

**DEVELOPMENT AGREEMENT
BY AND BETWEEN KIAWAH RESORT ASSOCIATES, L.P.
AND THE TOWN OF KIAWAH ISLAND**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is entered into this 12th day of October, 2005, (the effective date) by and between KIAWAH RESORT ASSOCIATES, L.P., a limited partnership organized and existing under the laws of Delaware, and the other persons defined and described as Property Owner and the TOWN OF KIAWAH ISLAND, a municipal corporation organized and existing under the laws of the State of South Carolina.

RECITALS

WHEREAS, the Town of Kiawah Island (the "Town") and Kiawah Resort Associates, L.P. (one of the Property Owners herein) and other persons entered a Development Agreement effective September 26, 1994 (the "Initial Agreement") (recorded in the RMC Office for Charleston County at Book J248, Page 001); and

WHEREAS, the Town and Kiawah Resort Associates, L.P. entered and recorded the First through Ninth Amendments to the Initial Agreement in the RMC Office for Charleston County, with the Ninth Amendment being recorded at Book D 537, Page 223; and,

WHEREAS, the Property Owner and the Town desire to terminate the Initial Agreement and replace it with this Development Agreement; and,

WHEREAS, the Property Owner and the Town desire that this Development Agreement shall take precedence and control to the extent that there is a conflict between the terms of this Development Agreement and the Initial Agreement or the Nine Amendments to the Initial Agreement; and

WHEREAS, under § 6-31-50(a) the Town Council conducted public hearings regarding its consideration of this Development Agreement on September 7, 2005, and on September 9, 2005, after publishing and announcing notice of intent to consider this Development Agreement was advertised in a newspaper of general circulation in Charleston County, setting forth the date of the first public hearing, with such notice specifying the location of the property subject to this Development Agreement as well as the other information required under § 6-31-50(B)(2); and

WHEREAS, under S.C. Code § 6-31-60(A)(7) the Town Council of the Town determined on October 12, 2005 that this Development Agreement is consistent with the Town's Comprehensive Plan and Land Development Regulations; and

WHEREAS, under S.C. Code § 6-31-30, the Town Council of the Town adopted Ordinance No. 2005-6 on October 12, 2005, approving this Development Agreement.

NOW THEREFORE, the Parties agree:

1. **Definitions.** In this Development Agreement, capitalized words or phrases shall be defined and have the meaning set forth in Exhibit 1.1.
2. **Parties.** Parties to this Agreement are the Property Owner and the Town.

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- 2. **Parties.** Parties to this Agreement are the Property Owner and the Town.
- 3. **Relationship of the Parties.** This Agreement creates a contractual relationship between the Parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, principal/agent, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for the acts of the other party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Property Owner constitutes "state action" for any purpose.

4. **Legal Description of the Real Property.** The Real Property which is the subject of this Agreement is described as follows:

- (i) All real property on Kiawah Island currently owned by the Property Owner and the subsequent owners of this real property as provided for in Section 33 herein.
- (ii) A legal description of the Real Property now owned by Property Owner is set forth in the schedules and maps attached as Exhibit 4.1: Description of Real Property.

The Real Property currently consists of approximately 993 acres of highland and thousands of acres of marshlands and low lands.

5. **Identity of the Property Owner.** "Property Owner" means Kiawah Resort Associates, L.P., a limited partnership organized and existing under the laws of Delaware, together with all subsidiaries thereof and other entities which have a legal interest on the date of execution hereof in any of the Real Property as described in Section 4 and includes Kiawah Resort Associates, L.P.'s successors in interest and successors in title and/or assigns by virtue of assignment or other instrument pursuant to ¶ 33 hereof. Additionally, Property Owner shall mean Kiawah Development Partners, Inc., Kiawah Land Development, LLC, Kiawah Island Utility, Inc., Lodema R. Adams as Trustee of Bear Island Holding Trust, Charles P. Darby, III and John C.L. Darby as Trustees of the Charles P. Darby, Jr. Issue Trust, and Vanderhorst, LLC and their successors in interest or successors in title and/or assigns by virtue of assignment or other instrument in accord with ¶ 33 herein, solely for purposes of the property owned by them that is submitted under this Agreement. Property Owner warrants that there are no other legal or equitable owners of the Real Property.

