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

DRAFT OCTOBER 4, 2013

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

THIS AMENDED AND RESTATED DEVELOPMENT AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2013~~05~~, (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 desired to terminate the Initial Agreement and replaced it with the~~is~~ Development Agreement dated October 12, 2005, recorded in the RMC Office for Charleston County at Book Z 558, Page 004 (the "2005 Development Agreement); and,

WHEREAS the Town and the Property Owner entered six (6)~~five (5)~~ amendments to the 2005 Development Agreement; and,

WHEREAS the Town and the Property Owner have agreed to the annexation into the Town of certain real property comprising the development known as Freshfields and at a later date Property Owner may annex into the Town a portion of the development known as Cassique; and.

WHEREAS the Town and the Property Owner desire to amend and restate the 2005 Development Agreement to cover the annexed lands and future annexed lands, incorporate the six (6)~~five~~ amendments to the 2005 Development Agreement, and modify some of its provisions; and

WHEREAS, the Property Owner and the Town desire that this~~ Development~~ Agreement shall replace the 2005 Development Agreements and the Amendments thereto~~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~~, except that the 2005 Development Agreements and the Amendments thereto shall remain in effect solely as to 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 who are not parties to this Agreement; and

WHEREAS, under S.C. Code § 6-31-50(a) the Town Council conducted public hearings regarding its consideration of this ~~Development~~ Agreement on _____, 2013~~05~~, and on _____, 2013~~05~~, 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 _____, 2013~~05~~ 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. _____ on _____, 2013~~05~~, 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.

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 within the Town of ~~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~~ [insert number] 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.~~ LLC, KDP II LLC, ~~Kiawah Land Development, LLC,~~ Kiawah Island Utility, Inc., Atlantic Partners, LLC, Atlantic Partners II, LLC, Kiawah Island Club Holdings, LLC and **[INSERT LESSOR OF HOTEL PARCEL AT FF]** ~~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, LLC, KDP II LLC, Kiawah Island Utility, Inc., Atlantic Partners, LLC, Atlantic Partners II, LLC, Kiawah Island Club Holdings, LLC, and **[INSERT LESSOR OF HOTEL PARCEL AT FF]** ~~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 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.

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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 the~~is~~ 2005 Development 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), as amended, 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 (i) to allow up to two Neighborhood Docks ~~(this should be a defined term with the definition tracking the arbitrator's decision)neighborhoodcommunity docks~~ on Parcel 12B to include up to 200 feet (in length, single side) of floating docks, and (ii) to allow docks adjacent to Real Property known as Cassique ~~(Cassique Docks should be a defined term and specifically limited to those in Cassique allowed use of the docks)~~ consistent with the terms of the Real Estate Agreement dated January 26, 1989, recorded in Book M181, page 308, in favor of the Lowcountry Open Land Trust. An illustration of the Cassique marsh and dock areas is attached as Exhibit 10.3. All Town permits necessary for dock construction shall be issued expeditiously by the Town upon compliance with the Key Location Ordinance ~~and the Town will be supportive of any other governmental permits for obtaining the said dock permits requested by Property Owner.~~

(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) as of October 12, 2005, 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. The sole exception to the application of the Town's Road Code and Subdivision Regulations shall be that the Subdivision Regulations of the County as set forth in Exhibit 10.4 shall apply to the Cassique and Freshfields Parcels.

~~(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:

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. CERTAIN REAL PROPERTY UNDER THE INITIAL AGREEMENT AND 2005 DEVELOPMENT AGREEMENT NOT INCLUDED IN THE UNDEVELOPED LANDS. ~~The~~Certain lands included in the definition of the Real Property under the Initial Agreement and the 2005 Development 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 Exhibit ?? ~~Section 10(b)~~ of this Agreement.

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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 except for the Freshfields Parcels which receive preliminary subdivision plat approval for the first time after October 12, 2005, ~~the effective date of this Agreement~~ and the new non-single family Dwelling Units within the Undeveloped Lands except for the Freshfields Parcels~~-~~ that receive approval for the first time after October 12, 2005 ~~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 except for the Freshfields Parcels ~~—~~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 October 12, 2005~~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 excluding the Freshfields Parcels.

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 excluding the Freshfields Parcels 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 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.

Freshfields Development Standards

The building development standards and lot standards for the Freshfields Parcels shall be governed by the former County PUD as modified in Exhibit 13.14.

Cassique Development Standards

The building development standards and lot standards for the Cassique shall be governed by the former County PUD as modified in Exhibit 13.15.

Cassique has been planned and developed to be a series of high end residential neighborhoods within a community organized framework of golf, sports, gardens and the natural low country environment. Particular attention has been given to the creative integration of diverse home sizes and settings. The residential development standards that have governed design and development since inception have included the Charleston County R-4, Single Family Residential 4 District and the Cassique Planned Development (PD-110) District, which was approved March 2, 2005. The primary uses within both districts are single family detached with an overall density limit of 4 residential dwelling units per acre. The Cassique PD is intended to provide greater flexibility to position structures within natural settings as well as establish garden environments and streetscapes that are consistent with the vision of a country garden community. The Cassique PD was approved for portions or the whole of TMS 205-00-00-002,006 and 077.

These standards have been integrated in Exhibits 13.3 Table of General Lot Standards with specific application to Cassique. It is the intent of the Property Owner to expand the standards of the Cassique PD to TMS 205-00-00-012 Fairway 18 Parcel, as represented in Exhibit 13.13 to create a garden neighborhood adjacent to the clubhouse grounds. Additionally these standards will be expanded to lands within the golf course generally

described as an area no greater than 10 acres within the golf course bounded by holes number 1, 7 ,8, and 9.

Setbacks

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For Lots in the Undeveloped Lands owned by third persons, the ARB, in its sole discretion, may apply the setback specified for the Lot in either the Graphic Setbacks or the Building Development Standards for setbacks in Exhibit 13.3. Additional reduction to setbacks may occur per the provisions of Ordinance 2013-01.

Attached hereto as Exhibit 13.10 is a copy of the Graphic Setbacks for Undeveloped Lands owned by third persons. Attached hereto as Exhibit 13.11 is a copy of Ordinance 2013-01, which is hereby incorporated as part of this Section 13.B.1 (c) of the Agreement. Attached hereto as Exhibit 13.12 is a revised copy of the schedule of conveyances to third persons under the Initial Agreement as required by paragraph 2 of Section 10(b) of the 2005 Development Agreement.

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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.

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(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, except for the Freshfields Parcels. 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 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 ~~p~~Parcels, except for the Freshfields 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 for land located on Kiawah Island. 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. Notwithstanding the foregoing, signs within the Freshfields Parcels are subject to the approval of the ARB for Freshfields and the standards it may adopt to govern signs.

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 except for the Freshfields Parcels; 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. The ARB for Freshfields shall determine all tree replacement requirements, if any, for the Freshfields Parcels.

(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 for all Parcels other than the Freshfields Parcels 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.

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 for Kiawah Island if the board of KICA so desires. When the Property Owner decides to turn over control of the Kiawah Island 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 Kiawah Island 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

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 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 ~~p~~Parcels, except for the Freshfields 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 for land located on Kiawah Island. 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. Notwithstanding the foregoing, signs within the Freshfields Parcels are subject to the approval of the ARB for Freshfields and the standards it may adopt to govern signs.

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 except for the Freshfields Parcels; 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. The ARB for Freshfields shall determine all tree replacement requirements, if any, for the Freshfields Parcels.

