AN ORDINANCE
AMENDING THE KIAWAH RIVER DEVELOPMENT AGREEMENT, JOHNS ISLAND, SOUTH CAROLINA, BY AND AMONG KIAWAH RIVER INVESTMENT, LLC AND CHARLESTON COUNTY, SOUTH CAROLINA.

WHEREAS, Charleston County, South Carolina ("County"), acting by and through the Charleston County Council ("County Council"), is empowered under and pursuant to the provisions of the South Carolina Local Government Development Agreement Act, Title 6, Chapter 31, Code of Laws of South Carolina 1976, as amended ("Act"), to enter into development agreements relating to property within the County; and

WHEREAS, County Council approved the Development Agreement for Kiawah River Plantation, Johns Island, South Carolina, by and among Kiawah River Plantation, LP; Ocean Boulevard Properties, A South Carolina Limited Partnership; and Charleston County, South Carolina ("Development Agreement") on December 9, 2009 (recorded in the office of the Register of Deeds on February 4, 2010), finding it consistent with the Charleston County Comprehensive Plan ("Comprehensive Plan"), the Charleston County Zoning and Land Development Regulations ("ZLDR"), and the Act; and that it is a proper exercise of the police power and other authority granted to the County government; and benefits the general health, safety and welfare of the citizens of Charleston County for the County to enter into the Development Agreement relating to the development of the property known as Kiawah River Plantation, Johns Island, South Carolina; and

WHEREAS, County Council approved amendments to the Development Agreement on October 9, 2018 (recorded in the office of the Register of Deeds on October 22, 2018), finding the proposed amendments to change the development name to “Kiawah River” and clarify development standards consistent with the Comprehensive Plan, the ZLDR, and the Act; and

WHEREAS, prior to the amendments adopted in 2018, the properties were acquired by Kiawah River Investment, LLC, and since that time, some properties have been sold to other entities and individuals; and

WHEREAS, the applicant requests the Development Agreement be amended to add retirement housing units, change specific procedures relating to Grand Tree removals, and clarify terms and development standards; and

WHEREAS, the Charleston County Planning Commission ("Planning Commission") has reviewed the proposed amendments and adopted a resolution, by majority vote of the entire membership, recommending that
County Council approve with conditions the proposed amendments; and

WHEREAS, upon receipt of the recommendation of the Planning Commission, County Council held at least two public hearings and after close of the public hearings, County Council approves with conditions the proposed amendments.

NOW, THEREFORE, BE IT ORDAINED, by the County Council of Charleston County, South Carolina, in meeting duly assembled, as follows:

SECTION I. FINDINGS INCORPORATED
The above recitals and findings are incorporated herein by reference and made a part of this Ordinance. In addition to the recitals set forth above, which the County Council hereby adopts as findings of fact, the County Council specifically finds that the Development Agreement attached hereto as Exhibit “B” complies with the Act, the Comprehensive Plan, and the ZLDR.

SECTION II. DEVELOPMENT AGREEMENT
The amendments to the Development Agreement, including the changes attached thereto as Exhibit “A” and made part of this Ordinance by reference, are hereby approved with conditions in accordance with the Act and the ZLDR. The Development Agreement shall be effective immediately upon approval of this Ordinance after third reading and execution by the parties.

SECTION III. EXECUTION
The Chairman of the County Council is authorized to execute and deliver the Development Agreement on behalf of the County, and any and all other necessary documents or instruments incidental to the approval of this Ordinance and the Development Agreement.

SECTION IV. SEVERABILITY
If, for any reason, any part of this Ordinance is invalidated by court of competent jurisdiction, the remaining portions of this Ordinance shall remain in full force and effect.

SECTION V. EFFECTIVE DATE
This Ordinance shall become effective immediately upon its approval following third reading by the County Council.

ADOPTED and APPROVED in meeting duly assembled this 10th day of March, 2020.

CHARLESTON COUNTY, SOUTH CAROLINA

By: ______________________________
    J. Elliott Summey
Chairman of Charleston County Council

ATTEST:

By:____________________________
   Kristen L. Salisbury
   Clerk to Charleston County Council

First Reading: February 4, 2020
Second Reading: February 25, 2020
Third Reading: March 10, 2020
EXHIBIT “A”

RECOMMENDED CHANGES AND CONDITIONS TO THE KIWAH RIVER,
JOHNS ISLAND, SOUTH CAROLINA DEVELOPMENT AGREEMENT
APPROVED BY COUNTY COUNCIL

1. Include a statement(s) in the appropriate location(s) of the Agreement and PD indicating that Retirement Housing and Retirement Housing Units shall not be used as Short-Term Rental Properties, and add the following definition of Short-Term Rental Properties: “A residential dwelling or any part thereof that is offered, advertised, or provided to Short-Term Rental Tenants (excluding family members), for a fee or any form of compensation, for intervals of 29 days or less during a calendar year.”

2. Amend PD Sec. 4.3.4, Assemblies and Special Events, 3rd sentence, and all other applicable sections of the Agreement and PD to state: Such special events on the Real Property owned by the declarant under the Covenants, the Association, or a Hotel or Inn, or the owner of the chapel on the Real Property shall be considered an Accessory Use and shall not require a zoning permit, special exception, conditional use permit, or other further approval from the County nor have a cap on the number in a calendar year, provided that daily event attendance shall be limited to 750 people.

3. Amend PD Sec. 9.B, Tree Removal, Replacement, Protection, Preservation and Mitigation, last sentence, and all other applicable sections of the Agreement and PD, to state: “The health of the trees shall be determined by the Planning Director provided that the applicant shall pay the Grand Tree Variance application fee for each tree to be evaluated.”

4. Allow amendments up to third reading.

EXHIBIT “B”
KIAWAH RIVER

DEVELOPMENT AGREEMENT

BY AND AMONG

KIAWAH RIVER PLANTATION, LP;

OCEAN BOULEVARD PROPERTIES, A

SOUTH CAROLINA LIMITED PARTNERSHIP;

AND

CHARLESTON COUNTY,

SOUTH CAROLINA
Kiawah River Development Agreement
By and Among Kiawah River Plantation, LP;
Ocean Boulevard Properties, a South Carolina Limited Partnership; and
Charleston County, South Carolina

THIS DEVELOPMENT AGREEMENT is entered into this 22nd day of December, 2009 and is effective on the 1st day of January 2010, by and among Kiawah River Plantation, LP, a Delaware limited partnership; Ocean Boulevard Properties, a South Carolina Limited Partnership; and Charleston County, a political subdivision of the State of South Carolina (the “County”). This Development Agreement, together with the Kiawah River Planned Development District Plan, the recitals herein, and all exhibits and appendices attached hereto, shall be hereinafter referred to as the “Agreement.” The date upon which this Agreement becomes effective shall be hereinafter referred to as the “Effective Date.”

RECITALS

This Agreement is predicated upon the following:

1. Due to market variability and other factors, the Property Owner desires flexibility in its ability to develop the Real Property, as well as stability in the local Laws and regulations affecting the development of the Real Property.

2. The County desires an increased tax base, greater job opportunities for current and future residents of the County, certain infrastructure improvements designated more fully herein, and the protection or enhancement of certain natural resources, as explained more fully herein.

3. The South Carolina Local Government Development Agreement Act (the “Act”), codified at sections 6-31-10 to -160 of the South Carolina Code, enables counties to enter into binding development agreements with persons or entities having a legal or equitable interest in land intending to undertake any development, provided the land has certain minimum acreages of highland, and the development agreement and its approval complies with certain other conditions set forth in the Act.

4. The Act recognizes: “The lack of certainty in the approval of Development can result in a waste of economic and land resources, can discourage sound capital improvement planning and financing, can cause the cost of housing and Development to escalate, and can discourage commitment to comprehensive planning.” S.C. Code Ann. § 6-31-10(B)(1).

5. The Act recognizes: “Development Agreements will encourage the vesting of property rights by protecting such rights from the effect of subsequently enacted local legislation or from the effects of changing policies and procedures of local government agencies which may conflict with any term or provision of the Development Agreement or in any way hinder, restrict, or prevent the Development of the project.” S.C. Code Ann. § 6-31-10(B)(6).

6. This Agreement shall be read and interpreted in coordination with the Kiawah River Plantation Planned Development District Plan (the “Plan”), which has been submitted
This Agreement, together with the Plan, facilitates flexibility for the Property Owner in the development of the Real Property, while providing the County with an increased tax base, job opportunities, recreational facilities, and other infrastructure, as set forth more fully herein.

7. Pursuant to section 6-31-30 of the South Carolina Code, County Council has adopted Article 3.16 of the ZLDR, incorporating the procedures and requirements for considering and entering into development agreements set forth in sections 6-31-10 to -160 of the South Carolina Code.

8. In satisfaction of section 6-31-50 of the South Carolina Code and any other notice requirements, the County conducted public hearings regarding its consideration of this Agreement on November 17, 2009 and December 3, 2009, after timely publishing and announcing notice of its intent to consider this Agreement.