Kiawah Resort Associates, L.P. represents that it has a legal interest in the Real Property and that all other entities now holding legal or equitable interests in the Real Property are to be bound by this Agreement. By execution hereof, Kiawah Development Partners, Inc., Kiawah Land Development, LLC, Kiawah Island Utility, Inc., Lodema R. Adams as Trustee of Bear Island Holding Trust, Charles P. Darby, III and John C.L. Darby as Trustees of the Charles P. Darby, Jr. Issue Trust, and Vanderhorst, LLC, confirm their

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being bound by the terms hereof solely for purposes of the properties owned by them submitted under this Agreement and are responsible only for the obligations associated with properties owned by them.

6. **Intent of the Parties.** The Town and the Property Owner agree that the burdens of this Agreement bind, and the benefits of this Agreement shall inure, to each of them and to their successors in interest and, in the case of the Property Owner, its successors in title and/or assigns pursuant to paragraph 33 hereof.
7. **Benefits and Burdens.** The Town and the Property Owner enter this Agreement in order to serve benefits and burdens referenced in § 6-31-10 *et seq.*
8. **Consistency with the Town's Comprehensive Plan and Land Development Regulations.** This Agreement is consistent with the Town's Comprehensive Plan and Land Development Regulations.

Whenever express or implied substantive provisions of this Agreement are inconsistent with the applicable standards set forth in the Zoning Code, the standards set forth in the Zoning Code and the standards set forth in this Agreement shall, to the extent possible, be considered in pari materia to give effect to both the Zoning Code and this Agreement; provided, however, that in the event of a conflict, and subject to the provisions of § 6-31-80, the standards set forth in this Agreement shall govern. Nothing is intended herein to limit application of administrative or procedural or similar provisions of the Zoning Code nor limit the Town of Kiawah in amending provisions of the Zoning Code in accordance with law and any development agreement. In the event of a dispute between the parties to this Agreement as to whether a provision in the Comprehensive Plan or Zoning Code is inconsistent with express or implied substantive provisions of this Agreement, the parties must first submit such disputed interpretation to Town Council and must wait seven days after such submittal before invoking the remedies afforded them under this Agreement.

9. **Legislative Act.** Any change in the standards established by this Agreement or to laws pertaining to the same shall require the approval of the Town Council, subject to compliance with applicable statutory procedures and consistent with Paragraph 10 (A) of this Agreement. This Agreement constitutes a legislative act of the Town Council of the Town. The Town Council adopted this Agreement only after following procedures required by Code Section 6-31-10 *et seq.* This Agreement shall not be construed to create a debt of the Town as referenced in Section 6-31-145.
10. **Applicable Land Use Regulations.**
 - (a) **Applicable Laws and Land Development Regulations.** Except as otherwise provided by this Agreement or by Section 6-31-10 *et seq.*, the Laws applicable to the Development of the Real Property, subject to this Agreement, are those in force at the time of the execution of this Agreement. The Town shall not apply

subsequently adopted Laws and Land Development Regulations to the Real Property or the Project unless the Town has held a public hearing and has determined: (1) the proposed, subsequent Laws or Land Development Regulations are not in conflict with the Laws or Land Development Regulations governing the Agreement and do not prevent the Development set forth in this Agreement; (2) the proposed, subsequent Laws or Land Development Regulations are essential to the public health, safety, or welfare and the proposed, subsequent Laws or Land Development Regulations expressly state that they apply to a development that is subject to a development agreement; (3) the proposed, subsequent Laws or Land Development Regulations are specifically anticipated and provided for in this Agreement; (4) the Town demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement which changes, if not addressed by the Town, would pose a serious threat to the public health, safety, or welfare; or (5) this Agreement is based on substantially and materially inaccurate information supplied by the Property Owner.

- (b) Vested Rights. Subject to the provisions of subparagraph (a) above, all rights and prerogatives accorded Property Owner by this Agreement shall immediately constitute vested rights for the Development of the Real Property.