(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 for all Parcels other than the Freshfields Parcels 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.

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 for Kiawah Island if the board of KICA so desires. When the Property Owner decides to turn over control of the Kiawah Island 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 Kiawah Island 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. The right that the Property Owner has to consent to an amendment to the KICA covenants shall expire on January 1, 2018.

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

hereto, shall apply.

(j) Accessory Uses.

In lieu of Article 12A-303: "Accessory Uses, Buildings/Structures, Section 4: Standards for Accessory Building in Residential Districts" of the Town's zoning ordinances, the following standard shall govern:

Accessory buildings shall be allowed in residential zoning districts pursuant to the following conditions:

A. No accessory building may be constructed on the Parcels on Kiawah Island on a Lot less than 15,000 square feet;
B. No accessory building may be constructed on the Cassique Parcels on a Lot less than **[Need to insert square footage]** square feet;
C. Detached accessory buildings shall be prohibited from being placed in front of the principal building and shall be placed in the rear yard, except that a detached accessory building may be constructed in front of the principal residence where the residence backs up to a beach, golf course, lagoon or marsh. Accessory buildings will be located within the buildable area of the Lot as delineated by the setback requirements.
D. Sub-leasing or renting an accessory building separately from the primary use shall constitute a violation of the Town's zoning ordinance."

[Note: Above provision is part of the Second Amendment to the 2005 DA. The other part requires a revision to Exhibit 13.1 as follows: "Subparagraph No. 3 of Exhibit 13.1 is deleted and replaced with the following: "3. Special Exception. None of the accessory uses represented as 'P' Permitted in Exhibit 13.1: 'Table of Permitted Uses' shall require Special Exception BZA~~ZBA~~ approval."]

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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 located on Kiawah Island (including any leasable, non-residential building square footage) shall not exceed 219,000 **[Note: Check this cap]** square feet of floor area in total. Total commercial square footage on the Real Property known as Cassique (including any leasable, non-residential building square footage) shall not exceed **[insert number]** square feet of floor area in total. Total commercial square footage on the Real Property known as Freshfields (including any leasable, non-residential building square footage) shall not exceed **[insert number]** square feet of floor area in total.

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

(c) Building Development Standards

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

(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.

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(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 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 for all Parcels other than the Freshfields Parcels. 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.

For the Freshfields Parcels, the provisions of ~~the Charleston County standard attached as~~ Exhibit 13.14 shall govern the minimum Parcel open space.

(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

Future Parklands/Open Space

~~Bear Island (except as provided in Section 16(d) of this Agreement)~~ **[Note: Still required under 2005 DA that remains in effect as to its signatories who are not parties to this Agreement]**

Captain Sam's Spit (subject to reservations in Section 16(~~f~~g)) **Note: Change reference in Note 16 to Exh 13.2 to refer to ¶16(f) instead of ¶16(g).**

Parking Area for Captain Sam's Spit

~~Cougar Island~~ Park at Ocean Park (formerly Cougar Island)

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

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in this Agreement and those that have been previously constructed and conveyed under the terms of the Initial Agreement and the 2005 Development 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) For all Parcels other than the Freshfields Parcels, ~~I~~if more than one designation - "R-1," "R-2," "R-3," "C" and "U" - applies to a ~~p~~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 ~~p~~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 ~~p~~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).

~~The former County PUD as modified in~~ Exhibit 13.14 shall establish the standards for mixed use development on the Freshfields Parcels.

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 re-platting 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 on Parcels other than the Parcels in Freshfields shall be counted toward the 1184 cap in Section 13.B.1 (b)(i).

14. **Facilities and Services.** ~~TAlthough the nature of this long-term Project prevents the Property Owner from now providing exact completion dates. t~~he 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, as to Real Property on Kiawah Island, 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. As to the roads and other infrasaetructure for Freshfields and Cassique, the Property Owner agrees that under no circumstances will the Property Owner attempt to dedicate the roads or other infrastructure to the Town nor will the Town accept such roads and other infrastructure.

(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 for the Real Property on Kiawah Island. 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 or purchase Kiawah Island Utility, Inc., it would become the provider for the Real Property on

Kiawah Island. For the portions of the Real Property located at Cassique and Freshfields, the Seabrook Island Utility Commission shall provide the sewer service and St. Johns Water Company shall provide potable water.

(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. Nothwithstanding 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 Utilityies, Inc. any real property underlying any above ground storage constructed, including land for any above ground storage for ASR systems.

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.

(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 prior 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 Island.~~Roundabout?)

(d) Exactions. In return for the provision of the facilities and services set forth in this section 14 of this Agreement and the same section of the 2005 Agreement and the Initial Agreement, the Town agrees that it will not seek further property or monetary exactions or impact fees related only to the facilities and services described in this section 14, subject to S.C. Code §§ 6-31-80 and 6-31-100 (Cum.Supp. 2004); provided, however, the Town is not the facilities and services provider, except in the event that it exercises its power of eminent domain over Kiawah Island Utility, Inc, in accordance with the statutes and constitution of South Carolina. ~~-~~or purchases Kiawah Island Utility, Inc.

15. **Reservations, Conveyances, Leases, Easements, and Other Agreements.**

(a) For Benefit of KICA. The Property Owner shall make the following reservations, conveyances, leases, easements, and other agreements for the benefit of the KICA:

(i) Beach Parking:

A. Ocean Course. ~~Within a reasonable time after the effective date of this Agreement, the Property Owner shall make a non-exclusive assignment to the Town of its easement rights and interests under that certain Grant of 30' Easement and Amendment of Easement and Beachfront Property Agreement from Landmark Land Company of Carolina, Inc. to Kiawah Resort Associates, a South Carolina joint venture dated July 26, 1991, and recorded in the RMC Office for Charleston County at Book X204, page 613, and any amendments thereto and assumptions thereof (collectively the "Landmark Easement."). Upon such assignment, Town assumes the responsibility of coordinating with The Ocean Course Golf Club, LLC (and its successors) and KICA the implementation of the beach parking at the Ocean Course including obtaining the necessary permits for such construction, as set forth in the Initial Agreement and the amendments thereto. Property Owner shall cooperate with the Town in seeking such permits. Property Owner shall pay for and construct the parking spaces within a reasonable time after the permits are obtained. Upon completion~~

~~of construction, the Town and Property Owner shall make an assignment (which at their respective elections may be non-exclusive of their respective interests) to KICA of their rights and interests under the Landmark Easement~~ Property Owner affirms its obligations with respect to beach parking at the Ocean Course as set forth in the Parking License Agreement effective May 5, 2009, copy attached as Exhibit 15.2.

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B. Captain Sam's Spit. If the Property Owner should develop Parcel 12B as allowed by this Agreement, Property Owner shall construct a parking area of coquina shell or better for eight (8) cars at or near the location of the approved preliminary plat ~~west end of the road to such spit~~ (which may be conveyed to KICA) and convey to KICA by quitclaim deed such parking area no later than the Termination Date~~January 1, 2018~~, at a location in the discretion of the Property Owner, to allow KICA members access to the beach. If necessary, the Property Owner shall convey by quitclaim deed a pedestrian path to KICA for pedestrian access of its members from the parking area to the beach.~~.~~

(ii) New ~~Cougar Island~~ Park at Ocean Park:

The Property Owner shall provide, plan, and develop an active park (e.g. fishing and crabbing dock, interpretative nature trails, picnic areas, and/or nature overlooks) on Ocean Park~~Cougar Island~~, Parcel 43, to consist of at least 2 acres located in the area shown on Exhibit 15.1. The Property Owner shall also provide eight (8) parking spaces of coquina shell or better for the use of this park. This park shall be developed and conveyed by quit claim deed for $1.00 to KICA no later than one year after recording the final plat for Ocean Park~~Cougar Island~~ that includes the proposed park and amenities.

