testimony that, if the Village were able to acquire the assets, its plan would be to have Mr. Paul, Ms. Mayfield, and Mr. Stewart continue in their roles for a certain amount of time, right?

A. Correct.

Q. But neither Mr. Paul, nor Ms. Mayfield, nor Mr. Stewart has ever given you any indication that they would continue to work for the Village, correct?

A. That's correct.

Q. In the Sub 21 Order, have you read that?

A. Yes, that's been allowed.

Q. One of the things that the Commission quoted in that Order was the testimony of Mr. Briggs where he said, "We have a good deal there" -- and I'll represent to you, that he was referring to the parking and barge rates -- and he said, "We have a good deal there. There's no question it's reasonable."

Do you remember that testimony?

A. I do remember that.

Q. Would you agree with Mr. Briggs, that the rates for the parking and barge are currently

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1 reasonable?

2 A. I would say they probably are, yes.

3 MS. HEDRICK: I have nothing further at  
4 this time.

5 COMMISSIONER DUFFLEY: Mr. Ferrell?

6 EXAMINATION BY MR. FERRELL:

7 Q. Just a few. Did you attend the two-hour open  
8 session public meeting that Mr. Paul and Mr. Lee -- I  
9 mean Mr. Roberts attended on the Island to answer  
10 questions?

11 A. Yes. The July meeting at the association  
12 building?

13 Q. Yes. The mayor was there, but you were there  
14 as well?

15 A. Yes.

16 Q. So Mr. Paul and Mr. Roberts came to hear  
17 ques- -- to answer questions and concerns from yourself  
18 and others on the Island --

19 A. Yes.

20 Q. -- in that approximately two-hour meeting?

21 A. Yes.

22 Q. Okay. And, I believe, your testimony earlier  
23 was that you didn't raise these potential changes to  
24 cover and different things at that meeting, correct?

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PLACE: Dobbs Building, Raleigh, North Carolina  
DATE: Thursday, March 9, 2023  
TIME: 2:05 p.m. - 5:42 p.m.  
DOCKET NO.: A-41, Sub 22  
BEFORE: Commissioner Kimberly W. Duffley, Presiding  
Chair Charlotte A. Mitchell  
Commissioner ToNola D. Brown-Bland  
Commissioner Daniel G. Clodfelter  
Commissioner Jeffrey A. Hughes  
Commissioner Floyd B. McKissick, Jr.  
Commissioner Karen M. Kemerait

IN THE MATTER OF:

Joint Application of

Bald Head Island Transportation, Inc., and  
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Bald Head Island Ferry Transportation, LLC, and  
Permission to Pledge Assets

VOLUME: 6

1 increase revenues while only marginally increasing  
2 expenses. And I believe that's one of the thoughts  
3 behind Mr. Roberts, as he says he wants to seek ways to  
4 increaser ridership, increase profitability.

5 Q. In terms of rate design, though, that's  
6 something that BHIL can do itself, now?

7 A. Without a doubt, but I've never -- I don't  
8 believe BHIL has tried that, and possibly, that's  
9 reason because they're owned by the Mitchell family,  
10 and their attitude towards maximizing revenues may not  
11 be the same as Mr. Roberts.

12 Q. Going back to the capital expenditures, you  
13 mentioned they could be funded the profitability  
14 operations. The second thing you -- I believe you  
15 mentioned was a short-term loan?

16 A. A loan.

17 Q. Okay.

18 A. I'm not going to go as far as to say  
19 short-term versus long-term, but yes, and talking  
20 with -- Mr. Roberts has testified this -- and I  
21 remember when I dealt with the lender that I was  
22 impressed with the conversation to the point where I  
23 believe very confidently he would be a likely source of  
24 additional capital. Bankers, as you may well know,

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CONFIDENTIAL Apr 13 2023

CONFIDENTIAL

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1 PLACE: Dobbs Building, Raleigh, North Carolina  
2 DATE: Friday, March 10, 2023  
3 TIME: 9:30 a.m. - 10:45 a.m.  
4 DOCKET NO: A-41, Sub 22  
5 BEFORE: Commissioner Kimberly W. Duffley, Presiding  
6 Chair Charlotte A. Mitchell  
7 Commissioner ToNola D. Brown-Bland  
8 Commissioner Daniel G. Clodfelter  
9 Commissioner Jeffrey A. Hughes  
10 Commissioner Floyd B. McKissick, Jr.  
11 Commissioner Karen M. Kemerait  
12  
13

14 IN THE MATTER OF:

15 Joint Application of

16 Bald Head Island Transportation, Inc., and  
17 Bald Head Island Ferry Transportation, LLC, for  
18 Approval of Transfer of Common Carrier Certificate to  
19 Bald Head Island Ferry Transportation, LLC, and  
20 Permission to Pledge Assets  
21

22 Volume 7  
23  
24

1 believe it's to you where you were the attorney that  
2 wanted to ask confidential questions, and I think we  
3 had a couple on this side as well.

4 MR. FERRELL: Yes. Thank you.

5 FURTHER EXAMINATION BY MR. FERRELL:

6 Q Good morning. Mr. Hinton, I just have a short  
7 series of questions for you. Did you request to  
8 have the opportunity to have a call with  
9 SharpVue's lender in order to discuss kind of the  
10 terms of the loan and get an understanding to  
11 satisfy yourself about their commitment to  
12 loaning money on this project?

13 A (Mr. Hinton) Yes, we did. As illustrated or  
14 discussed in our original testimony, one of the  
15 caveats we had was we had to have assurances that  
16 a debt capital was actually available to the  
17 Company or would be available to the Company with  
18 at least a reasonable level of confidence. And  
19 at first filing of the testimony, we weren't at  
20 that level, so we did request to speak to the --  
21 as confidential, I can speak to the president of  
22 Truist Bank.

23 Q And so did you have an opportunity to have a call  
24 with Chris Bell, the regional president for the



1 A. The NCUC has required regulatory conditions in the approval of past mergers, and the  
2 Applicants are proposing numerous regulatory conditions that are very similar to those  
3 proposed by the Public Staff as part of this proceeding.

4 **Q. Do the proposed regulatory conditions address the Village's concern that parking**  
5 **may not be available in the future at a reasonable cost?**

6 A. Yes. However, first it is important to reiterate that the current parking is sufficient and is  
7 reasonably priced. The Village's concern, as discussed above, relates to a hypothetical  
8 situation in the future. The regulatory conditions offered by SharpVue ensure the  
9 availability of parking and that parking barge rates will not increase greater than the rate  
10 of inflation. The regulatory conditions and oversight of affiliate transactions address the  
11 concerns about parking availability and pricing.

12 **Q. Beyond the testimony in Docket A-41, Sub 21, did you undertake any independent**  
13 **analysis of the reasonableness of the pricing of parking at the Deep Point Terminal?**

14 A The general standard for evaluating affiliate transaction agreements is to allow services  
15 between regulated and non-regulated affiliates at the lower of cost or market rates, subject  
16 to Commission oversight. (The Applicants have agreed to that standard in this docket.) In  
17 that context, "benchmarking" is often utilized to determine "market rates." Accordingly,  
18 I thought it would be instructive to determine the appropriateness of the current parking  
19 charges by benchmarking the prices charged by other parking businesses.

20 **Q. Have you performed a benchmarking analysis of North Carolina parking rates to**  
21 **determine if the Bald Head Island parking is reasonably priced?**

22 A. Yes. Table 3 below contains a summary of various parking operations in North Carolina  
23 and their prices.

1

**Table 1 - North Carolina Maximum Daily Parking Rates**

Parking Facility	Daily Max Rate
Wilmington International- Economy Daily Lot	\$9
Town of Carolina Beach- November & December	\$10
Charlotte Douglas International- Long-term Lot	\$10
Piedmont Triad International- Economy	\$10
Raleigh-Durham International- Economy	\$11
Deep Point Terminal Parking	\$12
Piedmont Triad International- Central Garage	\$12
City of Wilmington- Decks	\$12
Charlotte Douglas International- Daily Deck	\$12
Piedmont Triad International- Central Garage	\$12
Wilmington International- Daily Lot	\$12
City of Wilmington- River Place Deck	\$13
Downtown Raleigh State Gov't Complex- Parking Decks	\$14
Raleigh-Durham International- Express	\$14
Downtown Raleigh State Gov't Complex- Performing Arts Deck & Convention Center	\$15
Town of Holden Beach	\$15
City of Wilmington- Convention Center	\$15
Piedmont Triad International- Premium	\$15
Wilmington International- Premium Daily Lot	\$15
Charlotte Douglas International- Express Deck	\$16
Raleigh-Durham International- Central	\$17
City of Wilmington- On Street	\$19
Downtown Raleigh State Government Complex- Visitor	\$20
Town of Oak Island	\$20
Charlotte Douglas International- Hourly	\$24
Wilmington International- Hourly Lot	\$24
Town of Carolina Beach- March to October	\$25
Town of Wrightsville Beach	\$25
Raleigh-Durham International- Premier	\$26
Downtown Raleigh State Government Complex- Metered	\$30
Count= 30	

Parking Facility	Daily Max Rate
Average= \$16.13	
Median= \$15.00	
Mode= \$12.00	

Not considering discounted annual pass rates<sup>23</sup>, the standard daily parking rate at the Deep Point Terminal is \$12 per day and its daily parking price ranks as the 6<sup>th</sup> lowest of those benchmarked. As shown in table above, the Deep Point parking price is below the average North Carolina daily parking rate of \$16.13. In fact, the parking prices at the Deep Point Terminal rank in the 23.3 percentile, placing them in the lowest quartile of the benchmarked North Carolina parking rates. The benchmark analysis also indicated that the median of the daily parking rates in North Carolina is \$15, and the mode is \$12. The mode represents the price in the benchmark analysis that is repeated the most times, meaning that a daily parking rate of \$12, as is the case at Deep Point, is quite common. Based on all this information, I conclude there is no indication that the Deep Point parking rates are priced above the market rate. In addition, a similar analysis can be conducted at any point in the future to ascertain if SharpVue's affiliate BHIFT provides reasonably priced parking.