Further, vested rights created by the Initial Agreement in the Real Property as defined by the Initial Agreement for land that was previously transferred by the Property Owner under the provisions of Section 33 of the Initial Agreement and is not included in the Undeveloped Lands as defined in this Agreement shall continue and remain vested until January 1, 2008. The purpose and intent are that vested rights created under the Initial Agreement for lands not now owned by the Property Owner under this Agreement shall remain vested through January 1, 2008. No later than November 1, 2005, Property Owner shall provide the Town a schedule of such conveyances to third persons under the Initial Agreement that identifies the land involved, the grantee, and number of potential Dwelling Units assigned by Property Owner for conveyances other than individual Lots. This schedule is subject to the Town's approval, which shall not be unreasonably withheld.

Paragraph 10 (a) of this Agreement does not abrogate any rights either preserved by S.C. Code Section 6-31-140 or that may have vested pursuant to common law and otherwise in the absence of a development agreement.

- (c) Dock Permitting. The provisions of the Key Location Ordinance (Town of Kiawah Island Ordinance No. 2003-5) shall apply to the Real Property. A copy of this Ordinance is attached as Exhibit 10.2. The Town shall support (not to include financial support) the amendment of the Key Locations Ordinance to allow up to two community docks on Parcel 12B to include up to 200 feet (in length, single side) of floating docks. All Town permits necessary for dock construction shall be issued expeditiously by the Town upon compliance with the Key Location

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(d) Road Codes and Subdivision Regulations.

- (i) The Road Code and Subdivision Regulations of the Town ("Municipal Code, Town of Kiawah Island, South Carolina" Art. 12B and 12C) shall apply to the Real Property except that in lieu of any potential obligation to "four lane" all of the bridges, overpasses, or roads comprising the Kiawah Island Parkway (the "Parkway"), Property Owner shall plan and implement Traffic Mitigation Measures in accordance with Exhibit 10.1, if required by the provisions of the same.
- (ii) Notwithstanding the provisions of Section 10 (d)(i), the Property Owner agrees to pay ten (10%) percent of the cost to improve the Parkway, including possibly adding two additional lanes, from the roundabout to the entrance security gate as well as ten (10%) percent of the cost of an adjacent bike path, provided such total contribution shall not exceed \$250,000 even if ten (10%) percent of the combined total cost exceeds \$250,000. This obligation of the Property Owner does not survive the Termination Date.
- (iii) The Town agrees to support the addition of a professionally engineered street access intersecting the Parkway to and from the Settlement/River Course at the approximate location depicted on the Final Subdivision Plat of The Settlement Phase IIIA, copy attached as Exhibit 10.3.

11. Building Codes and Laws Other Than Land Use Regulations. The Property Owner, notwithstanding any provision which may be construed to the contrary in this Agreement, must comply with any building, housing, electrical, plumbing and gas codes subsequently adopted by the Town or other governmental entity, as authorized by Chapter 9 of Title 6 of the South Carolina Code. This Agreement shall not be construed to supercede or contravene the requirements of any building, housing, electrical, plumbing and gas codes subsequently adopted by the Town or any other governmental entity, as authorized by Chapter 9 Title 6 of the South Carolina Code. The provisions of this Agreement are not intended, nor should they be construed in any way, to alter or amend in any way the rights, duties, and privileges of the Town to exercise governmental powers and pass laws not applicable to Development of the Real Property including, but not limited to, the power of eminent domain (including the power to exercise eminent domain over Kiawah Island Utility, Inc. in accordance with the laws and constitution of South Carolina) and the power to levy and collect taxes; provided, however, that Laws applicable to the Development of the Real Property shall be subject to Section 10 (a).

12. Local Development Permits and Other Permits Needed. The Parties anticipate that the following local Development Permits and other regulatory permits will be needed to complete the Development of the Project:

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Zoning permits, plat approvals (preliminary, conditional or final), roads and drainage construction plan approvals, building permits, and certificates of occupancy.

The failure of the Agreement to address a particular permit, condition, term, or restriction does not relieve the Property Owner of the necessity of complying with the law governing the permit requirements, conditions, terms or restrictions.