(iii) ~~Sora Rail Tract:~~

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~~On or before December 31, 2005, the Property Owner will convey to KICA by quitclaim deed for one ($1.00) dollar the tract adjacent to the Sora Rail Road KICA maintenance facility, shown on Exhibit 15.2, for its use in KICA's maintenance operations. The conveyance by the Property Owner shall be in conformance with the draft quitclaim deed attached as Exhibit 15.3.~~

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~~(iv)~~ KICA Boat Storage:

~~The Property Owner shall continue to lease the two current boat storage~~

areas to KICA under the terms of the existing leases. Property Owner affirms its obligations with respect boat storage as set forth in the Assignment and Assumption Agreement Dennis needs a copy of this document to review)for boat storage dated March 12, 2007, copy attached as Exhibit 15.3.

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(iv) Golf Courses/Tennis Courts Covenant:

The Property Owner reaffirms it placed in 1989 certain matters of record in the Charleston County RMC office which require -- among other things -- the current and future owners of Cougar Point, Turtle Point, Osprey Point, and The Ocean Course, as well as the two Resort Tennis Centers to use the lands currently devoted to golf and tennis purposes to only such golf course and tennis center purposes (and reasonable, related retail and commercial activities) for a period of approximately 8375 years from the date hereof, absent consent of the Property Owner. The purpose and effect of such restrictive covenants was and is to prevent the conversion of these amenities that are available to Kiawah property owners to other uses, such as residential or other purely commercial purposes, for such period. If the Property Owner shall assign its rights under these restrictive covenants to an entity not controlled or owned by Property Owner, the Property Owner will limit in such assignment the assignee's right to consent to changes to only those for minor alterations or to correct boundaries, etc., absent Town approval.

Property Owner agrees that the Cassique golf course and the River Course golf course shall remain eighteen (18) hole golf courses and shall be re-zoned to Park and Recreation District provided this re-zoning includes a floating overlay that authorizes the Property Owner to subdivide land from the tax map parcels currently comprising the golf courses for residential and utility uses not to exceed ___ acres from the Cassique golf course and ____ acres from the River Course golf course.

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16. **Environmentally-Sensitive Property Protection.** The Property Owner shall make the following reservations, conveyances, leases, easements, and other agreements related to the protection of environmentally sensitive property as follows:

(a) Preservation of Marsh Lands Acreage:

There are approximately 4,000 to 5,000 acres of low lands and marsh lands contiguous to Kiawah Island, including those lands below mean high water and isolated lands above mean high water which are not specifically identified as Parcels in Exhibit 4.1 to this Agreement, identified on Exhibit 16.1 to this Agreement. On or before the Termination Date, all such land identified in Exhibit 16.1, except as further set forth herein, shall be conveyed by the Property Owner by quit claim deed (for $1.00) to the KICA as additional Common Property subject to subpart (d) below.

The conveyance of all marshes and lowlands (as lie below mean high tide) shall be subject to a reservation in favor of Property Owner, its successors and assigns, across the property conveyed for access by walkways, docks, bridges, etc., to any highlands, hummocks or the like for active and passive recreational uses, and subject to all rights for dock usage under the Town's Key Location Ordinances, and subject to the right to grant a conservation easement to a qualified organization under 26 U.S.C. § 501(c)(3) in a form required by state or federal law before transfer to KICA. Property Owner shall also convey isolated lands above mean high water in the marsh that are not specifically identified as Parcels, by quit claim deed, to KICA by the Termination Date as defined in Section 21 herein, subject to all the same reservations, except for "undevelopable" highlands and isolated highlands as shown on Exh. 16.1 (KRA to provide description of undevelopable highland near or adjacent to developable highland). As for these "undevelopable" highlands and isolated highlands shown on Exh. 16.1 to be retained by Property Owner, Property Owner shall not be required to convey the same to KICA and may deed the same to purchasers; provided the deed shall impose permanent restrictions that prevent all construction (provided that said restrictions shall not prohibit active or passive recreational uses, access, and recreational structures such as docks, bulkheads, walkways, and gazebos) on such "undevelopable" highlands.

(b) Beachfront Property.

The protective ocean front building setback guidelines voluntarily imposed in the mid-1970's by the predecessors in title of the Property Owner as well as the Property Owner since June 1988 with respect to the ocean front dunes for the purposes of setting back residential building structures, shall be continued by the ARB respecting its regulation of usage and placement of such structures on ocean front Lots at Kiawah Island. The strict customs and usages of the ARB shall likewise be continued in regard to such house structure setbacks and shall be adjusted by the ARB for each oceanfront site or it deems best and most appropriate.

Attached hereto as Exh. 16.3 is the confirmation of intent as to the deed(s) of conveyance of the Beachfront Strip pursuant to Section 16(b) of the Initial Agreement.

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Property Owner hereby acknowledges that certain License/Access Agreement dated December 31, 1993, and that Grant of Exclusive License dated April 15, 1997, as set forth in Exhibits 31.1 and 31.2, respectively, to be in full force and effect. Any covenants or deed reservations recorded prior or subsequent to the License Agreements by Property Owner and contrary thereto shall be deemed ineffective.

The emergency beach accesses identified in the License/Access Agreements shall not be obstructed in any manner inconsistent with the rights of the Town as set forth in the License/Access Agreements. The Town shall have the absolute right to access the beach at those emergency beach access points pursuant to the License/Access Agreements. Provided, however, the Parties agree that the Property Owner may re-locate the Beachwalker Park beach access to allow the Development authorized under this Agreement so long as a new beach access for Town vehicular use is provided by Property Owner nearby, in addition to the cooperation or rights that are specified in Exhibits 31.1 and 31.2.

Property Owner further acknowledges that the Town shares concurrent jurisdiction with the South Carolina DHEC's Department of Ocean and Coastal Resource Management ("OCRM") and federal agencies in accord with state and federal law, including the Town's jurisdiction and authority as set forth in Section 48-39-10, et. seq., of the South Carolina Code of Laws, 1976, as amended.

(c) Marshes:

The Property Owner will limit its use of the marshes in and surrounding Kiawah Island to only such uses as are allowed by Subpart 16.(a) herein, the Town's Key Location Ordinances (Exhibit 10.2 hereto), and other local, state or federal laws.

(d) ~~Bear Island:~~

~~Bear Island (AKA Little Bear Island) is located at the far eastern end of Kiawah Island, and is partially contiguous to the 5th hole of The Ocean Course. [See Exhibit 16.3.] The Property Owner (i) agrees and commits to Bear Island being primarily devoted to passive recreational activities as herein provided and (ii) hereby agrees (subject only to the permitted exceptions, conveyances, reservations, and site Development referenced below and/or of record in the conservation easement herein mentioned) to convey same on or before the Termination Date to the KICA as additional Common Property under the Covenants.~~

~~Such conveyance to KICA (by quit claim deed) shall be subject to the right on the part of the Property Owner (of the approximately 152 highland acres estimated to comprise Bear Island (as depicted on Exhibit 16.3) to undertake limited Development, as is permissible and/or reserved in the deed of conservation easement recorded in the RMC Office for Charleston County at Book F340, page 421 to Wetlands America Trust, Inc.~~

~~Further, a master plan for Bear Island shall be submitted by the Property Owner for Town approval prior to any Development activities being undertaken thereon. The Town shall not unreasonably withhold or delay approval of any such master plan and agrees to facilitate, as needed, such limited Development and sale of 1 or 2 small Lots or Single Family Detached Dwellings and associated improvements (including roads providing access thereto) and related uses/activities as are allowed and/or reserved in said conservation easement~~.