**Q. Do these benchmarking results also inform the decision regarding the appropriate method of determining rate base in these proceedings?**

---

<sup>23</sup> Of course, this is a significant exclusion from the analysis because the uncontroverted evidence of record in A-41, Sub 21, is that owners and residents who tend to park for longer periods can buy an annual pass under which their fee in the Premium Lot is \$3.70 per day. The annual pass rate is even lower for a pass in the General Lot, at \$3.29 per day. Annual pass rates are lower still for contractors (\$1.92 per day) and Island employees (\$1.78 per day). NCUC Docket No. A-41, Sub 21, STG Cross Examination Ex. 2.

1 A. Yes. In the Sub 21 Order, the Commission has already ordered that the current rates should  
2 stay in place. As explained earlier in my testimony, establishing the rate base at the current  
3 market value (i.e., the SharpVue purchase price) would, in essence maintain rates at their  
4 approximate current level resulting in minimal, if any, rate impact on consumers. And this  
5 benchmarking demonstrates that the current rates are consistent with parking rates at other  
6 locations around the state.

7 Said conversely, reducing the rate base by \$25 million as proposed by the Village would  
8 result in parking rates that would be completely inconsistent and uneconomical for the  
9 facilities' owner when compared with similar parking services provided around the state.  
10 I am not a lawyer, but, in layman's terms, such a result would have the practical result of a  
11 taking from BHIL or SharpVue in the amount of \$25 million of value.

12 **Q. One of your answers earlier in this testimony implied the Commission might seek to**  
13 **regulate parking and tugboat/barge rates in some way other than by rate base/rate-**  
14 **of-return ratemaking; could these benchmarking results also support such a result?**

15 A. Yes. If the current rates are consistent with rates at other parking facilities around the State,  
16 and the Commission has already found that they are just and reasonable, then it would seem  
17 to me that – so long as those rates could be adjusted only at or below the rate of inflation –  
18 the administrative burden and expense of having to come in for a rate case (which would  
19 inevitably be contested, based upon the history of Bald Head Island), or requiring  
20 affirmative Commission approval for every adjustment of rates that might accommodate a  
21 market opportunity or ratepayer request would outweigh any regulatory benefit and would  
22 be administratively burdensome for an operation of this size, unnecessary as a practical  
23 matter, and (from an economic perspective) extremely inefficient.



85032 P1391 06-21-2023  
14:27:30 000  
Brenda M. Clemmons PROP  
Brunswick County, NC Register of Deeds page 1 of 4  
Brenda M. Clemmons Register of Deeds  
06-21-2023 14:27:30.000 Brunswick County, NC  
NC REVENUE STAMP: \$3200.00 (#884879)

4  
Return to MTN type POP  
Total 26 Rev 3200 Int. 8  
Ck \$ 4978 Ck # 4245 Cash \$  
Refund \_\_\_\_\_ Cash \$ \_\_\_\_\_ Finance \_\_\_\_\_  
☒ Portions of document are illegible due to condition of original.  
☒ Document contains seals verified by original instrument that cannot be reproduced or copied

## NORTH CAROLINA SPECIAL WARRANTY DEED

*Delinquent taxes, if any, are to be paid by the closing attorney to the county tax collector before the disbursing of funds.*

Mail after recording to Grantee, 3700 Glenwood Ave., Ste. 530, Raleigh, NC 27612  
This instrument was prepared by Judith A. Ward, P. O. Box 3069, Bald Head Island, NC 28461  
Excise Tax: \$ 3200.00  
Parcel Identifier No.: 2642J011, 2642J018, 2642J031

**\*\*PREPARED WITHOUT OPINION AS TO TITLE\*\***

Brief description for the Index:

Lots 5R, 11R, and 18, The Shops at Maritime Way, Bald Head Island, NC

THIS DEED made this 20<sup>th</sup> day of June, 2023, by and between

GRANTOR

BALD HEAD ISLAND LIMITED, LLC,  
a Texas limited liability company  
P. O. Box 3069  
Bald Head Island, NC 28461

GRANTEE

PELICAN REAL PROPERTY, LLC,  
a North Carolina limited liability company  
3700 Glenwood Ave., Suite 530  
Raleigh, NC 27612

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain real property and premises situated in the Village of Bald Head Island, Smithville Township, Brunswick County, North Carolina, and more particularly described as follows:

**SEE ATTACHED EXHIBIT A FOR LEGAL DESCRIPTION (the "Property").**

*Pursuant to N.C.G.S. 105-317.2(2), Grantor states that the property herein described does not include the primary residence of the Grantor.*

573384

Return to  
Murchison, Taylor & Gibson, PLLC

Brunswick County, NC Register of Deeds page 2 of 4  
B5032 P1392 06-21-2023 14:27:30.000  
Brenda M. Clemmons PROP

TO HAVE AND TO HOLD the aforesaid Property, and all privileges, improvements, and appurtenances thereto belonging, to the Grantee in fee simple, subject to the exceptions herein set forth; and the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and that Grantor will warrant and defend the same against the lawful claims of all persons claiming by through or under Grantor, but against no others, subject to the exceptions set forth herein.

The Property is subject to all "Permitted Liens", as said term is defined in that Asset Purchase Agreement between the parties hereto (and assigns among others) dated as of May 17, 2022 (as amended). Without limiting the foregoing, the Property is subject to the following:

1. Ad valorem real property taxes for 2023 and subsequent years;
2. All applicable laws, zoning ordinances, building codes and other governmental rules and regulations, if any, affecting the use or development of the property conveyed;
3. All matters that would be disclosed by an accurate survey as of the date hereof;
4. The terms and conditions of the "Bald Head Island Commercial Design Guidelines" with an effective date of August 20, 2014, a copy of which has been provided to Grantee and is incorporated herein by reference; and
5. Additional exceptions set forth on the attached Exhibit B.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name by its duly authorized agent and representative, the day and year first above written.

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

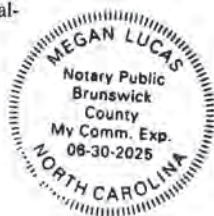
By:   
Charles A. Paul, III, Manager

STATE OF NORTH CAROLINA  
NEW HANOVER COUNTY

I, Megan Lucas, 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 the said Bald Head Island Limited, LLC.

WITNESS my hand and official seal, this the 20<sup>th</sup> day of June, 2023.

-stamp or seal-



  
Notary Public

My commission expires: 06/30/2025



B5032 P1393 06-21-2023  
14:27:30.000  
Brenda M. Clemmons PROP  
page 3 of 4

**EXHIBIT A**  
**TO NORTH CAROLINA SPECIAL WARRANTY DEED**  
**BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO**  
**PELICAN REAL PROPERTY, LLC, GRANTEE**

**LEGAL DESCRIPTION:**

All of those certain tracts or parcels of land, lying and being in the Village of Bald Head Island, Smithville Township, Brunswick County, North Carolina, more particularly described as follows:

BEING ALL of **Lot 5 Revised**, containing 118,779 square feet/2.73 AC, more or less, and **Lot 11 Revised**, containing 54,311 square feet/1.25 AC, more or less, as said lots are shown on that certain plat entitled "Lot 1 Revised, Lot 5 Revised and Lot 11 Revised For The Shops at Maritime Way" prepared by Withers and Ravenel-Brunswick Surveying, Inc., and recorded in **Map Cabinet 37, Page 64**, Brunswick County Registry; and

BEING ALL of **Lot 18**, containing **66,617 square feet, more or less**, as shown on that certain plat entitled "The Shops at Maritime Way" prepared by Brunswick Surveying, Inc., and recorded in **Map Cabinet 27, Page 541**, Brunswick County Registry.

Together with and subject to those rights and obligations set forth in that Third Amended and Restated Declaration of Protective Covenants for The Shops at Maritime Way recorded in Book 5032, Page 335, Brunswick County Registry (as may be further be amended from time to time).