13. **Vested Rights Governing the Development of the Real Property**

- A. **REAL PROPERTY UNDER THE INITIAL AGREEMENT NOT INCLUDED IN THE UNDEVELOPED LANDS.** The lands included in the definition of the Real Property under the Initial Agreement that are not included in the Undeveloped Lands under this Agreement as described on Exhibit 1.3 shall have the vested rights and Vested Units described in Section 10(b) of this Agreement.
- B. **VESTED RIGHTS GOVERNING THE DEVELOPMENT OF THE UNDEVELOPED LANDS AS DESCRIBED ON EXHIBIT 1.3.**

1. **RESIDENTIAL USES**

(a) **Permitted Uses**

Except as may be further limited by the provisions of this Agreement, all uses listed on Exhibit 13.1, Table of Permitted Uses attached hereto, under the heading "Residential" shall be vested as to those Parcels on Exhibit 13.2 with the designation "R". Parcels designated as R-1 on Exhibit 13.2 permit Single Family Detached Dwellings at a Density of three (3) or fewer Dwelling Units per acre. Parcels designated as R-2 permit any permitted type of attached and/or detached residential unit with up to four (4) dwellings per building. The maximum Density of R-2 development shall not exceed six (6) Dwelling Units per acre for any given development or result in a higher Parcel Density than specified on Exhibit 13.2. Parcels designated as R-3 may include any permitted type of residential development listed on Exhibit 13.1 as limited by Parcel Density, Height and other provisions of this Agreement, with a Density not to exceed twelve (12) Dwelling Units per acre.

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(b) New Dwelling Units

- (i) The total number of *new* single family residential Lots and *new* non-single family residential Dwelling Units on the Undeveloped Lands of the Real Property which receive preliminary subdivision plat approval for the first time after the effective date of this Agreement and the new non-single family Dwelling Units within the Undeveloped Lands that receive approval for the first time after the effective date of this Agreement, shall not exceed in the entirety 1,184.

The purpose and effect of this provision is to provide an absolute limit upon the new Lots or Dwelling Units to a Development total of 1,184 *new*, additional single family residential Lots and non-single family residential Dwelling Units on the Undeveloped Lands of the Real Property. This limit or "cap" shall be in addition to those Lots or Dwelling Unit approved prior to the effective date of this Agreement. This limit on Lots and Dwelling Units shall not include Hotel Rooms and Support Space previously approved by the Town or that was previously transferred by the Property Owner pursuant to the Initial Agreement.

- (ii) The maximum Density limits per acre for each Undeveloped Land Parcel as provided on Exhibit 13.2 are used to establish the maximum number of Dwelling Units per Parcel. The maximum number of Dwelling Units per Parcel shall be as provided in Exhibit 13.2 but in no event shall the new Lots and non-single family Dwelling Units exceed the 1,184 total established by the preceding paragraph.

Each Lot and condominium Dwelling Unit shown on a recorded master deed that is subdivided or created after the effective date of this Agreement on land now known as Cassique adjacent to Kiawah Island that is being developed by the Property Owner or its affiliated entities shall count against this cap of 1,184 *new*, additional single family residential Lots and non-single family residential Dwelling Units on the Real Property as described herein.

(c) Building Development Standards

The ARB shall apply the Building Development Standards in Exhibit 13.2 and shall prescribe and determine Lot area, Lot width, Lot depth, Lot coverage, setback and yard requirements, and may adjust the criteria set

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forth in the Table of General Lot Standards attached as Exhibit 13.3 provided the ARB determines that exceptional circumstances exist with respect to a particular Lot based on unusual configuration, topography, tree cover, or other material considerations. The ARB approved deviation from a particular standard in Exhibit 13.3 shall not exceed the percentage allowance specified for that standard in Exhibit 13.3.

(d) Off-Street Parking

The number of off-street parking spaces for any use shall be as outlined in Exhibit 13.4. The design of parking areas shall meet the minimum dimensional standards of Exhibit 13.5.

(e) Building Height

Residential Height is limited to a number of habitable floors (i.e., stories) exclusive of the area below the Ground Floor Level. One-half story is a habitable floor which has square footage that is no greater than one-half the square footage of the largest story. Buildings shall not exceed the number of stories and Height specified in Exhibits 13.2 and 13.3.

Furthermore, except as noted below, no portion of a residential building (excluding fireplaces, chimneys and vents) may be taller than 30 feet from Ground Floor Level within 15 feet of any property line, nor taller than 35 feet from Ground Floor Level within 20 feet of any property line. These setbacks do not apply to internal property lines in condominium or townhouse development. The Town may grant exceptions to these setbacks for interior property lines as identified through the platting process, provided that such exceptions do not adversely impact existing Development.