9. The Real Property subject to this Agreement is approximately 1427.81 acres, including 1083.2 acres of highland, 187.41 acres of freshwater wetland, and 157.2 acres of OCRM critical area. A portion of the Real Property, being approximately 810.22 acres of highland and freshwater wetland, is currently zoned AG-8 (agricultural preservation district). A second portion of the Real Property, being approximately 460.39 acres of highland and freshwater wetland, is currently zoned R-4 (single family residential 4). The Real Property is simultaneously herewith being rezoned to planned development (PD), with the Plan constituting the development plan for the Real Property, in accordance with the terms and conditions of this Agreement.

10. Pursuant to section 6-31-60(A)(7) of the South Carolina Code, on December 22, 2009, County Council found this Agreement to be consistent with the Act, the Comprehensive Plan, and the ZLDR, as more particularly described in the Plan and the Executive Summary submitted with this Agreement.

11. Pursuant to section 6-31-60(A)(8) of the South Carolina Code, in approving this Agreement, County Council has determined that, with respect to the Project, this Agreement, in conjunction with the Plan and applicable Laws, sufficiently provides for the public health, safety, and welfare of its citizens and that no additional conditions, terms, restrictions, or other requirements are necessary.

12. On December 22, 2009, County Council adopted Ordinance Number [insert ordinance number], amending its zoning ordinance and zoning map to rezone the Real Property to PD and adopting the Plan as the planned development district plan for the Real Property.

13. On December 22, 2009, County Council adopted Ordinance Number [insert ordinance number], approving this Agreement.

14. After the Effective Date of this Agreement, Kiawah River Investment, LLC acquired all right, title, and interest of Kiawah River Plantation, LP, and Ocean Boulevard Properties, LP in and to the Real Property and has become the Property Owner.
NOW THEREFORE, in consideration of the premises of this Agreement and the mutual benefits to the Parties, the Parties agree as follows:

1. **Definitions**

In this Agreement, italicized words or phrases are as defined in Exhibit 1.1. The definitions set forth in Exhibit 1.1 shall control the development of the Real Property in lieu of any contrary definitions in the ZLDR, the Plan, or other Laws. The definitions in Chapter 12 of the ZLDR on the Effective Date shall otherwise apply.

2. **Parties**

The Parties to this Agreement are the Property Owner and the County. When used herein with reference to a specific Tract, Development Parcel, Lot, or other portion of the Real Property, Parties shall mean and refer to the County and that specific person or entity that has legal title to such Tract, Development Parcel, Lot, or other portion of the Real Property. If portions of this Agreement apply to one or more, but not all, of the entities or persons comprising the Property Owner, those particular parties may be separately referred to herein.

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 in which the County or Property Owner 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 in which the conduct of the Property Owner constitutes “state action” for any purpose. This Agreement is not intended to grant to the County any authority over property lying beyond its corporate limits.

4. **The Real Property**

A. **Legal Description/Plat:** The Real Property is approximately 1427.81 acres, including 1083.2 acres of highland, 187.41 acres of freshwater wetland, and 157.2 acres of OCRM critical area. The Real Property is fully described in the legal description and plat attached hereto as Exhibits 4.1 and 4.2, respectively. Exhibit 4.2 contains a minor mathematical error. In the acreage table on the first page, under the column entitled “Ponds,” the total amount should be 235.94, and not 234.94. The total amount of the Real Property platted and recorded in Exhibit 4.2 is therefore 1427.81 acres, not 1426.81 acres. This error is mathematical only, as the maps delineate 235.94 acres of “Ponds” and 1427.81 total acres. An acreage breakdown of the Real Property pursuant to Exhibit 4.2 is attached hereto as Exhibit 4.3. The Real Property is a portion of Charleston County Tax Map Number 212-00-00-001.

B. **Deed History/Unplatted Areas:** The deeds reflecting the grant of the Real Property, together with approximately 576.65 acres of unplatted marshlands and small islands, to the Property Owner are attached hereto as Exhibits 4.4, 4.5, and 4.6. Although not included within the Plan, the Property Owner intends to preserve or enhance this unplatted area as open space.
Further, this unplatted area will be platted and recorded in compliance with the ZLDR prior to any Development or conveyance thereof, if any. This Agreement and the Plan do not and shall not interfere with the easement agreement by and between the Charleston County Park and Recreation Commission and W.L. Limehouse and Julian Limehouse, III, as Co-Personal Representatives of the Estate of Julian S. Limehouse, Jr., William Lawton Limehouse, Peggy K. Limehouse, Linda Anne L. McMurphy, a/k/a Anne Limehouse MacMurphy, Mary Ruth L. Schneider, J. Sidi Limehouse, III, a/k/a Julian S. Limehouse, III, Peggy Jo Gray, and Anne Limehouse MacMurphy, Trustee for Michael Linar Limehouse, dated June 7, 1994, and recorded in Book Z243 at Page 402 in the Charleston County RMC Office. Furthermore, this Agreement and the Plan do not and shall not interfere with the underground right-of-way easement granted by W.L. Limehouse to Berkeley Electric Cooperative, Inc., dated February 25, 1993, in Book K229 at Page 594 in the Charleston County RMC Office. These easement agreement are attached hereto and incorporated herein by reference as Exhibits 4.7 and 4.8, respectively.

C. Wetland Survey: A wetland survey of the Real Property is attached hereto as Exhibit 4.9. Exhibit 4.9 has been submitted to, but not yet approved by, OCRM and the Corps with respect to the current acreages of highland, freshwater wetland, and OCRM critical area on the Real Property. A letter from the Corps confirming receipt and on-going review of the wetland survey is attached hereto as Appendix N. The Property Owner will obtain an approved wetland survey from OCRM and the Corps, in compliance with the ZLDR, prior to obtaining development approvals or permits for the Development of a portion of the Real Property to which the survey applies.

D. Addition of Real Property: The Property Owner may notify the County 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 clerk of County Council and the Planning Director; provided, however, that no other property shall be added to the Agreement unless the Agreement and the Plan are duly amended to include the new land.

5. The Property Owner

“Property Owner” means Kiawah River Investment, LLC, a limited liability company, together with all subsidiaries thereof and other entities, which may have a legal interest on the date of execution hereof in any of the Real Property described in Paragraph 4 and includes their successors in interest, successors in title (as to any portion of the Real Property), and/or assigns by virtue of assignment or other instrument compliant with this Agreement. When used herein with reference to a specific Tract, Development Parcel, Lot, or other portion of the Real Property, “Property Owner” shall mean and refer to that specific person or entity that has legal title to such Tract, Development Parcel, Lot, or other portion of the Real Property. The Property Owner warrants that there are no other legal or equitable owners of the Real Property.

6. Benefits and Burdens

In accordance with section 6-31-120 of the South Carolina Code, the Parties 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 heirs and personal
7. **Consistency with Comprehensive Plan and Land Development Regulations**

The County finds this Agreement and the Plan to be consistent with the Act, County Ordinances, Comprehensive Plan, and ZLDR, as more particularly described in the Plan and the Executive Summary submitted with this Agreement.

8. **Development Agreement Governs**

Whenever, in the County’s determination, express substantive provisions of this Agreement are inconsistent or in conflict with the applicable standards set forth in the County Ordinances, Comprehensive Plan, ZLDR, or other Laws, the provisions and standards set forth in this Agreement shall govern. This rule of interpretation shall replace any contrary rule set forth in the Comprehensive Plan, County Ordinances, ZLDR, or other Laws. Whenever express substantive provisions of this Agreement are inconsistent or in conflict with the substantive provisions of the Plan, the more restrictive provision shall apply.

9. **Legislative Act**

Any change in the standards established by this Agreement or to the Laws pertaining to the same shall require the approval of County Council, subject to compliance with applicable statutory procedures and consistent with Paragraph 10.A of this Agreement. This Agreement constitutes a legislative act of County Council. County Council adopted this Agreement only after following the statutory procedures required by sections 6-31-10 to -160 of the South Carolina Code and Article 3.16 of the ZLDR. This Agreement shall not be construed to create a debt of the County as referenced in section 6-31-145 of the South Carolina Code.

10. **Applicable Land Development Regulations**

A. Applicable Laws and Land Development Regulations: Pursuant to section 6-31-80 of the South Carolina Code, except as limited by state or federal law, including section 6-31-140 of the South Carolina Code, the Laws applicable to Development of the Real Property shall be those in force on the Effective Date, as supplemented or modified by this Agreement. The County shall not apply subsequently adopted Laws or Land Development Regulations to the Real Property or the Project unless the County has held a properly noticed 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 this Agreement; (3) the proposed subsequent Laws or Land Development Regulations are specifically anticipated and provided for in this Agreement; (4) substantial changes have occurred in pertinent conditions existing at the time of approval of this Agreement which changes, if not addressed by the County, 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**. Nothing herein shall preclude the **Property Owner** from agreeing to abide by such new **Laws**, regulations, or ordinances subsequently passed by the **County** which the **Property Owner** deems appropriate.

