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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-In-Equity

Mikell R. Scarborough, Master-In-Equity for Charleston County

Appellate Case No. 2015-001146
Trial Court Case No. 2013-CP-10-1225

RECEIVED

DEC 15 2015

SC Court of Appeals

Kiawah Resort Associates, L.P., a Delaware
Limited Partnership, and Kiawah
Development Partners II LLC.,

Appellants/Respondents,

v.

Kiawah Island Community Association, Inc.,
a South Carolina Not-for-Profit Corporation,

Respondent,

and

Kiawah Property Owners Group, Inc., and
Inlet Cove Club Homeowners Association, Inc.

Respondents/Appellants

**RECORD ON APPEAL
(VOLUME 1 OF 6)**

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STATE OF SOUTH CAROLINA	)	BEFORE THE MASTER-IN-EQUITY
	)	
COUNTY OF CHARLESTON	)	MIKELL R. SCARBOROUGH
	)	
Kiawah Resort Associates, L.P., a Delaware	)	C/A No. 2013-CP-10-01225
Limited Partnership,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Kiawah Island Community Association, Inc., a	)	
South Carolina Not-for-Profit Corporation,	)	
	)	
Defendant.	)	

**ORDER GRANTING
INTERVENTION**

FILED
2013 NOV -5 AM 11:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

This matter comes before me on Proposed Intervenor Inlet Cove Club Homeowners Association ("Inlet Cove") and Kiawah Property Owners Group's ("KPOG") Motion to Intervene. Upon hearing held October 28, 2013, wherein counsel for all parties were present, and pursuant to SCRCF Rule 24, Inlet Cove and KPOG's Motion to Intervene is granted based on the following:

FACTUAL BACKGROUND

In 1994, Kiawah Resort Associates, L.P. ("KRA") entered into a Development Agreement (the "1994 Agreement") with the Town of Kiawah Island (the "Town") that required, in part, that KRA convey what was described as a 10 mile strip of beachfront property (the "Beachfront Strip") to Kiawah Island Community Association, Inc. ("KICA") as Common Property. The 1994 Agreement further required that KRA commit the tract of land known as Captain Sam's Spit to permanent reservation as an open space, nature study or park and that KRA convey Captain Sam's Spit to KICA by January 1, 2008. Under KICA's Declaration of Covenants and Restrictions, as amended ("KICA Covenants"), which govern the rights and responsibilities of KICA and its members, "Common Properties" are "to be devoted to and intended for the common use and



enjoyment of the owners, residents, and their guests.” In December, 1995, KRA deeded the Beachfront Strip to KICA as Common Property, subject to all applicable covenants, conditions, restrictions and easements of record as of the 1994 Agreement, and subject further to the covenant, condition and restriction that the Property shall be maintained and utilized as a Common Property.

In prescribing the duties of KICA as well as the rights of its members, the KICA Covenants state that all members and their guests “shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every” parcel. The KICA Covenants further state that the members’ rights and easements of enjoyment in Common Properties are subject to KICA’s right to convey Common Property, but that any such conveyance of Common Property by KICA would require an affirmative vote by three-fourths (3/4) of its members to be effective.

In October, 2005, KRA and the Town entered into a second Development Agreement (the “2005 Agreement”), which replaced the 1994 Agreement and granted KRA development rights on Captain Sam’s Spit. In 2007, KRA claimed there was an error in the property description of the Beachfront Strip, claiming that a 4.62 acre parcel was mistakenly conveyed to KICA with the Beachfront Strip. KRA requested that KICA issue a “corrective quit-claim deed” conveying title to the 4.62 acre parcel to KRA. However, KICA’s Board of Directors declined KRA’s request and the matter was not presented to membership for a vote. Accordingly, KRA filed a Summons and Complaint on March 1, 2013, asserting that it is entitled to a declaration that the 4.62 acre parcel was included and conveyed with the Beachfront Strip by mutual mistake and judicial reformation of the deed conveying the Beachfront Strip to KICA to remove the 4.62 acre parcel, or alternatively, to an order of specific performance requiring that KICA deed the 4.62 acre parcel to KRA. On May 8,

2013, KICA filed an Answer and Counterclaim denying that KRA is entitled to the relief sought in the Complaint and stating, in part, that it “is uncertain and insecure with respect to its rights to transfer the [4.62 acre parcel] to KRA” and requesting that this Court “declare its rights by determining whether the [4.62 acre parcel] is Common Property.”

KICA is the principal property owners’ association that all property owners on Kiawah Island become members of upon purchase of their property. Therefore, all members of Inlet Cove and KPOG are also members of KICA. Inlet Cove is a separate property owners’ association specifically for the Inlet Cove neighborhood, consisting of 108 parcels on 12.73 acres of land lying and situate with the Kiawah River along its western boundary, the Beachwalker Road along its eastern boundary, and the Beachwalker Park along its southern boundary. Members of Inlet Cove independently own by deed elevated cottages as well as the land on which they sit, and jointly own the common areas within the Inlet Cove neighborhood. KPOG is an independent property owners’ advocacy organization. Since its formation in 1981, KPOG has provided property owners with information about Kiawah and about plans and activities that will impact the Kiawah property owner. KPOG’s mission is to identify, examine, and communicate issues of significance to Kiawah Island property owners, and advocate on their behalf. KPOG acts to: represent the combined interests of membership on issues that may affect the fundamental character of Kiawah Island; support the preservation of the natural resources and beauty of Kiawah Island and appropriate environmental conservation policies and/or methods; work with local government units in support of property owners’ shared perspectives, concerns and investments; and foster and support economic growth that is consistent with the preservation of the natural beauty of Kiawah Island and the quality of life which forms the basis for members’ original and continuing attraction to Kiawah Island.

A handwritten signature in black ink, appearing to be "MRS", enclosed within a hand-drawn oval.

On May 29, 2013, Inlet Cove and KPOG filed a Motion to Intervene in the action brought by KRA based on easement rights of their members and the accompanying interests in aesthetic and recreational use and enjoyment of the subject 4.62 acres as Common Property. Moreover, Inlet Cove and KPOG sought to intervene on the basis that their interests would not be adequately represented in their absence.

LEGAL STANDARD

The South Carolina Rules of Civil Procedure (SCRCP) provide for intervention as of right and permissive intervention. Intervention of right is governed by SCRCP Rule 24(a), which provides for intervention:

“(1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.”

Permissive intervention is governed by SCRCP Rule 24(b), which provides for intervention: “(1) when a statute confers a conditional right to intervene; or (2) when an applicant’s claim or defense and the main action have a question of law or fact in common.”

“We interpret the rules to permit liberal intervention particularly where, as here, judicial economy will be promoted by the declaration of the rights of all parties who may be affected.” Berkeley Electric v. Town of Mt. Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990).

Intervention as of Right

“Intervention of right requires a direct, substantial, legally protectable interest in the proceedings.” Ex Parte Reichlyn; In Re: SCDHEC v. Columbia Organic Chemical Co., Inc., 310 S.C. 495, 499, 427 S.E.2d 661, 664 (1993). An interest in the use and enjoyment of property is a

cognizable, legally protected interest. S.C. Wildlife Federation v. S.C. Coastal Council, 296 S.C. 187, 190, 371 S.E.2d 521, 523 (1988); Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision), 332 S.C. 551, 505 S.E.2d 598 (Ct. App.1998) (rev'd on other grounds). "An organization has standing only if it alleges that it or its members will suffer an individualized injury;" Hill v. SCDHEC, 389 S.C. 1, 23, 698 S.E.2d 612, 624 (2010), and South Carolina courts recognize injuries stemming from an aesthetic interest in viewing private property notwithstanding ownership or control over that property. S.C. Wildlife Federation, 296 S.C. 187, 190, 371 S.E.2d 521, 523 (1988); Ogburn-Matthews, 332 S.C. 551, 505 S.E.2d 598 (Ct. App.1998). If there is a protected interest at stake, the next question is whether that interest is being adequately represented by existing parties.

"The burden of demonstrating inadequacy of representation is on the applicant. This burden is minimal and the applicant need only show that the representation of his interests "may be" inadequate." Berkeley Electric, 302 S.C. 186, 191, 394 S.E.2d 712, 715 (1990) (internal citations omitted); see also NRDC v. U.S. Nuclear Reg. Comm'n, 578 F.2d 1341, 1346 (10th Cir. 1978) (the possibility of divergence of interest need not be great in order to satisfy the burden). The South Carolina Supreme Court has adopted the Sagebrush test for determining if an existing party adequately represents the interests of the intervention applicant, which considers the following factors: (1) whether the existing parties will undoubtedly make all the same arguments as proposed intervenor; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether proposed intervenor offers different knowledge, experience or perspective on the proceedings that would otherwise be absent. Berkeley Electric at 191, 394 S.E.2d at 715. A presumption of adequate representation arises when a proposed intervenor and existing party have



the same ultimate objective in a case; however, this presumption is rebutted where the existing party is the government or governing body obligated to represent the public interest which may differ from the particular interests of proposed intervenor. Utah Ass'n of Counties v. Clinton, 255 F.3d 1246, 1255-56 (10th Cir. 2001); see also In re Sierra Club, 945 F.2d 776, 779-80 (4th Cir. 1991) (although would-be intervenor and government entity share objectives, entity not adequate representative due to obligation to represent interests of general public including those with conflicting views).

Permissive Intervention

“Rule 24(b) intervention is premised upon the theory that when claims or defenses have a question of law or fact common to each other, sound administrative procedures encourage the disposition of all of the claims or defenses in one action rather than a multiplicity of actions.” S.C. Tax Commission v. Union City Treasurer, 295 S.C. 257, 263, 368 S.E.2d 72, 75 (Ct. App. 1988).

DISCUSSION

Inlet Cove and KPOG filed the Motion to Intervene pursuant to SCRCF Rule 24(a)(2) asserting a distinct interest in the property that is the subject of the action, which is not adequately represented by an existing party. Alternatively, Inlet Cove and KPOG assert permissive intervention pursuant to SCRCF Rule 24(b) in light of common questions of fact or law between their claims and defenses and those of the main action.

Inlet Cove was organized and exists to provide a sense of shared community values among its members and to ensure that these values remain protected. Inlet Cove is comprised of many lifelong South Carolina residents, some of whom permanently reside in the Inlet Cove neighborhood, as well as homeowners who maintain their properties for seasonal or periodic uses. Inlet Cove's natural beauty and accessibility to passive recreational activities not only evidences its



desirability, but also constitutes the core values that it serves to protect. Inlet Cove is in very close proximity to the 4.62 acres in dispute; ^{MVB} its members use and enjoy this property for its aesthetic qualities and for viewing wildlife. KPOG was organized and exists to provide information and awareness to Kiawah Island property owners regarding issues of shared concern that may impact the community. KPOG actively advocates for the protection of Kiawah Island's extraordinary character and beauty as well as the quality of life of Kiawah Island's property owners. KPOG promotes the preservation of Kiawah Island's natural resources as an important link to the maintenance of the fundamental character of Kiawah Island and seeks to ensure that growth and development on Kiawah Island remain consistent with such preservation.

Like all property owners on Kiawah, Inlet Cove and KPOG's members are members of KICA. By virtue of the KICA Covenants, Inlet Cove and KPOG hold property rights in the access, use and enjoyment of Common Property, including the subject 4.62 acre parcel. Moreover, Inlet Cove and KPOG assert distinct interests arising from their property rights in their commitment to the preservation of aesthetic and recreational values in the natural environment for the benefit of Kiawah residents and homeowners. Inlet Cove also asserts a particularly acute interest in the 4.62 acres due to its close proximity to that parcel, to the Beachfront Strip and to Captain Sam's Spit. Inlet Cove and KPOG claim that their members' quality of life and aesthetic and recreational use and enjoyment of the 4.62 acres will be directly and adversely impacted by the outcome of this litigation.

A proposed intervenor must only claim an interest "*relating* to the property or transaction which is the subject of the action" under SCRCR Rule 24(a)(2). Here, Inlet Cove and KPOG's interests are two-fold. First, as members of KICA, they share easement rights in property held as



Common Property under KICA's Covenants. Second, Inlet Cove and KPOG hold aesthetic and recreational interests in viewing, using and enjoying the 4.62 acres and surrounding wildlife in its natural state. Our courts have recognized that aesthetic interests provide a basis for challenging an activity. In Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693, 145 L.Ed.2d 610 (2000), the United States Supreme Court reaffirmed the long-standing principle that aesthetic and recreational interests can provide the basis for standing: "We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." 528 U.S. 167, 183, citing Sierra Club v. Morton, supra., and Lujan v. Defenders of Wildlife ("Of course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for the purposes of standing."). This principle was specifically reaffirmed by the South Carolina Supreme Court in Sea Pines Ass'n for Protection of Wildlife, Inc. v. S.C. Dept. of Natural Resources, 345 S.C. 594, 601-602, 550 S.E.2d 287, 291-292 (2001); see also S.C. Wildlife Federation and Ogburn-Matthews, supra. Therefore, Inlet Cove and KPOG claim they sufficiently alleged distinct interests in the 4.62 acre parcel of property.

Inlet Cove and KPOG meet the minimal burden of showing impairment of their interest under SCRCF Rule 24(a)(2) by alleging that "their commitment to preserving the aesthetic and recreational values of the natural environment and the quality of [their] life . . . will be substantially impaired without their direct participation in this matter."

Inlet Cove and KPOG allege that their interests will not be adequately represented by KICA. Specifically, KRA claims a mutual mistake in the transfer of 4.62 acres of Common Property entitles

~~it~~ deed reformation. KICA has no position on the intentions of the parties or whether there was a unilateral or mutual mistake in the property transfer, asserting that it is merely a beneficiary of the development agreement. Inlet Cove and KPOG claim that any mistake is unilateral, that the parties intended to transfer the 4.62 acres as Common Property, and that KRA is not entitled to deed reformation. Clearly, neither KRA nor KICA will represent Inlet Cove and KPOG's position as to the intention of the parties or whether there was a mistake. Further, Inlet Cove member Sophia McAllister affirmed by affidavit that the 4.62 acre parcel is clearly a valuable financial asset to KICA, and also that it is critically important as a Common Property asset to Kiawah Island residents, such as Inlet Cove and KPOG. Ms. McAllister also testified to the fact that KICA directly communicated to its membership that "it is pleased to see this matter [regarding the 4.62 acre parcel] resolved through the legal process" but that members should not inquire further for it "will refrain from further comment until the matter is resolved." For these reasons, Inlet Cove and KPOG have established that there exists a reasonable concern that their interests in protecting the 4.62 acre parcel for aesthetic and recreational use and enjoyment as Common Property will not be adequately represented by KICA.

Additionally, Inlet Cove and KPOG have established that KICA will not "undoubtedly" make all the same arguments as proposed intervenors in protecting their interest because KICA is not taking a position on the intention of the parties or whether there was a mutual mistake in transferring the 4.62 acres.

I therefore conclude that Inlet Cove and KPOG meet the test for intervention as of right.

In the alternative, Inlet Cove and KPOG also meet the test for permissive intervention under SCRCP Rule 24(b).

KRA argues that intervention should be denied because it claims this matter entails a mere scrivener's error in the legal description of the deed conveying the Beachfront Strip to KICA, which inadvertently included the 4.62 acre parcel as Common Property. KRA argues there was a mutual mistake on the part of both parties to the 1994 Agreement, and since neither Inlet Cove nor KPOG are signatories to the 1994 Agreement or owners of the 4.62 acre parcel, they should not be permitted to intervene.

KICA argues in opposition of intervention claiming that Inlet Cove and KPOG do not possess distinct interests in the 4.62 acre parcel and that it is capable of adequately representing the interests of Inlet Cove and KPOG as well as all of its members in this dispute. Additionally, as a third-party beneficiary to the 1994 Agreement, KICA disclaims any intention as to whether the 4.62 acre parcel was to be conveyed and maintained as Common Property.

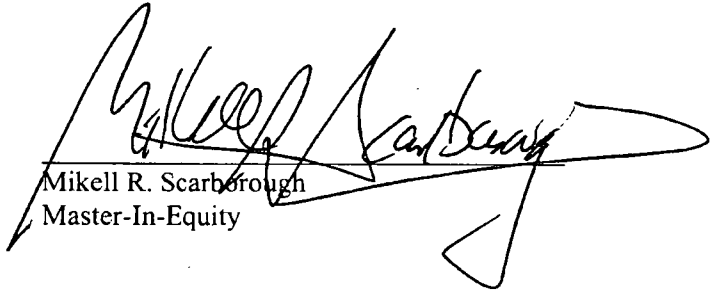
Inlet Cove and KPOG emphatically argue that the 4.62 acre parcel was intentionally conveyed as Common Property to KICA and should be preserved as Common Property for the use and enjoyment of KICA membership unless and until an affirmative majority of membership votes to convey the property for some other purpose.

Therefore, this Court perceives three separate and distinct positions with regard to the 4.62 acre parcel of property that is the subject of this action. Inlet Cove and KPOG clearly assert claims or defenses with questions of law or fact in common with those asserted by KRA and KICA in satisfaction of requisite showing for permissive intervention pursuant to SCRCP Rule 24(b).

Therefore, Inlet Cove and KPOG sufficiently demonstrated to this Court that they should be permitted to intervene under the standards set forth in SCRCP Rule 24. Furthermore, having fully considered the motion, the relevant legal authorities, and the arguments of counsel,



IT IS HEREBY ORDERED that Proposed Intervenors Inlet Cove Club Homeowners Association and Kiawah Property Owners Group's Motion to Intervene is **GRANTED,**
AND IT IS SO ORDERED.


Mikell R. Scarborough
Master-In-Equity

November 1, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013CP-10-1225

KIAWAH RESORT ASSOCIATESKIAWAH ISLAND COMMUNITY
ASSOCIATION

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

Plaintiff's motion for relief from the order granting intervention is respectfully denied.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

6/4/2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KIAWAH RESORT ASSOCIATES, L.P., a
Delaware Limited Partnership, and KIAWAH
DEVELOPMENT PARTNERS II, INC.,

Plaintiffs,

vs.

KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC., a South Carolina Not-
for-Profit Corporation,

Defendant,

and

KIAWAH PROPERTY OWNERS GROUP,
INC. and INLET COVE CLUB
HOMEOWNERS ASSOCIATION, INC.,

Intervenors.

BEFORE THE MASTER-IN-EQUITY

Case No. 2013-CP-10-01225

FINAL ORDER

FILED
2014 JUN -4 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This action came before me by consent of the parties to ascertain and determine the validity, nature or extent of Plaintiff's title and interest in the subject of this action, a 4.62 acre tract of land, known as Captain Sam's Spit, located on Kiawah Island. Based upon the record, I make the following Findings of Fact and Conclusions of Law as the Order of this Court.

FINDINGS OF FACT

This action was initiated by Kiawah Resort Associates, LP ("KRA") as an action for declaratory judgment, reformation of deed, and specific performance arising out of a 1994 and 1995 transaction between KRA and the Kiawah Island Community Association, Inc. ("KICA"). The parcel of land this action concerns is a 4.62 acre tract of undeveloped land which has been



identified as "the Additional Land" or "the Subject Property," as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

I find this Court has jurisdiction of this action and that venue is proper.

The Parties and Procedural History

KICA serves and operates as the property owners' association for the majority of owners of property located within the Town of Kiawah Island, South Carolina. In addition to statutes, regulations, ordinances, and other legislative authority, KICA is governed by a recorded Declaration of Covenants, Conditions, and Restrictions, as amended (the "KICA Covenants").

Plaintiff KRA was the developer of Kiawah Island, and at all pertinent times hereto was the "Company" for purposes of and, as defined in, the KICA Covenants. Certain transfers among affiliated companies have resulted in a transfer of KRA's ownership and related interests in the Subject Property to the later-joined Plaintiff, KDP II LLC ("KDP II"), such that KDP II is KRA's ultimate assignee with regard to KRA's interest in the Subject Property.

After the commencement of this action, two parties, the Kiawah Property Owners' Group, Inc. ("KPOG") and the Inlet Cove Club Homeowners' Association, Inc. ("Inlet Cove") sought to intervene in the action alleging that, while members of KICA, the parties were inadequately represented in this action by KICA. This Court granted KPOG and Inlet Cove leave to intervene on the basis of their representations that they would present evidence as to the parties' intent to convey and receive the Additional Land as Common Property.¹

The 1994 Development Agreement

On or about September 26, 1994 KRA and the Town of Kiawah Island (the "Town") entered into a Development Agreement (the "1994 Development Agreement") that was recorded

¹ Five days after the conclusion of the trial in this matter the Board of Directors of KPOG enacted a plan to dissolve itself and is thus in the process of winding down its operations. The effect of such dissolution, upon its completion, will render KPOG incapable of maintaining or prosecuting any affirmative claims to the Subject Property.

on September 30, 1994, in Book J248, page 001, in the R.M.C. Office for Charleston County, S.C. ("R.M.C. Office"). Section 16(b) of the 1994 Development Agreement required KRA, the "Property Owner" for purposes of the 1994 Development Agreement, to convey what was described as a 10 mile strip of beachfront property (the "Beachfront Strip") to KICA as Common Property on or before January 1, 1996. The language is as follows:

Section 16(b) 10 Mile Strip of Beachfront Property:

It is understood and agreed that there is a strip of scenic dunes and high land owned primarily by the Property Owner (some of which is encumbered by the General Covenants, certain view and access easements and other agreements of record) which extends along the Kiawah Island beachfront for approximately 10 miles as generally depicted on Exhibit 16.2. This strip of high land varies in width, but often is 200' to 300' wide and is generally seaward of most residential, resort, or commercial property lines. It generally comprises the area of land abutting most seaward platted residential Lot lines and the mean high water mark of the Atlantic Ocean.

The Property Owner hereby agrees that this strip of highland and dunes will, on or before January 1, 1996, be conveyed by quit claim deed to the KICA as Common Property, subject only to matters of record prior to the effective date of this Agreement and the right of the Property Owner and other nearby owners to enjoy ingress and egress, permitted boardwalks and gazebos, across same in appropriate locations to access the beach or for other lawful purposes. The conveyance shall be by deed at the Property Owner's election (for \$1.00 consideration), and recorded in the Charleston County RMC office.

The 1994 Development Agreement defines "Common Properties" as "KICA Common Properties, Purchased Common Properties, and Restricted Common Properties as described under the KICA Covenants." The 1994 Development Agreement further states the "KICA Covenants means and refers to the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. recorded in the RMC Office for Charleston County in Book M 114, Page 407, and all amendments and supplements thereto, including those recorded at



Book O-125 at page 163, Book K-139 at page 58, Book R-210 at page 748, Book W-243 at page 271, and Book W-243 at page 258.”

KICA was not a party to the 1994 Development Agreement. Rather, KICA was a third-party beneficiary of the 1994 Development Agreement by virtue of the Agreement’s mandate that KRA convey various properties to KICA as Common Property. According to the testimony presented at trial, KICA did not directly have any involvement in the negotiation, drafting, or execution of the 1994 Development Agreement except through its execution of the Agreement for Conveyance, as further discussed below.

KICA is directed by a seven member Board of Directors. At the time of the negotiation, drafting and execution of the 1994 Development Agreement, the execution of the Agreement for Conveyance, and the execution, recordation and delivery of the Beachfront Deed, the seven members of the KICA Board of Directors were comprised of four Directors appointed by KRA (who simultaneously were also partners in KRA) and three homeowner Directors.

Section 16(g) of the 1994 Development Agreement addressed the land known as Captain Sam’s Spit, which is also depicted on Exhibit 16.2 to the 1994 Development Agreement but was not then assigned a Parcel Number, as follows:

Captain Sam's Spit. The Property Owner commits to the permanent reservation of the tract of land known as Captain Sam's Spit, shown in Exhibit 16.2 as active and/or passive open space, nature study, or parks. Property Owner agrees to convey Captain Sam's Spit to KICA, by quit claim deed by January 1, 2008; provided, however, that Property Owner may convey the eastern half of the spit to Charleston County Park & Recreation Commission prior to January 1, 2008.

Exhibit 16.2 to the 1994 Development Agreement, as referenced in both paragraphs 16(b) and 16(g) of the 1994 Development Agreement, is a graphic illustration of the entirety of Kiawah Island entitled “Beachfront Dedication Area.” Exhibit 16.2 depicts the Beachfront Strip as a hatch-marked strip of land beginning east of the extended boundary line of a 19.5-acre parcel

identified as Parcel No. 13 in the 1994 Development Agreement (the "Beachwalker Ocean Parcel"), extending east along the beachfront and ending at the northeastern tip of Little Bear Island at the eastern end of Kiawah Island. Exhibit 16.2 also contains a hand-written notation with a line and arrow pointing to the Captain Sam's Spit area denoting that area as "Area not included in Dedication (sic) Area" and the area of Captain Sam's Spit is fully shaded in. According to the testimony presented at trial, both the hand shading in of Captain Sam's Spit and the handwritten note and arrow on Exhibit 16.2 were performed by Mark Permar, a land planner under the employ of KRA. Exhibit 16.2, as with every other document contained within the 1994 Development Agreement, bears the initials of Charles Way for KRA and Mayor Mary Melvin for the Town.

An executed Agreement for Conveyance and draft quit-claim deed for conveyance of the Beachfront Strip to KICA were attached to the 1994 Development Agreement as Exhibit 16.7. Both the Agreement for Conveyance and the Beachfront Deed were drafted by KRA's legal counsel. The Agreement for Conveyance is the only document related to the Subject Property that is signed by KICA. This document serves as the contract between KRA and KICA which obligated KRA to convey, and KICA to receive, various properties as Common Property, including the Beachfront Strip. The Agreement for Conveyance was signed on behalf of KICA by Townsend Clarkson, then President of KICA's Board of Directors, who was also a partner of KRA. Mr. Clarkson testified that he had no evidence that the KICA Board had reviewed or was asked to comment on the draft of the Agreement for Conveyance prior to his execution of the document on KICA's behalf, and that no vote of the KICA Board was had to authorize his execution of the Agreement for Conveyance. Accordingly, I find that KICA was a third-party beneficiary of the 1994 Development Agreement.

The property descriptions contained in the Agreement for Conveyance and the draft quit claim deed attached in the schedule to the Agreement for Conveyance that is part of Exhibit 16.7 of the 1994 Development Agreement are identical to the description used in the executed and recorded Beachfront Deed. In particular, the property description in the Beachfront Deed is as follows:

All that certain piece, parcel or strip of land, situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, approximately ten (10) miles in length, the westernmost boundary of which being an imaginary line having as its northern terminus, a point marked by a concrete monument having State Plane Coordinates N275, 327.0025/ E2, 267.801.5097 located at the southwestern most corner of a 2.067 acre tract located at the terminus of Beachwalker Road on Kiawah Island known generally as the "Employee Facility Tract" and as shown on a plat by Williams & Associates dated March 20, 1981, and recorded in Plat Book AS at page 85 in the R.M.C. Office for Charleston County, S.C. (the "R.M.C. Office"); thence running with said imaginary line from said point in a southerly direction S04°55'6"E to the mean high water mark of the Atlantic Ocean; said strip of land thence extending eastwardly to an imaginary line extending due south from point marked by a concrete monument numbered 27722 shown on Page 3 of 3 of a plat of the "Links Course Tract" by Davis & Floyd Inc. dated February 6, 1989, and recorded in Plat Book BV at page 38, in the R.M.C. Office to the mean high water mark of the Atlantic Ocean: said strip of land varies in width but is generally between 200' and 300' wide and extends from the seaward boundary lines of most beachfront residential, resort and commercial properties on Kiawah Island, as shown on plats of record in the R.M.C. Office to the mean high water mark of the Atlantic Ocean.

This quit-claim deed was dated December 29, 1995, and recorded February 20, 1996, in Book N265, page 406, in the R.M.C. Office.

Pursuant to Section 16(b) of the 1994 Development Agreement, the Beachfront Deed conveyed the Beachfront Strip to KICA as Common Property "subject to the covenant, condition, and restriction that the Property shall be maintained and utilized as a Common Property as defined in the Declaration of Covenants and Restrictions of Kiawah Island Community Association, Inc. recorded in Book M114, Page 407 in R.M.C. Office, as amended,

(the "KICA Covenants") and shall be made subject to such rights and restrictions as are applicable to Common Properties as set forth in said KICA Covenants." This conveyance was made in accordance with Article II, Section 2(a) of the KICA Covenants which states in pertinent part that "Until January 1, 2016, the Company [KRA], its successors, and assigns, shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration any property which is contiguous or nearly contiguous to Kiawah Island if acquired by the Company prior to January 1, 2016...." As such, the KICA Covenants provide for no mechanism by which KICA can refuse to accept any property conveyed to it by KRA.

The 2005 Development Agreement

October 12, 2005, KRA and the Town entered into a second Development Agreement (the "2005 Development Agreement"), replacing and terminating the 1994 Development Agreement. The 2005 Development Agreement was recorded in Book Z558, page 004 in the R.M.C. Office. The 2005 Development Agreement eliminated the terms of Section 16(g) of the 1994 Development Agreement for Captain Sam's Spit and replaced them with new provisions that granted KRA certain limited development rights on Captain Sam's Spit.

On or about October 2, 2012, the Town of Kiawah Island and KRA as Property Owner entered the Fifth Amendment to the 2005 Development Agreement (the "Fifth Amendment"), that is recorded at Book 0290 at Page 99 in the R.M.C. Office. In the Fifth Amendment to the 2005 Development Agreement, the Town of Kiawah Island and KRA as Property Owner agreed to the following:

- (1) that the Property Owner's intent was that the western terminus-boundary of the Beachfront Strip be the eastern boundary and extended eastern boundary of Parcel 13 as described in the First [1994] Agreement and the [2005] Agreement, known as the Beachwalker Ocean Parcel (TMS No. 207-05-00-118), as illustrated on Ex. 16.2 to the First [1994] Agreement recorded at Book J248 Page 366 in the RMC Office for



Charleston County; (2) that the Property Owner did not intend that the Beachfront Strip include the Additional Land, which is west of the intended western terminus-boundary of the Beachfront Strip; and, (3) that the intent of the Property Owner at the time of entry of the 2005 Agreement was that the Additional Land was part of Parcels 13 and 12A as described in the 2005 Agreement.

As part of this Fifth Amendment to the 2005 Development Agreement, the Town expressly rejected any inclusion of language that referenced the Town's intent with respect to whether the Additional Land was to be included in the Beachfront Strip, but rather limited the language to address only the Property Owner's (KRA's) intent.

Material Facts Pertaining to the Subject Property

In or around 1997, Plaintiffs discovered what they contend is an error within the property description in the Beachfront Deed; however, KRA did not bring this alleged error to KICA's attention until 2007 - 12 years after the deed of conveyance. Contrary to the visual depiction of the Beachfront Strip in Exhibit 16.2 to the 1994 Development Agreement, the property description for the Beachfront Strip in both the Agreement for Conveyance and draft quit-claim deed attached as Exhibit 16.7 to the 1994 Development Agreement as well as in the Beachfront Deed state that the Beachfront Strip commenced at the southwesternmost corner of the 2.067 acre "Employee Facility Tract," which is designated as part of Parcel 13 (the "Beachwalker Ocean Parcel"), in the 1994 Development Agreement.

Plaintiffs contend the description of the Point of Beginning of the Beachfront Strip used in the Agreement for Conveyance and the Beachfront Deed was an error that lead to the unintentional inclusion of 4.62 acres seaward of the Employee Facility Tract in the Beachfront Strip. The Employee Facility Tract and the area seaward of that tract including the Subject Property are portions of Parcels 12 and 13, the "Beachwalker Park" Parcel and "Beachwalker



Ocean" Parcel under the 1994 Development Agreement, and Parcels 12A and 13 under the 2005 Development Agreement.

Upon receipt of the Plaintiffs' request in 2007 that KICA issue a deed conveying back the Subject Property, KICA rejected the request on the grounds that, regardless of whether the Subject Property was supposed to be included in the Beachfront Strip, the Subject Property had been conveyed as Common Property as required by the 1994 Development Agreement so that KICA had no authority to execute such a deed without an affirmative vote of its membership.² Article IV, Section 1 of the KICA Covenants grants to every member of KICA, every guest and tenant, an easement of enjoyment in and to the Common Properties which is appurtenant to and passes with the title to every Lot and Parcel. Article IV, Section 6 of the KICA Covenants further provides those rights and easements referenced above shall be subject to the following:

(h) The right of the Association to give or sell all or any part of the Common Properties and Restrictive Common Properties, including leasehold interests, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the members, provided that no such gift or sale or determination as to the purposes or as to conditions thereof shall be effective unless dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6 and unless written notice of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties or Restrictive Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

² Some testimony was presented at trial regarding one prior "corrective deed" from KICA to KRA to convey back certain property that the parties agreed was erroneously included in the Beachfront Deed. However, this Court has not been asked to opine on the legitimacy of said conveyance and finds that conveyance to have no precedential weight in the determination of the claims actually pending before the Court.

KICA contends the Additional Land is Common Property and subject to the KICA Covenants. As such, KICA lacks the ability to transfer to KRA or KDP II unless the transfer is approved by the requisite vote of three-fourths (3/4) of the members in accordance with Article IV, Section 6(h) of the KICA Covenants. Consequently, KICA filed a counterclaim for a declaratory judgment seeking this court's ruling on whether the Additional Land is Common Property and therefore only able to be transferred upon a vote of the KICA membership.

Evidence of intent and mistake

The parties presented extensive testimony regarding the intent of various parties as to whether KRA in fact meant to convey the Subject Property to KICA.

With respect to KRA's intent, KRA presented evidence that, from the time of negotiating and drafting the 1994 Development Agreement through present day, it was KRA's, and now KDP II's, intent that the Additional Land was not to be conveyed to KICA.

With regard to KICA's intent, KICA's Executive Director, Tammy McAdory, testified that at all times relevant to this litigation she has acted as the custodian of the official records of KICA. Ms. McAdory could find no records from the 1995 period or prior that memorialized any discussion, much less intent, of KICA regarding the inclusion of the Additional Land in the Beachfront Strip. Rather, KICA's first knowledge of the Additional Land's inclusion as a potential error was in 2007. Furthermore, the only document bearing any signature by KICA is the Agreement for Conveyance signed by its President, Townsend Clarkson, in 1994, which does include the Additional Land as being part of the property to be conveyed to KICA.

KRA presented evidence of two illustrations maintained on KICA's website. The illustrations were of property presently included in KICA's dune management program as well as an illustration of KICA's Common Properties. Neither illustration includes the Additional



Land. However, no testimony was offered as to when these illustrations were created sufficient to derive any inference from them as to the intent of KICA in 1994 or 1995.

KRA also introduced a document from KICA entitled "Talking Points for KDP." Ms. McAdory testified this document was created in 2012 and were the notes of then Chair of the KICA Board of Directors, Craig Weaver, created for the purpose of advising new Directors on the history of the issues surrounding the Additional Land. The document states that the prior Board in 2011 believed that the inclusion of the Additional Land was likely not the intent of the parties to the 1994 Development Agreement, i.e., the Town of Kiawah Island and KRA; however, Mr. Weaver was not on the KICA Board during the 1994 or 1995 periods.

KRA also called as witnesses three of the four KRA-appointed KICA Board members, these witnesses being Townsend Clarkson, Patrick McKinney, and Leonard Long. Each of these witnesses were also members of the KRA partnership. Each witness testified that not only did KRA not intend to convey the Additional Land to KICA, but that it was their understanding in their capacity as KICA Directors that KICA did not intend to receive the Additional Land as part of the Beachfront Strip. However, upon cross examination, none of these witnesses could recall any discussion by the KICA Board of Directors prior to 2007 regarding the Beachfront Strip, much less whether the Beachfront Strip was specifically to include the Additional Land.

Significantly, the only official action of the KICA Board taken on this issue is the execution of the Agreement for Conveyance which obligated KICA to receive from KRA the Additional Land as Common Property.

The intervenors, KPOG and Inlet Cove, presented evidence pertaining to KICA's intent, with respect to the inclusion of the Additional Land in the Beachfront Deed, by presenting evidence of the developable status of the subject property, during the relevant 1994 time frame,



as the property was subject to the S.C. Beachfront Management Act at the time of the 1994 Development Agreement.

The SC Beachfront Management Act & the 1994 Development Agreement

Pursuant to the Coastal Tidelands and Wetlands Act, as amended, §§ 48-39-250 through 48-39-360 (the "Beachfront Management Act"), the Department of Health and Environmental Control's Office of Coastal Resource Management ("DHEC/OCRM") establishes the location of the beachfront jurisdictional lines – the baseline and setback line – along South Carolina's coastline and maintains jurisdiction over all development occurring seaward of the setback line, which in this case is located twenty (20) feet landward of the baseline. (Tr. 485-486, 495, 503; S.C. Code Ann. § 48-39-290).

The Beachfront Management Act generally prohibits development seaward of the jurisdictional lines subject to very limited exceptions. (Tr. 487, 491, 503; S.C. Code Ann. § 48-39-290).

In 1989, interim jurisdictional lines were established. In 1991, DHEC/OCRM's staff oceanographer, Bill Eiser, established the final jurisdictional lines on Kiawah Island. (Tr. 493). Mr. Eiser also re-established the 1999 and 2009 jurisdictional lines in accordance with the Beachfront Management Act. (Tr. 493).

Moving from east to west, the 1991 jurisdictional lines along Kiawah Island's beachfront generally continued along the crest of the primary dunes closest to the ocean until reaching the western end of the island around Beachwalker Park, at which point the lines wrapped up and back around the park, placing all of the property seaward and westward of those lines, including the majority of the 4.62 acre parcel, as well as Captain Sam's Spit, within DHEC/OCRM's



jurisdiction and subject to the general prohibition on development. (Tr. Tr. 508-510; see Intervenor's Ex. 19; S.C. Code Ann. § 48-39-290).

On September 26, 1994, pursuant to the S.C. Code §§ 6-31-10 through 6-31-160, the Town and KRA entered into the Development Agreement ("the 1994 Development Agreement") that established the extent of KRA's development rights and obligations on Kiawah Island. (See Plaintiff's Trial Ex. 5).

The 1994 Development Agreement included Section 16, entitled "Environmentally Sensitive Areas of Protection." Section 16 required, in part, that KRA convey what was described as a ten (10) mile strip of beachfront property (the "Beachfront Strip") to KICA as Common Property before January 1, 1996. (Plaintiff's Trial Ex. 5, pp. 42-43, Section 16(b)). Section 16 also obligated KRA to commit the tract of land known as Captain Sam's Spit to permanent dedication and to convey Captain Sam's Spit to KICA by quitclaim deed by January 1, 2008. (Plaintiff's Trial Ex. 5, p. 45, Section 16(g)). Both Sections 16(b) and 16(g) make reference to Exhibit 16.2 as generally depicting those two dedication areas.

During the negotiations and drafting of the 1994 Development Agreement, the properties intended to comprise the Beachfront Strip and Captain Sam's Spit were not surveyed or formally platted due, in part, to the time and expense of such an undertaking on tracts of land that are both dynamic in nature, and which were to constitute conveyances of undevelopable property. (Tr. 230, 254, 271, 335-337; Plaintiff's Trial Ex. 5, p. 42).

Exhibit 16.2 is the only general illustration depicting the property on Kiawah Island within the 1994 Development Agreement. (See Plaintiff's Trial Ex. 28). However, Exhibit 16.2 is neither a survey nor an official plat of record. Additionally, Exhibit 16.2 was unilaterally altered by Mark Permar, a representative of KRA, to reflect something other than what the

Town's original version depicted. (Tr. 48-50, 73-74, 81-82). Accordingly, while Exhibit 16.2 is referenced in both Sections 16(b) and 16(g) as intending to depict both the beachfront strip and Captain Sam's Spit, the accuracy of the boundaries are lack reliability and are of limited value in determining the intent of the parties with regard to the conveyance of the Beachfront Strip.

"Parcel 13" does not exist as a platted property of record on Kiawah Island, but rather it was created by KRA's land use planner for development purposes and generally incorporates the Employee Facility Tract and the 16-acre tract. (Tr. 101, 107-109, 272). Similarly, "Parcel 12" is not a platted property of record and generally includes the property known as Beachwalker Park. (See Intervenor's Trial Ex. 14). Therefore, the accuracy of property boundaries by reference to those numbered parcels is not sufficiently reliable.

The westernmost plats of record of Kiawah Island used during the drafting of the 1994 Development Agreement, and specifically the drafting of the legal description of the Beachfront Strip, included (from east to west): a plat of a 16.088 acre tract, dated May 16, 1988 (the "16-acre tract") (see Intervenor's Trial Ex. 5); a plat of the Employee Facility Tract, dated March 20, 1981 (the "Employee Facility Tract") (see Plaintiff's Trial Ex. 26); a plat of the property known as Beachwalker Park, dated February 12, 1976 (the "Beachwalker Park Plat") (see Intervenor's Trial Ex. 22); and a depiction of the property known as Captain Sam's Spit on "An Exhibit of Captain Sam's Spit and Beachwalker Park," dated July 14, 1994 (the "Exhibit of Captain Sam's Spit") (see Plaintiff's Trial Ex. 5, p. Schedule P-10).

The Employee Facility Tract was ultimately used in drafting the western boundary in the legal description of the Beachfront Strip because it was the only plat of "residential, resort, or commercial" property on the far west end of Kiawah Island and it was most representative of the property in front of which the 1994 Development Agreement envisioned the Beachfront Strip

beginning. (Tr. 231-232, 254, 273, 274, 333, 335-339, 343-344; Plaintiff's Trial Ex. 5, pp. 42-43).

The legal description of the Beachfront Strip was derived from and commenced at the southwestern corner of the Employee Facility Tract. (See Intervenor's Trial Exs. 2, p. 9 & 3, p. 1). The western boundary of the Beachfront Strip is an imaginary line extending south of the southwestern corner of the Employee Facility Tract to the mean high water mark; the eastern boundary of the Beachfront Strip is an imaginary line extending south to the mean high water mark from the southeasternmost point on a plat of record on the east end in 1994; the southern boundary of the Beachfront Strip runs along the mean high water mark from the west boundary line to the east boundary line; and the northern boundary of the Beachfront Strip generally abuts the seaward property lines of platted oceanfront lots. (Tr. 338-339; Intervenor's Trial Exs. 2, p. 9 & 3, p. 1).

The only document related to the Beachfront Strip that was formally executed by KICA is the Agreement for Conveyance, which was incorporated as an exhibit to the 1994 Development Agreement. Therefore, the evidence KRA offered in support of the alleged mistake of the Beachfront Strip is based on discussions or agreements, which KICA was not privy to, and which is contrary to the clear language in the Agreement for Conveyance.

The legal description of the Beachfront Strip in the Beachfront Deed is identical to the legal description of the Beachfront Strip in the Agreement for Conveyance.

On December 29, 1995, KRA formally executed the quitclaim deed (the "Beachfront Deed"), recorded in Book N265, page 406, in the R.M.C. Office for Charleston County, conveying the Beachfront Strip to KICA as Common Property in accordance with the 1994

Development Agreement, subject to all applicable covenants, conditions, restrictions and easements of record. (See Intervenor's Trial Ex. 3).

The Plaintiff's surveyor was able to take the property description contained in the deed and create a survey of the property in dispute. (Intervenor's Trial Ex. 15). I therefore find that the legal description in the Agreement of Conveyance and Quitclaim Deed is clear and plainly unambiguous.

The Weight of the Evidence

The court finds that whatever evidence exists of KRA's intent not to convey the Beachfront Strip to KICA is only relevant to the extent the court finds the deed and Agreement for Conveyance to be ambiguous.

It is the courts responsibility to weigh the evidence. While there is some conflicting evidence, the Master is persuaded that given the lack of any evidence of KICA Board's discussion of the Beachfront Strip prior to the execution of the Beachfront Deed, that the best evidence of KICA's intent during the relevant period of 1994 and 1995 is its President's execution of the Agreement for Conveyance. Accordingly, the court finds that there is clear evidence to show that KICA intended for the property to be included in the Beachfront Deed as Common Property.

As to the Town's intent, the Town was not a party to this litigation or to either the Agreement for Conveyance or the Beachfront Deed. However, the Town was a party to the 1994 Development Agreement which is the instrument by which KRA initially assumed the obligation to transfer certain properties to KICA as Common Property.

The court finds that the relevant manifestation of intent by the Town is contained in the 1994 Development Agreement and its various incorporated exhibits. The visual depiction of the

Beachfront Strip contained in the Beachfront Dedication Area in Exhibit 16.2 and the written legal description used in the Agreement for Conveyance as Exhibit 16.7 are not consistent insofar as the former does not include the Additional Land as part of the Beachfront Strip while the latter does include the Additional Land.

Dennis Rhoad, the Town's legal counsel, was called by KRA as a witness to provide testimony to clarify this inconsistency between the Exhibits and to shed light on the Town's intent. Mr. Rhoad did not believe that there was any discussion by the Town that would have discussed with particularity the Additional Land or the western terminus of the Beachfront Strip. However, Mr. Rhoad testified that he believed the Town did not intend to obligate KRA to convey any "developable property" to KICA as part of the Beachfront Strip.

KRA also presented the Fifth Amendment to the 2005 Development Agreement as evidence of the Town's intent. However, as previously stated, the Fifth Amendment is merely a reflection of the Town's agreement that KRA did not intend to convey the Additional Land, but is silent as to the Town's intent.

While evidence was presented that the Town did not intend to obligate KRA to convey developable property to KICA, the court finds that is **not** the relevant inquiry here. If intent is the issue, the relevant inquiry is:

"Was the property developable at the time it was conveyed to KICA?"

The court finds, as a matter of fact and law, that at the time of the 1994 conveyance, the subject property was not developable. Therefore, the court finds the conveyance of the Additional Property is consistent with the 1994 Development plan to convey the common property to KICA.



CONCLUSIONS OF LAW

In this action Plaintiffs allege three causes of action:

(1) A declaratory adjudication that the inclusion of the Additional Land in the legal description in the Beachfront Deed to KICA as Common Property was unintentional, in error, and a mistake, and contrary to the intent of the parties to the two Development Agreements of which KICA was a named third-party beneficiary for certain purposes, including receipt of the Beachfront Deed;

(2) Reformation of the property description of the Beachfront Deed deleting the Additional Land and correcting the property description so that it provides for a corrective description of the western terminus of the Beachfront Strip; and

(3) Alternatively, a claim for specific performance compelling KICA to execute a deed to KDP II for the Additional Land without encumbrance except for those matters of encumbrance at the time of the conveyance of the Beachfront Deed.

(4) In addition, KICA asserted a counterclaim seeking an adjudication that the Additional Land is Common Property and subject to the KICA Covenants such that it may only be conveyed by KICA with the requisite approval of the members in accordance with Article IV of the KICA Covenants.

KRA and KDP II's Claim of Mistake and for Reformation Fails

The Court finds that while the Plaintiff pled its claims for declaratory judgment and reformation as two distinct causes of action, the issues of intent and mistake are so interwoven with the elements of reformation that a claim for declaratory judgment cannot stand independently from the claim for reformation. As such, the Court issues this consolidated analysis on the two claims.



Prior to undertaking a reformation analysis, the Court must first determine whether the deed is ambiguous. Ambiguity is a question of law. If a deed is ambiguous, the reformation action is treated as a matter of equity thereby allowing the Court to look at extrinsic evidence to determine the parties' intent. If a deed is unambiguous, however, the reformation claim is handled as an issue of law and thus limits the Court's examination of intent to the terms of the deed itself. Penza v. Pendleton Station, LLC, 404 S.C. 198, 743 S.E.2d 850 (2013).

The Beachfront Deed is a self-contained document. While it was entered into pursuant to the 1994 Development Agreement and its Exhibit 16.7, the Agreement for Conveyance, the Beachfront Deed itself makes no reference to either of these documents and does not seek to incorporate their terms by reference. While the property description contained in the 1995 Beachfront Deed is not as precise as one would get if the property had been surveyed, it nonetheless clearly defines the area to be conveyed in a way that is ascertainable to a degree of reasonable certainty, especially considering the property was to be conveyed as Common Property and not intended to be used for development purposes.

The property description specifically identifies a point of beginning by reference to both a concrete monument and by reference to a recorded plat and the description "closes" such that the conveyed premises are readily apparent, especially as to the western terminus that KRA seeks to reform. No testimony elicited at trial cast any doubt on what property the Beachfront Deed actually conveys. As such, the deed unambiguously shows that KRA conveyed the Subject Property as part of the Beachfront Strip to KICA as Common Property and no evidence within the Beachfront Deed itself infers a contrary intent. As such, KRA's claim for reformation must fail, under the Penza test.



This Court's analysis could stop there since the Plaintiff cannot pass the threshold issue of proving ambiguity. However, for the reasons stated below, even if the Beachfront Deed was ambiguous and the Court could examine extrinsic evidence, reformation still does not apply.

This analysis starts with the guiding principle that in order to reform an instrument,

"preceding the execution of the instrument, and as the inducement to its execution, the parties to the same had an understanding, an agreement, a contract; and, in the effort to reduce the evidence in writing of that contract, a mutual mistake was made, by which mistake, so made, the understanding, the agreement, the contract of the parties in relation to the subject-matter thereof was not carried into effect." Brock v. O'Dell, 44 S.C. 22, 21 S.E. 976, 979 (1895).

"Before a court of equity will reform a solemn instrument, it must be shown by evidence which is the most clear and convincing, not simply it was a mistake on the part of one of the parties, but that it was a mutual mistake; that both parties intended a certain thing; and that by mistake in the drafting of the paper did not get what both parties intended." Sullivan v. Moore, 92 S.C. 305, 307, 75 S.E. 497 (1912).

The Court cannot assume such an agreement; it must be proved. Gowdy v. Kelley, 185 S.C. 415, 194 S.E. 156 (1937). Sims v. Tyler, 276 S.C. 640, 281 S.E.2d 229 (1981).

Mistake

The court will reform an instrument on the ground of mistake where, at the time the contract is entered into, (1) there is a mutual mistake as to the facts upon which it is based, or as to the terms and stipulations embraced therein; or (2) one of the parties only is under such mistake, either of the facts or the stipulations, and such mistake has been occasioned by the fraud, deceit, or imposition in any form of the other." Kennerty v. Etiwan Phosphate Company, 21 S.C. 226, 231 (1884); see also, Forrester v. Moon, 100 S.C. 157, 84 S.E. 532 (1915). No fraud, deceit, imbecility or imposition by any party is alleged in the case before the Court and so the only grounds upon which reformation can be found is through a showing of mutual mistake.

Plaintiffs must present evidence, not only of the agreement actually made, but of the mutuality of the mistake. That evidence must be clear, convincing, and satisfactory, for courts of equity do not grant the high remedy of reformation upon a mere probability.

"In the exercise of this jurisdiction to reform written instruments, courts of equity proceed with the utmost caution. It must appear that the precise terms of the contract had been orally agreed upon between the parties and that the written instrument actually signed fails to be, as it was intended, an execution of the previous agreement, but expresses a different contract; and that this is the result of a mutual mistake. If there is no antecedent agreement to which the writing can be conformed, it is clear that reformation on the ground of mistake must be refused." Gowdy, 185 S.C. 415.

In the matter *sub judice*, the only agreement which can be pointed to between the parties to the Beachfront Deed, i.e., KRA and KICA, other than the Beachfront Deed itself, is the Agreement for Conveyance. The Agreement for Conveyance obligated KRA to convey and KICA to accept a deed in precisely the same form as the Beachfront Deed. As such, Plaintiff cannot rely on the Agreement for Conveyance as evidence of an antecedent agreement between KRA and KICA as a basis to reform the Beachfront Deed.

Plaintiff is not required to show a written agreement as evidence of the mutual mistake. Under the Gowdy decision, the antecedent agreement which can be used as evidence of mutual mistake can be an oral agreement. But regardless of whether the antecedent agreement is written or oral, the evidence of the agreement must be clear and convincing to prove mutual mistake. Here, the Court is persuaded that KRA did intend to convey the Subject Property to KICA as part of the Beachfront Strip at the time of the conveyance. Further, there is no evidence that KICA shared in that mistake. The only written manifestation of KICA's intent in 1994 and 1995 was the executed Agreement for Conveyance which does not contravene the Beachfront Deed.

No evidence has been presented to show that the KICA Board was asked for, or provided, any input into the terms of the Beachfront Deed or specifically whether the Beachfront Strip was to include the Subject Property. As such, Plaintiffs cannot prove the existence of an antecedent agreement with KICA that proves that both KICA and KRA were mutually mistaken in the

inclusion of the Subject Property in the Beachfront Deed. All evidence of intent presented by Plaintiff came from events, not at the time the conveyance was made, but from after the fact.

The parties accurately demonstrated that KICA was not a party to the 1994 Development Agreement, but rather was a third party beneficiary of that document to the extent that it obligated KRA to convey certain properties, including the Beachfront Strip, to KICA as Common Property. The question arises whether the intent of the Town of Kiawah Island, as a party to the 1994 Development Agreement which obligated KRA to execute the Beachfront Deed but who was not a party to the Beachfront Deed, is either relevant or controlling as to the determination of intent and mutual mistake of KRA and KICA with respect to the property description contained in the Beachfront Deed. The Court has found no guiding legal authority to authorize, much less require, that it weigh or examine the intent of anyone who is not an immediate party to the instrument, or at least in privity thereto when determining intent for the purposes of proving mutual mistake in the context for reformation. 66 Am. Jur. 2d Reformation of Instruments § 60 (1973). Accordingly, this Court finds that the Town of Kiawah Island's intent is not relevant to the reformation analysis.

Even if the Town of Kiawah Island's intent were relevant, the evidence shows that, while the Town's legal counsel testified that the Town did not intend for KRA to convey any developable property to KICA, the Town nonetheless declined to go so far as to say that the form of the Agreement for Conveyance and the Beachfront Deed was contrary to the Town's intent in its passage of the Fifth Amendment to the 2005 Development Agreement. As such the evidence of the Town's intent does not meet the clear and convincing standard required for a finding of mutual mistake. Accordingly, regardless of whether the Beachfront Deed is ambiguous or unambiguous, the claim for reformation fails for lack of mutual mistake.

KRA and KDP II's Claim for Specific Performance Fails

KRA and KDP II have asked the Master to compel KICA to issue a deed conveying the Additional Land to KDP II. In order to prevail on a specific performance claim, this Court must find: "(1) there is clear evidence of a valid agreement; (2) the agreement had been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract." Ingram v. Kasey's Associates, 340 S.C. at 106, 531 S.E.2d at 291 (2000). Additionally, the specific act requested by the complaining party must be stated with certainty and definiteness in the contract. See generally, White v. Felkel, 222 S.C. 313, 72 S.E. 531 (1952); Yawkey v. Lowndes, 150 S.C. 493, 148 S.E. 554 (1929); Masonic Temple, Inc. v. Ebert, 199 S.C. 5, 18 S.E.2d 584 (1942); Anthony v. Eve, 109 S.C. 255, 95 S.E. 513 (1918).

There is only one contract between KICA and the Plaintiffs related to the Additional Land: the Agreement for Conveyance attached as Exhibit 16.7 to the 1994 Development Agreement. By the terms of that contract, KRA was obligated to execute and KICA was obligated to accept the Beachfront Deed, which was attached as a schedule to the Agreement for Conveyance. KRA in fact executed the Beachfront Deed in the exact form that was called for by the Agreement for Conveyance and KICA accepted delivery of the deed. In short, both parties complied with the express terms of the Agreement for Conveyance and no breach is found.

That KRA contends that the contract is erroneous is not a basis to find KICA in breach or to entitle KRA to force KICA into an act that is contrary to the express terms of the contract. As such, the court concludes that the Plaintiffs are not entitled to a decree of specific performance.

“Courts only have the authority to specifically enforce contracts that the parties themselves have made; they do not have the authority to alter contracts or to make new contracts for the parties.” Lowcountry Open Land Trust v. Charleston Southern University, 376 S.C. 399, 656 S.E.2d 775 (Ct. App. 2007).

KICA holds the Additional Land as Common Property Subject to the KICA Covenants

KICA’s sole counterclaim sought a judicial declaration of whether the Subject Property was in fact Common Property and therefore subject to the provisions of Article IV of the KICA Covenants limiting KICA’s ability to convey the Subject Property only upon an affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association. The issue of the classification of the Subject Property as Common Property is not disputed by any of the parties. Indeed, each of the relevant documents - 1994 Development Agreement, the Agreement for Conveyance, and the Beachfront Deed – state that the conveyed premises, including the Subject Property, are considered as Common Property subject to the KICA Covenants.

Some testimony was given at trial relating to a single prior conveyance where KICA, while still under KRA control, executed a quit claim deed conveying to KRA an approximately three acre tract of land that was included in the Beachfront Deed which the parties agreed was conveyed to KICA in error. KRA claims that this prior conveyance is evidence that KICA is not bound by the provisions of the KICA Covenants. However, the Court finds that this single instance of deviation from the KICA Covenants is not persuasive of proper procedure or otherwise has any precedential value in this Court’s analysis.

The KICA Covenants are clear in their terms as to the method by which Common Property may be conveyed. As such, this Court concludes that the Additional Land is subject to

the KICA Covenants as Common Property and can only be conveyed upon an affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association.

CONCLUSION

IT IS THEREFORE ORDERED:

1. The Plaintiffs' claim for Reformation of the Deed is denied;
2. The Plaintiffs' claim for Specific Performance is denied;
3. The "Additional Property," the 4.62 Acres of property which is the subject of this action and which includes the area described as "Captain Sam's spit" is owned by KICA; and
4. The "Additional Property" is subject to the KICA covenants which require an affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting in order to transfer title to the property.

IT IS SO ORDERED!

June 4, 2014

Charleston, SC

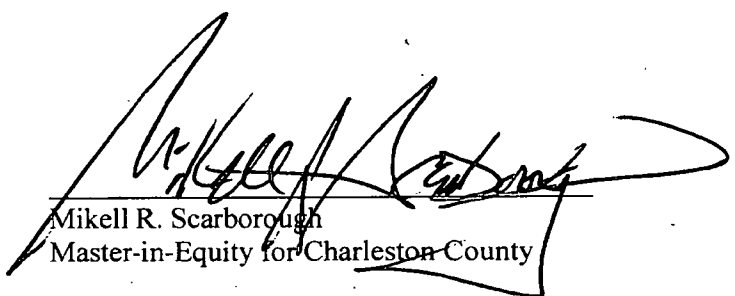

Mikell R. Scarborough
Master-in-Equity for Charleston County

EXHIBIT "A"

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, lying generally (i) south/southwest of the 2.067 acre Employee Facility Tract located at the terminus of Beachwalker Road on Kiawah Island, S.C., shown on a plat by Williams & Associates dated March 20, 1981, and recorded in Plat Book AS at page 85 in the RMC Office, and (ii) west of the 16.088 Acre Beachwalker Ocean tract shown on a plat by Southeastern Surveying, Inc. dated May 18, 1988, having latest revision dated June 28, 1988 and recorded in Plat Book BS at page 60 in the RMC Office, said parcel containing 4.620 acres, more or less.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KIAWAH RESORT ASSOCIATES, L.P., a
Delaware Limited Partnership, and KIAWAH
DEVELOPMENT PARTNERS II, INC.,

Plaintiffs,

vs.

KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC., a South Carolina Not-
for-Profit Corporation,

Defendant,

and

KIAWAH PROPERTY OWNERS GROUP,
INC. and INLET COVE CLUB
HOMEOWNERS ASSOCIATION, INC.,

Intervenors.

BEFORE THE MASTER-IN-EQUITY

MIKELL R. SCARBOROUGH

Case No. 2013-CP-10-01225

ORDER ON MOTION TO ALTER OR
AMEND THE FINAL ORDER

FILED
2015 MAY -7 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT

The above-styled action came before the Master-in-Equity by consent of the parties to ascertain and determine the validity, nature or extent of Plaintiffs' title and all other interests in a certain 4.62-acre tract of real property on Kiawah Island ("the Property"). This Court, after conducting a bench trial and hearing evidence and argument from the parties, issued its Final Order on June 4, 2014, wherein the Court denied Plaintiffs' claims for reformation and specific performance, and declared the Property is owned by Defendant Kiawah Island Community Association, Inc. ("KICA") and subject to the KICA Declaration of Covenants and Restrictions which require that any conveyance of Common Property by KICA be approved by a three-fourths vote of the KICA membership.



Plaintiffs thereafter filed a sixteen-count motion to amend or alter the Final Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. All issues raised in Plaintiffs' motion pertain to this Court's ruling on Plaintiffs' claim for reformation. As such, this Court's ruling on Plaintiffs' specific performance claim, as well as the Court's conclusion that the conveyance of the Property resulted in the Property becoming Common Property, remains unchallenged. This Court, after considering the written submissions of the Parties and hearing oral argument on the motion, now enters this Order denying fifteen grounds and granting one ground of Plaintiffs' Motion as follows:

I. Whether the Property is Developable or Considered to be Part of Captain Sam's Spit Does Not Impact the Determination that the Deed Cannot Be Reformed.

Plaintiffs' first, second, and fourteenth enumerated grounds for alteration of the Final Order pertain to the Court's findings that a majority of the Property is developable and that the Property is part of the land known as Captain Sam's Spit. However, whether the Property is or is not developable and whether the Property is or is not part of Captain Sam's Spit does not impact the Court's ultimate conclusion that Plaintiffs did not meet their burden on their claim for reformation of the Beachfront Deed.