(f) Buffers, Fencing, and Signage

The ARB shall prescribe and determine and may adjust, subject to the provisions of Section 13.B.6., natural vegetative buffers between either Development Parcels of differing density residential lands or residential and non-residential lands and may adjust the following criteria: The buffer shall be a landscaped or naturally vegetated area not less than 30' wide, or a golf course, or other non-wooded area not less than 50' wide or a change in topography, or any other natural or architectural transition feature which may be within the boundaries of a parcel.

The ARB may approve fencing that is limited to landscaped hedgerows of dense plant material and/or wooden, masonry or wrought iron material which is architecturally integrated with other Development on the Lot or

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Development Parcel. Fencing shall not exceed five (5) feet in height from grade for residential Development. The ARB shall not approve solid wood fences in front yards. Fencing (excluding the use of plant materials) within five (5) feet of side and rear property lines is prohibited. Fences taller than three (3) feet from pavement of adjacent streets shall not be located within the Sight Triangle without Town approval.

Signage allowed within parcels that permit residential, commercial or utility/community support uses shall meet and comply with the Kiawah Island Graphics Standards, as updated by the ARB from time to time, (current edition, Exhibit 13.6), however, at such time as the Lots or Development Parcels on a Subdivision Plat are no longer part of the Undeveloped Lands, Property Owner agrees that signage shall be in the discretion of the KICA. Temporary signs for special events may be approved by the ARB provided the signs do not have moving parts, blinking or flashing lights, glaring lights, neon or extensive use of bright, offensive colors, and further provided that any temporary sign shall be permitted for a maximum of fifteen (15) days. Signs shall be located to avoid obstructing traffic visibility. No sign, excepting traffic signs, which is taller than three (3) feet above the pavement of the adjacent streets shall be permitted within the Sight Triangle of any street intersection without Town approval.

(g) Tree Replacement Guidelines

The Tree Replacement Guidelines, as currently promulgated by the ARB in the latest edition of Designing With Nature, copy attached as Exhibit 13.7, shall continue to be applied by the ARB throughout all Real Property; provided, however, they may be adjusted, modified, and updated from time to time by the ARB with the approval of the Town, whose approval shall not be unreasonably withheld or delayed.

(h) Aesthetics

Except as otherwise provided herein, including, but not limited to, paragraphs 10, 11, 12 and 13, the ARB shall have sole and exclusive jurisdiction with regard to the standards and guidelines set forth in the latest edition of "Designing With Nature," copy attached as Exhibit 13.7 (as may be amended by the Property Owner), the granting of "variances" from the Building Development Standards for the Undeveloped Lands described in this section and Exhibit 13.2 for residential uses, and other matters within its jurisdiction under Article II, Sections 1 and 2, of the General Covenants (excluding the introductory paragraph to them). In the event of any inconsistency between either Exhibit 13.7 or the General Covenants and the provisions of this Agreement, this Agreement governs.

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The Town agrees that it will not establish an architectural review body during the term of this Agreement which replaces or duplicates the jurisdiction of the ARB as reserved to it under this subsection.

Property Owner shall allow the board of KICA to appoint one member of the ARB if the board of KICA so desires. When the Property Owner decides to turn over control of the ARB to KICA as allowed under the General Covenants and/or KICA Covenants, the Property Owner shall cooperate with the board of KICA to accomplish an orderly and staged transition of the ARB to KICA. This orderly and staged transition is in addition to and not to the exclusion of any prerogatives of the Property Owner with respect to the ARB under the General Covenants.

For so long as it controls the ARB, Property Owner shall cause the ARB to transmit to the Town and KICA a copy of the agenda of upcoming meetings of the ARB in a timely manner.

(i) Additional Building Standards For Mutiple Lot Combinations.

In instances where construction is to occur where more than one Lot has been combined with another Lot, the standards set forth on Exhibit 13.9, attached hereto, shall apply.

2. COMMERCIAL USES

(a) Permitted Uses

All uses presently shown on Exhibit 13.1 under the heading "Commercial" shall be vested as a matter of right on all parcels in the Undeveloped Lands with the designation "C" on Exhibit 13.2.