**B. Land Development Regulations**: The Kiawah River Planned Development District Plan (the “**Plan**”), attached hereto and incorporated herein by reference as **Appendix A**, shall constitute the development plan applicable to the **Real Property**. Furthermore, the **County’s ZLDR**, as amended by this **Agreement**, is attached hereto as **Appendix B**. **Appendix B** shall apply except as expressly set forth in the **Plan**. As reflected in **Appendix B**, chapters 1, 2, 3, 10, and 11 of the ZLDR and the appendices to the ZLDR, as these chapters and appendices exist on the **Effective Date**, shall apply to the **Real Property** unless otherwise expressly stated herein.

**C. Building Codes and **Laws** and Other Land Development Regulations**: Notwithstanding any provision in this **Agreement** which may be construed to the contrary, the **Property Owner** must comply with any applicable flood, building, housing, electrical, plumbing and gas codes now existing or subsequently adopted by the **County** 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 flood, building, housing, electrical, plumbing or gas codes subsequently adopted by the **County** 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 the rights, duties and privileges of the **County** 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 Paragraph 10.A of this **Agreement**.

**11. The Kiawah River Planned Development District Plan**: The Kiawah River Planned Development District Plan (the “**Plan**”) is attached hereto and incorporated herein by reference as **Appendix A**. **Appendix A** shall constitute the zoning and development plan for the **Real Property**. For the purpose of illustrating the development the **Property Owner** may institute on the **Real Property** pursuant to the **Agreement** and the **Plan**, an Illustrative Master Plan is attached to the **Plan** as Exhibit 1.1. While the Illustrative Master Plan may be used by the **County** and the **Property Owner** as a general guide for the overall development of the **Real Property**, the **Lots**, **Development Parcels**, **Thoroughfares**, green space, recreational areas, **Community Ways**, and other elements illustrated thereon are not intended to represent the exact configuration and location of the development that will occur on the **Real Property**. The more specific elements of the **Agreement** and the **Plan** should be used by the **County** and the **Property Owner** to help guide the precise configuration and location of the different aspects of development as the Project progresses. The remainder of this Paragraph 11 of the **Agreement** addresses each item required for planned development application submittals, including planned development stipulations and sketch plans.

1. **Planned Development Name**: The name of the planned development shall be Kiawah River; provided, however, the **Property Owner** may provide written notice to the **County** at any time before commencement of construction on the **Real Property** pursuant to the **Agreement** of a different name for the planned development which does not duplicate
the name of any other planned development or subdivision, the final plat of which has been recorded in the RMC Office for Charleston County, South Carolina at the time of such notice.

2. Statement of Objectives: The objectives of the Plan are set forth in Part 2, Intent and Results, of the Plan, and/or as follows:

A. Current Number of Dwelling Units/Density: The Real Property includes 1,270.61 acres of highland and freshwater wetland, which is currently “split-zoned.” A portion of the Real Property, being approximately 810.22 acres of highland and freshwater wetland, is currently zoned Agricultural Preservation District (AG-8). The residential density requirements of the base zoning standards applicable to this portion of the Real Property would therefore facilitate the development of 101 Dwelling Units. A second portion of the Real Property, being approximately 460.39 acres of highland and freshwater wetland, is currently zoned Single Family Residential 4 (R-4). The residential density requirements of the base zoning standards applicable to this portion of the Real Property would therefore facilitate the development of 1,841 Dwelling Units. Accordingly, the combined density standards of the base zoning districts would facilitate the development of 1,942 Dwelling Units on the Real Property. Furthermore, the use regulations of the underlying zoning districts would prohibit the Property Owner from developing multi-family dwellings on the Real Property and permit single-family attached dwellings only on the portion of the Real Property currently zoned R-4 and only pursuant to a special exception. Moreover, many of the commercial, office, lodging, and retail uses necessary to serve the future residents of the Real Property would not be permitted in either district, necessitating that residents seek these amenities off-site.

B. Permitted Dwelling Units/Densities under the Comprehensive Plan/Rezoning to PD: The gross density requirements in the Comprehensive Plan would permit the development of up to 2,043 Dwelling Units on the Real Property. The ZLDR would further permit a density bonus of up to 25% in the Urban/Suburban portion of the Real Property for the provision of Affordable Housing.

C. Proposed Dwelling Units/Densities under the Plan: Pursuant to the Plan, the Property Owner may develop up to 1,285 Dwelling Units on the Real Property not including those Dwelling Units that are Retirement Housing Units. Furthermore, 117 of these Dwelling Units will be designed as Housing for the Workforce, 18 of which will constitute Affordable Housing. In addition, the Property Owner may develop up to 80,000 square feet of GLA, which includes those commercial, institutional, and similar uses designated as such in the Plan. The Property Owner may also develop a Golf Course or Golf Courses, consisting up to 36 total holes, and up to 450 Guest Rooms on the Real Property. The Guest Rooms may be dispersed among Villas, Inns, Bed and Breakfasts,
and/or up to two (2) Hotels. Finally, the Property Owner will develop or preserve at least fifty percent (50%) of the Real Property, exclusive of OCRM critical area, as open space (which may include the above-referenced Golf Course(s), provided, however, that the Golf Course(s) shall not comprise the entire area designated as open space).

3. Site Information: The Real Property subject to the Plan consists of 1427.81 acres, including 1083.2 acres of highland, 187.41 acres of freshwater wetland, and 157.2 acres of saltwater wetland, or marsh. This area is platted in Exhibit 4.2.

4. Table of Proposed Land Uses: Table 5.1 illustrates the proposed maximum and average residential densities for each residential use; the maximum total acreage of each residential use; the maximum allowable number of each type of residential unit requested; and the maximum proposed floor area ratios (% of Lot in relation to building floor area) for each non-residential use. All dimensional and lot standards requested, including the maximum Building Coverage, for each land use type designated, are addressed in section 6 of the Plan.

Table 5.1: Table of Proposed Land Uses

<table>
<thead>
<tr>
<th>Permitted Uses</th>
<th>Not to Exceed (“nte”)</th>
<th>Minimum Acreage</th>
<th>Maximum Acreage</th>
<th>Maximum Density</th>
<th>Maximum Floor Area Ratio</th>
</tr>
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<tbody>
<tr>
<td>Single Family Detached</td>
<td>nte 1285</td>
<td></td>
<td>550</td>
<td>4/acre</td>
<td></td>
</tr>
<tr>
<td>Single Family-Attached</td>
<td>nte 320</td>
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<td>50</td>
<td>10/acre</td>
<td></td>
</tr>
<tr>
<td>Multi-Family</td>
<td>nte 320</td>
<td></td>
<td>50</td>
<td>20/acre</td>
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</tr>
<tr>
<td>Housing for the Work Force</td>
<td>up to 117 nte 160</td>
<td></td>
<td>40</td>
<td>20/acre</td>
<td></td>
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<tr>
<td>Retirement Housing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>All Residential</td>
<td>nte 1285 excluding Retirement Housing</td>
<td>600</td>
<td>1.01/acre</td>
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<td></td>
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<tr>
<td>Commercial</td>
<td>nte 80,000 square feet</td>
<td></td>
<td>12</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Self-Service Storage/Mini-Warehousing, Boat/RV Storage</td>
<td>50% of the floor area shall count against GLA</td>
<td>Subject to 12 acre maximum for Commercial</td>
<td></td>
<td></td>
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<tr>
<td>Accommodations</td>
<td>nte 450 Guest Rooms or Villas</td>
<td></td>
<td>50</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Open Space</td>
<td>635.31</td>
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<td></td>
<td></td>
<td></td>
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</tbody>
</table>
The following standards shall apply to Table 5.1 and the location of densities within the Development:

1. As used in Table 5.1, “Density” refers to the number of Dwelling Units per unit of land area. Density is calculated by dividing the number of Dwelling Units on a site by the gross area (in acres) of highland (including freshwater wetlands) of the site on which the Dwelling Units are located, provided that all other requirements of the Plan are met.

2. The Property Owner may not exceed 50,000 square feet of GLA on the portion of the Real Property delineated in the Plan as the Bohicket Station.

3. The Property Owner may not exceed 80 Dwelling Units on the portion of the Real Property delineated in the Plan as the Bohicket Station.

4. The Property Owner may not exceed 580 Dwelling Units on the portion of the Real Property formerly zoned AG-8 which is also designated in the Plan as Rural Residential.

5. Retirement Housing Units shall count against the cap of 450 Guest Rooms with 2.0 Retirement Housing Unit equals 1 Guest Room. Each Retirement Housing Unit equals .5 Guest Room. This conversion factor for Retirement Housing is based on accepted national standards for traffic counts that demonstrate that the vehicle trips per day for a Retirement Housing Unit are fewer than 50% of those for a Guest Room. The total number of Retirement Housing Units shall be rounded up to the nearest whole number of Guest Rooms for purposes of the nte cap above. Retirement Housing Units may be located only in the River Village and not in the Rural Residential or Bohicket Station.

6. The maximum density for Retirement Housing shall depend on the housing type and be subject to the same maximum density limitations for that particular residential housing type shown in Table 5.1.

7. The uses of Self-Service Storage/Mini-Warehousing, Boat/RV Storage must be exclusively for the use of the owners and tenants of any portion of the Real Property and of the contractors working on the Real Property. Only 50% of the floor area devoted to these uses shall count against GLA.