To reform a deed, the party seeking reformation must demonstrate that "preceding the execution of the instrument, and as the inducement to its execution, *the parties to the same* had an understanding, an agreement, a contract; and, in the effort to reduce the evidence in writing of that contract, a mutual mistake was made, by which mistake, so made, the understanding, the agreement, the contract of the parties in relation to the subject-matter thereof was not carried into effect." Brock v. O'Dell, 44 S.C. 22, 21 S.E. 976, 979 (1895) (emphasis supplied). "Before a court of equity will reform a solemn instrument, it must be shown by evidence which is the most

clear and convincing, not simply it was a mistake on the part of one of the parties, but that it was a *mutual mistake*; that *both parties intended a certain thing*; and that by mistake in the drafting of the paper did not get what both parties intended.” Sullivan v. Moore, 92 S.C. 305, 307, 75 S.E. 497 (1912) (emphasis supplied). The Court cannot assume such an agreement; it must be proved. Gowdy v. Kelley, 185 S.C. 415, 194 S.E. 156 (1937). “In the exercise of this jurisdiction to reform written instruments, courts of equity proceed with the utmost caution. It must appear that the precise terms of the contract had been orally agreed upon between the parties and that the written instrument actually signed fails to be, as it was intended, an execution of the previous agreement, but expresses a different contract; and that this is the result of a mutual mistake. If there is no antecedent agreement to which the writing can be conformed, it is clear that reformation on the ground of mistake must be refused.” Id. This is a challenging standard to meet.

The following facts are undisputed:

- that KICA had no representative present in the negotiation, drafting, or execution of the 1994 Development Agreement between Plaintiff Kiawah Resort Associates, L.P. (“KRA”) and non-party the Town of Kiawah Island;
- that the only document relevant to the reformation analysis signed by any representative of KICA is the Agreement for Conveyance, signed by the then-President Townsend Clarkson, who was also a member of the KRA partnership at the time;
- that the Agreement for Conveyance unambiguously states that the 4.62 acres be conveyed by KRA to KICA by virtue of the Beachfront Deed, which also unambiguously describes the 4.62 acres in the described premises; and

- that the Agreement for Conveyance and Beachfront Deed were incorporated into the 1994 Development Agreement executed by KRA and the Town of Kiawah Island.

In order to achieve reformation, Plaintiffs must present clear and convincing evidence that KICA had an affirmative intent to have the 4.62 acres excluded from the Beachfront Deed. In the June 4, 2014 Final Order, this Court found that Plaintiffs did not present sufficient evidence to reach this high standard. In re-examining the evidence in the record in light of the grounds raised in Plaintiffs' motion, the Court finds nothing that leads to even an inference that whether the Property was considered developable or whether the Property was considered to be part of Captain Sam's Spit impacted KICA's intent with regard to the land to be included in the Beachfront Deed.

II. The Court's Evaluation of Exhibit 16.2 of the 1994 Development Agreement was Proper.

In their third, fourth, and fifth grounds for alteration of the Final Order, Plaintiffs claim that the Court attributed insufficient evidentiary weight to or otherwise misinterpreted Exhibit 16.2 of the 1994 Development Agreement. As fact finder in a bench trial, the Court has broad discretion to weigh and evaluate the evidence presented. The Court's findings will be upheld unless no evidence is found to support that finding. Waterpointe I Property Owners Assn, Inc. v. Paragon, Inc., 342 S.C. 454, 536 S.E.2d 878 (2000), citing Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). Here, the Court carefully considered the evidence presented by the parties, including Exhibit 16.2, and determined that Exhibit 16.2 is not solely determinative of the reformation issue. As recited above, reformation can only be granted by a clear showing that the Beachfront Deed does not accurately reflect the intent of both parties to that document (here, KRA and KICA). Exhibit 16.2, is an Exhibit to the 1994 Development Agreement which was a contract between KRA and the Town of Kiawah. Exhibit 16.2 is not

referred to in either the Agreement for Conveyance or the Beachfront Deed, which are the only two documents to which KICA is a party. There is no testimony presented by any party that points to KICA having ever seen or approved Exhibit 16.2 prior to the receipt of the Beachfront Deed. As such, Exhibit 16.2, while perhaps demonstrative of KRA's intent, does nothing to bolster any inference that it is a reflection of KICA's intent. Without a showing that the Beachfront Deed inadequately represents KICA's intent, reformation cannot lie. Therefore, as with the three prior argued grounds for altering the Final Order, this argument regarding the weight attributed to Exhibit 16.2 does nothing to change the Court's denial of Plaintiffs' reformation claim.

III. Neither the Potentially Gratuitous Nature of the Transfer nor the Involvement of the Town of Kiawah Island Changes the Analysis of Plaintiffs' Reformation Claim.

In their sixth ground for amendment of the Final Order, Plaintiffs state that because KICA was not a party to the 1994 Development Agreement, it holds the position of a third-party beneficiary of that Agreement. Plaintiffs argue that "the manner in which the parties [KRA and the Town of Kiawah Island] intended to benefit KICA cannot be bifurcated from the manner in which KICA intended to be benefited." Plaintiffs' argument ignores the existence of the Agreement for Conveyance which is signed by KICA's then-President wherein KICA agreed to accept the land described in the Beachfront Strip, including the Property. The Agreement for Conveyance is the only manifestation of KICA's intent that exists in the record of this case. The Court cannot wholly disregard this fact. Alternatively, Plaintiffs argue that the Agreement for Conveyance suffers from the same alleged error as the Beachfront Deed.

Essentially, Plaintiffs advocate that this Court depart from the long-standing rule asserted in Brock v. O'Dell, 44 S.C. 22, 21 S.E. 976, 979 (1895) that the intent relevant to the reformation

analysis is the intent of the parties to the instrument the claimant is seeking to reform. In support of this exhortation, Plaintiffs argue that because the Beachfront Deed was a gratuitous transfer and because it was entered pursuant to the 1994 Development Agreement a different conclusion should be reached. For the reasons explained below, the Court disagrees.

A. Whether the Beachfront Deed is considered a gratuitous transfer does not impact the reformation analysis.

This Court cannot forego any examination of KICA's intent on the mere assertion that the Beachfront Deed was a gratuitous transfer, as such a position is contrary to both the facts of this case and the applicable law. There is no dispute that KICA did not pay monetary consideration for the Beachfront Deed. However, that fact, alone, does not make the Beachfront Deed a gratuitous transfer. It is clear that KRA benefitted from the transaction. Testimony at trial explained that KRA came up with the notion of the beachfront conveyance to assuage concerns expressed by prospective purchasers that lots being advertised and sold as beachfront homes would remain in perpetuity as beachfront. This concern derived from prior disputes on another accreting beach at Isle of Palms which eventually accreted so much that buildable lots developed on the seaward side of Palm Boulevard. KRA, in order to enhance the value of the beachfront lots on Kiawah Island, sought to minimize this perceived danger to owners of beachfront lots by placing the Kiawah dunes field into the Community Association to be held as Common Property for the perpetual use and enjoyment of all of KICA's members. Such transfer conferred a benefit on KRA as it brought increased value not only to the beachfront lots it sold at a premium, but conferred an amenity of value to every property within the KICA regime. Under these circumstances, the Beachfront Deed is not truly a gratuitous transfer.

However, if this Court were to minimize or ignore the benefit conferred on KRA by protecting the beachfront strip from future development, and thereby consider the Beachfront

Deed a gratuitous transfer, it would still be required to examine KICA's intent. In the previously cited case of Brock v. O'Dell, Stephen Clayton deeded 400 acres as a gift to his son, Alfred Clayton, who thereafter deeded the property to William O'Dell. The first deed from the elder Clayton to the younger Clayton omitted the traditional language of devise to include the heirs of the younger Clayton which would be necessary to vest the grantee with fee simple title. Upon the death of the two Claytons, the remaining heirs of Stephen Clayton claimed title reverted to them. William O'Dell sought to reform the gratuitous deed between the Claytons to add the "heirs" language. In that case, the Court went through the traditional deed reformation analysis to look at the intent of the parties to the instrument to be reformed (i.e., both Stephen and Alfred Clayton). The Court did not find that Alfred's intent was irrelevant just because the transfer was gratuitous.

Similarly, the seminal reformation case of Gowdy v. Kelley, 185 S.C. 415 (1937) also considered the reformation of an intra-family deed given for "love and affection". Like in Brock v. O'Dell, the Court examined the intent of both parties and refused to reform the deed without a showing of clear and convincing evidence of mutual mistake. In short, when presented with an equitable reformation claim, the courts of this State do not discount the intent of the grantee in gratuitous transfers. For this reason, the intent of KICA is relevant, regardless of whether the Beachfront Deed is a gratuitous transfer.

B. The Town of Kiawah Island's intent cannot be substituted for KICA's intent.

Plaintiffs encourage the Court to substitute the Town of Kiawah's intent for KICA's intent when looking for evidence of mutual mistake. This Court has found no prior decision by the South Carolina appellate courts which directly addresses the highly particular facts of this case. Admittedly, the deeds of gift described in Brock v. O'Dell and Gowdy v. Kelley do not have a party occupying the Town of Kiawah Island's role of a third party at whose behest the

grantor (KRA) gave the deed. Should this fact require a deviation from centuries of clear precedent in how to approach a reformation analysis? The Court has given this issue considerable thought.

The Court first examined whether an analogy could be made with an *inter vivos* trust conveyance. In seeking to modify or reform a conveyance made through an *inter vivos* trust, a Court will look at effectuating the intent of the settlor, much like the examination of a Will seeks to effectuate the intent of the testator. Chilles v. Chilles, 270 S.C. 379, 242 S.E.2d 426 (1978). In the *inter vivos* trust context, the intent of the trustee or the beneficiary is irrelevant, much like the intent of an executor or a devisee in an estate context is immaterial. Yet such an analogy is unsatisfactory and does not smoothly accommodate the facts of this case. Putting the Town of Kiawah Island in a settlor's position stretches the analogy too far as the Town at no time had ownership of the conveyed property. Also, to render KRA's position to that merely executory role of a trustee carrying out the instruction of the settlor misconstrues KRA's true level of involvement in and control over the negotiation of the entire project. It further ignores the testimony that conveying the beachfront strip to KICA was actually KRA's idea and to KRA's benefit, and not a mandate of the Town of Kiawah Island as an accommodation to receive other zoning entitlements. Furthermore, such an analysis would actually render KRA's intent as irrelevant. As such, this Court finds that employing the analysis of *inter vivos* trust or other testamentary transfers is not helpful, especially in light of existing reformation case law dealing with gratuitous transfers. This Court finds that the Beachfront Deed in this case has more in common with a deed of gift rather than a bequest by Will or trust.

Having found inadequate guidance in the annals of trust and estates law, the Court sought the wisdom of how other jurisdictions treat cases with similar facts to the one before us. That



examination has proven to this Court how uncommon the facts of this case truly are. The Florida case of Antonelli v. Smith, 556 So.2d 1132 (1989)¹ has, however, a similar premise to the facts of this case which this Court finds instructive. In that case, the president of Key Colony Beach Golf Club, Inc. (Mr. Smith) was in negotiations with the State of Florida regarding its issuance of a dredge and fill permit to Key Colony. As a condition of the issuance of that permit, Mr. Smith was required to deed certain canal bottom land to the owners of the lots which were adjacent to three impacted canals. Mr. Smith, on behalf of Key Colony, executed and recorded the various deeds with no notice to or knowledge of the adjacent owners. The Antonellis were one of these owners.

Three years later, the Antonellis commenced development of their own parcel and in their development negotiations with the State were informed of Mr. Smith's permit and the conveyance of the canal bottom land to them. The Antonellis worked cooperatively with Mr. Smith for use of his permit in continuing their development until such time that they lost their development to foreclosure. However, the foreclosure deed did not include the canal-bottom land. Two years later, the Antonellis discovered that the canal bottom deed to them from Key Colony was flawed in that the property was previously owned by Mr. Smith individually, not by Key Colony. The Antonellis brought suit to reform the canal-bottom deed to correct the name of the grantor. Ultimately, the action was dismissed without prejudice for failure to join an indispensable party. However, prior to reaching that conclusion, the appellate court undertook a reformation analysis and at no time considered the intent or directives by the State of Florida as being controlling, much less informative, to its reformation analysis. Rather, the intent of the Antonellis was examined along with their reliance on the transfer.

¹ It should be noted that Florida's deed reformation law differs significantly from South Carolina's in that Florida does not allow reformation of gratuitous transfers at the behest of the grantee. As seen in the discussion in Section III(A) of this Order, supra, South Carolina has no such prohibition.



Like in the Antonelli decision, KICA has taken the property deeded to it and subjected it to the KICA Declaration as Common Property which has vested in each and every owner in the KICA regime an easement for use and enjoyment. Testimony was presented at the trial of this matter as to individual KICA members' use of that easement and reliance on same which has been in existence for nearly two decades. To disturb those rights now with no consideration given to the holders of those rights is something this Court is unwilling to do in light of no precedent authorizing such action.

IV. The Holding in Penza v. Pendleton Station, LLC, 404 S.C. 198, 743 S.E.2d 850 (2013) is Dispositive of this Matter.

Plaintiffs claim that the Court erred by following the Court of Appeals' holding in the Penza decision in their seventh enumerated ground for amendment. Penza requires that prior to undertaking a reformation analysis, the Court must first determine as a matter of law whether the deed is ambiguous. If a deed is ambiguous, the reformation action is treated as a matter of equity thereby allowing the Court to look at extrinsic evidence to determine the parties' intent. If a deed is unambiguous, however, the reformation claim is handled as an issue of law and thus limits the Court's examination of intent to the terms of the deed itself.

This Court held that the Beachfront Deed is a self-contained document. While it was entered into pursuant to the 1994 Development Agreement and the Agreement for Conveyance, the Beachfront Deed made no reference to either of the Agreements and did not otherwise seek to incorporate their terms. In fact, consistent with the principles raised in Penza, all terms expressed in the agreements leading up to the execution of the Beachfront Deed are extinguished under the doctrine of merger. *See, Charleston & W. C. Ry. Co. v. Joyce*, 231 S.C. 493, 99 S.E.2d 187 (1957).

The property description contained in the Beachfront Deed defines the area to be conveyed in a way that is ascertainable with certainty. The property description specifically identifies a point of beginning by reference to both a concrete monument and by reference to a recorded plat, and the description closes such that the conveyed premises are readily apparent, especially as to the western terminus that KRA seeks to reform. No testimony presented at trial called into question what property the Beachfront Deed conveys and, therefore, unambiguously shows that KRA conveyed the Property to KICA as Common Property. No evidence within the Beachfront Deed itself infers a contrary intent. As such, the Court denied KRA's claim for reformation, finding that it failed the Penza test.

However, Plaintiffs overlook that while the Court could have concluded its analysis at this stage and thereby exclude any examination of any parol evidence, the Court went on to analyze the case as if the facts did not pass the Penza test. The Court undertook a thorough analysis which took into consideration all extrinsic evidence presented by the parties and still came to the conclusion that Plaintiffs did not meet their evidentiary burden to prove mutual mistake for the purposes of reformation. As such, even if the Court were to remove any reference to the Penza decision, it would still not change the Court's analysis of the extrinsic evidence or otherwise affect its denial of Plaintiffs' claim for reformation. For these reasons, the Court declines to amend or alter its Final Order on this ground.

V. The Court Properly Considered All Evidence Presented.

Plaintiffs' eighth, tenth, eleventh, and twelfth grounds for altering or amending the Final Order all assert that the Court erred in its consideration – or alleged lack of consideration – of certain pieces of evidence presented by the parties. Specifically, Plaintiffs claim that the Court did not give sufficient weight or consideration to:



- the testimony of Beth Nimmons, paralegal for Plaintiffs' legal counsel, regarding her drafting of the legal descriptions used in the Beachfront Deed and Agreement for Conveyance (ground eight); and
- testimony as to what acts KICA has or has not undertaken with respect to maintenance or possession of the Property after the conveyance (ground ten).

Furthermore, Plaintiffs claim that the Court

- improperly used the placement of the 1991 Baseline and/or Setback Line as an indicator of intent (ground 11). This argument appears to be a way to rephrase the first ground argued by Plaintiffs as it relates to the Court's determination of whether the Property was developable – to the extent that the 1991 lines dictated what could or could not be built on the Property and whether a party's intent could be derived from the Property's ability to be developed. *See, Section I, supra.*
- mentioned in the Final Order a document tendered by Plaintiffs which was not admitted into evidence because the document consisted of statements made many years after the conveyance of the Property by a Chairperson of KICA who could have had no personal knowledge of the events surrounding the 1994 Development Agreement, the Agreement for Conveyance or Beachfront Deed (ground 12). The Court correctly held that the relevant point of inquiry when determining intent for purposes of reformation is the time of the execution of the instrument in question.

As to all four of the grounds (eight, ten, eleven, and twelve) addressed in this section, the Court, as fact finder in a bench trial, has broad discretion in its evaluation and consideration of the evidence presented at trial, and such findings are held to an "any evidence" standard on appeal. The Court thoughtfully considered each piece of evidence presented by the parties. That

MT 9

the Court assigned less weight to certain pieces of testimony than Plaintiffs would desire is entirely within the Court's purview as fact finder. It is not grounds for amending the Final Order.

VI. The Testimony of KRA-appointed KICA Directors and the Validity of the Agreement for Conveyance were Properly Considered.

In their ninth and thirteenth grounds for amendment, Plaintiffs argue that the Court did not give sufficient weight to the testimony of certain KRA partners who were also on the KICA Board of Directors in 1994 as to their understanding of what land was to be included in the Beachfront Deed, or to "conflicting factual findings" as to whether the Agreement for Conveyance was an official KICA Board action. At no point either at the trial or in any other stage of this litigation was there ever an allegation made by any party that Townsend Clarkson's execution of the Agreement for Conveyance in his capacity as the President of KICA was somehow an *ultra vires* act. Certainly, KICA has not disavowed the Agreement for Conveyance. While no witnesses at the trial could recall whether there was an official KICA Board meeting to discuss the Agreement for Conveyance and Mr. Clarkson's execution thereof during the 1994 time period, KICA has at no time in the intervening twenty years sought to repudiate the Agreement for Conveyance as not being an official KICA Board action. Furthermore, KICA's Declaration obligates KICA to accept all conveyances of property it receives from Plaintiffs as Common Property, regardless of the existence of the Agreement for Conveyance.

The Court is troubled by Plaintiffs' ninth ground for amending the final order as well as their argument asserted at the hearing on the motion that in 1994 for all practical purposes "KRA was KICA" and that therefore KRA's intent must necessarily be KICA's intent, thus prohibiting KICA to have any separate intent or agency. It is undisputed that in 1994 the KICA Board of Directors was comprised of four KRA-appointed Directors and three Owner Directors. As a non-profit corporation, KICA and its Board of Directors are subject to the South Carolina Non-Profit



Corporation Act. Section 33-31-831 of the Act is titled "Director Conflict of Interest". The statute does not define a "conflict of interest"; rather, it defines "a conflict of interest transaction". The statute addresses actual transactions under consideration by a Board of Directors of a non-profit corporation in which any director has a direct or indirect interest. According to the Official Comment that accompanies the statute, Section 831 applies to a transaction where a director is a general partner in a partnership or a director, officer, or trustee of another entity that has an interest in the transaction. The Statute and Official Comment allow a non-profit corporation to transact business with a director who has a direct or indirect interest in the transaction. An "interested director" is permitted to participate in discussions and can even vote on the transaction. So long as the transaction is approved by a majority of the disinterested directors, the transaction is approved.

Present before the Court is a written agreement – the Agreement for Conveyance – signed by the then-President of the KCIA Board, which obligates KRA to give and KICA to receive the Property as Common Property for the use and benefit of its membership. In the intervening twenty years, KICA has never repudiated or disavowed the Agreement for Conveyance or its obligations thereunder. Plaintiffs' evidence of KICA's mutual mistake is the testimony of three interested KRA-appointed KICA Board members who were also partners in the KRA partnership. The reformation cases discussed previously herein are clear that the burden of proof of mutual mistake is on the party seeking reformation. This Court finds that under the guidance offered by the Non-Profit Corporation Act, the testimony of only interested directors to disavow a written agreement signed with apparent authority of the President of the KICA Board which has never been subsequently questioned by KICA fails to rise to the level of clear and convincing



evidence of mutual mistake required by the applicable reformation case law. For this reason, the Court finds no merit in grounds nine and thirteen of Plaintiffs' motion.

VII. Intervenor Do Not Have Standing.

Plaintiffs' fifteenth ground for amendment of the Final Order argues that both intervenors, Inlet Cove Club Homeowners Association, Inc. and Kiawah Property Owners Group, Inc., should be dismissed from this action for lack of standing. Plaintiffs as well as KICA have shown that neither intervening entity has asserted any discrete claims that are separately derived from their membership in KICA. Rather the KPOG and Inlet Cove members' (who are also members of KICA) sole basis for asserting any claim against the Property is rooted in their easement of use and enjoyment resulting from the Property being conveyed as Common Property and subject to the KICA Declaration. It is KICA who has the sole right and authority to prosecute or defend rights which arise under the KICA Declaration.

The Court agrees and finds that the Intervenor do not have standing separate from their capacity as KICA members and should be dismissed from the case. However, it should be noted that this ruling in no way impacts or alters the Court's ultimate ruling on the reformation claim discussed herein.

VIII. Partition Is Procedurally Improper.

Plaintiffs' final grounds for amendment or alteration of this Court's Final Order requests as an alternative claim for relief that the Court award Plaintiffs all portions of the Property which is landward of the 1991 Setback Line. Plaintiffs' motion, some sixteen months after the filing of the original Complaint and seven months after the trial of the case, is the first time Plaintiffs have articulated what amounts to a claim for partition of the Property. Such a claim is procedurally improper at this late stage and is denied. Furthermore, no evidence was submitted in the trial of



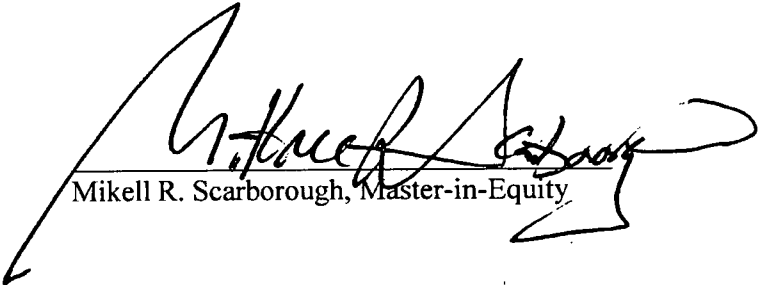
this case which would lead to the conclusion that KICA intended to receive some, but not all, of the 4.62 acres which is the subject of this litigation. Again, clear and convincing affirmative proof of KICA's intent to receive something other than what is described in the Agreement for Conveyance and Beachfront Deed is what is required to reform the Beachfront Deed. Plaintiffs have not satisfied this burden.

IX. Conclusion

Intervenors Inlet Cove Club Homeowners Association, Inc. and Kiawah Property Owners Group, Inc. are hereby dismissed from this action. All other rulings in this Court's June 4, 2014 Final Order stand as originally stated and are hereby explicitly reaffirmed.

It is so Ordered.

This 11th day of May 2014.


Mikell R. Scarborough, Master-in-Equity

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KIAWAH RESORT ASSOCIATES, L.P., etc.,

Plaintiff(s)

vs.

KIAWAH ISLAND COMMUNITY ASSOC., INC., etc.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 10- 1225

Submitted By: Robert L. Brooke
Address: 2 N. Adgers Wharf
Charleston, SC 29401

SC Bar #: 6847
Telephone #: (843) 768-3440
Fax #:
Other:
E-mail: rbrooke@kiawah.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

** If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20____-CP-_____ ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☒ Other (499) Deed Reformation
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order ☐ Other (899)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (516)		

Submitting Party Signature: _____

Date: March 1, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10- 1225

KIAWAH RESORT ASSOCIATES, L.P.,)
a Delaware Limited Partnership,)
)
Plaintiff,)

vs.)

KIAWAH ISLAND COMMUNITY)
ASSOCIATION, INC., a South)
Carolina Not-for-Profit Corporation,)
Defendant.)

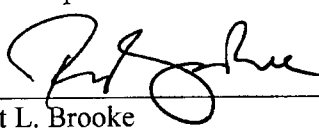
SUMMONS

(Declaratory Judgment)
(Reformation of Deed/Specific Performance)
(Non-Jury)

FILED
2013 MAR -1 PM 3:40
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.


Robert L. Brooke
2 N. Adgers Wharf
Charleston, South Carolina 29401
843.768.3440 Direct
rbrooke@kiawah.com
ATTORNEY FOR PLAINTIFF

March 1, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

KIAWAH RESORT ASSOCIATES, L.P.,)
a Delaware Limited Partnership,)

Plaintiff,)

vs.)

KIAWAH ISLAND COMMUNITY)
ASSOCIATION, INC., a South)
Carolina Not-for-Profit Corporation,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2013-CP-10- 1225

FILED
2013 MAR -1 PM 3:48
JULIE J. ARTHUR
CLERK OF COURT
BY _____
COMPLAINT
(Declaratory Judgment)
(Reformation of Deed/Specific Performance)
(Non-Jury)

The Plaintiff, Kiawah Resort Associates, L.P., complaining of the Defendant, Kiawah Island Community Association, Inc., alleges and states as follows:

1. The Plaintiff, Kiawah Resort Associates, L.P. ("KRA") is a Delaware limited partnership with its principal place of business in Charleston County.
2. The Defendant, Kiawah Island Community Association, Inc. ("KICA"), is a South Carolina not-for-profit corporation that serves and operates as the principal property owners' association on Kiawah Island, South Carolina.
3. In addition to statutes, regulations, ordinances, and other legislative authority, KICA is governed by a recorded Declaration of Covenants, Conditions, and Restrictions, as amended (the "KICA Covenants") hereinafter more specifically described, and Bylaws, as amended.
4. KRA is, and at all pertinent times hereto was, the "Company" for purposes of and as defined in the KICA Covenants.

5. There is a controversy between KRA and KICA over their respective rights and obligations with regard to a deed from KRA to KICA and whether KRA is entitled to relief to correct an error in that deed, as more fully set forth herein.
6. This Court has jurisdiction of this matter and venue is proper in this Court.

STIPULATED FACTS

7. On or about September 26, 1994 KRA and the Town of Kiawah Island (the "Town") entered into a Development Agreement (the "1994 Development Agreement") that was recorded September 30, 1994, in Book J248, page 001, in the R.M.C. Office for Charleston County, S.C. ("R.M.C. Office"). Attached hereto as Exhibit A is a true and accurate copy of the body of the 1994 Development Agreement, including the particular exhibits thereto that are relevant to the deed in question described in more detail below.
8. Section 16(b) of the 1994 Development Agreement required KRA, the "Property Owner" for purposes of the 1994 Development Agreement, to convey what was described as a 10 mile strip of beachfront property (the "Beachfront Strip") to Kiawah Island Community Association on or before January 1, 1996, as follows:

(b) 10 Mile Strip of Beachfront Property:

It is understood and agreed that there is a strip of scenic dunes and high land owned primarily by the Property Owner (some of which is encumbered by the General Covenants, certain view and access easements and other agreements of record) which extends along the Kiawah Island beachfront for approximately 10 miles as generally depicted on Exhibit 16.2. This strip of high land varies in width, but often is 200' to 300' wide and is generally seaward of most residential, resort, or commercial property lines. It generally comprises the area of land abutting most seaward platted residential Lot lines and the mean high water mark of the Atlantic Ocean.

The Property Owner hereby agrees that this strip of highland and dunes will, on or before January 1, 1996, be conveyed by quit claim deed to the KICA as Common Property, subject only to matters of record prior to the

effective date of this Agreement and the right of the Property Owner and other nearby owners to enjoy ingress and egress, permitted boardwalks and gazebos, across same in appropriate locations to access the beach or for other lawful purposes. The conveyance shall be by deed at the Property Owner's election (for \$1.00 consideration), and recorded in the Charleston County RMC office.

9. The 1994 Development Agreement defines "Common Properties" as "KICA Common Properties, Purchased Common Properties, and Restricted Common Properties as described under the KICA Covenants." The 1994 Development Agreement further states the "'KICA Covenants' means and refers to the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. recorded in the RMC Office for Charleston County in Book M 114, Page 407, and all amendments and supplements thereto, including those recorded at Book O-125 at page 163, Book K-139 at page 58, Book R-210 at page 748, Book W-243 at page 271, and Book W-243 at page 258."
10. Exhibit 16.2 to the 1994 Development Agreement is a graphic illustration that depicts the Beachfront Strip as a strip of land beginning east of the extended boundary line of the 19.5-acre parcel (identified as Parcel No. 13 in the 1994 Development Agreement) (the "Beachwalker Ocean Parcel"), extending east along the beachfront and ending at the northeastern tip of Little Bear Island at the opposite end of Kiawah Island.
11. Section 16 (g) of the 1994 Development Agreement addressed the land known as Captain Sam's Spit, which is also depicted on Exhibit 16.2 to the 1994 Development Agreement but was not assigned a Parcel No., as follows:

Captain Sam's Spit. The Property Owner commits to the permanent reservation of the tract of land known as Captain Sam's Spit, shown in Exhibit 16.2 as active and/or passive open space, nature study, or parks. Property Owner agrees to convey Captain Sam's Spit to KICA, by quit

claim deed by January 1, 2008; provided, however, that Property Owner may convey the eastern half of the spit to Charleston County Park & Recreation Commission prior to January 1, 2008.

12. Exhibit 16.2 to the 1994 Development Agreement also contains a hand-written notation with a line and arrow pointing to the Captain Sam's Spit area denoting that area as "Area not included in Dedication Area."
13. A draft contract and draft quit-claim deed for conveyance of the Beachfront Strip to KICA were attached to the 1994 Development Agreement as Exhibit 16.7.
14. Pursuant to section 16 (b) of the Development Agreement, KRA executed the deed of conveyance to KICA for what it believed to be the Beachfront Strip by quit-claim deed in the same form as the quit-claim deed attached as Exhibit 16.7 to the 1994 Development Agreement, before the January 1, 1996 deadline. This quit-claim deed was dated December 29, 1995, and recorded February 20, 1996, in Book N265, page 406, in the R.M.C. Office for Charleston County (the "Beachfront Deed"). Attached hereto as Exhibit B is a true and accurate copy of the Beachfront Deed.
15. Pursuant to Section 16 (b) of the Development Agreement the Beachfront Deed conveyed the Beachfront Strip to KICA as Common Property as follows: ... the conveyance is made subject to the covenant, condition, and restriction that the Property shall be maintained and utilized as a Common Property as defined in the Declaration of Covenants and Restrictions of Kiawah Island Community Association, Inc. recorded in Book M114, Page 407 in R.M.C. Office, as amended, (the "KICA Covenants") and shall be made subject to such rights and restrictions as are applicable to Common Properties as set forth in said KICA Covenants.

16. The Beachfront Strip had not been separately platted as a distinct TMS parcel at the time of the execution of the Beachfront Deed.
17. Because the property conveyed by the Beachfront Deed was not described in its entirety on plats of record, the legal description of the property conveyed in the Beachfront Deed was described generally as an area extending from a specific point located at the western end of Kiawah Island to a point located at the eastern end thereof, generally between 200 and 300 feet in width, extending from the seaward boundary lines of “most beachfront residential, resort and commercial properties on Kiawah Island, as shown on plats of record” in the R.M.C. Office, to the mean high water mark of the Atlantic Ocean.
18. The property description in the Beachfront Deed is identical to the property description in the draft quit-claim deed that was attached to the contract that is part of Exhibit 16.7 of the 1994 Development Agreement.
19. In 1997 KRA discovered the first error in the property description in the Beachfront Deed. The property description inadvertently included a beachfront development tract owned by KRA in the middle of the island identified as Parcel No. 20, in the 1994 Development Agreement — an approximately 3.1 acre beachfront parcel located south of the then location of Sea Forest Drive on Kiawah Island, east of Windswept Villas (the “East Beach Ocean Parcel”).
20. The Beachfront Deed inadvertently and erroneously conveyed the East Beach Ocean Parcel to KICA because there was no plat of record that established the seaward boundary line of the East Beach Ocean Parcel, nor was it a separate TMS parcel at the time the Beachfront Deed was executed and recorded.

21. KRA obtained a plat of survey dated March 11, 1997, which established the southern or seaward boundary line of the East Beach Ocean Parcel, prepared by Southeastern Surveying, Inc. and recorded in Plat Book EB, at page 679, in the R.M.C. Office.
22. With the Town's approval, KICA executed a confirmatory quit-claim deed to KRA returning record title to KRA to the East Beach Ocean Parcel adjacent to the center island Sanctuary Hotel tract (the "Confirmatory Quit-Claim Deed"). The Confirmatory Quit-Claim Deed was recorded at book Y285, page 763 in the R.M.C. Office and re-recorded at book O288, page 790 in the R.M.C. Office. Attached hereto as Exhibit C is a true and accurate copy of the Confirmatory Quit-Claim Deed.
23. In accordance with the intent of Section 16.2 of the 1994 Development Agreement, KRA executed a corrective and confirmatory deed conveying to KICA the beachfront strip seaward of the East Beach Ocean Parcel (the "Corrective and Confirmatory Deed"), recorded at book Y285, page 772 and re-recorded in book 0288, page 799 in the RMC Office for Charleston County. Attached hereto as Exhibit D is a true and accurate copy of the Corrective and Confirmatory Deed.
24. Near the time of the above two conveyances, it was determined that there was another error that needed correction in the property description of the Beachfront Deed that pertained to the eastern end of the Beachfront Strip. A 1988 plat of the entire east end of Kiawah established the seaward boundary line as the mean high water mark and left no land between the seaward boundary of the dunes and the ocean. Thus, the only property conveyed to KICA by the Beachfront Deed at the east end of the island was the beachfront area, if any, lying between the old mean high water mark shown on the 1988 Davis & Floyd plat, and the then-current mean high water mark, contrary to the intent of

the parties to convey a “a strip of scenic dunes and high land owned primarily by the Property Owner ... which extends along the Kiawah Island beachfront for approximately 10 miles ... [that] varies in width, but often is 200’ to 300’ wide.”

25. To accomplish the intent of the conveyance described in Section 16(b) of the 1994 Development Agreement, KRA prepared and executed a second corrective and confirmatory deed (the “Second Corrective and Confirmatory Deed”) to convey this portion of the beachfront strip to KICA in 6 separate tracts—including a 245.045 acre beachfront parcel at the easternmost tip of the island conveyed by reference to an exhibit plat prepared by Southeastern Surveying at KRA’s request. This Second Corrective and Confirmatory Deed was recorded at book L304, page 459 in the R.M.C. Office. Attached hereto as Exhibit E is a true and accurate copy of the Second Corrective and Confirmatory Deed.
26. On October 12, 2005, KRA and the Town entered into the second Development Agreement (the “2005 Development Agreement”), replacing and terminating the 1994 Development Agreement. The 2005 Development Agreement was recorded in Book Z558, page 004 in the R.M.C. Office. Attached hereto as Exhibit F is a true and accurate copy of the body of the 2005 Development Agreement and its pertinent exhibits.
27. The 2005 Development Agreement eliminated the terms of Section 16(g) of the 1994 Development Agreement for Captain Sam’s Spit and replaced them with new provisions that granted the Property Owner certain limited development rights on Captain Sam’s Spit.
28. On or around 2007, KRA discovered an additional error within the property description in the Beachfront Deed. In particular, the property description in the Beachfront Deed

stated, in part, as follows: "All that certain piece, parcel or strip of land, situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, approximately ten (10) miles in length, the westernmost boundary of which being an imaginary line having as its northern terminus, a point marked by a concrete monument having State Plane Coordinates N275, 327.0025/ E2, 267.801.5097 located at the southwesternmost corner of a 2.067 acre tract located at the terminus of Beachwalker Road on Kiawah Island known generally as the "Employee Facility Tract" and as shown on a plat by Williams & Associates dated March 20, 1981, and recorded in Plat Book AS at page 85 in the R.M.C. Office for Charleston County, S.C. (the "R.M.C. Office") ; thence running with said imaginary line from said point in a southerly direction S04°55'6" E to the mean high water mark of the Atlantic Ocean; said strip of land thence extending eastwardly to an imaginary line extending due south from point marked by a concrete monument numbered 27722 shown on Page 3 of 3 of a plat of the "Links Course Tract" by Davis & Floyd Inc. dated February 6, 1989, and recorded in Plat Book BV at page 38, in the R.M.C. Office to the mean high water mark of the Atlantic Ocean: said strip of land varies in width but is generally between 200' and 300' wide and extends from the seaward boundary lines of most beachfront residential, resort and commercial properties on Kiawah Island, as shown on plats of record in the R.M.C. Office to the mean high water mark of the Atlantic Ocean."

29. Contrary to the visual depiction of the Beachfront Strip in Exhibit 16.2 to the 1994 Development Agreement and the terms of the 1994 and 2005 Development Agreements, the property description for the Beachfront Strip in both the draft contract and draft quit-claim deed attached as Exhibit 16.7 to the 1994 Development Agreement as well as in the

Beachfront Deed mistakenly state that the Beachfront Strip commenced at the south westernmost corner of the 2.067 acre "Employee Facility Tract," which is designated as part of Parcel 13 (the "Beachwalker Ocean Parcel"), in the 1994 Development Agreement. ("Point of Beginning").

30. Because of the error in the Point of Beginning, the property description in the Beachfront Deed unintentionally included an area of 4.62 acres seaward of KRA's more than two acre "Employee Facility Tract" on Beachwalker Road ("the Additional Land"). The Employee Facility Tract, and the area seaward of that tract including the Additional Land are portions of Parcels 12 and 13, the "Beachwalker Park" Parcel and "Beachwalker Ocean" Parcel under the 1994 Development Agreement, and Parcels 12A and 13 under the 2005 Development Agreement, and the Additional Land was not meant to be conveyed, and was erroneously and mistakenly conveyed, as part of the Beachfront Strip. An illustration of the Additional Land mistakenly conveyed is attached hereto as Exhibit G.
31. The 1994 and 2005 Development Agreements both treat the Additional Land as the land of the Property Owner. The 1994 Development Agreement shows the Additional Land as belonging to the Property Owner as part of Parcel 12, the "Beachwalker Park" Parcel (TMS No. 207-05-00-001) and Parcel 13, the "Beachwalker Ocean" Parcel. The 2005 Development Agreement shows the Additional Land as belonging to the Property Owner as part of Parcel 12A, the "Beachwalker Park" Parcel (TMS No. 207-05-00-001) and Parcel 13, the "Beachwalker Ocean" Parcel under the 2005 Development Agreement.
32. Even after the Beachfront Deed which expressly designated the Additional Land as Common Property, the Additional Land remained a part of TMS No. 207-05-00-0011 on

the real property tax records of Charleston County and reflected there as owned by Property Owner and has never been formally subdivided into a separate TMS parcel.

33. On or about October 2, 2012, the Town of Kiawah Island and KRA as Property Owner entered the Fifth Amendment to the 2005 Development Agreement (the "Fifth Amendment"), that is recorded at Book 0290 at Page 99 in the R.M.C. Office, a copy of the recorded Fifth Amendment is attached hereto as Exhibit H.

34. In the Fifth Amendment to the 2005 Development Agreement, the Town of Kiawah Island and KRA as Property Owner agreed to and confirmed the following:

(1) that the Property Owner's intent was that the western terminus-boundary of the Beachfront Strip be the eastern boundary and extended eastern boundary of Parcel 13 as described in the First [1994] Agreement and the [2005] Agreement, known as the Beachwalker Ocean Parcel (TMS No. 207-05-00-118), as illustrated on Exh. 16.2 to the First [1994] Agreement recorded at Book J248 Page 366 in the RMC Office for Charleston County; (2) that the Property Owner did not intend that the Beachfront Strip include the Additional Land, which is west of the intended western terminus-boundary of the Beachfront Strip; and, (3) that the intent of the Property Owner at the time of entry of the 2005 Agreement was that the Additional Land was part of Parcels 13 and 12A as described in the 2005 Agreement.

35. KRA has requested the Board of Directors of KICA to authorize the President and Secretary of KICA to execute a corrective quit-claim deed conveying title to the Additional Land back to KRA since the Additional Land was unintentionally included in the property description in the Beachfront Deed, and the parties to the Development Agreements never intended that the Additional Land be included as a part of the Common Property conveyed to KICA.

36. The Board of Directors of KICA has declined to authorize the President and Secretary to execute a corrective quit-claim deed to KRA in light of the fact that the Additional Land was conveyed to KICA as Common Property and Common Property cannot be conveyed

to KRA without an affirmative vote of the members of KICA under Article IV, Section 6(h) of the KICA Covenants.

37. KRA asserts that it is entitled to judicial reformation of the property description in the Beachfront Deed to delete the Additional Land from the Beachfront Strip by changing the Point of Beginning and to establish the western terminus of the Beachfront Strip along the eastern boundary of the Beachwalker Ocean Parcel, and/or to an order authorizing and requiring the President and the Secretary of KICA to execute a corrective quitclaim deed for the Additional Land on the ground that the inclusion of the Additional Land in the legal description in the Beachfront Deed to KICA as Common Property was a mistake caused by the error in the "Point of Beginning" of the legal description which was and continues to be contrary to the intent of the parties.

FOR A FIRST CAUSE OF ACTION

38. KRA realleges its previous allegations as if fully set forth herein.
39. KRA is entitled to a declaratory adjudication that the inclusion of the Additional Land in the legal description in the Beachfront Deed to KICA as Common Property was unintentional, in error, and a mistake, and contrary to the intent of the parties to the two Development Agreements of which KICA was a named third-party beneficiary for certain purposes, including the recipient of the Beachfront Deed.

FOR A SECOND CAUSE OF ACTION

40. KRA realleges its previous allegations as if fully set forth herein.
41. KRA is entitled to an order of this Court directing reformation of the property description of the Beachfront Deed deleting the Additional Land and correcting the property description so that it provides for an accurate and correct description of the western

terminus of the Beachfront Strip and the recording of the reformed Beachfront Deed in the RMC Office for Charleston County.

FOR A THIRD CAUSE OF ACTION

42. KRA realleges its previous allegations as if fully set forth herein.

43. In the alternative, KRA is entitled to an order of specific performance compelling the duly authorized representative(s) of KICA to execute a deed to KRA for the Additional Land without encumbrance except for those matters of encumbrance at the time of the conveyance of the Beachfront Deed.

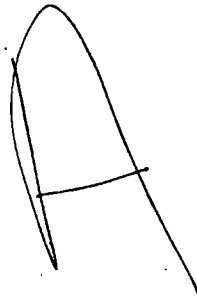
WHEREFORE, the Plaintiff prays for the relief against the Defendant as set forth above and for such further and other relief as the Court deems just and proper.



Robert L. Brooke
2 N. Adgers Wharf
Charleston, South Carolina 29401
843.768.3440 Direct
rbrooke@kiawah.com
ATTORNEY FOR PLAINTIFF

March 1, 2013
Charleston, South Carolina

A



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

THIS DEVELOPMENT AGREEMENT is entered into this 26th day of September, 1994, by and between KIAWAH RESORT ASSOCIATES, L.P., a limited partnership organized and existing under the laws of Delaware, and the TOWN OF KIAWAH ISLAND, a municipal corporation organized and existing under the laws of the State of South Carolina.

RECITALS

This Agreement is predicated upon the following facts:

1. The Code of Laws of South Carolina §§ 6-31-10 through 6-31-160, inclusive, authorize the Town to enter into binding development agreements with persons or entities intending to undertake any development on real property containing twenty-five acres or more of highland and having a legal or equitable interest in the real property to be developed;
2. Under Code § 6-31-30, the Town Council of the Town has established procedures and requirements for considering and entering development agreements;
3. Under Code § 6-31-50(A), the Town Council conducted a public hearing regarding its consideration of this Agreement on May 3, 1994, June 2, 1994, June 28, 1994, July 7, 1994, July 14, 1994, and September 26, 1994, after publishing and announcing notice of its intent to consider this Agreement, all in satisfaction of provisions Code § 6-31-50(B) and any other notice requirements;
4. Under Code § 6-31-60(A)(7), the Town Council of the Town found on September 26, 1994, that this Agreement is consistent with the Town's Comprehensive Plan and Land Development Regulations; and
5. Under Code § 6-31-30, the Town Council of the Town adopted Ordinance No. ____ on ____ 19__, approving this Agreement with the Property Owner.

NOW THEREFORE, the parties agree:

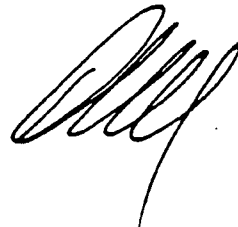
1. **Definitions.** In this Agreement, unless the word or phrase is non-capitalized:
 - (a) "Adjacent" means next to or within 100 feet. Adjacent properties include those properties which abut a property, as well as properties with any portion being located within 100 feet of any boundary of the subject property.

- (b) "Agreement" means this Development Agreement, including the recitals and exhibits attached hereto.
- (c) "ARB" is the Kiawah Architectural Review Board that is currently operational under the auspices of the Property Owner and/or as it may later function under the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to all Property in Kiawah Island (recorded in the Charleston County RMC office in Book M114 Page 406, and amended by instrument recorded in Book Z-124, Page 305).
- (d) "Bridge" or "Causeway" means a raised roadway crossing naturally wet ground or water features.
- (e) "Building Development Standards" means minimum standards for the area, width, building coverage, building setback and yard requirements for Lots or Development Parcels.
- (f) "Common Properties" means KICA Common Properties, Purchased Common Properties, and Restricted Common Properties as described under the KICA Covenants.
- (g) "Comprehensive Plan" means the master plan adopted pursuant to S.C. Code §§ 6-7-510, et seq., 5-23-490 et seq., 6-29-310 et seq., or 4-27-600 and the official map adopted pursuant to § 6-7-1210, et seq.
- (h) "Density" means the number of Dwelling Units per acre. Parcel Density equals the number of Dwelling Units divided by the gross acreage above mean high water, excluding Fresh Water and Salt Water Wetlands.
- (i) "Developed Lands" means and refers to all Real Property (as shown on the map attached as Exhibit 1.1), excluding all lands included in the Definition of "Undeveloped Lands".
- (j) "Development" means the planning for or carrying out of a building activity or mining operation, the making of a material change in the use or appearance of any structure or property, or the dividing of land into three or more parcels, and is intended by the Parties to include all uses of, activities upon or changes to the Real Property as are authorized by the Agreement.

"Development," as designated in a land or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "Development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or

activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.

- (k) "Development Parcel" means any tract of land on which Development may occur, including platted Lots and unplatted parcels, but excluding street rights-of-way.
- (l) "Development Permit" includes a building permit, zoning permit, subdivision approval, rezoning certification, special exception, variance, certificate of occupancy or any other official action of Local Government having the effect of permitting the Development or use of property.
- (m) "Dwelling Unit" means one or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with cooking, sleeping and sanitary facilities provided within the dwelling unit.
- (n) "Facilities" means major capital or community improvements including, but not limited to, transportation, sanitary sewer, solid waste, drainage, and potable water. The Property Owner is specifically exempted from any Town requirement for the provision of facilities relating to public education, public health systems and facilities, libraries, public housing, jails and other detention sites, courts, police and trash or garbage disposal sites.
- (o) "Finished Grade" means the average elevation of a Lot after construction; provided, however, that Finished Grade shall not be more than 6 feet above Natural Ground elevation, and provided further that the Town may approve more than 6 feet.
- (p) "Fresh Water and Salt Water Wetlands" means those properties with elevations below the mean high water line, and properties within a pond, lagoon or other Water Bodies.
- (q) "General Covenants" means and refers to the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property on Kiawah Island (recorded in the Charleston County RMC Office in Book M114, Page 406, and amended by instrument recorded in Book Z124, Page 305.)
- (r) "Ground Floor Level" means Natural Ground or the lowest floor elevation for structures as set forth in the Town of Kiawah's floodplain management ordinance, (as found in § 14-101 of the Municipal Code), as amended, whichever is higher; provided, however, that Ground Floor Level shall not exceed 14 feet above Natural Ground. This definition shall not be construed to



prevent an owner from constructing his first finished floor higher than Ground Floor Level, provided, however, Height is measured from Ground Floor Level.

- (s) "Gross Leasable Area" (GLA) means total floor area for which the tenant pays rent and that is designed for the tenant's occupancy and exclusive use. GLA does not include public or common areas, such as utility rooms, stairwells and malls.
- (t) "Guest Rooms" means a resort hotel room or suite designed for occupancy as a single unit by no more than four (4) persons in a single unit.
- (u) "Height" means elevation from Ground Floor Level as measured in feet and stories. Building height does not include chimneys, antennae or ventilation pipes. Height in stories is the number of habitable floors (stories) exclusive of the area below the first finished floor. One-half story is a habitable floor which has heated square footage that is no greater than one-half the heated square footage of the largest story.
- (v) "Hotel Rooms and Support Space" means any Guest Rooms, public lobby, food and beverage, meeting and banquet, administrative service and mechanical areas attributable to hotel operation. Hotel and Support Space permitted under ¶ 19 is limited to 325 Guest Rooms and 52,000 square feet of floor area for support area, including lobbies, administrative space, eating areas, meeting rooms and service areas. This definition does not prohibit the development of commercial space permitted in ¶ 13.B.2. from being developed on a hotel site, provided that any support space in excess of 52,000 square feet shall be counted towards the space permitted in ¶ 13.B.2.(b).
- (w) "Kiawah Island" means the area within the Town of Kiawah Island, including its surrounding marshes and nearby islands and includes all lands and areas encompassed within the boundaries of the low lands, high lands, marsh lands, and waterways depicted on Exhibit 1.2.
- (x) "KICA" means the Kiawah Island Community Association, Inc.
- (y) "KICA Covenants" means and refers to the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. recorded in the RMC Office for Charleston County in Book M 114, Page 407, and all amendments and supplements thereto, including those recorded at Book O-125 at page 163, Book K-139 at page 58, Book R-210 at page 748, Book W-243 at page 271, and Book W-243 at page 258.
- (z) "Land Development Regulations" means ordinances and regulations enacted by the appropriate governing body for the regulation of any aspect of

Development and includes Local Government zoning, rezoning, subdivision, building construction, occupancy or sign regulations or any other regulations controlling the Development or use of property.

- (aa) "Laws" means all ordinances, resolutions, regulations, comprehensive plans, Land Development Regulations, policies and rules, custom and usage (formal or informal) adopted by a Local Government affecting the Development of property and includes laws governing permitted uses of the property, governing density, and governing design, improvement, and construction standards and specifications, except as provided in § 6-31-140(A).
- (ab) "Local Government" means any county, municipality, special district, or governmental entity of the State, county, municipality, or region established pursuant to law which exercises regulatory authority over, and grants Development Permits for land Development or which provides public Facilities.
- (ac) "Lot" means Development Parcel identified in a Subdivision Plat recorded in the Charleston County, RMC office.
- (ad) "Natural Ground" means the average elevation of a Lot or Development Parcel prior to Development activity.
- (ae) "Parties" are the Property Owner and Town.
- (af) "Parcel" means any of those tracts of the Real Property constituting the Undeveloped Lands that are numbered and identified in Exhibits 1.3 and 13.2.
- (ag) "Pervious Cover" means land which permits the absorption of stormwater into the ground. This may include walkways and driveways which are pervious to stormwater.
- (ah) "Private Club" means a privately-owned, by-invitation-only association of two or more members who may have the use of land and facilities owned or leased by the club and made available to members, their guests, and others as the club owner(s) may allow from time to time; membership may be for social, civic, recreational, and/or other lawful purposes with such membership conditioned upon the receipt of dues, fees, or other charges as are levied by the club owners.
- (ai) "Project" is the Development that has occurred and will occur on Kiawah Island.
- (aj) PDD1a shall refer only to the Zoning Ordinance originally adopted by Charleston County and adopted by the Town on April 6, 1989, as a part of the

Town's Planning and Zoning regulations in 1989, as amended prior to the date hereof.

- (ak) "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 paragraph (4) and includes Kiawah Resort Associates, L.P.'s successors in interest or successors in title and/or assigns by virtue of assignment or other instrument pursuant to ¶ 33 hereof. Additionally, Property Owner shall mean Beachwalker Partners, L.P., Kiawah Island Real Estate, Inc., Kiawah Island Utility, Inc., The Beach Company, Earle E. Long Trust, and DIECI, Inc. and their successors and assigns 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.
- (al) "Real Property" is the real property referred to in paragraph 4 and includes any improvements or structures customarily regarded as part of real property.
- (am) "Sight Triangle" means a triangular-shaped portion of land established at street intersections in which nothing is permitted which limits or obstructs the sight distance of motorists entering or leaving the intersection. The sides of the triangle measure twenty-five (25) feet from the intersection of the projected pavement lines.
- (an) "Single Family Detached Dwelling" means a building containing one Dwelling Unit that is not attached to any other Dwelling Unit and is surrounded by yards or open space.
- (ao) "Single Family, Patio Homes and Multi-Family Covenants" means and refers to the Declaration of Covenants and Restrictions applicable to Single Family Housing at Kiawah Island recorded at Book T-108 at page 339 in the RMC office for Charleston County; the Declaration of Covenants and Restrictions applicable to Patio Homes at Kiawah Island recorded at Book T-108 at page 341 in the RMC office for Charleston County; and the Declaration of Covenants and Restrictions applicable to Multi-Family Housing at Kiawah Island recorded at Book T-108 at page 340 in the RMC office for Charleston County.
- (ap) "Subdivision Plat" means a recorded graphic description of property prepared and approved in compliance with Article 12B, Subdivision Regulations of the Municipal Code, Town of Kiawah Island, South Carolina, as amended.

- (aq) "Town" is the Town of Kiawah Island, South Carolina, a municipal corporation organized and existing under the laws of the State of South Carolina.
- (ar) "Traffic Mitigation Measures" means improvements and/or transportation management strategies to restore or maintain acceptable levels of service for a roadway segment or segments, including, but not limited to: turn lane additions, acceleration/deceleration lanes, a new off-island reception center/security checkpoint, other road widening alternatives, vanpools, and other alternatives to decrease traffic volume or increase roadway capacity.
- (as) "Traffic Mitigation Plan" means a plan to restore or maintain acceptable levels of service for a roadway segment or segments.
- (at) "Type E" and "Type A" Members are as defined in the KICA Covenants. The "Type A Directors" are those directors on the board of KICA who are elected by the KICA Members.
- (au) "Undeveloped Lands" in existence on the date of execution of this Agreement is the Real Property indicated on Exhibit 1.3. Undeveloped Lands shall, during the term of this Agreement, include only Real Property that either (i) has not received any plat approval or (ii) has received preliminary, conditional or final plat approval but fewer than 100% of the Lots or parcels depicted thereon have been sold to Type A members under the Covenants and fewer than 90% of the potential houses on such platted Lots or parcels (or less than 95% of the buildable commercial square footage on a plat of commercial property) have been constructed. Also included within the definition of Undeveloped Lands is the Real Property made subject to a recorded master deed after the date hereof but fewer than 90% of the condominium units shown thereon have been sold to Type A members under the KICA Covenants.
- (av) "Vested Units" means the new single family Lots and new non-single family Dwelling Units which may be approved for all Undeveloped Lands. Such new Lots and Dwelling Units constituting Vested Units include those which receive preliminary subdivision plat approval for the first time after January 28, 1994 and any Dwelling Units approved after January 28, 1994, for Development in the Undeveloped Lands.
- (aw) "Water Bodies" means property determined to be under water no less than eleven (11) months of the year and under such standing water for a continuous period of no less than nine (9) months of the year.
- (ax) "Zoning Board of Adjustment" or "ZBA" means the duly-appointed Zoning Board of Adjustment for the Town of Kiawah Island.

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

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

- (i) All Real Property on Kiawah Island currently owned by the Property Owner.
- (ii) A legal description of the Real Property is set forth in the schedules and maps attached as Exhibit 4.1: Description of Real Property.

The Real Property currently consists of approximately 2058 acres of highland and approximately 5,000 acres of marshlands and low lands.

The Property Owner may notify the Town from time to time of property proposed to be added to the legal description of Real Property by the filing of a legal description of subsequently acquired properties with the Town Clerk; provided, however, that no other property shall be added to the Agreement unless the same is duly amended by mutual agreement of the parties and after compliance with §§ 6-31-10 et seq.

- (iii) The Parties have endeavored to identify by description and location all existing holdings of Real Property of the Property Owner on Kiawah Island. Despite the Parties' best efforts, there may be other acreages or parcels of the Property Owner that have inadvertently not been identified. If and when such acreage or parcels are discovered, the Parties agree to consent to add same, by amendment, in good faith to this Agreement as part of the Undeveloped Lands. In such event, the densities, uses and other Building Development Standards as described in Section 13 and the tables therein for such newly added parcel shall be consistent with other similar Parcels in the Undeveloped Lands already subject to this Agreement; provided, however that the limitation of 1,974 Vested Units established in ¶ 13.B.1.(b), the limitation of 300,000 square feet of commercial floor area established in ¶ 13.B.2(b), and the limitation of 325 new Hotel/Inn Rooms and 52,000 square feet of Support Space established in ¶ 19 shall not change unless this Agreement is amended, by major modification, in accordance with the provisions of ¶ 22, infra.



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 paragraph (4) and includes Kiawah Resort Associates, L.P.'s successors in interest or successors in title and/or assigns by virtue of assignment or other instrument pursuant to ¶ 33 hereof. Additionally, Property Owner shall mean Beachwalker Partners, L.P., Kiawah Island Real Estate, Inc., Kiawah Island Utility, Inc., The Beach Company, Earle E. Long Trust, and DIECI, Inc. and their successors and assigns 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 Beachwalker Partners, L.P., Kiawah Island Real Estate, Inc., Kiawah Island Utility, Inc., DIECI, Inc., the Beach Company, and Earle E. Long Trust 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.

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, as adopted on September 26, 1994.

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 § 10(a). 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 S.C. Code § 6-31-10 et seq. This Agreement shall not be construed to create a debt of the Town as referenced in § 6-31-145.
10. Applicable Land Use Regulations.
 - (a) Applicable Laws and Land Development Regulations. Except as otherwise provided by this Agreement or by § 6-31-10 et seq., the Laws applicable to Development of the Real Property, subject to this Agreement, are those in force at the time of execution of this Agreement. The Town shall not apply subsequently adopted Laws and Land Development Regulations to the Real Property or the Project unless the Town has held a public hearing and has determined: (1) the proposed, subsequent Laws or Land Development Regulations are not in conflict with the Laws or Land Development Regulations governing the Agreement and do not prevent the Development set forth in this Agreement; (2) the proposed, subsequent Laws or Land Development Regulations are essential to the public health, safety, or welfare and the proposed, subsequent Laws or Land Development Regulations expressly state that they apply to a development that is subject to a development agreement; (3) the proposed, subsequent Laws or Land Development Regulations are specifically anticipated and provided for in this Agreement; (4) the Town demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement which changes, if not addressed by the Town, would pose a serious threat to the public health, safety, or welfare; or (5) this Agreement is based on substantially and materially inaccurate information supplied by the Property Owner.
 - (b) Vested Rights. Subject to the provisions of subparagraph (a) above, all rights and prerogatives accorded the Property Owner by this Agreement shall immediately constitute vested rights for the Development of the Real Property.

Paragraph 10(a) of this Agreement does not abrogate any rights either preserved by S.C. Code § 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 91-2 as amended by Ordinance 92-1) shall apply to the Real Property. All Town permits necessary for dock construction shall be issued expeditiously by the Town upon compliance with the Key Location Ordinance.
- (d) Road Codes and Subdivision Regulations.
- (i) The Road Code and Subdivision Regulations of the Town ("Municipal Code, Town of Kiawah Island, South Carolina" Art. 12B and 12C) shall apply to the Real Property except that in lieu of any potential obligation to "four lane," all of the bridges, overpasses, or roads comprising the Kiawah Island Parkway, the Property Owner shall plan and implement Traffic Mitigation Measures in accordance with Exhibit 10.1, if required by it.
 - (ii) In the event that Property Owner conveys a Dwelling Unit, Lot or Development Parcel to third parties on Parcels 18, 29, 32, and 35, all such conveyances of Dwelling Units, Lots or Development Parcels as are on KICA streets to any successor in interest (including lessees) to Property Owner, shall contain a covenant running with the land requiring the third parties, by both contract and covenant, to pay 150% of the annual assessment behind the Vanderhorst gate in lieu of 100% of such annual assessment.
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 supersede or contravene the requirements of 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. 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 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. DEVELOPED LANDS AND UNDEVELOPED LANDS. For purposes of this Agreement, the property on Kiawah Island has been divided into two categories: Developed Lands and Undeveloped Lands.

- (i) The Undeveloped Lands are entitled solely to the vested rights for the Undeveloped Lands and the Developed Lands are entitled solely to the vested rights for the Developed Lands.
- (ii) The Property Owner at any time may elect to convert Undeveloped Lands to Developed Lands by notifying the Town in writing of such election and providing the Town at such time with a legal description of the Real Property subject to the election.

B. VESTED RIGHTS GOVERNING THE DEVELOPMENT OF THE UNDEVELOPED LANDS.

1. RESIDENTIAL USES

(a) Permitted Uses

Except as 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.

(b) New Dwelling Units

- (i) The total number of new single family residential Lots and non-single family residential Dwelling Units, herein collectively referred to as "Vested Units" to be vested by this Agreement and to be located solely on Undeveloped Lands owned by the Property Owner, shall not exceed 1,974 Vested Units, commencing with such residential Lots as are given preliminary plat approval for the first time after January 28, 1994, non-single family residential Dwelling Units approved after January 28, 1994, and such condominium Dwelling Units shown on a recorded master deed for the first time after January 28, 1994.

The purpose and effect of this provision is to provide an absolute limit upon Lots or Dwelling Units to a Development total of 1,974 new, additional single family residential Lots and non-single family residential Dwelling Units on the Real Property. This limit or "cap" shall be in addition to those Lots or units which have received preliminary, conditional, or final plat approval or which appear on a recorded condominium master deed prior to January, 28, 1994. [This limit on dwelling units does not include rooms in inns or hotels. See ¶ 19, infra.]

- (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 Vested Units exceed the 1,974 total established by the preceding paragraph.