85032 P1394 06-21-2023  
14:27:30.000  
Brenda M. Clemmons PROP  
Brunswick County, NC Register of Deeds page 4 of 4

**EXHIBIT B**  
**TO NORTH CAROLINA SPECIAL WARRANTY DEED**  
**BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO**  
**PELICAN REAL PROPERTY, LLC, GRANTEE**

**EXCEPTIONS:**

1. Terms, provisions, options, right of first refusal, covenants, conditions, restrictions, easements, charges, assessments, and liens provided for in instrument(s) filed for record in Book 5032, Page 335; Book 3123, Page 1186, Book 1743, Page 363, Book 2064, Page 603, Book 2280, Page 389, Book 2374, Page 290, Book 2579, Page 857, Book 3123, Page 499, Book 3123, Page 1186 and any related maps, plans, bylaws and other document(s) and amendment(s).
2. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variations or other adverse circumstance affecting the Title disclosed by plat(s) recorded in Map Cabinet 81, Pages 45-47; Map Cabinet 37, Page 64; Map Cabinet 27, Page 541; Map Cabinet 23, Page 537; Map Cabinet 23, Page 204; and Map Cabinet 22, Page 375.
3. Utility Right of Way Easement to Southern Bell Telephone and Telegraph Company recorded in Book 702, Page 87.
4. Easement Agreement recorded in Book 1143, Page 919.
5. Grant of Easement (Water Wells) to Bald Head Island Utilities, Inc. recorded in Book 2075, Page 1235.
6. Grant of Easement (Pump Stations) to Bald Head Island Utilities, Inc. recorded in Book 2075, Page 1238; Assignment of Assumption of Utility Easements to the Village of Bald Head Island recorded in Book 2307, Page 1404, Book 2474, Page 729 and Book 2542, Page 1296.



 **B5032 P1395** 06-21-2023 14:27:30.001  
Brunswick County, NC Register of Deeds page 1 of 5  
Brenda M. Clemmons Register of Deeds  
06-21-2023 14:27:30.001 Brunswick County, NC  
NC REVENUE STAMP: \$1300.00 (#884880)

Return to MTA Type Box  
Total 26 Rev 1300 Int. 0.00  
5 Ck \$ 4978 Ck # 4245 Cash \$  
Refund Cash \$ Finance \$  
☐ Portions of document are illegible due to condition of original.  
☒ Document contains seals verified by original instrument that cannot be reproduced or copied.

## NORTH CAROLINA SPECIAL WARRANTY DEED

*Delinquent taxes, if any, are to be paid by the closing attorney to the county tax collector before the disbursing of funds.*

Mail after recording to Grantee, 3700 Glenwood Ave., Ste. 530, Raleigh, NC 27612

This instrument was prepared by Judith A. Ward, P. O. Box 3069, Bald Head Island, NC 28461

**\*\*PREPARED WITHOUT OPINION AS TO TITLE\*\***

Excise Tax: \$ 1300.00

Parcel Identifier No.: See Exhibit A

Brief description for the Index:

Units A14, T13, T14, S5, S6, S19, Bald Head  
Island Yacht Club, a Condominium, BHI, NC

THIS DEED made this 20<sup>th</sup> day of June, 2023, by and between

### GRANTOR

BALD HEAD ISLAND LIMITED, LLC,  
a Texas limited liability company  
P. O. Box 3069  
Bald Head Island, NC 28461

### GRANTEE

PELICAN REAL PROPERTY, LLC,  
a North Carolina limited liability company  
3700 Glenwood Ave., Suite 530  
Raleigh, NC 27612

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain real property and premises situated in the Village of Bald Head Island, Smithville Township, Brunswick County, North Carolina, and more particularly described as follows:

**SEE ATTACHED EXHIBIT A FOR LEGAL DESCRIPTION (the "Property").**

*Pursuant to N.C.G.S. 105-317.2(2), Grantor states that the property herein described does not include the primary residence of the Grantor.*

373356

Return to  
Murchison, Taylor & Gibson, PLLC



TO HAVE AND TO HOLD the aforesaid Property, and all privileges, improvements, and appurtenances thereto belonging, to the Grantee in fee simple, subject to the exceptions herein set forth; and the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and that Grantor will warrant and defend the same against the lawful claims of all persons claiming by through or under Grantor, but against no others, subject to the exceptions herein set forth.

The Property is subject to all "Permitted Liens", as said term is defined in that Asset Purchase Agreement between the parties hereto (and assigns among others) dated as of May 17, 2022 (as amended). Without limiting the foregoing, the Property is subject to the following:

1. Ad valorem real property taxes for 2023 and subsequent years;
2. All applicable laws, zoning ordinances, building codes and other governmental rules and regulations, if any, affecting the use or development of the property conveyed;
3. All matters that would be disclosed by an accurate survey as of the date hereof;
4. Additional exceptions set forth on the attached Exhibit B; and
5. Any future transferee must have applied for membership in the Bald Head Island Yacht Club and have been approved prior to a transfer of the Property as provided in Article XV Paragraph B of the Declaration of Condominium, recorded in Book 3655 at Page 388, Office of the Register of Deeds of Brunswick County, North Carolina. Said approval shall be evidenced by the Bald Head Island Yacht Club on the transfer deed by execution of the form of approval on said transfer deed that is also set out on the following page of the deed of this Property.

CONSENT OF BALD HEAD ISLAND YACHT CLUB,  
GRANTOR SIGNATURE AND ACKNOWLEDGMENT FOLLOW ON NEXT PAGE.



B5032 P1397 06-21-2023 14:27:30.001  
Grenda N. Clemmons PROP  
Brunswick County, NC Register of Deeds page 3 of 5

BALD HEAD ISLAND YACHT CLUB has received and approved the membership application of **PELICAN REAL PROPERTY, LLC**, Grantee, as required by Article XV, Paragraph B of the Declaration of Condominium recorded in Book 3655, at Page 388, Office of the Register of Deeds of Brunswick County, North Carolina; and acknowledges and approves the transfer of the Property to Grantee.

BALD HEAD ISLAND YACHT CLUB,  
a North Carolina non-profit corporation

By:   
Title: Commander  
Authorized Signatory

IN WITNESS WHEREOF, the **Grantor** has caused this instrument to be signed in its name by its duly authorized agent and representative, the day and year first above written.

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

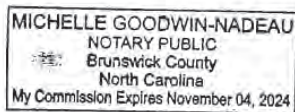
By:   
Charles A. Paul, III, Manager

STATE OF NORTH CAROLINA  
BRUNSWICK COUNTY

I, Michelle Goodwin-Nadeau, 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 the said Bald Head Island Limited, LLC.

WITNESS my hand and official seal, this the 15<sup>th</sup> day of June, 2023.

-stamp or seal-



Michelle Goodwin-Nadeau  
Notary Public  
My commission expires: 11/04/2024





**EXHIBIT A**  
**TO NORTH CAROLINA SPECIAL WARRANTY DEED**  
**BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO**  
**PELICAN REAL PROPERTY, LLC, GRANTEE**

**LEGAL DESCRIPTION:**

Being all of those certain premises comprising a portion of Bald Head Island Yacht Club, a Condominium, said Condominium having been established under Chapter 47C of the North Carolina General Statutes (North Carolina Condominium Act) and the Declaration of condominium dated June 15, 2015, and recorded in Book 3655, at Page 388, Office of the Register of Deeds of Brunswick County, North Carolina, the premises hereby conveyed being more particularly described as follows:

1. **Units A-14, T-13, T-14, S-5, S-6, and S-19**, as denominated in the chart below, as described in said Declaration, and as shown on the Plan of Condominium recorded in Condo Book 16, Pages 31-35 of the Brunswick County Registry; and
2. The allocated percentage undivided interest appurtenant to said Units denominated below, in all Common Areas and Facilities of said Condominium including buildings and improvements on the land described in the aforesaid Declaration of Condominium and as shown on the Plan of Condominium recorded in Condo Book 16, Pages 31-35, Brunswick County Registry.

<u>Unit Number</u>	<u>Allocated Percentage Interest</u>
A-14	1.4544
T-13	0.6109
T-14	0.4654
S-5	0.2909
S-6	0.2909
S-19	0.3709

Together with the right of ingress to and egress from said property and the right to use, for all purposes, in common with other owners and occupants from time to time, any and all portions of Bald Head Island Yacht Club, a Condominium, designated in the Declaration of Condominium as "Common Areas."

For reference purposes, Brunswick County tax parcel numbers are as follows:

A-14 – 260JB034  
T-13 – 260JB032  
T-14 – 260JB033  
S-5 – 260JB005  
S-6 – 260JB006  
S-19 – 260JB019.