8. Commercial is limited to no more than 80,000 SF of GLA situated on no more than 12 acres.

5. Maximum Density/Open Space: The maximum residential densities set forth herein do not exceed the maximum densities permitted in the Comprehensive Plan. Density and lot area calculations within the Plan comply with the requirements contained in Article 4.2 of the ZLDR, Measurements, Computations and Exceptions.

6. Affordable Dwelling Units/Housing for the Workforce: “Housing for the Workforce Unit” means any residential unit designed to accommodate persons employed on the Real Property, persons employed on Kiawah Island, persons employed on Seabrook Island, persons employed within a ten (10) mile radius of the Real Property, and any residential unit meeting the definition of Affordable Housing. The Property Owner or its designated assignee shall design, build, and market up to 117 Housing for the Workforce units on the Real Property as part of the Project. Further, 18 of these Housing for the Workforce units shall constitute Affordable Housing. Housing for the Workforce units and Affordable Housing units may be developed anywhere on the Real Property. Moreover, any or all of these units may consist of accessory dwellings, single-family detached dwellings, single-family attached dwellings, or multi-family units. On or before the
The Property Owner’s development of 200 residential Dwelling Units on the Real Property, the Property Owner or its designated assignee shall design and market (for sale or rent) at least twenty (20) Housing for the Workforce units on the Real Property. On or before the development of every additional 200 residential Dwelling Units on the Real Property (not including Dwelling Units reserved or used for Housing for the Workforce), the Property Owner or its designated assignee shall design and market (for sale or rent) at least twenty (20) additional Housing for the Workforce units up to the maximum of 117 Housing for the Workforce units.

7. **Impact Assessment/Analysis**: An analysis of the impact of the proposed development on existing public facilities and services (e.g. roads and streets, water, sewer, etc.) is attached hereto and incorporated herein by reference as Appendix C. Furthermore, a Capital Improvements Program/Fiscal Impact Analysis is attached hereto as Exhibit D. Exhibits C and D include proposed future improvements to these facilities and services to be made as part of the planned development. These exhibits are addressed more fully in Paragraph 16 of this Agreement.

8. **Traffic Study**: A traffic study and mitigation plan that meets the requirements of Article 9.9 of the ZLDR is attached hereto and incorporated herein by reference as Appendix E. This traffic study and the proposed mitigation plan are addressed more fully in Paragraph 16 of this Agreement.

9. **Development Schedule**: The development schedule for the Project is included in section 7 of the Plan, as well as Paragraph 18 of this Agreement.

10. **Open Space**: Open space and common open space shall be provided and managed in accordance with Section 8 of the Plan.

11. **Streets**: All streets intended for dedication to the public shall comply with the County’s Road Construction Standards (unless otherwise approved by the Charleston County Public Works Director), notwithstanding any other provision contained herein. Any and all streets and roads, curb cuts, and streetscape designed and constructed by the Property Owner may (1) be owned and maintained as Common Areas; (2) be owned and maintained by the Property Owner or a related entity; or (3) be dedicated to the public. The Property Owner, a related entity, and/or a duly constituted Association shall perform the maintenance and upkeep on any and all streets and roads on the Real Property or any portion thereof unless they have been dedicated to and accepted by the public. Upon tender of a deed from the Property Owner approved by the County attorney, the public may accept any and all streets and roads (including related infrastructure) tendered for dedication by the Property Owner provided they comply with the County’s Road Construction Standards described in the ZLDR. All alleys shall be maintained and owned by the Property Owner, a related entity, or an Association as Common Areas.

12. **Compliance with ZLDR**: 
a. The Property Owner shall comply with the processes in the ZLDR, as it exists on the Effective Date and as may be expressly amended herein.

b. The Property Owner intends to proceed with the proposed Development in accordance with the provisions of the Agreement, the ZLDR, applicable provisions of the Comprehensive Plan, and with such conditions as are included in the Plan.

c. The provisions of Article 3.10 of the ZLDR, Variances, shall apply to the planned development with respect to zoning-related dimensional, design or performance standards on individual Lots. Variance applications for trees, Setbacks, buffers, height, and maximum Lot/building coverage for individual Lots shall be processed pursuant to ZLDR Article 3.10, Zoning Variances. All other proposed changes to the Development Agreement and/or Planned Development must be processed as Development Agreement and Planned Development amendment applications. Variances from the tree regulations in the Plan may be granted in accordance with the processes in the Plan.

13. Letters of Coordination: Letters of coordination from all agencies from which the Property Owner must either (1) obtain permits or (2) obtain services and/or facilities are collectively attached hereto and incorporated herein by reference as Appendix F.

14. Dimensional Standards:

a. Waterfront Development: The Property Owner may develop up to 227 residential Lots, excluding Lots that have Villas or Bed and Breakfasts that are Guest Rooms, on the portion of the Real Property directly abutting the OCRM Critical Line. Moreover, the Property Owner shall enhance or preserve at least three (3) miles of the portion of the Real Property directly abutting the OCRM Critical Line as open space. Further, the Property Owner will limit, through restrictive covenants or a conservation easement, the number of private use (use for one person or family), joint, or community Docks developed on the Real Property to eighteen (18). In addition, the Property Owner shall adopt restrictive covenants with respect to single-family detached Lots on portion of the Real Property designated in the Plan as Rural Residential requiring that 50% of each Lot be preserved in its natural condition. In consideration of the foregoing, notwithstanding Article 4.27.6.B.1 of the ZLDR, the waterfront development standards set forth in section 6 of the Plan, and no others, shall apply to the Real Property. The waterfront development standards set forth therein shall apply to the Real Property in lieu of Articles 4.26, 4.27.6.B.1, and 9.7 of the ZLDR.

b. Pursuant to section 8 of the Plan, the Property Owner shall generally provide a 25-foot vegetative buffer between the perimeter of the Real Property and an adjacent property titled to an unrelated third party on the Effective Date (unless otherwise specified in the Plan). Rear Setbacks shall be as set forth in Table 6.1 in
the **Plan.** Article 4.27.6.B.2 of the ZLDR shall not apply to the planned development of the **Real Property.**

15. **Architectural Guidelines:** The Architectural and Landscaping Design requirements of the ZLDR do not apply. The ARB shall develop and administer the architectural and landscaping requirements for the **Real Property** as provided in the **Covenants.** The **Property Owner** shall provide the **Planning Director** a copy of the ARB approval of the architectural and landscaping design as part of each **Development** application. Architectural guidelines set forth in Article 9.6 of the ZLDR shall not apply to the **Real Property.**

16. **Lots to Abut Common Open Space:** Pursuant to section 8 of the **Plan,** residential parcels shall be designed to maximize orientation toward common open space or similar areas.

17. **Access:**

   a. The **Property Owner** shall use best efforts to facilitate a connection with adjacent parcels at the approximate locations illustrated in Exhibit 4.1 to the **Plan.** The **Property Owner**’s obligation under this section shall not require that the **Property Owner** purchase or otherwise finance the acquisition of any right, title, or interest in and to these adjoining properties. The **County** recognizes the **Property Owner**’s abilities under this section are highly dependent upon and constricted by the actions or inactions of third parties.

   b. Areas between structures shall be covered by easements where necessary for access and to provide for maintenance and utility service.

   c. Primary vehicular access to office, commercial, or industrial development shall be through limited access roads.

18. **Commercial Areas:**

   a. Commercial areas and adjacent residential, office, and industrial areas shall be directly connected through paved sidewalks, unpaved trails, or other pedestrian infrastructure.

   b. Commercial areas shall be planned as groups having common parking areas and common ingress and egress points.

19. **Industrial Areas:**

   a. A minimum vegetative buffer of forty (40) feet shall be required where industrial uses, if any, abut residential uses.
b. All intervening space between the right-of-way line and project building line and intervening spaces between buildings, drives, parking areas and improved areas shall be landscaped with trees and plantings and properly maintained at all times.

20. Areas Designated for Future Uses: All areas designated for future expansion or not intended for immediate improvement or development shall remain in a natural state until such time as development permits are approved; provided, however, with respect to this provision, the “natural state” of the property shall include those uses permitted under base zoning. The County agrees that undeveloped portions of the Real Property shall be held by the Property Owner, or its successors, for agricultural/silvi-cultural/forestry purposes or similar permitted uses until Development on that portion of the Real Property. The County agrees that it will permit said agricultural uses to continue on these undeveloped lands.

21. Signs: The Property Owner shall provide a master signage plan to the ARB, for review and approval, for each phase of the Project and must provide the ARB’s written approval of that phase’s master signage plan to the Planning Director prior to obtaining a certificate of occupancy for any portion of that phase of the Project. Notwithstanding the foregoing, the standards contained within Article 9.11 of the ZLDR shall apply to signs visible from Betsy Kerrison Parkway and Mullet Hall Road.

22. Parking: The parking and loading regulations in Article 9.3 of the ZLDR, as modified in Appendix B, and no others, shall apply to the Real Property or any portion thereof; provided, however, the amendments set forth in section 10 of the Plan shall apply.