(c) Building Development Standards

The ARB shall prescribe and determine Lot area, Lot width, Lot depth, Lot coverage, setback and yard requirements, and may adjust the following criteria:

- (i) LOT AREA: Minimum Lot areas required for each dwelling unit are as follows:
- a. 8,000 square feet in Lots shown with a density of 3 Dwelling Units per acre;

- b. 6,000 square feet in Lots shown with a density between 3 Dwelling Units per acre and 6 Dwelling Unit residential condominium units per acre;
 - c. 4,000 square feet in Lots shown with a density between 6 Dwelling Units per acre and 12 Dwelling Units per acre;
 - d. Lot area required for each Dwelling Unit may be reduced to 2,000 square feet provided that open space is provided equivalent to the amount by which each Lot is reduced. Such equivalent open space shall be provided within 1,000 feet of each such Lot so reduced.
- (ii) LOT WIDTH: The Lot width may be reduced to a minimum of 15 feet at the street right of way, provided that the Lot width at the building line (as indicated on the plat) shall be no less than:
- a. 60 feet for Lots over 8,000 square feet;
 - b. 50 feet for Lots between 4,000 square feet and 8,000 square feet;
 - c. 20 feet for Lots between 2,000 square feet and 4,000 square feet.
- (iii) LOT COVERAGE: All buildings on any lot, including accessory buildings shall not cover more than:
- a. 33% of the area of Lots with more than 6,000 square feet per Lot; and
 - b. 60% of the area of Lots with less than 6,000 square feet per Lot.
- (iv) SETBACK AND YARD REQUIREMENTS: Negative or "Zero" Lot lines are permitted at the discretion of the ARB.
- a. FRONT YARDS: Each Lot shall have a front yard as follows:
 - 25 feet on Lots with more than 8,000 square feet.
 - 10 feet on Lots between 4,000 square feet and 8,000 square feet.

- No front yard is required on Lots between 2,000 square feet and 4,000 square feet provided all such units shall front on a common open space or street with a minimum width of 30 feet.
- b. INTERIOR (SIDE) YARDS: Each Lot shall have two side yards whose sum shall be no less than 14 feet such that one required side yard shall be no less than three (3) feet (provided that there shall be no openings of the house into a side yard which is less than five (5) feet) and that the other required side yard be no less than eleven (11) feet, provided, however, that all houses on adjoining Lots shall have a minimum of thirteen (13) feet between them. the minimum distance between buildings may be reduced to eight (8) feet (and the required yards likewise) provided that the corners of the buildings overlap not more than fourteen (14) feet; that there are no openings in one of such walls at such a location; that there shall be no more than four adjacent units with the side yards so reduced; and that no side yard shall be less than three (3) feet. However, in instances in which two adjacent Lot owners mutually covenant and agree to utilize a common Lot line as a zero Lot line, no setbacks shall conform to these regulations.
- c. CORNER (SIDE) YARDS: Each corner Lot shall have a side yard of not less than twenty-five (25) feet except in cases in which the side Lot line of a Lot abuts common open space which has a minimum width adjacent to the Lot of twenty-three (23) feet, then the corner side yard of such Lot may be reduced to three (3) feet.
- d. REAR YARDS: Each Lot shall have a rear yard of not less than twenty-five (25) feet except in cases in which the rear Lot line abuts open space (either as a buffer between tracts or within the tract) which has a minimum width adjacent to the Lot of thirty (30) feet if wooded or fifty (50) feet if non-wooded area, then the rear yard of such Lot may be reduced to fifteen (15) feet.

(d) Off-Street Parking

The number of off-street parking spaces for any use shall be as outlined in Exhibit 13.5. The design of parking areas shall meet the minimum dimensional standards of Exhibit 13.6.

(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. Single family residential buildings shall not exceed the stories specified in Exh. 13.2 or 45 feet in height from Ground Floor Level, regardless of the Height limits specified in Exhibit 13.2. Other residential structures shall not exceed the number of habitable floors or the Height (measured in feet from Ground Floor Level) shown in Exhibit 13.2.

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

(f) Buffers, Fencing, and Signage

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

The ARB shall 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 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, Exh. 13.7); however, at such time as the Lots or Development Parcels on a Subdivision Plat become part of the Developed Lands, Property Owner agrees that signage shall be in the discretion of the KICA. Temporary signs for special events may be approved by the ARB provided the signs do not have moving parts, blinking or flashing lights, glaring lights, neon or extensive use of bright, offensive colors, and further provided that any temporary sign shall be permitted for a maximum of fifteen (15) days. Signs shall be located to avoid obstructing traffic visibility. No sign, excepting traffic signs, which is taller than three (3) feet above the pavement of the adjacent streets shall be permitted within the Sight Triangle of any street intersection without Town approval.

(g) Tree Replacement Guidelines

The Tree Replacement Guidelines, as currently promulgated by the ARB in the June, 1992 edition of Designing With Nature, shall continue to be applied by the ARB throughout all Real Property; provided, however, they may be adjusted, modified, and updated from time to time by the ARB with the approval of the Town.

All new Development projects shall be designed so that building areas, streets and utilities are located to minimize the loss of oak trees and other trees with a diameter (caliper) of eight (8) inches or more, as measured 3' above grade. Such Development shall not result in the loss of any trees with a caliper of twenty-four (24) inches or more measured at three (3) feet above grade except where the ARB finds that tree density, topography, or other geographic constraints, either preclude saving or allow the removal of such trees. Where such trees are removed, the ARB may require replacement with oak trees of at least two (2) inches caliper and having combined caliper equal to the removed specimen.

On individual Lots or Development Parcels, architects must take great care in designing buildings with an eye towards preserving all oak trees,

especially those that are larger than twenty-four (24) inch caliper. If there is no reasonable design solution that would save these large trees, mitigation shall be required by planting trees in which the sum of the caliper is equal to or greater than the caliper of the trees which are being removed.

Town approval will be necessary for the removal of live oak trees with thirty inch (30") or greater caliper (measured 3' feet above grade) from any single family Lots. If a single family Lot owner can reasonably demonstrate to the Town that there is no practical alternative for placement of a house, then the tree may be removed with Town approval, provided there is ample mitigation that, in the aggregate, is equal to the caliper of tree cut. On single family Lots, the Property Owner must provide the Town a survey of live oak trees with 30" or greater caliper (measured 3' above grade) before obtaining a building permit.

The ARB's tree replacement guidelines as set forth in the June 1992 edition of Designing with Nature shall govern the removal of trees from street rights-of-way and Lots or Development Parcels other than single family Lots. Town approval shall not be necessary for the removal of these trees from other Lots or Development Parcels and street rights-of-way. However, if a live oak of 30" or greater caliper (measured 3' above grade) is removed, then Property Owner shall submit to the Town evidence of mitigation required by the provisions of this section, including either a survey or sworn certification as to the live oak trees of 30" or greater caliper (measured 3' above grade) in the impacted area.

(h) Aesthetics

Except as otherwise provided herein, including, but not limited to, paragraphs 10, 11, 12 and 13, the ARB shall have sole and exclusive jurisdiction with regard to the standards and guidelines set forth in Exhibit 13.8, "Designing with Nature," attached hereto 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 13.8 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.

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 island wide commercial square footage on all Real Property (including any leasable, non-residential building square footage, but excluding Hotel Rooms and Support Space) shall not exceed 300,000 square feet of floor area on both Developed and Undeveloped Lands.

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

(c) Building Development Standards

Building setback standards shall be as established by the ARB and administered, varied and adjusted as necessary or appropriate for all Lots or Development Parcels in the Undeveloped Lands.

For non-residential uses, the minimum Lot area is 20,000 sq.ft., the minimum Lot depth is 120 ft., and the minimum Lot width is 150 ft.

The ARB shall establish limitations for total ground coverage of all impervious surfaces including building footprint, decks, walkways, parking and circulation areas, etc. In no event shall these limitations provide for more than seventy (70) percent impervious surfaces on any commercial Lot or Development Parcel without Town approval.

(d) Off-Street Parking

The number of off-street parking spaces for any use shall be as outlined in Exhibit 13.5. The design of parking areas shall meet the minimum dimensional standards of Exhibit 13.6.

(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 13.9, "Commercial Bulk Standards."

(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 shall approve fencing that is limited to landscaped hedgerows of dense plant material and/or wooden, masonry or wrought iron material. Fencing shall not exceed 10 feet in height for commercial or utility development. Fencing (excluding the use of plant materials) within fifteen (15) feet of any property line is prohibited. Fences taller than three (3) feet from pavement of adjacent streets shall not be located within the Sight Triangle without Town approval.

Signage allowed within parcels that permit residential, commercial or utility/community support uses must meet and comply with the Kiawah Island Graphics Standards, as updated by the ARB from time to time, (current edition, Exh. 13.7); however, at such time as the Lots or Development Parcels on a Subdivision Plat become part of the Developed Lands, Property Owner agrees that signage shall be in the discretion of the KICA. Temporary signs for special events may be approved by the ARB provided the signs do not have moving parts, blinking or flashing lights, glaring lights, neon or extensive use of bright, offensive colors, and further provided that any temporary sign shall be permitted for a maximum of fifteen (15) days. Signs shall be located to avoid obstructing traffic visibility. No sign 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 June, 1992 edition of Designing With Nature, shall continue to be applied by the ARB throughout all Real Property; provided, however, they may be adjusted, modified, and updated from time to time by the ARB with the approval of the Town.

All new Development projects shall be designed so that building areas, streets and utilities are located to minimize the loss of oak trees and other trees with a diameter (caliper) of eight (8) inches or more, as measured 3' above grade. Such Development shall not result in the loss of any trees with a caliper of twenty-four (24) inches or more measured at three (3) feet above grade except where the ARB finds that tree density, topography, or other geographic constraints, either preclude saving or allow the removal of such trees. Where such trees are removed, the ARB may require replacement with oak trees of at least two (2) inches caliper and having combined caliper equal to the removed specimen.

On individual Lots or Development Parcels, architects must take great care in designing buildings with an eye towards preserving all oak trees, especially those that are larger than twenty-four (24) inch caliper. If there is no reasonable design solution that would save these large trees, mitigation shall be required by planting trees in which the sum of the caliper is equal to or greater than the caliper of the trees which are being removed.

The ARB's tree replacement guidelines as set forth in the June 1992 edition of Designing with Nature shall govern the removal of trees from street rights-of-way and Lots or Development Parcels other than single family Lots. Town approval shall not be necessary for the removal of these trees from other Lots or Development Parcels and street rights-of-way. However, if a live oak of 30" or greater caliper (measured 3' above grade) is removed, then Property Owner shall submit to the Town evidence of mitigation required by the provisions of this section, including either a survey or sworn certification as to the live oak trees of 30" or greater caliper (measured 3' above grade) in the impacted area.

(h) Aesthetics

Except as otherwise provided herein, including, but not limited to, paragraphs 10, 11, 12 and 13, the ARB shall have sole and exclusive



jurisdiction with regard to the standards and guidelines set forth in Exhibit 13.8, "Designing with Nature," attached hereto 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 13.8 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.

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 20,000 sq.ft., the minimum Lot depth is 120 ft., and the minimum Lot width is 150 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 shall be as described in Exhibit 13.2. Building Height of non-habitable structures (antennas, towers, communication structures, utility structures, etc.) shall be as determined by the ARB unless it is proposed to exceed Heights of the same proposed structures existing on the date of execution of this Agreement, as specified in Exhibit 13.10 attached hereto. Town approval shall be required to exceed these specified Heights..

(e) 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 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 shall approve fencing that is limited to landscaped hedgerows of dense plant material and/or wooden, masonry or wrought iron material. Fencing shall not exceed 10 feet in height for commercial or utility development. Fencing (excluding the use of plant materials) within fifteen (15) feet of any property line is prohibited. Fences taller than three (3) feet from pavement of adjacent streets shall not be located within the Sight Triangle of any street intersection without Town approval.

Signage allowed within parcels that permit residential, commercial or utility/community support uses shall meet and comply with the Kiawah Island Graphics Standards, as updated by the ARB from time to time, (current edition, Exh. 13.7); however, at such time as the Lots or Development Parcels on a Subdivision Plat become part of the Developed Lands, Property Owner agrees that signage shall be in the discretion of the KICA. Temporary signs for special events may be approved by the ARB provided the signs do not have moving parts, blinking or flashing lights, glaring lights, neon or extensive use of bright, offensive colors, and further provided that any temporary sign shall be permitted for a maximum of fifteen (15) days. Signs shall be located to avoid obstructing traffic visibility. No sign 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.

(f) Tree Replacement Guidelines

The Tree Replacement Guidelines, as currently promulgated by the ARB in the June, 1992 edition of Designing With Nature, shall continue to be applied by the ARB throughout all Real Property; provided, however, they may be adjusted, modified, and updated from time to time by the ARB with the approval of the Town.

All new Development projects shall be designed so that building areas, streets and utilities are located to minimize the loss of oak trees and other trees with a diameter (caliper) of eight (8) inches or more, as measured 3' above grade. Such Development shall not result in the loss of any trees with a caliper of twenty-four (24) inches or more measured at three (3) feet above grade except where the ARB finds that tree density, topography, or other geographic constraints, either preclude saving or allow removal of such trees. Where such trees are removed, the ARB may require replacement with oak trees of at least two (2) inches caliper and having combined caliper equal to the removed specimen.

On individual Lots or Development Parcels, architects must take great care in designing buildings with an eye towards preserving all oak trees, especially those that are larger than twenty-four (24) inch caliper. If there is no reasonable design solution that would save these large trees, mitigation shall be required by planting trees in which the sum of the caliper is equal to or greater than the caliper of the trees which are being removed.

The ARB's tree replacement guidelines as set forth in the June 1992 edition of Designing with Nature shall govern the removal of trees from street rights-of-way and Lots or Development Parcels other than single family Lots. Town approval shall not be necessary for the removal of these trees from other Lots or Development Parcels and street rights-of-way. However, if a live oak of 30" or greater caliper (measured 3' above grade) is removed, then Property Owner shall submit to the Town evidence of mitigation required by the provisions of this section, including either a survey or sworn certification as to the live oak trees of 30" or greater caliper (measured 3' above grade) in the impacted area.

(g) Aesthetics

Except as otherwise provided herein, including, but not limited to, paragraphs 10, 11, 12 and 13, the ARB shall have sole and exclusive jurisdiction with regard to the standards and guidelines set forth in Exhibit 13.8, "Designing with Nature," attached hereto 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 13.8 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.

4. OPEN SPACE

- (a) Parcel open space is defined as land with Pervious Cover. The percentage of Parcel open space is determined by dividing the area of Pervious Cover by the gross area of a Parcel exclusive of Fresh Water and Salt Water Wetlands. Exhibit 13.2 provides the minimum required percentages of Parcel open space for each Parcel.
- (b) The Property Owner shall dedicate conservation open space as provided in Paragraph 16 of this Agreement.
- (c) The Property Owner shall provide and dedicate the following active or passive open space Facilities:

Active or Passive Recreation Sites

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.

Existing Parklands/Open Space

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

Future Parklands/Open Space

Bear Island (except as provided in Paragraph 16(d) of this Agreement)
Captain Sam's Spit (subject to reservations in ¶ 16(h))
Blue Heron Mini Park/View Tower
Cougar Island Park



man

Trails

The Property Owner shall determine the specific alignments of all trails, including access to the trail system from new Development areas; provided that the existing trail system shall be extended, at Property Owner's cost, along Flyway Drive to Glen Abbey.

In the event a road is constructed to Bear Island for regular automobile traffic to serve one or more Dwelling Units there, Property Owner agrees that the trail system shall be extended along this road to Bear Island (this survives the Agreement), provided the owner of the Ocean Course consents to such trail use.

Dedication of trail segments to KICA shall occur in conjunction with plat approval for adjacent subdivisions or rights-of-way.

- (d) The Town agrees that the above future facilities and open spaces specified in this Agreement, in conjunction with existing facilities, open spaces, parks, marshes, natural and man made features and recreational amenities of Kiawah Island, shall satisfy all current and future obligations of the Property Owner relating to the same for monetary exactions and/or the provision or dedication of parks, parklands, community recreational facilities, open spaces and recreational areas on Kiawah Island.

5. MIXED USE DEVELOPMENT

- (a) If more than one designation - "R-1," "R-2," "R-3," "C" and "U" - applies to a parcel in Exhibit 13.2, any permitted land use within a single land use type (e.g., Residential, Commercial or Utility) may be established on the parcel. A mixed use development with more than one type of use shall be permitted with Town approval of the requested mix, arrangement and Building Development Standards for such uses, which approval shall not be unreasonably withheld. The maximum residential, non-residential and hotel square footage for mixed use development on any parcel shall not exceed the FAR established in Exhibit 13.2. Mixed use FAR's shall be calculated by dividing the total floor area of all use types (e.g., Residential, Commercial, Hotel 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). Hotel Rooms and Support Space will be counted towards the maximums as provided in ¶ 19.

6. COMPATIBILITY STANDARDS

- (a) Compliance. Notwithstanding any other provision of this Agreement to the contrary (including, but not limited to, certain provisions of this paragraph 13) the ARB and the Property Owner shall comply with the Compatibility Standards set forth in ¶ 13.B.6.(c) and ¶ 13.B.6.(d).
- (b) Adjustment. The compatibility standards set forth in ¶ 13.B.6.(c) shall be subject to adjustment only by the proper exercise of discretion or authority, as delegated to the Zoning Board of Adjustment or the Town Council by the South Carolina Code.
- (c) Compatibility Standards

The intent of these compatibility standards is to provide the ARB with broad discretion to establish or modify Building Development Standards on Undeveloped Lands, while providing adequate protection to consumers by ensuring that the use and design of new Development will be compatible with that of Lots and Development Parcels sold to third parties.

The proposed land use for each Lot or Development Parcel will be defined on the Subdivision Plat for all new Lots. Land use changes that change the overall classification of use, as specified in Table 13.2, must be approved by the Town. Any change to Building Development Standards shown on a Subdivision Plat for Lots located Adjacent to any Lot or Development Parcel under contract to a Type A Member shall comply with ¶ 13.B.6. of this Agreement. However, these compatibility standards, including Town approval for a change to a Building Development Standard, shall not be necessary for single family Lots on Subdivision Plats that were approved in any form by the Town before January 28, 1994.

New Development of Undeveloped Lands which is Adjacent to Lots included in a Subdivision Plat or Development Parcels is subject to the following compatibility standards. New Development located Adjacent to previously platted Lots or Development Parcels shall:

- (i) Have an equal or lower Density than Adjacent Lots or Development Parcels;

- (ii) Be designated for the same or a less intensive use than Adjacent Lots or Development Parcels; and
- (iii) Comply with the Building Development Standards and Height established for Adjacent Lots or Development Parcels.

If proposed Development does not meet conditions (i), (ii) and (iii), then the following bufferyards shall be required:

Required Bufferyards(1)

Existing Development	Proposed Development(1)				
	R-1	R-2	R-3	Commercial, Office or Resort	Other Uses
R-1	none(2)	A	B	C	(3)
R-2	A	none	A	B	(3)
R-3	B	A	none	A	(3)
Commercial, Office or Resort	C	B	A	none	(3)
Other Uses	(3)	(3)	(3)	(3)	(3)

Notes for Required Bufferyards Table

- (1) Bufferyards and open spaces shall be provided on the site of the new Development, regardless of existing setbacks, bufferyards or open space otherwise provided on the existing developed site, except that existing golf courses or dedicated open space areas may be counted towards bufferyard requirements. Bufferyards do not include required building setbacks. Natural bufferyards are those for which the vegetation has been permitted to grow through natural succession to include trees which are at least twenty (20) feet tall with thickly vegetated understory growth. Densely planted bufferyards shall include a variety of trees and understory plantings which will mature to create an opaque bufferyard within five (5) years of planting. Open bufferyards include golf courses, Water Bodies, and other areas where vegetation does not completely visually screen Adjacent land uses. Design and plant material shall be determined by ARB; provided, however, that the Town shall reasonably determine whether or not the specific planting criteria of this paragraph for vegetative bufferyards have been met by Property Owner.
- (2) If new Development located Adjacent to previously platted Lots does not comply with Building Development Standards and Height established for Adjacent Lots, a type "A" bufferyard must be provided.
- (3) Type of bufferyard to be determined by the Town based on impact of use, but shall not exceed 60 feet in width for natural or densely planted bufferyard or 120 feet for open bufferyard.

Bufferyard Definitions

Design and plant materials shall be determined by the ARB.

Bufferyard Type	Minimum Requirement
A	30 ft. wide with natural or densely planted vegetation or 50 feet of open buffer yard.
B	40 ft. wide with natural or densely planted vegetation or 70 feet of open buffer yard.
C	60 ft. wide with natural or densely planted vegetation or 120 feet of open buffer yard.

(d) Consumer Reliance/Consumer Consent

- (i) Subject to the provisions of ¶ 13.B.6.(c), at the time of conditional and final plat submittal, the Property Owner may on the plat indicate such Building Development Standards as the Property Owner shall determine to be appropriate. If no Building Development Standards are described on the conditional or final Subdivision Plat, then the Building Development Standards for the platted Lots shall be as determined by the ARB.
- (ii) If a conditional or final Subdivision Plat indicates an applicable Building Development Standard, then a buyer or seller of a Lot (including the Property Owner) may elect to agree in writing that no reliance will be placed on such Building Development Standards as may apply (directly on the plat and/or by ARB adjustment) to any Adjacent Lot or Development Parcels and/or such buyer may waive enforcement of such Standards.
- (iii) The owner of a Lot or Development Parcel who seeks to deviate from such Building Development Standards as appear on the conditional or final plat which includes his Lot or Development Parcel, may avoid seeking a variance from the Zoning Board of Adjustment only if the Type A owners of Adjacent Lots execute a consent (as described in subparagraph (ii)). A copy of the consent must be provided the ZBA and ARB.



(e) Replatting

- (i) 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 January 28, 1994. Any increase in the number of Lots from such re-platting or re-configuration shall be counted toward the 1,974 cap in Section 13.A.(b)(i).

C. VESTED RIGHTS FOR THE DEVELOPED LANDS.

The Lots and Development Parcels constituting a portion of the Real Property on Exhibit 4.1 not designated as numbered Parcels are the Developed Lands as of the date hereof, and the Town agrees, subject to the provisions of paragraph 10(a), not to enact setback standards any more restrictive than those shown on Exhibit 13.11: Kiawah Island Property Setback Requirements, attached hereto. Modification of the setback standards for Developed Lands shall require approval of the ARB and the Town's Zoning Board of Adjustment.

1. RESIDENTIAL USES(a) Permitted Uses

In order to foster the utmost compatibility and cohesion in existing residential neighborhoods, all land of the Property Owner in the Developed Lands that is designated "R" on Exhibit 13.12 "Existing Residential Lots and Condominium Units", shall only be used for residential purposes. For those Developed Lands of the Property Owner that are currently bound by covenants prescribing a particular type of residential use, the residential uses shall be limited to those permitted under those existing covenants. For those Developed Lands of the Property Owner that are not currently bound by covenants prescribing a particular residential use, the residential use must be single family.

Residential unit types within Developed Lands are limited to those as outlined in the Single Family, Patio Homes, and Multi-family Covenants.

(b) Density

Subject to ¶ 15(a)(ii), the total number of Dwelling Units in Developed Lands shall not exceed the total number of existing single family residential Lots and residential condominium Dwelling Units as shown

on Exhibit 13.12: Existing Residential Lots and Residential Condominium Units.

(c) Building Development Standards

The Building Development Standards for setback and yard requirements are as described in Exhibit 13.11. Variances to these standards will require Town of Kiawah Island Zoning Board of Adjustment approval and ARB approval.

Building coverage (i.e., building foot print) shall not exceed the following:

- (i) 33% of the area of Lots or Development Parcels with more than 6,000 square feet per Lot; and
- (ii) 40% of the area of Lots or Development Parcels with less than 6,000 square feet.

(d) Off-Street Parking

The number of off-street parking spaces for any use shall be as outlined in Exhibit 13.5. The design of parking areas shall meet the minimum dimensional standards of Exhibit 13.6.

(e) Building Height

Building Height is limited to 2.5 stories for single family structures or 3 stories for other residential structures. The Height of single family structures shall not exceed 35 feet from Ground Floor Level. The Height of other residential structures shall not exceed 40 feet from Ground Floor Level, except as approved by the Board of Zoning Adjustment. This maximum Height of 35' for single family structures shall not apply to the Lots described on Exh. 13.15 in the Osprey Beach Subdivision, which shall have a maximum permissible Height of 45' from Ground Floor Level, a maximum elevation that is compatible with existing, established structures in this subdivision along the beachfront.

Height is the number of habitable floors (i.e., stories) exclusive of the area below the finished first floor. One-half story is a habitable floor which has heated square footage that is no greater than one-half the heated square footage of the largest story.

(f) Buffers, Fencing, and Signage

Buffers, fencing and signage shall comply with ¶ 13.B.1.(f) of this Agreement.

(g) Tree Replacement Guidelines

The Tree Replacement Guidelines, as currently promulgated by the ARB in the June, 1992 edition of Designing With Nature, shall continue to be applied by the ARB throughout all Real Property; provided, however, they may be adjusted, modified, and updated from time to time by the ARB with the approval of the Town.

On individual Lots or Development Parcels, architects must take great care in designing buildings with an eye towards preserving all oak trees, especially those that are larger than twenty-four (24) inch caliper, as measured 3' above grade. If there is no reasonable design solution that would save these large trees, mitigation shall be required by planting trees in which the sum of the caliper is equal to or greater than the caliper of the trees which are being removed.

Town approval shall be necessary for the removal of live oak trees with twenty-four inch (24") or greater caliper (measured 3' above grade) in the Developed Lands. If an owner can reasonably demonstrate to the Town that there is no practical alternative to removing such tree, then the tree may be removed with Town approval provided there is ample mitigation that, in the aggregate, is equal to the caliper of tree cut. On single family Lots, the Property Owner must provide the Town a survey of live oak trees with 30" or greater caliper (measured 3' above grade) before obtaining a building permit.

(h) Aesthetics

Except as otherwise provided herein, including, but not limited to, paragraphs 10, 11, 12 and 13, the ARB shall have sole and exclusive jurisdiction with regard to the standards and guidelines set forth in Exhibit 13.8, "Designing with Nature," attached hereto 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 13.8 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.

2. COMMERCIAL USES

(a) Permitted Uses

All uses presently shown on Exhibit 13.1 under the heading "Commercial" shall be permitted as a matter of right on all parcels of the Property Owner in the Developed Lands designated "C" on Exhibit 13.13.

(b) Size Limitations

Total island wide commercial square footage on all Real Property (including any leasable, non-residential building square footage, but excluding Hotel Rooms and Support Space) shall not exceed 300,000 square feet of floor area on both Developed and Undeveloped Lands.

(c) Building Development Standards

Building setback standards are established by Exhibit 13.14 and shall be subject to variance only if approved by the ARB and the Zoning Board of Adjustment.

Building coverage standards shall be established by Exhibit 13.14. Limitations for total ground coverage of all impervious surfaces, including building footprint, decks, walkways, parking and circulation areas, etc., shall be subject to variance only if approved by the ARB and the Zoning Board of Adjustment.

(d) Off-Street Parking

The number of off-street parking spaces for any use shall be as outlined in Exhibit 13.5. The design of parking areas shall meet the minimum dimensional standards of Exhibit 13.6.

(e) Building Height

Height is the vertical distance from Ground Floor Level to the top of a non-residential or mixed use building. Building Height shall not exceed 35 feet from Ground Floor Level unless otherwise approved by the Town.



(f) Buffers, Fencing and Signage

Buffers, fencing and signage shall comply with ¶ 13.B.1.(f).

(g) Aesthetics

Except as otherwise provided herein, including, but not limited to, paragraphs 10, 11, 12 and 13, the ARB shall have sole and exclusive jurisdiction with regard to the standards and guidelines set forth in Exhibit 13.8, "Designing with Nature," attached hereto 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 13.8 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.

(h) Tree Replacement Guidelines

The Tree Replacement Guidelines, as currently promulgated by the ARB in the June, 1992 edition of Designing With Nature, shall continue to be applied by the ARB throughout all Real Property; provided, however, they may be adjusted, modified, and updated from time to time by the ARB with the approval of the Town.

On individual Lots or Development Parcels, architects must take great care in designing buildings with an eye towards preserving all oak trees, especially those that are larger than twenty-four (24) inch caliper, as measured 3' above grade. If there is no reasonable design solution that would save these large trees, mitigation shall be required by planting trees in which the sum of the caliper is equal to or greater than the caliper of the trees which are being removed.

Town approval shall be necessary for the removal of live oak trees with twenty-four inch (24") or greater caliper (measured 3' above grade) in the Developed Lands. If an owner can reasonably demonstrate to the Town that there is no practical alternative to removing such tree, then the tree may be removed with Town approval provided there is ample mitigation that, in the aggregate, is equal to the caliper of tree cut. On non-residential Lots, the Property Owner must provide the Town a

survey of live oak trees with 30" or greater caliper (measured 3' above grade) before obtaining a building permit.

14. Facilities and Services. Although the nature of this long term Project prevents the Property Owner from now providing exact completion dates, the Property Owner certifies that the following services and Facilities will be in place (or if not fully in place, the cost of their construction fully bonded or letter of credit posted pursuant to the Town Subdivision Regulations) at the times provided below and as to roads, sewer, and water infrastructure, at the times Lots or Dwelling Units in subdivided real property or condominium units on recorded master deeds are offered for purchase to the public. Subject to compliance with applicable Laws and 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 assures the Town that adequate Facilities (as defined in Section 1.(n)) shall be available concurrent with the impacts of Development. Nothing in this Agreement shall be construed to create an obligation for the Town to construct Facilities or on Property Owner to pave the currently unpaved sections of Eugenia Avenue.

- (a) Rights-of-Way. The Property Owner shall at its expense develop and provide roads and other related infrastructure, and pursuant to and at such times required by the KICA Covenants, transfer same to the KICA if they are intended to be KICA Common Properties or Purchased Common Properties or Restricted Common Properties.
- (b) Water and Sewer. 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.
- (c) Second Fire Station. The Property Owner shall, at no cost, no later than June 30, 1996, dedicate to the St. John's Fire Department fee simple title for the land necessary for a second fire substation, to be located at one of the sites designated in Exhibit 14.1, such site being of a size and configuration approved by the Property Owner and St. John's Fire Department prior to the execution of this Agreement.
- (d) Conveyance of Existing Parkway. The Property Owner agrees that its directors on the board of the KICA will support and vote for the conveyance of an option to acquire fee simple title (for a nominal consideration for both the option and fee simple title of not to exceed \$1) to the Town (by execution of the contract attached hereto as Exhibit 14.2) of the existing Kiawah Island Parkway from Bohicket Road to the first gate as shown in Exhibit 14.3. This transfer may take the form of a conveyance from KICA to Property Owner who shall simultaneously make a conveyance to the Town.

This conveyance shall be voted on by the KICA members, as with any other conveyance of Common Property, by April 1, 1995. The Town and Property Owner agree to actively support such KICA referendum.

- (e) Addition of Entrance Road and Location of New Security Gate. The Town and the Property Owner recognize that certain shopping, office, convenient travel and other benefits shall accrue to Kiawah property owners if (i) additional, aesthetically-pleasing safe and well designed ingress and egress between a point northwest of the Kiawah Island Bridge and Bohicket Road is provided and (ii) if an additional Kiawah security checkpoint is added on the Kiawah Parkway as it crosses the Andell tract shown on Exhibit 14.4. In furtherance of such goals, the Town agrees that it will consent to construction of an additional entrance road to Kiawah Island for ingress and egress from Bohicket Road, provided the final plan, including adjoining uses, is essentially compatible with the schematic drawing that is shown on Exhibit 14.4; provided, however, any such agreement is conditioned upon the existing Kiawah Island Parkway, from Bohicket Road to where it will merge with the new parkway, not being obstructed or impeded in any material fashion and being constructed as shown in Exhibit 14.4 attached hereto. Town shall allow curb cuts on the Kiawah Island Parkway, as expressly designated on Exhibit 14.4. The Kiawah Island Parkway will remain accessible to two-way traffic for its entire distance except as shown on Exhibit 14.4. The Kiawah Island Parkway will not be connected to the new entrance road in any manner other than the merging of the two as indicated on Exhibit 14.4.

The Betsy Kerrison Parkway Extension Road will be designed in accordance with the above agreement and constructed entirely by the Property Owner or others. All such planning and construction of the new extension and related improvements shall be paid for either by the Property Owner or others, but not by the Town. Provided, the new extension shall be put in active use once construction of the mixed use shopping area has commenced.

- (f) Exactions. In return for the provision of the facilities and services set forth in this section, 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, subject to S.C. Code §§ 6-31-80 and 6-31-100 (Cum.Supp. 1993); provided, however, the Town is not the facilities and services provider.

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) Rhett's Bluff Landing:

The Rhett's Bluff Landing property consists of approximately 6 acres as shown on the plat attached hereto and made part hereof as Exhibit 15.1. The Landing consists of undeveloped acreage, developed parking areas, an entry road and gate, a pavilion, and two L-shaped piers (for, respectively, tying up of boats and fishing and crabbing purposes, the former dock having a smaller pavilion for viewing), a boat ramp, lighting and electrical service, bollards, signage and other improvements.

The Property Owner further agrees to convey no later than March 1, 1995, all of the above mentioned land and the then existing improvements thereon to the KICA as Common Property with the reservation being that the Property Owner and its guests, shall have the right in perpetuity, without charge, to use and reserve the Rhett's Bluff Landing as shown in Exhibit 15.1 for parties, special events, and other similar functions, and for fishing, boating, crabbing, etc. The Property Owner shall, however, be fully responsible for preparation and cleanup of the site and for payment for all KICA security, cleanup and other expenses (including all repairs) as may be generated as a result of such Property Owner usage. Property Owner party usage of Rhett's Bluff Landing shall be limited to 15 days per year; and, Property Owner shall give KICA reasonable written notice of its desire to reserve usage. Property Owner shall not be entitled, as a matter of right, to party use on more than two consecutive days.

Pending such conveyance, the annual License Agreement dated July 31, 1993, from the Property Owner to the KICA shall be annually renewed for \$1.00/year provided KICA agrees to be responsible for maintenance repairs except those indicated in the previous paragraph as shall remain entirely the Property Owner's responsibility. The Property Owner shall execute and record the Termination of Declaration of Covenants and Restrictions for Rhett's Bluff Landing, Exhibit 15.1a, contemporaneously with its conveyance to KICA.

(ii) Beach Parking:

In addition to the nine spaces recently conveyed to the KICA on Ocean Marsh Road and the 110 spaces at the new Kiawah Island Beach Club facility, the Property Owner commits to convey (by quit claim deed), the following additional beach parking facilities inside and east of the Vanderhorst Gate: no later than January 1, 2000, the Property Owner will improve with coquina shell or better and any landscaping it deems

tasteful and appropriate, a 30 space parking area generally seaward of The Ocean Course clubhouse for restricted use during daylight hours of the summer months, except during tournaments or special events. The parking spaces created as aforesaid shall be on land over which the Property Owner has an easement or other rights and privileges. Such rights and privileges shall be conveyed to the KICA no later than January 1, 2000. Property Owner shall not interfere with the Ghost Run Emergency Vehicular Access Point.

No later than June 1, 1995, the Property Owner shall convey by quit claim deed to KICA inside and east of the Vanderhorst gate, one or more off-street locations having a combined total of at least 50 beach parking spaces and shall construct the spaces with coquina shell or better. These 50 spaces shall be on Parcel 40 and are likely to be adjacent to the second fire station site (See, Exhibits 14.1 and 15.2) in Osprey Beach. Property Owner shall also include in its conveyance of the property for these beach parking spaces sufficient space that would allow the placement of a future bathroom facility. Town shall support the location of beach parking at this site.

No later than March 1, 1995, the Property Owner will convey to KICA, by quit claim deed, the western $\frac{1}{2}$ of David Street, as shown on Exh. 15.3. To the extent parking spaces in the former David Street are included in the plan for the renovation of the KICA members' pool tract, Property Owner shall also reimburse KICA for the construction of up to 35 parking spaces to be located therein, which are to be constructed in the same manner as those spaces on Ocean Marsh Drive.

No later than March 1, 1995, Property Owner shall also convey to KICA an enlarged pool parcel site down to the critical line on the ocean side of the current KICA members' pool parcel, as described in Exhibit 15.3 attached hereto.

In return for these conveyances to KICA, the Town would agree to view favorably the subdivision of the lot on the southeast corner of Eugenia Avenue and David Street and permit adding 40 ft. of David Street to such subdivided lot, so long as no houses are permitted on the western-most 40' of the new, western-most lot.

(iii) Fishing and Crabbing Piers/Observation Towers:

At least one Observation Tower and one fishing/crabbing pier shall be constructed at the Property Owner's sole cost on or before January 1, 2000 at sites selected by the Property Owner along Blue Heron pond.

Such structures are to be conveyed by quit claim deed to the KICA as Common Property at such time as the other Common Property serving the approved and platted Lots around Blue Heron pond, is conveyed by the Property Owner to the KICA.

(iv) New Blue Heron Park:

The Property Owner hereby commits to provide, plan, and develop a passive park adjacent to the fishing/crabbing pier or the Wildlife Observation Tower mentioned in ¶ 15(a)(iii) above; the new park shall consist of at least 2 acres of highlands located in the area shown on Exhibit 15.4 and in addition shall have provision for access (this does not require Property Owner to provide a bike trail) and 3-4 parking spaces improved with coquina shell or better prior to conveyance.

(v) New Cougar Island 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 Cougar Island, Parcel 43, to consist of at least 2 acres located in the area shown on Exhibit 15.10. The Property Owner shall also provide five 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 one (\$1.00) Dollar, to the KICA no later than January 1, 2000.

(vi) 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 Marsh 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 95 years from the date hereof. 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. So long as the essential purposes of such covenants are fulfilled, the Property Owner may consent to minor alterations or to correct boundaries, etc.

(vii) Existing Park Facilities:

The Property Owner hereby commits to convey by deed to the KICA the following park land and park facilities described in Exhibit 15.5 no later than January 1, 1996, unless such parklands and park facilities are already subject to a 99 year Lease to KICA:

Glossy Ibis Minipark	Marsh View Tower Overlook
Marsh Island Park	Willet Pond Minipark
Canvasback Pond Minipark	
Master Leisure Trail System	
Internal Crabbing/View Stands	

(viii) Sora Rail Tract:

On or before March 1, 1996, the Property Owner will convey the Sora Rail Road maintenance tract shown in Exhibit 15.9 by quit claim deed to KICA for \$1.00 for maintenance purposes.

(b) Exchange of The Town's Kiawah River Commons Property

(i) Conveyance of Town's Property. If the Town desires to convey its Lot at Kiawah River Commons to the Property Owner, free of all liens and encumbrances except those that may have existed at the time the Property Owner originally conveyed the Lot to the Town, then the Property Owner hereby agrees to provide the Town a 100% credit in the amount of the Town's Kiawah River Commons Lot purchase price (less any transfer tax due from the Property Owner) which credit shall be utilized as full compensation for purchase of any one of the 3.5 acre Beachwalker parcel or the 3.0 acre Andell Reception Center parcel, both identified on Exhibit 15.6 attached hereto. Property Owner, upon receiving notice from the Town of the Town's intent to exchange property, shall convey the same by quit claim deed free of all covenants and encumbrances except those set forth in subsection (iii) herein within sixty (60) days of receipt of said notice.

(ii) Kiawah Reception/Civic Center. The Town and the Property Owner are desirous of actively participating in the creation of and operation of a new Kiawah Reception Center and Town of Kiawah Island Civic Center to be located along the Kiawah Island Parkway approximately one-half (1/2) mile northwest of the Kiawah Island Bridge on a parcel containing approximately 8-10 acres on the west side of the Parkway and currently forming part of what is known as the "Andell Tract" as is depicted on Exhibit 15.7.

The Property Owner (with or without other partners) intends to seek to acquire and develop the Reception Center Tract and Kiawah Island Civic Center if it can be acquired at a fair market price from its current owners. Upon receipt of any required permits and upon such sale and development commencing, the Property Owner will make every reasonable and good faith effort to provide the Town an opportunity to exchange the current site for three (3) acres of high ground at the above-referenced site on an even exchange basis.

The location of the subparcel to be conveyed to the Town shall be as reasonably determined by the parties; however, the conveyance of such subparcel must be accomplished no later than January 1, 1995.

In the event that the above-referenced subparcel is not made available on or before the referenced date, the Town, at its sole discretion, shall have the option of exchanging its current Civic Center site, on an even exchange basis, as provided in ¶ 15(b)(i).

- (iii) Other Conditions. If the Andell Reception Center Parcel is selected, the design must be approved by ARB, whose consent would not be unreasonably withheld and whose changes or objections would be justified. If the Town selects the Beachwalker site, any building the Town may erect there shall substantially conform to the design standards attached as Exhibit 15.8 "Beachwalker Town Hall Design Standards".

If the right to exchange is exercised, the Town will agree (as to either parcel) to a permanent restrictive covenant prohibiting real estate sales or rentals activities, a covenant giving the Property Owner the right-of-first refusal, and (if the Andell site is chosen) the grant of permission for parking to Property Owner, its guests, and other permittees provided this parking does not materially interfere with the parking necessary for the Town.

The Town shall exercise this right to exchange by June 30, 1996. The Town shall exercise its right to exchange as to a particular tract within 90 days if Property Owner presents Town with a legitimate purchase offer from a third party.

The failure or inability of Property Owner to purchase the proposed Andell Reception Center parcel shall not be a breach of this provision or the Agreement.

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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 1.3 of this agreement, identified on Exhibit 16.1. On or before the expiration of the term of this Agreement, 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 Ordinance, 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 2008, subject to all the same reservations, except for "undevelopable" highlands and isolated highlands as shown on Exh. 16.1 (KICA 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 imposes 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) 10 Mile Strip of Beachfront Property:

It is understood and agreed that there is a strip of scenic dunes and high land owned primarily by the Property Owner (some of which is encumbered by the General Covenants, certain view and access easements and other agreements of record) which extends along the Kiawah Island beachfront for approximately 10 miles as generally depicted on Exhibit 16.2. This strip of high land varies in width, but often is 200' to 300' wide and is generally seaward of most

residential, resort, or commercial property lines. It generally comprises the area of land abutting most seaward platted residential Lot lines and the mean high water mark of the Atlantic Ocean.

The Property Owner hereby agrees that this strip of highland and dunes will, on or before January 1, 1996, be conveyed by quit claim deed to the KICA as Common Property, subject only to matters of record prior to the effective date of this Agreement and the right of the Property Owner and other nearby owners to enjoy ingress and egress, permitted boardwalks and gazebos, across same in appropriate locations to access the beach or for other lawful purposes. The conveyance shall be by deed at the Property Owner's election (for \$1.00 consideration), and recorded in the Charleston County RMC office.

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 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.

Property Owner hereby acknowledges that certain License/Access Agreement dated December 31, 1993, as set forth in Exh. 31.1 to be in full force and effect. Any covenants or deed reservations recorded prior or subsequent to the License Agreement by Property Owner and contrary thereto shall be deemed ineffective.

The emergency beach accesses identified in the License/Access Agreement shall not be obstructed in any manner inconsistent with the rights of the Town as set forth in the License/Access Agreement. The Town shall have the absolute right to access the beach at those emergency beach access points pursuant to the License/Access Agreement.

Property Owner further acknowledges that the Town shares concurrent jurisdiction with the South Carolina Coastal Council 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 Ordinance 91-1 as amended by Ordinance 92-1 (Exhibit 16.3, attached 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 16.4.] 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 exceptions listed below, to convey same on or before January 1, 2016 to the KICA as additional Common Property under the Covenants.

Such conveyance (by quit claim deed) shall be subject to the right on the part of the Property Owner to use that portion of Bear Island identified on Exhibit 16.4 as needed to replace any of the holes of The Ocean Course as may in whole or part be damaged by any future storm, natural disaster, natural changes in either the channel or ocean front or dunes, or by any other causes. [For example, if the 5th or 6th holes were entirely destroyed by the creation of a new Stono inlet channel resulting from a hurricane, but portions of Bear Island remained that could be used to create a new, replacement golf hole, then, in such event, it is understood and agreed that such portions of Bear Island may, in the Property Owner's discretion, be so used, added to or made permanently available to the then owner of The Ocean Course property either before or after the year 2016. All consideration for such sale to the owner of The Ocean Course shall belong to the Property Owner, its successors and assigns.] Such portion of Bear Island as shown on Exhibit 16.4 that is subject to use for construction of destroyed holes of the Ocean Course shall not be available or used for an expansion of the Ocean Course, unless land is not available for reconstruction at the site of the Ocean Course.

In addition, of the approximately 207 highland acres estimated to comprise the northeast part of Bear Island, as shown on Exhibit 16.4, the Property Owner shall have the limited right to subdivide no more than 20% of such acres for construction of up to 18 small cottage sites and may convey the same as with other Kiawah lots, to 3rd parties; in addition the Property Owner, its successors and assigns, may erect limited active recreational facilities within the said 20% of such Bear Island acreage. (e.g., tennis facilities, par 3 golf hole, etc.). Private roads, maintained by the Property Owner or an association created by the Property Owner, its successors or assigns, shall be used to access these cottage sites.

A master plan for Bear Island shall be submitted by the Property Owner for Town approval prior to any activities being undertaken thereon. The Town shall not unreasonably withhold approval of any such master plan.

Except as provided above, 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 such natural 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.

- (e) Ocean Course Perimeter Properties. There currently exists, surrounding The Ocean Course, approximately 96 acres of dunes, lagoons, wetlands, creeks, low lands, and other environmentally sensitive areas. The same shall, pursuant to the schematic plan attached as Exhibit 16.5, be made subject to a permanent restriction of the type to be approved by the Audubon Society of New York State or a similar 501(c)(3) entity designated by the Property Owner. The purpose of the restriction shall be to assure that environmentally sound practices are maintained at all times respecting use of such surrounding property; provided, however, that no such restriction shall supersede or replace the jurisdiction or authority of any governmental entity, including Town.
- (f) 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 16.6: Programmatic Agreement.
- (g) Captain Sam's Spit. The Property Owner commits to the permanent reservation of the tract of land known as Captain Sam's Spit, shown in Exhibit 16.2 as active and/or passive open space, nature study, or parks. Property Owner agrees to convey Captain Sam's Spit to KICA, by quit claim deed by January 1, 2008; provided, however, that Property Owner may convey the eastern half of the spit to Charleston County Park & Recreation Commission prior to January 1, 2008.
- (h) Town's Wildlife Committee. The ad hoc Wildlife Committee that presently exists shall be abolished no later than January 1, 1995.

The Town may appoint a Wildlife Committee to be composed of _____ members, all of whom shall be appointed by Town Council.

The Wildlife Committee shall be funded primarily by the Town and shall be responsible for providing various wildlife services and maintenance, including

but not limited to turtle program, management of critical habitat areas, fisheries, etc.; provided however, that Town shall coordinate with all appropriate State and Federal agencies, Associations and the Kiawah Island Community Association and the Property Owner in carrying out its functions through the Wildlife Committee.

17. 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 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.

18. Kiawah Island Community Association, Inc.

(a) Transition and Reserve Funds

- (i) Property Owner Responsibility. Once the Initial Transition described in subsection (ii) occurs, Property Owner shall voluntarily forego exercising two of its votes under the circumstances described below. If, and only if, the "Type A" Directors do not all abide by the Dispute Resolution Procedures outlined herein on a particular issue, then Property Owner shall have the right to exercise all four of its votes on the particular issue in question and shall not be required to abide by such Dispute Resolution Procedures. This paragraph shall be construed so as to allow Property Owner to act, when necessary, so as to avoid a breach of this Agreement caused by the acts of third parties, not subject to control of the Property Owner.
- (ii) Initial Transition. Starting March 1, 1996, there shall be Initial Transition by division of control of the board of KICA between the directors controlled by the Property Owner and the Type A Directors based on different KICA functions. This division of control shall be

implemented through a Weighted Vote System. Subject to the provisions of vi, infra, Property Owner shall continue to have the right to appoint four directors, the Type A owners three.

Under the Weighted Vote System, Property Owner shall continue to exercise all four of its votes solely on questions relating to landscaping, lakes and lagoon maintenance, and Facilities maintenance. Facilities maintenance shall not include expenditures from reserve funds; provided, however, that at the time of execution of this Agreement, \$273,000 shall be escrowed from the reserve funds to resurface Governor's Drive if requested by the directors appointed by Property Owner. Resurfacing shall be completed by January 1, 1996, or said escrowed funds shall be taken out of escrow and returned to reserve funds.

With regard to the KICA board's decisions on the expenditure of the Major Repair and Replacement Fund (sometimes referred to as "reserve funds" or "reserves"), the directors appointed by the Property Owner shall have 3 votes and the Type A elected directors shall have 3 votes. During Final Transition, the expenditure of reserve funds shall be determined by voting where the vote of each Type A Director counts as 1/6 and the vote of the Property Owner appointed directors counts as 1.

On all issues (including, but not limited to, election of officers, beach parking and Rhett's Bluff Landing) other than landscaping, lakes and lagoon maintenance, Facilities maintenance, and expenditure of reserve funds, Property Owner shall only exercise two of its four votes, subject to the provisions of this Agreement pertaining to Dispute Resolution Procedures, reserve funds, and those decisions that require a dual majority under subsection v. A vote by three of the Type A Directors, with two other directors voting nay and the remaining two directors not voting or abstaining shall be deemed a majority vote. In the event that Roberts Rules of Order or any covenant requires four votes for any matter to be deemed to have a majority, then Property Owner agrees to record one vote with the majority under the Weighted Vote System. If this Agreement is terminated prior to the expiration of its term as established by § 21 of said Agreement, then Property Owner shall be entitled to appoint four directors and exercise its four director votes on all matters.

- (iii) KICA Authority. Starting March 1, 1996, the board of the KICA shall make decisions related to the operation of KICA (e.g., security; continued access by KRA's guests, potential buyers, invitees, and licensees; easements (utilities, drainage, and access); landscaping;

Facilities maintenance; relationship with the Town; employee benefits; operation and staffing of the Property Owners' pool; replacement and acquisition of equipment; staffing; increases in annual assessments) pursuant to the Standards Manual, attached hereto as Exhibit 18.1, where applicable.

Said Standards Manual shall contain a provision stating that the board shall use its best efforts to add a minimum of \$100,000 per year to the reserve funds, to be moved to said funds from the operating budget at the beginning of each fiscal year. Directors appointed by Property Owner shall not unreasonably withhold their approval of said annual addition to the reserve funds. The Standards Manual sets forth the existing standards as established by the historic operation, policies and practices of the KICA. The Standards Manual will be in effect for the duration of the Agreement, regardless of whether the Agreement is terminated before its expiration date. Access rights granted to Property Owner by the Standards Manual shall exist in perpetuity. The Standards Manual shall establish the pro rata allocation of funds within the KICA budget, based on past years' budgets, between functions over which Property Owner may exercise its four votes and those that the Type A Directors have majority control under the Weighted Vote System.

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. The Property Owner voluntarily refrains from asserting certain rights under the KICA Covenants only so long as this Agreement is in effect and the Type A Directors abide by the dispute resolution procedures provided by this Agreement and the Standards Manual. On January 1, 2008, KRA will sign a permanent waiver of its right to appoint a majority of the KICA board, if board-control transition has not yet occurred under the KICA Covenants.

- (iv) Dispute Resolution. A dispute resolution procedure shall be implemented through the Standards Manual that would allow members of the KICA board of directors to obtain the prompt resolution of disputes over whether a mandatory provision of the Standards Manual has been violated. The Dispute Resolution Procedure shall provide for

the implementation of the decision obtained within such period of time as specified in the Arbitration Order.

The dispute Resolution Procedure shall be by binding arbitration by a single arbitrator selected from the U.S. District Court's list of attorneys serving as mediators (if the parties cannot agree, then the name shall be blindly selected and that person shall act as the arbitrator unless both sides reject the name, in which event another name will be selected; provided, however, that the parties shall not reject more than 5 names). The decision of the arbitrator, by Arbitration Order, shall specifically state in writing the precise action to be taken (or not taken). The Arbitration Order shall be enforceable and may be confirmed as a judgment under S.C. Code § 15-48-120 (Cumm.Supp. 1992). The Parties agree to waive the requirement of the printed notice provision described in S.C. Code § 15-48-10(a) (Cumm.Supp. 1992).

- (v) Dual Majorities Required. Dual majorities (i.e., a majority of the Type A Directors and a majority of the Property Owner appointed directors) shall be necessary:
 - (a) To hire and fire the administrator, provided Bob Cowan shall be designated as initial administrator at the time of execution of this Agreement.
 - (b) To hire and fire counsel, provided Trenholm Walker shall be designated as initial counsel at the time of the execution of this Agreement. If the legal representation of KICA involves a transaction or matter directly between Property Owner and KICA in which Property Owner and KICA have a conflict of interest or potential litigation between Property Owner and KICA, KICA shall, at KICA's cost, be represented in such transaction or matter by counsel selected per Exhibit 4 to the Standards Manual.
 - (c) To propose changes to the KICA Covenants.
 - (d) To relocate the KICA offices and/or maintenance/storage areas.
 - (e) To change the Standards Manual.
 - (f) To hire and fire the head of security, provided Bill Westberg shall be designated the head of security at the time of execution of this Agreement.



- (vi) Interim Transition/Final Transition. Interim Transition shall occur on December 31, 2000, when Property Owner shall give up control over one of its current four director positions. Property Owner shall after Interim Transition appoint three directors on the KICA board until Final Transition shall occur on January 1, 2004, when Property Owner shall give up control over three of its current four director positions. Property Owner shall appoint one director on the KICA board thereafter. During Interim and after Final Transition, the Weighted Vote System shall not be used.

Upon Interim Transition, the Property Owner shall grant permission to the Type A Members to elect a fourth director who shall be deemed to be serving in one of the four directorships reserved to Property Owner under the KICA Covenants. Likewise, upon Final Transition, the Property Owner shall grant permission to the Type A Members to elect a fourth, fifth, and sixth director who shall be deemed to be serving in three of the four directorships reserved to Property Owner under the KICA Covenants. If and only if the Type A Directors do not abide by the Dispute Resolution Procedures herein on a particular issue after Interim or Final Transition, then Property Owner shall have the right to revoke its authorization of the one or three Type A Directors, respectively, deemed to be serving in the directorships reserved to Property Owner under the KICA Covenants and to appoint one or three directors, respectively, in their places, on the particular issue in question, and shall not be required to abide by such dispute resolution procedures.

- (vii) Limits to KICA Board Member Authority. KICA board members shall not interfere with the day-to-day operation of the KICA staff. No individual board member shall have the separate authority to hire or fire, or otherwise separately supervise or direct the affairs of the KICA.
- (viii) Extension of Covenants. Any agreement to submit any property west of the Main Gate located next to the General Store, except for Parcels 1, 2, 3, 4, 5, 6, 9, 10, 11, 12 and 13, (which may contain a residential structure of any type) to the KICA Covenants after the effective date of this Agreement shall require six out of seven director votes on a non-weighted basis.
- (ix) Access. KICA shall grant access across private roads on the Common Properties to members of Private Clubs on Kiawah Island and their guests.

- (x) KICA Officer Selection. The officers of the KICA shall be elected by the Weighted Vote System after Initial Transition and by majority vote after Interim Transition.
 - (xi) 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.
 - (xii) Directors Approval Not Required. The provisions of this Agreement shall not require approval of the current Type A Directors as a condition precedent to the effectiveness of this Agreement.
 - (xiii) Severability. Notwithstanding any provision of this Agreement to the contrary including, but not limited to, ¶ 25, infra, the provisions of this ¶ 18(a) shall not be severable.
- (b) The Security Gate. The Town and the Property Owner recognize and respect the fundamental importance and value of the Security Gate, private rights-of-way and private amenities to the Town, the Property Owner and the owners of property on Kiawah Island 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 first security gate) 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.
19. Hotel/Inn Zoning. It is understood and agreed between the Town and the Property Owner 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. The Property Owner is agreeable to limiting the parcels available for such purposes to Parcels 12, 13, and 20 on Exhibit 19.1. All hotels or inns on the Real Property shall not exceed a total of 325 Hotel Guest Rooms and Support Space, provided that any support space floor area (as described in Section 1.(v)) in excess of 52,000 square feet shall be counted toward the 300,000 square feet gross cap on commercial square footage.

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:

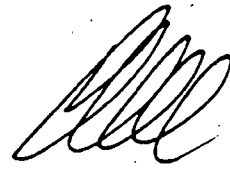
<u>YEAR</u>	<u>% COMPLETE</u>
5	15
10	32
15	45
20	65
25	85
30	100

- (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, 2008 (the "Termination Date"). Nothing in this Agreement shall be interpreted to preclude the Parties from extending the Termination Date by mutual agreement or from entering into subsequent development agreements.

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 is a partner or shareholder in the entity that purchases the Ocean Course, whose legal description is attached as Exhibit 22.1, then the Town agrees to consent to add the Ocean Course to the Real Property by amendment to this Agreement (which consent shall not unreasonably be withheld). The Ocean Course shall be treated and designated as Parcel 45, as further set forth herein. Upon such acquisition, the partnership or other entity acquiring the Ocean Course shall immediately notify the Town Clerk in writing of the acquisition and the submittal of the Ocean Course for amendment of this Agreement; the acquiring partnership or other



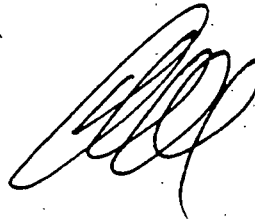
entity shall, within 30 days notice from the Clerk, sign an addendum making it a signatory to this Agreement.

If the Property Owner is a partner or shareholder in an entity that purchases all or a portion of the acreage, whose legal description is attached as Exhibit 22.2 (now part of what is popularly called the Andell tract) for purposes of establishing a Kiawah Reception Center, then the Town, upon annexation complying with the provisions of § 6-31-110, agrees to consent to add the Reception Center acreage to the Real Property by amendment to this Agreement (which consent shall not be unreasonably withheld). The Reception Center tract shall be treated and designated as Parcel 50, as further set forth herein. Upon such acquisition, the partnership or other entity acquiring the Reception Center tract shall immediately notify the Town Clerk in writing of the acquisition and the submittal of the Reception Center tract for amendment of this Agreement; the acquiring partnership or other entity shall sign an addendum making it a signatory to this Agreement upon 30 days notice from the Clerk.

Any amendment to this Agreement shall comply with the provisions of § 6-31-10 et seq. Any requirement of this Agreement requiring consent or approval of one of the Parties shall not require amendment of this Agreement unless the text expressly requires amendment. Wherever said consent or approval is required, the same shall not be unreasonably withheld. The Town and the Property Owner agree to cooperate in accomplishing the annexation of the Reception Center tract into the Town. Upon annexation, the Reception Center tract shall be subject to this Agreement and designated as Parcel 50. A major modification of this Agreement shall occur only after public notice and a public hearing by the Town.

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 the 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 its Exhibits 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 nonbreaching 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 Councilmembers, 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.** All conveyances or transfers of any portion of the Real Property to the Town or KICA, except for the "exchange" described in Section 16.(b) of this Agreement, 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. 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 the Town or 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.

The conveyances required herein shall be in accord with Exhibits 14.2, 15.1a, 15.11, and 16.7 hereto.

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.

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.

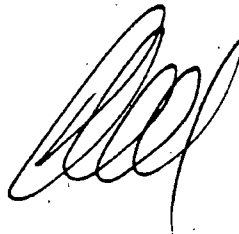
33. Successors and Assigns.

- (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."
 - (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, Town 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, commercial square footage, and Hotel Rooms and Support Space (in reduction of the 1,974 Vested Units, 300,000 non-residential square footage, 325 Hotel Guest Rooms, and 52,000 sq.ft. Support Space referred to in ¶ 1(v), 13.B.1.(b), 13.B.2.(b), 13.C.2.(b), and 19 hereof).
- (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 hereto and shown on Exhibits 1.1 and 1.3 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 Developed and Undeveloped Lands.

- (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. 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
7A Beachwalker Office Park
Johns Island, SC 29455

With copies to:

Planning Director
2 Courthouse Square
Charleston, SC 29401

Dennis J. Rhoad, Esq.
127 1/2 King Street
Charleston, SC 29402

To the Property Owner:

Charles S. Way, Jr.
Chairman of the Board
Kiawah Resort Associates, L.P.
200 Meeting Street, Suite 401
P.O. Box 242
Charleston, South Carolina 29402

Leonard L. Long, Jr.
 Managing Director
 Kiawah Resort Associates, L.P.
 92 Broad Street
 P.O. Box 419
 Charleston, SC 29402

With Copies to:

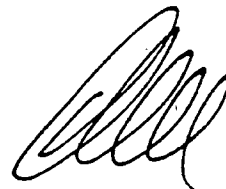
G. Trenholm Walker, Esq.
 Wise & Cole, P.A.
 151 Meeting Street, Suite 200
 P.O. Drawer O
 Charleston, S.C. 29402

- (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/or 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 and Captain Sam's Spit as set forth in ¶ 16(b) and (h) of this Agreement;
 - (ii) Construction of Facilities covered by a recorded plat;
 - (iii) Conveyance of Rhett's Bluff Landing;
 - (iv) Conveyance of marshes and lowlands;
 - (v) Conveyance of Bear Island to the KICA, exclusive of those portions that may have previously been developed pursuant to this Agreement. 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 replacement holes on the Ocean Course if existing holes are destroyed by natural disasters,

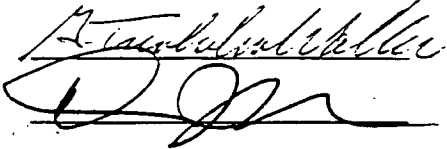
etc., mentioned in ¶ 16(d), and the Property Owner's right to receive the proceeds from any such conveyance to the owner of The Ocean Course and further subject to the reservation of title by Property Owner to no more than 20% of the approximately 208 highland acres on the northeast part of Bear Island that may be subdivided and developed per ¶ 16(d) herein.