(b) Size Limitations

Total commercial square footage on the Real Property (including any leasable, non-residential building square footage) shall not exceed 219,000 square feet of floor area in total.

The maximum commercial square footage allowable for each parcel shall not exceed the totals provided on Exhibit 13.2.

(c) Building Development Standards

The provisions of Section 13.B.1 (c) control.

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(d) Off-Street Parking

The number of off-street parking spaces for any use shall be as outlined in Exhibit 13.4. The design of parking areas shall meet the minimum dimensional standards of Exhibit 13.5.

(e) Building Height

Height shall not exceed the number of commercially habitable floors (i.e., stories) exclusive of the area below the finished first floor or the maximum elevation from Ground Floor Level established in Exhibit 13.2. One-half story is a habitable floor which has square footage that is no greater than one-half the square footage of the largest story.

No portion of a building may be taller than the Height above Ground Floor Level specified in Exhibit 13.8, "Commercial Bulk Standards."

(f) Buffers, Fencing and Signage

The provisions of Section 13.B.1 (f) control.

(g) Tree Replacement Guidelines

The provisions of Section 13.B.1 (g) control.

(h) Aesthetics

The provisions of Section 13.B.1 (h) control.

3. UTILITY AND SUPPORT SERVICES

(a) Permitted Uses

All uses as shown as "Utility" on Exhibit 13.1, shall be vested as a matter of right on all Undeveloped Lands indicated as U on Exhibit 13.2.

(b) Building Development Standards

Building setback standards shall be as established by the ARB.

For non-residential uses, the minimum Lot area is 12,000 sq.ft., the minimum Lot depth is 120 ft., and the minimum Lot width is 100 ft.

The ARB shall establish limitations for total ground coverage of building

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footprint, decks, walkways, parking and circulation areas, etc.

(c) Off-Street Parking

Off-street parking standards shall be as provided by ¶ 13.B.1.(d).

(d) Building Height

Building Height limitations for all structures other than the existing towers shall be as described in Exhibit 13.2.

(e) Buffers, Fencing, and Signage

The provisions of Section 13.B.1 (f) control.

(f) Tree Replacement Guidelines

The provisions of Section 13.B.1 (g) control.

(g) Aesthetics

The provisions of Section 13.B.1 (h) control.

4. OPEN SPACE

(a) Parcel open space is defined as land with Pervious Cover. The percentage of Parcel open space is determined by dividing the area of Pervious Cover by the gross area of a Parcel exclusive of Fresh Water and Salt Water Wetlands. Exhibit 13.2 provides the minimum required percentages of Parcel open space for each Parcel.

(b) The Property Owner shall dedicate conservation open space as provided in Paragraph 16 of this Agreement.

(c) The Property Owner shall provide and dedicate the following active or passive open space Facilities.

Active or Passive Recreation Sites

In addition to the passive and active open space that the Property Owner has previously dedicated to KICA, the following list includes active or passive park sites and open space which have been and/or shall be dedicated to KICA in accordance with Paragraphs 15 and 16 of this Agreement

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Future Parklands/Open Space

Bear Island (except as provided in Section 16(d) of this Agreement)

Captain Sam's Spit (subject to reservations in Section 16(g))

Parking Area for Captain Sam's Spit

Cougar Island Park

Trails

The Property Owner shall determine the specific alignments of all trails, including access to the trail system from new Development areas. Dedication of trail segments to KICA shall occur in conjunction with plat approval for adjacent subdivisions or rights-of-way.

(d) The Town agrees that the above future facilities and open spaces specified in this Agreement and those that have been previously constructed and conveyed under the terms of the Initial Agreement (including but not limited to Glossy Ibis Mini Park, Marshview Tower Overlook, Willet Pond Mini Park, Marsh Island Park, Rhett's Bluff Boat Landing, Canvasback Pond Mini Park, Master Leisure Trail System, Internal Crabbing/View Stands, Blue Heron Mini Park/View Tower, Eagle Point Boat Landing, and Cinder Creek Boathouse), in conjunction with existing facilities, open spaces, parks, marshes, natural and man made features and recreational amenities of Kiawah Island, shall satisfy all current and future obligations of the Property Owner relating to the same for monetary exactions and/or the provision or dedication of parks, parklands, community recreational facilities, open spaces and recreational areas on Kiawah Island.