85032 P1399 06-21-2023  
Brunswick County, NC Register of Deeds page 5 of 5  
Brenda M. Clemmons PROP

**EXHIBIT B**  
**TO NORTH CAROLINA SPECIAL WARRANTY DEED**  
**BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO**  
**PELICAN REAL PROPERTY, LLC, GRANTEE**

**EXCEPTIONS:**

1. Easements described in that certain Declaration of Easements and Covenants: Bald Head Island Marina Association, recorded in Book 3514, Page 1105, Brunswick County Registry, and all amendments thereto;
2. Terms, provisions, options, rights of first refusal, covenants, conditions, restrictions, easements, charges, assessments and liens provided for in instrument(s) filed for record in Book 778, Page 61, Book 1438, Page 1192, Book 3512, Page 916 and any related maps, plans, bylaws and other document(s) and amendment(s) recorded in Brunswick County Registry;
3. Easements to Village of Bald Head Island recorded in Book 1385, Page 1216, Book 2875, Page 632 and Book 3000, Page 922, Brunswick County Registry;
4. Reciprocal Deed of Easement and Assignment recorded in Book 3384, Page 1050, Brunswick County Registry;
5. Assignment and Assumption of Easements recorded in Book 2307, Page 1404 and Book 2542, Page 1296, Brunswick County Registry;
6. Easements, restrictions and obligations (including but not limited to the payment of dues and assessments) described in the Declaration of Condominium recorded in Book 3655, at Page 388, Brunswick County Registry, and any amendments thereto, and as shown on the Plan of Condominium recorded in Condo Book 16, at Pages 31-35, Brunswick County Registry;
7. Easement and Memorandum of Agreement between Bald Head Island Yacht Club and Charter Communications, LLC recorded in Book 3994, Page 1322, Brunswick County Registry;
8. Subject to any riparian and or littoral rights of others, and also as to title to, or rights of others in and to, any portion of the land lying below the high water mark, any submerged lands, or any land which may have been under water or which has been added to the subject land by accretion, reliction or avulsion.

 **B5033 P0001** 06-21-2023  
Brunswick County, NC Register of Deeds page 1 of 4  
Brenda M. Clemmons 14:27:30.002 PROP  
Brenda M. Clemmons Register of Deeds  
06-21-2023 14:27:30.002 Brunswick County, NC  
NC REVENUE STAMP: \$400.00 (#884881)

Return to MTA Type File  
Total 26 Rev 400 Int. File  
Ck \$ 498 Ck # 4245 Cash \$  
Refund \_\_\_\_\_ Finance \_\_\_\_\_  
Portions of document are illegible due to condition of original.  
Document contains seals verified by original instrument that cannot be reproduced or copied

## NORTH CAROLINA SPECIAL WARRANTY DEED

*Delinquent taxes, if any, are to be paid by the closing attorney to the county tax collector before the disbursing of funds.*

Mail after recording to Grantee, 3700 Glenwood Ave., Ste. 530, Raleigh, NC 27612  
This instrument was prepared by Judith A. Ward, P. O. Box 3069, Bald Head Island, NC 28461  
Excise Tax: \$ 400.00  
Parcel Identifier No.: P/O 260JA006

**\*\*PREPARED WITHOUT OPINION AS TO TITLE\*\***

Brief description for the Index:

Parcel C Tract 2, Bald Head Island Landing,  
Bald Head Island, North Carolina

THIS DEED made this 20<sup>th</sup> day of June, 2023, by and between

### GRANTOR

BALD HEAD ISLAND LIMITED, LLC,  
a Texas limited liability company  
P. O. Box 3069  
Bald Head Island, NC 28461

### GRANTEE

PELICAN REAL PROPERTY, LLC,  
a North Carolina limited liability company  
3700 Glenwood Ave., Suite 530  
Raleigh, NC 27612

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain real property and premises situated in the Village of Bald Head Island, Smithville Township, Brunswick County, North Carolina, and more particularly described as follows:

**SEE ATTACHED EXHIBIT A FOR LEGAL DESCRIPTION (the "Property").**

*Pursuant to N.C.G.S. 105-317.2(2), Grantor states that the property herein described does not include the primary residence of the Grantor.*

Return to  
Murchison, Taylor & Gibson, PLLC



B5033 P0002 06-21-2023 14:27:30 002  
Brunswick County, NC Register of Deeds page 2 of 4  
Brenda N. Clemmons PROP

TO HAVE AND TO HOLD the aforesaid Property, and all privileges, improvements, and appurtenances thereto belonging, to the Grantee in fee simple, subject to the exceptions herein set forth; and the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and that Grantor will warrant and defend the same against the lawful claims of all persons claiming by through or under Grantor, but against no others, subject to the exceptions set forth herein.

The Property is subject to all "Permitted Liens", as said term is defined in that Asset Purchase Agreement between the parties hereto (and assigns among others) dated as of May 17, 2022 (as amended). Without limiting the foregoing, the Property is also SUBJECT TO the following:

1. Ad valorem real property taxes for 2023 and subsequent years;
2. All applicable laws, zoning ordinances, building codes and other governmental rules and regulations, if any, affecting the use or development of the property conveyed;
3. All matters that would be disclosed by an accurate survey as of the date hereof;
4. The terms and conditions of the "Bald Head Island Commercial Design Guidelines" with an effective date of August 20, 2014, a copy of which has been provided to Grantee and is incorporated herein by reference; and
5. Additional exceptions set forth on the attached Exhibit B.

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name by its duly authorized agent and representative, the day and year first above written.

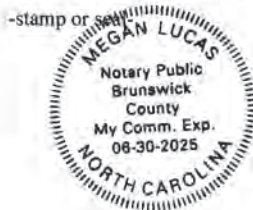
BALD HEAD ISLAND LIMITED, LLC,  
a Texas limited liability company

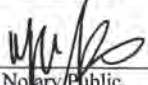
By:   
Charles A. Paul, III, Manager

STATE OF NORTH CAROLINA  
NEW HANOVER COUNTY

I, Megan Lucas, 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 the said Bald Head Island Limited, LLC.

WITNESS my hand and official seal, this the 20<sup>th</sup> day of June 2023.



  
Notary Public  
My commission expires: 06/30/2025



B5033 P0003 06-21-2023  
14:27:30.002  
Brunswick County, NC Register of Deeds  
Brenda M. Clemmons PROP  
page 3 of 4

**EXHIBIT A**

**TO NORTH CAROLINA SPECIAL WARRANTY DEED  
BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO  
PELICAN REAL PROPERTY, LLC, GRANTEE**

**LEGAL DESCRIPTION:**

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

BEING ALL of **Parcel C Tract 2, Bald Head Island Landing**, containing 0.666 acres, more or less, as shown on that plat entitled "Subdivision Survey for the Property of Bald Head Island Limited, LLC, Parcel C Rev, Parcel C Tract 1, Parcel C Tract 2, Bald Head Island Landing" prepared by ESP Associates, Inc., and recorded in **Map Cabinet 146, Page 65** of the Brunswick County Registry.





**EXHIBIT B**

**TO NORTH CAROLINA SPECIAL WARRANTY DEED  
BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO  
PELICAN REAL PROPERTY, LLC, GRANTEE**

**EXCEPTIONS:**

1. Covenants, conditions, restrictions, easements, and liens provided for Declarations of Covenants and Restrictions Affecting Land filed for record in Book 3123, page 1186 and any related maps, plans, bylaws and other document(s) and amendment(s).
2. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variations or other adverse circumstance affecting the Title disclosed by plat recorded in Map Cabinet 146, Page 65; Map Cabinet 124, Pages 89, 90 and 91; Map Cabinet 120, Pages 34, 35 and 36; Map Cabinet 92, Page 64; Map Cabinet 79, Page 3; Map Cabinet 73, Page 49; Map Cabinet 71, Page 40; Map Cabinet 71, Page 39; and Map Cabinet 21, Page 500.
3. Easement(s) to Carolina Power & Light Company recorded in Book 442, Page 199 and Book 474, Page 487.
4. Deed of Easement to Southern Bell Telephone & Telegraph recorded in Book 702, Page 87.
5. Easement between Bald Head Island Limited and Village of Bald Head Island recorded in Book 1385, Page 1216.
6. Terms, conditions, reservations and easements contained in that Corrective Special Warranty Deed recorded in Book 1438, Page 1192.
7. Assignment of Assumption of Utility Easements to Village of Bald Head Island recorded in Book 2307, Page 1404, Book 2472, Page 729 and Book 2474, Page 729.
8. Non-Exclusive Easement between Bald Head Island Limited and Village of Bald Head Island recorded in Book 3000, Page 922.
9. Grant of Temporary Pedestrian Easement recorded in Book 3258, Page 21 and rerecorded in Book 3267, Page 266.
10. Terms, conditions, reservations and easements described in that deed for Lot 17R, Bald Head Island Landing recorded in Book 3426, Page 984; in that deed for Lot 9A, Bald Head Landing recorded in Book 3722, Page 67; and that deed for Lot 5R, Bald Head Landing recorded in Book 4518, Page 478.
11. Reciprocal Deed of Easement and Assignments between Bald Head Island Limited and Village of Bald Head Island recorded in Book 3384, Page 1050.
12. Subject to any riparian and or littoral rights of others, and also as to title to, or rights of others in and to, any portion of the land lying below the high water mark, any submerged lands, or any land which may have been under water or which has been added to the subject land by accretion, reliction, avulsion or the like.
13. Subject to non-exclusive easements, if any, to the general public and individual owners of lots in Bald Head Island, for ingress and egress for pedestrian, vehicular, and marine traffic over, through and across common areas, sidewalks, paths, walkways, docks, decks, bridges, gazebos and other improvements, as the same may from time to time exist upon or extend from the owners property, and for pedestrian and vehicular traffic over, through and across alleys, streets and roads as platted, or as may cross portions of the owners property, for access to and from the dedicated public roads as shown on the recorded plats of Bald Head Island.