~~Except as so provided herein, Bear Island shall remain permanently in its natural state as habitat for animals and birds; provided, the Property Owner and/or Kiawah property owners and/or their invitees (under the auspices of and/or regulations and supervision of the KICA) may enter on to the natural undeveloped areas of the Bear Island property for camping, nature viewing, wildlife expeditions, and other similar activities. (Access for such purposes may have to be by boat).~~

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(e) Archeological Studies. Subject to the provisions of § 6-31-80, the Programmatic Agreement heretofore entered between the Property Owner and the State Department of Archives and certain other state and federal entities shall govern all matters dealing with archeology at Kiawah Island. A copy of such Agreement is attached as Exhibit 16.4: Programmatic Agreement.

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(f) Captain Sam's Spit – Parcel 12B.

This parcel is known as Captain Sam's Spit and is shown on Exhibit 16.2. It comprises approximately ~~118.3~~155.341 acres of highland of which the Property Owner may plat, Develop, and convey: (a) fee simple title to no more than 20 acres for Single Family Detached Dwelling residential purposes and any uses as are authorized for Parcel 12B as authorized by this Agreement;(b) and utilize additional Parcel 12B highland acreage as may be needed for infrastructure/Development including, but not limited to, road rights-of-way, utilities, beach access easements, paths, trails, green space, community recreation serving Parcel 12B, dock access, parking, etc., with any such Development to comply with this Agreement including but not limited to Exhibits 13.1 and 13.2. *Provided however*, only highland landward of the setback line and/or critical line set by OCRM may have structures built thereon (lot lines and boardwalks

permitted by OCRM from time to time may, however, irrespective of the foregoing, extend seaward of the setback line and critical line).

Such developable acreage shall be based on environmentally-sensitive approaches to Development, including limited and careful infrastructure construction. The Town will assist Property Owner in facilitating provision of access strategies that minimize impacts with narrow rights-of-ways to 20' widths or less and narrower road profiles to 16', provided such access is appropriate for emergency vehicles. Property Owner may use pervious material for same.

Notwithstanding any other provision of this Agreement, Property Owner agrees that prior to any conveyance to KICA of rights, title, or interests in any roadway and adjacent right-of-way leading to developable property appearing on recorded plats at Captain Sam's Spit (i.e., on Parcel 12B), the Property Owner shall first obtain and provide to the board of directors of KICA, a certification from a licensed civil engineer with at least 20 years experience in South Carolina coastal development, that such roadway/right-of-way, in such engineer's considered professional opinion, will not unreasonably be subject to tidal erosion from the Kiawah River or the Atlantic Ocean.

When and if such roadway/right-of-way improvements are completed by Property Owner and such certification obtained from the licensed civil engineer, as aforesaid, is so delivered, then the roadway/right-of-way may, with all such improvements as are herein or otherwise authorized or provided for, be conveyed pursuant to the Kiawah Island General Covenants and/or the KICA Covenants, to KICA in such form as Property Owner has heretofore customarily conveyed rights in other roads and rights-of-way at Kiawah Island to KICA.

Property Owner may construct up to 2 N~~n~~eighborhood ~~(again this needs to be defined in accordance with the arbitrator's decision)community~~ ~~d~~Docks (with OCRM permitting approval) serving parcel 12B with flexibility for placement per Exhibit 16.2. The Key Location Ordinance shall be amended by the Town to accommodate same as and when the dock(s) are ready to be Developed by Property Owner.

~~The Town will assist Property Owner's implementation of the Development authorized on parcel 12B, including supportive assistance with state, federal, and local regulatory or governmental authorities or agencies.~~

Should the baseline/setback and/or critical lines move (including adjustments as result from periodic measurements by OCRM), allowances and locations for structure placement shall be adjusted accordingly by the parties and confirmed by amendment(s) hereto upon request of either party.

Property Owner shall provide to KICA (by quitclaim deed conveyance) 8 parking spaces at the approximate location on the approved subdivision plat ~~western end of the road access authorized above~~ upon completion of the road access~~same~~ and shall improve the spaces with pervious material. An easement to KICA shall be limited to its members' use for access along the road to the 8 parking space area. A beach access path from such parking area shall also be granted by Property Owner to KICA by quitclaim deed for its members' convenient usage.

On or before the Termination Date of this Agreement, Property Owner shall convey to KICA (for nominal consideration by quitclaim deed) such areas of highland depicted in light green and cream on Exhibit16.2 as are then seaward (as to land on the ocean side of Parcel 12B) of the crest of the primary oceanfront dune, less only such areas/lots as may have been encumbered by easements or conveyed to third parties (*e.g.*, lot owners, KICA, etc. pursuant to the authorizations hereinabove noted).

Prior to the Termination Date, Property Owner also agrees to restrict all remaining highlands not devoted to the uses or purposes authorized herein, to non-developable, passive green space by restrictive covenant recorded in the Charleston County RMC office. Property Owner shall grant an easement to KINHC (provided KINHC accepts) for any acreage not subject to Development, including such acreage as is to be conveyed, ultimately, to KICA.

The Town has requested that the Property Owner consider the possibility of establishing a temporary site on the Kiawah River for KICA members to launch kayaks and canoes before further Development of Captain Sam's Spit. Property Owner agrees to study the issue and consider the request in good faith.

17. [Left intentionally blank]

~~**Historic Structure Preservation and Restoration.** The Property Owner shall protect and preserve the historic Vanderhorst Mansion.~~

~~It is further agreed that Exhibit 17.1, Vanderhorst Development Plan, attached hereto, reflects a Development Plan for the overall Vanderhorst tract that is satisfactory to the Town respecting subdivision, architectural elements, infrastructure and other Development of this 6 acre tract.~~

~~It is further agreed that the plans heretofore approved by the State Archives Department, the Preservation Society of Charleston, the Historic Charleston Foundation and others as are included are likewise satisfactory to the Town and will be approved whenever presented by the Property Owner and/or others for all permitting, subdivision or other purposes.~~

~~All restoration expenses of the Vanderhorst Mansion as well as all road, water, sewer and~~

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~~any other infrastructure indicated on Exhibit 17.1 shall be the sole responsibility of the Property Owner or its successors in title, successors in interest or assigns.(Town wants all of this left in the DA)~~

18. **Kiawah Island Community Association, Inc.**

(a) Waiver.

The Property Owner executed a Limited Waiver under Declaration of Kiawah Island Community Association pursuant to the terms of the 2005 Development Agreement that is recorded in the RMC Office for Charleston County at Book 568, Page 393 (the "Limited Waiver'). The Parties agree that the ~~As of the effective date of this Agreement, Property Owner permanently and irrevocably waives its right to appoint a majority of the KICA board except for a specific reservation of certain rights including those under Article VIII, Section 2 of the KICA Covenants to approve all amendments to the KICA Covenants until the Termination Date, or the occurrence of board control~~ "retained rights of Kiawah Resort Associates, LP, its successors and assignees" as set forth in Limited Waiver shall expire upon -transition under the KICA Covenants -or January 1, 2018- whichever occurs first. ~~, as set forth in the copy of the waiver attached as Exhibit 18.1, which shall be executed and recorded by Property Owner within thirty (30) days after the effective date.~~ (

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(b) KICA Authority.