Additionally, in the event this Agreement is terminated as a result of an uncured material breach by the Property Owner, as finally determined at the conclusion of all available legal appeals, the following additional performances shall survive:

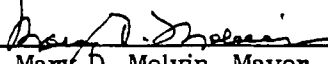
- (i) All conveyances to KICA as set forth in Exhibit 16.7; and
- (ii) The provisions of § 18 herein, titled Kiawah Island Community Association, Inc.

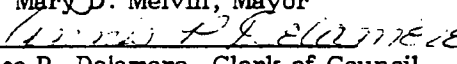


IN WITNESS WHEREOF this Agreement has been executed by the Parties on the day and year first above written.



TOWN OF KIAWAH ISLAND (Town)

By:  (Seal)
Mary D. Melvin, Mayor

Attest: 
Annice P. Delamere, Clerk of Council
(Property Owner)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named TOWN OF KIAWAH ISLAND, by Mary D. Melvin, its Mayor, and Annice P. Delamere, its Clerk of Council, sign and seal the within written DEVELOPMENT AGREEMENT, and as the act and deed of TOWN OF KIAWAH ISLAND deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.



SWORN to before me this

26th day of September, 1994.


Notary Public for South Carolina

My Commission Expires: 2/15/98

man



KIAWAH RESORT ASSOCIATES, L.P.
(Property Owner) (seal)

BY: D&W Investments, Inc.
Its General Partner

[Signature]
[Signature]

By: *[Signature]*
Charles S. Way, Jr.
Its: President

By: *[Signature]*
Betty R. Crow
Its: Secretary

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named KIAWAH RESORT ASSOCIATES, L.P., by D&W Investments, Inc., a South Carolina corporation, its General Partner, by Charles S. Way, Jr., its President, and by Betty R. Crow, its Secretary, sign and seal the within written DEVELOPMENT AGREEMENT, and as the act and deed of the limited partnership deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

[Signature]

SWORN to before me this

26th day of September, 1994.

[Signature]
Notary Public for South Carolina

My Commission Expires: 2/12/98

mem

[Signature]

BK J 248PG071

BEACHWALKER PARTNERS, L.P. (seal)

BY: D&W Investments, Inc.

Its General Partner

By:

Charles S. Way, Jr.

Its:

President

By:

Betty R. Crow

Its:

Secretary

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named BEACHWALKER PARTNERS, L.P., by D&W Investments, Inc., a South Carolina corporation, its General Partner, by Charles S. Way, Jr., its President, and by Betty R. Crow, its Secretary, sign and seal the within written DEVELOPMENT AGREEMENT, and as the act and deed of the limited partnership deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this

26th day of September, 1994.

Notary Public for South Carolina

My Commission Expires: 2/10/98

[Signature]
[Signature]

KIAWAH ISLAND UTILITY, INC. (seal)

By: *[Signature]*
 Charles S. Way, Jr.
 Its: Chairman of the Board

By: *[Signature]*
 Betty R. Crow
 Its: Secretary

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named KIAWAH ISLAND UTILITY, INC., by Charles S. Way, Jr., its Chairman of the Board, and by Betty R. Crow, its Secretary, sign and seal the within written DEVELOPMENT AGREEMENT, and as the act and deed of KIAWAH ISLAND UTILITY, INC. deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

[Signature]

SWORN to before me this

26th day of September, 1994.

[Signature]
 Notary Public for South Carolina

My Commission Expires: 2/16/98

mem

[Signature]

BX J 248PG073

WITNESSES:

Judith Y. Smith
E. [unclear] [unclear]

EARLE E. LONG TRUST

By:

Leonard L. Long, Jr.
Trustee

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named EARLE E. LONG TRUST, by Leonard L. Long, Jr., its Trustee, sign and seal the within written DEVELOPMENT AGREEMENT, and as the act and deed of EARLE E. LONG TRUST deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

A. T. [Signature]

SWORN to before me this

11th day of September, 1994.

[Signature]
Notary Public for South Carolina

My Commission Expires: 11/28/00

man

[Signature]

H. Tamblin Waller
[Signature]

THE BEACH COMPANY (seal)

By: [Signature]
 Charles S. Way, Jr.
 Its: President

By: [Signature]
 Betty R. Crow
 Its: Secretary

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named THE BEACH COMPANY, by Charles S. Way, Jr., its President, and by Betty R. Crow, its Secretary, sign and seal the within written DEVELOPMENT AGREEMENT, and as the act and deed of THE BEACH COMPANY deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

H. Tamblin Waller

SWORN to before me this

26th day of September, 1994.

[Signature]
 Notary Public for South Carolina

My Commission Expires: 2/10/98

man

[Signature]

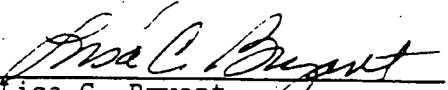
WITNESSES:

Matthew J. Smith

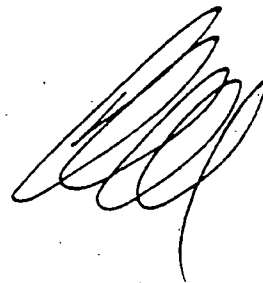
Wendy Roach

DIECI, INC.

By: 
Charles P. Darby, III
Vice President

By: 
Lisa C. Bryant
Secretary

mem



STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, deposes and says that (s)he saw the within named DIECI, INC., by Charles P. Darby, III, its Vice President, and by Lisa C. Bryant, its Secretary, sign and seal the within written DEVELOPMENT AGREEMENT, and as the act and deed of DIECI, INC. deliver the same, and that (s)he with the other witness subscribed above witnessed the execution thereof.

Nashua J. Smith

SWORN to before me this

26th day of September, 1994.

Katherine M. Brown
 Notary Public for South Carolina

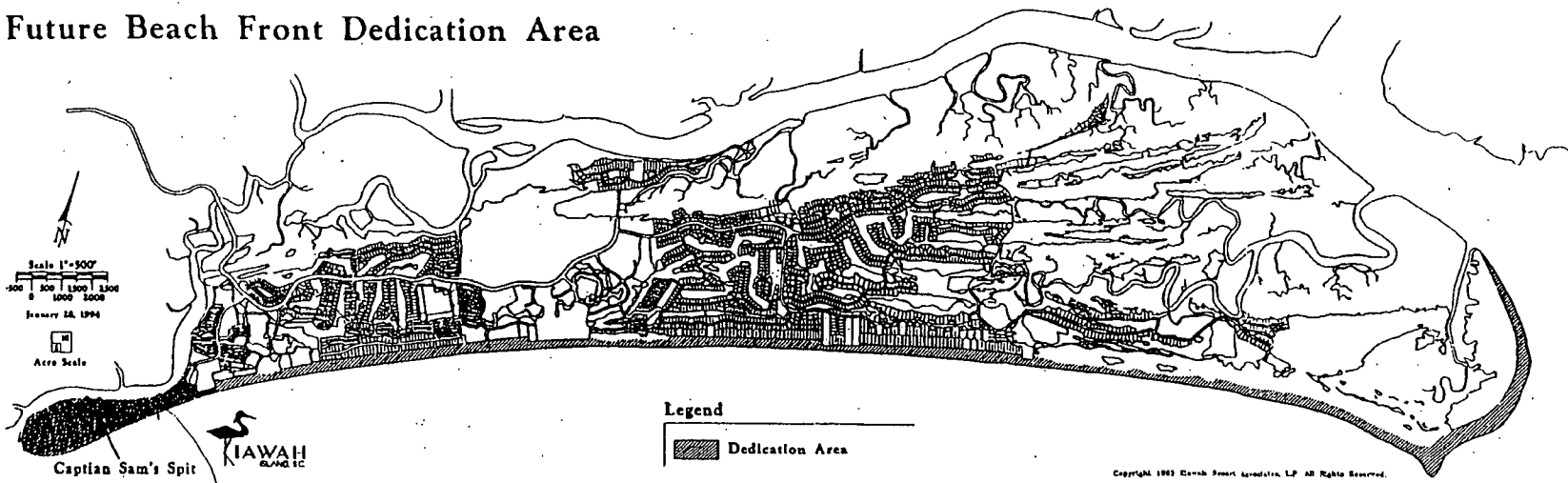
My Commission Expires: 12/22/97

Mem

[Signature]

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Future Beach Front Dedication Area



141

Captain Sam's Spit



Legend
Dedication Area

Copyright 1993 Kiwah Beach Land, L.P. All Rights Reserved.

*Area not included in Dedication Area
(Area of Captain Sam's Spit handled
separately in Development Agreement)
Section 10.1(n)*

Handwritten signature

Exhibit 13.2: Parcel-Specific Development Standards

Parcel #	Parcel Description	Use Type (1)	Approx. Acres (2)	Maximum Gross Density (3)	Total Units (4)	Existing Units (5)	Cap on New Units (6)	Maximum F.A.R. w/ Transfer (7)	Height Stories/Feet (8)	Parcel Open Space (9)
1	Mingo Point	R-2, C	11.50	4	46	0	46	0.25	4/50	30
2	Mingo North	R-2, C	4.00	3	12	0	12	0.20	2.5/35	30
3	Mingo South	R-2, C	4.40	3	13	0	13	0.20	2.5/35	30
4	Little Rabbit	R-2, C	4.50	4	18	0	18	0.25	2.5/35	30
5	Rabbit North	R-2, C	6.20	3	19	0	19	0.20	2.5/35	30
6	Kiswah River Commons	R-2, C	6.16	6	37	0	37	0.25	4/50	30
7	Sales Center	C	2.37			0	0	0.25	4/50	30
8	Parkway Gate	C	1.20			0	0	0.25	2.5/35	30
9	Beachwalker Office Park	R-2,C	1.75	6	10	0	10	0.20(10)	4/50	30
10	Marsh Point Residual	R-2,C	0.66	6	4	0	4	0.20	2.5/35	30
11	Beachwalker Lagoon	R-3, C	9.44	10	94	0	94	0.25	4/50	30
12	Beachwalker Park	R-3, C (20)	8.70	12	104	0	104	0.20	6/70(16)	30
13	Beachwalker Ocean	R-3, C	19.50	12	234	0	234	0.20	6/70(16)	30
14	Strawmarket	C	1.19			0	0	0.25(10)	2.5/35	30
15	Utility Tracts	U	34.36			0	0	0.25	2.5/35(22)	30
16	Base Pond	R-2, C (17)	289.60	3	869	0	869		4/50	40
17	Rhet's Bluff	R-1	64.22	1.5	96	83	13		2.5	40
18	Captain Maynards	R-1	11.38	1.5	17	6	11		2.5	40
19	Heron Park Grille	C	1.79		0	0	0	0.20(10)	2.5/35	40

OK J 248PG107

Parcel #	Parcel Description	Use Type (1)	Approx. Acres (2)	Maximum Gross Density (3)	Total Units (4)	Existing Units (5)	Cap on New Units (6)	Maximum F.A.R. w/ Transfer (7)	Height Stories/Feet (8)	Parcel Open Space (9)
20	East Beach Ocean	R-3	3.10	12	37	0	37	0.25	6/70	30
21	East Beach Lagoon	R-3	3.30	8	40	0	40		4/50	40
22	East Beach Interior	R-2	33.22	6	199	0	199		4/50	40
23	Governor's Marsh	R-2	12.73	6	76	0	76		2.5	40
24	Ocean Green 2	R-2	6.04	6	36	20	16		2.5	40
25	Vanderhoist Mansion	R-1	18.34	1.5	28	11	17		(11)	50
26	Flyway/Glen Abbey	R-1	2.79	2	6	0	6		2.5	40
27	Marsh Cove	R-1	9.87	2	20	19	1		2.5	50
28	Osprey Entry	R-1	3.70	3	11	0	11		2.5	50
29	Terrapin Island	R-1	22.04	1	22	15	7		2.5	60
30	Blue Heron	R-1	278.30	2	557	0	557		2.5	50
31	Eagle Point	R-1	18.32	1.5	27	0	27		2.5	50
32	Eagle Point	R-1	14.96	1.5	22	0	22		2.5	50
33	Falcon Point	R-1	84.15	1.25	106	0	106		2.5	50
34	Three Loons Island	R-1	30.96	1	31	0	31		2.5	50
35	Cormorant Island	R-1	10.53	1	11	0	11		2.5	50
36	Bufflehead Point	R-2 (19)	4.93	4	20	0	20		2.5	50
37	Club Cottage Lane	R-2 (19)	8.20	4	33	11	22		2.5	50
38	Osprey Finger	R-2 (19)	3.79	4	15	0	15		2.5	50
39	Marsh Cottage	R-2 (19)	6.17	4	25	0	25		2.5	50
40	Osprey Beach 3	R-2	15.80	6	95	0	95		4/50	40
41	Osprey Beach 2	R-1, C	21.73	2	43	25	18	(12)	2.5/35	40

[Handwritten signature]

OK J 248PG108

Parcel #	Parcel Description	Use Type (1)	Approx. Acres (2)	Maximum Gross Density (3)	Total Units (4)	Existing Units (5)	Cap on New Units (6)	Maximum F.A.R. w/ Transfer (7)	Height Stories/Feet (8)	Parcel Open Space (9)
42	Otter Island	R-1	109.10	1	109	100	9		2.5	50
43	Cougar Island	R-2 (21)	250.30	1.5	375	41	334		2.5	50
44	Bear Island	R-2 (21)		(13)			18			
45	Ocean Course	R-2, C (21)	180.67	(14)			20	(15)	2.5/35	
46	Snowy Egret	R-1	19.85	2	40	39	1		2.5	50
47	Whimbrell Road	R-1	9.76	2	20	20	0		2.5	50
48	Piping Plover	R-1	9.81	2	20	20	0		2.5	50
49	Golden Eye	R-1	16.53	2	33	20	13		2.5	50
50	Andell	C						(18)		
51	Bear Island Residential									
52	91 Surfson	R-1		2	1	0	1		2.5	30
53	189 Bailey Dunion	R-1		2	1	0	1		2.5	30

SON [Signature]

Notes Governing Exhibit 13.2, Parcel Specific Development Standards

1. Parcels with more than one use designation may be appropriate for either type of land use indicated in the above table. All uses shall comply with the appropriate standards for the use type as defined in this agreement. Development consisting of more than one use shall be subject to approval of the Town in accordance with ¶ 13.B.5. Mixed Use Development.
2. Acreage figures are approximate and may vary somewhat over time.
3. Gross Density equals the number of potential Dwelling Units (existing and future) divided by the gross residential acreage of the parcel above mean high water, excluding Fresh Water and Salt Water Wetlands. Gross Density limits are not intended to discourage or limit the development of higher density types or clusters of residences within a parcel; provided, however, that maximum density limits are used to establish an absolute cap on the total number of Dwelling Units on a parcel. The above maximum Densities can not be obtained for every parcel; as each parcel is platted or sold, the Property Owner shall clearly establish the maximum number of dwelling units which may be permitted on a parcel. In no instance shall the maximum number of Vested Units established after the execution of this agreement exceed 1,974. In the event that density is limited by physical constraints, a bridge permit or other regulatory constraint beyond the Town's jurisdiction, said limits are not intended to be superseded by this agreement.
4. The total number of single family Lots and non-single family Dwelling Units permitted in the parcel at maximum permitted densities.
5. The number of single family Lots with preliminary plat approval and the number non-single family dwelling units approved by the Town as of January 28, 1994.
6. The maximum number of Vested Units which may be approved on any one parcel, subject to the limit of 1,974 total Vested Units. The total for this column is 3,220 units, plus a total of 38 additional units on Bear Island and the Ocean Course. Where existing units are indicated in the previous column, resubdivision may be required prior to establishing any Vested Units.
7. Maximum floor area ratio (FAR) equals the building floor area divided by the non-residential or mixed use acreage above mean high water, excluding Fresh Water and Salt Water Wetlands. This column shows the maximum floor area ratio which may be developed on an individual parcel. In no event shall the total amount of non-residential development, exclusive of Hotel Rooms and Support Space, exceed 300,000 square feet for the Real Property.
8. No development shall exceed the maximum number of stories or the maximum height in feet listed in this column, subject to the bulk limitations described in ¶ 13.B.1.(e), provided however, that by reason of floodplain regulations, and the need for innovative design for view-shed and hurricane safety purposes, the absolute height limit on single family residences is forty-five (45) feet from Ground Floor Level. Listed height in feet applies to non-single family development.
9. Parcel open space as described in ¶ 13.B.4. of this Agreement, is the minimum percentage requirement of Pervious Coverage for a Parcel.
10. Existing development which is modified is subject to compliance with provisions of this Development Agreement.
11. Height of structures on this Parcel shall comply with Exhibit 13.3: Vanderhorst Height Limitations, attached hereto. No structure on this Parcel shall be higher than the eave height of the Vanderhorst Mansion.

[Handwritten signature] *[Handwritten signature]*

- 12 Non-residential uses shall be limited to the Beach Club and associated uses, including dining, kitchen/food preparation areas, public lobby, meeting rooms, lounge, club administrative/ operations offices, service and mechanical areas, locker rooms, restrooms, retail store for beach/pool sundries and other uses normally associated with beach club operations and/or restaurant/snack bar facilities. Total building floor area for non-residential habitable structures on this Parcel not to exceed 25,000 square feet and shall be limited to the area designated on Exhibit 13.4.
- 13 See ¶ 16(d), *infra*.
- 14 Up to 20 dwelling units may be permitted in the area to the west of the Ocean Course Club House, shown in Exhibit 13.4.
- 15 Non-residential uses shall be limited to the Ocean Course Country Club and associated uses, including dining, kitchen/food preparation areas, public lobby, meeting rooms, lounge, club administrative/operations offices, service and mechanical areas, locker rooms, restrooms, retail store for beach/pool sundries and other uses normally associated with golf club operations and/or restaurant/snack bar facilities. Total building floor area for non-residential habitable structures on this Parcel shall not exceed 25,000 square feet.
- 16 This Height may be permitted for hotel development on Parcel 13 only if Parcel 12 is permanently reserved or dedicated for open space/recreational purposes, otherwise the Height shall be limited to four (4) stories and a maximum of fifty (50) feet.
- 17 Non-residential uses shall be limited to golf country club uses including golf pro shop, tennis pro shop, locker rooms, restrooms, dining, kitchen/food preparation, public/lobby area, meeting rooms, lounge, swimming pool, tennis courts, golf course, practice range, maintenance facilities, club administrative/operations offices, service and mechanical areas, maintenance and other uses normally associated with golf country club operations. Total building floor area for non-residential habitable structures on this Parcel shall not exceed 40,000 square feet for club operations and 15,000 square feet for golf course/grounds maintenance.
- 18 Commercial allowance for Parcel 50 shall not be applied to the overall limit established in ¶ 13.B.2(6).
- 19 Currently there are three residential housing structures used by guests of Property Owner and/or Kiawah Island Club, Inc., and located on Parcel 37. The Property Owner agrees on behalf of Kiawah Island Club, Inc. that the Club will not lease more than 20 such housing structures, including those currently existing at any one time, and further agrees that these structures will be limited to Parcels 16, 36, 37, 38 and 39.
- 20 Development subject to provisions of ¶ 16(h).
- 21 Dwelling unit types limited to single family detached units, including patio homes and zero Lot line developments.
- 22 Height provision for towers and non-habitable utility structures shall be as provided in ¶ 13.B.3.(d).
- 23 Access to East Beach Interior is limited to Green Dolphin Way and Turtle Point Lane. Existing tunnel connection between Parcels 16 and 22 to remain.

Handwritten signature and initials, possibly reading 'ADW'.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AGREEMENT FOR CONVEYANCE
 OF
 PROPERTIES ON KIAWAH ISLAND, S.C.

WHEREAS, Kiawah Resort Associates, L.P., a Delaware limited partnership, (hereinafter sometimes referred to as "KRA, L.P."), and the Town of Kiawah Island, a municipal corporation organized and existing under the laws of the State of South Carolina (hereinafter sometimes referred to as the "Town"), entered into that certain Development Agreement regarding aspects of the overall development of Kiawah Island, S.C., which is dated the 26 day of September, 1994 (the "Development Agreement"); and

WHEREAS, under the terms of the Development Agreement, KRA, L.P. has agreed to convey to the Kiawah Island Community Association, Inc., (the "KICA") certain properties located on Kiawah Island, S.C. prior to certain dates more particularly set forth in the Development Agreement, the terms and provisions of which are incorporated herein by reference;

WHEREAS, KRA, L.P. has agreed to enter into the within Agreement for Conveyance of Properties on Kiawah Island, S.C. (the "Agreement") to evidence its agreement to the conveyance of such properties in accordance with the terms and provisions of the Development Agreement,

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for/and in consideration of the sum of Five and No/100 (\$5.00) Dollars to it in hand paid by the KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., and in further consideration of the execution by the Town of Kiawah Island of the Development Agreement, KIAWAH RESORT ASSOCIATES, L.P. agrees to convey, and the KICA agrees to accept, by Quit-Claim deed (unless otherwise provided,) the following described real estate upon the terms and conditions set forth below:

Parcel 1:
Rhett's Bluff Boat Landing
 {Paragraph 15.(a)(i)}

All that certain piece, parcel or lot of land situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, known generally as the "Rhett's Bluff Boat Landing" containing 6.430 Acres, more or less, and shown and designated as "6.430 ACRES" on a plat by Southeastern Surveying, Inc., entitled "A PLAT OF A 6.430 ACRE TRACT OF LAND LOCATED IN RHETT'S BLUFF SUBDIVISION OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA", dated June 22, 1994, and recorded in Plat Book _____, page _____, in the R.M.C. Office for Charleston County, South Carolina, said parcel having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.

TMS Number: 209-11-00-040

Parcel 1 shall be conveyed to the KICA no later than March 1, 1995, together with all improvements existing thereon at the time of this Agreement, plus any additional improvements which may be added between the time of this Agreement and the time of such conveyance, including developed parking areas, an entry road and gate, a pavilion, two L-shaped piers (for, respectively, tying up of boats and fishing and crabbing purposes, the former dock having a smaller pavilion for viewing), a boat ramp, lighting and electrical service, bollards, signage and any other improvements existing thereon at the time of such conveyance, all as more particularly set forth in Paragraph 15 (a)(i) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-1 attached hereto and incorporated herein by reference.

Parcels 2a and 2b
Beach Parking Areas
{Paragraph 15.(a)(ii)}

Parcel 2a

50 Space Parking Area at Ocean Course Drive

(Description to Follow)

(Note: Description to include enough land for KICA to build
a small restroom facility at KICA's sole expense)

Parcel 2a shall be conveyed to the KICA no later than March 1, 1995, together with all improvements existing thereon at the time of this Agreement, plus any additional improvements which may be added between the time of this Agreement and the time of such conveyance, all as more particularly set forth in Paragraph _____ of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, reverts, and reservations as are set forth in Schedule P-2a attached hereto and incorporated herein by reference.

KRA, L.P. further agrees, prior to the conveyance of said Parcel 2a to the KICA, to make improvements, at its sole expense, to a 50 space parking area within Parcel 2a, with coquina shell or better. Such obligation is more particularly set forth in Paragraph _____ of the Development Agreement.

Parcel 2b

Western 1/2 of David Street next to Property Owners' Pool Tract

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State of South Carolina, containing .687 acres, more or less, known generally as the "Western Half of David Street", and shown and designated as "0.687 AC." on a plat by Southeastern Surveying, Inc., entitled "A SUBDIVISION PLAT OF LOTS 1A & 1B TRACT 13 BLOCK 7 SUBD. 411 SURFSCOTER LN., LOTS 1A & 1B BLOCK A EUGENIA AVE. AND A PORTION OF DAVID ST. CONTAINING 2.014 ACRES OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA", dated February 22, 1994, last revised on June 2, 1994, and recorded in Plat Book EA at page 67, in the R.M.C. Office for Charleston County, South Carolina, said tract having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.

Parcel 2b shall be conveyed to the KICA no later than March 1, 1995, together with all improvements existing thereon at the time of this Agreement, plus any additional improvements which may be added between the time of this Agreement and the time of such conveyance, all as more particularly set forth in Paragraph 15.(a)(ii) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-2b attached hereto and incorporated herein by reference.

Parcel 2c

Tract for Proposed Extension of Members' Pool Parcel

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, located seaward of the KICA Members' Pool Parcel, lying within the southerly extensions of the two side lot lines of the property shown as the "Residents' Beach Club Parcel" on a plat by Gifford, Nielson & Williams entitled "A PLAT OF: RESIDENTS' BEACH CLUB PARCEL OWNED BY KIAWAH ISLAND COMPANY, LIMITED LOCATED ON KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA", dated January 16, 1985, having latest revision dated February 4, 1985, and recorded in Plat Book BD at page 101, in the R.M.C. Office, and extending from the southernmost boundary line of said tract to the mean high water mark of the Atlantic Ocean, as the same may vary from time to time.

Parcel 2c shall be conveyed to the KICA no later than March 1, 1995, together with all improvements existing thereon at the time of this Agreement, plus any additional improvements which may be added between the time of this Agreement and the time of such conveyance, all as more particularly set forth in Paragraph 15.(a)(ii) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-2c attached hereto and incorporated herein by reference.

Parcel 2d

Parking Area Seaward of the Ocean Course Clubhouse

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State of South Carolina, located at the eastern end of Kiawah Island, south of the Ocean Course Clubhouse, and shown and designated as "KIAWAH RESORT ASSOCIATES EASEMENT AREA" on a plat by Southeastern Surveying, Inc., entitled "A PLAT OF A 30' ACCESS EASEMENT CROSSING THE LANDS OF KIAWAH RESORT ASSOCIATES AND LANDMARK LAND COMPANY OF CAROLINA, INC. LOCATED IN THE TOWN OF KIAWAH ISLAND CHARLESTON COUNTY, SOUTH CAROLINA", dated April 17, 1991, SAVING AND EXCEPTING THEREFROM, that portion of the aforesaid Easement Area lying between the S.C.C.C. (n/k/a OCRM) Interim Baseline and the "revised" southernmost boundary line of the Ocean Course Tract, as shown on a plat by Southeastern Surveying, Inc., entitled "A COMBINATION PLAT OF A 22.075 ACRE TRACT AND A 1.784 ACRE TRACT OWNED BY KIAWAH RESORT ASSOCIATES ABOUT TO BE CONVEYED TO LANDMARK LAND COMPANY OF CAROLINA, INC. LOCATED IN THE TOWN OF KIAWAH ISLAND CHARLESTON COUNTY, SOUTH CAROLINA", dated August 20, 1991, copies of which said plats are attached hereto as Schedule P-2d-("A") and incorporated herein by reference.

TOGETHER WITH a non-exclusive, perpetual, permanent, assignable, transmissible and commercial easement for pedestrian and vehicular access, ingress and egress, to and from the southernmost terminus of Ocean Course Drive to the southernmost property line of the Ocean Course Tract, and shown and designated as "30' ACCESS EASEMENT" on a plat by Southeastern Surveying, Inc., entitled "A PLAT OF A 30' ACCESS EASEMENT CROSSING THE LANDS OF KIAWAH RESORT ASSOCIATES AND LANDMARK LAND COMPANY OF CAROLINA, INC. LOCATED IN THE TOWN OF KIAWAH ISLAND CHARLESTON COUNTY, SOUTH CAROLINA", dated April 17, 1991, and designated as "30' ACCESS EASEMENT" lying between the S.C.C.C. (n/k/a OCRM) Interim Baseline and the "revised" southernmost boundary line of the Ocean Course Tract, as shown on a plat by Southeastern Surveying, Inc., entitled "A COMBINATION PLAT OF A 22.075 ACRE TRACT AND A 1.784 ACRE TRACT OWNED BY KIAWAH RESORT ASSOCIATES ABOUT TO BE CONVEYED TO LANDMARK LAND COMPANY OF CAROLINA, INC. LOCATED IN THE TOWN OF KIAWAH ISLAND CHARLESTON COUNTY, SOUTH CAROLINA", dated August 20, 1991, copies of which said plats are attached hereto as Schedule P-2d-("A") and incorporated herein by reference.

Parcel 2d shall be conveyed to the KICA no later than January 1, 2000, together with all improvements existing thereon at the time of this Agreement, plus any additional improvements which may be added between the time of this Agreement and the time of such conveyance, all as more particularly set forth in Paragraph 15.(a)(ii) of the Development Agreement. Such conveyance shall be made by (a) Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, for that portion of the parcel lying seaward of the southernmost boundary line of the Ocean Course tract, which said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-2d attached hereto and incorporated herein by reference; and (ii) Assignment of Non-Exclusive Easement as to that portion of the parcel running generally in a southerly direction from the southernmost terminus of Ocean Course Drive, to the southernmost boundary line of the Ocean Course tract. Said Assignment of Non-Exclusive Easement shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-2d attached hereto and incorporated herein by reference.

KRA, L.P. further agrees, prior to the conveyance of said Parcel 2d to the KICA, to make improvements, at its sole expense, to a 30 space parking area within the southernmost portion of Parcel 2d, generally seaward of the Ocean Course Clubhouse, with coquina shell or better and any landscaping it deems tasteful and appropriate. Such obligation is more particularly set forth in Paragraph 15(ii) of the Development Agreement.

Parcel 3
Fishing and Crabbing Pier/Observation Tower
 {Paragraph 15.(a)(iii)}

Parcel 3 consists of one or more small tracts of land (the exact size, location, shape, and boundaries, to be in KRA, L.P.'s discretion), whereupon at least one Observation Tower and one fishing/crabbing pier are to be constructed by KRA, L.P., its successors and assigns, at no cost to the KICA, its successors and assigns, all to be located at a point or points along Blue Heron Pond which is located south/southwest of Terrapin Island, and is shown on a plat by Davis & Floyd, Inc., surveyors, entitled "PLAT SHOWING EAST END KIAWAH ISLAND PROPERTY OF KIAWAH ISLAND COMPANY, LIMITED LOCATED CHARLESTON COUNTY, S.C." dated May 5, 1988, and recorded in Plat Book BS, pages 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53 in the R.M.C. Office, and being a portion of the property included in the records of the Charleston County, S.C. Assessor's Office as Tax Map Number 207-00-00-015.

BK J 248PG401

Nothing herein is intended to lessen or curtail any other rights or privileges as Grantor may enjoy, either as a Kiawah property owner or the Company, under any of the recorded Kiawah Covenants, including rights or easements to use and enjoy Common Property and allowing guests or others to do so.

This is a portion of the property conveyed to the Grantor herein by deed of conveyance of Kiawah Resort Associates, a South Carolina joint venture, dated June 26, 1992, and recorded in Book L215, page 486 in the R.M.C. Office.

TOGETHER with, all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or anyway incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Kiawah Island Community Association, Inc., its successors and assigns, forever.

IN WITNESS WHEREOF, Kiawah Resort Associates, L.P., has caused these presents to be executed in its name by its General Partner thereunto duly authorized, and its seal to be hereunto affixed, this ____ day of _____, in the year of our Lord One Thousand Nine Hundred and Ninety-Five, and in the Two Hundred and Nineteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: D&W Investments, Inc.,
a South Carolina corporation

(CORP. SEAL)

Its: General Partner

By: _____

Charles S. Way, Jr.

Its: President

By: _____

Betty R. Crow

Its: Secretary

Parcel 3, as ultimately composed and located by KRA, L.P., in its discretion, shall be conveyed to the KICA no later than January 1, 2000, together with all improvements existing thereon at the time of this Agreement, plus any additional improvements which may be added between the time of this Agreement and the time of such conveyance, as set forth in Paragraph 15.(a)(iii) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-3 attached hereto and incorporated herein by reference.

Parcel 4
New Blue Heron Park
 {Paragraph 15.(a)(iv)}

Parcel 4 consists of at least two (2) acres of highland adjacent to the fishing/crabbing pier and Observation Tower described above as "Parcel 3", located along Blue Heron Pond which is located south/southwest of Terrapin Island, and is shown on a plat by Davis & Floyd, Inc., surveyors, entitled "PLAT SHOWING EAST END KIAWAH ISLAND PROPERTY OF KIAWAH ISLAND COMPANY, LIMITED LOCATED CHARLESTON COUNTY, S.C." dated May 5, 1988, and recorded in Plat Book BS, pages 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53 in the R.M.C. Office, and being a portion of the property included in the records of the Charleston County, S.C. Assessor's Office as Tax Map Number 207-00-00-015, to be provided, planned and developed by KRA, L.P., its successors and assigns, at its sole expense, as a passive park, TOGETHER with a non-exclusive easement for access, ingress and egress to and from said areas and roads owned by the KICA.

Parcel 4 shall be conveyed by KRA, L.P. to the KICA simultaneously with the conveyance to the KICA of such other Common Properties serving the approved and platted lots surrounding Blue Heron Pond, all as more particularly set forth in Paragraph 15.(a)(iv) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-4 attached hereto and incorporated herein by reference.

KRA, L.P. further agrees to provide three to four parking spaces and improve the same, at its sole expense, with coquina shell or better, prior to such conveyance.

Parcel 5
Existing Park Facilities
 {Paragraph 15.(a)(vi)}

Glossy Ibis Mini-Park

All that certain, piece, parcel and tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, known generally as the "Glossy Ibis Mini-Park," and shown and designated as "Residual 1.091 Ac." on a plat by Southeastern Surveying, Inc. entitled "A Final Plat of Lots 700 - 713 and 749 - 768 Glossy Ibis Tract 48 Phase 1 Egret/Pintail Subdivision (428) owned by Kiawah Resort Associates, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA" dated September 1, 1992, bearing latest revision date of September 24, 1992, and recorded in Plat Book CK at page 21, in the office of the Register of Mesne Conveyances for Charleston County, S.C., (hereinafter the "R.M.C. Office"), said lot having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.

Canvasback Pond Minipark

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, located at the intersection of Flyway Drive and Governor's Drive, containing _____ Acres, more or less, and shown and designated as " _____ " on a plat by Southeastern Surveying, Inc., entitled " _____ " dated _____, 1994, a copy of which said plat is attached hereto as Exhibit P-5 ("A"), and incorporated herein by reference, said tract having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.

Master Leisure Trail System

All those certain pieces, parcels or tracts of land situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, which are utilized by property owners on Kiawah Island, S.C., and maintained by the KICA as part of the "Master Leisure Trail System" on Kiawah Island, S.C., but which, at the time of execution of the Development Agreement, have not been leased, assigned, or otherwise conveyed to the KICA.

Internal Crabbing/View Stands

All those certain pieces, parcels or strips of land situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, which are utilized by property owners on Kiawah Island, S.C., and maintained by the KICA as community crabbing piers and/or view stands.

Willet Pond Minipark

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, known generally as the "Willet Pond Minipark," and shown and designated as "RESIDUAL 0.373 AC." on a plat by Southeastern Surveying, Inc. entitled "A FINAL PLAT OF OTTER ISLAND SUBDIVISION (430) TRACT 57, BLOCK 2, LOTS 15 THRU 54 AND COUGAR ISLAND SUBDIVISION (431) TRACT 58, BLOCK 1, LOTS 100 THRU 110 OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND CHARLESTON COUNTY, SOUTH CAROLINA", dated June 27, 1991, having latest revision dated August 12, 1991, and recorded in Plat Book CE at page 35, in the office of the Register of Mesne Conveyances for Charleston County, S.C., said tract having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.

The several areas comprising Parcel 5 shall be conveyed by KRA, L.P. to the KICA no later than January 1, 1996, together with all improvements existing thereon at the time of this Agreement, plus any additional improvements which may be added between the time of this Agreement and the time of such conveyance, as more particularly set forth in Paragraph 15.(a)(vi) of the Development Agreement.

The conveyance of the Glossy Ibis Mini-Park, Canvasback Pond Minipark, and Willet Pond Minipark shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-5 attached hereto and incorporated herein by reference.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness, who made oath that (s)he saw the within named Kiawah Resort Associates, L.P., by D&W Investments, Inc., a South Carolina corporation, its General Partner, by Charles S. Way, Jr., its President and by Betty R. Crow, its Secretary, sign and seal the within written instrument, and as the act and deed of the limited partnership deliver the same, and that (s)he with the other witness appearing above witnessed the execution thereof.

Sworn to before me this
____ day of _____, 1995.

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



Portions of the Master Leisure Trail System and any Internal Crabbing/View Stands that are currently being maintained by the KICA that (i) were not included in the 99 year lease from Kiawah Resort Associates to the KICA; or (ii) have not been heretofore included in a conveyance to the KICA, will be conveyed by amendment to the 99 year lease by and between KRA, L.P. and the KICA, which said Amendment to Lease shall be completed and a memorandum thereof recorded no later than January 1, 1995.

In future subdivisions, where roads or other improvements or areas are to be conveyed to KICA and become "Common Property" (within the meaning of the recorded Kiawah covenants), as the final plat of such subdivisions are recorded and the roads therein are completed and conveyed by KRA, L.P. to the KICA, such leisure trails and/or Internal Crabbing/View Stands or other future Common Property shall also be conveyed to the KICA, by, in KRA, L.P.'s discretion, either: (i) Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and subject to all applicable covenants, conditions, rights, easements, restrictions, and reservations of record; or (ii) Assignment of a non-exclusive easement if such areas either cannot be accurately described to convey title or if title is held by a third party and KRA, L.P. is vested with a non-exclusive easement, or (iii) by amendment of the KICA 99 year lease.

Parcel 6
Sora Rail Tract
 {Paragraph 15.(a)(vii)}

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, located at the Kiawah Island "Utility Tract", containing 1.00 acre, more or less, west of property of Kiawah Island Utility, Inc.; north of the Cable Television Building; and east of an unnamed 50' road right-of-way, and shown on a plat by Southeastern Surveying, Inc., entitled "AN EXHIBIT OF A 1.000 ACRE TRACT OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND CHARLESTON COUNTY, SOUTH CAROLINA", dated July 14, 1994, a copy of which said plat is attached hereto as Exhibit P-6 ("A"), and incorporated herein by reference, said tract having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.

TOGETHER WITH a non-exclusive, perpetual, permanent, assignable, transmissible and commercial easement for pedestrian and vehicular access, ingress and egress, to and from the southern right-of-way line of the Kiawah Island Parkway, to the above-described property; over, upon and across (i) Sora Rail Road, as shown on a plat by Coastal Surveying, Inc., recorded in Plat Book AM at page 96, in the R.M.C. Office; and (ii) an unnamed 50' Right-of-Way leading from Sora Rail Road to the above-described property, as shown on a plat by Davis & Floyd, Inc., entitled "Plat Showing Telephone Office Building Property of Kiawah Resort Associates Located in Utility tract Town of Kiawah Island Charleston County, SC" dated February 6, 1989, and recorded in Plat Book BU at pages 160 and 161, in the R.M.C. Office.

Parcel 6 shall be conveyed by KRA, L.P. to the KICA no later than January 1, 1996, together with all improvements existing thereon at the time of this Agreement, plus any additional improvements which may be added between the time of this Agreement and the time of such conveyance, as more particularly set forth in Paragraph 15.(a)(vii) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-6 attached hereto and incorporated herein by reference. This conveyance shall be subject to the restriction that use of the tract be limited to those uses associated with the maintenance of Kiawah Island "Common Properties."

IN WITNESS WHEREOF, the Kiawah Island Community Association, Inc. has caused these presents to be executed in its name by its officer(s) thereunto duly authorized, and its seal to be hereunto affixed, this ____ day of _____, in the year of our Lord One Thousand Nine Hundred and Ninety-Five, in the Two Hundred and Nineteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

June Watson

KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC. (SEAL)

By: [Signature]

Its: [Signature]

By: _____

Its: _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness, who made oath that (s)he saw the within named Kiawah Island Community Association, Inc., by its officers thereunto duly authorized, sign and seal the within written instrument, and said corporation by said officers did deliver the same, and that (s)he with the other witness appearing above witnessed the execution thereof.

Sworn to before me this
____ day of _____, 1995.

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

BUIST/BN/KRALP/DEVECH.1-4

[Signature]

men

Parcel 7

Approximately 4,000-5,000 acres of lowlands and marshlands as set forth in Paragraph 16.(a) of the Development Agreement

For purposes of this description,
the term "Kiawah Island" shall and does hereby include
its adjacent islands within the marshes bordered by Stono Inlet,
the Kiawah River, Captain Sam's Inlet and the Atlantic Ocean,
which islands include but are not limited to "Cougar Island", "Eagle Point",
"Bear Island", "Three Loons Island", "Captain Maynard's Island",
"Cormorant Island", "Otter Island", "Terrapin Island", and "Willet Island".

All those certain pieces, parcels and tracts of lowland and marshlands as lie below mean high water (as the same may vary from time to time), surrounding Kiawah Island, S.C., (illustrated generally on Exhibit 16.1 to the Development Agreement which is incorporated herein by reference,) and which lie generally outside an area located approximately three hundred (300) feet away from Kiawah Island proper, and which extend to the mean low water marks of the Kiawah River, Stono River, the Atlantic Ocean, the westernmost part of Captain Sams Inlet, and other navigable waters of the United States, if any, on which said lowlands and marshlands border, together with beds of navigable and non-navigable creeks or streams where the same surround the aforesaid lowlands and marshlands.

Where the perimeter highland property of Kiawah Island is shown on subdivision plats of record in the R.M.C. Office, such lowland and marshland area described above shall commence at a point in the lowlands and marshlands three hundred (300') feet away from or seaward of the perimeter boundary line(s) of such tracts of highland on Kiawah Island as shown on such subdivision plats of record in the R.M.C. Office.

TOGETHER WITH any highlands, hummocks and any small islands bordered in whole or in part by the aforesaid marshland and lowland property, as lie beyond said 300' mark surrounding Kiawah Island.

SAVING AND EXCEPTING THEREFROM, however, any highlands or hummocks adjacent to and/or near Kiawah Island, and any small islands bordered in whole or in part by the aforesaid marshland and lowland property conveyed to third parties by instruments recorded in the R.M.C. Office prior to January 1, 2008.

It is the intention of KRA, L.P. to convey to the KICA only a portion of the lowlands and marshlands surrounding Kiawah Island, and certain undevelopable and isolated highlands and hummocks and small islands where the same have not been conveyed to third parties by instruments of record in the R.M.C. Office prior to January 1, 2008, subject to such permanent restrictions and limitations on use as set forth in the "form" deed attached hereto as Schedule P-7(a)(i), and incorporated herein by reference.

TMS Number: 207-00-00-002

Parcel 7 shall be conveyed by KRA, L.P. to the KICA no later than January 1, 2008, as more particularly set forth in Paragraph 16 (a) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-7 attached hereto and incorporated herein by reference.

Parcel 8

Approximately 10 Miles of Beachfront Property
pursuant to Paragraph 16(b) of the Development Agreement

All that certain piece, parcel or strip of land, situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, approximately ten (10) miles in length, the westernmost boundary of which being an imaginary line having as its northern terminus, a point marked by a concrete monument having State Plane Coordinates N275,327.0025/E2,267,801.5097 located at the southwesternmost corner of a 2.067 acre tract of land located at the terminus of Beachwalker Road on Kiawah Island, known generally as the "Employee Facility Tract" and as shown on a plat by Williams & Associates dated March 20, 1981, and recorded in Plat Book AS at page 85, in the R.M.C. Office for Charleston County, S.C. (the "R.M.C. Office"); thence running with said imaginary line from said point in a southerly direction S04°55'16"E to the mean high water mark of the Atlantic Ocean; said strip of land thence extending eastwardly to an imaginary line extending due south from a point marked by a concrete monument numbered 27722 shown on Page 3 of 3 of a plat of the "Links Course Tract" by Davis & Floyd, Inc., dated February 6, 1989, and recorded in Plat Book BV at page 38, in the R.M.C. Office to the mean high water mark of the Atlantic Ocean; said strip of land varies in width, but is generally between 200' and 300' wide, and extends from the seaward boundary lines of most beachfront residential, resort and commercial properties on Kiawah Island, as shown on plats of record in the R.M.C. Office, to the mean high water mark of the Atlantic Ocean.

SAVING AND EXCEPTING THEREFROM, however, so much of the above-described beachfront property having been previously conveyed by KRA, L.P. or its predecessors in title to third parties by instruments recorded in the R.M.C. Office prior to the execution hereof.

Parcel 8 shall be conveyed by KRA, L.P. to the KICA no later than January 1, 1996, as more particularly set forth in Paragraph 16(b) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-8 attached hereto and incorporated herein by reference.

Parcel 9

Bear Island, a/k/a Little Bear Island, subject to rights of KRA, L.P.,
its successors and assigns, to replace any holes of The Ocean Course,
See paragraph 16(d) of the Development Agreement

All that certain piece, parcel or tract of land, being the far eastern end of Kiawah Island, Charleston County, South Carolina, known generally as "Bear Island" or "Little Bear Island," and shown and designated on a sketch attached hereto as Schedule P-9-("A"), which said sketch is incorporated herein by reference.

Parcel 9 shall be conveyed by KRA, L.P. to the KICA no later than January 1, 2016, as more particularly set forth in Paragraph 16(d) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-9 attached hereto and incorporated herein by reference.



In addition to the above, that portion of Parcel 9 as is designated "area available for golf replacement" (the "Golf Replacement Area") on Schedule P-9-("A") hereto, is made subject to the following terms and conditions:

Should a portion of The Ocean Course, which is located to the southwest of Bear Island, become damaged, in whole or in part, by any future storm, natural disaster, natural change in either the channel or oceanfront or dunes, or by any other causes and there is no property available on such damaged Ocean Course site for the replacement of such holes, then, in such event, KRA, L.P., its successors or assigns, may, in its or their sole discretion, convey to the then owner of The Ocean Course property, so much of the Golf Replacement Area as may be necessary to reconstruct such golf areas of The Ocean Course as may be so damaged by such causes listed above. Should the property on Bear Island as is needed for such purposes be then titled in KICA or its successors or assigns, then such then owner, by acceptance of the deed to the Bear Island property, agrees to forthwith convey to the then owner of The Ocean Course, such lands as are so designated by KRA, L.P., its successors or assigns. The full sale consideration (other than \$1.00) shall be paid solely to KRA, L.P., its successors or assigns. It is understood and agreed that such damage from such causes may occur more than once and from time to time and this condition and conveyance requirement shall continue.

The parties agree that there are approximately 207 acres of highland located within the Bear Island parcel. Once the exact amount of highland acreage within the Bear Island parcel is determined (which such determination shall be made by KRA, L.P. at its sole expense), KRA, L.P. shall have the limited right to subdivide up to twenty (20%) percent of such highland acreage for the construction of up to eighteen (18) small cottage sites, and may convey the same as with other Kiawah Island lots, to third party purchasers. Such 20% area shall be located within the southern half of the Bear Island parcel, as delineated on Schedule P-9-("A") hereto (the aforesaid 20% of the highland acreage within the Bear Island parcel as set forth above is hereinafter referred to as the "Cottage Area"). In addition, KRA, L.P., may construct limited active recreational facilities within the Cottage Area, including, but not limited to tennis facilities, par 3 golf holes, etc. KRA, L.P. and KICA further agree that access to the Cottage Area shall be by means of private roads which will be constructed and maintained by KRA, L.P., and/or an association created by KRA, L.P., its successors and assigns, and KRA, L.P. shall have the right, in its sole discretion, to maintain title to such private access road and/or convey it to a homeowners association.

Prior to the commencement of such construction and improvement of any portion of Bear Island, KRA, L.P. shall submit to the Town of Kiawah Island for approval, a master plan for Bear Island, all in accordance with Paragraph 16(d) of the Development Agreement.

Except as provided above, Bear Island shall remain permanently in its natural state as a habitat for animals and birds; provided, however, that nothing contained herein shall prohibit KRA, L.P., and/or Kiawah property owners and their invitees (under the auspices of and/or regulations and supervision of the KICA), from entering onto such natural areas of Bear Island for camping, nature viewing, wildlife expeditions, and other similar activities. (Access may have to be by boat)

Handwritten signature and initials, possibly reading 'man'.

Parcel 10

Conveyance of Captain Sam's Spit pursuant to
Paragraph 16.(h) of the Development Agreement

All that certain piece, parcel or tract of land being the westernmost portion of Kiawah Island, Charleston County, S.C., lying generally south of Beachwalker Park and southwest of the "Employee Facility Tract", more particularly delineated on a plat by Southeastern Surveying, Inc., entitled **"AN EXHIBIT OF CAPTAIN SAM'S SPIT AND BEACHWALKER PARK OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA"**, dated July 14, 1994, attached hereto as Exhibit "A" and incorporated herein by reference; said tract being bounded on the north by the Kiawah River, a small tract of land west of Beachwalker Park, and Beachwalker Park; on the east by property of Grantor; on the South and Southeast by the Atlantic Ocean and on the west by the Kiawah River and Captain Sam's Inlet.

Parcel 10 shall be conveyed by KRA, L.P. to the KICA no later than January 1, 2008, as more particularly set forth in Paragraph 16(h) of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-10 attached hereto and incorporated herein by reference. Such conveyance shall be made subject to specific reservations by KRA, L.P., for itself and its successors and assigns, of a non-exclusive easement for pedestrian and vehicular access, ingress and egress, and all recreational uses, including boat landing or dock uses.

KRA, L.P. reserves the right, in its sole discretion, to convey the eastern half of Parcel 10, more fully depicted on Schedule P-10(a) hereof, to Charleston County and/or the Charleston County Parks and Recreation Commission, at any time prior to January 1, 2008, pursuant to Paragraph 16.(h) of the Development Agreement. However, such conveyance shall contain a restriction that the property shall be used only for active and/or passive open space, nature study, beach recreation or parks.

Parcel 11

Cougar Island Park

{Paragraph _____}

Parcel 11 consists of no more than two (2) acres of highland located on Cougar Island at a site to be selected by KRA, L.P., its successors and assigns, which is north of The Ocean Course, and is shown on a plat by Davis & Floyd, Inc., surveyors, entitled **"PLAT SHOWING EAST END KIAWAH ISLAND PROPERTY OF KIAWAH ISLAND COMPANY, LIMITED LOCATED CHARLESTON COUNTY, S.C."** dated May 5, 1988, and recorded in Plat Book BS, pages 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, and 53 in the R.M.C. Office, and being a portion of the property included in the records of the Charleston County, S.C. Assessor's Office as Tax Map Number 207-00-00-015, to be provided, planned and developed by KRA, L.P., its successors and assigns, at its sole expense, as a passive park, TOGETHER with a non-exclusive easement for access, ingress and egress to and from said areas and roads owned by the KICA.

Handwritten signature and initials, possibly reading 'All' and 'mm'.

Parcel 11 shall be conveyed by KRA, L.P. to the KICA no later than March 1, 1995, together with all improvements existing thereon at the time of such conveyance, all as more particularly set forth in Paragraph _____ of the Development Agreement. Such conveyance shall be made by Quit-Claim deed, for a nominal consideration not to exceed One and No/100 (\$1.00) Dollar, and said deed shall be in substantially the same form and content, and subject only to the covenants, conditions, rights, easements, restrictions, and reservations as are set forth in Schedule P-11 attached hereto and incorporated herein by reference.

KRA, L.P. further agrees to provide five parking spaces and improve the same, at its sole expense, with coquina shell or better, prior to such conveyance.

THE ABOVE-DESCRIBED PARCELS ARE HEREINAFTER
SOMETIMES COLLECTIVELY REFERRED TO AS THE "PROPERTIES"

MORTGAGE LIEN

The Properties shall be conveyed by KRA, L.P. to the KICA either (i) free and clear of any mortgage liens or (ii) the lien of such mortgages shall be subordinated to the conveyances contemplated hereby.

COMMON PROPERTIES

The Properties described herein shall be conveyed to the KICA by quit-claim deeds, subject to the covenants, conditions, rights, easements, restrictions, provisions, and reservations set forth herein; and subject further to the condition and restriction that the Properties shall be maintained and utilized as Common Properties as defined in the Declaration of Covenants and Restrictions of The Kiawah Island Community Association, Inc. recorded in Book M114, page 407 in the R.M.C. Office, as amended, and shall be made subject to such rights and restrictions as are applicable to Common Properties as set forth in said Declaration.

ROLLBACK TAXES

KRA, L.P. hereby represents to the KICA that it has no knowledge of any pending Roll-Back taxes assessed against the Property and agrees that in the event Roll-Back taxes are assessed against the Property, KRA, L.P. shall assume liability for their payment, and does hereby indemnify the KICA from and against payment thereof.

SURVIVAL

KICA and KRA, L.P. acknowledge and agree that the obligations set forth herein shall survive to the extent called for in paragraph 34(j) of the Development Agreement.

APPLICABLE LAW

This Agreement shall be governed by the laws of the State of South Carolina.

NOTICES

Any notice, demand or other instrument or written communication required or permitted to be given, served, made or delivered hereunder may be given in such manner and to such addresses as are set forth in Paragraph 34.(h) of the Development Agreement.

Handwritten signature and initials, possibly reading 'Dale' and 'man'.

SUCCESSORS AND ASSIGNS

The covenants and agreements in the within Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto, their successors and assigns, their respective successors in interest, their heirs, personal representatives and assigns.

ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the parties hereto and neither this Agreement nor any provision thereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

IN WITNESS WHEREOF, Kiawah Resort Associates, L.P., has caused these presents to be executed in its name by its General Partner thereunto duly authorized, and its seal to be hereunto affixed, this 26th day of September, in the year of our Lord One Thousand Nine Hundred and Ninety-Four, in the Two Hundred and Nineteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: D&W Investments, Inc.,
a South Carolina corporation

(CORP. SEAL)

Its: General Partner

By:

Charles S. Way, Jr.

Its:

President

By:

Betty R. Crow

Its:

Secretary

H. Andrew Waller
[Signature]

[Signature]

man

IN WITNESS WHEREOF, the Kiawah Island Community Association, Inc. has caused these presents to be executed in its name by its officer(s) thereunto duly authorized, and its seal to be hereunto affixed, this _____ day of September, in the year of our Lord One Thousand Nine Hundred and Ninety-Four, in the Two Hundred and Nineteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Anne Watson
[Signature]

KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC. (SEAL)

By: [Signature]
Its: [Signature]
By: [Signature]
Its: Secretary

BUIST/BN/KRALP/DEVELOPM.COM

[Signature]

[Signature]

September 14, 1994

Schedule P-1

Parcel 1
Rhett's Bluff Boat Landing

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) INDENTURE QUIT-CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS, that Kiawah Resort Associates, L.P., (a Delaware limited partnership), (hereinafter sometimes referred to as "KRA, L.P." and/or the "Grantor"), in the State aforesaid, for/and in consideration of the sum of One and No/100 (\$1.00) Dollar, to it in hand paid at and before the sealing of these presents by the Kiawah Island Community Association, Inc., (hereinafter sometimes referred to as the "KICA" and/or the "Grantee"), in the State aforesaid, the receipt whereof is hereby acknowledged, has subject to the reservations herein, remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Kiawah Island Community Association, Inc., the following described property, to-wit:

All that certain piece, parcel or lot of land, together with the buildings and improvements located thereon, and associated with or extending therefrom (e.g., piers, boat access landing, etc.,) situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, known generally as the "Rhett's Bluff Boat Landing" containing 6.430 Acres, more or less, and shown and designated as "6.430 ACRES" on a plat by Southeastern Surveying, Inc., entitled "A PLAT OF A 6.430 ACRE TRACT OF LAND LOCATED IN RHETT'S BLUFF SUBDIVISION OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA", dated June 22, 1994, and recorded in Plat Book _____, page _____, in the R.M.C. Office for Charleston County, South Carolina, said parcel having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear (the highland and all improvements, whether or not depicted on the aforesaid plats, hereinafter referred to as the "Property").

TMS Number: 209-11-00-040

Address of Grantee: One Kiawah River Circle
Kiawah Island, SC 29455

This conveyance is made subject to the following:

- (a) Charleston County, S.C. ad valorem taxes for 1995, not yet due and payable, and ad valorem taxes for all subsequent years.
- (b) Title to that portion of the property, if any, lying below the mean high water mark of abutting tidal waters.

Schedule P-1, Page 1

(c) Rights reserved unto Ronald D. Royal, a/k/a Ronald David Royal, Dennison A. Royal, Alice Royal Smith, formerly Pamela Alice Royal, a/k/a Pamela Royal Smith, Michael F. Royal, Sandra Royal Olsberg and Nancy Royal Schomaker, formerly Nancy Royal Mims, and their respective assigns, and obtained through and tied to the ownership of a lot or lots subdivided from the property described in the "Saving and Excepting Also" clause found on pages 4 and 5 of the deed hereinafter referred to, to become a member of any association of Kiawah property owners or other such organization; the right of ingress and egress over any platted public and private streets, roads and ways; the right to connect and use utility and other services on the same basis as those services are offered to other lot owners on Kiawah Island and the right to use recreational facilities on the same basis as those facilities are offered to other such lot owners, said rights being more fully set forth in subparagraph "(d)" on page 5 of the deed of conveyance from Ronald D. Royal, et al., to Coastal Shores, Inc., dated February 15, 1974, and recorded in Book U103, page 265 in the R.M.C. Office.

(d) Unrecorded easements, if any, for utility lines and facilities existing at the time of the conveyance from Ronald D. Royal, et al. to Coastal Shores, Inc., dated February 15, 1974, and recorded in Book U103, page 265 in the R.M.C. Office, as set forth in paragraph "(c)" on page 7 thereof.

(e) Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Kiawah Island executed by Kiawah Island Company, Inc. dated February 19, 1976, and recorded February 19, 1976, in Book T108, page 338 in the R.M.C. Office, as from time to time may be amended by instruments of record.

(f) Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Kiawah Island executed by Kiawah Island Company Limited dated December 21, 1977, and recorded December 29, 1977, in Book M114, page 406 in the R.M.C. Office.

(g) Declaration of Covenants and Restrictions of The Kiawah Island Community Association, Inc., executed by Kiawah Island Community Association, Inc. and by Kiawah Island Company, Inc. dated February 19, 1976, and recorded February 19, 1976, in Book T108, page 337 in the R.M.C. Office as may from time to time be amended by instruments of record.

(h) Declaration of Covenants and Restrictions of The Kiawah Island Community Association, Inc. executed by Kiawah Island Community Association, Inc. and Kiawah Island Company Limited dated December 21, 1977, and recorded December 29, 1977, in Book M114, page 407 in the R.M.C. Office.

(i) Addendum to the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. dated March 28, 1981, and recorded in Book O125, page 163 in the R.M.C. Office.

(j) Second Addendum to Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. dated July 30, 1984, and recorded August 14, 1984, in Book K139, page 58 in the R.M.C. Office.

(k) Third Addendum to Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., dated January 30, 1992, and recorded in Book R210, page 748 in the R.M.C. Office.

(l) Fourth Addendum to Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., dated May 20, 1994, and recorded June 3, 1994, in Book W243, page 258, in the R.M.C. Office.

(m) First Amendment to the By-Laws of the Kiawah Island Community Association, Inc., dated January 30, 1992, and recorded in Book R210, page 759 in the R.M.C. Office.

(n) Supplementary Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., and Supplementary Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Kiawah Island executed by Kiawah Island Company Limited dated March 23, 1981, and recorded March 26, 1981, in Book Z124, page 305 in the R.M.C. Office.

(o) Second Supplementary Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., executed by the Kiawah Island Community Association, Inc., dated May 20, 1994, and recorded June 3, 1994, in Book W243, page 271, in the R.M.C. Office.

(p) Assignment and Assumption of Developer's Rights and Easements executed by Kiawah Island Company Limited in favor of Kiawah Resort Associates, dated June 28, 1988, and recorded June 29, 1988 in Book Z175, page 561 in the R.M.C. Office, assigning certain rights under the aforesaid restrictions, as certain rights have been further assigned by that certain Agreement and Assignment of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property on Kiawah Island, SC", dated March 31, 1989, a Memorandum of which Agreement is recorded in Book F183, page 307 in the R.M.C. Office, as amended by that certain Amendment to Memorandum for Recording recorded in Book J198, page 623, and as further amended by that certain Second Amendment to Memorandum for Recording recorded in Book X204, page 601 in the R.M.C. Office.

(q) Assignment and Assumption of Developer's Rights and Easements executed by Kiawah Resort Associates in favor of Kiawah Resort Associates, L.P., dated June 26, 1992, and recorded June 26, 1992, in Book N215, page 11, in the R.M.C. Office, assigning the rights referred to in the preceding subparagraph to Kiawah Resort Associates, L.P.

(r) Declaration of Special Covenants and Restrictions (Non-Competition) executed by KRA, dated March 31, 1989, and recorded in Book E183, page 345 in the R.M.C. Office, as amended by instrument dated May 10, 1989, and recorded in Book H184, page 338 in said R.M.C. Office, and as further amended by instrument September 8, 1989, and recorded in Book M191, page 671 in said R.M.C. Office.

(s) Agreement entered into by and between Kiawah Resort Associates and Edgar A. Buck and Margaret B. Buck dated February 10, 1989, and recorded in Book W181, page 643 in the R.M.C. Office.

(t) Declaration of Special Covenants and Restrictions (Bass Pond), declared by Kiawah Resort Associates, dated March 31, 1989, and recorded in Book E183, page 411 in the R.M.C. Office.

(u) Non-Exclusive Easement for Access, Ingress and Egress and for Effluent Lines executed by Kiawah Resort Associates in favor of Landmark Land Company of Carolina, Inc., dated March 31, 1989, and recorded March 31, 1989, in Book E183, page 138 in the R.M.C. Office.

Schedule P-1, Page 3

Handwritten signature and initials, possibly reading 'M. Buck'.

(v) Agreement by and between St. John's Water Company, Inc. and Kiawah Island Utility, Inc., dated April 12, 1978, and recorded in Book O121, page 365, in the R.M.C. Office.

(w) Any lawful, constitutional interest in either the State of South Carolina or Federal Government created, or limitations on use imposed, by the Federal Coastal Management Act or other Federal law or by S. C. Code Sections 48-39-10 through 48-39-220, as amended, and Sections 48-39-250 through 48-39-360, as amended, or any regulations promulgated pursuant to said State or Federal laws, inclusive of the DHEC - Office of Ocean and Coastal Resource Management, and U. S. Army Corps of Engineers regulations, and such rights as the public may enjoy to the use of property lying below the mean high water mark.

(x) Easements, construction/improvement setbacks and other building/use criteria as shown on the aforesaid plat recorded in Plat Book _____, at page _____, in the R.M.C. Office.