B5155 P0028 03-27-2024 16:24:44.001  
Brenda M. Clemmons PROP  
Brunswick County, NC Register of Deeds page 1 of 6

Return to MT+G Type Box  
Total 26 Row 5000 Int. JA  
6 Ck \$ 5026 Ck # 4615 Cash \$  
Refund Cash \$ Finance  
☒ Portions of document are illegible due to condition of original.  
☒ Document contains seals verified by original instrument that can not be reproduced or copied.

Brenda M. Clemmons Register of Deeds  
03-27-2024 16:24:44.001 Brunswick County, NC  
NC REVENUE STAMP: \$5000.00 (#924942)

## NORTH CAROLINA SPECIAL WARRANTY DEED

*Delinquent taxes, if any, are to be paid by the closing attorney to the county tax collector before the disbursing of funds.*

Mail after recording to Grantee, 3700 Glenwood Ave., Ste. 530, Raleigh, NC 27612

This instrument was prepared by Murchison, Taylor & Gibson PLLC, 1979 Eastwood Rd, Ste 101, Wilmington NC 28403

**\*\*PREPARED WITHOUT OPINION AS TO TITLE\*\***

Excise Tax: \$5,000.00

Parcel Identifier No.: 260JA003

Brief description for the Index:

Parcel B, Bald Head Island Landing  
(2.143 ac+/-), Bald Head Island, North Carolina

THIS DEED made this 14<sup>th</sup> day of March 2024, by and between

### GRANTOR

BALD HEAD ISLAND LIMITED, LLC,  
a Texas limited liability company  
P. O. Box 3069  
Bald Head Island, NC 28461

### GRANTEE

PELICAN REAL PROPERTY, LLC,  
a North Carolina limited liability company  
3700 Glenwood Ave., Suite 530  
Raleigh, NC 27612

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain real property and premises situated in the Village of Bald Head Island, Smithville Township, Brunswick County, North Carolina, and more particularly described as follows:

**SEE ATTACHED EXHIBIT A FOR LEGAL DESCRIPTION (the "Property").**

*Pursuant to N.C.G.S. 105-317.2(2), Grantor states that the property herein described does not include the primary residence of the Grantor.*

 B5155 P0029 03-27-2024  
16:24:44.001  
Brenda M. Clemmons PROP  
Brunswick County, NC Register of Deeds page 2 of 6

TO HAVE AND TO HOLD the aforesaid Property, and all privileges, improvements, and appurtenances thereto belonging, to the Grantee in fee simple, subject to the exceptions herein set forth; and the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and that Grantor will warrant and defend the same against the lawful claims of all persons claiming by through or under Grantor, but against no others, subject to the exceptions set forth herein.

The Property is subject to all "Permitted Liens", as said term is defined in that Asset Purchase Agreement between the parties hereto (and assigns among others) dated as of May 17, 2022 (as amended). Without limiting the foregoing, the Property is also SUBJECT TO the following:

1. Ad valorem real property taxes for 2024 and subsequent years;
2. All applicable laws, zoning ordinances, building codes and other governmental rules and regulations, if any, affecting the use or development of the property conveyed;
3. Rights of tenants in possession or having the right to possession, if any;
4. All matters shown on that survey entitled "ALTA/NSPS Land Title Survey of Bald Head Island Marina" by Donald E. Thomas, PLC, ESP Associates, Inc., dated 11/15/2022; and all matters that would be disclosed by an accurate survey as of the date hereof;
4. The terms and conditions of the "Bald Head Island Commercial Design Guidelines", a copy of which has been provided to Grantee and is incorporated herein by reference; and
5. Additional exceptions set forth on that title insurance commitment issued by Chicago Title 23-14891WL and/or listed on the attached Exhibit B.

- SIGNATURE PAGE FOLLOWS -





IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name by its duly authorized agent and representative, the day and year first above written.

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

By: 

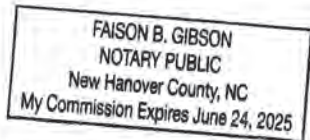
Charles A. Paul, III, Manager

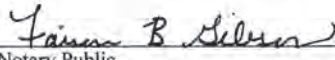
STATE OF NORTH CAROLINA  
New Hanover COUNTY

I, Faison B. Gibson, 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 the said **Bald Head Island Limited, LLC**.

WITNESS my hand and official seal, this the 14<sup>th</sup> day of March 2024.

-stamp or seal-



  
Notary Public  
My commission expires: 6/24/2025



B5155 P0031 03-27-2024  
16:24:44.001  
Brenda M. Clemmons, PROP  
Brunswick County, NC Register of Deeds page 4 of 6

EXHIBIT A  
TO NORTH CAROLINA SPECIAL WARRANTY DEED  
BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO  
PELICAN REAL PROPERTY, LLC, GRANTEE

LEGAL DESCRIPTION:

BEING ALL of Parcel B, Bald Head Island Landing, containing 2.143 acres, more or less, as shown on that plat entitled "Recombination Plat for a Portion of Bald Head Island Landing", as prepared by ESP Associates, Inc. and recorded in Map Cabinet 124, Page 89-91 of the Brunswick County Registry (the "Plat").

TOGETHER with a non-exclusive easement (the "Riparian Easement") for riparian rights and pedestrian access, ingress and egress over a portion of that certain one (1) foot wide strip of land described in a deed recorded in Book 3514, Page 1055, Brunswick County Registry, which portion is adjacent to the above-described Parcel B. For further reference, the portion of the one (1) foot wide strip of land that is adjacent to Parcel B is also shown on Page 90 of the Bald Head Island Landing Plat and begins at designated point "4" and runs N60°55'15"W 141.10 ft. to the PH Corner and then N29°00'49"E 15.59 ft.

ALSO TOGETHER WITH a non-exclusive easement (the "Access Easement") for pedestrian and vehicular access, ingress and egress to and from said Parcel B and the public right of way known as Keelson Row Extension, such Access Easement running over, upon and across the lands depicted on Sheet 3 of the Plat as "Variable Width Access Easement (Private) MB 92 Pg 64" and "Private Access Easement (Variable Width)" (collectively, the "Access Easement Areas"). For reference, the Access Easement Areas are part of "Parcel A" as shown on the Plat and "Parcel C Rev" as shown on the plat recorded in Map Cabinet 146, Page 65, Brunswick County Registry, respectively. Provided however, that the Grantor reserves the right to relocate any or all of the Access Easement Areas, in Grantor's reasonable discretion, so long as the revised easement areas are sufficient in size and location, for pedestrians and vehicles to access a public right-of-way and for as long as the same is necessary to obtain such access for Parcel B. Grantor's right of relocation is subject to the consent of Grantee, which consent shall not be unreasonably withheld. And provided however, the Access Easement shall terminate and be extinguished, without further action by the parties to this Deed or their successors, when and if direct access to a public right-of-way becomes available to Parcel B.

LESS AND EXCEPT from the above described Parcel B, any and all fuel fixtures and equipment, including without limitation, all petroleum pumps and dispensers, underground or aboveground fuel storage tanks and the associated fuel lines, pumps, dispensers, fittings and connections used in the sale of gasoline and other petroleum products and all applicable UST permits, the ownership of which is specifically retained by Grantor, along with all necessary and reasonable easements for the Grantor's access, use, operation, maintenance, repair, and replacement of the same.



B5155 P0032 03-27-2024  
16:24:44.001  
Brenda H. Clemmons PROP  
page 5 of 5

**EXHIBIT B**  
**TO NORTH CAROLINA SPECIAL WARRANTY DEED**  
**BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO**  
**PELICAN REAL PROPERTY, LLC, GRANTEE**

**EXCEPTIONS:**

1. Covenants, conditions, restrictions, easements, and liens provided for the Declaration of Covenants and Restrictions Affecting Land recorded in Book 3123, Page 1186 and any related maps, plans, bylaws and other document(s) and amendment(s).
2. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variations or other adverse circumstance affecting the Title disclosed by plat recorded in Map Cabinet 146, Page 65; Map Cabinet 124, Pages 89, 90 and 91; Map Cabinet 120, Pages 34, 35 and 36; Map Cabinet 92, Page 64; Map Cabinet 79, Page 3; Map Cabinet 73, Page 49; Map Cabinet 71, Page 40; Map Cabinet 71, Page 39; Map Cabinet 21, Page 500; and Map Cabinet U, Page 41.
3. Easement(s) to Carolina Power & Light Company recorded in Book 442, Page 199 and Book 474, Page 487.
4. Deed of Easement to Southern Bell Telephone & Telegraph recorded in Book 702, Page 87.
5. Easement between Bald Head Island Limited and Village of Bald Head Island recorded in Book 1385, Page 1216.
6. Terms, conditions, reservations and easements contained in that Corrective Special Warranty Deed recorded in Book 1438, Page 1192.
7. Assignment of Assumption of Utility Easements to Village of Bald Head Island recorded in Book 2307, Page 1404, and Book 2474, Page 729. Assignment, Clarification, Ratification and Assumption of Utility Easement recorded in Book 2542, Page 1296.
8. Non-Exclusive Easement between Bald Head Island Limited and Village of Bald Head Island recorded in Book 3000, Page 922.
9. Reciprocal Deed of Easement and Assignments between Bald Head Island Limited and Village of Bald Head Island recorded in Book 3384, Page 1050.
10. Terms, conditions, reservations and easements described in that deed for Lot 17R, Bald Head Island Landing recorded in Book 3426, Page 1215; in that deed for Lot 9A, Bald Head Island Landing recorded in Book 3722, Page 673; and that deed for Lot 5R, Bald Head Island Landing recorded in Book 4518, Page 478.
11. Deed of Easement to Village of Bald Head Island recorded in Book 4342, Page 1239.
12. Subject to any riparian and or littoral rights incident to the land; possible rights of others in and to the continuous and uninterrupted flow of the waters bounding or crossing the land; title to any portion of the land owned by any governmental entity including but not limited to marsh, dredged and/or filled areas; and also as to title to, or rights of others in and to, any portion of the land lying below the high water mark, any submerged lands, or any land which may have been under water or which has been added to the subject land by accretion, reliction or avulsion.
13. Access easement described in deeds recorded in Book 924, Page 1047; Book 924, Page 1050; and Book 1012 Page 769.
14. As to the Riparian Easement, covenants, conditions, restrictions, easements, and liens provided for in Book 778, Page 61; Book 1438, Page 1192; and Book 3514, Page 1105, and any related maps, plans, bylaws and other document(s) and amendment(s).