This Agreement shall not be understood as amending the KICA Covenants or changing rights thereunder. Except as expressly provided in this Agreement, the rights granted the Property Owner as the "Company" under the KICA Covenants are not intended to be lessened or abrogated, and any consensual relinquishment herein of rights provided to the Property Owner by the KICA Covenants shall not be deemed or construed to be permanent waivers of its rights under the KICA Covenants except as expressly set forth in the Limited Waiver that was Exhibit 18.1 to the 2005 Development Agreement that is recorded in the RMC Office for Charleston County at Book B 568, Page 393.

(c) The Security Gates.

The Town and the Property Owner recognize and respect the fundamental importance and value of the ~~S~~security ~~G~~gates, private rights-of-way and private amenities to the Town, the Property Owner and the owners of property on Kiawah Island and Cassique and to the enhancement and preservation of every property owner's land values. If a judicial challenge is brought seeking to make one or more of the roads on the island open to the general public and the challenging

party prevails based, in whole or in substantial part, on the expenditure of public funds by the Town and/or an ordinance passed by the Town and/or other conduct or ownership of facilities of the Town, the Town agrees that it will immediately cease such expenditures, repeal such ordinance, and refrain from owning such facilities (as are inside the ~~current main~~ security gates) or continuing such conduct. This paragraph shall be subject to the provisions of § 6-31-80 and shall not be construed to prevent the performance or enforcement of the specific provisions of this Agreement.

(d) Extension of Covenants. Property Owner agrees that it will not exercise its rights under the KICA Covenants to submit contiguous or nearly contiguous properties to the KICA covenants unless there has been prior approval by a simple majority vote of the members present at a duly called meeting of the membership under the KICA Covenants. Parcels 2, 3,~~-4,~~ 5,~~-6,~~ 11, 12A, and 12B are excluded from this requirement of approval by the KICA membership.

Property Owner agrees that Property Owner will not seek to add Cassique to the KICA Covenants by supplemental declaration (that would need to be approved by the members of KICA in accordance with the preceeding paragraph) without the prior approval of a majority of the Cassique owners, excluding Property Owner, by vote at a duly called meeting or obtained in a written referendum.

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~~(e) Property Owner Votes. Property Owner, during the term of this Agreement, agrees to abstain from casting any or all of its votes as a Type A Member and any proxies it may hold from other Type A Members for the election of Type A Directors.~~

19. **Hotel/Inn Zoning.** . It is understood and agreed between the Town and the Property Owner that ~~that unlike other resort and residential communities,~~ the Real Property is intended to be and shall remain free of a proliferation of hotels or inns. No Hotel Rooms and Support Space are allocated to the Undeveloped Lands on Kiawah Island as defined in this Agreement.

20. **Development Schedule for The Project**.

(a) Commencement date. The Project commenced in the mid-1970's, and has been ongoing since then.

(b) Interim completion date. The Property Owner projects that in the following years after the execution and adoption of this Agreement, the following percentages of the Undeveloped Lands within the Real Property will be developed:

YEAR	% COMPLETE
5	10

10	20
15	35
20	60
25	85
30	100

(c) Completion date. The Property Owner projects that by the year 2030 the Project should be complete (i.e., all recreational amenities erected, commercial structures built, and essentially all structures erected on building Lots and all necessary infrastructure in place). Nothing in this paragraph shall be interpreted to extend the term of this Agreement.

21. **Term of the Agreement.** This Agreement shall expire on January 1, 2023. ~~August 1, 2015~~. If the Property Owner shall provide to the Town a certification that highland within the Real Property owned by the Property Owner as of January 1, 2016~~2008~~, is 250 acres or greater, the Town and the Property Owner shall enter an amendment to this Agreement extending the term to January 1, 2026~~18~~. The date of the expiration of the term of this Agreement is the "Termination Date.".

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~~Property Owner and the Town agree that the Initial Agreement shall be terminated at the time of the effective date of this Agreement except the following which shall not be extinguished and shall survive the termination: (1) the rights and obligations of the Ocean Course Golf Club, LLC, with respect to beach parking at the Ocean Course as set forth in sixth and eighth amendments to the Initial Agreement, and (2) those vested rights of third persons specifically preserved herein under Section 10(b). All rights and obligations under the Initial Agreement that are preserved by this Agreement shall be deemed to have been continuous and without interruption despite the termination of the Initial Agreement~~.

22. **Amending or Canceling The Agreement.** Subject to the provisions of § 6-31-80, this Agreement may be amended or canceled in whole or in part only by mutual consent of the Parties in writing or by their successors in interest and, in the case of the Property Owner, its successors in title who, by virtue of assignment or other instrument become the "Company" under the KICA Covenants.

If the Property Owner and related entities petition to annex into the Town their land at Cassique, as reflected on Exhibits 1.3 and 4.1, then the Town agrees to consent to add Cassique to the Real Property by amendment to this Agreement and add as parties to this Agreement the related entities that are not already parties. Cassique shall be treated and designated as Parcel 60, as further set forth herein. It is the intent of the parties that the final reading approving such annexation be accompanied by an amendment to this Agreement adding this land to the Real Property and including as Property Owner those owners of such land who are not already parties.

23. **Modifying Or Suspending The Agreement.** In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, the pertinent provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

24. **Periodic Review.** The Zoning Administrator of the Town, or, if the Town has no Zoning Administrator, an appropriate officer of the Town, shall review the Project and this Agreement at least every twelve months, at which time the Property Owner shall demonstrate good faith compliance with the terms of this Agreement.

    If, as a result of its periodic review, the Town finds and determines that the Property Owner has committed a material breach of the terms or conditions of this Agreement, the Town shall serve notice in writing upon the Property Owner setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the Property Owner a reasonable time in which to cure the material breach.

    If the Property Owner fails to cure any material breach within the time given, then the Town unilaterally may terminate or modify this Agreement; provided, that the Town has first given the Property Owner the opportunity: (1) to rebut the Town's finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the Town with respect to the findings and determinations.

25. **Severability.** Subject to the provisions of § 6-31-150 and of ¶ 18(a), supra, if any word, phrase, sentence, paragraph or provision of this Agreement shall be finally adjudicated to be invalid, void, or illegal, it shall be deleted and in no way affect, impair, or invalidate any other provision hereof.

26. **Merger.** This Agreement coupled with the Exhibits hereto which are incorporated herein by reference shall state the final and complete expression of the Parties' intentions. In return for the respective rights, benefits and burdens undertaken by the Parties, the Property Owner shall be, and is hereby, relieved of obligations imposed by PDD1a, including but not limited to obligations relating to providing an elementary school site, except those which may be specifically carried forward herein.

    The parties hereto agree to cooperate with each other to effectuate the provisions of this Agreement and to act reasonably and expeditiously in all performances required under the Agreement.

    In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending such action.

27. **Conflicts of law.** This Agreement shall be construed and enforced in accordance with

the laws of the State of South Carolina.