5. MIXED USE DEVELOPMENT

(a) If more than one designation - "R-1," "R-2," "R-3," "C" and "U" - applies to a parcel in Exhibit 13.2, any permitted land use within a single land use type (e.g., Residential, Commercial or Utility) may be established on the parcel. A mixed use development with more than one type of use shall be permitted with Town approval of the requested mix, arrangement and Building Development Standards for such uses, which approval shall not be unreasonably withheld. The maximum residential and non-residential square footage for mixed use development on any parcel shall not exceed the FAR established in Exhibit 13.2. Mixed use FAR's shall be calculated by dividing the total floor area of all use types (e.g., Residential, Commercial, and Utility) by the gross site area above mean high water, excluding Fresh Water and Salt Water Wetlands. Residential units in mixed use developments will be counted towards the maximum number of Vested Units as provided in ¶ 13.B.1.(b)(i). Non-Residential floor area will be counted towards the maximum square footage as provided in ¶ 13.B.2.(b).

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6. COMPATIBILITY STANDARDS.

The Compatibility Standards of the Land Development Regulations of the Town at the time of the effective date of this Agreement shall apply.

(a) Replatting

The Town, subject to compliance with applicable Laws, may approve replatting or re-configuration of Lots or Development Parcels contained in Subdivision Plats approved prior to the effective date of this Agreement. The Town shall notify the Property Owner when a person applies for replatting. Any increase in the number of Lots from such re-platting or re-configuration shall be counted toward the 1184 cap in Section 13.B.1 (b)(i).

14. Facilities and Services. Although the nature of this long term Project prevents the Property Owner from now providing exact completion dates, the Property Owner certifies that the following services and Facilities will be in place (or if not fully in place, the cost of their construction fully bonded or letter of credit posted pursuant to the Town Subdivision Regulations) at the times provided below and as to roads, sewer, and water infrastructure, at the times Lots or Dwelling Units in subdivided real property or condominium units on recorded master deeds are offered for purchase to the public. Subject to compliance with applicable Laws with all provisions of this Agreement, the Town hereby authorizes the Property Owner, on its own or through its affiliated companies, to install the Facilities. Notwithstanding any provision herein to the contrary, the Property Owner hereby agrees that adequate Facilities (as defined in the definition of "Facilities" in Exhibit 1.1) shall be available concurrent with the impacts of Development. Nothing in this Agreement shall be construed to create an obligation for the Town to construct Facilities or on Property Owner to pave the currently unpaved sections of Eugenia Avenue.

- (a) Rights-of-Way. The Property Owner shall at its expense develop and provide roads and other related infrastructure, and pursuant to and at such times required by the KICA Covenants, transfer same to the KICA if they are intended to be KICA Common Properties or Purchased Common Properties or Restricted Common Properties.

(b) Water and Sewer.

- (i) Provider. The service and Facilities for water and sewer shall be provided by the Kiawah Island Utility, Inc. (currently owned by the Property Owner) or its successor. If however the Town were to exercise its right to eminent domain over Kiawah Island Utility, Inc. in accordance with the statutes and constitution of South Carolina, it would become the provider.

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(ii) First Offer. In the event the Property Owner decides to sell the assets of or stock in Kiawah Island Utility, Inc., Property Owner shall negotiate first with the Town and allow the Town to make the first purchase offer, if it so desires, before seeking purchase proposals from other persons. The Town shall have ninety (90) days after written notice from the Property Owner to provide notice to Property Owner that it intends to exercise its right of first offer and shall make its proposal no later than one hundred twenty (120) days after the initial written notice of the Property Owner. If the Town does not notify the Property Owner of its intent to exercise its right to first offer within the required time, or if the Town does not make an offer within the required time, or if such offer is rejected by the Property Owner, Property Owner may seek purchase proposals from others.

(iii) Service Area. Property Owner shall not cause Kiawah Island Utility, Inc. to expand its services beyond its existing service area, Kiawah Island, without obtaining the written approval of the Town.