15. Encroachment Agreement between Bald Head Island Limited LLC and Riverside Adventure Company recorded in the Brunswick County Registry on the date of the foregoing deed.
16. Lease Agreement by and between Bald Head Island Limited LLC and Delphina Cantina, LLC dated April 1, 2023.
17. Commercial Lease Agreement by and between Bald Head Island Limited LLC and Pope Holdings, LLC dated May 1, 2016 and amended May 1, 2022.
18. Commercial Lease Agreement between Pelican Real Property, LLC and Bald Head Island Limited, LLC dated on or around the date of the foregoing deed.



Return to MT & G Type BOX  
5 Total 26 Fee 8900 Int. JS  
Chk \$ 8990 Ck # 4616 Cash \$  
Refund \_\_\_\_\_ Cash \_\_\_\_\_ Finance \_\_\_\_\_  
☐ Portions of document are illegible due to condition of original.  
☒ Document contents verified by original instrument filed. Not be reproduced or copied.

Brenda M. Clemmons Register of Deeds  
03-27-2024 16:24:44.002 Brunswick County, NC  
NC REVENUE STAMP: \$8900.00 (#924943)

## NORTH CAROLINA SPECIAL WARRANTY DEED

*Delinquent taxes, if any, are to be paid by the closing attorney to the county tax collector before the disbursing of funds.*

Mail after recording to Grantee, 3700 Glenwood Ave., Ste. 530, Raleigh, NC 27612

This instrument was prepared by Murchison, Taylor & Gibson PLLC, 1979 Eastwood Rd, Ste 101, Wilmington NC 28403

**\*\*PREPARED WITHOUT OPINION AS TO TITLE\*\***

Excise Tax: \$8,900.00

Parcel Identifier No.: 2380000301

Brief description for the Index:

Tract 1, Deep Point (18.93 acres+/-),  
Southport, North Carolina

THIS DEED made this 14<sup>th</sup> day of March 2024, by and between

### GRANTOR

BALD HEAD ISLAND LIMITED, LLC,  
a Texas limited liability company  
P. O. Box 3069  
Bald Head Island, NC 28461

### GRANTEE

PELICAN REAL PROPERTY, LLC,  
a North Carolina limited liability company  
3700 Glenwood Ave., Suite 530  
Raleigh, NC 27612

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain real property and premises situated in the City of Southport, Smithville Township, Brunswick County, North Carolina, and more particularly described as follows:

**SEE ATTACHED EXHIBIT A FOR LEGAL DESCRIPTION (the "Property").**

*Pursuant to N.C.G.S. 105-317.2(2), Grantor states that the property herein described does not include the primary residence of the Grantor.*



 85155 P0035 03-27-2024  
Brenda M. Clemmons 16:24:44 002  
Brunswick County, NC Register of Deeds PROP page 2 of 5

TO HAVE AND TO HOLD the aforesaid Property, and all privileges, improvements, and appurtenances thereto belonging, to the Grantee in fee simple, subject to the exceptions herein set forth; and the Grantor covenants with the Grantee, that Grantor has done nothing to impair such title as Grantor received, and that Grantor will warrant and defend the same against the lawful claims of all persons claiming by through or under Grantor, but against no others, subject to the exceptions set forth herein.

The Property is subject to all "Permitted Liens", as said term is defined in that Asset Purchase Agreement between the parties hereto (and assigns among others) dated as of May 17, 2022 (as amended). Without limiting the foregoing, the Property is also SUBJECT TO the following:

1. Ad valorem real property taxes for 2024 and subsequent years;
2. All applicable laws, zoning ordinances, building codes and other governmental rules and regulations, if any, affecting the use or development of the property conveyed;
3. Rights of tenants in possession or having the right to possession, if any;
4. All matters shown on that ALTA/NSPS Land Title Survey prepared by Donald E. Thomas, ESP Associates, Inc., P.L.S., dated August 19, 2022; and all matters that would be disclosed by an accurate survey as of the date hereof; and
5. Additional exceptions set forth on that title insurance commitment issued by Chicago Title 24-02805W and/or listed on the attached Exhibit B.

- SIGNATURE PAGE FOLLOWS -



85155 P0036 03-27-2024  
16:24:44 002  
Brenda H. Clemmons PROP  
Brunswick County, NC Register of Deeds page 3 of 5

IN WITNESS WHEREOF, the Grantor has caused this instrument to be signed in its name by its duly authorized agent and representative, the day and year first above written.

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

By:   
Charles A. Paul, III, Manager

STATE OF NORTH CAROLINA

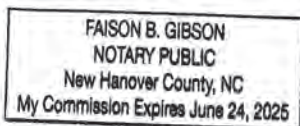
New Hanover COUNTY

I, Faison B. Gibson, 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 the said **Bald Head Island Limited, LLC**.

WITNESS my hand and official seal, this the 14<sup>th</sup> day of March 2024.

-stamp or seal-

Faison B. Gibson  
Notary Public  
My commission expires: 6/24/2025





B5155 P0037 03-27-2024  
16:24:44 002  
Brenda M. Clemmons PROP  
of Deeds page 4 of 5

**EXHIBIT A**  
**TO NORTH CAROLINA SPECIAL WARRANTY DEED**  
**BALD HEAD ISLAND LIMITED LLC, GRANTOR TO**  
**PELICAN REAL PROPERTY, LLC, GRANTEE**

**LEGAL DESCRIPTION:**

BEING ALL of "Tract 1" containing 18.93 acres, more or less, as shown on that certain plat entitled "Subdivision Survey for Bald Head Island Limited" prepared by ESP Associates, Inc. and recorded in Map Cabinet 119, Pages 1-4, Brunswick County Registry (the "Plat");

Together with and subject to those rights and obligations described in the Declaration of Easements: Deep Point Marina, as recorded in Book 4307, Page 746, Brunswick County Registry, as the same may be amended from time to time;

Together with and subject to those rights and obligations in the Easement from the State of North Carolina recorded in Book 1185, Page 930, Brunswick County Registry; and

Together with and subject to those rights and obligations in the Easement Grant and Agreement between Bald Head Island Limited LLC and The Landing at Southport Community Services Association, Inc. recorded in Book 2776, Page 609, Brunswick County Registry.

AND the Grantor does also, without representation or warranty of any kind, express or implied, hereby remise, release and forever quitclaim unto Grantee that property shown on the Plat as the "Overlap Area Due to Change in Mean High Water Line 0.98 AC", together with any and all riparian rights appurtenant thereto.

LESS AND EXCEPT from the above described Tract 1, any and all fuel fixtures and equipment, including without limitation, all petroleum pumps and dispensers, underground or aboveground fuel storage tanks and the associated fuel lines, pumps, dispensers, fittings and connections used in the sale of gasoline and other petroleum products and all applicable UST permits, the ownership of which is specifically retained by Grantor, along with all necessary and reasonable easements for the Grantor's access, use, operation, maintenance, repair, and replacement of the same.