28. **Remedies.** Each Party recognizes that the other Party would suffer irreparable harm from a material breach of this Agreement and that no adequate remedy at law exists to enforce this Agreement. Consequently, the Parties agree that any non-breaching Party who seeks enforcement of the Agreement is entitled to the remedies of injunction and specific performance but not to any other legal or equitable remedies including, but not limited to, damages; provided, however, that Property Owner shall not forfeit its right to just compensation for any violation by Town of Property Owner's Fifth Amendment rights. The Town will look solely to the Property Owner as to any rights it may have against the Property Owner under this Agreement, and hereby waives any right to assert claims against limited partners of the Property Owner, and further agrees that no limited partner or agent of the Property Owner has any personal liability under this Agreement. Likewise, Property Owner agrees to look solely to the Town's assets as to any rights it may have against the Town under this Agreement, and hereby waives any right to assert claims for personal liability against individuals acting on behalf of the Town, its Town Council members, agencies, boards, or commissions.

29. **Recording.** Within fourteen days after execution of this Agreement, the Property Owner shall record the agreement with the Charleston County Register of Mesne Conveyance. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest and assigns of the Parties to this Agreement.

30. **Third Parties**. Notwithstanding any provision herein to the contrary, this Agreement shall not be binding and shall have no force or effect as to persons or entities who are not Parties or Successors and Assigns to this Agreement.

31. **Conveyances**. Except as otherwise provided herein, all conveyances or transfers of any portion of the Real Property to KICA are to be by quit claim deed and for nominal consideration not to exceed one dollar ($1.00). Except as provided in § 16(d) herein, all conveyances shall be tendered by the Property Owner so as to close during the duration of this Agreement; and, such conveyances shall preserve the Town's rights of beach access existing on the date of execution of the License Agreement dated December 31, 1993, attached hereto as Exhibit 31.1, and as of the date of the execution of the Grant of Exclusive License between Kiawah Resort Associates, LP and the Town for vehicular beach access from Beachwalker Park, attached hereto as Exhibit 31.2, recorded in the RMC Office for Charleston County at Book Z 282, Page 737. All improvements prior to conveyance shall be at the Property Owner's expense. The Property Owner hereby freely consents to such conveyances and waives any challenges it may otherwise have to the validity of said conveyances (as exactions or otherwise). Property Owner further agrees to waive any challenges to Town ordinances (regardless of when enacted) passed so as to limit Property Owner's use of Real Property to be conveyed to KICA (or some 501(c)(3) organization) in order to protect and preserve the purposes of the conveyances. Such waiver shall include, but not be limited to all state laws and local zoning and subdivision

regulations prohibiting all development of any portion of the Real Property so conveyed, it being agreed to by the Property Owner that said restrictions do not restrict the totality of the Real Property and that the same are reasonable restrictions in time, place and manner.

Notwithstanding the foregoing, the Property Owner shall be entitled to grant easements, licenses, access, and recreational uses for the properties to be conveyed, consistent with and not prohibited by Sections 14, 15, 16, and 33(b)(iii) herein.

32. **Town Determinations Relating to the Project.**

Approval of Agreement. The Town Council has approved the Project under the process set forth in ¶ 6-31-50 of the Act and the Development Agreement procedures set forth in Paragraph _____of the Ordinance on the terms and conditions set forth in this ~~Development~~ Agreement.

33. **Successors and Assigns.**

(a) Binding Effect. This Agreement shall be binding on the successors and assigns of the Property Owner in the ownership or Development of any portion of the Real Property or the Project. A purchaser, lessee or other successor in interest of any portion of the Real Property shall be responsible for performance of Property Owner's obligations hereunder as to the portion of the Real Property so transferred. In addition, unless the Town gives its written consent (which consent shall be deemed given if the Town does not respond after thirty (30) days written notice and which consent shall not be unreasonably withheld) to transfer or assignment, Property Owner shall remain jointly and severally liable to Town under this Agreement. The Town's determination whether to give its written consent shall be based on the ability of the purchaser/transferee to perform the obligations of this Agreement associated with the tract transferred. Such written consent will not be unreasonably withheld if such ability is demonstrated.

This paragraph shall not be construed to prevent Property Owner from obtaining indemnification of liability to the Town from third parties. Further, Property Owner shall not be required to notify the Town or obtain the Town's consent with regard to the sale of Lots in single family residential subdivisions or Lots in commercial areas which have been platted and approved in accordance with the terms of this Agreement. Property Owner shall be released from obligations as to sale of individual Lots in single family subdivisions and individual pad sites in commercial areas.

This Agreement shall also be binding on the Town and all future Town Councils for the duration of this Agreement, even if the Town Council members and/or mayor change.

(b) Transfer of Project. Property Owner shall be entitled to transfer any portion or all of the Real Property to a purchaser(s), subject to the following exceptions:

(i) Notice of Property Transfer. If the Property Owner intends to transfer all or a portion of the Real Property to a purchaser who, by virtue of assignment or other instrument, becomes the "Company" under and within the meaning of the KICA Covenants, Property Owner shall notify the Town by thirty days prior written notice and provide it a copy of the assignment of such status as the "Company." If the owners of Property Owner intend to sell their ownership interests in Property Owner to an unrelated third party, Property Owner shall inform the Town no fewer than five business days before the earlier of any public announcement of the transfer of ownership or the consummation of the transaction, and Town agrees to hold such information in confidence. ~~This paragraph is intended to include any type of transfer whether legal or equitable and whether it involves the conveyance of Real Property or stock transfer or any type of transfer whatsoever.~~

(ii) Transfer of Facility and Service Obligations. If the Property Owner transfers any portion of the Real Property on which the Property Owner is required to provide and/or construct certain Facilities or provide certain services, distinct from those provided throughout the Project and which are site-specific to the portion of the Real Property conveyed, then the Property Owner shall be required to obtain a written agreement from the purchaser expressly assuming all such separate responsibilities and obligations with regard to the parcel conveyed and the Property Owner shall provide a copy of such agreement to the Town.

(iii) Transfer of Property Committed to Transfer to Third Parties. Property Owner shall not be entitled to transfer to third parties Real Property which Property Owner is required to transfer to KICA or other third parties by reason of the terms of this Agreement. Notwithstanding the foregoing, the Property Owner shall be entitled to grant easements, access, and recreational uses for the properties to be conveyed, consistent with and not prohibited by Sections 14, 15, 16, and 33(b)(iii) herein.

(iv) Assignment of Development Rights. Any and all conveyances of any portion of the Real Property subject to the "cap" set forth in § 13.B.1.(b)(ii) herein shall, by contract and covenant running with the land, assign a precise number of Vested Units and commercial square footage. (in reduction of the -----new Vested Units, and ~~219,000~~---------- non-residential square footage)

(v) Mortgage Lenders. Notwithstanding anything to the contrary contained herein, the exceptions to transfer contained in this ¶ 33(b) shall not apply: (i) to any mortgage lender either as the result of foreclosure of any mortgage secured by any portion of the Real Property or any other transfer in lieu of foreclosure; (ii) to any third party purchaser at such a foreclosure; or (iii) to any third party purchaser of such mortgage lender's interest subsequent to the mortgage lender's acquiring ownership of any portion of the Real Property as set forth above. Furthermore, nothing contained herein shall prevent, hinder or delay any transfer of any portion of the Real Property to any such mortgage lender or subsequent purchaser. Except as set forth herein, any such mortgage lender or subsequent purchaser shall be bound by and shall receive the benefits from this Agreement as the successor in title to the Property Owner in accordance with ¶ 6 hereof.