23. Tree Protection: The tree regulations in Article 9.4 of the ZLDR, as modified in Appendix B, and no others, shall apply to the Real Property or any portion thereof.

24. Resource Areas: The Plan protects the resources determined significant by the Planning Director, as set forth more fully in section 14 of the Plan.

25. Common Open Space: Common open space and open space is located to preserve any significant resources on the Real Property. The standards applicable to common open space and open space on the Real Property are set forth in section 8 of the Plan. Article 4.27.7 of the ZLDR shall apply to the Real Property only to the extent set forth in section 8 of the Plan.

26. Affordable Dwelling Units: Affordable dwelling units and Housing for the Workforce shall be provided in accordance with this Agreement. Article 4.27.8 of the ZLDR shall not apply because the Property Owner is NOT requesting a density bonus from the maximum range in the Comprehensive Plan on the Urban/Suburban portion of the Real Property.

27. Land Use Sketch Plan: The general location and amount of land proposed for each land use, including single-family residential, multi-family residential, institutional,
office, commercial, industrial, common open space/recreation, street use, etc., is conceptually delineated in Exhibit 4.1 to the Plan. Moreover, the amount of land proposed for each such land use is set forth in Table 5.1 to the Plan.

28. Conceptual Lot Lines: The conceptual lines of the Lots proposed to be developed on the Real Property are delineated in Exhibit 1.2 to the Plan.

29. Pedestrian and Motor Traffic Circulation: The conceptual proposed pedestrian and motor traffic circulation for the proposed development is delineated in Exhibits 4.1 and 11.4 to the Plan.

30. Wetlands Survey: A wetland survey of the Real Property is attached hereto as Exhibit 4.9. Exhibit 4.9 has been submitted to, but not yet approved by, OCRM and the Corps with respect to the current acreages of highland, freshwater wetland, and OCRM critical area on the Real Property. A letter from the Corps confirming receipt and review of this survey is attached hereto as Appendix N. The Property Owner has no intention to develop upon any of these natural areas; provided, however, the Property Owner may construct portions of roads and/or utilities on these natural areas only after obtaining all applicable permits and approvals from OCRM and the Corps for such Development and obtaining site plan approval from the County pursuant to the ZLDR.

31. Tree Survey: The Property Owner has provided the County with a high-resolution aerial photograph of the Real Property in lieu of a tree survey. A tree survey showing all Grand Trees on proposed residential Lots of one acre or less and in road rights-of-way and easements on a portion of the Real Property proposed to be developed pursuant to the Plan shall be submitted as part of a site plan or preliminary plat application for that portion of the Real Property. Tree surveys for non-residential uses and lots greater than one acre shall conform to the standards in section 9 of the Plan. Article 4.27.9.C.1.b.v of the ZLDR, requiring a tree survey as part of a PD application, shall not apply.

32. Architectural Elevations: Architectural elevations for each type of residential and non-residential unit are attached to the Plan as Exhibit 12.1.

33. Phasing Schedule: A general delineation of the areas to be included in each phase of the proposed development is attached to the Plan as Exhibit 7.1. Notwithstanding Article 4.27.9.C.1.b.viii of the ZLDR, the location of common open space areas and/or affordable housing units to be included in each phase shall not be required at this time. The location of common open space areas and/or affordable housing units to be included within a phase of development shall be set forth as part of a site plan or preliminary plat application for that phase. Common open space and Housing for the Workforce shall be provided throughout the Project in conformity with this Agreement.

34. Construction Entrance: The location of the construction entrance is set forth in Exhibit 14.1 to the Plan.
35. **Landscaping Sketch Plan**: Notwithstanding Article 4.27.9.C.1.b.x of the ZLDR, a landscaping sketch plan shall not be required at this time. A landscaping sketch plan for each phase of the proposed development shall be submitted as part of a site plan or preliminary plat application for that phase.

36. **Utility Sketch Plan**: Notwithstanding Article 4.27.9.C.1.b.xi of the ZLDR, a utility sketch plan with the location of any on-site natural areas, buffers, trees and sidewalks that may be impacted by utility facilities including the existing and proposed location of any easements or rights-of-way shall not be required at this time. In lieu thereof, the Property Owner has submitted a series of conceptual plans for the provision of utilities and facilities, attached to the Plan as Exhibits 14.1 through 14.2. A more detailed utility sketch plan, in compliance with Article 4.27.9.C.1.b.xi of the ZLDR, for each phase of the proposed development shall be submitted as part of a site plan or preliminary plat application for that phase.

37. **Current Aerial/Sketch Plan Overlay**: An aerial of the Real Property with an overlay of the proposed Illustrative Master Plan is attached to the Plan as Exhibit 1.1.

12. **Local Development Permits and Other Permits Needed**

   Pursuant to section 6-31-60(A)(6) of the South Carolina Code, the Parties anticipate that the following local Development Permits, approvals, and other regulatory permits will be needed to complete the Project:

   - County plat approvals;
   - County infrastructure permits;
   - County land disturbance permits;
   - County zoning, building, business license, stormwater/drainage, and contracting permits;
   - County certificates of occupancy; applicable DHEC permits; and any other required local, state or federal approvals or permits.

   The County will make a determination on the Property Owner’s complete applications for approvals and permits within a reasonable time. The failure of this 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 permit requirements, conditions, terms, or restrictions.

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

   A. **Generally**: Subject to Paragraph 10.A of this Agreement, all rights and prerogatives accorded to the Property Owner by this Agreement and the Plan shall immediately constitute vested rights for the Development of the Real Property. Nothing in this Agreement, including but not limited to Paragraph 10.A, is intended to abrogate and shall not abrogate or diminish rights conferred under sections 6-31-140 of the South Carolina Code, the “Vested Rights Act” (codified at sections 6-29-1510 to -1560 of the South Carolina Code), any provision of the County Ordinances adopted pursuant to the Vested Rights Act, or any rights that may have vested pursuant to common law or otherwise in the absence of a Development Agreement.
B. Vested Rights to Complete Development in Progress: Any permits or approvals granted to the Property Owner prior to the adoption of this Agreement shall continue to be valid, vested rights.

C. Vested Rights in the Plan: All permitted, conditional, accessory, and temporary uses set forth in the Plan shall constitute vested rights on the Effective Date. In addition, all Building Development Standards and other Development regulations, including but not limited to waterfront development standards, tree regulations, parking and loading regulations, open space and common open space regulations, architectural regulations, landscaping regulations, and buffer and screening regulations set forth in the Plan shall constitute vested rights on the Effective Date.

D. Entitlement Densities: The Property Owner shall have a vested right to the following entitlement densities on the Effective Date:

1. Dwelling Units: The Property Owner shall have the vested right to develop up to 1,285 Dwelling Units on the Real Property, not including those Dwelling Units that are Retirement Housing Units, and may determine the precise type, configuration and location of Dwelling Units, provided that:
   - The Property Owner may not develop more than 580 Dwelling Units on the portion of the Real Property formerly zoned AG-8 which is designated as Rural Residential in the Plan; and
   - The Property Owner may not develop more than 80 Dwelling Units on the portion of the Real Property delineated in the Plan as the Bohicket Station.

2. Retirement Housing. The Property Owner shall have a vested right to develop up to 160 Retirement Housing Units. These Retirement Housing Units shall be in addition to the other 1,285 Dwelling Units vested for the Real Property. Retirement Housing Units shall count against the cap of 450 Guest Rooms at the equivalence of 2.0 Retirement Housing Units for each Guest Room, with any fractions rounded up to the next whole number of Guest Rooms. Retirement Housing Units may be located only in the River Village and not in the Rural Residential or Bohicket Station.

3. Housing for the Workforce: Of the 1,285 total Dwelling Units, 117 shall constitute Housing for the Workforce units. Further, 18 of the Housing for the Workforce units shall constitute Affordable Housing. The Property Owner may determine the precise type, configuration and location of Housing for the Workforce and Affordable Housing on the Real Property, in compliance with the Agreement and the Plan; provided, however, that the Housing for the Workforce units and Affordable Housing units shall be located throughout the Real Property and the Dwelling Unit caps described in number 1, above, are not exceeded.

4. Commercial and Institutional Entitlement Densities: “Gross Leasable Area” or “GLA” means total floor area devoted to a use designated as such in Table 4.1 of the Plan. GLA does not include public or common areas, such as parking lots, utility rooms and stairwells, in a building or on a Lot otherwise devoted to a use designated as GLA in the Plan. For the purpose of this provision, the term “floor area” shall have the definition specified in Chapter 12 of the ZLDR on the Effective Date. The Property Owner shall have
the vested right to develop up to 80,000 square feet of GLA on the Real Property. This GLA shall constitute a vested right on the Effective Date. The Property Owner may determine the precise configuration and location of GLA on the Real Property, in compliance with the Agreement and the Plan.