03-27-2024  
16:24:44.002  
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Brenda N. Clemmons PROP  
Brunswick County, NC Register of Deeds page 5 of 5

**EXHIBIT B**  
**TO NORTH CAROLINA SPECIAL WARRANTY DEED**  
**BALD HEAD ISLAND LIMITED, LLC, GRANTOR TO**  
**PELICAN REAL PROPERTY, LLC, GRANTEE**

**EXCEPTIONS:**

1. Covenants, conditions, restrictions, easements, and liens provided for in instrument(s) filed for record in Declaration of Protective Covenants recorded in Book 2748, Page 1273, Brunswick County Registry and Declaration of Easements recorded in Book 4307, Page 746, Brunswick County Registry, and any related maps, plans, bylaws and other document(s) and amendment(s).
2. Any right, easement, setback, interest, claim, encroachment, encumbrance, violation, variations or other adverse circumstance affecting the title disclosed by plats recorded in Map Cabinet 119, Pages 1-4, Map Cabinet 29, Page 266, Map Cabinet 20, Page 414, Map Cabinet 17, Page 335, Map Cabinet 10, Page 131, Map Cabinet I, Page 136 and Map Cabinet 1, Page 77.
3. Easement to Brunswick Electric Membership Corporation recorded in Book A-53, Page 56.
4. Easement to Carolina Power & Light Company recorded in Book 308, Page 428.
5. Declaration of Final Resolution of Claim to Submerged Lands in Book 800, Page 366.
6. Terms and conditions of easement over submerged lands from State of North Carolina to Bald Head Island Limited DBA Deep Point Marina in Book 1185, Page 930.
7. Terms and conditions of Easement Grant and Agreement from The Landing at Southport Community Services Association, Inc. to Bald Head Island Limited, LLC recorded in Book 2776, Page 609, as affected by Brunswick County Register of Deeds Administrative Correction Notice in Book 2809, Page 1353.
8. Subject to any riparian and or littoral rights incident to the land; possible rights of others in and to the continuous and uninterrupted flow of the waters bounding or crossing the land; title to any portion of the land owned by any governmental entity including but not limited to marsh, dredged and/or filled areas; and also as to title to, or rights of others in and to, any portion of the land lying below the high water mark, any submerged lands, or any land which may have been under water or which has been added to the subject land by accretion, reliction or avulsion.
9. Commercial Lease Agreement between Pelican Real Property, LLC and Bald Head Island Limited, LLC dated on or around the date of the foregoing deed.





Return to MT + G Type Box  
Total 64 Pay 0 Int. 0  
Chk \$ 8990 Chk # 4616 Cash \$  
Refund 0 Cash 0 Finance  
☐ Portions of document are illegible due to condition of original.  
☒ Document contains seals verified by original instrument that can not be reproduced or copied.

**PURCHASE MONEY DEED OF TRUST**

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

**NORTH CAROLINA**

**BRUNSWICK COUNTY**

THIS PURCHASE MONEY DEED OF TRUST (this "Deed of Trust"), entered into effective as of the 26<sup>th</sup> day of **March 2024**, by and between **Pelican Real Property, LLC**, a North Carolina limited liability company with a mailing address of 3700 Glenwood Avenue, Suite 530, Raleigh, North Carolina 27612 ("**Grantor**"), **Faison B. Gibson, Esq.**, with a mailing address of 1979 Eastwood Road, Suite 101, Wilmington, North Carolina 28403 ("**Trustee**"), and **Bald Head Island Limited LLC**, a Texas limited liability company with a mailing address of P.O. Box 3069, Bald Head Island, North Carolina 28461 ("**Beneficiary**"). The designation Grantor, Trustee, and Beneficiary as used herein shall include said parties, their heirs, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WHEREAS, Grantor is indebted to the Beneficiary in the principal sum of One Million and 00/100 Dollars (\$1,000,000.00), as evidenced by a Purchase Money Promissory Note of even date herewith (the "**Note**"), the terms of which are incorporated herein by reference. The Purchase Money Promissory Note secured by this Deed of Trust is for the balance of a portion of the purchase price of real estate. The final due date for payment of said Note, if not sooner paid, is June 15, 2024.

WHEREAS, pursuant to N.C.G.S. §45-21.38, the Note and this Deed of Trust evidence and secure the balance of the purchase price between Grantor as purchaser of the Property and Beneficiary as seller of the Property. Pursuant to N.C.G.S. §39-13, the Note and this Deed of Trust evidence and secure all or a portion of the purchase price for the Property and are executed, delivered, and recorded with the deed to the Property as part of the same transaction, and the proceeds of the Note are actually used for purchase of the Property and not for future improvements.

NOW, THEREFORE, as security for said indebtedness, advancements and other sums expended by Beneficiary pursuant to this Deed of Trust and costs of collection (including attorneys' fees as provided in the Note) and other valuable consideration, the receipt of which is hereby acknowledged, the Grantor has bargained, sold, given, granted and conveyed and does by



these presents bargain, sell, give, grant and convey to said Trustee, her heirs, or successors, and assigns, the parcel(s) of land situated in Brunswick County, North Carolina, (the "Property") and more particularly described on Exhibit A attached hereto and incorporated herein by reference.

TO HAVE AND TO HOLD said Property with all privileges and appurtenances thereunto belonging, to said Trustee, her heirs, successors, and assigns forever, upon the trusts, terms and conditions, and for the uses hereinafter set forth.

If the Grantor shall pay the Note secured hereby in accordance with its terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, all other sums secured hereby and shall comply with all of the covenants, terms and conditions of this Deed of Trust, then this conveyance shall be null and void and may be canceled and released of record at the request and the expense of the Grantor. If, however, there shall be any default in the payment of any sums due under the Note, this Deed of Trust or any other instrument securing the Note or if there shall be default in any of the other covenants, terms or conditions of the Note secured hereby, or any failure or neglect to comply with the covenants, terms or conditions contained in this Deed of Trust or any other instrument securing the Note, then and in any of such events, without further notice, it shall be lawful for and the duty of the Trustee, upon request of the Beneficiary, to sell the Property herein conveyed at public auction for cash, after having first given such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as may then be required by law and giving such notice and advertising the time and place of such sale in such manner as may then be provided by law, and upon such and any resale and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey title to the purchaser in as full and ample manner as the Trustee is empowered. The Trustee shall be authorized to retain an attorney to represent her in such proceedings.

The proceeds of the sale shall, after the Trustee retains his commission, together with reasonable attorneys' fees incurred by the Trustee in such proceeding, be applied to the costs of sale, including, but not limited to, costs of collection, taxes, assessments, costs of recording, service fees and incidental expenditures, the amount due on the Note hereby secured and advancements and other sums expended by the Beneficiary according to the provisions hereof and otherwise as required by the then existing law relating to foreclosures. The Trustee's commission shall be five percent (5%) of the gross proceeds of the sale or the minimum sum of \$500.00 whichever is greater, for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by Trustee, including reasonable attorneys' fees, and a partial commission computed on five percent (5%) of the outstanding indebtedness or the above stated minimum sum, whichever is greater, in accordance with the following schedule, to-wit: one-fourth (1/4) thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half (1/2) thereof after issuance of said notice; three-fourths (3/4) thereof after such hearing; and the greater of the full commission or minimum sum after the initial sale.

And the said Grantor does hereby covenant and agree with the Trustee as follows:

1. **INSURANCE.** Grantor shall keep all improvements on said Property, now or hereafter erected, constantly insured against loss by fire, windstorm and such other casualties and





contingencies, in such manner and in such companies and for such amounts, not less than that amount necessary to pay the sum secured by the Deed of Trust. Grantor shall purchase such insurance, pay all premiums therefor, as long as the Note secured hereby remains unpaid. If Grantor fails to purchase such insurance, pay premiums therefor then Beneficiary, at its option, may purchase such insurance.

2. **TAXES, ASSESSMENTS, CHARGES.** Grantor shall pay all taxes, assessments and charges as may be lawfully levied against said Property within thirty (30) days after the same shall become due. In the event that Grantor fails to so pay all taxes, assessments and charges as herein required, then beneficiary, at their option, may pay the same and the amounts so paid shall be added to the principal of the Note secured by this Deed of Trust, and shall be due and payable upon demand of Beneficiary.

3. **ASSIGNMENTS OF RENTS AND PROFITS.** Grantor assigns to Beneficiary, in the event of default, all rents and profits from the Property and any improvements thereon, and authorizes beneficiary to enter upon and take possession of such Property and improvements, to rent same, at any reasonable rate of rent determined by Beneficiary, and after deducting from any such rents the cost of reletting and collection, to apply the remainder to the debt secured hereby.

4. **PARTIAL RELEASE.** Grantor shall not be entitled to the partial release of any of the above-described property unless a specific provision providing therefor is included in this Deed of Trust. In the event a partial release provision is included in this Deed of Trust, Grantor must strictly comply with the terms thereof. Notwithstanding anything herein contained, Grantor shall not be entitled to any release of property unless Grantor is not in default and is in full compliance with all of the terms and provisions of the Note, this Deed of Trust, and any other instrument that may be securing said Note.

5. **WASTE.** The Grantor covenants that they will keep the Property herein conveyed in as good order, repair and condition as they are now, reasonable wear and tear excepted, and will comply with all governmental requirements respecting the Property or their use, and that they will not commit or permit any waste.

6. **COMPLIANCE WITH LAWS.** Grantor shall regularly and promptly comply with any applicable legal requirements of the United States, the State of North Carolina or other governmental entity, agency or instrumentality relating to the use or condition of the Property.

7. **CONDEMNATION.** In the event that any or all of the Property shall be condemned and taken under the power of eminent domain, Grantor shall give immediate written notice to Beneficiary and Beneficiary shall have the right to receive and collect all damages awarded by reason of such taking, and the right to such damages hereby is assigned to Beneficiary who shall have the discretion to apply the amount so received, or any part thereof, to the indebtedness due hereunder and if payable in installments, applied in the inverse order of maturity of such installments, or to any alteration, repair or restoration of the Property by Grantor.