(c) Release of Property Owner. In the event of consent by Town to the sale or other conveyance of all or a portion of the Real Property and compliance with the conditions set forth therein, the Property Owner shall be released from any further obligations with respect to this Agreement as to the portion of the Real Property so transferred, and the transferee shall be substituted as the Property Owner under the Agreement as to the portion of the Real Property so transferred.

(d) Estoppel Certificate. Upon request in writing from an assignee or the Property Owner to the Town sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the Town will provide a certificate in recordable form that solely with respect to the portion of the Real Property described in the request, there are no violations or breaches of this Agreement, except as otherwise described in the Certificate. The Town will respond to such a request within ninety (90) days of the receipt of the request, and may employ such professional consultants, municipal, county and state agencies and staff as may be necessary to assure the truth and completeness of the statements in the certificate. The reasonable costs and disbursements of private consultants will be paid by the person making the request.

The certificate issued by the Town will be binding on the Town in accordance with the facts and statements contained therein as of its date and may be relied upon by all persons having notice thereof. No claim or action to enforce compliance with this Agreement may be brought against the Property Owner or its assignees properly holding rights hereunder, alleging any violation of the terms and covenants affecting such portion of the Real Property except as otherwise described in the Certificate.

If the Town does not respond to such request within ninety (90) days of the time of its receipt, the portion of the Real Property described in the request will be

deemed in compliance with all of the covenants and terms of this Agreement. A certificate of such conclusion may be recorded by the Property Owner, including a copy of the request and the notice of receipt and it shall be binding on the Town as of its date. Such notice shall have the same effect as a Certificate issued by the Town under this ¶ 33 (d).

34. **General Terms and Conditions.** .

(a) Agreements to Run with the Land. This Agreement shall be recorded against the Real Property as described in Exhibit 4.1 attached hereto. The agreements contained herein shall be deemed to run with the land. The burdens of this Agreement are binding upon, and the benefits of the Agreement shall inure to, all successors in interest to the Parties to the Agreement.

(b) Construction of Agreement. This Agreement should be construed so as to effectuate the public purpose of settlement of disputes, while protecting the public health, safety and welfare, including but not limited to ensuring the adequacy of Facilities and compatibility between Undeveloped Lands and the other Development on Kiawah Island.

(c) Mutual Releases. At the time of, and subject to, (a) the expiration of any applicable appeal period with respect to the approval of this Agreement without any appeal having been filed or (b) the final determination of any court upholding this Agreement, whichever occurs later, and excepting the parties' respective rights and obligations under this Agreement, Property Owner, on behalf of itself and Property Owner's partners, officers, directors, employees, agents, attorneys and consultants, hereby releases the Town and the Town's council members, officials, employees, agents, attorneys and consultants, and the Town, on behalf of itself and the Town's council members, officials, employees, agents, attorneys and consultants, hereby releases Property Owner and Property Owner's partners, officers, directors, employees, agents, attorneys and consultants, from and against any and all claims, demands, liabilities, costs, expenses of whatever nature, whether known or unknown, and whether liquidated or contingent, arising on or before the date of this Agreement in connection with the Real Property or the application, processing or approval of the Project; provided, however, that each party shall not be released from its continuing obligation to comply with law, including Town's Land Development Regulations, as amended.

(d) State and Federal Law. The Parties agree, intend and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of the development agreement, the provisions of this Agreement shall be modified or suspended as may be necessary to comply with state or federal laws or regulations. The Parties further

agree that if any provision of this Agreement is declared invalid, this Agreement shall be deemed amended to the extent necessary to make it consistent with state or federal law, as the case may be, and the balance of the Agreement shall remain in full force and effect.

(e) No Waiver. Failure of a Party hereto to exercise any right hereunder shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder. Unless this Agreement is amended by vote of the Town Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the Town has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the Town by making any promise or representation not contained herein. Any amendments are subject to § 22 herein.

(f) Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the same subject matter, except for the survival and extension of certain rights and obligations established under the 2005 Development~~Initial~~ Agreement and the amendments thereto as might be explicitly described herein. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

(g) Attorneys Fees. Should any Party hereto employ an attorney for the purpose of enforcing this Agreement, or any judgment based on this Agreement, for any reason or in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearings, the prevailing Party shall be entitled to receive from the other party thereto reimbursement for all attorneys' fees and all costs and expenses. Should any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

(h) Notices. All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

To the Town:

Mayor of Kiawah Island
Town Hall
21 Beachwalker Drive
Kiawah Island, SC 29455

With copies to:

County Planning Director

Lonnie Hamilton Public Services Building
4045 Bridge View Drive
N. Charleston, SC 29405

Dennis J. Rhoad, Esq.
PO Box 1059
Charleston, SC 29402 - 1059

To the Property Owner:

~~Charles P. Darby, III~~Patrick Melton
Kiawah Development Partners, LLC
~~Two North Adgers Wharf~~130 Gardeners Circle, PMB#155
Johns Island, SC 29455
~~Charleston, SC 29401~~

~~Leonard L. Long, Jr.~~
~~Kiawah Development Partners~~
~~Two North Adgers Wharf~~
~~Charleston, SC 29401~~

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With copies to:

G. Trenholm Walker, Esq.
P. O. Box 22247
Charleston, SC 29403-2247

(i) Execution of Agreement. This Agreement may be executed in multiple parts as originals or by facsimile copies of executed originals; provided, however, if executed and evidence of execution is made by facsimile copy, then an original shall be provided to the other party within seven (7) days of receipt of said facsimile copy.

(j) Survival of Property Owner's Obligations. Notwithstanding any provision of this Agreement, or of law to the contrary and as a partial consideration for the parties entering into this Agreement, the Parties agree that Property Owner is obligated to provide to the Town and KICA the following enumerated extraordinary and significant benefits even if the Property Owner cancels, rescinds, repudiates, refuses, revokes, or in any manner terminates or attempts to terminate this Agreement:

(i) Dedication of the conservation open space at Captain Sam's Spit as set forth in Section 16 of this Agreement;

(ii) Construction of Facilities covered by a recorded plat;

(iii) ~~(iii)~~ Conveyance of marshes and lowlands;
~~Bear Island as set forth in Section 16 (d);~~
~~(iii)~~(iv) Park at Ocean Park as set forth in section 15 (a) (ii).

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~~(iv) Conveyance of Bear Island to the KICA, exclusive of those portions that may have previously been Developed pursuant to deed of conservation easement recorded in the RMC Office for Charleston County at Book F340, page 421 to Wetlands America Trust, Inc. However, such conveyance after the expiration or termination of this Agreement shall still be subject to reservation of the quit claim deed that makes portions of Bear Island available for Development as permitted in the deed of conservation easement recorded in the RMC Office for Charleston County at Book F340, page 421 to Wetlands America Trust, Inc and further subject to the reservation of title by Property Owner as set forth in this Agreement.~~

(k) Disputes in Interpretation. If the Town and the Property Owner disagree as to the interpretation and/or meaning of this Agreement, they agree that they shall have their respective attorneys meet over the course of a week in an effort to resolve such difference. If their attorneys are unable to agree, these attorneys shall within a week select a third person to arbitrate the dispute. The arbitration shall be held promptly (no later than one week after the arbitrator is selected) and include a hearing conducted by the arbitrator in which the Parties shall have the right to make their arguments, present evidence, cross examine witnesses and to invoke such other procedures as normally attend an arbitration proceeding. The arbitrator's award shall be final and binding. The Parties hereby waive the statutory notice of arbitration on the front of this Agreement as specified in South Carolina's Uniform Arbitration Act, S.C. Code § 15-48-10(a).