(y) Memorandum of Utility Service Agreement executed by and between Kiawah Resort Associates, L.P. and Kiawah Island Utility, Inc., dated July 29, 1994, and recorded in Book _____, page _____, in the R.M.C. Office.

(z) This conveyance is made subject to the express covenant, condition and restriction that the Property shall be used only as a private Kiawah Island community boat landing with related facilities, for the use of Kiawah Island property owners and others as either allowed for or reserved herein or by KICA, its successors and assigns, and the Property shall be maintained and utilized as a Common Property as defined in the aforesaid Declaration recorded in Book M114, page 407 in the R.M.C. Office, as amended, and is subject to such rights and restrictions as are applicable to Common Properties as set forth in said Declaration.

Notwithstanding any other provision hereof, there is hereby reserved unto the Grantor, for itself and its invitees, successors, successors in title and assigns, the non-exclusive, perpetual, permanent, assignable, transmissible and commercial right and easement, in perpetuity, to use and reserve the Rhett's Bluff Boat Landing (i.e., the Property), including all improvements thereon, without charge, for parties, special events, and other similar functions, and for fishing, boating, crabbing, etc. Grantor, its successors and assigns, shall be fully responsible for the preparation and cleanup of the site and for payment for all KICA security, cleanup and other expenses (including all repairs) as may be generated as a result of Grantor's such usage. Grantor's party usage shall be limited to 15 days per year, and Grantor, its successors and assigns, shall give KICA reasonable written notice of its desire to reserve such usage; these party usage rights shall be further limited, as a matter of right, to periods of no more than two consecutive days.

The non-exclusive usage rights and easements herein reserved shall be for the benefit of Grantor, its invitees, successors, successors in title and assigns, shall be and are hereby deemed to be integral to, inhering in and essential to Grantor's commercial purposes as developer of Kiawah Island and/or the "Company" under the Kiawah Island Covenants, are enforceable only by Grantor, its successors as such developer or the "Company" under the Kiawah Island Covenants, and its assigns, or its designee, and shall benefit and run with the title to the Grantor's remaining properties on Kiawah Island, S.C. (including but not limited to its Sales Center Property on the Kiawah Island Parkway and Cougar Island).

Schedule P-1, Page 4

B.



ALL-STATE LEGAL 800-222-2519 EDSN RECYCLED

EXH B

EX 11 265PG406

Parcel 8

Approximately 10 Miles of Beachfront Property

STATE OF SOUTH CAROLINA)
) QUIT-CLAIM DEED
COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS, that Kiawah Resort Associates, L.P., (a Delaware limited partnership), (hereinafter sometimes referred to as "KRA, L.P." and/or the "Grantor"), in the State aforesaid, for and in consideration of the sum of One and No/100 (\$1.00) Dollar, to it in hand paid at and before the sealing of these presents by the Kiawah Island Community Association, Inc., (hereinafter sometimes referred to as the "KICA" and/or the "Grantee"), in the State aforesaid, the receipt whereof is hereby acknowledged, has remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said Kiawah Island Community Association, Inc., all of its right, title and interest, of, in and to the following described property, to-wit:

All that certain piece, parcel or strip of land, situate, lying and being in the Town of Kiawah Island, County of Charleston, State of South Carolina, approximately ten (10) miles in length, the westernmost boundary of which being an imaginary line having as its northern terminus, a point marked by a concrete monument having State Plane Coordinates N275,327.0025/ E2,267,801.5097 located at the southwesternmost corner of a 2.067 acre tract of land located at the terminus of Beachwalker Road on Kiawah Island, known generally as the "Employee Facility Tract" and as shown on a plat by Williams & Associates dated March 20, 1981, and recorded in Plat Book AS at page 85, in the R.M.C. Office for Charleston County, S.C. (the "R.M.C. Office"); thence running with said imaginary line from said point in a southerly direction S04°55'16"E to the mean high water mark of the Atlantic Ocean; said strip of land thence extending eastwardly to an imaginary line extending due south from a point marked by a concrete monument numbered 27722 shown on Page 3 of 3 of a plat of the "Links Course Tract" by Davis & Floyd, Inc., dated February 6, 1989, and recorded in Plat Book BV at page 38, in the R.M.C. Office to the mean high water mark of the Atlantic Ocean; said strip of land varies in width, but is generally between 200' and 300' wide, and extends from the seaward boundary lines of most beachfront residential, resort and commercial properties on Kiawah Island, as shown on plats of record in the R.M.C. Office, to the mean high water mark of the Atlantic Ocean.

IN-5 No 207-00-00-029

SAVING AND EXCEPTING THEREFROM, however, so much of the above-described beachfront property having been previously conveyed to third parties by instruments recorded in the R.M.C. Office prior to the execution and recordation hereof.

(The above-described property is hereinafter referred to as the "Property").

TMS Number:

207-00-00⁰²⁹~~002~~

Address of Grantee:

One Kiawah River Circle
Kiawah Island, SC 29455

This conveyance is made subject to all applicable covenants, conditions, restrictions and easements of record as of September 16, 1994, the date of the Development Agreement executed by and between Kiawah Resort Associates, L.P., and the Town of Kiawah Island, and all applicable governmental and zoning ordinances and regulations.

This conveyance is made subject further to the covenant, condition and restriction that the Property shall be maintained and utilized as a Common Property as defined in the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., recorded in Book M114, page 407 in the R.M.C. Office, as amended, (the "KICA Covenants") and shall be made subject to such rights and restrictions as are applicable to Common Properties as set forth in said KICA Covenants.

Notwithstanding any other provision hereof, there is hereby reserved unto the Grantor, for itself and its invitees, successors, subsidiaries, successors in title and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial right and easement for ingress and egress, for the construction and maintenance of permitted walkways, boardwalks, and gazebos, and to use the Property for other lawful purposes.

Further reserving unto the Grantor, for itself, its invitees, successors, subsidiaries, successors-in-title and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial right and easement for access, ingress and egress for the installation and maintenance of utilities and for all other necessary, useful, or convenient utility purposes and activities of every kind and description, over, upon, across, and under, the Property, which said easement is necessary for Grantor's commercial purposes as developer of Kiawah Island, and those of its successors, assigns, and subsidiaries.

Nothing herein is intended to lessen or curtail any other rights or privileges as Grantor may enjoy, either as a Kiawah property owner or the Company, under any of the recorded Kiawah covenants, including rights or easements to use and enjoy Common Property and allowing guests or others to do so.

Portions of the Property hereby conveyed may be located in part seaward of the interim Setback Line as established by the South Carolina Coastal Council (n/k/a DHEC - Office of Ocean and Coastal Resource Management) as of January 20, 1989, and South Carolina Code Sections 48-39-270 through 48-39-360, as amended, effective July 1, 1988 (the "Beach Protection Act"). The following information concerning the location and circumstances of the Property is hereby disclosed:

The proximity and location of the Interim Setback Line and the Interim Baseline areas are shown on plats of record in the R.M.C. Office for Charleston County, South Carolina. There are no habitable structures on the Property seaward of the setback line. The most recently published annual erosion rate for the Property is not set forth herein because the Property shown on such plats has over the 40 year period prior to July 1, 1988, been determined to not have an erosion rate. Reference must be had to the Beach Protection Act itself regarding the significance of these disclosures as well as the potential for movement and relocation of the lines in the future.

This is a portion of the property conveyed to the Grantor herein by deed of conveyance of Kiawah Resort Associates, a South Carolina joint venture, dated June 26, 1992, and recorded in Book L215, page 486 in the R.M.C. Office.

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Kiawah Island Community Association, Inc., its successors and assigns, forever.

IN WITNESS WHEREOF, Kiawah Resort Associates, L.P., has caused these presents to be executed in its name by its General Partner thereunto duly authorized, and its seal to be hereunto affixed, this 29th day of December, in the year of our Lord One Thousand Nine Hundred and Ninety-Five, and in the Two Hundred and Nineteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: D&W Investments, Inc.,
a South Carolina corporation

(CORP SEAL)

Its: General Partner

By: Charles S. Way, Jr.
Charles S. Way, Jr.

Its: President

By: Betty R. Crow
Betty R. Crow

Its: Secretary

Nilda M. Badiali

Elizabeth J. Ammons

OX 265PG409

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness, who made oath that (s)he saw the within named Kiawah Resort Associates, L.P., by D&W Investments, Inc., a South Carolina corporation, its General Partner, by Charles S. Way, Jr., its President and by Betty R. Crow, its Secretary, sign and seal the within written instrument, and as the act and deed of the limited partnership deliver the same, and that (s)he with the other witness appearing above witnessed the execution thereof.

Sworn to before me this
29th day of December, 1995.

Nida M. Badali (SEAL)
Notary Public for South Carolina
My commission expires: 5-24-2004

Elizabeth J. Sumner

BU1ST/BN/KRALP/TOWN/PARCEL&DED.

This deed was delivered on December 29, 1995.

RETURN TO
THOMAS G. BUIST
P.O. BOX 316
29402

BK N 265PG410

41 clai
10. 10 L

FILED

AMS Verified
POTL# 12
INT 116
2-20-96

N265-406

96 FEB 20 PM 4:38

CLERK OF COURT
CHARLESTON COUNTY SC

(AFF)

7H
2-23-96

Recorded this 20 day of Feb Year '96
On Property Record Card

James A. Mosley
Auditor Charleston County

C

C.

EXH C

BK Y285PG763

Re-Recorded
BK 0 288PG790
I/T

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) CONFIRMATORY QUIT-CLAIM DEED
(3.054 Acre "Beachfront Parcel" on Sea Forest Drive
Town of Kiawah Island, S.C.)

WHEREAS, Kiawah Resort Associates, L.P. (a Delaware limited partnership hereinafter sometimes referred to as "KRA, L.P." and/or the "Grantee") and the Town of Kiawah Island entered into that certain Development Agreement in connection with the development of Kiawah Island, S.C., which agreement is dated as of September 26, 1994, and recorded September 30, 1994, in Book J248, page 1, in the R.M.C. Office for Charleston County, S.C., as amended (the "Development Agreement"); and

WHEREAS, pursuant to the provisions of Section 16.b. of the Development Agreement, KRA, L.P. conveyed several miles of beachfront property on Kiawah Island, Charleston County, S.C., to the Kiawah Island Community Association, Inc. (hereinafter sometimes referred to as the "KICA" and/or the "Grantor") by Quit-Claim Deed dated the 29th day of December, 1995, and recorded in Book N265, page 406, in said R.M.C. Office (the "Beachfront Deed"); and

WHEREAS, the property conveyed by the Beachfront Deed was not shown in its entirety on plats of record, thus requiring that the legal description of the property conveyed be described generally as an area extending from a specific point located at the western end of Kiawah Island to a point located at the eastern end thereof, generally between 200' and 300' in width, extending from the seaward boundary lines of "most beachfront residential, resort and commercial properties on Kiawah Island as shown on plats of record" in said R.M.C. Office, to the mean high water mark of the Atlantic Ocean; and

WHEREAS, it has come to the attention of KRA, L.P. that at the time of said conveyance, there was no plat of record which would establish the seaward boundary line of an approximately 3.054 acre beachfront parcel located south of the easternmost terminus of Sea Forest Drive on Kiawah Island, east of Windswept Villas, and west of the "Center Island Hotel Tract;" and

WHEREAS, KRA, L.P. has now obtained a plat of survey dated March 11, 1997, which establishes the southern or seaward boundary line of the said 3.054 acre beachfront parcel, which plat was prepared by Southeastern Surveying, Inc., has been duly approved by the proper governmental authorities, and is recorded in Plat Book EB, at page 679, in said R.M.C. Office, and the said 3.054 acre beachfront parcel is more particularly described according to said plat in the legal description thereof set forth on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, it was not the intention of the parties to the Development Agreement that title to any portion of the Property be included in the Beachfront Deed; and

WHEREAS, KICA is minded to execute and deliver the within Confirmatory Quit-Claim Deed to the said KRA, L.P. in order to (i) avoid any possible future question or concern regarding the title to the Property being presently vested in KRA, L.P.; and (ii) remove any question as may have arisen by the unintended possible inclusion of the Property or some portion thereof in the legal description in the Beachfront Deed; and

**This deed is being re-recorded to add the Tract designation (Tract "F") and correct the name of the plat in the Property Description on Exhibit "A".

WHEREAS, at a duly called meeting of the Board of Directors of the Kiawah Island Community Association, Inc., held the 27th day of May, 1997, it was unanimously resolved that the execution and delivery of the within Confirmatory Quit-Claim Deed is an administrative function of such corporation to clarify an ambiguity created by the language contained in the Beachfront Deed, and pursuant to the powers and authority vested in said Board of Directors under the Declaration of Covenants and Restrictions of the KICA recorded in Book M114, page 407, in the R.M.C. Office, as amended (the "KICA Covenants"), Eric H. Nielsen, its President, and Nicholas Mihalas, its Secretary, were authorized and directed to execute the same on behalf of the corporation,

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., by and through its undersigned officers thereunto duly authorized, in the State aforesaid, for/and in consideration of the Premises and the sum of One and No/100 (\$1.00) Dollar, to it in hand paid at and before the sealing of these presents by KIAWAH RESORT ASSOCIATES, L.P., in the State aforesaid, the receipt whereof is hereby acknowledged, has remised, released, and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said KIAWAH RESORT ASSOCIATES, L.P., all of its right, title and interest of, in and to the below described property, to-wit:

SEE ATTACHED EXHIBIT "A" FOR PROPERTY DESCRIPTION
OF THE 3.054 ACRE BEACHFRONT PARCEL
(hereinafter sometimes referred to as the "Property")

This conveyance is made subject to any and all applicable covenants, conditions, restrictions, and easements of record.

TMS Number: 209-07-00-126
Tax District: 5-4
Address of Grantee: Post Office Box 12001
Charleston, SC 29422

AND KICA, by the execution, delivery, and recordation of the within Confirmatory Quit-Claim Deed, does hereby agree and confirm that (i) the Property was not, nor was it ever intended to be included in the Beachfront Deed conveyance; (ii) that any and all reservations, limitations or restrictions purportedly imposed on or implied by, through, or under the Beachfront Deed to be on the Property are hereby declared null, void, and of no further force and effect if ever in effect; and (iii) that no portion of the Property is, or ever was intended to be maintained and utilized as a "Common Property" as such term is defined in the KICA Covenants.

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said KIAWAH RESORT ASSOCIATES, L.P., its successors and assigns, forever.

Kiawah Resort Associates, L.P. has joined in the execution of the within Confirmatory Quit-Claim Deed to evidence of record its consent and agreement to said deed and the terms, provisions, and conditions set forth herein.

IN WITNESS WHEREOF, the Kiawah Island Community Association, Inc. has caused these presents to be executed in its name by its officer(s) thereunto duly authorized, and its seal to be hereunto affixed, this 23 day of June, in the year of our Lord One Thousand Nine Hundred and Ninety-Seven, in the Two Hundred and Twenty-First year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
[Signature] C. Bryant
[Signature] C. Bryant

KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC. (SEAL)

By: [Signature]
Eric H. Nielsen
Its: President
By: [Signature]
Nicholas Mihalas
Its: Secretary

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by the Kiawah Island Community Association, Inc., by Eric H. Nielsen, its President, this 23rd day of June, 1997.

[Signature] C. Bryant (SEAL)
Notary Public for South Carolina
My commission expires: 8-8-99

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by the Kiawah Island Community Association, Inc., by Nicholas Mihalas, its Secretary, this 23rd day of June, 1997.

[Signature] C. Bryant (SEAL)
Notary Public for South Carolina
My commission expires: 8-8-99

BK Y285PG766 Re-Recorded
BK 0 288PG793

IN WITNESS WHEREOF, Kiawah Resort Associates, L.P., has caused these presents to be executed in its name by its General Partner thereunto duly authorized and its seal to be hereunto affixed, this 15th day of April, in the year of our Lord One Thousand Nine Hundred and Ninety-Seven, in the Two Hundred and Twenty-First year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: D&W Investments, Inc.,
a South Carolina corporation
(CORP. SEAL)

Its: General Partner

By: Charles P. Darby, III
Its: President

William L. Bell
John C. Bryant

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., a South Carolina corporation, its General Partner, by Charles P. Darby, III, its President, this 15th day of April, 1997.

John C. Bryant (SEAL)
Notary Public for South Carolina
My commission expires: 8-8-99

efn/wpdocs/town/4acreded.rev

Re-Recorded
BK 0 288 PG 794

BK Y285 PG 767

Exhibit "A"

Description of 3.054 Acre Tract

*as Tract "F" All that certain piece, parcel or tract of land situate, lying and being in the Town of
Kiawah Island, Charleston County, State aforesaid, containing 3.054 acres, more or less, *etc*
and shown on a plat prepared by Southeastern Surveying, Inc., entitled "A BOUNDARY PLAT OF
TRACT F BEING 3.054 ACRES OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED *etc*
IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH
CAROLINA" dated March 11, 1997, and recorded in Plat Book EB, at page 679, in the *etc*
R.M.C. Office for Charleston County, S.C., said property having such location, butts and
bounds, metes, courses and distances as will by reference to said plat more fully appear.

Re-Recorded
BK 0 288PG795

BK Y285PG768
CONSENT
(Confirmatory Quit-Claim Deed)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

WHEREAS, Kiawah Resort Associates, L.P. (a Delaware limited partnership hereinafter sometimes referred to as "KRA, L.P.") and the Town of Kiawah Island (the "Town") entered into that certain Development Agreement in connection with the development of Kiawah Island, S.C., which agreement is dated as of September 26, 1994, and recorded September 30, 1994, in Book J248, page 1, in the R.M.C. Office for Charleston County, S.C., (the "R.M.C. Office"), as amended (the "Development Agreement"); and

WHEREAS, pursuant to the provisions of Section 16.b. of the Development Agreement, KRA, L.P. attempted to convey approximately 10 miles of beachfront property on Kiawah Island, Charleston County, S.C., to the Kiawah Island Community Association, Inc. ("KICA") by Quit-Claim Deed dated the 29th day of December, 1995, and recorded in Book N265, page 406, in the R.M.C. Office (the "Beachfront Deed"); and

WHEREAS, (i) the 10 mile beachfront strip to be conveyed to KICA by the Beachfront Deed was not shown on a plat of record; (ii) certain of the properties landward of the beachfront strip to be conveyed were either shown on numerous plats of record or were not platted at all; and (iii) the seaward boundary lines of certain parcels as shown on plats of record is the mean high water mark of the Atlantic Ocean, thereby creating an uncertainty as to exactly what property was conveyed to KICA by the Beachfront Deed, and what property was retained by KRA, L.P.; and

WHEREAS, KRA, L.P. is the owner of a 3.054 acre beachfront parcel located south of the easternmost terminus of Sea Forest Drive on Kiawah Island, east of Windswept Villas, and west of the "Center Island Hotel Tract," which 3.054 acre tract is more particularly described on Exhibit "A" on the attached Confirmatory Quit-Claim Deed from KICA to KRA, L.P. (the "3.054 Acre Tract") but which parcel was not shown on a plat of record in the R.M.C. Office at the time of recordation of the Beachfront Deed;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that after a careful review of the Development Agreement, and due consideration and consultation by and among the Mayor, Council members, and legal representatives of the Town, the Town of Kiawah Island, as a party to the Development Agreement, is minded to execute the within Consent to evidence of record its acknowledgment that the 3.054 Acre Tract as shown on a plat by Southeastern Surveying, Inc., recorded in Plat Book EB, at page 679, in the R.M.C. Office, and more particularly described on Exhibit "A" to the attached Confirmatory Quit-Claim Deed from KICA to KRA, L.P. never was intended to be included in the Beachfront Deed; and to consent to the execution, delivery, and recordation of the said Confirmatory Quit-Claim Deed by KICA to KRA, L.P. as a confirmatory action, which shall not be construed as contrary to or in violation of the terms and provisions of Paragraph 16.b. of the Development Agreement.

BK Y285PG769

Re-recorded
BK 0 288PG796

IN WITNESS WHEREOF, the Town of Kiawah Island has caused these presents to be executed
this 21st day of April, 1997.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



TOWN OF KIAWAH ISLAND
(CORP. SEAL)

By: Ralph A. Magnotti
Ralph A. Magnotti, Mayor

Attest: Rita Moran
Clerk of Council

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Re Recorded
 BK 0 288PG797

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Certain property located within the Town of Kiawah Island, Charleston County, S.C., being a 3.054 acre tract of land, bearing Charleston County Assessor's Office TMS #209-07-00-126, was transferred by Kiawah Island Community Association, Inc. to Kiawah Resort Associates, L.P. by Confirmatory Quit-Claim Deed dated April 15, 1997.

2. The transaction was (Check One):

_____ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was a nominal consideration of Five and No/100 (\$5.00) Dollars, as the conveyance is a transfer of roads and other related facilities.

_____ not an arm's length real property transaction and the fair market value of the property is \$ _____

XX The above transaction is exempt, or partially exempt from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, et seq. because said transaction is a Confirmatory Quit-Claim Deed, and meets the requirements of Exemption #14.

As requested by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Legal Planning Assistant for the Grantee, Kiawah Resort Associates, L.P.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Charles H. Morris (SEAL)
 Purchaser, Legal Representative of the Purchaser,
 or other Responsible Person connected with the
 transaction.

Sworn to before me this

24 day of June, 1997.

Janice B. Morley (SEAL)
 Notary Public for South Carolina

My commission expires: 08-01-05

Return to:

BK Y285PG771

Elisabeth F. Nimmons
Legal Planning Assistant
Kiawah Resort Associates, L.P.
Post Office Box 419
Charleston, SC 29402

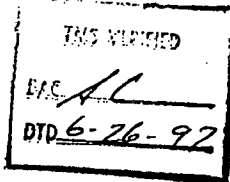
FILED

Y285-763
97 JUN 24 PM 2:25

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

del I Re-Recorded
BK 0 288PG798

del I
CFB



Recording Fee	14.00
State Fee	
County Fee	EXEMPT
Postage	
TOTAL	14.00

A

Recorded this 24 day of Jun Year 97
On Property Record Card

Roger A Mosley
Auditor Charleston County

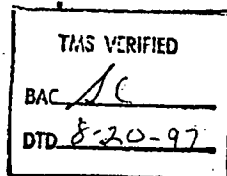
Re-Recording Fee	14.00
State Fee	EXEMPT
County Fee	
Postage	
TOTAL	14.00

C

Re-Recorded
FILED

0288-790
97 AUG 15 PM 4:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

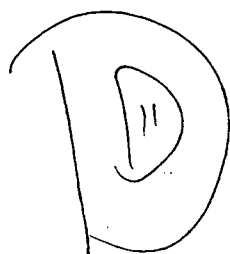


Recorded this 15 day of Aug Year 97
On Property Record Card

Roger A Mosley
Auditor Charleston County



D



BK Y285PG772

EXH D

Re-Recorded
BK 0 288PG799
I/+

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CORRECTIVE
AND
CONFIRMATORY DEED

WHEREAS, Kiawah Resort Associates, L.P. (a Delaware limited partnership hereinafter sometimes referred to as "KRA, L.P." and/or the "Grantor") and the Town of Kiawah Island entered into that certain Development Agreement in connection with the development of Kiawah Island, S.C., which agreement is dated as of September 26, 1994, and recorded September 30, 1994, in Book J248, page 1, in the R.M.C. Office for Charleston County, S.C., (the "R.M.C. Office"), as amended (the "Development Agreement"); and

WHEREAS, pursuant to the provisions of Section 16.b. of the Development Agreement, KRA, L.P. conveyed approximately 10 miles of beachfront property on Kiawah Island, Charleston County, S.C., to the Kiawah Island Community Association, Inc. (hereinafter sometimes referred to as the "KICA" and/or the "Grantee") by Quit-Claim Deed dated the 29th day of December, 1995, and recorded in Book N265, page 406, in the R.M.C. Office (the "Beachfront Deed"); and

WHEREAS, the property conveyed by the Beachfront Deed was not separately platted. Accordingly, the property description was recited generally as an area extending from a specific point located at the western end of Kiawah Island to a point located at the eastern end thereof, generally between 200' and 300' wide, extending from the seaward boundary lines of most beachfront residential, resort and commercial properties on Kiawah Island as shown on plats of record in the R.M.C. Office, to the mean high water mark of the Atlantic Ocean; and

WHEREAS, it has come to the attention of KRA, L.P. that at the time of said conveyance, there was no plat of record which would establish the seaward boundary line of an approximately 3.054 acre beachfront parcel located south of the easternmost terminus of Sea Forest Drive on Kiawah Island, east of Windswept Villas, and west of the "Center Island Hotel Tract," which 3.054 acre tract is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "3.054 Acre Tract;") and

WHEREAS, KRA, L.P., the Town of Kiawah Island, and KICA did not intend to include any portion of the 3.054 Acre Tract in the Beachfront Deed; and

WHEREAS, in order to avoid any possible future title questions or concerns with regard to the 3.054 Acre Tract, KRA, L.P. has heretofore obtained a plat of survey which establishes the southern or seaward boundary line thereof, which plat has been duly approved by the proper governmental authorities, and is recorded in Plat Book EB, at page 679, in the R.M.C. Office; and

WHEREAS, KRA, L.P. is minded to execute and deliver the within Corrective and Confirmatory Deed to clarify and confirm the description of the beachfront property seaward of the 3.043 Acre Tract which was conveyed to KICA by the aforesaid Beachfront Deed,

**This deed is being re-recorded to (i) reflect the correct TMS Number; and (ii) add the Tract designation (Tract "F") and correct the name of the plat in the Property Description on Exhibit "A".

Page 1

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that KIAWAH RESORT ASSOCIATES, L.P., in the State aforesaid, for/and in consideration of the Premises and the sum of One and No/100 (\$1.00) Dollar, to it in hand paid at and before the sealing of these presents by KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., in the State aforesaid, the receipt whereof is hereby acknowledged, has remised, released, and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., all of its right, title and interest of, in and to the below described property, to-wit:

SEE ATTACHED EXHIBIT "B" FOR PROPERTY DESCRIPTION
OF BEACHFRONT PROPERTY SEAWARD OF THE 3.054 ACRE TRACT

(hereinafter sometimes referred to as the "Property")

TMS Number: 207-00-00-029
Tax District: 5-4
Address of Grantee: 23 Beachwalker Drive
Kiawah Island, SC 29455

This conveyance is made subject to any and all applicable covenants, conditions, restrictions, and easements of record as of September 16, 1994, the date of the Development Agreement, as amended, and all applicable governmental and zoning ordinances and regulations.

This conveyance is made subject further to the covenant, condition, and restriction that the Property shall be maintained and utilized as a Common Property as defined in the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., recorded in Book M114, page 407, in the R.M.C. Office, as amended, (the "KICA Covenants"), and shall be made subject to such rights and restrictions as are applicable to Common Properties as set forth in the KICA Covenants.

Notwithstanding any other provision hereof, there is hereby reserved unto the Grantor, for itself and its invitees, successors, subsidiaries, successors-in-title, and assigns, a non-exclusive assignable, transmissible, and commercial right and easement for ingress and egress, for the construction and maintenance of permitted walkways, boardwalks, and gazebos, and to use the Property for other lawful purposes.

Further reserving unto the Grantor, for itself, its invitees, successors, subsidiaries, successors-in-title, and assigns, a non-exclusive, assignable, transmissible, and commercial right and easement for access, ingress, and egress for the installation and maintenance of all utilities, and for all other necessary, useful, or convenient utility purposes and activities of every kind and description over, upon, across, and under the Property, which easement is necessary for Grantor's commercial purposes as developer of Kiawah Island, S.C., and those of its successors, assigns, and subsidiaries.

Nothing herein is intended to lessen or curtail any other rights or privileges as Grantor may enjoy, either as a Kiawah property owner or the Company under any of the recorded Kiawah covenants, including rights or easements to use and enjoy Common Property and allowing guests or others to do so.

By the execution and recordation of the within Corrective and Confirmatory Deed, KRA, L.P. does hereby declare and confirm that (i) the 3.054 Acre Tract was not, nor was it ever intended to be included in the Beachfront Deed; (ii) that any and all reservations, limitations or restrictions purportedly imposed or inferred on the 3.054 Acre Tract by, through, or under the Beachfront Deed are hereby declared null, void, and of no further force and effect; and (iii) that no portion of the 3.054 Acre Tract is, or ever was intended to be maintained and utilized as a "Common Property" as defined in the KICA Covenants.

re-recorded
BK 0 288PG801

Portions of the Property hereby conveyed may be located in part seaward of the interim Setback Line as established by the South Carolina Coastal Council (n/k/a DHEC - Office of Ocean and Coastal Resource Management) as of January 20, 1989, and South Carolina Code Sections 48-39-270 through 48-39-360, as amended, effective July 1, 1977 (the "Beach Protection Act"). The following information concerning the location and circumstances of the Property is hereby disclosed:

The proximity and location of the interim Setback Line and the Interim Baseline areas are shown on plats of record in the R.M.C. Office. There are no habitable structures on the Property seaward of the setback line. The most recently published annual erosion rate for the Property is not set forth herein because the Property shown on such plats has over the 40 year period prior to July 1, 1988, been determined to not have an erosion rate. Reference must be had to the Beach Protection Act itself regarding the significance of these disclosures as well as the potential for movement and relocation of the lines in the future.

This is a portion of the property conveyed to the Grantor herein by deed of conveyance of Kiawah Resort Associates, a South Carolina joint venture, dated June 26, 1992, and recorded in Book L215, page 486, in the R.M.C. Office, and a portion of the property conveyed by KRA, L.P. to KICA by the Beachfront Deed.

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., its successors and assigns, forever.

IN WITNESS WHEREOF, Kiawah Resort Associates, L.P., has caused these presents to be executed in its name by its General Partner thereunto duly authorized and its seal to be hereunto affixed, this 15th day of April, in the year of our Lord One Thousand Nine Hundred and Ninety-Seven, in the Two Hundred and Twenty-First year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Allison L. Bell
Anna C. Pappas

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: D&W Investments, Inc.,
a South Carolina corporation
(CORP. SEAL)

Its: General Partner

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

Its: President

BK Y285PG775

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Re-Recorded
BK 0 288PG802

THE FOREGOING INSTRUMENT was acknowledged before me by Kiawah Resort Associates, L.P., by D&W Investments, Inc., a South Carolina corporation, its General Partner, by Charles P. Darby, III, its President, this 15th day of April, 1997.

Dean C. Bryant (SEAL)
Notary Public for South Carolina
My commission expires: 8-8-99

BK Y285PG776

Exhibit "A"

Re Recorded
BK 0 288PG803

Description of 3.054 Acre Tract

*as Tract "F" All that certain piece, parcel or tract of land situate, lying and being in the Town of
Kiawah Island, Charleston County, State aforesaid, containing 3.054 acres, more or less, *EHN*
and shown on a plat prepared by Southeastern Surveying, Inc., entitled "A BOUNDARY PLAT OF
TRACT F BEING 3.054 ACRES OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED *HN*
IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH *OFF*
CAROLINA" dated March 11, 1997, and recorded in Plat Book EB, at page 679, in the
R.M.C. Office for Charleston County, S.C., said property having such location, butts and
bounds, metes, courses and distances as will by reference to said plat more fully appear.

BK Y285PG777

Exhibit "B"

Re-Recorded

The "Property"

BK 0 288PG804

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State aforesaid, lying within an area having as its western boundary, an imaginary line being the southerly extension of the westernmost property line of the 3.054 Acre Tract (as shown on a plat prepared by Southeastern Surveying, Inc., dated March 11, 1997, and recorded in Plat Book EB, at page 679, in the R.M.C. Office), and as its eastern boundary, an imaginary line being the southerly extension of the easternmost property line of the 3.054 Acre Tract, to the mean high water mark of the Atlantic Ocean, as the same may vary from time to time.

Page 6

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) CONSENT
) *(Corrective and Confirmatory Deed)*

WHEREAS, Kiawah Resort Associates, L.P. (a Delaware limited partnership hereinafter sometimes referred to as "KRA, L.P.") and the Town of Kiawah Island (the "Town") entered into that certain Development Agreement in connection with the development of Kiawah Island, S.C., which agreement is dated as of September 26, 1994, and recorded September 30, 1994, in Book J248, page 1, in the R.M.C. Office for Charleston County, S.C., (the "R.M.C. Office"), as amended (the "Development Agreement"); and

WHEREAS, pursuant to the provisions of Section 16.b. of the Development Agreement, KRA, L.P. attempted to convey approximately 10 miles of beachfront property on Kiawah Island, Charleston County, S.C., to the Kiawah Island Community Association, Inc. ("KICA") by Quit-Claim Deed dated the 29th day of December, 1995, and recorded in Book N265, page 406, in the R.M.C. Office (the "Beachfront Deed"); and

WHEREAS, (i) the 10 mile beachfront strip to be conveyed to KICA by the Beachfront Deed was not shown on a plat of record; (ii) certain of the properties landward of the beachfront strip to be conveyed were either shown on numerous plats of record or were not platted at all; and (iii) the seaward boundary lines of certain parcels as shown on plats of record is the mean high water mark of the Atlantic Ocean, thereby creating an uncertainty as to exactly what property was conveyed to KICA by the Beachfront Deed, and what property was retained by KRA, L.P.; and

WHEREAS, KRA, L.P. is the owner of a 3.054 acre beachfront parcel located south of the easternmost terminus of Sea Forest Drive on Kiawah Island, east of Windswept Villas, and west of the "Center Island Hotel Tract," which 3.054 acre tract (the "3.054 Acre Tract") is more particularly described on Exhibit "A" to the attached Corrective and Confirmatory Deed from KRA, L.P. to KICA for the beachfront area seaward thereof, but which 3.054 Acre Tract was not shown on a plat of record in the R.M.C. Office at the time of recordation of the Beachfront Deed,

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that after a careful review of the Development Agreement, and due consideration and consultation by and among the Mayor, Council members, and legal representatives of the Town, the Town of Kiawah Island, as a party to the Development Agreement, is minded to execute the within Consent to evidence of record its acknowledgment that the 3.054 Acre Tract as shown on a plat by Southeastern Surveying, Inc., recorded in Plat Book EB, at page 679, in the R.M.C. Office, and more particularly described on Exhibit "A" to the attached Corrective and Confirmatory Deed from KRA, L.P. to KICA never was intended to be included in the Beachfront Deed; and to consent to the execution, delivery, and recordation of the said Corrective and Confirmatory Deed by KRA, L.P. to KICA as a confirmatory action, which shall not be construed as contrary to or in violation of the terms and provisions of Paragraph 16.b. of the Development Agreement.

BK Y285PG779

Re-Recorded

BK 0 288PG806

IN WITNESS WHEREOF, the Town of Kiawah Island has caused these presents to be executed
this 24 day of April, 1997.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



TOWN OF KIAWAH ISLAND
(CORP. SEAL)

By: Ralph A. Magnotti
Ralph A. Magnotti, Mayor

Attest: Rita Moran
Clerk of Council

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT

Re-Recorded
 BK 0 288PG807

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Certain property located within the Town of Kiawah Island, Charleston County, S.C., consisting of the beach area seaward of a 3.054 acre tract of land, being a portion of TMS 207-00-00-029, was transferred by Kiawah Resort Associates, L.P. to the Kiawah Island Community Association, Inc. by Corrective and Confirmatory Deed dated April 15, 1997.

2. The transaction was (Check One):

_____ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was a nominal consideration of Five and No/100 (\$5.00) Dollars, as the conveyance is a transfer of roads and other related facilities.

_____ not an arm's length real property transaction and the fair market value of the property is \$ _____

XX The above transaction is exempt, or partially exempt from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, et seq. because said transaction is a corrective and confirmatory conveyance and meets the requirements of Exemption #14.

As requested by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Legal Planning Assistant for the Grantor, Kiawah Resort Associates, L.P.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Justin J. Ammon (SEAL)
 Purchaser, Legal Representative of the
 Purchaser, or other Responsible Person
 connected with the transaction.

Sworn to before me this
 24 day of June, 1997

Janice B. Deady (SEAL)
 Notary Public for South Carolina
 My commission expires: 08-01-05

BK Y285PG781

Return to:

Elisabeth F. Nimmons
Legal Planning Assistant
Kiawah Resort Associates, L.P.
Post Office Box 419
Charleston, SC 29402

FILED

Y285-772
97 JUN 24 PM 2:24

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Re-Recorded
BK 0 288PG808

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TMS VERIFIED
BAC <u>LC</u>
DTD <u>6-26-97</u>

Re-Recorded

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97 AUG 15 PM 4:01

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

TMS VERIFIED
BAC <u>LC</u>
DTD <u>8-20-97</u>

Recording
Fee

State
Fee

County
Fee

Postage

TOTAL

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Recorded this 24 day of Jun Year 97
On Property Record Card

Reggie A. Mosley
Auditor Charleston County

Re- Recording Fee 15.00
State Fee EXEMPT
County Fee
Postage
TOTAL 15.00

Recorded this 15 day of Aug Year 97
On Property Record Card

Reggie A. Mosley
Auditor Charleston County

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EXH E

8X L 304PG459

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) CORRECTIVE
 AND
 CONFIRMATORY DEED

WHEREAS, Kiawah Resort Associates, L.P. (a Delaware limited partnership hereinafter sometimes referred to as "KRA, L.P." and/or the "Grantor") and the Town of Kiawah Island entered into that certain Development Agreement in connection with the development of Kiawah Island, S.C., which agreement is dated as of September 26, 1994, and recorded September 30, 1994, in Book J248, page 1, in the R.M.C. Office for Charleston County, S.C., (the "R.M.C. Office"), as amended (the "Development Agreement"); and

WHEREAS, pursuant to the provisions of Section 16.b. of the Development Agreement, KRA, L.P. attempted to convey approximately 10 miles of beachfront property on Kiawah Island, Charleston County, S.C., to the Kiawah Island Community Association, Inc. (hereinafter sometimes referred to as the "KICA" and/or the "Grantee") by Quit-Claim Deed dated the 29th day of December, 1995, and recorded in Book N265, page 406, in the R.M.C. Office (the "Beachfront Deed"); and

WHEREAS, that while the Development Agreement has a sketch of the 10 miles of beachfront property attached (Exh. 16.2), the property actually conveyed by the Beachfront Deed was not separately platted. Accordingly, the property description was recited generally as an area extending from a specific point located at the western end of Kiawah Island to a point located at the eastern end thereof, generally between 200' and 300' wide, extending from the seaward boundary lines of most beachfront residential, resort and commercial properties on Kiawah Island as shown on plats of record in the R.M.C. Office, to the mean high water mark of the Atlantic Ocean; and

WHEREAS, it has come to the attention of KRA, L.P. that there is of record in said R.M.C. Office (and was at the time of the Beachfront Deed) a plat of much of the eastern end of Kiawah Island which delineates as the seaward boundary line thereof, the mean high water mark of the Atlantic Ocean, and as a consequence, the description in the aforesaid deed as it pertains to the eastern end of Kiawah Island is ambiguous; and

WHEREAS, KRA, L.P. is minded to execute and deliver the within Corrective and Confirmatory Deed based upon more recent surveys and plats of the eastern end of Kiawah Island, so as to clarify and confirm the description of such beachfront property at the east end of Kiawah Island as was intended to be conveyed to KICA by the Beachfront Deed,

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that KIAWAH RESORT ASSOCIATES, L.P., in the State aforesaid, for/and in consideration of the Premises and the sum of One and No/100 (\$1.00) Dollar, to it in hand paid at and before the sealing of these presents by KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., in the State aforesaid, the receipt whereof is hereby acknowledged, has remised, released, and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto the said KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., all of its right, title and interest of, in and to the below described property, to-wit:

SEE ATTACHED EXHIBIT "A" FOR PROPERTY DESCRIPTION
OF BEACHFRONT PROPERTY AT THE EAST END OF KIAWAH ISLAND, S.C.

(hereinafter sometimes referred to as the "Property")

Page 1

TMS Number: 207-00-00-029

9K L 304PG460

Tax District: 5-4

Address of Grantee: 23 Beachwalker Drive
Kiawah Island, SC 29455

This conveyance is made subject to any and all applicable covenants, conditions, restrictions, and easements of record as of September 16, 1994, the date of the Development Agreement, as amended, and all applicable governmental and zoning ordinances and regulations.

This conveyance is made subject further to the covenant, condition, and restriction that the Property shall be maintained and utilized as a Common Property as defined in the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., recorded in Book M114, page 407, in the R.M.C. Office, as amended, (the "KICA Covenants"), and shall be made subject to such rights and restrictions as are applicable to Common Properties as set forth in the KICA Covenants.

Notwithstanding any other provision hereof, there is hereby reserved unto the Grantor, for itself and its invitees, successors, subsidiaries, successors-in-title, and assigns, a non-exclusive assignable, transmissible, and commercial right and easement for ingress and egress, for the construction and maintenance of permitted walkways, boardwalks, and gazebos, and to use the Property for other lawful purposes.

Further reserving unto the Grantor, for itself, its invitees, successors, subsidiaries, successors-in-title, and assigns, a non-exclusive, assignable, transmissible, and commercial right and easement for access, ingress, and egress for the installation and maintenance of all utilities, and for all other necessary, useful, or convenient utility purposes and activities of every kind and description over, upon, across, and under the Property, which easement is necessary for Grantor's commercial purposes as developer of Kiawah Island, S.C., and those of its successors, assigns, and subsidiaries.

Nothing herein is intended to lessen or curtail any other rights or privileges as Grantor may enjoy, either as a Kiawah property owner or the Company under any of the recorded Kiawah covenants, including rights or easements to use and enjoy Common Property and allowing guests or others to do so.

Portions of the Property hereby conveyed may be located in part seaward of the interim Setback Line as established by the South Carolina Coastal Council (n/k/a DHEC - Office of Ocean and Coastal Resource Management) as of January 20, 1989, and South Carolina Code Sections 48-39-270 through 48-39-360, as amended, effective July 1, 1977 (the "Beach Protection Act"). The following information concerning the location and circumstances of the Property is hereby disclosed:

The proximity and location of the interim Setback Line and the Interim Baseline areas are shown on plats of record in the R.M.C. Office. There are no habitable structures on the Property seaward of the setback line. The most recently published annual erosion rate for the Property is not set forth herein because the Property shown on such plats has over the 40 year period prior to July 1, 1988, been determined to not have an erosion rate. Reference must be had to the Beach Protection Act itself regarding the significance of these disclosures as well as the potential for movement and relocation of the lines in the future.

Page 2

This is a portion of the property conveyed to the Grantor herein by deed of conveyance of Kiawah Resort Associates, a South Carolina joint venture, dated June 26, 1992, and recorded in Book L215, page 486, in the R.M.C. Office.

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., its successors and assigns, forever.

IN WITNESS WHEREOF, Kiawah Resort Associates, L.P., has caused these presents to be executed in its name by its General Partner thereunto duly authorized and its seal to be hereunto affixed, this 15th day of May, in the year of our Lord One Thousand Nine Hundred and Ninety-Seven, in the Two Hundred and Twenty-First year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: D&W Investments, Inc.,
a South Carolina corporation

(CORP. SEAL)

Its: General Partner

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

Its: President

Katherine M. Brown
Anna C. Bryant

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., a South Carolina corporation, its General Partner, by Charles P. Darby, III, its President, this 15th day of May, 1997.

Anna C. Bryant (SEAL)
Notary Public for South Carolina
My commission expires: 8-8-99

wpdocs/town/beachfront.ded

The "Property"

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State aforesaid, being a portion of the Kiawah Island beachfront, varying in width, and lying generally within an area having as its western boundary, an imaginary line being the southerly extension of the westernmost property line of Lot 100 Flyway Drive, in Osprey Beach Subdivision, in the Town of Kiawah Island, S.C., and as its eastern boundary line, a point located at the northeast end of "Bear Island" in the Town of Kiawah Island, S.C., said property being more particularly described as follows:

Parcel 1

(Area Seaward of "Flyway Drive" Properties)

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State aforesaid lying seaward of certain lots now or formerly known as Lots 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 112, 113, 121, 122, 123, 126, 127, 128, 129, 133, 134, 135, 138, 139, 140, 141, 144, 145, 147, 150, 151, 152, 153, 156, 157, 158, 163, 164, 165, 168, 169, 170, 171, 174, 175, 176, and 177 (Lot 177 being now known generally as "Bally Bunion" Subdivision), a "20' Utility, Pedestrian/Beach Access and Drainage Easement" lying between Lots 113 and 121, Flyway Drive, a "20' Utility, Pedestrian/Beach Access and Drainage Easement" lying between Lots 158 and 163 Flyway Drive, as said lots are shown on a plat prepared by Precision Land Surveying Co., Inc., dated August 31, 1990, and recorded in Plat Book CA at pages 194, 195, and 196, in the R.M.C. Office, between the seaward boundary lines of said lots and easement areas as shown on aforesaid plat, and the mean high water mark of the Atlantic Ocean, as the same may vary from time to time.

Grantor is aware that certain of the "Flyway Drive" lots shown on the aforesaid plat recorded in Plat Book CA at pages 194, 195, and 196, in the R.M.C. Office, may have been re-platted, subdivided, and/or combined to create larger lots. However, it is Grantor's intent to convey hereby any and all beachfront property currently owned by Grantor lying within the southerly extension of the eastern and western property lines of the above-described lots and easement areas as shown on the aforesaid plat, between the seaward boundary lines thereof and the mean high water mark of the Atlantic Ocean as the same may vary from time to time.

ALSO

Parcel 2

(Area Seaward of "Sand Fiddler Court" Lots)

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State aforesaid lying seaward of certain lots now or formerly known as Lots 203, 204, 205, 206, 207, and 208, Sand Fiddler Court, and a "10' Pedestrian Beach Access Easement Area and Drainage Easement" east of Lot 208, in Osprey Beach Subdivision, Phase IIA, as said lots are shown on a plat prepared by Southeastern Surveying, Inc., entitled "A FINAL PLAT OF LOTS 200-211 SAND FIDDLER COURT OSPREY BEACH SUBDIVISION 429 TRACT 51 OWNED BY KIAWAH RESORT

ASSOCIATES, L.P., LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA" dated September 23, 1993, last revised on December 15, 1993, and recorded in Plat Book CO, at page 169, in the R.M.C. Office, between the seaward boundary lines of said lots and "10' Pedestrian Beach Access Easement Area and Drainage Easement" as shown on aforesaid plat, and the mean high water mark of the Atlantic Ocean, as the same may vary from time to time.

Grantor is aware that certain of the "Sand Fiddler Court" lots shown on the aforesaid plat recorded in Plat Book CO, at page 169, in the R.M.C. Office, may have been re-platted, subdivided, and/or combined to create larger lots. However, it is Grantor's intent to convey hereby any and all beachfront property currently owned by Grantor lying within the southerly extension of the eastern and western property lines of said lots and the "10' Pedestrian Beach Access Easement Area and Drainage Easement" as shown on the aforesaid plat, between the seaward boundary lines thereof and the mean high water mark of the Atlantic Ocean as the same may vary from time to time.

ALSO

Parcel 3

(Area Seaward of "5.720 Ac. Future Development" Area on Ocean Marsh Road)

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State aforesaid lying seaward of a tract of land shown and designated as "FUTURE DEVELOPMENT 5.720 Ac." on Ocean Marsh Road, in Osprey Beach Subdivision, Phase IIB, as shown on a plat prepared by Southeastern Surveying, Inc., entitled "A FINAL PLAT OF OCEAN MARSH ROAD & LOT 225 BEING A PORTION OF OSPREY BEACH PHASE IIB SUBDIVISION 429 TRACT 51 OWNED BY KIAWAH RESORT ASSOCIATES, L.P., LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA" dated March 22, 1993, last revised on May 19, 1993, and recorded in Plat Book CM at page 133, in the R.M.C. Office, between the seaward boundary lines of said tract as shown on aforesaid plat, and the mean high water mark of the Atlantic Ocean, as the same may vary from time to time.

It is Grantor's intent to convey hereby any and all beachfront property currently owned by Grantor lying within the southerly extension of the eastern and western property lines of said 5.720 Ac. Future Development tract as shown on the aforesaid plat, between the seaward boundary lines thereof and the mean high water mark of the Atlantic Ocean as the same may vary from time to time.

ALSO

Parcel 4

(Area Seaward of the Beach Club site)

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State aforesaid lying seaward of The Beach Club, which tract is located at the southeasternmost terminus of Ocean Marsh Road, in Osprey Beach Subdivision, Phase IIB, and is shown and designated as Lot "225 COMMERCIAL SITE 4.005 Ac." on a plat prepared by Southeastern Surveying, Inc., entitled "A FINAL PLAT OF OCEAN MARSH ROAD & LOT 225 BEING A PORTION

Page 5

OF OSPREY BEACH PHASE IIB SUBDIVISION 429 TRACT 51 OWNED BY KIAWAH RESORT ASSOCIATES, L.P., LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA" dated March 22, 1993, last revised on May 19, 1993, and recorded in Plat Book CM at page 133, in the R.M.C. Office, between the seaward boundary lines of said tract as shown on aforesaid plat, and the mean high water mark of the Atlantic Ocean, as the same may vary from time to time.

It is Grantor's intent to convey hereby any and all beachfront property currently owned by Grantor lying within the southerly extension of the eastern and western property lines of The Beach Club tract hereinabove described, between the seaward boundary lines thereof and the mean high water mark of the Atlantic Ocean as the same may vary from time to time.

ALSO

Parcel 5

(Area Seaward of Westernmost Portion of The Ocean Course)

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, State aforesaid lying seaward of the westernmost portion of the Ocean Course, within an area having as its western terminus, a line extending in a generally southeasterly direction along a bearing of S09°20'54"E, from a point marked by a concrete monument having State Plane Coordinates N283643.33/E2294652.82, at the southwesternmost corner of The Ocean Course as shown on Sheet 2 of 8 of a plat of The Ocean Course prepared by SouthStar Surveying, Inc., dated June 29, 1995, and recorded in Plat Book EA at pages 731 - 738, in the R.M.C. Office (the "Western Terminus"), and as its eastern terminus, a line extending in a generally southeasterly direction along a bearing of S04°53'19"E, from a point marked by a concrete monument having State Plane Coordinates N284500.74/E2301915.17, said point being southwest of the "Clubhouse" on Sheet 5 of 8 of the aforesaid plat prepared by SouthStar Surveying, Inc., dated June 29, 1995, and recorded in Plat Book EA at pages 731 - 738, in the R.M.C. Office (the "Eastern Terminus").

It is Grantor's intent to convey hereby any and all beachfront property currently owned by Grantor lying within the Western Terminus and the Eastern Terminus, and extending from the seaward boundary line of The Ocean Course as shown on Sheets 2 of 8, 3 of 8, 4 of 8, and the easternmost approximately 298.43' of Parcel 4 herein described is shown on Sheet 5 of 8, on the aforesaid plat prepared by SouthStar Surveying, Inc., dated June 29, 1995, and recorded in Plat Book EA at pages 732 - 735, in the R.M.C. Office, to the mean high water mark of the Atlantic Ocean, as the same may vary from time to time.

Page 6

ALSO

BK L 304PG465

Parcel 6

(Area Seaward of Easternmost Portion of The Ocean Course, extending to
a point at the Northeasternmost Tip of Bear Island)

All that certain piece, parcel, or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, being the easternmost portion of the Kiawah Island beachfront, containing 245.045 acres, more or less, and shown on the attached exhibit prepared by Southeastern Surveying, Inc., entitled "An Exhibit of a 245.045 Acre Beachfront Parcel at the East End of Kiawah Island, S.C., Owned by Kiawah Resort Associates, L.P., in the Town of Kiawah Island, Charleston County, South Carolina" dated April 24, 1997, attached hereto as Exhibit "B" and incorporated herein by reference, said beachfront parcel having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.

SAVING AND EXCEPTING from the foregoing descriptions of Parcels 1, 2, 3, 4, 5, and 6, so much of the above-described beachfront property having been previously conveyed to third parties by instruments recorded in the R.M.C. Office prior to December 29, 1995, being the date of the Beachfront Deed.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BK L 304PG466
CONSENT

(Corrective and Confirmatory Deed
for Beachfront Property at the East End
of Kiawah Island, SC)

WHEREAS, Kiawah Resort Associates, L.P. (a Delaware limited partnership hereinafter sometimes referred to as "KRA, L.P.") and the Town of Kiawah Island (the "Town") entered into that certain Development Agreement in connection with the development of Kiawah Island, S.C., which agreement is dated as of September 26, 1994, and recorded September 30, 1994, in Book J248, page 1, in the R.M.C. Office for Charleston County, S.C., (the "R.M.C. Office"), as amended (the "Development Agreement"); and

WHEREAS, pursuant to the provisions of Section 16.b. of the Development Agreement, KRA, L.P. attempted to convey approximately 10 miles of beachfront property on Kiawah Island, Charleston County, S.C., to the Kiawah Island Community Association, Inc. ("KICA") by Quit-Claim Deed dated the 29th day of December, 1995, and recorded in Book N265, page 406, in the R.M.C. Office (the "Beachfront Deed"); and

WHEREAS, (i) the 10 mile beachfront strip to be conveyed to KICA by the Beachfront Deed was not shown on a plat of record; (ii) certain of the properties landward of the beachfront strip to be conveyed were either shown on numerous plats of record or were not platted at all; and (iii) the seaward boundary lines of certain parcels as shown on plats of record is the mean high water mark of the Atlantic Ocean, thereby creating an uncertainty as to exactly what property, if any, was conveyed to KICA by the Beachfront Deed, and what property was retained by KRA, L.P.; and

WHEREAS, KRA, L.P. has executed and delivered the attached Corrective and Confirmatory Deed to clarify and confirm by way of reference to more recent plats, the description of the beachfront property at the east end of Kiawah Island which was intended to be conveyed to KICA by the Beachfront Deed,

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that after a careful review of the Development Agreement, and due consideration and consultation by and among the Mayor, Council members, and legal representatives of the Town, the Town of Kiawah Island, as a party to the Development Agreement, is minded to execute the within Consent to evidence of record its consent to the execution, delivery, and recordation of the said Corrective and Confirmatory Deed by KRA, L.P. to KICA as a confirmatory action, which shall not be construed as contrary to or in violation of the terms and provisions of Paragraph 16.b. of the Development Agreement.

IN WITNESS WHEREOF, the Town of Kiawah Island has caused these presents to be executed this 15 day of April, 1997.

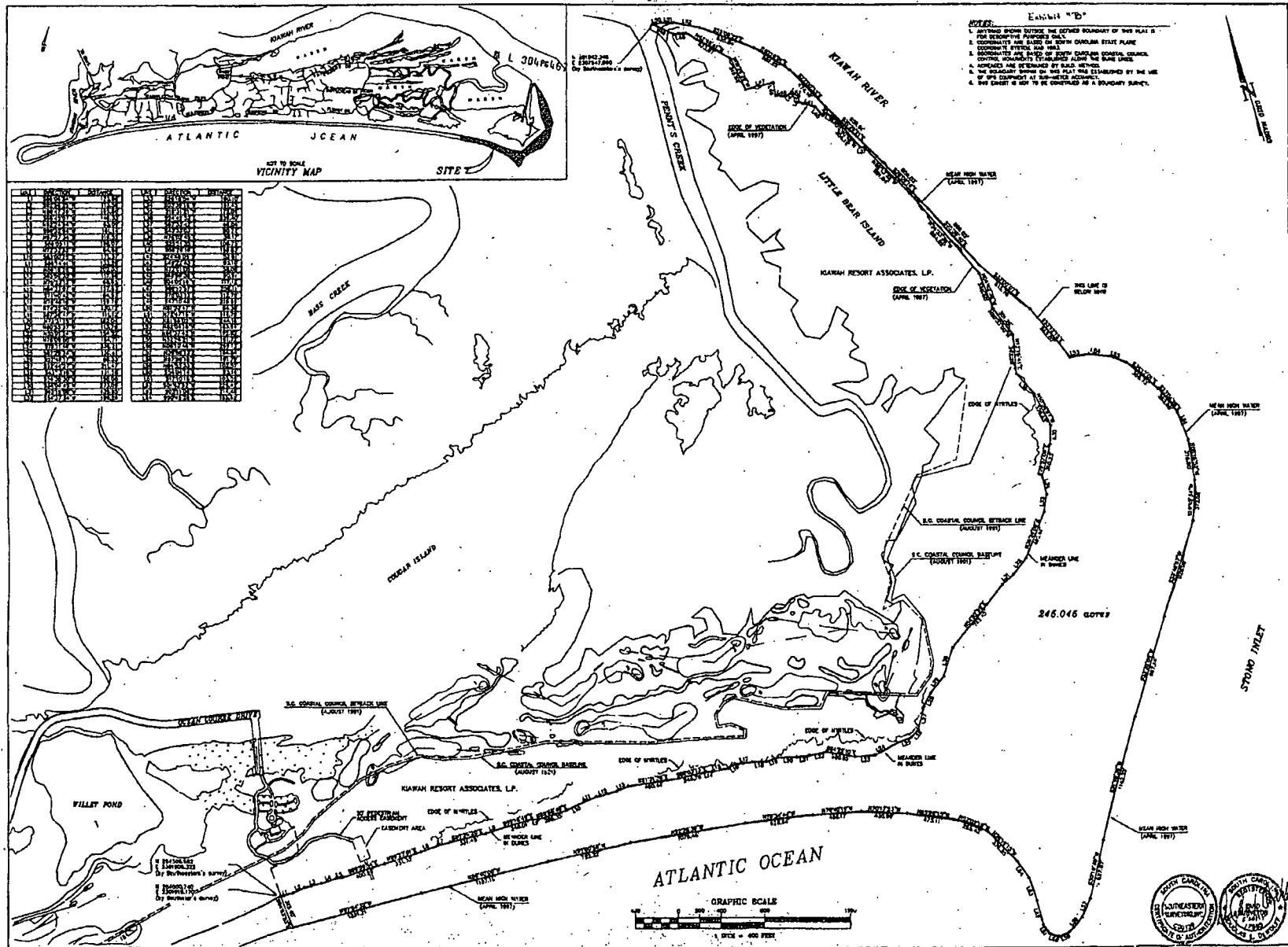
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



TOWN OF KIAWAH ISLAND
(CORP. SEAL)

By: Ralph A. Magnotti
Ralph A. Magnotti, Mayor

Attest: Rita Moran
Clerk of Council



Southwestern Surveying, Inc.
 147 Wappoo Creek Drive - Suite 102
 Charleston, South Carolina 29412
 (803) 795-8330 FAX: 795-3307

AN EXHIBIT OF
A 245.045 ACRE BEACH FRONT PARCEL
AT THE EAST END OF KIAWAH ISLAND
OWNED BY KIAWAH RESORT ASSOCIATES, L.P.
LOCATED IN THE TOWN OF KIAWAH ISLAND,
CHARLESTON COUNTY, SOUTH CAROLINA

Plat No. 10
DATE: APRIL 24, 1997
PREPARED BY:
CHECKED BY:
DATE: 8/20/98
DRAWN: 7078-EKA
SHEET 1 OF 1

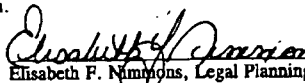
STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

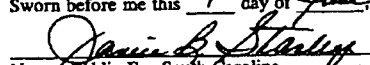
BK L 304 PG 468

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. Certain property located within the Town of Kiawah Island, Charleston County, S.C., being a portion of a 10 mile strip of beach having TMS Number: 207-00-00-029, was transferred by Kiawah Resort Associates, L.P. to the Kiawah Island Community Association, Inc. by Corrective and Confirmatory Deed dated May 15, 1997 and being recorded simultaneously herewith.
3. Check one of the following: The DEED is
 - a) ☐ Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - b) ☐ Subject to the deed recording fee for a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - c) ☒ The above transaction is exempt, or partially exempt from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, et. seq. because said transaction is a corrective and confirmatory conveyance and meets the requirements of Exemption #14.
4. Check one of the following if either item 3a or item 3b above has been checked.
 - a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - b) ☐ The fee is computed on the fair market value of the realty which is \$ _____
 - c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The DEED Recording Fee is computed as follows:
 - a) the amount listed in item 4 above
 - b) -0- the amount listed in item 5 above (no amount place zero)
 - c) Subtract line 6b from Line 6a and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Planning Assistant
8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

 (SEAL)
Elisabeth F. Nimmmons, Legal Planning Assistant for Grantor

Sworn before me this 9 day of June, 1998.

 (SEAL)
Notary Public For South Carolina
My Commission Expires: 8-1-2000

Elizabeth F Nimmons

BK L 304PG469

NKw-I
Hil ✓

FILED

L 304-459

98 JUN -9 PM 3:44

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Recording
Fee 16.00

State
Fee EXEMPT

County
Fee EXEMPT

Postage —

TOTAL 16.00

B

PID VERIFIED	
ASSR	<u>103</u>
DTD	<u>6-11-98</u>

Recorded this 9 day of June Year 1998
On Property Record Card

James A. Manning
Auditor Charleston County

F

F

REF ID: A66587

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

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

RECITALS

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

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

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

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

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

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

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

NOW THEREFORE, the Parties agree:

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

2. **Parties.** Parties to this Agreement are the Property Owner and the Town.
3. **Relationship of the Parties.** This Agreement creates a contractual relationship between the Parties. This Agreement is not intended to create, and does not create, the relationship of master/servant, principal/agent, independent contractor/employer, partnership, joint venture, or any other relationship where one party may be held responsible for the acts of the other party. Further, this Agreement is not intended to create, nor does it create, a relationship whereby the conduct of the Property Owner constitutes "state action" for any purpose.
4. **Legal Description of the Real Property.** The Real Property which is the subject of this Agreement is described as follows:
- (i) All real property on Kiawah Island currently owned by the Property Owner and the subsequent owners of this real property as provided for in Section 33 herein.
 - (ii) A legal description of the Real Property now owned by Property Owner is set forth in the schedules and maps attached as Exhibit 4.1: Description of Real Property.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Road Codes and Subdivision Regulations.