8. **SECURITY AGREEMENT; FINANCING STATEMENTS.** To further secure the repayment and performance of the Note and other obligations secured by this Deed of Trust,



Grantor hereby grants to Beneficiary a Uniform Commercial Code security interest in all building materials, building supplies, fixtures, inventory and equipment (other than household goods) now owned or hereafter acquired by Grantor, together with all attachments, accessories and accessions thereto and replacements thereof, located at or upon or intended for use, used, or useable in the construction, occupancy, operation or maintenance of improvements constructed or to be constructed on the Property, and/or other personal property (other than household goods) specifically made subject to the Secured Obligations (together the "Personal Property"), and Trustee and Beneficiary shall have all the rights of a secured creditor under the Uniform Commercial Code as adopted and amended from time to time in the State of North Carolina. Such rights may be exercised by Trustee or Beneficiary either separately or in conjunction with any remedies against the Property. In addition to recording this Deed of Trust, Beneficiary may, at any time and without further authorization from Grantor, file such additional financing statements as Beneficiary deems appropriate to perfect its security interest in the Personal Property. THE PROPERTY INCLUDES FIXTURES AND THIS INSTRUMENT IS TO BE FILED AND SHALL SERVE AS A FIXTURE FILING ACCORDING TO N.C.G.S. §25-9-502.

9. WARRANTIES. Grantor covenants with Trustee and Beneficiary that it is seized of the Property in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that it will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated. Title to the property herein above described is subject to the following exceptions: Declarations of record, if applicable in the Brunswick County Registry; all easements, rights of way and restrictions of record; government regulations including zoning, subdivision, and building regulations and other encumbrances of record; current ad valorem taxes and subsequent years; normal and customary utility easements of record; and any and all other matters shown on the deed of even date herewith transferring title to the Property from Beneficiary to Grantor.

10. SUBSTITUTION OF TRUSTEE. Grantor and Trustee covenant and agree to and with Beneficiary that in case the said Trustee, or any successor trustee, shall die, become incapable of acting, renounce her trust, or for any reason the holder of the Note desires to replace said Trustee, then the holder may appoint, in writing, a trustee to take the place of the Trustee; and upon the probate and registration of the same, the trustee thus appointed shall succeed to all rights, powers and duties of the Trustee.

11. SALE OF PROPERTY. Grantor agrees that if the Property or any part thereof or interest therein is sold, assigned, transferred, conveyed or otherwise alienated by Grantor, whether voluntarily or involuntarily or by operation of law, without the prior written consent of Beneficiary, then Beneficiary, at its own option, may declare the note secured hereby and all other obligations hereunder to be forthwith due and payable. Any change in the legal or equitable title of the Property or in the beneficial ownership of the Property, including the sale, conveyance or disposition of a majority interest in the Grantor if a corporation, limited liability company or partnership, whether or not of record and whether or not for consideration, shall be deemed to be the transfer of an interest in the Property.

12. ADVANCEMENTS. If Grantor shall fail to perform any of the covenants or obligations contained herein or in any other instrument given as additional security for the Note





secured hereby, the Beneficiary may, but without obligation, make advances to perform such covenants or obligations, and all such sums so advanced shall be added to the principal sum, shall bear interest at the rate provided in the Note Secured hereby for sums due after default and shall be due from Grantor on demand of the Beneficiary. No advancement or anything contained in this paragraph shall constitute a waiver by beneficiary or prevent such failure to perform from constituting an event of default.

13. INDEMNITY. If any suit or proceeding be brought against the Trustee or Beneficiary or if any suit or proceeding be brought which may affect the value or title of the Property, Grantor shall defend, indemnify and hold harmless and on demand reimburse Trustee or Beneficiary from any loss, cost, damage or expense and any sums expended by Trustee or Beneficiary shall bear interest as provided in the Note secured hereby for sums due after default and shall be due and payable on demand.

14. WAIVERS. Grantor waives all rights to require marshaling of assets by the Trustee or Beneficiary. No delay or omission of the Trustee or Beneficiary in the exercise of any right, power or remedy arising under the Note or this Deed of Trust shall be deemed a waiver of any default or acquiescence therein or shall impair or waive the exercise of such right, power or remedy by Trustee or Beneficiary at any other time.

15. INSPECTION. Upon prior notice to Grantor, Beneficiary may at any reasonable time and from time to time make or cause to be made reasonable entries upon, investigations, and inspections of the Property, including without limitation any inspections or investigations such as sampling and testing which may be necessary or desirable to review compliance with Environmental Laws.

16. CIVIL ACTION. In the event that the Trustee is named as a party to any civil action as Trustee in this Deed of Trust, the Trustee shall be entitled to employ an attorney at law, including Trustee if Trustee is a licensed attorney, to represent Trustee in said action and the reasonable attorneys' fee of the Trustee in such action shall be paid by the Beneficiary and added to the principal of the Note secured by this Deed of Trust and bear interest at the rate provided in the Note for sums due after default.

17. ATTORNEYS' FEES. In the event that Grantor shall default in its obligations under this Deed of Trust or the Note, and Beneficiary employs an attorney to assist in the collection of the Debt or to enforce compliance of Grantor with any of the provisions of this Deed of Trust or the Note or in the event Beneficiary or Trustee shall become parties to any suit or legal proceeding (including any proceeding conducted before any United States Bankruptcy Court) concerning the Property, concerning the lien of this Deed of Trust, concerning collection of the Debt or concerning compliance by Grantor with any of the provisions of this Deed of Trust or the Note, Grantor shall pay Beneficiary's reasonable attorneys' fees and all of the costs that may be incurred, and such fees and costs shall be secured by this Deed of Trust and its payment enforced as if it were a part of the Debt. Grantor shall be liable for such attorneys' fees and costs whether or not any suit or proceeding is commenced. Notwithstanding anything to the contrary in this Deed of Trust, all attorneys' fees described herein shall be at customary billing rates



without regard to any statutory assumption and shall be subject to the provisions of Section 7 of the Note.

18. PRIOR LIENS. Default under the terms of any instrument secured by a lien to which this Deed of Trust is subordinate shall constitute default hereunder.

19. ANTI-MARSHALLING PROVISIONS. Trustee and Beneficiary may grant releases at any time and from time to time of all or any portion of the Property (whether or not such releases are required by agreement among the parties) agreeable to Trustee and Beneficiary without notice to or the consent, approval or agreement of other parties and interests, including junior lienors and purchasers subject to the lien of this Deed of Trust, and such releases shall not impair in any manner the validity of or priority of this Deed of Trust on that portion of the Property remaining subject to this Deed of Trust, nor release Grantor from personal liability for the Debt. Notwithstanding the existence of any other security interests in the Property held by Beneficiary or by any other party, Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies available to Beneficiary, and Beneficiary shall further have the right to determine the order in which any or all portions of the Debt are satisfied from the proceeds realized upon the exercise of any remedy it has. Grantor, or any party who consents to this, or any party who has actual or constructive notice hereof, hereby waives any and all rights to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

20. NO OTHER LIENS. Except for the Note and this Deed of Trust, Grantor shall not create, incur, assume or suffer to exist any lien upon or with respect to the Property until the Note is satisfied in full.

- SIGNATURE PAGE FOLLOWS -



IN WITNESS WHEREOF, the Grantor has executed this Purchase Money Deed of Trust by its authorized representative, the day and the year first above written.

GRANTOR: **Pelican Real Property, LLC**  
a North Carolina limited liability company

By: **Pelican Legacy Holdings, LLC**, its sole member

By: **SVC Pelican Partners, LLC**, its manager

By: [Signature] (SEAL)  
Name: George Purrington  
Title: Authorized Signatory

STATE OF NORTH CAROLINA

COUNTY OF Wake  
(County where acknowledgment taken)

I, Therese Gibson, a Notary Public, do hereby certify that the following person appeared before me this day and acknowledged to me that he or she signed the foregoing instrument for the purposes stated therein and in the capacity indicated above:

George Purrington.  
(insert name, not title)

Witness my hand and official seal this the 26 day of March, 2024.



Therese Gibson  
NOTARY PUBLIC  
My Commission Expires: 03/29/2026

(AFFIX OFFICIAL STAMP OR SEAL ABOVE)





**EXHIBIT A**

**TO PURCHASE MONEY DEED OF TRUST**

(Property Description)

BEING those tracts or parcels of land situated in the City of Southport, Smithville Township, Brunswick County, North Carolina and more particularly described as follows:

BEING ALL of "Tract 1" containing 18.93 acres, more or less, as shown on that certain plat entitled "Subdivision Survey for Bald Head Island Limited" prepared by ESP Associates, Inc. and recorded in Map Cabinet 119, Pages 1-4, Brunswick County Registry (the "Plat");

Together with and subject to those rights and obligations described in the Declaration of Easements: Deep Point Marina, as recorded in Book 4307, Page 746, Brunswick County Registry, as the same may be amended from time to time;

Together with and subject to those rights and obligations in the Easement from the State of North Carolina recorded in Book 1185, Page 930, Brunswick County Registry; and

Together with and subject to those rights and obligations in the Easement Grant and Agreement between Bald Head Island Limited LLC and The Landing at Southport Community Services Association, Inc. recorded in Book 2776, Page 609, Brunswick County Registry.

Together with any right, title and interest the Grantor may have into that property shown on the Plat as the "Overlap Area Due to Change in Mean High Water Line 0.98 AC", together with any and all riparian rights appurtenant thereto.