(iv) Donations. Property Owner will install and contribute to Kiawah Island Utility, Inc. (or reimburse Kiawah Island Utility, Inc. for the cost of installation thereof) all water and sewer facilities and infrastructure physically installed after September 1, 2005, on the Parcels owned by the Property Owner as shown on Exhibit 4.1 (with the exception of Parcel 15) or their adjacent rights of way, to serve such Parcels. Such facilities and infrastructure include but are not limited to, distribution and transmission lines, hydrants, pumps, and lift stations. If an additional, new above-ground water storage facility is needed to serve the Parcels owned by the Property Owner as shown on Exhibit 4.1 (with the exception of Parcel 15), the Property Owner shall pay for it without charge to Kiawah Island Utility, Inc. and donate it to Kiawah Island Utility, Inc. Notwithstanding the foregoing, the Property Owner shall not be obligated to construct and donate or pay for aquifer storage and recovery ("ASR") systems or any related facilities or components of ASR systems, including but not limited to pipes, pumps, and above ground storage required and necessary to operate an ASR system. In addition, Property Owner will donate to Kiawah Island Utilities any real property underlying any above ground storage constructed.

The Town and the Property Owner acknowledge that binding decisions rendered in prior rate proceedings (and appeals thereof) of Kiawah Island Utility, Inc. have held that the Property Owner does not have a legal obligation to donate all the infrastructure facilities described in (iv) above and that such donation will be made in discharge, and in lieu, of possible future exactions and donations that the Town might otherwise try to recover from the Property Owner in the absence of this Agreement. Town and Property Owner agree that the donations specified in this section shall not, and do not, constitute a waiver of the Property Owner's right to seek payment for other transmission and related facilities that it may construct for Kiawah Island Utility, Inc. or may construct for it in the future.

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(v) Capacity Analysis. The Town shall have the right to have the Town's consulting engineers perform an analysis of Kiawah Island Utility, Inc. to determine (a) whether the water and sewer capacity of Kiawah Island Utility is sufficient to handle existing customers, and (b) whether the existing plant and facilities of Kiawah Island Utility are being maintained and repaired in good condition. This assessment maybe done up to three times during the term of this Agreement at times to be determined by the Town but in no event closer than three years apart, except that an examination may be performed within the last twelve months before the Termination Date of this Agreement or prior to the triggering of subsection 14 (b)(ii) above. Kiawah Island Utility, Inc. agrees to grant the consulting engineers access to such records (excluding proprietary financial information) and its personnel as necessary to complete the report. The Town agrees that the information disclosed to its consulting engineers is confidential and shall be treated by it and its engineers as being confidential. The Town shall pay for the expense of the engineer associated with this analysis. The Town and Property Owner agree to use Thomas &Hutton or a mutually agreed substitute to perform this analysis.

(vi) Rate Applications. Before intervening in future applications for rate adjustments by Kiawah Island Utility, Inc., the Town shall meet with representatives of Kiawah Island Utility, Inc. and the Property Owner to go over the proposed rate application, in an effort to avoid unnecessary expenditure of revenues of the Town and Kiawah Island Utility, Inc. on the litigation of rate applications. In consideration of the Property Owner entering this Agreement, the Town shall not expend any funds towards the expenses of a third party to assist a third party in intervening in any action before the South Carolina Public Service Commission ("PSC") involving a proposed rate increase applied for by Kiawah Island Utility, Inc. or any appeal thereof. The Town reserves the right to intervene in PSC proceedings initiated by Kiawah Island Utility, Inc. seeking a rate increase.

(c) New Entrance and Roundabout. The Town shall be responsible for the maintenance, including landscaping and drainage, of the roundabout for the reconfiguration of the intersection of the Kiawah Island Parkway with the Betsy Kerrison Parkway, and associated areas. In the event that Property Owner believes the Town is not providing adequate maintenance, the Property Owner shall notify the Town specifying the nature of the deficiency. If the Town does not respond in writing to the Property Owner within 30 days and does not implement the correction of the deficiency within 30 days, the Property Owner shall have the right to accomplish the corrective measures, at its expense, unless the Town objects. If the Town objects, the Town and Property Owner shall attempt to arrive at a reasonable resolution. The Town recognizes that the donation of land by Atlantic Partners, an entity affiliated with Property Owner, to the Town to accomplish the roundabout constitutes a valuable contribution towards the Facilities, even though the roundabout is not located on Kiawah