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

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

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

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

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

13. Vested Rights Governing the Development of the Real Property

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

1. RESIDENTIAL USES

(a) Permitted Uses

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

(b) New Dwelling Units

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

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

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

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

(c) Building Development Standards

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

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

(d) Off-Street Parking

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

(e) Building Height

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

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

(f) Buffers, Fencing, and Signage

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

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

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

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

(g) Tree Replacement Guidelines

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

(h) Aesthetics

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

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

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

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

(i) Additional Building Standards For Multiple Lot Combinations.

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

2. COMMERCIAL USES

(a) Permitted Uses

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

(b) Size Limitations

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

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

(c) Building Development Standards

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

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(d) Off-Street Parking

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

(e) Building Height

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

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

(f) Buffers, Fencing and Signage

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

(g) Tree Replacement Guidelines

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

(h) Aesthetics

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

3. UTILITY AND SUPPORT SERVICES

(a) Permitted Uses

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

(b) Building Development Standards

Building setback standards shall be as established by the ARB.

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

The ARB shall establish limitations for total ground coverage of building

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

(c) Off-Street Parking

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

(d) Building Height

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

(e) Buffers, Fencing, and Signage

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

(f) Tree Replacement Guidelines

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

(g) Aesthetics

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

4. OPEN SPACE

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

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

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

Active or Passive Recreation Sites

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

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Future Parklands/Open Space

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

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

Parking Area for Captain Sam's Spit
Cougar Island Park

Trails

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

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

5. MIXED USE DEVELOPMENT

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

6. **COMPATIBILITY STANDARDS.**

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

(a) **Replatting**

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

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

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

(b) **Water and Sewer.**

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

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

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

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

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

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

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

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

Island.

- (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 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..

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

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 west end of the road to such spit (which may be conveyed to KICA) and convey to

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KICA by quitclaim deed such parking area, 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:

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 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 Cougar Island that includes the proposed park and amenities.

(iii) Sora Rail Tract:

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.

(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.

(v) 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 83 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.

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 (KICA 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.

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.)

- (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.
- (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 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 community 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 western end of the road access authorized above upon completion of 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 Exhibit 16.2 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. **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 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.

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

(a) Waiver.

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 transition under the KICA Covenants, 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.

(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 Exhibit 18.1.

(c) The Security Gate.

The Town and the Property Owner recognize and respect the fundamental importance and value of the Security Gate, private rights-of-way and private amenities to the Town, the Property Owner and the owners of property on Kiawah Island 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 gate) 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.

- (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 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 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:
- | <u>YEAR</u> | <u>% COMPLETE</u> |
|-------------|-------------------|
| 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 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, 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, 2018. The date of the expiration of the term of this Agreement is the "Termination Date."

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.
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.

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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.

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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

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 Ordinance 2005-6 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-

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."
 - (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

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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).

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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 Initial Agreement and the amendments thereto as 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
Kiawah Development Partners
Two North Adgers Wharf
Charleston, SC 29401

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

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) Conveyance of marshes and lowlands;
 - (iv) Conveyance of Bear Island to the KICA, exclusive of those portions that may have previously been Developed pursuant to deed of conservation

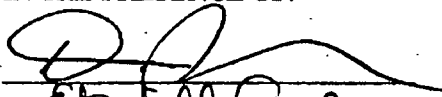
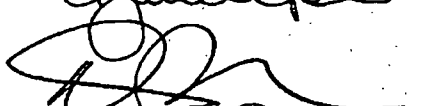
may have previously been Developed pursuant to deed of conservation easement recorded in the RMC Office for Charleston County at Book F340, page 421 to Wetlands America Trust, Inc. However, such conveyance after the expiration or termination of this Agreement shall still be subject to reservation of 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).

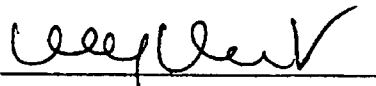
IN WITNESS WHEREOF the Parties hereto have executed and delivered this Amended and Restated Development Agreement; and by their seals do affirm such execution and delivery, on the day and year first above written.

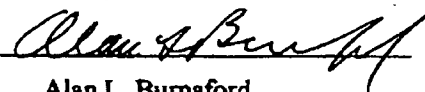
TOWN OF KIAWAH ISLAND

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


Elizabeth C. Gre

Elizabeth C. Gre

**TOWN OF KIAWAH ISLAND (Town)
(SEAL)**

By: 
William G. Wert, Mayor

By: 
Alan L. Burnaford

vl
 [Signature]
 [Signature]
 [Signature]
 [Signature]

BK: 7558PG042

By: [Signature]
 Charles R. Lipuma

By: [Signature]
 Donald H. McIver, Jr.

By: [Signature]
 G. Steven Orban

Attest: [Signature]
 Allison B. Harvey, Administrator

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, its Mayor, and Allison B. Harvey, its Town Administrator, this 12 day of October, 2005.

[Signature] (SEAL)
 Notary Public for South Carolina

My Commission Expires: 11-27-2011



PROPERTY OWNER

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: D&W Investments, Inc.,
a South Carolina corporation
(CORP. SEAL)

Its: General Partner

By: [Signature]
Charles P. Darby, III

Its: President

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

Its: General Partner

By: [Signature]
Charles P. Darby, III

Its: Manager

[Signature]
Allen B. Harvey

[Signature]
Allen B. Harvey

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., a South Carolina corporation, its General Partner, by Charles P. Darby, III, its President, this 12 day of October, 2005.

[Signature] (SEAL)
Notary Public for South Carolina
My commission expires: 11-27-2011

NOTARY PUBLIC
36

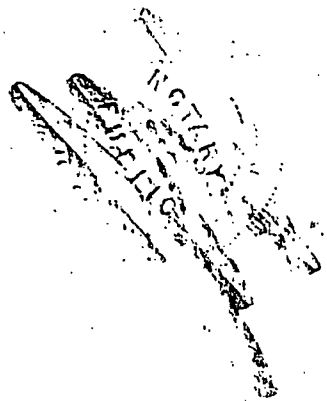
40

EX-105 Z558PG044

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 12 day of October, 2005.

 (SEAL)
Notary Public for South Carolina
My commission expires: 11-27-2011



BK 77 Z558PG045

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


Allen B. Harvey

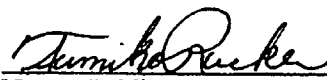
KIAWAH DEVELOPMENT PARTNERS,
INC. (SEAL)

By: 
Charles P. Darby, III

Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by Kiawah
Development Partners, Inc., by Charles P. Darby, III, its President, this 12 day of
October, 2005.

 (SEAL)
Notary Public for South Carolina
My commission expires: 11-27-2011

42
BK # Z558PG046

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH LAND DEVELOPMENT, LLC
(SEAL)

By: Kiawah Development Partners II, Inc.
Its: Manager

(CORP. SEAL)



Allin Brainerd

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 12 day of October, 2005.

 (SEAL)
Notary Public for South Carolina
My commission expires: 11-27-2011

11

BK 7 Z558PG047

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]

Allen B. Harvey

KIAWAH ISLAND UTILITY, INC.
(CORP. SEAL)

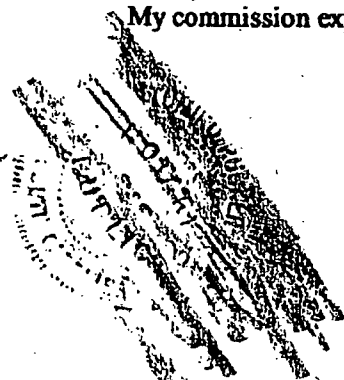
By: [Signature]
Charles P. Darby, III

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 12 day of October, 2005.

[Signature] (SEAL)
Notary Public for South Carolina
My commission expires: 11-27-2011



MD

BEAR ISLAND HOLDING TRUST
(SEAL)

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

Elizabeth Buxton

THE FOREGOING INSTRUMENT was acknowledged before me by Bear Island Holding Trust by Lodema R. Adams, Trustee, this 12th day of October, 2005.

Checkley D. Summo (SEAL)
Notary Public for South Carolina
My commission expires: 1-19-11

41
BK 55 Z558PG049

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

CPD
CHARLES P. DARBY, JR. ISSUE TRUST
(SEAL)

John C. Darby
Charles P. Darby, III

By: Charles P. Darby, III
Charles P. Darby, III, Co-Trustee
By: John C. Darby
John C.L. Darby, Co-Trustee

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

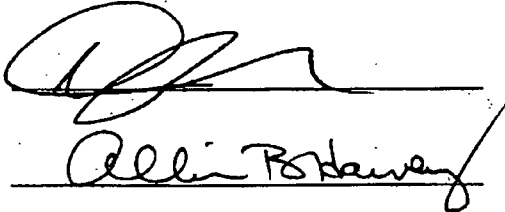
THE FOREGOING INSTRUMENT was acknowledged before me by the Charles P. Darby, Jr. Issue Trust by Charles P. Darby, III and John C.L. Darby, Co-Trustees of said Trust, this 12th day of October, 2005.

Charles P. Darby, III (SEAL)
Notary Public for South Carolina
My commission expires: 1-19-11

u
BK # Z558PG050

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

VANDERHORST, LLC (SEAL)


Allen B. Harvey

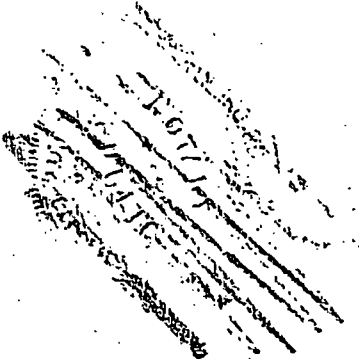
By: 
Charles P. Darby, III

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 12 day of October, 2005.

 (SEAL)
Notary Public for South Carolina
My commission expires: 11-27-2011



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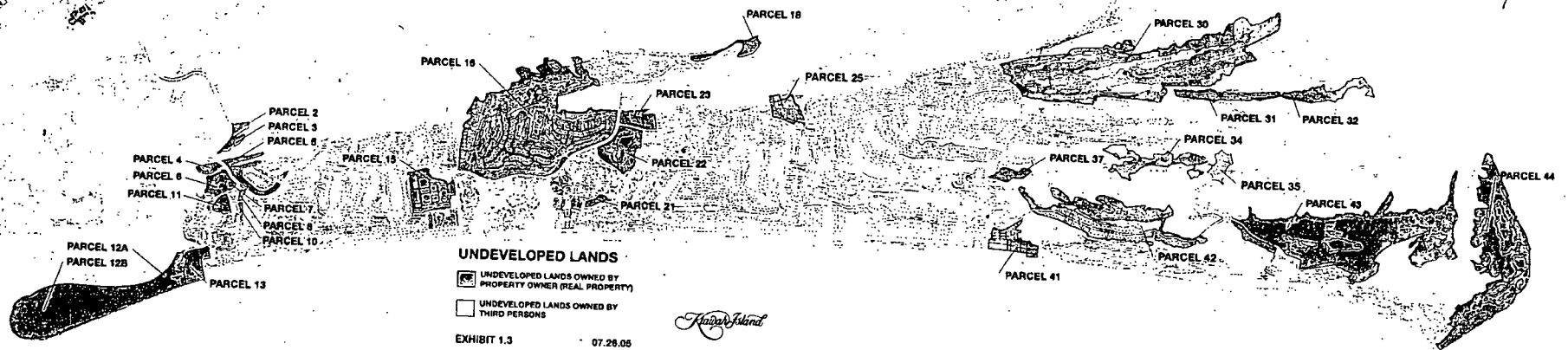


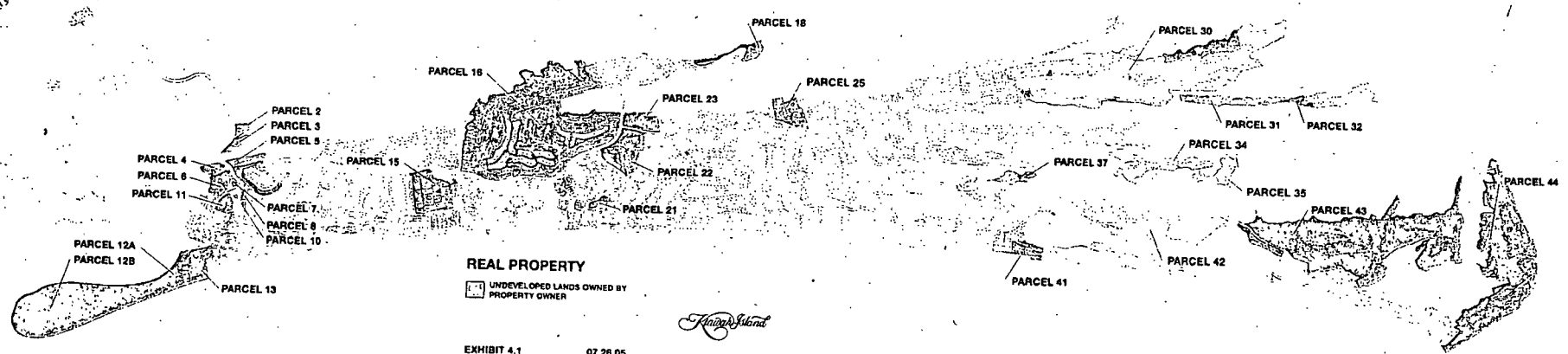
Exhibit 4.1: Description of Real Property
Owned by Property Owner
07.29.05

PARCEL NO.	PARCEL DESCRIPTION	ACREAGE (ABOVE M.H.W.)
2	Mingo North	8.27
3	Mingo South	4.40
4	Little Rabbit	4.50
5	Little Rabbit North	6.20
6	Kiawah River Commons	6.16
7	Sales Center	2.37
8	Parkway Gate	1.20
10	Marsh Point Residual	0.66
11	Beachwalker Lagoon	5.94
12A	Beachwalker Park	8.70
12B	Captain Sam's Spit	118.03
13	Beachwalker Ocean	19.50
15	Utility Tract	34.36
16	Settlement (Bass Pond) (includes lots 1-9, 28-31, 54, 166 + golf)	255.41
18	Captain Maynards	11.38
21	East Beach Lagoon	3.00
22	East Beach Interior	33.22
23	Governors Marsh	12.73
25	Vanderhorst Mansion	18.34
30	Preserve (Blue Heron)	20.19
41	Osprey Beach 3/Beach Club	8.21
43	Cougar Island (Includes lots 100-110 + land)	240.42
44	Little Bear Island	149.05
SUBTOTAL		972.14
MISCELLANEOUS DESCRIPTION (within parcel)		
A	Oyster Rake (549-570, 530)	10.48
B	Oceanwoods (421-423)	0.35
C	Preserve/Eagle point (Parcels 30,31,32) ' Lots (107, 239, 242, 323) ' Boat Landing	5.24
D	Club Cottage (1, 7-9) (Parcel 37)	2.76
E	Royal Subdivision (30)	0.34
F	326 Glen Eagle	0.34
G	Fire Station #2 Residual (Parcel 40)	0.29
H	Down Island Storage (Parcel 30)	1.85
SUBTOTAL		21.65
TOTAL		993.79

CM

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253



REAL PROPERTY
UNDEVELOPED LANDS OWNED BY
PROPERTY OWNER

EXHIBIT 4.1 07.28.05

Kauai Island

Exhibit 13.2: Parcel-Specific Development Standards
08.31.05

Parcel #	Parcel Description	Use Type (1)	Approx. Acres(2)	Maximum Gross Density (3)	Total Units (4)	Existing Units (5)	Maximum New Units (6)	Maximum F.A.R. W/Transfer (7)	Maximum Height Stories/Feet (8)	Parcel Open Space (9)
2	Mingo North	R-2, C	8.27	3	12	0	12	0.20	2.5/35	30
3	Mingo South	R-2, C	4.40	3	13	0	13	0.20	2.5/35	30
4	Little Rabbit	R-2, C	4.50	4	18	0	18	0.25	2.5/35	30
5	Rabbit North	R-2, C	6.20	3	19	0	19	0.20	2.5/35	30
6	Kiawah River Commons	R-2, C	6.16	6	37	0	37	0.25	4/50	30
7	Sales Center	C	2.37	-	-	-	-	0.25	4/50	30
8	Parkway Gate	C	1.20	-	-	-	-	0.25	2.5/35	30
10	Marsh Point Residual	R-2, C	0.66	6	4	0	4	0.20	2.5/35	30
11	Beachwalker Lagoon	R-3, C	5.94	10	60	0	60	0.25	4/50	30
12A	Beachwalker Park	R-3, C (15)	8.70	12	104	0	104	0.20	4/65 (10)	30
12B	Captain Sam's	R-1 (15) (16)	118.30 (20)	2.5	50	0	50	-	2.5/40	40
13	Beachwalker Ocean	R-3, C (15)	19.50	12	234	0	234	0.20	4/65 (10)	30
15	Utility Tracts	U	34.36	-	-	-	-	0.25	2.5/35	30
16	Settlement	R-2, C (14) (15)	289.60	3	869	85	784	-	4/50	40
18	Captain Maynards	R-1	11.38	1.5	17	6	11	-	2.5	40
21	East Beach Lagoon	R-3	3.00	8	24	0	24	-	4/50	40
22	East Beach Interior (19)	R-2 (15)	33.22	6	199	0	199	-	4/50	40
23	Governor's Marsh	R-2 (15)	12.73	6	76	0	76	-	2.5/40	40
25	Vanderhorst Mansion	R-1	18.34	1.5	28	1	27	-	(11)	50
30	Preserve	R-1	278.30	2	557	154	403	-	2.5/40	50
31	Eagle Point	R-1	18.32	1.5	27	10	0	-	2.5/40	50
32	Eagle Point	R-1	14.96	1.5	22	8	0	-	2.5/40	50
34	Summer Islands	R-1	30.96	1	31	19	0	-	2.5/40	50

Parcel #	Parcel Description	Use Type (1)	Approx. Acres(2)	Maximum Gross Density (3)	Total Units (4)	Existing Units (5)	Maximum New Units (6)	Maximum F.A.R. W/Transfer (7)	Maximum Height Stories/Feet (8)	Parcel Open Space (9)
37	Club Cottage Lane	R-2 (15)	8.20	4	33	11	0	-	2.5/40	50
41	Osprey Beach 2	R-1, C (15)	21.73	2	43	19	24	(12)	2.5/45	40
42	Otter Island	R-1	109.10	1	109	100	0	-	2.5/40 (21)	50
43	Cougar Island	R-2 (17) (15)	240.42	1.5	360	0	360	-	2.5/40 (21)	50
44	Bear Island	R-2 (17)	149.05	(13)	2	0	2	-	2.5/40	50

Notes Governing Exhibit 13.2: Parcel Specific Development Standards

- 1 Parcel with more than one use designation may be appropriate for either type of land use indicated in the above table. All uses shall comply with the appropriate standards for the use type as defined in this agreement. Development consisting of more than one use shall be subject to approval of the Town in accordance with ¶ 13.B.5. Mixed Use Development.
- 2 Acreage figures are approximate and may vary somewhat over time.
- 3 Gross Density equals the number of potential Dwelling Units (existing and future) divided by the gross residential acreage of the parcel above mean high water, excluding Fresh Water and Salt Water Wetlands. Gross Density limits are not intended to discourage or limit the development of higher density types or clusters or residences within a parcel; provided, however, that maximum density limits are used to establish an absolute cap on the total number of Dwelling Units on a parcel. The above maximum Densities can not be obtained for every parcel; as each parcel is platted or sold, the Property Owner shall clearly establish the maximum number of Dwelling Units which may be permitted on a parcel. In no instance shall the maximum number of Vested Units established after the execution of this agreement exceed 1,184. In the event that density is limited by physical constraints, a bridge permit or other regulatory constraint beyond the Town's jurisdiction, said limits are not intended to be superseded by this agreement.
- 4 The total number of single family Lots and non-single family Dwelling units permitted in the parcel at maximum permitted densities.
- 5 The number of single family Lots with preliminary plat approval and the number non-single family dwelling units approved by the Town as of July 23, 2005.
- 6 The maximum number of Vested Units which may be approved on any one parcel, subject to the limit of 1,184 total Vested Units. The total for this column is 2,461 units. Where existing units are indicated in the previous column, resubdivision may be required prior to establishing any Vested Units.
- 7 Maximum floor area ratio (FAR) equals the building floor area divided by the non-residential or mixed use acreage above mean high water, excluding Fresh Water and Salt Water Wetlands. This column shows the maximum floor area ratio which may be Developed on an individual parcel. In no event shall the total amount of non-residential development, exceed 219,000 square feet for the Real Property.
- 8 No development shall exceed the maximum number of stories or the maximum height in feet listed in this column, subject to the bulk limitations

described in ¶ 13.B.1.(e), provided however, that by reason of floodplain regulations, and the need for innovative design for view-shed and hurricane safety purposes, the height limit on single family residences is forty (40) feet from Ground Floor Level. A maximum height of 45 feet from Ground Floor level is permitted on Parcels 12A, 13, 41, 42 and 43 for single family. Listed height in feet applies to non-single family development.

- 9 Parcel open space as described in ¶ 13.B.4. of this Agreement, is the minimum percentage requirement of Pervious Coverage for a Parcel.
- 10 Height allowance of 65 feet from Ground Floor level is to allow for alternative forms and configurations of massing to minimize the impact of 4 habitable floors. This would include but not be limited to increased roof pitches, dormers, and innovation in overall massing.
- 11 No structure on this Parcel shall be higher than the upper eave height of the Vanderhorst Mansion.
- 12 Non-residential uses shall be limited to the Beach Club and associated uses, including dining, kitchen/food preparation areas, public lobby, meeting rooms, lounge, club administrative/operations offices, service and mechanical areas, locker rooms, restrooms, retail store for beach/pool sundries and other uses normally associated with beach club operations and or restaurant/snack bar facilities. Total building floor area for non-residential habitable structures on this Parcel not to exceed 25,000 square feet.
- 13 See ¶ 16(d), *infra*.
- 14 Non-residential uses shall be limited to golf country club uses including golf pro shop, tennis pro shop, locker rooms, restrooms, dining, kitchen/food preparation, public/lobby area, meeting rooms, lounge, swimming pool, tennis courts, golf course, practice range, maintenance facilities, club administrative/operations offices, service and mechanical areas; maintenance and other uses normally associated with golf country club operations. Total building floor area for non-residential habitable structures on this parcel shall not exceed 40,000 square feet for club operations and 15,000 square feet for golf course/grounds maintenance.
- 15 Currently there are three (3) Membership Lodge structures used by guests of Property Owner and/or Kiawah Island Club, Inc. and located on Parcel 37. The Property owner agrees on behalf of Kiawah Island Club, Inc. that the Club will not lease more than 20 Membership Lodge structures, including those currently existing at any one time, and further agrees that these structures will be limited to Parcels 12A, 12B, 13, 16, 22, 23, 41 and 43.
- 16 Development subject to provisions of ¶ 16(g).
- 17 Dwelling unit types limited to single family detached units, including patio homes and zero Lot line developments.
- 18 Intentionally omitted.
- 19 Access to East Beach Interior is limited to Green Dolphin Way and Turtle Point Lane. Existing tunnel connection between Parcels 16 and 22 to remain.
- 20 No greater than 20 acres of land may be Developed for residential use plus land for infrastructure (roads, utilities, trails, paths, community recreation, etc.)
- 21 Maximum building height for parcels 42 (Otter Island lots 1-41) and 43 (Cougar Island) shall be increased to 45' for lots on the water side of the road and are oriented to the ocean or Penny Creek, as determined by ARB.

PARCEL 12A

KIAH RIVER

KEY LOCATION

31 406 AC
ABOVE CRITICAL

PARCEL 12B
EXHIBIT 16.2

PRELIMINARY

Southeastern Surveying, Inc.
447 Wagon Creek Drive Suite 102
Chapelwood North Carolina 27912
(919) 998-1400 FAX (919) 998-1401

A SURVEY OF
CAPTAIN SAM'S SITE
NINE A TOTAL OF 118.029 ACRES
OWNED BY KAWAH RESORT ASSOCIATES, LP,
LOCATED IN THE TOWN OF KAWAH ISLAND,
CHARLESTON COUNTY, SOUTH CAROLINA

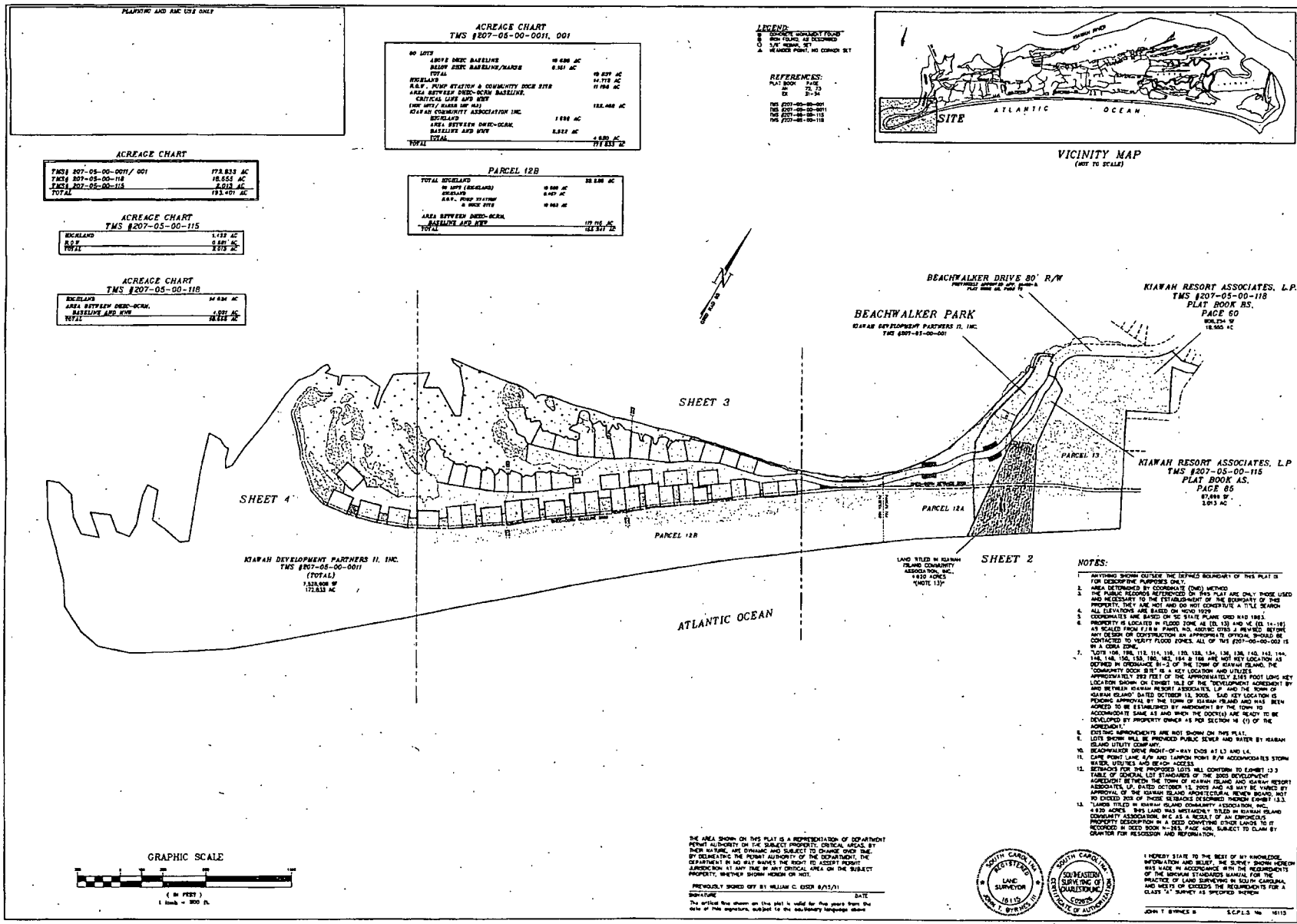
姓名	性别	年龄	职业
住址	电话	单位	
工作单位	职务	职称	
婚姻状况	子女情况	健康状况	
兴趣爱好	特长	其他	

G

G

EXH G

259



H

H

EXH H



BP0290099

RMC BK 0290 Pg 099 : pg 1 *

**FIFTH AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BY AND BETWEEN
KIAWAH RESORT ASSOCIATES, L.P., ET AL AND
THE TOWN OF KIAWAH ISLAND**

WHEREAS, the Town of Kiawah Island and Kiawah Resort Associates, L.P. (respectively referred to as "Town" and "Property Owner"), entered a Development Agreement on October 12, 2005 (hereinafter the "Agreement"), effective that same date, recorded in the RMC Office for Charleston County at Book Z 558, Page 004; and

WHEREAS, the Town and the Property Owner entered and recorded the First Amendment to the Agreement in the RMC Office for Charleston County at Book C 570, Page 595 that was effective December 13, 2005; and,

WHEREAS, the Town and the Property Owner entered and recorded the Second Amendment to the Agreement in the RMC Office for Charleston County at Book 0212, Page 088 that was effective August 2, 2011; and,

WHEREAS, the Town and the Property Owner entered and recorded the Third Amendment to the Agreement in the RMC Office for Charleston County at Book 0212, Page 089 that was effective August 2, 2011; and,

WHEREAS, the Town and the Property Owner entered and recorded the Fourth Amendment to the Agreement in the RMC Office for Charleston County at Book 0244, Page 565 that was effective March 6, 2012; and,

WHEREAS the Agreement replaced, according to its terms, a previous Development Agreement, as amended, between the Town and the Property Owner effective September 26, 1994 (hereinafter the "First Agreement") that is recorded in the RMC Office for Charleston County at Book J248, Page 001; and

WHEREAS in Section 16(b) of the First Agreement, titled "10 Mile Strip of Beachfront Property," the Property Owner agreed to convey to Kiawah Island Community Association, Inc. ("KICA") by quitclaim deed before January 1, 1996, a strip of highland and dunes described in the Section 16(b) as:

"... a strip of scenic dunes and high land owned primarily by the Property Owner (some of which is encumbered by the General Covenants, certain view and access easements and other agreements of record) which extends along the Kiawah Island beachfront for approximately 10 miles as generally depicted on Exhibit 16.2. This strip of high land varies in width, but often is 200' to 300' wide and is generally seaward of most residential, resort, or commercial property lines. It generally comprises the area of land abutting most seaward platted residential Lot lines and the mean high water mark of the Atlantic Ocean."

(Hereinafter referenced as the "Beachfront Strip"); and,

WHEREAS Exhibit 16.2 to the First Agreement was a graphic illustration of the location of the Beachfront Strip that established the western terminus of the Beachfront Strip as the eastern boundary and extended eastern boundary of Parcel 13 of the First Agreement, known as the Beachwalker Ocean Parcel (TMS No. 207-05-00-118) in the First Agreement; and

WHEREAS, to implement the transfer of the Beachfront Strip to KICA, Property Owner executed a deed to KICA recorded at Book N265, Page 406, and Corrective and Confirmatory Deed recorded at Book No. L304, Page 459, in the RMC Office for Charleston County (hereinafter, the "Deed"); and

WHEREAS the Agreement (entered in 2005) listed and described Parcel 12A as Beachwalker Park, Parcel 12B as Captain Sam's, and Parcel 13 as Beachwalker Ocean; and

WHEREAS Exhibit 1.3 to the Agreement is an illustration of the location of the Parcels owned by the Property Owner at the time of entry of the Agreement and shows that the Property Owner owned all the land to the high water mark, including the dunes and beachfront, west of the eastern boundary and extended eastern boundary of Parcel 13; and,

WHEREAS it has come to the attention of the Property Owner that the property description in the Deed encompassed land beyond the intended western terminus of the Beachfront Strip described in the First Agreement including land that is seaward of the Parcel known as Beachwalker Park that was listed and identified as Parcel 12 under the First Agreement and Parcel 12A under the Agreement that was not required to be included in the property description nor conveyed to KICA (all land so described and conveyed hereinafter shall be referred to as the "Additional Land"); and,

WHEREAS the Additional Land has remained a part of TMS No. 207-05-00-0011 on the real property tax records of Charleston County and reflected there as owned by Property Owner, and has never been formally subdivided into a separate TMS parcel; and,

WHEREAS Property Owner desires to reconfirm the intent under the First Agreement that the Beachfront Strip does not include the Additional Land; and

WHEREAS Property Owner and Town desire to confirm their intent under the Agreement as well as their intent and belief at the time the Agreement was entered that the land comprising Parcels 12A and 12B as depicted on Exhibit 1.3 to the Agreement, including the Additional Land, was owned by the Property Owner and subject to the Agreement by virtue of such ownership; and

WHEREAS this Fifth Amendment is intended to be a reaffirmation of what is clearly shown on Exhibit 16.2 of the First Agreement and Exhibit 1.3 of the Agreement; and,

WHEREAS, the Agreement provides in Section 22 that the Agreement may be amended; and,

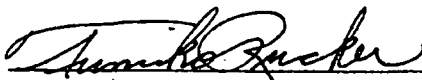
WHEREAS, the Property Owner desires to amend the Agreement to clarify and state their mutual intent with respect to the Beachfront Strip and the real property subject to both the First Agreement and the Agreement;

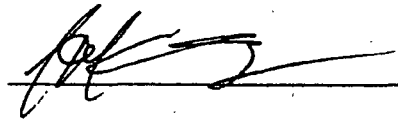
NOW, THEREFORE, the Town and Property Owner confirm and agree (1) that the Property Owner's intent was that the western terminus-boundary of the Beachfront Strip be the eastern boundary and extended eastern boundary of Parcel 13 as described in the First Agreement and the Agreement, known as the Beachwalker Ocean Parcel (TMS No. 207-05-00-118), as illustrated on Exh. 16.2 to the First Agreement recorded at Book J248 Page 366 in the RMC Office for Charleston County; (2) that the Property Owner did not intend that the Beachfront Strip include the Additional Land, which is west of the intended western terminus-boundary of the Beachfront Strip; and, (3) that the intent of the Property Owner at the time of entry of the Agreement was that the Additional Land was part of Parcels 13 and 12A as described in the Agreement.

All other terms, conditions, and provisions of the Agreement, as duly amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Fifth Amendment to the Agreement has been entered and enacted this 2nd day of October, 2012.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

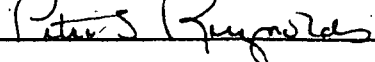




TOWN OF KIAWAH ISLAND (Town)
(SEAL)

By:  10/10/2012

G. Steven Orban, Mayor

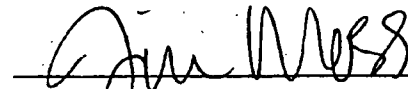
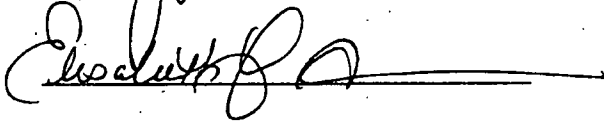
Attest: 

Petra Reynolds, Clerk of Council

RMC Bk 0290 Pg 099 : pg 5 *

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

(CORP. SEAL)

KIAWAH RESORT ASSOCIATES, L.P.
(Property Owner) (Seal)

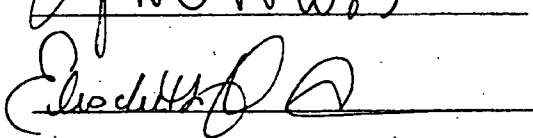
By: D&W Investments, Inc.,
(a South Carolina corporation)

2 North Adger's Wharf
Charleston, SC 29401
Its: General Partner

By: 
Charles P. Darby, III
Its: President

AND

(CORP. SEAL)

By: TWD Investments, LLC
(A South Carolina limited liability
Company)

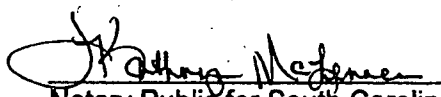
2 North Adger's Wharf
Charleston, SC 29401
Its: General Partner

By: 
Charles P. Darby, III
Its: Manager

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT
(TOWN)

THE FOREGOING INSTRUMENT was acknowledged before me by the TOWN OF KIAWAH ISLAND, by G. Steven Orban, its Mayor, and Petra Reynolds, its Clerk of Council, this 16 day of October, 2012.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 2/7/2016



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT
(Property Owner - D&W)

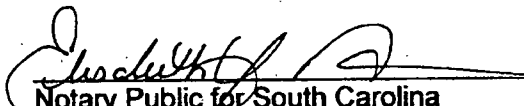
THE FOREGOING INSTRUMENT was acknowledged before me by KIAWAH RESORT ASSOCIATES, L.P., by D&W Investments, Inc., (a South Carolina corporation), its General Partner, by Charles P. Darby, III, its President, this 26th day of October, 2012.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-10-2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

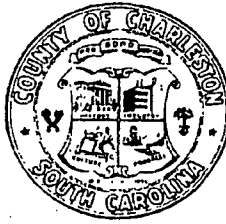
ACKNOWLEDGMENT
(Property Owner - TWD)

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 26th day of October, 2012.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-10-2020

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

PRATT-THOMAS, & WALKER, P.A.

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CHARLESTON SC 29413-2247

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Misc/Amend

Charlie Lybrand, Register
Charleston County, SC

MAKER:

KIAWAH ISLAND ETC

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of Pages: 9

of References:

Note:

RECIPIENT:

KIAWAH RESORT ASSOCS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
KIAWAH RESORT ASSOCIATES, L.P., a	)	
Delaware Limited Partnership,	)	Case No. 2013-CP-10-1225
	)	
Plaintiff,	)	
	)	<u>ANSWER AND COUNTERCLAIM</u>
vs.	)	(Declaratory Judgment)
	)	(Reformation of Deed/Specific Performance)
KIAWAH ISLAND COMMUNITY	)	(Non-Jury)
ASSOCIATION, INC., a South Carolina Not-	)	
for-Profit Corporation,	)	
	)	
Defendant,	)	
	)	

Defendant, KIAWAH ISLAND COMMUNITY ASSOCIATION, INC., ("KICA") a South Carolina Not-For-Profit Corporation, by and through counsel hereby responds to Plaintiff's Complaint for Declaratory Judgment, Reformation of Deed and Specific Performance, as follows:

AFFIRMATIVE DEFENSES

First AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted

Second AFFIRMATIVE DEFENSE

Plaintiff's claims are barred due to their own negligence and unclean hands.

Third AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred, in whole or in part, by the doctrines of laches, estoppel and waiver.

FILED
2013 MAY -8 PM 1:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY [Signature]

Fourth AFFIRMATIVE DEFENSE

The claims asserted in the Complaint may be barred to the extent the Plaintiff created, suffered, assumed or agreed to the conditions complained of therein.

Fifth AFFIRMATIVE DEFENSE

Plaintiff's claims may be barred, in whole or in part, for failure to join proper, necessary or indispensable parties.

Sixth AFFIRMATIVE DEFENSE

By way of further defense Defendant KICA responds the individually numbered paragraphs of Plaintiff's Complaint, as follows:

GENERAL ALLEGATIONS

1. Admitted.
2. Admitted.
3. Admitted.
4. Defendant can neither admit nor deny Plaintiff's allegation. Defendant believes Plaintiff's allegation to be true.
5. Admitted.
6. Admitted.

STIPULATED FACT

7. Admitted.
8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.

12. Admitted.
13. Admitted.
14. Defendant admits a Quit Claim Deed was recorded on February 20, 1996 in Book N265, Page 406. Defendant does not know what Plaintiff believed at the time of executing the referenced deed.
15. Admitted.
16. Defendant does not have sufficient information to admit or deny the fact alleged in this paragraph.
17. Defendant agrees the legal description of the property conveyed the Beachfront Deed was generally described. Defendant can neither admit nor deny why the Beachfront Deed was described as such.
18. Admitted.
19. Defendant does not have sufficient information to admit or deny the fact alleged in this paragraph.
20. Defendant does not have sufficient information to admit or deny the fact alleged in this paragraph.
21. Defendant does not have sufficient information to admit or deny the fact alleged in this paragraph.
22. Defendant admits a Confirmatory Quit Claim Deed recorded at Book Y285, Page 763 in the R.M.C. Office is attached as Exhibit C.
23. Defendant admits a Corrective and Confirmatory Deed recorded at Book Y285, Page 772 in the R.M.C. Office is attached as Exhibit D. Defendant neither admits nor denies the remainder of the facts alleged in that paragraph.

24. Defendant lacks sufficient information to enable it to admit or deny the facts alleged in this paragraph.
25. Defendant admits a Second Corrective and Confirmatory Deed recorded in Book L304, Page 459 in the R.M.C. Office is attached as Exhibit E.
26. Admitted.
27. Defendant admits the 2005 Development Agreement eliminated the terms of Paragraph 16(g) of the 1994 Development Agreement. Defendant neither admits nor denies the remainder of the alleged facts in this paragraph.
28. Defendant admits the property description in the Beachfront Deed is quoted in this paragraph in part. Defendant neither admits nor denies the remainder of the alleged facts in this paragraph.
29. Defendant lacks sufficient information to admit or deny the facts alleged in this paragraph.
30. Defendant lacks sufficient information to admit or deny the facts alleged in this paragraph.
31. Defendant lacks sufficient information to admit or deny the facts alleged in this paragraph.
32. Defendant lacks sufficient information to admit or deny the facts alleged in this paragraph.
33. Admitted.
34. Admitted.

35. Defendant admits KRA requested Defendant to execute a Corrective Quit-Claim Deed. Defendant cannot respond to the intent of the parties with respect to the Beachfront Deed or Development Agreement.
36. Admitted.
37. Defendant denies KRA is entitled to judicial reformation of the property description in the Beachfront Deed and/or an Order authorizing and requiring the President and Secretary of KICA to execute a Corrective Quit-Claim Deed. Defendant believes the legal description was a unilateral mistake of Plaintiff.

FOR A FIRST CAUSE OF ACTION

38. Defendant restates its previous responses to Paragraphs 1 thru 37 as if they were restated in their entirety.
39. Defendant denies Plaintiff is entitled to a declaratory judgment that the legal description in the Beachfront Deed to KICA as Common Property was unintentional, in error and a mistake.

FOR A SECOND CAUSE OF ACTION

40. Defendant restates its previous responses to Paragraphs 1 thru 39 as if they were restated in their entirety.
41. Defendant denies the Plaintiff is entitled to an order directing reformation of the property description of the Beachfront Deed deleting the Additional Land and correcting the property description.

FOR A THIRD CAUSE OF ACTION

42. Defendant restates its previous responses to Paragraphs 1 thru 41 as if they were restated in their entirety.

43. Defendant denies KRA is entitled to an order of specific performance compelling the duly authorized representative(s) of KICA to execute a deed to KRA for the Additional Land without encumbrance except for those matters of encumbrance at the time of the conveyance of the Beachfront Deed.

COUNTERCLAIM FOR DECLARATORY JUDGMENT

44. Defendant alleges and restates Paragraphs 7 through 15 of Plaintiff's Complaint and Defendant's responses thereto as if fully set forth herein.
45. As stated in Paragraph 15 of Plaintiff's Complaint, the Beachfront Property was expressly deeded as Common Property to KICA in accordance with the 1994 Development Agreement.
46. Article IV, Section 1 of the Declaration grants to every member of KICA, every guest and tenant an easement of enjoyment in and to the Common Properties which is appurtenant to and passes with the title to every Lot and Parcel. A copy of that Section is attached as Defendant's Exhibit 1 hereto and incorporated herein by reference.
47. Article IV, Section 6 of the Declaration further provides those rights and easements referenced above shall be subject to the following:

(h) The right of the Association to give or sell all or any part of the Common Properties and Restrictive Common Properties, including leasehold interests, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the members, provided that no such gift or sale or determination as to the purposes or as to conditions thereof shall be effective unless dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6 and unless written notice of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be

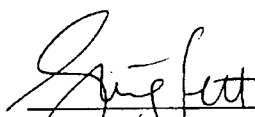
annexed to any instrument of dedication or transfer affecting the Common Properties or Restrictive Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

48. Defendant restates the allegations of paragraph 35 of Plaintiff's Complaint as if fully set forth herein. The Board of Directors of KICA believes the Additional Land is Common Property which it lacks the ability to transfer to KRA unless the transfer is approved by the requisite vote of the members in accordance with Article IV, Section 6(h) of the Declaration. The Defendant is uncertain and insecure with respect to its rights to transfer the Additional Land to KRA. Defendant respectfully requests this Court to declare its rights by determining whether the Additional Land is Common Property.

WHEREFORE, this Defendant requests that:

- (a) The prayers for relief requested by the Plaintiff in its Complaint be dismissed with prejudice with all costs cast upon the Plaintiff;
- (b) That the Court enter an Order Determining whether the Additional Land, as Defined by Plaintiff's Complaint, is Common Property; and
- (c) Any other relief this Court believes is just and proper.

Respectfully submitted, this 7th Day of May, 2013.



Allison Jett, Esq.
Weissman Nowack Curry & Wilco
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, GA 30326
Phone: (404) 926-4530
Email: alliejett@wncwlaw.com

Counsel for Defendant Kiawah Island Community Association, Inc.

EXHIBIT “1”

ARTICLE IV
PROPERTY RIGHTS IN THE VARIOUS COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment in Common Properties. Subject to the provisions of these covenants, the rules and regulations of the Association, and any fees or charges established by the Association every Type A, B, C, D and E Member and every guest and tenant of such Type A, B, C, D and E Member shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, or Development Unit Parcel.

Employees of the Type E Member shall have access to and enjoyment of the Common Properties subject to rules and regulations and user fees established by the Board of Directors.

A Member's spouse and children who reside with such Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Member, and in those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such joint owners, the principal officers of such a corporation, and the partners of such a partnership shall also have the same easement of enjoyment under this Section as a Member.

Section 2. Members' and Residents' Easements of Enjoyment in Restricted Common Properties. Subject to the Provisions of these covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Type A Member, but not Type B, C, or D Members, and every lessee Resident and Company employee have a right and easement of enjoyment in and to the Restricted Common Properties and such easement shall be appurtenant to and shall pass with the title of every Residential Lot and Family Dwelling Unit.

A Type A Member's spouse and children who reside with such Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Member, and in those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such a joint owners, the principal officers of such a corporation, and the partners of such a partnership shall also have the same easement of enjoyment under this Section as a Type A Member.

Section 3. Change from Restrictive Common Property to Unrestricted Common Property. By an affirmative vote of seventy-five per cent (75%) of the votes cast at a meeting of the Association called for the purpose of voting on such proposal, a "Restricted Common Property" may be changed into an unrestricted "Common Property".

Section 4. Title to Common Properties and Restricted Common Properties. The Company covenants for itself, its successors, and assigns, that it shall convey to the Association, at no cost to the Association, by deed or lease of ninety-nine (99) years, those parcels of land and facilities described in Section 7 of this Article IV hereof, within two (2) years after the Company has completed improvements thereon, if such be required, such that the Facility is functionally complete. The Association shall immediately become responsible for all maintenance, operation and such additional construction of improvements as may be authorized by the Association's Board of Directors subject to the Declaration of Rights, Restrictions, Affirmative Obligations, and Conditions Applicable to All Property in "Kiawah Island". It is the purpose of this provision to provide that the Association shall be responsible for all maintenance of Common Properties and Restricted Common Properties upon which all improvements required to be made by the Company have been completed, notwithstanding the fact that the Company is not obligated to convey or lease such properties to the Association until two years after such improvements have been completed thereon.

Natural areas, trail areas, etc., shall be conveyed in large or small parcels from time to time after the Company has completed the surveying and platting of all adjacent subdivisions for single family detached and Patio Home housing areas, multiple family tracts or public and commercial sites which may abut such natural areas, trail areas, etc. The Company covenants for itself, its successors and assigns, that it shall convey by deed to the Association all such properties within two (2) years of notification to the Association, in writing, of its intent to convey such properties, provided, however, that in the case of Common Properties or Restricted Common Properties, upon which improvements are required to be made by the Company, such notification of "intent to convey" shall not be deemed to be made until such time as the improvements have been completed such that the facility is functionally complete. Such notification will not normally show metes and bounds and, in any event, the metes and bounds as shown on the recorded plat and deed to the Association shall govern. All said parcels of land may be conveyed to the Association subject to:

Publication Date: June 1, 2007
Previous Pub. Date: June 1, 2006

KICA Covenants

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(1) all restrictive covenants of record at the time of conveyance;

(2) all existing mortgages; and

(3) a reservation by the Company of the right to substitute or add new mortgages thereon, provided however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgages.

The obligation to make payments of principal and interest in accordance with their due dates on all mortgages affecting property conveyed to the Association except mortgages on Purchased Common Properties (as described hereinbelow in Section 4 of this Article IV) shall continue to be the sole obligation of the Company or any Affiliate, Successor or Assign of the Company as the case may be. Notwithstanding anything in the foregoing to the contrary, the Company shall not be required to convey the above referred to parcels where such conveyance would be prohibited under agreements existing on the date hereof or hereafter but, in such case, shall be allowed to postpone such conveyance, without penalty, until such time as said prohibition may be nullified.

Section 5. Purchased Common Properties. Subject to the provisions of these covenants, the rules and regulations of the Association, and any charges established by the Association, every Type A Member shall have a right and easement of enjoyment in and to any property now or hereafter designated "Purchased Common Properties" pursuant to this Declaration. A Type A Member's spouse and children who reside with such Type A Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Type A Member.

In those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such joint owners, partnerships, and corporations shall annually appoint one (1) person as the "Primary Member." Such Primary Member shall have the same easement of enjoyment in the Purchased Common Properties as Members who own or occupy such property singularly. Each of the remaining joint Members or Tenants, other principal officers of such corporations, or partners of such partnership shall be entitled to an easement of enjoyment in the Purchased Common Properties by (1) paying to the Association annually an amount equal to the annual assessment charged against the property so owned, or in the alternative (2) should user fees be deemed appropriate, by payment of applicable user fees, and conforming to rules, regulations and other criteria approved by the Board of Directors for the particular Purchased Common Property. (as amended 5-9-1990)

"Purchased Common Properties" may be acquired by the Association when such acquisition and the concomitant Amenity Assessment are approved by a Referendum of Type "A" Members. Any debt incurred in acquiring Purchased Common Properties by the Association may be paid over a period not to exceed twenty years from receipts of Annual Assessment, Special Assessments, and/or Amenity Assessments. (as amended 5-31-1984)

Purchased Common Properties may be offered to the Association by the Company subject to acceptance of title thereto by the Association and implementation of an additional assessment (herein "Amenity Assessment") to fund the continued operation thereof. Purchased Common Properties may be offered to the Association subject to such restrictions, limitations, and reservations as are stated in the offering and submitted to the Association as part of the Referendum. The Amenity Assessment shall initially be established by the Board of Directors of the Association at an amount that the Board deems sufficient to fund the continued operation and maintenance of the Purchased Common Property, which assessment shall commence as to all Type "A" Members responding to the mail Referendum in which the Association accepts title to the Purchased Common Property. The Amenity Assessment for Purchased Common Property shall be established by the Board of Directors for each succeeding year but shall not be increased by more than ten percent (10%) over the previous year, or by the percentage increase between the first month and the last month of an annual assessment period in the Consumer Price Index for All Urban Consumers (1967 = 100) issued by the U.S. Bureau of Labor Statistics whichever of these two percentage figures is larger, except that the Amenity Assessment for the Recreation Center and its related facilities at 1 Shipwatch Road shall not be increased more than five percent (5%) per annum, starting with the year 2001. The Amenity Assessment may be increased above the stated maximum by approval of a majority of the votes of the Type "A" Members responding to a mail Referendum, which increase in the maximum Amenity Assessment, if approved, shall be effective for all subsequent years and shall thereafter increase each subsequent year as stated herein above. (as amended 1-1-2001)

The Association may not accept title to any Purchased Common Property without implementing an Amenity Assessment sufficient to provide funding for the continued maintenance and operation of the facility, unless the Board of Directors shall first determine that adequate funding can be provided from Annual Assessments to provide for the continued operation and maintenance of the Purchased Common Property without detrimentally affecting existing

Publication Date: June 1, 2007
Previous Pub. Date: June 1, 2006

KICA Covenants

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operations of the Association. (as amended 5-31-1984)

The Amenity Assessment shall be levied against Type "A" Members only. Purchased Common Properties may, in the discretion of the Board of Directors, be restricted to the exclusive use of Type "A" Members, or other persons may be permitted to use the facility subject to such rules and regulations as the Board of Directors may promulgate. The Board of Directors may establish initiation fees and user fees as the Board of Directors may in its discretion so determine. (as amended 5-31-1984)

Section 6. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its By-Laws, to borrow money from the Company or any lender for the purpose of improving and/or maintaining the Common Properties, Restricted Common Properties and Purchased Common Properties, and providing services authorized herein and in aid thereof to mortgage said properties; and

(b) The right of the Association to assume and pay any liens or encumbrances against the Purchased Common Property at the time of conveyance; and

(c) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures; and

(d) The right of the Association, to suspend the rights and easements of enjoyment of any Member or Tenant or Guest of any Member for any period during which the payment of any assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment, and provided that the Association shall not suspend the right to use any roads belonging to the Association subject to the rules, regulations and fees, if any established by the Association for such use.

(e) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties, Restricted Common Properties and Purchased Common Properties, and any facilities included therein, including the right of the Association, to charge a reasonable toll for the use of any roadways belonging to the Association, provided, however, that such rights of the Association shall not be construed to impair or qualify an Owner's rights of ingress and egress to his property.

(f) The Board of Directors of the Association shall have full discretion to determine the amount of the fee or toll for use of any roadway it may own, provided, however, that such fee or toll shall be limited to an amount which generates sufficient sums to cover the cost of the operation of entry control security stations; to repair, rehabilitate, resurface and otherwise maintain said roadways, to provide for the maintenance and clean-up of the right-of-ways; to provide drainage along said roadways; to provide for motorized security patrols and to provide such other roadway maintenance or services as the Association shall deem desirable. The Board of Directors of the Association shall further have the power to place any reasonable restrictions upon the use of the Association's roadways, subject to an Owner's or Resident's right of ingress and egress, including, but not limited to the types and sizes of vehicles permitted to use said roads, the maximum and minimum speeds of vehicles using said road, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Properties shall not make such restriction unreasonable. This paragraph (f) establishes maximum fees which may be charged for road entry and use of roads. The Board of Directors of the Association may supplement, with an allocation of a portion of the receipts from the annual assessment, the funds (if any) received from road use fees or tolls, to carry out the functions and activities as described in this paragraph (f).

(g) The right of the Company or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Properties, Restricted Common Properties, and Purchased Common Properties.

(h) The right of the Association to give or sell all or any part of the Common Properties and Restricted Common Properties, including lease-hold interest, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6,

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Previous Pub. Date: June 1, 2006

KICA Covenants

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and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties or Restricted Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

(i) The rights of reversion of the Lessor of any Common Properties or Restricted Common Properties leased by the Association upon expiration of the lease.

Section 7 [sic "6" in original recorded document]. [Conveyance by Deed or Lease.] The Company covenants for itself, its successors, and assigns, that, prior to 2016, it shall convey to the Association, by deed, ninety-nine (99) year lease, or other instruments sufficient to convey to the Association the full beneficial use for ninety-nine (99) years, those properties designated on the Company's Master Development Plan as "Common Properties" or "Restricted Common Properties", including the properties listed below. Such conveyance shall be subject to all the restrictions and limitations of the various Articles of this Declaration and any other restrictions and limitations of record and shall include the following:

(a) As Common Properties. There shall be conveyed to the Association without charge by the Company and the Association shall accept title to the following:

(1) Any private community roads and rights of way thereof within the properties which connect Residential Lots, Family Dwelling Units, Multiple Family Tracts, and Public or Commercial Sites or Units, and Development Unit Parcels, to public roads or highways.

(2) All bike trails not contained, or designated on the Master Development Plan to be contained, within a Public or Commercial Site, Multiple Family Tract or Development Unit Parcel.

(3) Open space designated as such on the Company's Master Development Plan or subdivision plats recorded in the Register of Mesne Conveyance, Charleston County, South Carolina.

(b) As Restricted Common Properties. There shall be conveyed to the Association without charge and the Association shall accept title to all properties designated by the Company for the exclusive common use and enjoyment of Owners and tenants of Residential Lots and Family Dwelling Units, their immediate families, guests accompanying such Owners, and the Company.

ARTICLE V

COVENANTS FOR ASSESSMENTS AND RESERVE FUNDS

Section 1. **Creation of the Lien and Personal Obligations of Assessments.** The Company covenants, and each Owner of any Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and pay to the Association (1) Annual Assessments or charges, and (2) Special Assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments together with such Delinquent Payment Fees thereon and costs of collection therefor as hereinafter provided, shall be a charge as continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with such Delinquent Payment Fees thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or any Unsubdivided Land, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment. (as amended 5-28-1981)

Section 2. **Purposes of Assessments.** The Annual Assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, enlargement, and operation of the Common Properties and Restricted Common Properties, and Purchased Common Properties, and to provide services which the Association is authorized to provide. In carrying out these duties, the Association may expend funds derived from assessments to make payments of principal and interest as consideration for the conveyance by the Company to the Association of Purchased Common Properties.

Publication Date: June 1, 2007
Previous Pub. Date: June 1, 2006

KICA Covenants

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13-CP-10-1225

CERTIFICATE OF SERVICE

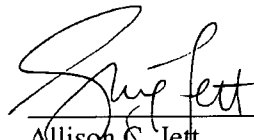
The undersigned certifies that the foregoing ANSWER AND COUNTERCLAIM was served upon the all counsel by depositing a copy of same in the United States Mail, postage prepaid, and properly addressed as follows:

Ellis R. Lesemann, Esq.
Harvey & Vallini, LLC
497 Bramson Court, Suite 201
Mount Pleasant, South Carolina 29464

Leonard Krawcheck, Esq.
Special Referee
Krawcheck & Davidson
9 State Street
Charleston, South Carolina 29401

FILED
2013 MAY -8 PM 1:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

This 7th day of May 2013.



Allison C. Jett
Attorney for Defendant Kiawah Island
Community Association, Inc.

WEISSMAN, NOWACK, CURRY & WILCO, P.C.
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
(404) 926-4500

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Kiawah Resort Associates, L.P., a Delaware
Limited Partnership,

Plaintiff,

vs.

Kiawah Island Community Association, Inc., a
South Carolina Not-for-Profit Corporation,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
)

) C/A No. 2013-CP-10-01225
)

) **MOTION TO**
) **INTERVENE OF INLET COVE**
) **HOMEOWNERS ASSOCIATION**
) **AND KIAWAH ISLAND PROPERTY**
) **OWNERS GROUP**

[Signature]

2013 MAY 28 PM 1:36
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

PLEASE TAKE NOTICE that Inlet Cove Homeowners Association and Kiawah Island Property Owners Group hereby move the Court for an Order allowing them to intervene in this proceeding. The basis for this motion is as follows:

1. Plaintiff Kiawah Resort Associates, L.P. ("KRA"), is a real estate developer that does business in Kiawah Island, South Carolina.
2. Defendant Kiawah Island Community Association, Inc. ("KICA"), is the principal property owners' association that all property owners on Kiawah Island become members of upon purchase of their property.
3. Proposed Intervenor Inlet Cove Homeowners Association ("Inlet Cove HOA") is a property owners' association specifically for the Inlet Cove neighborhood, which consists of 108 parcels on 12.73 acres of land lying and situate with the Kiawah River along its western boundary, the Beachwalker Road along its eastern boundary, and the Beachwalker Park along its southern boundary. Members of the Inlet Cove HOA independently own by deed elevated cottages as well as the land on which they sit; members also jointly own the common areas

within the Inlet Cove neighborhood, which include a community dock on the Kiawah River, boat storage, a cabana, two pools, and the two entranceways into the neighborhood from Beachwalker Road. Members of the Inlet Cove HOA are all members of KICA.

4. Proposed Intervenor Kiawah Island Property Owners Group ("KPOG") is an independent property owners' advocacy organization. Since its formation in 1981, KPOG has provided property owners with information about Kiawah and about plans and activities that will impact the Kiawah property owner. KPOG officers and volunteers have been active in court cases and with utility boards and wherever else Kiawah property owner interests have appeared to need action. KPOG's mission is to identify, examine, and communicate issues of significance to Kiawah Island property owners, and advocate on their behalf following Board approval. KPOG acts to: represent the combined interests of membership on issues that may affect the fundamental character of Kiawah Island; support the preservation of the natural resources and beauty of Kiawah Island and appropriate environmental conservation policies and/or methods; work with local government units in support of property owners' shared perspectives, concerns and investments; and foster and support economic growth that is consistent with the preservation of the natural beauty of Kiawah Island and the quality of life which forms the basis for members' original and continuing attraction to Kiawah Island.
5. The Declaration of Covenants and Restrictions, as amended ("KICA Covenants") govern the rights and responsibilities of KICA and its members, including, but not limited to, the maintenance and operation of "Common Properties" for the use and enjoyment of all members. (See **Exhibit 1**).
6. The KICA Covenants define "Common Properties" as those tracts of land which are deeded

to KICA and designated in such deed as Common Property. Moreover, “[a]ll Common Properties are to be devoted to and intended for the common use and enjoyment of the owners, residents, and their guests.” (**Exhibit 1**).

7. In or around September, 1994, KRA and the Town of Kiawah Island (the “Town”) entered into a Development Agreement (the “1994 Agreement”) that required, in part, that KRA convey what was described as a 10 mile strip of beachfront property (the “Beachfront Strip”) to KICA as Common Property. (See **Complaint ¶ 9**).
8. The 1994 Agreement further required that KRA commit the tract of land known as Captain Sam’s Spit to permanent reservation as an open space, nature study or park and that KRA convey Captain Sam’s Spit to KICA by January 1, 2008. (See **Complaint ¶ 11**).
9. In December, 1995, KRA deeded the Beachfront Strip to KICA as Common Property, “subject to all applicable covenants, conditions, restrictions and easements of record as of [the 1994 Agreement, and] subject further to the covenant, condition and restriction that the Property shall be maintained and utilized as a Common Property as defined in the [KICA Covenants].” (See **Exhibit B to Complaint**).
10. In October, 2005, KRA and the Town entered into a second Development Agreement (the “2005 Agreement”), which replaced the 1994 Agreement and granted KRA development rights on Captain Sam’s Spit.
11. In 2007, KRA claimed there was an error in the property description of the Beachfront Strip, which states that the western terminus point at which the Beachfront Strip commences includes an area of 4.62 acres seaward of KRA’s “Employee Facility Tract.” KRA claims that the 4.62 acre parcel was mistakenly conveyed to KICA with the Beachfront Strip.