5. **Lodging**: The Property Owner shall have a vested right to develop up to 450 Guest Rooms on the Real Property, which may be dispersed among Villas, Inns, Bed and Breakfasts, and/or up to two (2) Hotels. The Property Owner shall have a vested right to develop up to two (2) Hotels on the Real Property; provided, however, the total number of Guest Rooms on the Real Property may not exceed 450. The Property Owner may determine the precise type, configuration and location of Guest Rooms on the Real Property, in compliance with the Agreement and the Plan. Guest Rooms shall not count against any of the other entitlement densities in the Agreement.

6. **Golf Course**: “Golf Course” means a tract or tracts of land laid out for up to thirty-six (36) holes for playing the game of golf and improved with tees, greens, fairways, and hazards, and that may include club houses, driving ranges, training facilities, maintenance facilities, and shelters. Golf Courses shall constitute Active Recreation Areas. The Property Owner shall have the right to develop a portion of the Real Property for use as a Golf Course or Golf Courses, including up to 36 holes, any or all of which the Property Owner may develop as public or private, provided, however, that the Golf Course(s) shall not comprise the entire area designated as open space. The Property Owner shall have the right to build full-service club houses, practice ranges, training facilities and maintenance facilities accessory to the Golf Course(s) on the Real Property in any location the Property Owner deems appropriate, in compliance with the Agreement and the Plan. The Property Owner may determine the precise configuration and location of the Golf Course(s) and its/their accessory uses, in compliance with the Agreement and the Plan. The Golf Course(s), including club houses and other accessory uses, shall not count against any of the other entitlement densities in this Agreement.

14. **Intentionally Omitted.**

15. **Configuration and Location**

   The standards set forth in the Kiawah River Planned Development District Plan, attached hereto and incorporated herein by reference as Appendix A, shall control the configuration and location of vested rights and uses on the Real Property or any portion thereof. The conceptual illustrations or maps included in or attached as exhibits to this Agreement or the Plan are provided as examples only and shall not affirmatively bind the Property Owner. The planned Development is subject to change within the legal guidelines of this Agreement and the Plan, and the conceptual illustrations and maps included herein and attached hereto are therefore not commitments or representations to the County or any third party. The Property Owner may determine the precise configuration, names, acreage, amounts and location of any vested rights and uses in compliance with this Agreement and the Plan.

16. **Facilities and Services**
A. Generally: This section addresses the Facilities, including public infrastructure improvements, which are necessary to support the Development. The Property Owner shall only be responsible for those specific Facilities that the Property Owner expressly undertakes to install and maintain herein. The remainder of the Facilities listed herein shall be installed and maintained by the applicable service providers. Accordingly, letters of coordination with each of these service providers are included in Appendix F.

B. Certification of Completion Concurrent with Impact: Although the nature of this long term Project prevents the Property Owner from now providing exact completion dates, the Property Owner certifies that the specific services and Facilities, including public infrastructure improvements, that the Property Owner expressly undertakes to install will be in place, or if not fully in place, the cost of their construction fully bonded or letter of credit posted at a sufficient time to ensure availability concurrent with the impacts of the Development and consistent with the Schedule of Development set forth herein. Subject to compliance with applicable law and with all provisions of the Agreement, the County hereby authorizes the Property Owner to install all Facilities which the Property Owner has undertaken to provide herein.

C. Economic Impact Analysis: The Property Owner has procured an extensive economic and fiscal impact analysis of the proposed Development, prepared by The Regional Dynamics and Economic Modeling Laboratory at the Strom Thurmond Institute of Government at Clemson University and attached hereto as Appendix C. Further, a more detailed analysis of the fiscal impact of the Project on governmental services and infrastructure, as well as a capital improvements program designed to implement necessary infrastructure improvements as the Project progresses, is attached hereto as Appendix D (The Fiscal Impact of Kiawah River Plantation on Charleston County, dated December 18, 2009). Both of these analyses project a positive net fiscal impact for the County, with additional revenue received by the County as a result of the Development more than sufficient to cover the additional expenditure burden for the County generated by the Development.

D. Traffic Considerations

1. Traffic Study and Mitigation Plan: The Property Owner has procured a Traffic Impact Analysis and Mitigation Plan prepared by Kubilins Transportation Group, Inc., a copy of which is attached hereto as Appendix E. This study analyzes the traffic operations within the area of influence and provides recommended access management for the site and intersection improvements needed for mitigating traffic impacts. A proof-of-coordination letter with DOT is also included in Appendix F, attached hereto.

2. Scope of Study: The area of influence of the study site, as indicated by DOT, includes the following four (4) existing and one (1) proposed intersections:

   a. Maybank Highway (SC 700) and River Road (S-10-91) (signalized);

   b. Maybank Highway (SC 700) and Bohicket Road/Main Road (S-10-20) (signalized);
c. Bohicket Road/Betsy Kerrison Parkway and River Road (S-10-20) (signalized);

d. River Road (S-10-91) and Mullet Hall Road/Site Access (unsignalized);

and

e. Betsy Kerrison Parkway and Village Site Access (proposed signal)

3. Site Access: The Development will be served by two (2) full-movement access points. The primary access point for the Development will be located at Betsy Kerrison Parkway. The secondary access point for the Development will be located at Mullet Hall Road. There are no recommended improvements to Mullet Hall Road. However, the following improvements are recommended to ensure proper site access at Betsy Kerrison Parkway:

a. Construct a full-movement access drive with one (1) ingress lane and two (2) egress lanes. The egress lanes should be configured as a separate left turn lane with 150 feet of storage and the through lane shall terminate as a right turn lane. 150 feet of internal protected storage should also be provided.

b. Construct a dedicated left-turn lane on the southbound approach of Betsy Kerrison Parkway with 150 feet of storage with appropriate tapers.

c. Construct a dedicated right-turn lane on the northbound approach of Betsy Kerrison Parkway with 100 feet of storage with appropriate tapers

d. Install traffic signal control upon meeting the appropriate MUTCD and SCDOT traffic signal control warrants.

The Property Owner shall construct or finance the construction of the above-stated improvements (or such other improvements as shall be recommended in consultation with DOT) after obtaining all applicable permits and approvals from DOT as these improvements are deemed necessary by DOT. The Property Owner shall complete the first three (a-c) of the above-stated improvements concurrently with the completion of Phase 1 construction. The Property Owner shall complete the final recommended improvement (d) when required in coordination with DOT. The Property Owner will dedicate any applicable public improvements associated with this primary access point to the public for maintenance in accordance with applicable law and provide any applicable maintenance bond in coordination with DOT.

4. Initial Development Capacity: The study analyzed the amount of development and resultant traffic that can be handled without operational impacts to the major facilities and intersections on Johns Island. The analysis determined that the following amount of development could be constructed over the next several years without any significant impact to the intersections or roadway network that would require improvements:
• 105 single family homes
• 315 recreational homes
• 40 workforce apartments
• 350 guest rooms
• 35,000 square feet of GLA in the Bohicket Station Tract, as delineated in Exhibit 4.1 of the Plan
• 20,000 square feet of GLA within the River Village Tract, as delineated in Exhibit 4.1 of the Plan
• An 18-hole golf course

Further, Kublins Transportation Group, Inc. has prepared a land-use equivalency matrix, attached hereto as Appendix E-1, which permits a ready conversion of the traffic impact (number of peak hour trips generated) from one proposed use to another. The Property Owner shall fund an independent supplemental traffic study (the cost of which shall not exceed $20,000.00) and provide a proposed mitigation and implementation plan for the County’s review and approval after the Development has reached 2/3 of the “Initial Development Capacity” set forth in the initial traffic impact analysis, prepared as part of this Agreement, as such “Initial Development Capacity” may be converted by Appendix E-1.

E. The Project’s Thoroughfares:

1. Definition: “Thoroughfare” means a way for use by vehicular and pedestrian traffic and to provide access to Lots and open space, consisting of vehicular lanes and their adjacent rights-of-way.

2. County Road Construction Standards: Notwithstanding any provision in the Agreement or the Plan which may be construed to the contrary, the Property Owner shall comply with the standards for public roads set forth in the County Road Construction Standards, described in the ZLDR, with respect to any Thoroughfares the Property Owner intends to dedicate to the public. The Agreement and the Plan shall not be construed to supersede or contravene the County Road Construction Standards described in the ZLDR with respect to any Thoroughfares the Property Owner intends to dedicate to the public.

3. Design and Installation: The Property Owner shall develop and install Thoroughfares and their related infrastructure on the Real Property. The Property Owner may develop any or all of the Thoroughfares on the Real Property as public or private; provided, however, any Thoroughfares to be offered for dedication to the public will comply with the County Road Construction Standards described in the ZLDR.

4. Private Thoroughfares: Exhibits 11.1 and 11.2 to the Plan provide an illustration of the typical private Thoroughfare sections which may be implemented on the Real Property, including typical utility placements within private Thoroughfares. Exhibit 11.3 to the Plan shows the vehicular lanes and parking assemblies which may be utilized for private Thoroughfares on the Real Property or designated portions thereof. Exhibit 11.4 to the Plan shows the conceptual road framework which may be implemented for private
Thoroughfares on the Real Property. Notwithstanding those exhibits, the Property Owner may determine the precise configuration and location of any and all private Thoroughfares on the Real Property; provided, however, the Property Owner has a qualified engineer determine that their configuration and location does not present a significant safety hazard.