IN WITNESS WHEREOF the Parties hereto have executed and delivered this Amended and Restated Development Agreement, and by their seals do affirm such execution and delivery, on the day and year first above written.

TOWN OF KIAWAH ISLAND

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

TOWN OF KIAWAH ISLAND (Town) (SEAL)

_____

By:_____

DRAFT OCTOBER 4, 2013

~~William G. Wert~~Charles R. Lipuma, Mayor

_____ By:_____

Mary Q. Johnson~~Alan L. Burnaford~~

_____ By:_____

John D. Labriola~~Charles R. Lipuma~~

_____ By:_____

Lauren N. Patch~~Donald H. McIver, Jr.~~

_____ By:_____

Richard Murphy~~G. Steven Orban~~

_____ Attest:_____

~~Patricia M. Wallis~~Lakesha Y. Shannon, Clerk of Council

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT
(TOWN)

THE FOREGOING INSTRUMENT was acknowledged before me by the TOWN OF KIAWAH ISLAND, by ~~William G. Wert~~ Charles R. Lipuma, its Mayor, and ~~Patricia M. Wallis~~ Lakesha Y. Shannon, its Clerk of Council, this _____ day of _____, 2013~~05~~.

_____(SEAL)
Notary Public for South Carolina

My Commission Expires:_____

PROPERTY OWNER

[NOTE: HAVE BETH REPLACE THE SIGNATURE BLOCKS WITH THE NEW SIGNATURE BLOCKS FOR ALL THE ENTITIES]

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: ~~D&W Investments, Inc.~~ Coral Canary GP, L.L.C.
a ~~South Carolina~~ Delaware limited liability company~~corporation~~
(CORP.SEAL)

Its: General Partner

_____ By: _____
~~Charles P. Darby, III~~Patrick Melton

_____ Its: President

~~By: TWD Investments, LLC~~
~~(a South Carolina limited liability company)~~
~~(SEAL)~~

~~Its: General Partner~~

~~By: _____~~
~~Charles P. Darby, III~~

~~Its: Manager~~

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by Kiawah Resort Associates, L.P., by ~~D&W Investments, Inc~~Coral Canary GP, L.L.C., a ~~South Carolina~~ Delaware limited liability company~~corporation~~, its General Partner, by ~~Charles P. Darby, III~~Patrick Melton, its President, this _____ day of _____, 201~~305~~.

_____(SEAL)
Notary Public for South Carolina
My commission expires:

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

~~THE FOREGOING INSTRUMENT was acknowledged before me by Kiawah Resort Associates, L.P., by TWD Investments, LLC (a South Carolina limited liability company), its General Partner, by Charles P. Darby, III, its Manager, this _____ day of _____, 2005.~~

~~_____(SEAL)~~
~~Notary Public for South Carolina~~
~~My commission expires:~~

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:
(SEAL)

_____

_____

KIAWAH DEVELOPMENT PARTNERS,
LLC~~INC.~~

By:_____
~~Charles P. Darby, III~~Patrick Melton

Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by Kiawah Development Partners, ~~Inc.~~LLC, by ~~Charles P. Darby, III~~Patrick Melton, its President, this _____ day of _____, 20~~05~~13.

_____(SEAL)
Notary Public for South Carolina
My commission expires:

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH LAND DEVELOPMENT, LLC
(SEAL)
By: Kiawah Development Partners II, Inc.
Its: Manager
(CORP.SEAL)

_____

By:_____
~~Charles P. Darby, III~~

_____

Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by Kiawah Land Development, LLC, by Kiawah Development Partners II, Inc., its Manager, by ~~Charles P. Darby~~, III, its President, this _____ day of _____, 2005.

_____(SEAL)
Notary Public for South Carolina
My commission expires:

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

_____

_____

KIAWAH ISLAND UTILITY, INC.
(CORP. SEAL)

By:_____
~~Charles P. Darby, III~~

Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by Kiawah Island Utility, Inc., by ~~Charles P. Darby~~, its President, this _____ day of _____, 2013~~05~~.

_____(SEAL)
Notary Public for South Carolina
My commission expires:

~~SIGNED, SEALED AND DELIVERED~~ ~~BEAR ISLAND HOLDING TRUST~~
~~IN THE PRESENCE OF:~~ ~~(SEAL)~~

~~By:~~ _____
~~Lodema R. Adams, Trustee~~

_____

_____

~~STATE OF SOUTH CAROLINA)~~
~~)~~
~~COUNTY OF CHARLESTON)~~

~~THE FOREGOING INSTRUMENT was acknowledged before me by Bear Island Holding Trust by Lodema R. Adams, Trustee, this _____ day of _____, 2005.~~

_____ ~~(SEAL)~~
~~Notary Public for South Carolina~~
~~My commission expires:~~

~~SIGNED, SEALED AND DELIVERED~~ ~~CHARLES P. DARBY, JR. ISSUE TRUST~~
~~IN THE PRESENCE OF:~~ ~~(SEAL)~~

~~By:~~
~~Charles P. Darby, III, Co-Trustee~~

~~By:~~
~~John C.L. Darby, Co-Trustee~~

~~STATE OF SOUTH CAROLINA)~~
~~)~~
~~COUNTY OF CHARLESTON)~~

~~THE FOREGOING INSTRUMENT was acknowledged before me by the Charles P. Darby, Jr. Issue Trust by Charles P. Darby, III and John C.L. Darby, Co-Trustees of said Trust. this _____ day of _____, 2005.~~

~~(SEAL)~~
~~Notary Public for South Carolina~~
~~My commission expires:~~

SIGNED, SEALED AND DELIVERED
~~IN THE PRESENCE OF:~~

VANDERHORST, LLC (SEAL)

~~By:~~
~~Charles P. Darby, III~~

~~Its: Manager~~

~~STATE OF SOUTH CAROLINA)~~
~~)~~
~~COUNTY OF CHARLESTON)~~

~~THE FOREGOING INSTRUMENT was acknowledged before me by Vanderhorst, LLC, by Charles P. Darby, III, its Manager, this _____ day of _____, 2005.~~

~~(SEAL)~~
~~Notary Public for South Carolina~~
~~My commission expires:~~

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

FRESHFIELDS VILLAGE HOTEL ASSOCIATES LLC (SEAL)
By: Local Hotel Properties, LLC
Its: Manager (CORP SEAL)

By: _____
Donald J. Semmler

Its: Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by Freshfields Village Hotel Associates LLC, by Local Hotel Properties, LLC, its Manager, by Donald J. Semmler, its Member, this _____ day of _____, 2013.

_____ (SEAL)
Notary Public for South Carolina
My commission expires:

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~~SIGNED, SEALED AND DELIVERED KIAWAH ISLAND CLUB, INC.~~
~~IN THE PRESENCE OF: (CORP SEAL)~~

~~By:~~
~~Patrick Melton~~

~~Its: President~~

~~STATE OF SOUTH CAROLINA)~~
~~)~~
~~COUNTY OF CHARLESTON)~~

~~THE FOREGOING INSTRUMENT was acknowledged before me by Kiawah Island Club, Inc., by Patrick Melton, its President, this day of , 2013.~~

~~(SEAL)~~
~~Notary Public for South Carolina~~
~~My commission expires:~~

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