12. The 4.62 acres in dispute is beachfront property and represents a very valuable asset to KICA and its members, specifically the proposed intervenors Inlet Cove Homeowners Association and KPOG.
13. KRA requested that KICA issue a "corrective quit-claim deed" conveying title to the 4.62 acre parcel to KRA. However, KICA's Board of Directors declined KRA's request. (See **Complaint ¶¶ 35 - 36**).
14. In prescribing the duties of KICA as well as the rights of its members, the KICA Covenants state that all members and their guests "shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every" parcel. The KICA Covenants further state that the members' rights and easements of enjoyment in Common Properties are subject to KICA's right to convey Common Property, but that any such conveyance of Common Property by KICA would require an affirmative vote by three-fourths (3/4) of its members to be effective. (See **Exhibit 1**).
15. Upon information and belief, KRA will not be able to obtain approval by affirmative vote of the majority of the members of KICA to convey the 4.62 acres of Common Property to KRA.
16. KRA filed a summons and complaint on March 1, 2013, asserting that it is entitled to judicial reformation of the property description of the Beachfront Strip to remove the 4.62 acre parcel by changing the western terminus point at which the Beachfront Strip commences and/or to an order of specific performance requiring KICA to deed the 4.62 acre parcel to KRA based upon the allegation that its inclusion with the Beachfront Strip was an inadvertent mistake.

17. South Carolina Rules of Civil Procedure Rule 24(a) and (b) set forth the grounds for intervention. Intervention as of right is authorized: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. Permissive intervention is authorized: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. Inlet Cove HOA and KPOG meet both of these standards:

- a. Inlet Cove HOA was organized and exists to provide a sense of shared community values among its members and to ensure that these values remain protected. The Inlet Cove HOA is comprised of many lifelong South Carolina residents, some of whom permanently reside in the Inlet Cove neighborhood, as well as homeowners who maintain their properties for seasonal or periodic uses. Inlet Cove's natural beauty and accessibility to passive recreational activities not only evidences its desirability, but also constitutes the core values that the Inlet Cove HOA serves to protect. Inlet Cove is in very close proximity to the 4.62 acres in dispute, its member use and enjoy this property for its aesthetic qualities and for viewing wildlife. (See **Exhibit 2**).
- b. KPOG was organized and exists to provide information and awareness to Kiawah Island property owners regarding issues of shared concern that may impact the community. KPOG actively advocates for the protection of Kiawah Island's extraordinary character and beauty as well as the quality of life of Kiawah Island's

property owners. KPOG promotes the preservation of Kiawah Island's natural resources as an important link to the maintenance of the fundamental character of Kiawah Island and seeks to ensure that growth and development on Kiawah Island remain consistent with such preservation.

- c. Members of Inlet Cove HOA and KPOG assert that their quality of life with regard to aesthetic and recreational use and enjoyment of the natural environment and its resources will be directly and adversely impacted by the outcome of this litigation. The members of Inlet Cove HOA and KPOG, like all property owners on Kiawah Island, hold the right to access and enjoy the subject 4.62 acre parcel of Common Property, and indeed do use and enjoy the subject property. Inlet Cove HOA holds a particularly acute interest in the 4.62 acres due to its close proximity to that parcel, to the Beachfront Strip and to Captain Sam's Spit.
- d. Members of Inlet Cove HOA and KPOG assert that they will be harmed if a valuable asset currently used and enjoyed by these groups, which is currently in a natural and pristine state, is transferred to Plaintiff KRA.
- e. The KICA Covenants establish property owners' rights to access and use Common Property, however, Inlet Cove HOA and KPOG assert that their commitment to preserving the aesthetic and recreational values of the natural environment and the quality of life for Kiawah Island property owners represent distinct interests that will be substantially impaired without their direct participation in this matter. Our courts have recognized that aesthetic interests provide a basis for challenging an activity. In *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.* 528 U.S.

167, 120 S. Ct. 693, 145 L.Ed.2d 610 (2000), the United States Supreme Court reaffirmed the long-standing principle that aesthetic and recreational interests can provide the basis for standing: “We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons ‘for whom the aesthetic and recreational values of the area will be lessened’ by the challenged activity.” 528 U.S. 167, 183, *citing Sierra Club v. Morton, supra., and Lujan v. Defenders of Wildlife* (“Of course, the desire to use or observe an animal species, even for purely aesthetic purposes, is undeniably a cognizable interest for the purposes of standing.”). This principle was specifically reaffirmed by the South Carolina Supreme Court in *Sea Pines*, 345 S.C. 594, 601-602, 550 S.E.2d 287, 291-292.

- f. Moreover, Inlet Cove HOA and KPOG have serious concern that their interests in the 4.62 acres of Common Property will not be adequately protected by KICA. (See **Exhibit 2, Affidavit of Sophia McCallister**). Pursuant to the KICA Covenants, the KICA Board of Directors is the governing body of KICA and presumably executes this role and makes decisions according to the best interests of the members of KICA. However, there is at least an appearance of a conflict of interest between the KICA Board and Plaintiff KRA because the developer, Plaintiff KRA, selects and appoints a member to the KICA Board to represent its interests in development. This appearance that the KICA Board may not be acting in the best interests of its members, including Inlet Cove and KPOG, and Plaintiff KRA’s presence on the KICA Board may prevent KICA from taking the affirmative defensive actions its

members expect under the circumstances.

- g. Inlet Cove HOA and KPOG claim that the 4.62 acre parcel was conveyed to KICA as Common Property and that, therefore, it should remain as Common Property in the interest of the members of KICA. Whether the court may compel KICA to deed away the 4.62 acres is a question of fact or law that Inlet Cove HOA and KPOG share in common with KICA.

18. As demonstrated by the allegations set forth above, the Inlet Cove HOA and KPOG also meet the test for standing – 1) an injury in fact – an invasion of a legally protected interest; 2) a causal connection between the injury and the conduct complained of; and 3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. *Smiley v. South Carolina Dept. of Health and Environmental Control*, 374 S.C. 326, 649 S.E.2d 31 (2007); *Sea Pines Association for the Protection of Wildlife, Inc. v. S.C. Department of Natural Resources*, 345 S.C. 594, 550 S.E. 2d 287 (2001); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-561, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992); *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.* 528 U.S. 167, 120 S. Ct. 693, 145 L.Ed.2d 610 (2000).

PROPOSED INTERVENORS' POSITION IN INTERVENTION

The proposed intervenors assert that the 4.62 acre parcel was conveyed to KICA as Common Property within the property description of the Beachfront Strip. Plaintiff KRA executed a deed which conveyed the Beachfront Strip to Defendant KICA as Common Property and which specifically described and incorporated the 4.62 acres as the southwesternmost corner of the

Beachfront Strip. Plaintiff KRA attempts to argue that the parties intended for the 4.62 acre parcel to be owned by KRA by reference to the 1994 and 2005 Agreements. However, the proposed intervenors assert that, not only was Defendant KICA not one of the parties to the 1994 and 2005 Agreements, but also that the language relied upon by Plaintiff KRA in support of its claim is too broad to contradict the precise terms used in the deed conveying the Beachfront Strip to KICA.

Furthermore, the proposed intervenors assert that, at the time Plaintiff KRA executed the deed conveying the Beachfront Strip to Defendant KICA, there was no intent to develop that portion of Kiawah Island containing the subject parcel. Rather, preservation of the western portion of Kiawah Island, including Captain Sam's Spit and the 4.62 acre parcel, as natural and undisturbed by development was in alignment with the overarching plan in developing Kiawah Island as a whole. It was only after Plaintiff KRA altered its development rights by and through the 2005 Agreement that the possibility of development on Captain Sam's Spit, and consequently the importance of the surrounding parcels leading up to it, became a concern to Plaintiff KRA. Since execution of the deed conveying the Beachfront Strip, Defendant KICA has not been party to any agreement evidencing an intent to allow development on the western portion of Kiawah Island or otherwise departing from the original development scheme.

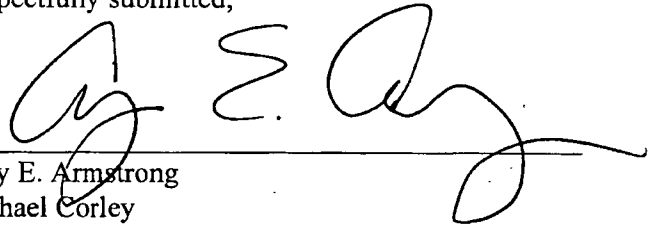
Therefore, the proposed intervenors seek an affirmative declaration by this court that the 4.62 acre parcel is Common Property and/or that the court order Plaintiff KRA to properly present its request for conveyance of the 4.62 acre parcel to the members of KICA for a vote as contemplated by the KICA Covenants.

This position will be supported by written and/or oral testimony at the hearing if intervention is permitted.

Counsel for proposed intervenors has consulted with counsel for Plaintiff KRA and is informed that Plaintiff objects to this motion. Counsel for proposed intervenor has consulted with counsel for Defendant KICA, but has not been informed of whether Defendant consents or objects to this motion.

WHEREFORE, the Inlet Cove Homeowners Association and Kiawah Island Property Owners Group pray that the Court issue an order granting it leave to intervene.

Respectfully submitted,



Amy E. Armstrong

Michael Corley

Jessie A. White

SOUTH CAROLINA ENVIRONMENTAL LAW
PROJECT

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Pawleys Island, SC 29585

Office address: 430 Highmarket Street
Georgetown, SC 29440

Telephone: (843) 527-0078

FAX: (843) 527-0540

Attorneys for Proposed Intervenors

Georgetown, South Carolina

May 10, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Kiawah Resort Associates, L.P., a Delaware
Limited Partnership,

Plaintiff,

vs.

Kiawah Island Community Association, Inc., a
South Carolina Not-for-Profit Corporation,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

) Case No. 2013-CP-10-01225

) **CERTIFICATE**
) **OF**
) **SERVICE**

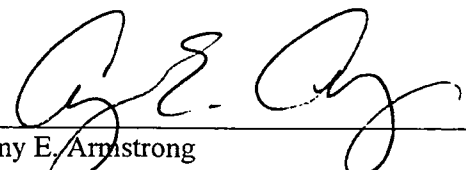
FILED
2013 MAY 28 PM 1:32
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I hereby certify that on this date I served copies of the Inlet Cove Homeowners Association and Kiawah Island Property Owners' Group's Motion to Intervene on counsel for all parties by placing copies of same in the United States Mail, first-class postage prepaid, addressed to:

Robert L. Brooke, Esq.
2 N. Adgers Wharf
Charleston, SC 29401

Ellis Leemann, Esq.
497 Bramson Court, Suite 201
Mt. Pleasant, SC 29464

Allison C. Jett
One Alliance Center
3500 Lennox Road, 4th Floor
Atlanta, GA 30326



Amy E. Armstrong
Attorney for the Proposed Intervenor

May 10 2013

Georgetown, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Kiawah Resort Associates, L.P., a Delaware
Limited Partnership,

Plaintiff,

vs.

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Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) C/A No. 2013-CP-10-01225

**AFFIDAVIT OF SOPHIA
MCALLISTER**

PERSONALLY APPEARED before me Sophia McAllister who being duly sworn deposes
and says:

I am a citizen and resident of Kiawah Island, South Carolina. My permanent residence is located in the Inlet Cove neighborhood at 21 Sunlet Bend, Kiawah Island, SC 29455. Inlet Cove has its own Homeowners Association called the Inlet Cove Homeowners Association, which consists of 108 property owners in Inlet Cove.

I am a member in good standing, and on the governing board, of the Inlet Cove Homeowners Association. I am also a member of the Kiawah Island Community Association ("KICA"). All Kiawah Island property owners are required under the Covenants and Restrictions to be members of KICA.

KICA currently owns a 4.62 acre parcel of beachfront property on Kiawah Island near Beachwalker Park, the only publicly accessible beach on Kiawah Island. The 4.62 acres is held by KICA as "Common Property," which KICA is required to maintain and improve pursuant to its Covenants and Bylaws. (See **Complaint ¶ 9**). The 4.62 acres of ocean front property is a valuable

Exhibit 2

asset to KICA.

The KICA Covenants further provide that all members and their guests “shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every” parcel. (See **Exhibit A**). As a member of KICA, I, along with the other members of Inlet Cove HOA, hold the right to access and enjoy the 4.62 acre parcel of Common Property.

In recent years, as more property owners have made Kiawah Island their permanent residence, KICA has expressed a need for, and has been in search of, additional land to expand its facilities and to continue to provide amenities to the growing community. KICA requested membership’s approval of a \$12 million land acquisition from the developer to allow expansion of facilities. Membership failed to approve the expenditure, and KICA is still in need of property to expand its facilities.

Therefore, the 4.62 acre parcel of beachfront property that KICA owns as Common Property is not only a valuable financial asset, but is also of critical importance to the residents of Kiawah Island, and the Inlet Cove Homeowners Association in particular, in that Inlet Cove is in very close proximity to the parcel.

Based on the latest statements and actions, or inactions, of KICA, the Inlet Cove Homeowners Association has serious concern that its interests in maintaining the 4.62 acres as Common Property will not be adequately protected. In a newsletter emailed to all Kiawah Island property owners, KICA attempted to soften the blow of the pending litigation by expressing relief that the question of whether the 4.62 acres is Common Property will be decided through the judicial process. (See **Exhibit B**). In its letter, not only did KICA announce that it “is pleased to see this

matter resolved through the legal process", but it also discouraged members from further inquiry into the matter by stating that it "will refrain from further comment until the matter is resolved." (Exhibit B).

This series of events have raised serious concerns with the Inlet Cove Homeowners Association about whether KICA intends to assert its ownership of the 4.62 acres of Common Property. The Inlet Cove Homeowners Association believes that if KICA does not strive to maintain and preserve this parcel as Common Property, it will result in a substantial financial and environmental loss for the members of the Inlet Cove Homeowners Association.

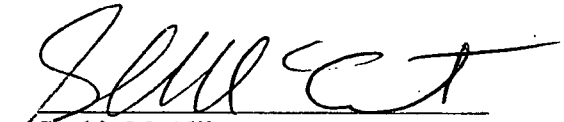
If Kiawah Resort Associates ("KRA") prevails in this lawsuit and obtains title to the 4.62 acres of beachfront property, the Inlet Cove Homeowners Association understands that a portion of the parcel will be utilized to create an access road for a proposed private development. I am aware of KRA's proposed development plans for Captain Sams Spit, which is adjacent to the 4.62 acres of Common Property. The proposed plan would require an extension of the existing Beachwalker Road, part of which appears to cross through the 4.62 acre parcel, to access the proposed area for development.

Inlet Cove is located within close proximity to Captain Sam's Spit, to the 4.62 acre parcel of Common Property and is directly bordered along its eastern edge by Beachwalker Road. Since this road is the only accessible route to the park and the beachfront, if and when KRA moves forward with its plans for development, the increased pressures placed on this road will adversely impact the community of Inlet Cove.

Inlet Cove is also adjacent to Beachwalker Park and the Kiawah River. The use and enjoyment of these natural resources, as well as the wildlife habitats that they support, fulfills the

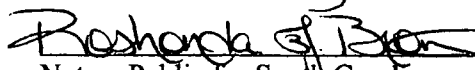
livelihood of the Inlet Cove community. Both permanent residents and seasonal homeowners of the neighborhood look forward to the opportunity to watch native wildlife from the porches of their modest cottages in Inlet Cove, to walk the short distance to the park to join Kiawah biologists as they band various species of birds, and to view the Spit in admiration from the community dock or as they kayak toward the inlet.

As a member of both the Inlet Cove Homeowners Association and KICA, I am seriously concerned that my right to use and enjoy Common Property is threatened by this litigation. I strongly believe the Inlet Cove Homeowners Association's participation in the matter is necessary to adequately represent our members' interests, which is the protection of the 4.62 acres as Common Property.


Sophia McAllister

SWORN TO before me this

1st day of May, 2013.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 8/18/2018

ROSHONDA J. BROWN
NOTARY PUBLIC
SOUTH CAROLINA

----- Forwarded message -----

From: KICA <kicaadm@kica.us>

Date: Fri, Apr 5, 2013 at 3:06 PM

Subject: Court Action Sought to Resolve Legal Matter

To: employees@kica.us



Court Action Sought to Resolve Legal Matter

April 5, 2013

Today the Kiawah Island Community Association (KICA) was served with a complaint whereby Kiawah Partners seeks judicial reformation of the deed to a piece of property previously conveyed to the association. The conveyance occurred in 1995 as a requirement of the development agreement between Kiawah Resort Associates (KRA) and the Town of Kiawah Island. KICA had no role in crafting the development agreement and the land was conveyed to KICA as a third party beneficiary.

The plaintiff, Kiawah Resort Associates (KRA), asserts that they did not intend in 1995 to transfer the property in question to KICA as Common Property and requested the board sign a corrective deed to rectify the matter. The board advised KRA that it would not sign a corrective deed because our covenants require the members approve a transfer of Common Property. KICA's most substantive disagreement is whether the property in question is Common Property, and since that issue can only be determined by a court, the association is pleased to see this matter resolved through the legal process.

KICA will refrain from further comment until the matter is resolved.

KICA Website

Exhibit A

Page 1 of 2

Stay Connected



KICA: 23 Beachwalker Drive, Kiawah Island, SC [843-768-9194](tel:843-768-9194)

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COMMUNITY ASSOCIATION COVENANTS

DECLARATION OF COVENANTS AND RESTRICTIONS OF THE KIAWAH ISLAND COMMUNITY ASSOCIATION, INC. *[KICA Covenants]*

The aforesaid Community Association Covenants were recorded in the office of the R.M.C. for Charleston, South Carolina in Book M-114, page 407, and incorporates in the text thereof the amendments made by instruments recorded in Book O-125, page 163; Book K-139, page 058; Book R-210, page 748; Book W-243, page 258; Book A-284, page 914; Book H-348, page 383; and Book W-444, page 552; Book F-583, page 354 (March 06 meeting) [Recordation data for amendments approved March 18, 2007 and effective June 1, 2007 to be added.]

KICA has prepared this publication for reference purposes only. If any member or other individual or entity has any questions as to his/her rights pursuant to the General Covenants and/or the Community Association Covenants or By-Laws, he/she should consult the actual recorded document and any amendments thereto recorded in the R.M.C. Office for Charleston County, S.C.

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Previous Pub. Date: June 1, 2006

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Exhibit 1

COMMUNITY ASSOCIATION COVENANTS

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AN HISTORICAL INTRODUCTION

The Kiawah Island Community Association, Inc. was formed in February, 1976 when the original developer, the Kiawah Island Company, Ltd., recorded covenants creating the Association. The original preamble detailed below is included for historical perspective:

WHEREAS, Company is the owner of the real property described in Article II of this declaration and it desires to create thereon a planned development community with a balanced representation of residential commercial and recreational uses to be known as "Kiawah Island".

WHEREAS, Company desires to provide for the preservation of values and for the maintenance of common facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions, and

WHEREAS, Company has caused to be incorporated under the laws of the State of South Carolina, a non-profit corporation, Kiawah Island Community Association, Inc., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth;

In 1977, these covenants were amplified and expanded by title documents that follow in this booklet. Title document also includes changes and clarifications duly approved since 1977 by either the Board of Directors or by formal referendum.

In June, 1988, Kiawah Resort Associates purchased the assets of the Kiawah Island Company, Ltd. and assumed the position of "Company" as defined in the documents.

DECLARATION OF COVENANTS AND RESTRICTIONS OF THE KIAWAH ISLAND COMMUNITY ASSOCIATION, INC.

[KICA Covenants]

THIS DECLARATION, made this 21st day of December, 1977, by Kiawah Island Community Association, Inc., a South Carolina non-profit, non-stock corporation, hereinafter "Association", and Kiawah Island Company Limited, a corporation duly organized and existing under the laws of the Territory of the British Virgin Islands (successor to Kiawah Island Company Inc., which merged with Kiawah Island Company Limited under Articles of Merger recorded the 14th day of December, 1976, in Book C-111, page 213, in the R.M.C. Office for Charleston County, S.C.) hereinafter "Company"; [see An Historical Introduction].

WITNESSETH:

WHEREAS, the Association and Kiawah Island Company, Inc., on or about the 19th day of February, 1976, executed a certain Declaration of Covenants and Restrictions of the Kiawah Island Community Association by instrument recorded in Book T 108, page 337, in the R.M.C. Office for Charleston County, S.C. (hereinafter "Declaration"); and

WHEREAS, a portion of Kiawah Island as described in Article II of the Declaration was subjected to the Declaration as well as certain Restrictions, Affirmative Obligations and Conditions declared by Kiawah Island Company, Inc., by instrument recorded in Book T 108, page 338, in the R.M.C. Office for Charleston County, S.C.; and

WHEREAS, in Section 2 of Article VIII of the Declaration it is provided that the Company reserves the right to amend the Declaration or any portion thereof on its own motion until January 1, 1978, so long as the voting power of the existing members of the Association is not diluted thereby nor the amounts of assessments of such members raised or changed in any manner which would adversely affect such members; and

WHEREAS, the Company, pursuant to the aforesaid authority, by means of this instrument is amending the Declaration so that the same shall contain the terms and provisions and shall read in its entirety as hereinafter set forth, and the Company is also by means of this instrument subjecting additional properties on Kiawah Island to the following Declaration of Covenants and Restrictions of the Kiawah Island Community Association, which said additional property is described on Exhibit "B" to Article II attached hereto and made by specific reference a part hereof;

NOW, THEREFORE, in consideration of the mutual promises herein the Company declares that the real property described in Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, possessed, and used subject to the covenants, restrictions, conditions, easements, changes, assessments, affirmative obligations, and liens (hereinafter sometimes referred to as "the Covenants") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words and terms when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise) shall have the following meanings:

- (a) "Association" shall mean and refer to Kiawah Island Community Association, Inc., a South Carolina non-profit corporation, its successors and assigns.
- (b) "Kiawah Island" shall mean and refer to all the lands in Charleston County, South Carolina, which are shown as a part of Kiawah Island on the Company's Master Development Plan as revised from time to time.
- (c) "Company" shall mean Kiawah Island Company Limited, a corporation duly organized and existing under the laws of the territory of the British Virgin Islands, and its successors and assigns. [see "An Historical Introduction"]

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(d) The "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions thereto, as are subjected to this declaration or any supplemental declaration under the provisions of Article II hereof.

(e) "Residential Lot" shall mean any subdivided but unimproved parcel of land located within the Properties which is intended for use as a site for a single family detached dwelling, townhouse, or garden home (Patio or Zero lot line) as shown upon any recorded subdivision map of any part of the Properties.

(f) "Multiple-Family Tract" shall mean any unimproved parcel of land located within the Properties, intended for development of attached residential units including townhouse lots for sale, condominiums and apartments. For the purposes of this Declaration, a parcel of land shall not be deemed a "Multiple-Family Tract" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property for multiple-family use is made of record and further, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved properties.

(g) "Public or Commercial Site" shall mean any unimproved parcel of land within the Properties, intended for use as a site for improvements designed to accommodate commercial or business enterprises to serve residents of Kiawah Island and/or the public, including but not limited to: rental apartments, business and professional offices; facilities for the retail sale of goods and services; banks and other financial institutions; social clubs; restaurants; hotels, motels, inns; theaters; lounges; indoor recreational facilities; marinas; transportation terminals or stations; automobile parking facilities; and gasoline stations. For the purpose of this Declaration, a parcel of land shall not be deemed a "Public and Commercial Site" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a public or commercial site is made of record and further, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved properties.

(h) "Development Unit Parcels" shall mean and refer to those parcels or tracts of land conveyed by the Company to third parties under covenants and restrictions permitting the division of such parcel or tract into smaller land units such as Residential Lots, Multiple-Family Tracts, or Public and Commercial Sites.

(i) "Unsubdivided Land" shall mean and refer to all land in the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions of Article II hereof which has not been subdivided into Residential Lots, Multiple-Family Tracts, Public and Commercial Sites, or Development Unit Parcels, through metes and bounds subdivision plats filed and made of record. For the purposes of this Declaration, the following classifications of Property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof-

(1) All lands committed to the Association through express, written notification by the Company to the Association of intent to convey to the Association.

(2) All lands designated on the Master Development Plan for intended use, or by actual use, for outdoor recreation facilities; operating farms; woodland, marsh and swamp conservancies; places of worship; community, civic and cultural clubs; libraries; nursery and other schools and instructional centers, and charitable institutions; maintenance areas; road rights of way and drainage easements.

(3) All lands designated, in any way, as Common Properties, Restricted Common Properties, or Purchased Common Properties.

(j) "Family Dwelling Unit" and "Dwelling Unit" shall mean and refer to any improved property intended for use as a single family dwelling, including without limitation any single family detached dwelling, patio home, condominium unit, townhouse unit, or cooperative apartment unit, located within the Properties.

(k) "Public and Commercial Unit" shall mean and include any improved property which is intended and designed to accommodate public, commercial or business enterprises to serve residents and/or the public, including but not limited to all those enterprises enumerated in subparagraph (g). A parcel of land shall not be deemed to be improved until the improvements being constructed on said parcel are sufficiently complete to be subject to assessment as improved properties.

(l) "Owner" shall mean and refer to the Owner as shown by the real estate records of Charleston County, South Carolina, whether it be one or more persons, firms, associations, corporation, or other legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagee, his or its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is of record a deed granting one or more parties life estate in any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the holder or holders of the life interest, regardless of who holds the fee interest. In the event that there is of record a long-term contract of sale covering any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to the property until such payments are made but the purchaser is given the use of said property.

(m) "Resident" shall mean and refer to each owner and lessee of a Dwelling Unit who has contracted to reside in Kiawah Island at least nine (9) months each year.

(n) "Member" shall mean and refer to all those Owners who are Members of the Association as defined in Section 1 of Article III.

(o) "Affiliate" shall mean any corporation more than fifty per cent (50%) of the voting stock of which is owned or controlled by the Company and any partnership or joint venture in which the Company has more than a fifty per cent (50%) equity interest or an interest in fifty per cent (50%) or more of the cash flow from such partnership or joint venture.

(p) "Master Development Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Kiawah Island. Since the concept of the future development of Kiawah Island is subject to continuous revision and change by the Company, present and future references to the "Master Development Plan" shall be references only to the latest revision thereof.

(q) "Intended for Use" shall mean the use intended for various parcels within the Properties as shown on the Master Development Plan of Kiawah Island, or the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which the Company has conveyed the property.

(r) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded or leased to the Association and designated in such deed or lease as "Common Properties". The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated a "Common Property". All Common Properties are to be devoted to and intended for the common use and enjoyment of the owners, residents, and their guests, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association, provided, however, that any lands which are leased by the Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such Lease. Common Properties shall not include those tracts of land falling within the definitions of "Restricted Common Properties" or "Purchased Common Properties" set forth below.

(s) "Restricted Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are actually deeded or leased to the Association and designated in such deed or lease as "Restricted Common Properties". All Restricted Common Properties are to be devoted to and intended for the common use and enjoyment of "Residents" and Type A members of the Association, as defined in Section 2 of Article III, guests accompanying such Residents or members and the Company. All use of Restricted Common Properties shall be subject to the fee schedules and operating rules adopted by the Association. Any lands which are leased by the Association for use as Restricted Common Properties shall lose their character as Restricted Common Properties upon the expiration of such lease.

(t) "Purchased Common Properties" shall mean and refer to those tracts of land with any improvements thereon acquired by the Association, and designated in the deed therefor as "Purchased Common Properties". Purchased Common Properties are to be devoted to and intended for the common use and enjoyment of Type A Members of the Association.

(u) "Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth herein including without limitation, whether the Association shall accept any offer by the Company to convey to the Association any "Purchased Common Properties", the levy of any Special Assessment; the increase of the maximum annual assessment in excess of that provided for herein, and the addition of functions or services which the Association is authorized to perform. In the event fifty-one per cent (51%) or more of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass", and the action voted upon will be deemed to have been authorized by the Members; provided, however, that in each instance where a higher percentage is required to "pass", that higher percentage shall control in that instance.

(v) "Of Record" shall mean recorded in the Register of Mesne Conveyance of Charleston County, South Carolina.

(w) "Neighborhood Area" shall mean and refer to areas designated as neighborhoods on the Master Development Plan and subdivision plats of Kiawah Island.

ARTICLE II [THE PROPERTY]

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, given, donated, leased, possessed, and occupied subject to these covenants is described as follows:

All that tract or parcel of land, situate, lying and being in Charleston County, South Carolina, which is more particularly described in Exhibit A and Exhibit B attached hereto and by specific reference made a part hereof.

All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Property". The Company intends to develop the existing property in accordance with a Master Development Plan prepared in its Planning Department and placed on display in its reception and sales office, and other areas. The Company reserves the right to review and modify the Master Development Plan at its sole option from time to time based upon its continuing research and design program. The Master Development Plan shall not bind the Company, its successors and assigns to adhere to the Master Development Plan in the development of the land shown thereon.

Subject to its right to modify the Master Development Plan as stated herein, the Company shall convey to the Association properties designated for such conveyance in its periodically revised publication KIAWAH ISLAND PROPERTY BUYER'S GUIDE, or other such document or publication hereafter designated by the Company, and, in addition, may at its option convey to the Association as provided in Article IV those parcels of land designated on the Master Development Plan as properties which may be transferred to the Association, as, in the reasonable exercise of its discretion, it so chooses without regard to the relative location of such portions or sections within the overall plan. Once conveyed to the Association, these properties shall become Common Properties, Restricted Common Properties, or Purchased Common Properties, as the case may be. The Company shall not be required to follow any predetermined sequence or order of improvements and development; and it may bring within the plan of these covenants additional lands, and develop the same before completing the development of the Existing Property. Other than as stated in this paragraph, the Company shall have the full power to add to, subtract from or make changes in the Master Development Plan regardless of the fact that such actions may alter the relative maximum potential voting strength of the various types of membership of the Association.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions. Until January 1, 2016, the Company, its successors, and assigns, shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration any property which is contiguous or nearly contiguous to Kiawah Island if acquired by the Company prior to January 1, 2016, including, but not limited to, all that property described in a Warranty Deed from Ronald D. Royal, et al to Coastal Shores, Inc. dated February 15, 1974, and of record in Book U-103, at pages 265 et seq. provided such property consists of all or portions of the properties identified as parcels 2, 3, 4, 5, 6, 11, 12A or 12B on Exhibit 1.3 of the Development Agreement between the Town of Kiawah and Kiawah Resort Associates, LP entered on October 12, 2005 recorded in the RMC Office for Charleston County at Book Z558, Page 004. For all other properties contiguous or nearly contiguous with Kiawah Island, the Company, its successors, and assigns shall have the right to add such properties only if there has been prior approval of the addition by a simple majority vote of the members present at a duly called meeting of the membership. (as amended 6-1-2006)

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Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions authorized under this and the succeeding subsections, shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of the Declaration to such additional property. (as amended 6-1-2006)

The Supplementary Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect on the property described in Section 1, of this Article II.

(b) Other Additions. Upon approval in writing of the Association pursuant to simple majority of the vote of those presents at a "duly called meeting", as defined in Article III, Section 6, the owner of any property who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may file or record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modification of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Association, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modification shall have no effect on the property described in Section 1, of this Article II.

(c) Mergers. Upon merger or consolidation of the Association with another association, corporation, or organization, as provided for in the Bylaws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, change, or addition to the covenants established by this Declaration within the Existing Property including, without limitation, the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association.

(d) Additional lands which become subject to this declaration under the provisions of this Section II may in the future be referred to as a part of Kiawah Island.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. **Membership.** Every Owner except Owners which are exempt from the payment of assessments shall be a Member of the Association. The Company shall be a Member of the Association.

Section 2. **Voting Rights.** The Association shall have four types of regular voting membership and one type of special voting membership which provides the Company with the power to elect a single member of the Board of Directors: (as amended 6-1-2006)

TYPE A: Type A Members shall be all Owners (including the Company) of Residential Lots and Family Dwelling Units. A Type A Member shall be entitled to two votes for each Family Dwelling Unit which he owns. An owner of a Residential Lot upon which a Family Dwelling Unit has not been constructed shall be entitled to one vote for each Residential Lot he owns.

TYPE B: Type B Members shall be all those Owners (including the Company) of platted Public or Commercial Sites and Multiple-Family Tracts. A Type B Member's total annual assessment will be divided by the amount of the annual assessment for a Residential Lot to determine the number of votes to which the Type B Member is entitled, with any fraction of $\frac{1}{2}$ or greater rounded off to the next highest number. (as amended 12-15-1988)

TYPE C: Type C Members shall be all those Owners (including the Company) of the Public and Commercial Units. A Type C Member's total annual assessment will be divided by the amount of the annual assessment of a Residential Lot to determine the number of votes to which the Type C Member is entitled, with any fraction of $\frac{1}{2}$ or greater rounded to the next highest number. (as amended 12-15-1988)

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TYPE D: Type D Members shall be all those Owners (including the Company) of the Unsubdivided Lands and Development Unit Parcels held and intended for future development by the Company or a third party. A Type D Member's total annual assessment will be divided by the amount of the annual assessment of a Residential Lot to determine the number of votes to which the Type D Member is entitled, with any fraction of $\frac{1}{2}$ or greater rounded to the next highest number. (as amended 12-15-1988)

TYPE E: The Type E Member shall be the Company. The Type E Member shall be entitled to appoint a single member of the Board of Directors and shall not cast Type A votes for the election of other members of the Board of Directors. (as amended 6-1-2006)

Payment of special assessments shall not entitle Type A, B, C, or D Members to additional votes.

When any property entitling the Owner to Membership as a Type A, B, C, or D Member of the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, such joint owners shall share among them the right to vote, which such right shall be exercised as a whole, and not in part, in the manner which they shall jointly determine; and if such joint owners fail to determine the manner in which their vote should be cast, their vote shall not be counted. When one joint owner signs a proxy or purports to vote for his or her co-owners, such vote shall be counted and bind all. The principles of this paragraph shall apply, insofar as possible, to the execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum. (as amended 5-28-1981)

The voting rights of any Owner may be assigned by said Owner to his lessee by giving written notice to the Secretary of the Association; provided, however, that the Owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee.

The Type A, B, C, and D Members are sometimes hereinafter collectively referred to as the "Members".

Section 3. Governance. The Association shall be governed by a Board of Directors consisting of Three (3), Five (5), Seven (7), Nine (9), or Eleven (11) Members. Initially, the Board shall consist of Three (3) Members, with the number in subsequent years to be determined by the members of the Board of Directors as provided for in the Bylaws of the Association.

Section 4. Election of the Board of Directors.

(a) Each member of Types A, B, C and D Membership classes shall be entitled to as many votes as equals the number of votes he is entitled to, based on his ownership of or tenancy in one or more of the various classifications of property as computed by the formula set out in Section 2 hereof, multiplied by the number of directors to be elected by Types A, B, C and D Members. Members may cast all of such votes for any one director or may distribute them among the number to be elected by Types A, B, C and D Members, or any two or more of them, as he may see fit, provided, however, that all votes must be cast in whole numbers and not fractions thereof. This right, when exercised, is termed Cumulative Voting. Members are divided into classes for the sole purpose of computing voting rights and shall not vote as a class. (as amended 6-1-2006)

(b) All the Association's Directors but one shall be elected by the Members of the Association; however, the Type E Member shall not cast Type A votes. (as amended 6-1-2006)

The Board of Directors shall be elected in part by the Type A, B, C and D Members, and in part by the E Member. The percentage of directors to be elected by Type A, B, C and D Members shall be equal to the per cent of the cumulative maximum number of lots and dwelling units authorized in Kiawah Island by the zoning authorities of Charleston County, South Carolina, which have been sold and conveyed to purchasers. Provided, however, the Type E Member shall be entitled to elect no less than a majority of the Board of Directors until such time as eighty per cent (80%) of the cumulative maximum number of authorized lots and dwelling units have been sold to Type A Members. The Type A, B, C and D Members shall elect the remainder. Subsequent to the sale of eighty per cent (80%) of the cumulative maximum number of authorized lots and dwelling units, the Type A, B, C and D members shall elect a percentage of the Board of Directors equal to the percentage of cumulative maximum number of dwelling units and lots owned by Type A Members; the Type E Members shall elect the remainder. For the purposes of this formula, the number of lots and dwelling units owned by Type A Members and the cumulative maximum number of lots and dwelling units authorized shall be determined annually by the Board of Directors as of the date on which notice of the meeting of the Members at which the Board of Directors is to be elected is mailed.

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It is the intent of this subparagraph (b) that the right to elect a majority of the members of the Board of Directors shall pass from the Company (Type E Member) to the Type A, B, C and D Members at such times as in excess of eighty per cent (80%) of the cumulative maximum number of lots and dwelling units or dwelling unit equivalents authorized in the Property by the zoning authorities of Charleston, South Carolina, are owned by Type A Members.

Section 5. Members to Have Power of Referendum in Certain Instances. Where specifically provided for herein, the Members, or some specific portion thereof, shall have the power to approve or reject certain actions proposed to be taken by the Association by Referendum including, without limitation, whether the Association shall accept any offer by the Company to convey to the Association any "Purchased Common Properties", and implement the applicable Amenity Assessment as provided in Article V, Section 5 hereof, the increase of maximum assessments by the Association in excess of those increases authorized herein, the levy by the Association of any Special Assessment, and the addition of functions or services which the Association is authorized to perform. In the event fifty-one percent (51%), or more, of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions therefor. At any time that the A, B, C and D Members have the ability to elect a majority of the Board of Directors, the Members may require a referendum on any action of the Board of Directors by presenting to the secretary of the Board within thirty (30) days of the taking of such action or ratification by the Board of its intent to take such action a petition signed by not less than twenty-five per cent (25%) of the Members. (as amended 5-31-1984).

Section 6. Quorum Required for Any Action Authorized at Regular or Special Meetings of the Corporation. The quorum required for any action which is subject to a vote of the Members at an open meeting of the Association (as distinguished from the Referendum) shall be as follows:

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association the presence at the meeting of Members or proxies entitled to cast fifty-one percent (51%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for any such second meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Article III, Section 6, and any other requirements for such "duly called meeting" which may be established by the Bylaws of the Association. This provision shall not apply when the proposed action is the amendment to this Declaration and the quorum requirement established by Article VIII, Section 2 shall govern in that instance; nor shall this provision apply as to assessment actions, in which case the quorum requirement established by Article V, Section 8 shall govern. For the purpose of this section, "proper notice" shall be deemed to be given when posted to the last known address of each Member not less than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered. (as amended 5-18-1989)

Section 7. Proxies. All Members of the Association may vote and transact business at any meeting of the Association by Proxy authorized in writing, provided, however, that Proxy authorization shall not be required for any action which is subject to a Referendum, in which case the votes of all the Members polled shall be made by specially provided ballots mailed or delivered to the Association.

Section 8. Ballots by Mail. When required by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for the vote of the Members and a ballot on which each Member may vote for or against the motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 6 of this Article III. Provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

Section 9. Electronic Communications. Notwithstanding any other provision in this Declaration, the board, in its discretion, may approve the use of electronic communication methods in place of or in conjunction with writings, mailings, and other forms of communication described in or required by this Declaration to accomplish voting, notices, proxies, ballots, referenda, and other similar actions described in or required by this Declaration, if (1) the board determines that the electronic method is reliable, (2) accurate contemporaneous records are maintained that document the communication and action, (3) the rights of the Company and the Members established by this Declaration are preserved, and not impaired or lessened by the method, and (4) that reasonable safeguards are in place to preserve the integrity of the vote, notice or other action. The board's approval of this additional or alternative method of communication shall be accomplished by resolution and documented in its meeting minutes.

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ARTICLE IV
PROPERTY RIGHTS IN THE VARIOUS COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment in Common Properties. Subject to the provisions of these covenants, the rules and regulations of the Association, and any fees or charges established by the Association every Type A, B, C, D and E Member and every guest and tenant of such Type A, B, C, D and E Member shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, or Development Unit Parcel.

Employees of the Type E Member shall have access to and enjoyment of the Common Properties subject to rules and regulations and user fees established by the Board of Directors.

A Member's spouse and children who reside with such Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Member, and in those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such joint owners, the principal officers of such a corporation, and the partners of such a partnership shall also have the same easement of enjoyment under this Section as a Member.

Section 2. Members' and Residents' Easements of Enjoyment in Restricted Common Properties. Subject to the Provisions of these covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Type A Member, but not Type B, C, or D Members, and every lessee Resident and Company employee have a right and easement of enjoyment in and to the Restricted Common Properties and such easement shall be appurtenant to and shall pass with the title of every Residential Lot and Family Dwelling Unit.

A Type A Member's spouse and children who reside with such Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Member, and in those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such a joint owners, the principal officers of such a corporation, and the partners of such a partnership shall also have the same easement of enjoyment under this Section as a Type A Member.

Section 3. Change from Restrictive Common Property to Unrestricted Common Property. By an affirmative vote of seventy-five per cent (75%) of the votes cast at a meeting of the Association called for the purpose of voting on such proposal, a "Restricted Common Property" may be changed into an unrestricted "Common Property".

Section 4. Title to Common Properties and Restricted Common Properties. The Company covenants for itself, its successors, and assigns, that it shall convey to the Association, at no cost to the Association, by deed or lease of ninety-nine (99) years, those parcels of land and facilities described in Section 7 of this Article IV hereof, within two (2) years after the Company has completed improvements thereon, if such be required, such that the Facility is functionally complete. The Association shall immediately become responsible for all maintenance, operation and such additional construction of improvements as may be authorized by the Association's Board of Directors subject to the Declaration of Rights, Restrictions, Affirmative Obligations, and Conditions Applicable to All Property in "Kiawah Island". It is the purpose of this provision to provide that the Association shall be responsible for all maintenance of Common Properties and Restricted Common Properties upon which all improvements required to be made by the Company have been completed, notwithstanding the fact that the Company is not obligated to convey or lease such properties to the Association until two years after such improvements have been completed thereon.

Natural areas, trail areas, etc., shall be conveyed in large or small parcels from time to time after the Company has completed the surveying and platting of all adjacent subdivisions for single family detached and Patio Home housing areas, multiple family tracts or public and commercial sites which may abut such natural areas, trail areas, etc. The Company covenants for itself, its successors and assigns, that it shall convey by deed to the Association all such properties within two (2) years of notification to the Association, in writing, of its intent to convey such properties, provided, however, that in the case of Common Properties or Restricted Common Properties, upon which improvements are required to be made by the Company, such notification of "intent to convey" shall not be deemed to be made until such time as the improvements have been completed such that the facility is functionally complete. Such notification will not normally show metes and bounds and, in any event, the metes and bounds as shown on the recorded plat and deed to the Association shall govern. All said parcels of land may be conveyed to the Association subject to:

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- (1) all restrictive covenants of record at the time of conveyance;
- (2) all existing mortgages; and
- (3) a reservation by the Company of the right to substitute or add new mortgages thereon, provided however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgages.

The obligation to make payments of principal and interest in accordance with their due dates on all mortgages affecting property conveyed to the Association except mortgages on Purchased Common Properties (as described hereinbelow in Section 4 of this Article IV) shall continue to be the sole obligation of the Company or any Affiliate, Successor or Assign of the Company as the case may be. Notwithstanding anything in the foregoing to the contrary, the Company shall not be required to convey the above referred to parcels where such conveyance would be prohibited under agreements existing on the date hereof or hereafter but, in such case, shall be allowed to postpone such conveyance, without penalty, until such time as said prohibition may be nullified.

Section 5. Purchased Common Properties. Subject to the provisions of these covenants, the rules and regulations of the Association, and any charges established by the Association, every Type A Member shall have a right and easement of enjoyment in and to any property now or hereafter designated "Purchased Common Properties" pursuant to this Declaration. A Type A Member's spouse and children who reside with such Type A Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Type A Member.

In those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such joint owners, partnerships, and corporations shall annually appoint one (1) person as the "Primary Member." Such Primary Member shall have the same easement of enjoyment in the Purchased Common Properties as Members who own or occupy such property singularly. Each of the remaining joint Members or Tenants, other principal officers of such corporations, or partners of such partnership shall be entitled to an easement of enjoyment in the Purchased Common Properties by (1) paying to the Association annually an amount equal to the annual assessment charged against the property so owned, or in the alternative (2) should user fees be deemed appropriate, by payment of applicable user fees, and conforming to rules, regulations and other criteria approved by the Board of Directors for the particular Purchased Common Property. (as amended 5-9-1990)

"Purchased Common Properties" may be acquired by the Association when such acquisition and the concomitant Amenity Assessment are approved by a Referendum of Type "A" Members. Any debt incurred in acquiring Purchased Common Properties by the Association may be paid over a period not to exceed twenty years from receipts of Annual Assessment, Special Assessments, and/or Amenity Assessments. (as amended 5-31-1984)

Purchased Common Properties may be offered to the Association by the Company subject to acceptance of title thereto by the Association and implementation of an additional assessment (herein "Amenity Assessment") to fund the continued operation thereof. Purchased Common Properties may be offered to the Association subject to such restrictions, limitations, and reservations as are stated in the offering and submitted to the Association as part of the Referendum. The Amenity Assessment shall initially be established by the Board of Directors of the Association at an amount that the Board deems sufficient to fund the continued operation and maintenance of the Purchased Common Property, which assessment shall commence as to all Type "A" Members responding to the mail Referendum in which the Association accepts title to the Purchased Common Property. The Amenity Assessment for Purchased Common Property shall be established by the Board of Directors for each succeeding year but shall not be increased by more than ten percent (10%) over the previous year, or by the percentage increase between the first month and the last month of an annual assessment period in the Consumer Price Index for All Urban Consumers (1967 = 100) issued by the U.S. Bureau of Labor Statistics whichever of these two percentage figures is larger, except that the Amenity Assessment for the Recreation Center and its related facilities at 1 Shipwatch Road shall not be increased more than five percent (5%) per annum, starting with the year 2001. The Amenity Assessment may be increased above the stated maximum by approval of a majority of the votes of the Type "A" Members responding to a mail Referendum, which increase in the maximum Amenity Assessment, if approved, shall be effective for all subsequent years and shall thereafter increase each subsequent year as stated herein above. (as amended 1-1-2001)

The Association may not accept title to any Purchased Common Property without implementing an Amenity Assessment sufficient to provide funding for the continued maintenance and operation of the facility, unless the Board of Directors shall first determine that adequate funding can be provided from Annual Assessments to provide for the continued operation and maintenance of the Purchased Common Property without detrimentally affecting existing

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operations of the Association. (as amended 5-31-1984)

The Amenity Assessment shall be levied against Type "A" Members only. Purchased Common Properties may, in the discretion of the Board of Directors, be restricted to the exclusive use of Type "A" Members, or other persons may be permitted to use the facility subject to such rules and regulations as the Board of Directors may promulgate. The Board of Directors may establish initiation fees and user fees as the Board of Directors may in its discretion so determine. (as amended 5-31-1984)

Section 6. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its By-Laws, to borrow money from the Company or any lender for the purpose of improving and/or maintaining the Common Properties, Restricted Common Properties and Purchased Common Properties, and providing services authorized herein and in aid thereof to mortgage said properties; and

(b) The right of the Association to assume and pay any liens or encumbrances against the Purchased Common Property at the time of conveyance; and

(c) The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures; and

(d) The right of the Association, to suspend the rights and easements of enjoyment of any Member or Tenant or Guest of any Member for any period during which the payment of any assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment, and provided that the Association shall not suspend the right to use any roads belonging to the Association subject to the rules, regulations and fees, if any established by the Association for such use.

(e) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties, Restricted Common Properties and Purchased Common Properties, and any facilities included therein, including the right of the Association, to charge a reasonable toll for the use of any roadways belonging to the Association, provided, however, that such rights of the Association shall not be construed to impair or qualify an Owner's rights of ingress and egress to his property.

(f) The Board of Directors of the Association shall have full discretion to determine the amount of the fee or toll for use of any roadway it may own, provided, however, that such fee or toll shall be limited to an amount which generates sufficient sums to cover the cost of the operation of entry control security stations; to repair, rehabilitate, resurface and otherwise maintain said roadways, to provide for the maintenance and clean-up of the right-of-ways; to provide drainage along said roadways; to provide for motorized security patrols and to provide such other roadway maintenance or services as the Association shall deem desirable. The Board of Directors of the Association shall further have the power to place any reasonable restrictions upon the use of the Association's roadways, subject to an Owner's or Resident's right of ingress and egress, including, but not limited to the types and sizes of vehicles permitted to use said roads, the maximum and minimum speeds of vehicles using said road, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Properties shall not make such restriction unreasonable. This paragraph (f) establishes maximum fees which may be charged for road entry and use of roads. The Board of Directors of the Association may supplement, with an allocation of a portion of the receipts from the annual assessment, the funds (if any) received from road use fees or tolls, to carry out the functions and activities as described in this paragraph (f).

(g) The right of the Company or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Properties, Restricted Common Properties, and Purchased Common Properties.

(h) The right of the Association to give or sell all or any part of the Common Properties and Restricted Common Properties, including lease-hold interest, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6,

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and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties or Restricted Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

(i) The rights of reversion of the Lessor of any Common Properties or Restricted Common Properties leased by the Association upon expiration of the lease.

Section 7 [sic "6" in original recorded document]. [Conveyance by Deed or Lease.] The Company covenants for itself, its successors, and assigns, that, prior to 2016, it shall convey to the Association, by deed, ninety-nine (99) year lease, or other instruments sufficient to convey to the Association the full beneficial use for ninety-nine (99) years, those properties designated on the Company's Master Development Plan as "Common Properties" or "Restricted Common Properties", including the properties listed below. Such conveyance shall be subject to all the restrictions and limitations of the various Articles of this Declaration and any other restrictions and limitations of record and shall include the following:

(a) As Common Properties. There shall be conveyed to the Association without charge by the Company and the Association shall accept title to the following:

(1) Any private community roads and rights of way thereof within the properties which connect Residential Lots, Family Dwelling Units, Multiple Family Tracts, and Public or Commercial Sites or Units, and Development Unit Parcels, to public roads or highways.

(2) All bike trails not contained, or designated on the Master Development Plan to be contained, within a Public or Commercial Site, Multiple Family Tract or Development Unit Parcel.

(3) Open space designated as such on the Company's Master Development Plan or subdivision plats recorded in the Register of Mesne Conveyance, Charleston County, South Carolina.

(b) As Restricted Common Properties. There shall be conveyed to the Association without charge and the Association shall accept title to all properties designated by the Company for the exclusive common use and enjoyment of Owners and tenants of Residential Lots and Family Dwelling Units, their immediate families, guests accompanying such Owners, and the Company.

ARTICLE V

COVENANTS FOR ASSESSMENTS AND RESERVE FUNDS

Section 1. **Creation of the Lien and Personal Obligations of Assessments.** The Company covenants, and each Owner of any Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and pay to the Association (1) Annual Assessments or charges, and (2) Special Assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments together with such Delinquent Payment Fees thereon and costs of collection therefor as hereinafter provided, shall be a charge as continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with such Delinquent Payment Fees thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or any Unsubdivided Land, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment. (as amended 5-28-1981)

Section 2. **Purposes of Assessments.** The Annual Assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, enlargement, and operation of the Common Properties and Restricted Common Properties, and Purchased Common Properties, and to provide services which the Association is authorized to provide. In carrying out these duties, the Association may expend funds derived from assessments to make payments of principal and interest as consideration for the conveyance by the Company to the Association of Purchased Common Properties.

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Section 3. Application of "Maximum" Annual Assessment. The Annual Assessment, as set forth in the schedule hereinbelow, and as is annually increased pursuant to the provisions of subparagraph (h) below, shall be levied by the Association. If, however, the Board of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded by an assessment less than the Maximum set out below, it may levy such lesser assessment. Provided, however, so long as the Company is engaged in the development of properties which are subject to the terms of this Declaration, the Association may not reduce assessments below those set out in Section 3 (a) immediately below without the written consent of the Company. The levy of an assessment less than the Maximum Annual Assessment in one year shall not affect the Board's right to levy the Maximum Annual Assessment in subsequent years. If the Board of Directors shall levy less than the Maximum Annual Assessment for any assessment year and thereafter, during such assessment year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by majority vote, levy a Supplemental Annual Assessment. In no event shall the sum of the initial and supplemental Annual Assessment for that year exceed the applicable Maximum Annual Assessments.

If the Board of the Association, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any year by the Maximum Annual Assessment, it may call a Referendum requesting approval of a specified increase in such assessment. Should two-thirds (2/3) of the votes cast in such Referendum be in favor of such Referendum, the proposed increased assessment shall be levied. An increase in assessments in any year pursuant to a Referendum taken shall in no way affect assessments for subsequent years.

- (a) The Maximum Annual Assessment shall be the sum calculated in accordance with the following schedule as may be increased in each instance by an inflation adjuster as set forth in this Article V, Section 3 (h) hereinbelow.

Property Type	Maximum Annual Assessment
Residential Lots	\$125.00
Family Dwelling Units	\$250.00
Public and Commercial Units	\$.15 per square foot
Unsubdivided Land, Multiple Family Tracts, Public and Commercial Sites, and Development Unit Parcels	\$ 50.00 per acre

(b) Property shall not be classified for purposes of these covenants and these Annual Assessments as a Residential Lot, until the first day of the quarter of the year after all of the following have occurred:

1. Making of record a plat showing such Residential Lot;
2. Approval by the Office of Interstate Land Sales Registration or successor agencies permitting such Residential Lot to be offered for sale; and
3. The lot has been conveyed by the Company to a Purchaser.

(c) For the purposes of calculating the Annual Assessments on Public and Commercial Units, the area to be included in the determination of the total number of square feet shall be all interior areas within the roof line of a building including open porches but excluding terraces and like areas.

(d) The Annual Assessment on unimproved land shall be billed quarterly commencing on the first day of January of each year. All other property shall be billed annually in January of each year. All assessment bills shall be due and payable thirty (30) days from the date of mailing the same. The Board of Directors may allow monthly or quarterly installment payments of Annual Assessments on improved property.

(e) The Owner of any assessable property which changes from one category to another during an assessment year shall be billed an additional amount for the remaining full quarters of such year to reflect the category change.

(f) For purposes of these assessments and voting rights hereunder, a property will be classed as unimproved land, and not as a Family Dwelling Unit or Public or Commercial Unit, until such time as construction of such Unit has occurred, and assessment at the improved property rate shall be prorated for the remainder of the full quarters of the year and billed that amount on the first day of the next full quarter.

(g) All assessments charged by the Association shall be rounded off to the nearest dollar.

(h) From and after January 1, 1977, the Maximum Annual Assessment shall be increased each year by the Board of Directors of the Association by five (5%) per cent per year over the previous year, or by the percentage increase between the first month and the last month on an annual assessment period in the Consumer Price Index for All Urban Consumers, (1967 = 100) (hereafter "C.P.I."), issued by the U.S. Bureau of Labor Statistics, whichever of these two percentage figures is larger. However, the Board of Directors may suspend such automatic increase for any one (1) year at its own discretion.

In the event that the C.P.I. referred to above shall be discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(i) Any increase or decrease in the fixed amount of the Maximum Annual Assessment shall be made in such a manner that the proportionate increase in such assessment is the same for Owners of Residential Lots, Family Dwelling Units, Multiple Family Tracts, Public and Commercial Sites, Public and Commercial Units, Development Units Parcels, or Unsubdivided Land.

Any time the actual assessment levied by the Board of Directors of the Association is less than the Maximum Annual Assessment such decrease shall be proportionate among the Owners of Residential Lots, Family Dwelling Units, Multiple Family Tracts, Public and Commercial Sites, Public and Commercial Units, Development Unit Parcels, and Unsubdivided Land. The decrease or increase received by each class of Owners of the various classes of property may be made disproportionately only by the favorable vote of seventy-five (75%) per cent of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6 hereof, and by seventy-five (75%) per cent of the votes cast at said meeting by the Members of the classes whose proportionate share is being raised or decreased proportionately less than that of Members of other classes.

Section 4. Special Assessments for Improvements and Additions. In addition to the Annual Assessments authorized by Section 3 hereof, the Association may levy Special Assessments, for the following purposes:

- (a) Construction or reconstruction, repair or replacement of capital improvements upon the Common Properties, Restricted Common Properties, and Purchased Common Properties, including the necessary fixtures and personal property related thereto;
- (b) For additions to the Common Properties, Restricted Common Properties, and Purchased Common Properties;
- (c) To provide for the necessary facilities and equipment to offer the services authorized herein;
- (d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

Such assessment before being charged must have received the assent of a majority of the votes of the Members responding to a mail Referendum within thirty (30) days of mailing. The mail Referendum shall include one statement from the Directors favoring the Special Assessment and one statement from any Directors opposing the Special Assessment containing the reasons for those Directors' support and opposition for the assessment. Neither statement shall exceed five pages in length.

This provision shall be interpreted to mean that the Association may make in any one year an Annual Assessment up to the Maximum set forth in Section 3 of this Article plus one or more additional Special Assessments. Such Special Assessments in any one year may not exceed a sum equal to the amount of the Maximum Annual Assessment for such year except for emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss. The fact that the Association has made an Annual Assessment for an amount up to the permitted Maximum shall not affect its right to make Special Assessments during the year.

The proportion of each Special Assessment to be paid by the Owners of the various classifications of assessable property shall be equal to the proportion of the Annual Assessments made for the assessment year during which such Special Assessments are approved by the Members.

Section 5. Segment Assessments and Amenity Assessments.

(a) **Segment Assessments.** In addition to the Annual Assessments and Special Assessments authorized in Sections 3 and 4 of this Article, the Board of Directors of the Association is hereby empowered to levy assessments to be used for the benefit and/or operation of a particular portion or segment of Kiawah Island, the payment of which assessment shall be borne by the Owners with such segment only; such assessment being herein referred to as "Segment Assessments". A Segment Assessment can only be levied by the Board of Directors of the Association after a determination that the affected segment of the Island has such need of a particular addition or improvement as would justify the expenditure therefor by the Owners who would be assessed and who would enjoy the benefits of such improvement or addition and/or the operation thereof. In cases where such a determination is made by the said Board, the levy of the applicable Segment Assessment by

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the Board of Directors of the Association shall be final and not subject to approval by either the whole body of Members or by those Members who would be subject to the assessment. Any one Segment Assessment may not exceed a sum equal to one-half of the amount of the Maximum Annual Assessment in any one assessment year. The proportion of each Segment Assessment to be paid by the affected Owners of the various classifications of assessable property shall be in proportion to the payment of Annual Assessments. (as amended 5-31-1984)

If a Segment Assessment is made for an improvement or addition which requires a continuing assessment for maintenance and/or operational costs, then those Owners subject to the levy of the Segment Assessment may discontinue and abolish such Segment Assessment if such Owners so vote in a Referendum held during the second or any subsequent year of such a continuing Segment Assessment. Should any costs result from the removal of any addition or improvement where a particular Segment Assessment is discontinued, such costs shall be funded by the Segment Assessment before its discontinuance.

(b) **Amenity Assessments.** In addition to all other assessments authorized herein, the Board of Directors is empowered to levy Amenity Assessments as provided in Article IV, Section 5 hereof. An Amenity Assessment may be discontinued or abolished if (i) the Type "A" Members so vote in a Referendum, and (ii) the Board of Directors so approve. (as amended 5-31-1984)

Section 6. Reserve Funds.

(a) The Association may establish reserve funds from its Annual Assessments and/or the Contribution to Reserves Fees as described in subsection (b) below, to be held in reserve in an interest bearing account or otherwise invested, as a reserve fund to be spent for any purpose of the Association that qualifies as being exempt from taxation under the provisions of the Internal Revenue Code of the United States dealing with property owners' associations. Such funds shall not be spent on Association operations. (as amended 6-1-07)

(b) Upon each transfer (as hereinafter defined) of any property subject both to the terms of these Covenants and the jurisdiction of the Association, the Association shall be paid a contribution to reserves fee ("Contribution to Reserves Fee") equal to the amount of the Association's Annual Assessment for such property for calendar year 1994. (as amended 6-1-1994)

From and after June 1, 2000, upon each transfer (as hereinafter defined) of any property subject both to the terms of these Covenants and the jurisdiction of the Association, the Association shall be paid a Contribution to Reserves Fee equal to .50 percent (.0050) of the gross purchase price for such property. In no event shall the Contribution to Reserves Fee due upon property that is not exempt under subsection (g) herein be less than the amount of the Association's current Annual Assessment for such property. (as amended 6-1-2006)

Up to 15% of the Contribution To Reserves Fee collected by the Association on an annual basis shall be available for use to cover the costs for the administration and management of the Contribution To Reserves Fees program. (as amended 6-1-1997).

The Association may require the grantor and/or grantee of the property or interest therein which is transferred to provide the Association with copies of documentation associated with the transfer, such as a copy of an executed closing statement, the applicable contract of sale and/or the deed or other instrument evidencing the transfer, and may further require the grantor and/or the grantee to provide an original affidavit signed under oath under penalty of perjury attesting to the gross purchase price or other consideration for the transfer. (as amended 6-1-1997)

(c) For purposes of these Covenants, the aforesaid Contribution To Reserves Fee shall not be considered an Annual Assessment, Special Assessment, Segment Assessment, Amenity Assessment or any form of assessment and shall be specifically excluded from all calculations related thereto. (as amended 6-1-1994)

(d) For purposes hereof a "transfer" shall be deemed to occur upon the execution of a deed, instrument or other similar writing whereby any property or an interest therein, is sold, granted, conveyed or otherwise transferred.