5. Ownership and Maintenance: The Property Owner, a related entity, and/or a duly constituted Association shall perform the maintenance and upkeep on any and all Thoroughfares on the Real Property or any portion thereof unless they have been dedicated to and accepted by the public in conformity with the County Road Construction Standards described in the ZLDR. All alleys shall be maintained and owned by the Property Owner, a related entity, or an Association.

6. Paving: Any and all public Thoroughfares installed on the Real Property shall be paved in accordance with the County Road Construction Standards, described in the ZLDR. To preserve the existing rural character of the Real Property or portions thereof, the Property Owner may retain existing unpaved, private Thoroughfares and/or install other unpaved, private Thoroughfares on the Real Property or portions thereof.

7. Internal Access: The Property Owner may limit access to private Thoroughfares on the Real Property or portions thereof through the use of a security gate or other similar method. Access to public Thoroughfares may NOT be similarly limited. All Thoroughfares on the Real Property, whether public or private, shall have direct or indirect access to Betsy Kerrison Parkway and Mullet Hall Road.

8. Construction Access: Construction traffic will be routed along Mullet Hall Road, at the location illustrated in Exhibit 14.1 to the Plan. Prior to construction of Phase 1, the Property Owner shall finance an inspection of Mullet Hall Road to determine and record its current condition. The Property Owner will provide a report defining the base line condition of Mullet Hall Road and providing an ultimate road section recommendation to accommodate projected traffic for build-out of the Project. This report will be submitted to DOT for review and approval. The Property Owner will then provide DOT with an engineer-certified construction cost estimate for any repairs and other improvements needed as specified in the report, as well as a letter of credit or bond ensuring the work will take place within a mutually agreeable time frame. The Property Owner will continue to coordinate any improvements or maintenance of Mullet Hall Road with DOT during the Project. The Charleston County Parks and Recreation Commission, which uses Mullet Hall Road for primary access to the Johns Island County Park and Mullet Hall Equestrian Center, has consented to this procedure via letter of coordination attached to the Plan as Exhibit 11.5.

9. Connections with Adjacent Properties: The Property Owner shall use best efforts to facilitate a connection with adjacent parcels at the approximate locations illustrated in Exhibit 4.1 to the Plan. The Property Owner’s obligation under this section shall not require that the Property Owner purchase or otherwise finance the acquisition of any right, title, or interest in and to these adjoining properties. The County recognizes the Property
Owner’s abilities under this section are highly dependent upon and constricted by the actions or inactions of third parties.

F. Community Ways: As used herein, a “Community Way” means a walkway of any surface type (paved or unpaved), a bicycle lane, bicycle route, bicycle trail, leisure trail, or walking trail designed for pedestrian or bicycle traffic. The Property Owner shall install an interconnected system of Community Ways on the Real Property. The Property Owner may determine the configuration, location, type, number, size, location, lighting and path surfaces of private Community Ways on the Real Property. However, any and all public Community Ways shall comply with the County’s Improvement Standards, as they exist on the Effective Date. The Property Owner shall use best efforts to facilitate a connection with adjacent parcels at the approximate locations delineated in Exhibit 4.1 to the Plan. The Property Owner’s obligation under this section shall not require that the Property Owner purchase or otherwise finance the acquisition of any right, title, or interest in and to these adjoining properties. The County recognizes the Property Owner’s abilities under this section are highly dependent upon and constricted by the actions or inactions of third parties. Any and all Community Ways designed and constructed by the Property Owner may (1) be owned and maintained as Common Areas; (2) be owned and maintained by the Property Owner or a related entity; or (3) be dedicated to the public. The Property Owner, a related entity, and/or a duly constituted Association shall perform the maintenance and upkeep of the Community Ways on the Real Property or any portion thereof unless they have been dedicated to and accepted by the public. Upon tender of a deed from the Property Owner approved by the County attorney, the public may accept any and all Community Ways tendered for dedication by the Property Owner provided they comply with the County’s Improvement Standards, as they exist on the Effective Date.

G. Golf Carts and Personal Transportation Vehicles: Golf carts and personal transportation vehicles may be used on any Thoroughfares, causeways, Community Ways, and parking areas of the Real Property or any portion thereof that the Property Owner may designate, if consistent with state law.

H. Wastewater Treatment: The Property Owner will provide suitable wastewater treatment or septic to all Lots and Dwelling Units on the Real Property pursuant to the Agreement after obtaining all applicable permits and approvals from regulatory agencies and governmental entities. Any wastewater treatment system shall be subject to best management practices. The proposed wastewater treatment facility will comply with the Charleston County 208 Water Quality Management Plan and all BCDCOG and SCDHEC requirements, including the SCDHEC permitting requirements that the Property Owner provide financial protections for the continued economic viability of the system and that the system be managed by a class A licensed operator.

I. Potable Water: St. John’s Water Company will provide potable water to all Lots and Dwelling Units on the Real Property pursuant to the Agreement after obtaining all applicable permits and approvals from regulatory agencies. Water supply for the Development will be via two (2) connections: (1) an existing, twenty-four-inch (24”) diameter water transmission main on Betsy Kerrison Boulevard; and (2) an existing six-inch (6”) diameter water main on Mullet Hall Road. The existing water main on Mullet Hall Road will likely need to be upsized in the future to supply sufficient fire-flow. The new system will be designed and constructed to supply sufficient fire suppressing flow based on the requirements of the Insurance Services Office (ISO), as well as
the Charleston County Building Department. A Preliminary Master Water Plan is attached to the Plan as Exhibit 14.1. Prior to the construction of Phase 1, a more in-depth water model will be created in order to properly size all mains. The new water distribution system will be designed to meet the requirements of the St. Johns Water Company and DHEC. Applicable impact fees will be paid to St. Johns Water Company in order to offset any capital improvement upgrades that will be needed for the system. A proof-of-coordination letter with St. Johns Water Company is included in Appendix F. Unless otherwise provided with respect to Lots served by a well, the Property Owner shall design and construct facilities necessary for the transmission and distribution of potable water to all Lots and Dwelling Units on the Real Property. The Property Owner shall transfer facilities for the transmission and distribution of potable water, including necessary easements, to St. Johns Water Co.

J. Drainage:

1. Stormwater Master Plan: A Stormwater Master Plan for the Real Property is attached hereto as Appendix H. The Property Owner shall provide sufficient drainage for the Development of the Real Property. The Property Owner shall not impair or diminish the drainage currently flowing through the Real Property. The Property Owner shall not impede such drainage during construction or during land disturbance activities on the Real Property and shall provide comparable drainage at a substitute location, if necessary.

2. County Stormwater Ordinance: Notwithstanding any provision in the Agreement or the Plan which may be construed to the contrary, the Property Owner shall comply with the standards for drainage set forth in the County Stormwater Ordinance. The Agreement and the Plan shall not be construed to supersede or contravene the County Stormwater Ordinance.

3. Coordination with County Public Works Department: The Property Owner will continue to coordinate with the Stormwater Division of the County’s Public Works Department to ensure that all publicly dedicated, constructed and accepted drainage-related capital improvements (or portions thereof) and operating expenses directly attributable to the Project and the Development are paid for through property tax revenue or other revenues generated from the Development during the build-out of the Project and concurrent with impacts from the Development, as well as to ensure that all improvements constructed on the Real Property comply with the County’s Stormwater Ordinance. The Property Owner shall obtain all applicable permits and approvals relating to drainage before beginning each phase of the Project.

4. Maintenance: Any and all drainage infrastructure designed and constructed by the Property Owner may (1) be owned and maintained as Common Areas; (2) be owned and maintained by the Property Owner or a related entity; or (3) be dedicated to the public. The Property Owner, a related entity, and/or a duly constituted Association shall perform the maintenance and upkeep of the drainage infrastructure and facilities on the Real Property or any portion thereof unless they have been dedicated to and accepted by the public.
K. Septic Tanks and Wells: The Property Owner may install septic systems and/or wells for drinking water to service Lots and Dwelling Units on the Real Property or portions thereof provided the septic systems and/or wells for drinking water meet state regulatory requirements. The number of Lots or Dwelling Units on the Real Property serviced by wells and/or septic systems shall not exceed any applicable state regulatory requirements. Any such Lots and Dwelling Units on the Real Property that are serviced by a septic system or well meeting applicable regulatory requirements shall not be considered non-conforming under the County’s Laws because of such septic system or well.

L. Streetlights: The Property Owner shall have the right to decide the location, design and number of streetlights, if any, on the Real Property. Any and all streetlights designed and installed on the Real Property may (1) be owned and maintained as Common Areas or (2) be owned and maintained by the Property Owner or a related entity. If the location of any streetlight is to be in a public right-of-way, the location must be approved by the County’s Director of Public Works.

M. Stoplights, Traffic Control, and Other Street Signage: The Property Owner may determine the configuration and location of all street and traffic control signs on the Real Property, the standards of which shall be determined in consultation with DOT. All traffic control devices within a public or private right-of-way must meet the requirements of the Manual on Uniform Traffic Control Devices.