The Contribution to Reserves Fee shall be paid to the Association at, or prior to, the time the deed, instrument or other document evidencing the transfer of the property, or an interest therein, is recorded in the RMC Office for Charleston County, South Carolina, but in no event no later than thirty (30) days after the date said deed, instrument or other document evidencing the transfer, is recorded in Charleston County, South Carolina. (as amended 6-1-1994)

(e) Payment of the Contribution To Reserves Fee shall be the liability of the purchaser or grantee of the property. In the event there is more than one grantee, all of such grantees shall be jointly and severally liable for the Contribution to Reserves Fee. Any agreement between the grantee and the grantor or any other person with regard to the allocation of the responsibility of the payment of said fee shall not affect the liability of the grantee thereof to the Association. (as amended 6-1-1994)

(f) The above described Contribution To Reserves Fee shall not apply to the following or applicable portion of:

- (1) A transfer effected pursuant to a court order; or
- (2) A transfer when the grantee of such property is the United States of America or State of South Carolina or any of their political subdivisions or departments and such grantee is to utilize the property for a public purpose; or
- (3) A transfer which, without additional consideration, confirms, corrects, modifies or supplements a transfer previously made; or
- (4) A transfer made with or without consideration, if the transferee shall have been at the time of transfer:
 - (i) the spouse, lineal descendant, or lineal ancestor of the transferor, by blood or adoption, or (ii) an entity owned solely by such related persons and/or the transferor. (as amended 6-1-2006)
- (5) A transfer to the trustee(s) of a trust in exchange for a beneficial interest received by the grantor in such trust or a distribution by the trustee(s) of the trust to the beneficiary or beneficiaries of the trust; or
- (6) A transfer by operation of law without actual consideration, including, but not limited to, a transfer occurring by virtue of the death or bankruptcy of an owner of a property or an interest therein; or
- (7) A transfer to any charitable organization or any religious organization provided that the property or interest therein so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes. For purposes hereof a charitable organization shall be limited to a charitable organization as defined in Section 33-55-20, South Carolina Code of Laws, 1976, (as amended); or
- (8) A transfer to a mortgagee in foreclosure of the mortgage held by such mortgagee, or transfer of a property or an interest therein subject to a mortgage to the mortgagee in lieu of foreclosing said mortgage on said property; or
- (9) A transfer to an escrow agent, trustee or qualified intermediary pursuant to a "like kind exchange" in accordance with Section 1031 of the Internal Revenue Code of 1986, as amended; or
- (10) A transfer of a property or interest therein which is exempt from assessment pursuant to Section 13 of this Article V; or
- (11) A transfer of a property or interest therein by the Association or to the Association.
- (12) A transfer between entities which are under common control or which have substantially equivalent economic ownership, but only of the property which has not been platted for sale as a Residential Lot or Lots. (as amended 6-1-2006)

Any party claiming to be exempt from payment of the Contribution To Reserves Fee to the Association shall submit to the Association a copy of the deed, or other instrument evidencing the transfer and an original affidavit signed under oath and penalty of perjury by the grantee attesting the basis upon which the transfer is claimed to be exempt from the herein described Contribution To Reserves Fee, in whole or in a part, and the name and mailing address of the grantee.

The Association may require the grantor and/or grantee of the property or interest therein which is transferred to provide the Association with copies of documentation associated with the transfer such as a copy of an executed closing statement, the applicable contract of sale and/or the deed or other instrument evidencing the transfer. (as amended 6-1-1994)

(g) In the event a Contribution To Reserves Fee is not paid to the Association when due, a delinquent payment fee not to exceed five percent (5.0%) of the unpaid amount per month from the due date and each month thereafter until paid shall be added to the Contribution to Reserves Fee so long as any portion thereof remains unpaid. The aforesaid delinquent payment fee shall be established from time to time, by the Association's Board of Directors. Additionally, if the Contribution To Reserves Fee is not paid to the Association when due, the amount of such fee plus the above described delinquent payment fee and all costs of collection thereof including, but not limited to, reasonable attorneys fees, as hereinafter provided, shall be a charge and continuing lien on the property transferred in the hands of the then Owner, his heirs, devisees, personal representatives, tenants, successors and/or assigns. If the Contribution To Reserves Fee is not paid to the Association when due, the Association may bring an action at law against the Owner personally obligated to pay the same for such fee (including any delinquent payment fee, costs and reasonable attorney's fees of any such action) and/or foreclose the lien for such fee (including any delinquent payment fee, costs and reasonable attorney's fees of any such action). (as amended 6-1-1994)

Notwithstanding the establishment of the above described lien for any unpaid Contributions To Reserves Fee together with any delinquent payment fee and costs of collection, said lien shall be subordinate to the lien of any purchase money mortgage placed upon the property in connection with or arising out of the transfer upon which the unpaid Contribution To Reserves Fee is based. (as amended 6-1-1994).

Section 7. Change in Maximum Amounts of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 of Article V hereof shall apply to any merger or consolidation in which the Association is authorized to participate under Article II, Section 2, hereof, and under the By-Laws of the Association.

Section 8. Quorum for Any Action Authorized Under this Article. The quorum required for any action authorized to be taken by the Association Members under this Article shall be as follows:

The first time any meeting of the Members of the Association is called to take action under this Article the presence at the meeting of Members or proxies entitled to cast sixty (60%) per cent of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast twenty-five (25%) per cent of the total vote of the membership of the Association.

Section 9. Date of Commencement of Annual Assessments. Due Date. Notwithstanding anything in the foregoing to the contrary, the Annual Assessments provided for herein shall commence no earlier than January 1, 1977. Persons becoming members subsequent to January 1 of each year shall pay assessments prorated as of the date of initial membership.

Section 10. Duties of the Board of Directors. The Board of Directors of the Association shall fix the amount of the assessment against each Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public or Commercial Site, Public or Commercial Unit, Development Unit Parcel, or Unsubdivided Land, within the assessment schedule as provided hereinabove, and shall at that time, direct the preparation of an index of the properties and assessments applicable thereto which shall be open to inspection by any Member. Written notice of assessment shall thereupon be sent to every Member subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

Section 11. Effect of Non-payment of Assessment: The Personal Obligation of the Owner, the Lien; Remedies of Association. If the assessment is not paid on or before the past-due date specified in Section 3 (d) of Article V hereof, then such assessment shall become delinquent and shall (together with a Delinquent Payment Fee as provided in the By-Laws not to exceed five (5%) per cent of the unpaid balance per month from the due date and each month thereafter so long as the assessment or any part thereof remains delinquent, and cost of collection thereof as hereinafter provided) become a charge and continuing lien on the Land and all improvements thereon, against which each such assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, tenants, and assigns. If the assessment is not paid within thirty (30) days after the past due date, the Association may bring an action at Law against the Owner personally and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include Delinquent Payment Fees on the assessment as above provided and a reasonable attorney's fee together with the costs of the action. (as amended 5-28-1981)

Section 12. Subordination of the Lien to Mortgage. The Lien of the assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which accrued subsequent to the date of such mortgage and which have become due and payable prior to a sale or transfer of such property pursuant to foreclosure, or any other proceedings or deed in lieu of foreclosures. The subordination established by this Section 12 shall be limited to a period of one (1) year and shall not apply to assessments accruing subsequent to the first anniversary date of the date the exempted mortgagee received title to the assessed property.

Section 13. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- (a) The grantee in conveyances made for the purpose of granting utility easements;
- (b) All Common Properties, Restricted Common Properties and Purchased Common Properties as defined in Article I, Section 1, hereof; and
- (c) All lands and improved property which are exempted from being Unsubdivided Land and set forth and described in Paragraph (2) of Article I hereof.

Section 14. Annual Statements. The President, Treasurer, or such other officer as may have custody of the funds of the Association shall annually within ninety days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than \$1,000.00. Such officer shall furnish to each Member of the Association who may make request therefor in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

Section 15. Annual Budget. The Board of Directors shall prepare and make available to all Members at least thirty (30) days prior to the Annual Meeting, a budget outlining anticipated receipts and expenses for the following fiscal year. The financial books of the Association shall be available for inspection by all Members at all reasonable times.

ARTICLE VI

FUNCTIONS OF ASSOCIATION

Section 1. Ownership and Maintenance of Common Properties and Restricted Common Properties. The Association shall be authorized to own and/or maintain (subject to the requirements of the County Council of Charleston County, South Carolina) Common Properties and Restricted Common Properties, equipment, furnishings, and improvements devoted to the following uses:

- (a) For roads or roadways, and parkways along said roads or roadways throughout the Properties;
- (b) For sidewalks, walking paths or trails, bicycle paths, and bridle paths throughout the Properties;
- (c) For transportation facilities throughout the Properties and other authorized areas other than privately owned automobiles, e.g. buses, electric vehicles, etc.,
- (d) For security and fire protection services including security stations, maintenance building and/or guardhouses, police equipment and fire stations and fire fighting equipment; and buildings used in maintenance functions;
- (e) For health care including ambulances and medical facilities and the equipment necessary to operate such facilities;
- (f) For providing any of the services which the Association is authorized to offer under Section 3 of this Article;
- (g) For purposes set out in deeds or long-term leases by which Common Properties and Restricted Common Properties are conveyed or leased to the Association, provided that such purposes shall be approved by the Members of the Association as set out in Section 5 of this Article;
- (h) For lakes, play fields, beaches, marshes, tennis and golf facilities, historic parks, wildlife areas, fishing facilities, other recreational facilities of any nature, and community meeting facilities serving the Properties; and
- (i) For water and sewage facilities and any other utilities, if not adequately provided by a private utility, Charleston County, or some other public body.

Section 2. Ownership and Maintenance of Purchased Common Properties. The Association shall be authorized to purchase, own, operate, and maintain properties following approval of the Members pursuant to the requirements of Section 5 of Article IV hereof. The Association shall be authorized to maintain Purchased Common Properties from receipts of Annual Assessments or Special Assessments.

Section 3. Services. The Association shall be authorized (unless prohibited by requirements of the County Council of Charleston County, South Carolina) but not required to provide the following services:

- (a) Cleanup and maintenance of all roads, roadways, roadway medians, parkways, lakes, beaches, marshes, and other Common Properties and Restricted Common Properties, within the Properties and also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;

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- (b) Landscaping of roads and parkways, sidewalks and walking paths and any Common Properties or Restricted Common Properties;
- (c) Transportation facilities other than privately owned automobiles, e.g. buses, electric vehicles, etc.;
- (d) Lighting of roads, sidewalks and walking paths throughout the Properties;
- (e) Police protection and security, including but not limited to the employment of police and security guards, maintenance of electronic and other security devices and control centers for the protection of persons and property within the "Properties" and assistance in the apprehension and prosecution of persons who violate the laws of South Carolina within the Properties;
- (f) Fire protection and prevention;
- (g) Garbage and trash collection and disposal;
- (h) Insect and pest control to the extent that it is necessary or desirable in the judgement of the Board of Directors of the Association to supplement the service provided by the state and local governments;
- (i) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document;
- (j) Maintenance of all lakes and lagoons located within the Properties, including the stocking of such lakes and lagoons;
- (k) To take any and all actions necessary to enforce all covenants and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Properties;
- (l) To set up and operate an architectural review board in the event that the Association is designated by the Company as the agent of the Company for such purpose;
- (m) Improvement of fishing available to Members within the Properties;
- (n) To provide day care and child care services;
- (o) To conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;
- (p) To provide legal and scientific resources for the improvement of air and water quality within the Properties;
- (q) To maintain water search and rescue boats for the protection and safety of those in the waters located on or adjacent to the Properties;
- (r) To provide safety equipment for storm emergencies;
- (s) To support the operation of transportation services between key points of the Properties and the airports, other public transportation terminals, schools and public centers serving the area surrounding the Properties, as provided for in Article V, Section 4 hereof;
- (t) To construct improvements on Common Properties, or Restricted Common Properties, for use for any of the purposes or as may be required to provide the services as authorized in this Article;
- (u) To provide administrative services including but not limited to legal, accounting and financial; and communication services informing Members of Activities; Notice of Meetings, Referendums, etc. incident to the above listed services;
- (v) To provide liability and hazard insurance covering improvements and activities on the Common Properties, Restricted Common Properties, and Purchased Common Properties;
- (w) To provide water, sewage and any necessary utility services not provided by a public body, private utility or the Company;
- (x) To provide, conduct, or maintain water pollution and shoreline erosion abatement measures including; without limitation, maintenance and repair of shore revetments and groins;
- (y) To exercise any rights reserved by the Company and transferred by the Company to the Association; and
- (z) To provide any or all of the above listed services to another association of Owners of real property under a contract, the terms of which must be approved by the Board of Directors.
- (aa) To make donations from the Contributions to Reserves Fees established in Article V, Section 6, to an organization qualified as exempt from taxation under the Internal Revenue Code of the United States whose purpose is the conservation, protection and preservation of natural areas on Kiawah Island. Such donations are to be used exclusively for the purchase of land on Kiawah Island. Contribution to Reserves Fees received before June 1, 2007 shall not be available for these donations. (as amended June 1, 2007)

Section 4. Reduction of Services. By the end of the calendar year of 1977, the Board of Directors of the Association shall define and list a minimum level of services which shall be furnished by the Association, and submit the same to the Members at the 1978 annual meeting. So long as the Company is engaged in the development of properties which are subject to the terms of this Declaration, the Association shall not reduce the level of services it furnishes below such minimum level.

Such minimum level of services shall expressly include an obligation of the Association to maintain roadways and drainage facilities in a functional and acceptable condition.

Section 5. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 4 of this Article. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments shall be submitted for referendum as herein provided. Subject to the provisions of Section 4 immediately above, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the affirmative vote of fifty-one (51%) per cent or more of those voting in a Referendum within Type A, B and C Members conducted by the Board of Directors under the same procedures as for a Special Assessment. However, in any referendum for the deletion of a service to Type D Members, such Members shall also be entitled to vote.

Section 6. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions. The Company may make loans to the Association, subject to approval by the Company of the use to which such loan proceeds will be put and by the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed to reduce the limits of the Annual Assessment below that provided as the Maximum Annual Assessment in Article V, Section 3(a), at any time there are outstanding any amounts due the Company as repayment of any loans made by the Company to the Association.

ARTICLE VII

ARCHITECTURAL CONTROL

Section 1. [ARB Composition.] The Architectural Review Board shall be composed of at least three (3) but not more than eleven (11) Members, all of whom shall be appointed by the Board of Directors of the Association. At least one (1) Member of the Association other than the officers, employees or agents of the Company shall be a member of the Architectural Review Board at all times.

Section 2. Architectural Review and Approval. No building, wall, fence, swimming pool, or other structure shall be commenced, erected, or maintained upon the Common Properties, Restricted Common Properties, or Purchased Common Properties nor shall any landscaping be done, nor shall any exterior addition to any existing structure or change or alteration therein, be made until the plans and specifications therefor showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by the Architectural Review Board. This paragraph shall not apply to any property utilized by a governmental entity or institution.

Section 3. [Functions and Records.] In the event the Company exercises its right to assign to the Association the functions pertaining to the approval of plans, location of improvements, etc. set forth in Article II of the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Kiawah Island, the Board of Directors of the Association through the aforesaid Architectural Review Board shall be obligated to exercise such functions and to maintain records of all of its actions.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Duration. The Covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Company, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty-five (25) years from the date this Declaration is recorded. Upon the expiration of said twenty-five (25) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited and this Declaration shall be automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial twenty-five (25) year period or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of the Association votes in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the President and Secretary of the Association shall execute

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a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be made of record and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

Section 2. Amendments. The Company specifically reserves the right to Amend this Declaration, or any portion hereof, on its own motion, from the date hereof until January 1, 1979, so long as the voting power of existing Members is not diluted thereby, nor the amounts of assessments of such existing Members raised or changed in any manner which would adversely affect such Members. Thereafter, the procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if three-fourths (3/4) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above the President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date of meeting of the Association at which such amendment was adopted), the date of the meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment, and the total number of votes cast against the amendment. Such Addendum shall be made of record.

No amendment to this Declaration shall be made without the consent of the Company until such time as eighty percent (80%) of the cumulative maximum number of lots and dwelling units authorized in Kiawah Island by the Town of Kiawah Island have been sold and conveyed to Type A Members, or until the termination of the Development Agreement between Kiawah Resort Associates, LP in [sic: and] the Town of Kiawah Island entered October 12, 2005, whichever occurs first. (as amended 6-1-2006)

The quorum required for any action authorized to be taken by the Association under this Section 2 shall be as follows:

The first time any meeting of the Members of the Association is called to take action under this Section 2 the presence at the meeting of the Members or proxies entitled to cast sixty (60%) per cent of the total vote of the Membership shall constitute a quorum; if the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast fifty (50%) per cent of the total vote of the Association.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants; and failure by the Association or any Member or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 4. Interpretation. The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions and to construe and interpret its provisions, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration of Covenants and Restrictions shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

Section 5. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

Section 6. Authorized Action. All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

Section 7. Notices. Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper first class postage affixed, to the address appearing on the Association's Membership list. Notice to one of two or more co-owners or co-tenants of a Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

Section 8. Other Agreements. Notwithstanding anything contained herein to the contrary, all the provisions of these covenants shall be subject to and conform with the provisions of:

(a) The Zoning Ordinance of the County of Charleston, South Carolina, and the rules and regulations promulgated thereunder, as may from time to time hereafter be amended or modified,

(b) The Master Development Plan for the development of Kiawah Island as may from time to time hereafter be amended or modified, and

(c) All conditions imposed on Kiawah Island by the zoning authorities of County Council allowing the development of Kiawah Island as a Planned Development District under such Zoning Ordinance of the County of Charleston, South Carolina, as may from time to time hereafter be amended or modified.

Section 9. Limited Liability. In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Company contemplated under this Declaration, the Company shall not be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way reacting to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted, or withheld.

Section 10. Termination of Association. In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years of the date of recording this Declaration, all Common Properties, Restricted Common Properties, and Purchased Common Properties belonging to the Association at the time of such adjudication shall revert to the Company, and the Company shall own and operate said Common Properties, Restricted Common Properties and Purchased Common Properties as Trustee for use and benefit of Owners with the Properties as set forth below. If said adjudication shall occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all Common Properties, Restricted Common Properties, and Purchased Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Court of Common Pleas of Charleston County, South Carolina, which Trustee shall own and operate said Common Properties, Restricted Common Properties and Purchased Common Properties for the use and benefit of Owners within the Properties as set forth below;

(a) Each lot or parcel of land located within the Properties shall be subject to an Annual Assessment which shall be paid by the Owner of each such lot or parcel to the Company or Trustee, whichever becomes the successor in title to the Association. The amount of such Annual Assessment and its due date shall be determined solely by the Company or the Trustee, as the case may be, but the amount of such Annual Assessment on any particular lot or parcel shall not exceed that amount actually assessed against that lot or parcel in the last year that assessments were levied by the Association, subject to the adjustments set forth in subparagraph (b) immediately below.

(b) The rate of the Minimum and Maximum Annual Assessment which may be charged by the Company or Trustee hereunder on any particular lot or parcel may be automatically increased each year by either five (5%) per cent or by the percentage increase between the first month and the last month of the annual assessment period in the Consumer Price Index for All Urban Consumers (1967 = 100) (hereafter C.P.I.) issued by the U.S. Bureau of Labor Statistics whichever of these two percentage figures is larger. The actual amount of such increase in the Maximum Annual Assessment on a lot or parcel shall equal the Maximum Annual Assessment on such lot or parcel for the previous year multiplied by the larger of the two percentage factors set forth above. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(c) Any past due Annual Assessment together with Delinquent Payment Fees thereon and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time the Annual Assessment became past due, and it shall also constitute and become a charge and continuing lien on the lot or parcel of land and all improvements thereon, against which the assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. (as amended 5-28-1981)

(d) The Company, or the Trustee, as the case may be, shall be required to use the funds collected as Annual Assessments for the operation, maintenance, repair and up-keep of the Common Properties, Restricted Common Properties, and Purchased Common Properties. The Company or Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. Neither the Company nor the Trustee shall have the obligations to provide for operation, maintenance, repair, and up-keep of the Common Properties, Restricted Common Properties, or Purchased Common Properties, once the funds provided by the Annual Assessment have been exhausted.

(e) The Company shall have the right to convey title to the Common Properties, Restricted Common Properties, and Purchased Common Properties and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.

(f) The Trustee shall have the power to dispose of the Common Properties, Restricted Common Properties, and Purchased Common Properties free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by fifty-one (51%) per cent or more of the Owners of property within the Properties or in the alternative shall be found to be in the best interest of the Owners of property within the Properties by the Court of Common Pleas of Charleston County South Carolina. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Properties, Restricted Common Properties, or Purchased Common Properties, then for the Payment of any obligations incurred by the Trustee in the operation, maintenance, repair and up-keep of such Properties, then the balance shall be distributed among the Owners of property within the Properties, exclusive of the Trustees, in a proportion equal to the portion that the Maximum Annual Assessment on property owned by a particular Owner bears to the total Maximum Annual Assessments for all property located within the Properties.

The foregoing Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., is recorded in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina, in Book M-114, page 407, and incorporates in the text thereof the amendments made by instruments recorded in Book O-125, page 163; Book K-139, page 58; Book R-210, page 748; Book W-243, page 258; Book A-284, page 914; Book H-348, page 383; and Book W-444, page 552 of said R.M.C. Office.

Applicability of the foregoing covenants was extended to additional properties on Kiawah Island, including specific lots on Eugenia Avenue and David Street (some David Streets lots are also known by Surfscoter Road addresses,) pursuant to Article II, Section 2 hereof, by instrument recorded in Book Z-124, page 305 (1981) and in Book W243, page 271 (1994) of said R.M.C. Office.

[recorded version contains actual signatures]

IN WITNESS WHEREOF, Kiawah Island Company Limited and Kiawah Island Community Association, Inc. have caused these presents to be executed by its duly authorized officers this 21st day of December, 1977.

KIAWAH ISLAND COMPANY LIMITED

By: Frank Brumley
As Its Vice President & General Manager

ATTEST: Lovick P. Sedduth
As Its Vice President – Development

Signed, sealed and delivered in the Presence of:

Thomas G. Buist
Jo Ann Towe

KIAWAH ISLAND COMMUNITY ASSOCIATION, INC.

By: Frank W. Brumley
As Its President

ATTEST: Lovick P. Sedduth
As Its Vice President

Signed, sealed and delivered in the presence of:

Thomas G. Buist
Jo Ann Towe

[recorded version contains actual signatures]

Publication Date: June 1, 2007
Previous Pub. Date: June 1, 2006

KICA Covenants

23

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Personally appeared before me Jo Ann Towe, who, on oath, says that she saw the within named Kiawah Island Company Limited by Frank W. Brumley, its Senior Vice President and General Manager sign the within covenants, and Lovick P. Suddath, its Vice President, attest the same, and the said Corporation, by said officers, seal said covenants, and, as its act and deed, deliver the same, and that she with Thomas G. Buist witnessed the execution thereof.

/s/ Jo Ann Towe

Sworn to before me this 21st day
of December, 1977.

/s/ Thomas G. Buist
Notary Public of South Carolina
My commission expires: 11-25-79

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Personally appeared before me Jo Ann Towe, who, on oath, says that she saw the within named Kiawah Island Community Association, Inc., by Frank W. Brumley, its President sign the within covenants, and Lovick P. Suddath, its Vice President, attest the same, and the said Corporation, by said officers, seal said covenants, and, as its act and deed, deliver the same, and that she with Thomas G. Buist witnessed the execution thereof.

/s/ Jo Ann Towe

Sworn to before me this 21st day
of December, 1977.

/s/ Thomas G. Buist
Notary Public of South Carolina
My commission expires: 11-25-79

Exhibit A

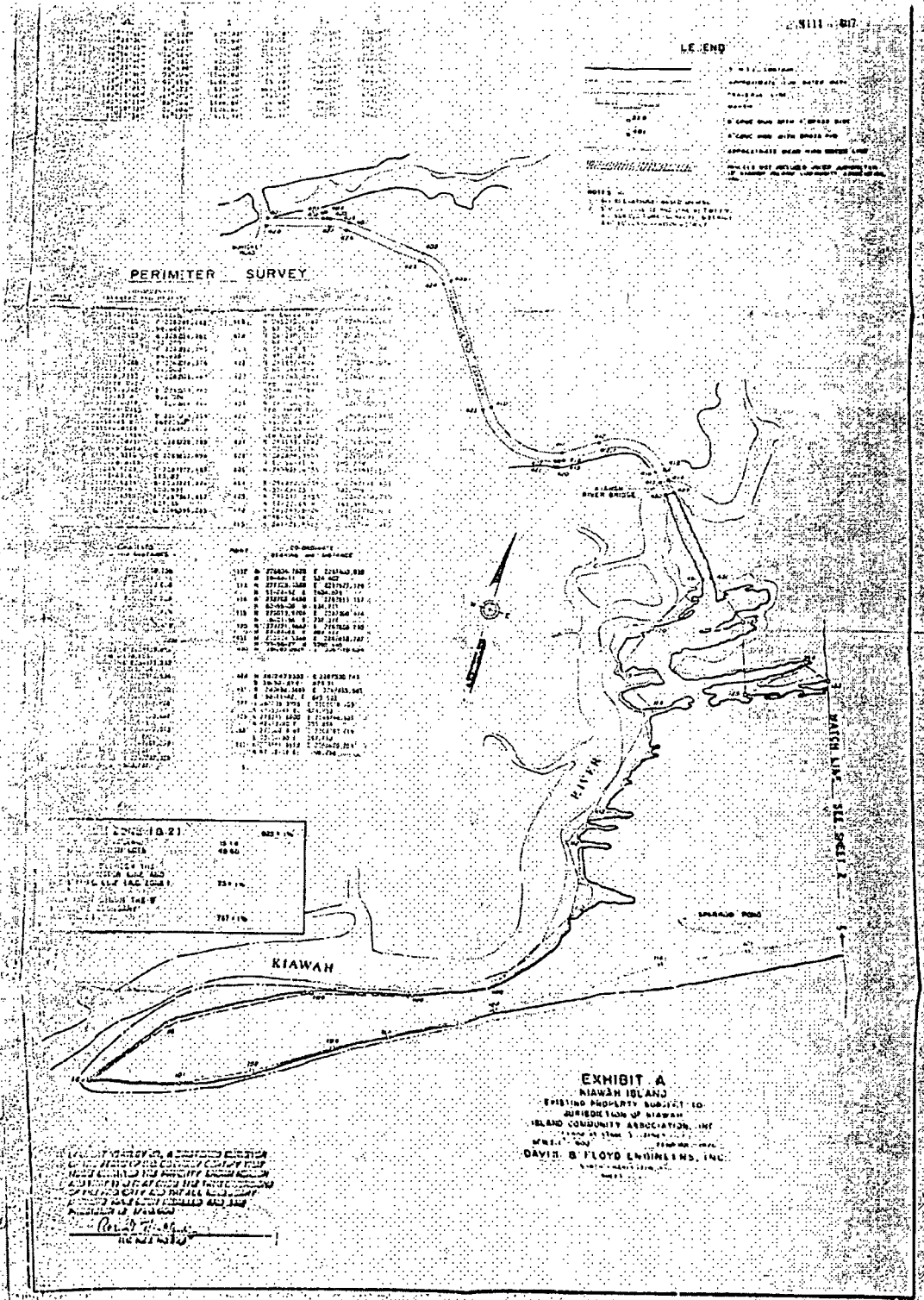
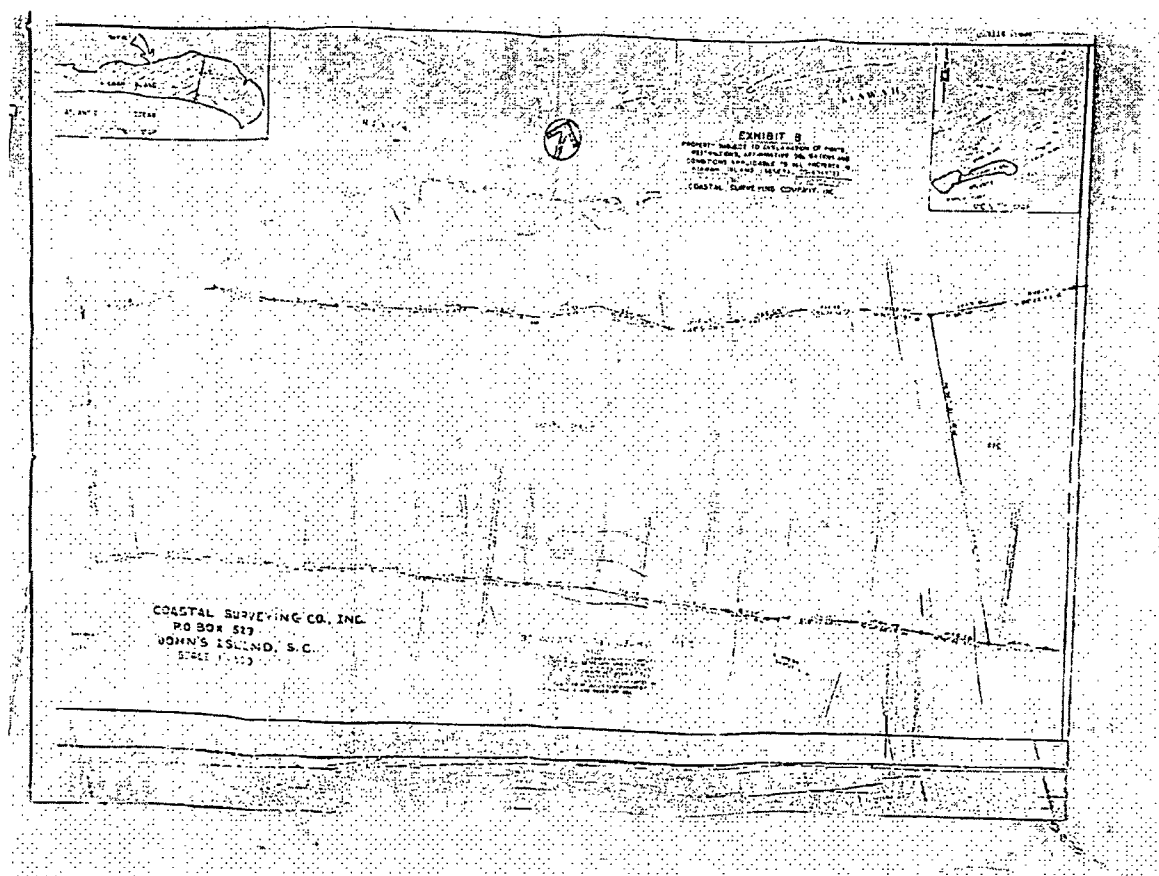


Exhibit B



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

KIAWAH RESORT ASSOCIATES, L.P., a
Delaware Limited Partnership,

Plaintiff,

vs.

KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC., a South Carolina Not-
for-Profit Corporation,

Defendant,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2013-CP-10-1225

PLAINTIFF'S REPLY TO
DEFENDANT'S COUNTERCLAIM

FILED
2013 JUN 21 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Plaintiff Kiawah Resort Associates, L.P. ("Plaintiff"), by and through its undersigned counsel, and hereby replies to the Counterclaim of Defendant Kiawah Island Community Association, Inc. ("Defendant") as follows:

FOR A FIRST DEFENSE

1. The allegations of Paragraphs 1 through 43 appear to be Defendant's Answer and Affirmative Defenses to Plaintiff's Complaint and therefore, no response is necessary by Plaintiff. To the extent a response is required, Plaintiff reasserts the allegations contained in its Complaint and deny all allegations that vary in any way from the allegations contained in the Complaint.

AS TO THE FIRST COUNTERCLAIM
(Declaratory Judgment)

2. In response to Paragraph 44 of Defendant's Counterclaim, Plaintiff reasserts and re-alleges each and every allegation in the foregoing paragraphs of this Reply and the Complaint.

3. In response to the allegations contained in Paragraph 45 of Defendant's Counterclaim, Plaintiff would deny those allegations, which purport to be a summary of Plaintiff's Allegations in Paragraph 15 of the Complaint, and would restate Paragraph 15 of the Complaint as written.

4. In response to the allegation in Paragraph 46 of the Answer and Counterclaim, Plaintiff states that the Declaration of Covenants is a written document that would speak for itself, and therefore denies the allegations and craves reference to the written document, which does not impact Plaintiff's claim for relief in this case.

5. In response to the allegation in Paragraph 47 of the Answer and Counterclaim, Plaintiff states that the Declaration of Covenants is a written document that would speak for itself, and therefore denies the allegations and craves reference to the actual written document, which does not impact Plaintiff's claim for relief in this case.

6. Responding to the allegations contained in Paragraph 48, Plaintiff denies the allegations and/or legal conclusions and would further state that the subject property is not "Common Property" but rather is and has been mutually considered the rightful property of Plaintiff.

7. Plaintiff denies the allegations in the "WHEREFORE" clause of Defendant's Answer and Counterclaims and states that Defendant is not entitled to the relief requested in the "WHEREFORE" clause or otherwise.

FOR A SECOND DEFENSE
(Estoppel)

8. Defendant's claims are barred by the doctrine of estoppel.

FOR A THIRD DEFENSE
(Waiver)

9. Defendant's claims are barred by the doctrine of waiver.

WHEREFORE, having fully replied to Defendant Kiawah Island Community Association, Inc.'s Counterclaim, Plaintiff respectfully prays that the Court dismiss the Defendant's Counterclaim with prejudice and grant such other and further relief to Plaintiff as the Court may deem just and proper.

Respectfully submitted,

By: 

Ellis R. Lesemann
HARVEY & VALLINI, LLC
497 Bramson Court, Suite 200
Mount Pleasant, SC 29464
Phone: (843) 388-8883
Fax: (843) 388-8884
ellisl@hvlawsc.com

Attorneys for Plaintiff

June 19, 2013
Mount Pleasant, South Carolina

13-1225

CERTIFICATE OF SERVICE

I hereby certify that I have this date, mailed, postage prepaid, a true and correct copy of
the **Plaintiff's Reply to Defendant's Counterclaim** to the following counsel of record:

Allison C. Jett, Esquire
Weissman Nowack Curry & Wilco
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, GA 30326
Attorneys for Defendant

By: A. Stair

Alden J. Stair

This 19th day of June, 2013
Mount Pleasant, South Carolina

FILED
2013 JUN 21 PM 2:52
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KIAWAH RESORT ASSOCIATES, L.P., a
Delaware Limited Partnership,

Plaintiff,

vs.

KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC., a South Carolina Not-
for-Profit Corporation,

Defendant,

BEFORE THE MASTER-IN-EQUITY

MIKELL R. SCARBOROUGH

Case No. 2013-CP-10-1225

**BRIEF IN OPPOSITION TO
MOTION TO INTERVENE**

FILED
2013 OCT 18 PM 1:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW Defendant Kiawah Island Community Association, Inc. ("KICA"), and does hereby respond to that Motion to Intervene filed by Inlet Cove Homeowners Association ("Inlet Cove") and Kiawah Island Property Owners Group ("KPOG"), respectfully showing as follows:

Statement of Relevant Facts

KICA is the mandatory membership association for all of the Owners of Lots subject to the Declaration of Covenants and Restrictions of Kiawah Island Community Association, Inc. ("KICA Declaration"). The instant action was brought by Kiawah Resort Associates, L.P. ("KRA") a real estate developer, for the purposes of reforming a 1995 deed from KRA to KICA which conveyed a 10-mile strip of beachfront property to KICA as Common Property. Specifically, KRA's complaint seeks to retroactively exclude 4.62 acres of the 10-mile strip from that 1995 conveyance thereby restoring ownership of the acreage in question to KRA. KRA alternatively pleads for relief to require that the Board of Directors of KICA, without a vote of the members, be required to deed the acreage back to KRA. The Board of Directors of KICA, as

well as intervenors, contends the 4.62 acres is Common Property which cannot be conveyed by the KICA Board without the prior approval of KICA members.

The history of the conveyance is largely not in dispute. KRA entered into a development agreement with the Town of Kiawah in 1994 to permit the development of a large swath of Kiawah Island ("Development Agreement"). The Development Agreement obligated KRA to deed the 10-mile strip to KICA as Common Property for the benefit of the members of KICA. The 1995 deed satisfied this requirement. The 4.62 acres was conveyed as Common Property.

KICA has timely responded to KRA's complaint and also filed a counterclaim for declaratory judgment. KICA seeks a determination of whether the acreage at issue is Common Property governed by KICA's Declaration and therefore subject to Article IV Section 6(h) of the KICA Declaration which requires a conveyance of Common Property must be approved by three-fourths (3/4) of the votes cast by KICA's members.

Inlet Cove and KPOG have jointly filed a motion to intervene in the instant litigation arguing that these groups meet the requirements for intervention as a matter of right and for permissive intervention.

Inlet Cove is a 108-Lot neighborhood within Kiawah Island. The 108 Lot Owners are subject to an additional Declaration of Covenants and Restrictions and are members of the Inlet Cove Club Homeowners' Association, Inc., a South Carolina Not for Profit Corporation, a sub-association under the larger umbrella of KICA.¹ All members of Inlet Cove are also members of KICA; all members of KICA are not also members of the Inlet Cove. The 4.62 acres at issue:

¹ The entity identified in the Motion to Intervene is "Inlet Cove Homeowners Association"; according to the South Carolina Secretary of State's records, the Inlet Cove Homeowners Association, Inc. was dissolved on February 6, 2003. The owners of the 108 Lots in the Inlet Cove neighborhood are actually members of the Inlet Cove Club Homeowners' Association, Inc., an entity which is not a party to this litigation and which is not implicated or mentioned in the Motion to Intervene.

(1) is not subject to the Inlet Cove Declaration; (2) is not subject to the control of the Inlet Cove; and (3) is not adjacent to any of the 108 Lots.

KPOG is a voluntary membership advocacy group.² Unlike KICA which governs all of Kiawah Island subject to the KICA Declaration and Inlet Cove which governs just the 108 Lots subject to the Inlet Cove Declaration, KPOG has no official role in the governance of any part of Kiawah Island. All members of KPOG who own property subject to the KICA Declaration are members of KICA.

Inasmuch as the 4.62 acres is not subject to the governance of either Inlet Cove or KPOG, neither corporation has any standing to intervene in this case; they have no rights to the property separate or divergent from those held by KICA. For the reasons more thoroughly discussed below, to the extent any members of Inlet Cove and KPOG have an interest in this litigation, those interests are adequately represented by KICA in the litigation.

Argument and Citation to Authority

A. Inlet Cove and KPOG cannot intervene as a matter of right.

The standard for intervention as a matter of right is governed by SCRCP 24(a) which states:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, *unless the applicant's interest is adequately represented by existing parties.* (Emphasis supplied).

² Like with proposed intervenor Inlet Cove, proposed intervenor Kiawah Island Property Owners Group is not an existing entity registered with the South Carolina Secretary of State's office. There is, however, an entity by the name of Kiawah Property Owners Group, Inc.

It is undisputed that there is no statute conferring upon these movants an unconditional right to intervene. Rather, movants rely on the statute's second prong, thus asserting that they have an interest in the property. In furtherance of this position, the movants cite to four U.S. Supreme Court and South Carolina Supreme Court decisions discussing a member of the public's standing to bring actions seeking protection of aesthetic or recreational interests in property. However, as shown in the Statement of Relevant Facts, both Inlet Cove and KPOG do not possess any interest in the property and are not even existing entities according to the South Carolina's Secretary of State's records. Even if Inlet Cove or KPOG had standing, merely having standing to assert a particular claim does not equate to being able to intervene as a matter of right. Rather, the applicant for intervention must claim an interest in the property *that is not adequately represented by existing parties*. Regardless of whether Inlet Cove or KPOG has any interest in the 4.62 acres or whether they are the Owners of Lots in Inlet Cove and KPOG members that possess the interest, any such claims are adequately represented by KICA in this litigation.

The burden of proving inadequacy of representation rests on the party seeking intervention. *In re Horry County State Bank*, 361 S.C. 503, at 508, 604 S.E.2d 723, at 725 (2004). The three-part test for determining if an existing party adequately represents the interests of the intervention applicant is whether: (1) existing parties will undoubtedly make all of the intervenor's arguments; (2) existing parties are capable and willing to make such arguments; and (3) intervenor offers different knowledge, experience, or perspective on the proceedings than would otherwise be absent. *Berkeley Electric Co-op, Inc. v. Town of Mt. Pleasant*, 302 S.C. 186, at 191 394 S.E.2d 712, at 715 (1990). The claims and defenses raised by KICA are identical to the prayers for relief made by Inlet Cove and KPOG in their Motion for Intervention, thereby satisfying the first two parts of this test. Furthermore, there is no allegation that these movants

have any particularized knowledge, experience, or perspective that is not or cannot be presented by KICA. As such, movants cannot meet the burden of proving inadequacy of representation.

This case is similar to *In re Horry County State Bank* where a property owner litigated the termination of an easement benefitting his property. The owner's bank held a security deed encumbering the owner's property and the appurtenant easement. The Bank filed a motion to intervene so that it could assert claims to protect its security interest in the easement. The South Carolina Court of Appeals found that the Bank's interest in the easement was adequately represented by the owner, thereby precluding the Bank's intervention. In reaching that decision the Court of Appeals cited to its earlier decision in *S.C. Tax Comm'n v. Union County Treasurer*, 295 S.C. 257, 638 S.E.2d 72 (1988), which held "when an applicant for intervention and an existing party have the same interests or ultimate objective in the litigation, a presumption arises that its interests are adequately represented and the application should be denied unless a showing of inadequate representation is made by demonstration of adversity of interest, collusion or nonfeasance."

As demonstrated by KICA's Answer and Counterclaim filed on May 18, 2013, KICA has asserted a claim seeking a declaration from the Court as to whether the subject property is Common Property under the KICA Declaration and therefore its conveyance is subject to a vote of the KICA membership. In their motion for intervention, KPOG and Inlet Cove pray for "an affirmative declaration by this Court that the 4.62 acre parcel is Common Property and/or that the Court order . . . the conveyance be presented to the KICA members for the vote required by the KICA Declaration." As in the case of *In re Horry County State Bank*, here KICA and the intervenors seek the same outcome: an establishment of the 4.62 acres as Common Property which necessitates the approval of three-fourths (3/4) of the votes cast by the members of KICA

for it to be conveyed to KRA. Additionally, if the Court determines the 4.62 acres is Common Property, then, as shown in the Statement of Facts, the members of Inlet Cove and KPOG do not have to intervene to participate in the vote. As mandatory members of KICA, each member of Inlet Cove and KPOG already has the right to vote on the transfer.

While intervenors agree with KICA that the determination of the status of the 4.62 acres as Common Property will be based solely on the terms of the Development Agreement and the KICA Declaration, the intervenors express a concern about how forceful KICA will present its arguments based on the fact that the governing documents of KICA allow KRA to appoint a single member to the nine (9) member Board of KICA to represent its interest in the development. However, KPOG and Inlet Cove fail to identify any claims or defenses they would raise that KICA has failed to raise that would create an issue of inadequate representation that would substantiate this concern. Mere speculation of inadequate representation or other conspiracy theory is not sufficient to show *actual* inadequate representation as required by SCRCP 24(a). *In re Horry County State Bank* addresses such hypothetical conjecture of conflict. In that case, the Bank postulated that the owner may have different intentions than the Bank with respect to the easement-laden property, such that it might desire to sell the property or even file for bankruptcy. As in this case, there was nothing in the record which supported the stated concern by the proposed intervenor. Nonetheless, the Court of Appeals held that *even if* the owner were planning to sell the property or declare bankruptcy, “this argument fails to address whether or not [the owner] has adequately represented the Bank’s interest in the easement. If representation could be shown inadequate by the mere possibility that two parties could have different intentions, little would be left of the doctrine of adequacy of representation.” *In re Horry County State Bank* at 509, 604 S.E.2d at 726. As such, the fact a representative of KRA

sits on the Board of Directors of KICA does not result in the inadequate representation of KPOG and Inlet Cove to permit them to intervene as a matter of right under SCRCP 24(a).

B. Inlet Cove and KPOG have no permissive right to intervene.

The standard for permissive intervention is governed by SCRCP 24(b) which states:

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

As above, it is undisputed that no statute gives Inlet Cove or KPOG a conditional right to intervene and, therefore, the intervenors must necessarily rely upon the second prong that they have a claim or defense which has a question of law or fact in common with this instant litigation. However, “[t]o warrant intervention under Rule 24(b) an applicant should ordinarily show he is charged with a public duty requiring him to intervene, or he has a claim or defense involving a question of law or fact in common with the main action. A mere general interest in the subject matter of the litigation is not sufficient.” *S.C. Tax Comm’n*, at 262, 368 S.E.2d at 75.

The only relief sought by the intervenors according to their brief is “an affirmative declaration by the court that the subject property be declared common property and/or that the Court order KRA to present its request for the conveyance of the 4.62 acre parcel to the members of KICA for a vote as directed by the KICA covenants.” These are the identical issues raised by KICA in its answer and counterclaim to KRA’s suit. Not only are KPOG and Inlet Cove not charged with a public duty requiring them to intervene, they can assert no separate or distinct

claim than is not already a part of this litigation, much less any separate or distinct claim that has a question of law or fact in common with the existing claims. Thus, intervention by these parties in no way brings any additional claims or defenses before the Court that have any bearing on the disposition of the 4.62 acres that is the subject of this litigation. Accordingly, the movants have failed to meet the burden of permissive intervention under SCRCP 24(b).

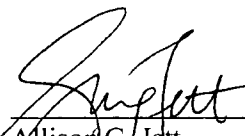
Conclusion

As shown above, the claims which KPOG or Inlet Cove want to assert in this matter are identical to those claims and defenses which have already been asserted by KICA. Accordingly, the interests of the movants are adequately represented by KICA and, therefore, movants have no right to intervene as a matter of law under SCRCP 24(a). Similarly, movants' claim for permissive intervention under SCRCP 24(b) also fails as they have not identified a single claim or defense not already at issue in the case that has a common question of law or fact to those issues present in the instant litigation. For the foregoing reasons, KICA respectfully states that KPOG's and Inlet Cove's motion to intervene should be denied in its entirety.

This 17th day of October, 2013.

WEISSMAN, NOWACK, CURRY & WILCO, P.C.
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
(404) 926-4500

100376763; 14251.002



Allison C. Jett
South Carolina Bar No. 81754
Attorney for Defendant Kiawah Island
Community Association, Inc.

STATE OF SOUTH CAROLINA	)	BEFORE THE MASTER-IN-EQUITY
	)	
COUNTY OF CHARLESTON	)	MIKELL R. SCARBOROUGH
	)	
KIAWAH RESORT ASSOCIATES, L.P., a	)	
Delaware Limited Partnership,	)	Case No. 2013-CP-10-1225
	)	
Plaintiff,	)	
vs.	)	
	)	
KIAWAH ISLAND COMMUNITY	)	<u>CERTIFICATE OF SERVICE</u>
ASSOCIATION, INC., a South Carolina Not-	)	
for-Profit Corporation,	)	
	)	
Defendant.	)	

The undersigned certifies that on this date Defendant's Brief in Opposition to Motion to Intervene was served upon opposing counsel by depositing a copy of same in the United States Mail, postage prepaid, and properly addressed to the following parties:

Ellis R. Lesemann, Esq.
Harvey & Vallini, LLC
497 Bramson Court, Suite 200
Mount Pleasant, SC 29464
ellisl@hvlawsc.com

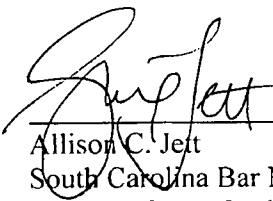
Amy E. Armstrong, Esq.
Michael Corley, Esq.
Jessie A. White, Esq.
South Carolina Environmental Law Project
P.O. Box 1380
Pawleys Island, SC 29585

Courtesy Copy to:

The Honorable Mikell R. Scarborough
Master-in-Equity
100 Broad Street, Suite 266
Charleston, SC 29401-2243

This 17th day of October 2013.

WEISSMAN, NOWACK, CURRY & WILCO, P.C.
One Alliance Center, 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
(404) 926-4500


Allison C. Jett
South Carolina Bar No. 81754
Attorney for Defendant Kiawah Island
Community Association, Inc.

FILED
2013 OCT 18 PM 1:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

100415797; 14251.002

STATE OF SOUTH CAROLINA	)	BEFORE THE MASTER-IN-EQUITY
	)	
COUNTY OF CHARLESTON	)	MIKELL R. SCARBOROUGH
	)	
Kiawah Resort Associates, L.P., a Delaware	)	C/A No. 2013-CP-10-01225
Limited Partnership,	)	
	)	
	)	REPLY TO
Plaintiff,	)	DEFENDANT'S BRIEF IN
	)	OPPOSITION TO MOTION TO
vs.	)	INTERVENE
	)	
Kiawah Island Community Association, Inc., a	)	
South Carolina Not-for-Profit Corporation,	)	
	)	
Defendant.	)	

FILED
 2013 OCT 28 PM 3:44
 JULIE J. ARMSTRONG
 CLERK OF COURT

COMES NOW the Proposed Intervenors Inlet Cove Club Homeowners Association, Inc. ("Inlet Cove") and Kiawah Property Owners Group, Inc. ("KPOG"),¹ and do hereby reply to the Brief in Opposition to the Motion to Intervene filed by Defendant Kiawah Island Community Association, Inc. ("KICA"), respectfully showing as follows:

I. Inlet Cove and KPOG Have Sufficiently Alleged Distinct Interests

KICA argues that Inlet Cove does not possess a distinct interest in the subject 4.62 acre parcel at issue (the "Property"), largely on the basis that the Property is not subject to the control of Inlet Cove by virtue of the subdivision's particular Declaration of Covenants and Restrictions. See Brief in Opposition, 2-3. KICA further argues that KPOG does not possess a distinct interest in the Property because it "has no official role in the governance of any part of Kiawah Island." *Id.* at 3. Following this line of arguments, KICA concludes that because neither Inlet Cove nor KPOG own

¹Counsel acknowledges the inadvertent misnomer of the Proposed Intervenors (as identified in Defendant KICA's Brief in Opposition to the Motion to Intervene), apologizes for any inconvenience or confusion it may have caused, and respectfully requests this Court to accept the correction in this reply and to infer the correction by reference with regard to prior documents filed with this Court.

or govern the Property, neither group has rights in the Property “separate or divergent from those held by KICA.” Id. However, KICA misunderstands the test for intervention and formulates its own standard improperly based on ownership or control.

South Carolina courts have routinely held that a plaintiff’s injuries may stem from aesthetic interest in viewing private property, despite the lack of property ownership or control. S.C. Wildlife Federation v. S.C. Coastal Council, 296 S.C. 187, 190, 371 S.E.2d 521, 523 (1988); Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision), 332 S.C. 551, 505 S.E.2d 598 (Ct. App.1998) (rev’d on other grounds). Those aesthetic and recreational interests are sufficient to allow a party to vindicate its rights. For instance, in Ogburn-Matthews, the Court held that plaintiffs that live adjacent to a privately owned wetland had a sufficient interest at stake to confer standing to challenge the issuance of a permit to fill the wetland because the permit would adversely affect their use and enjoyment in viewing the wetland and surrounding wildlife. 332 S.C. 551, 505 S.E.2d 598 (Ct. App.1998).

Where there is no applicable statute, SCRCP Rule 24(a)(2) provides that intervention may be permitted as a matter of right where the proposed intervenor “claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the [proposed intervenor’s] interest is adequately represented by existing parties.” KICA argues that Inlet Cove and KPOG lack rights in the Property because they lack ownership or control over the Property. However, KICA misinterprets the nature of the interest necessary for purposes of intervention. A proposed intervenor must only claim an interest “*relating* to the property or transaction which is the subject of the action” and Inlet Cove and KPOG satisfied that inquiry by

alleging aesthetic and recreational interests in the Property.

Here, Inlet Cove and KPOG's interests are two-fold. First, as members of KICA, they share an interest along with the membership as a whole in property held as Common Property under KICA's Declaration of Covenants and Restrictions. Second, Inlet Cove and KPOG hold, and have alleged, aesthetic interests in viewing and recreational interests in using the Property and surrounding wildlife in its natural state. See Motion to Intervene, 6-7. For example, KPOG's mission statement includes to "Support the preservation of the natural resources and beauty of Kiawah Island and appropriate environmental conservation policies and/or methods." Therefore, Inlet Cove and KPOG possess sufficient interests in the Property and, as explained further below, the latter interest is what specifically distinguishes proposed intervenors from KICA and suggests the need for intervention in this case.

Additionally, KICA asserts that its claims and defenses are identical to those raised by Inlet Cove and KPOG and thus, there will be no impairment of Inlet Cove and KPOG's interests if intervention is denied. However, the impairment of interest burden is minimal, meaning a proposed intervenor "must show only that impairment of its substantial legal interest is possible if intervention is denied." Utah Ass'n of Counties v. Clinton, 255 F.3d 1246, 1253 (10th Cir. 2001) (citing Grutter v. Bollinger, 188 F.3d 394, 399 (6th Cir. 1999)). Inlet Cove and KPOP satisfied the impairment of interest inquiry by alleging that "their commitment to preserving the aesthetic and recreational values of the natural environment and the quality of [their] life . . . will be substantially impaired without their direct participation in this matter." See Motion to Intervene, 6.

II. Inlet Cove and KPOG's Interests Are Not Adequately Represented by KICA

KICA relies primarily on In re Horry County State Bank, 361 S.C. 503, 604 S.E.2d 723 (Ct.

App. 2004) and Berkeley Electric Co-op, Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 394 S.E.2d 712 (1990) in arguing that it adequately represents the interests of Inlet Cove and KPOG in the matter before this Court. KICA correctly states that the burden of proof rests with the proposed intervenor to demonstrate that its interests will not be adequately represented by an existing party. See Brief in Opposition, 4. However, KICA neglects to recite the general rule that “[i]ntervention should be liberally granted, particularly where judicial economy will be promoted by the declaration of rights of all parties who may be affected.” In re Horry County State Bank, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004) (citing Berkeley Electric, 302 S.C. 186, 189, 394 S.E.2d 714, 714 (1990)). Moreover, “[t]he burden of demonstrating inadequacy of representation . . . may be satisfied by a showing that the representation of the [proposed intervenor’s] interest ‘may be’ inadequate.” Id. (citing Berkeley Electric, at 191, 394 S.E.2d at 715); see also NRDC v. U.S. Nuclear Reg. Comm’n, 578 F.2d 1341, 1346 (10th Cir. 1978) (the possibility of divergence of interest need not be great in order to satisfy the burden). Thus, despite KICA’s assertion that Inlet Cove and KPOG’s concern about the forcefulness of KICA’s defense amounts to “mere speculation,” it is sufficient under the standard that Inlet Cove and KPOP share concern that their interests “may be” inadequately represented. See Brief in Opposition, 6.

Inlet Cove and KPOG sufficiently allege in the motion to intervene, as well as in the supporting affidavit attached thereto, that their interests in preserving the Property as Common Property “may be” inadequately represented by KICA in this dispute. First, Inlet Cove and KPOP state that “there is at least an appearance of a conflict of interest between [KICA] and Plaintiff KRA because the developer, Plaintiff KRA, selects and appoints a member to the KICA Board to represent its interests in development. This appearance that the KICA Board may not be acting in the best

interests of its members, including Inlet Cove and KPOG, and Plaintiff KRA's presence on the KICA Board may prevent KICA from taking the affirmative defensive actions its members expect under the circumstances." See Motion to Intervene, 7-8.

Affiant Sophia McAllister is a member of Inlet Cove and KICA and testifies that "KICA has expressed a need for, and been in search of, additional land to expand its facilities" and "requested membership's approval of a \$12 million land acquisition from the developer to allow expansion of facilities." See Affidavit of Sophia McAllister, 2. Since KICA failed to obtain membership approval, "KICA is still in need of property to expand its facilities." Id. Accordingly, Sophia McAllister affirms that the Property is clearly a valuable financial asset to KICA, and also that it is critically important as a Common Property asset to Kiawah Island residents, such as Inlet Cove and KPOP. Id. Moreover, KICA directly communicated to its membership that "it is pleased to see this matter [regarding the Property] resolved through the legal process" but that members should not inquire further for it "will refrain from further comment until the matter is resolved." Id. at 2-3. Taking together the fact that KICA is actively searching for land to develop, that it currently owns 4.62 acres of prime beachfront property, that it perceives litigation brought by the developer to acquire this 4.62 acres as a good thing and that it discouraged membership from inquiry into and, by extension, active involvement in the litigation over the Property creates at the very least a reasonable concern that interests in protecting the Property for use and enjoyment as Common Property "may be" inadequately represented by KICA.

On top of meeting the minimal burden of inadequate representation as described above, Inlet Cove and KPOP satisfy the three-part test adopted by the Supreme Court in Berkeley Electric and outlined by KICA in its brief. See Brief in Opposition, 4. In determining whether an absent party's

interest is adequately represented, the court takes into consideration such factors as: (1) whether the existing parties will undoubtedly make all the same arguments as proposed intervenor; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether proposed intervenor offers different knowledge, experience or perspective on the proceedings that would otherwise be absent. Berkeley Electric at 191, 394 S.E.2d at 715.

KICA draws parallels between the matter before this Court and the facts in In re Horry County State Bank, however, in that case the proposed intervenor's interest was determined to be adequately represented because an existing party "vigorously defended" the same interest and the proposed intervenor pointed "to no unique knowledge, experience or perspective" that it could bring to the proceedings. In re Horry County State Bank at 509, 604 S.E.2d at 726. By contrast to In re Horry County State Bank where the interest of the proposed intervenor was coterminous with the interest of the existing party, Inlet Cove and KPOG assert distinct, legally protectable interests in the use and enjoyment of the Property that is the subject of this action. They seek intervention in order to ensure that their interest in the use and enjoyment of the Property for aesthetic and recreational purposes is adequately represented because KICA, at a minimum, has created an appearance to membership that it may not vigorously defend such interest.

Moreover, Inlet Cove and KPOG offer a different perspective from KICA for they constitute the individual members living on Kiawah Island and actually using and enjoying the Property. KICA states that it seeks what appears to be the same outcome as what Inlet Cove and KPOG seek – a declaration that the Property is Common Property. However, due to the aforementioned concerns with KICA's representation of proposed intervenors' interests in the Property, Inlet Cove and KPOG assert that KICA will not "undoubtedly" make all the same arguments as proposed intervenors in

protecting their interest, that KICA created an appearance to membership that it may not be capable or willing to make such arguments, and that Inlet Cove and KPOG offer a different perspective to the proceedings that would otherwise be absent. An important perspective is the value to the groups' membership if the property remains Common Property, specifically the aesthetic and recreational values.

III. KICA's Interests Are Not Necessarily Aligned With the Interests of Inlet Cove and KPOG

Inlet Cove and KPOG have legitimate concerns arising from the fact that the developer and plaintiff in this case has a presence on the KICA Board. This may create a conflict of interest or it may not, but what it does create is the appearance that KICA may not adequately represent the interests of Inlet Cove and KPOG. By way of comparison, a judge must recuse himself from presiding over a matter where an appearance of bias or partiality exists. Although the judge may be perfectly capable of maintaining impartiality, it is the appearance of a potential conflict of interest that necessitates recusal. Therefore, Inlet Cove and KPOG seek intervention as a precautionary measure in the event KICA proves unable to adequately represent their interests.

Not only does KICA ignore the distinct interests of Inlet Cove and KPOG in relation to the Property as alleged in their motion and supporting affidavit, but KICA also insists that because Inlet Cove and KPOG desire the same outcome as KICA, their intervention should be denied. However, KICA and the proposed intervenors do not exist in the same capacity regarding this action. KICA essentially functions and serves as the governing body of most of Kiawah Island, meaning it is obligated to represent the interests of the Kiawah Island public generally. Although Inlet Cove and KPOG fall within the general public, they hold and have alleged particular interests which are not

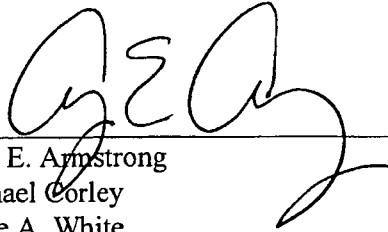
be identical with those of the general public that KICA represents.

A presumption of adequate representation arises when a proposed intervenor and existing party have the same ultimate objective in a case; however, this presumption is rebutted where the existing party is the government or governing body obligated to represent the public interest which may differ from the particular interests of proposed intervenor. Utah Ass'n of Counties v. Clinton, 255 F.3d 1246, 1255-56 (10th Cir. 2001) (“[T]he government’s representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public merely because both entities occupy the same posture in the litigation. In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor . . . This potential conflict exists even when the government is called upon to defend against a claim which the would-be intervenor also wishes to contest.”); see also In re Sierra Club, 945 F.2d 776, 779-80 (4th Cir. 1991) (although would-be intervenor and government entity share objectives, entity not adequate representative due to obligation to represent interests of general public including those with conflicting views).

CONCLUSION

For the reasons set forth above, Proposed Intervenor Inlet Cove and KPOG respectfully request that this Court allow intervention in this case.

Respectfully submitted,



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October 25, 2013

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Kiawah Resort Associates, L.P., a Delaware
Limited Partnership,

Plaintiff,

vs.

Kiawah Island Community Association, Inc., a
South Carolina Not-for-Profit Corporation,

Defendant.

BEFORE THE MASTER-IN-EQUITY

MIKELL R. SCARBOROUGH

Case No. 2013-CP-10-01225

**CERTIFICATE
OF
SERVICE**

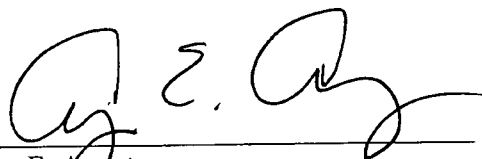
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CLERK OF COURT

I hereby certify that on this date I served copies of the Inlet Cove Club Homeowners Association and Kiawah Property Owners Group's Reply to Defendant's Brief in Opposition to the Motion to Intervene on counsel for all parties by placing copies of same in the United States Mail, first-class postage prepaid, addressed to:

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