N. Parks, Common Spaces and Buffers on the Real Property: Certain portions of the Real Property may contain parks, common spaces, and buffers. The Property Owner reserves the right to limit access and use of these to select owners, tenants or lessees on the Real Property, their guests, and others who may be their invitees.

O. Solid Waste Collection: Trash collection will be provided by the Property Owner for all residential, commercial, institutional, retail and office parcels on the Real Property. Trash collection for single-family parcels will be curb-side. Trash collection will be from a central location, such as a Dumpster, for each separate multi-family, commercial, institutional, retail, or office site on the Real Property. These Dumpsters (or other containers) will be located out-of-sight in approved areas with appropriate access and screening. A proof-of-coordination letter with Suburban Disposal Services is included in Appendix F. The Property Owner will continue to work with the Charleston County Environmental Management Department to coordinate solid-waste related activities.

P. Education: The Development will be served by the Charleston County School District and area private schools. The Development is planned to be similar in scope and nature to the Kiawah Island and Seabrook communities. The Development is expected to generate 39 new students who attend school in the district by the time of full build-out at year 20. A proof-of-coordination letter was received from the Charleston County School District stating that “all of the referenced schools currently have capacity on site to serve students in their attendance zones.” A copy of this letter is included in Appendix F.

Q. Police: All access drives and parking areas will be lighted to improve security and reduce vehicle thefts. The proposed Development will foster community involvement, which will
aid in the prevention of crime through citizen activism. Also, the proposed traffic improvements referenced in Appendix E should maintain or improve current response times to this and adjacent sites. A proof-of-coordination letter with the Charleston County Sheriff’s Office is included in Appendix F.

R. Fire Protection: All access roads and parking areas will be constructed to facilitate fire equipment access. Representatives of the Property Owner have coordinated with the St. John’s Fire Department to discuss the Development, including proposed road sections. The Property Owner will continue to coordinate with St. Johns Fire Department through the life of this Agreement. The Property Owner will provide capital items as stated in Section 16(X) of this Agreement.

S. Emergency Medical Services: Charleston County EMS provides emergency medical services to the citizens of Charleston County. A proof-of-coordination letter with Charleston County EMS is included in Appendix F.

T. Utilities: Utilities, such as electrical and gas services, cable television, high speed internet access, and telephone service, shall be made available and maintained by the appropriate service providers. All utilities shall be installed underground. The Property Owner shall furnish necessary easements to utility providers for water, sewer, gas, electricity, telephone, cable television, and other utilities. Adequate easements for utilities shall be reserved by the Property Owner in conveyances of Lots, Dwelling Units, and Development Parcels. The location and size of such easements shall be determined by the Property Owner in consultation with the applicable service provider. Letters of coordination from Berkeley Electric Cooperative, Inc., Comcast, and Bellsouth are included in Appendix F.

U. Common Area Maintenance: Any Association established with respect to the Real Property or any portion thereof shall be responsible for maintaining the Common Areas, as described in any applicable Covenants and/or the Agreement.

V. Hurricane Preparedness Plan: The Property Owner has procured a Hurricane Evacuation Plan, which is attached hereto as Appendix I. The Property Owner will coordinate with the Charleston County Emergency Preparedness Division and the South Carolina Emergency Management Division to ensure that the Development complies with applicable laws and regulations.

W. Town of Kiawah Island: The Property Owner has conferred with the Town of Kiawah Island, the only municipality adjacent to the Real Property, which supports the Project. Furthermore, the Property Owner has conferred with the nearby municipality of Seabrook Island. Proof-of-coordination letters with the Town of Kiawah Island and Seabrook Island are included in Appendix F.

X. Mitigation Provided Directly by the Property Owner to the County: The Property Owner shall provide the following amounts to mitigate the impact of the Development:

1. Ladder Truck: The Property Owner will pay $800,000 or the actual cost, whichever is lesser, towards the purchase of a ladder truck to service the Real Property for
St. John’s Fire District on or before obtaining a building permit for the construction of any building on the Real Property requiring a ladder truck according to National Fire Prevention Association requirements.

2. Dedication of Land: During the term of this Agreement, the Property Owner shall set aside three (3) highland acres of the Real Property at a mutually agreeable location(s). At such time as the County requests the use of any or all of this acreage for the construction of a substation(s) for the use of St. John’s Fire District, the Charleston County Sheriff’s Office, the Charleston County Magistrate’s Office, Charleston County EMS, and/or any other police, fire or EMS service which may acquire jurisdiction over the Real Property after the Effective Date (provided, however, the site(s) shall not be used solely by the Charleston County Magistrate’s Office), the Property Owner shall dedicate the such acreage to the County as necessary for such use(s). If the County does not construct a substation on the dedicated site(s) within three (3) years of the dedication, the dedicated site(s) shall revert back to the Property Owner; provided, however, the Property Owner shall continue to hold the site(s) as set forth in this Paragraph 16.X.2 and all of the County’s rights in this Paragraph 16.X.2 shall continue until the termination of this Agreement. The County may not request such dedication until after a certificate of occupancy has been issued for the 200th Dwelling Unit, unless otherwise agreed by the Parties.

17. Natural Resource Protection and Preservation

A. Cultural Resources Survey: The Property Owner has procured a Cultural Resources Survey of Mullet Hall Plantation, Johns Island, Charleston County, South Carolina, prepared by the Chicora Foundation, Inc., attached hereto as Appendix J. The study examined archaeological sites and cultural resources found on the Real Property.

1. Cemeteries: Three (3) cemeteries, designated in the study as 38CH1540, 38CH1548, and 38CH1549, will not be developed except as provided herein. Additionally, as recommended in the study, 38CH1540 will have a fifty foot (50’) minimum buffer, 38CH1548 will have a twenty-five foot (25’) minimum buffer, and 38CH1549 will have a fifty foot (50’) minimum buffer. All three cemetery sites will have construction fences erected for their protection during all phases of construction activity. As further recommended in the study, the Property Owner will remove all trees in the cemeteries of 5-inches DBH or less in diameter. The remaining trees will be pruned for crown cleaning and overall restoration. No tree survey or other County permits shall be required for such clearing and restoration.

2. Archaeological Resources: Upon review and approval by the State Historic Preservation Office (“SHPO”), eligible and potentially eligible archaeological resources may be either green spaced (preserved in place) or subjected to additional investigation (data recovery in the case of eligible sites or additional testing in the case of potentially eligible sites). With additional testing, the potentially eligible sites may be designated as either eligible or not eligible. Contractors shall be advised to report the discovery of any archaeological remains encountered during construction activities to the Project engineer, who should, in turn, report the find to SHPO. No further land-altering activities shall take
place in the area of the discovery until they have been examined by an archaeologist and, if necessary, processed.

B. Memorandum of Agreement: The Property Owner will enter into a Memorandum of Agreement with DHEC and SHPO, a proposed draft of which is attached hereto as Appendix K, to certify the consistency of the Development with the Coastal Zone Management Plan and to mitigate potential impacts of the Development on sites which are eligible for, potentially eligible for, or currently listed in the National Register of Historic Places. The Property Owner will continue to coordinate with DHEC and SHPO to ensure that applicable natural and cultural resource areas on the Real Property are investigated, preserved and protected pursuant to state and federal law.

C. Threatened and Endangered Species Assessment: The Property Owner has procured a Threatened and Endangered Species Assessment, prepared by Newkirk Environmental, Inc., which, together with a May 21, 2009, update of this assessment, is attached hereto as Appendix L. The assessment was conducted to determine the occurrence of, or potential for, animal and plant species federally listed as endangered or threatened to exist within the Real Property. Completion of this survey complied with current state and federal regulations, including the Federal Endangered Species Act, the Bald and Golden Eagle Protection Act, the Migratory Bird Treaty Act, and the South Carolina Non-Game and Endangered Species Conservation Act. Field surveys have documented the presence of two (2) bald eagle nests within the boundaries of the Real Property. As a result, coordination with the Department of Natural Resources and the United States Fish & Wildlife Service is ongoing in an attempt to establish guidelines for activities near the active nests. The proposed Development shall comply with these guidelines.

D. Flora and Fauna: The Property Owner will use best efforts to maintain and enhance the native plant material on the Real Property. Additional considerations in Lot configurations will be made to maintain wildlife corridors that connect this property with the surrounding natural environment.

18. Development Schedule for the Project

A. Commencement Date: The Project will be deemed to commence Development upon the Effective Date.

B. Interim Completion Dates: The Property Owner estimates that during the years after the Effective Date, the following percentages of the undeveloped highland within the Real Property will be developed pursuant to the Plan:

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>0-25%</td>
</tr>
<tr>
<td>10</td>
<td>26-50%</td>
</tr>
<tr>
<td>15</td>
<td>51-75%</td>
</tr>
<tr>
<td>20</td>
<td>76-100%</td>
</tr>
</tbody>
</table>
As such, a generalized phasing plan for the Real Property, showing a conceptual illustration of the Development which may be implemented on the Real Property 5 years, 10 years, 15 years, and 20 years after the Effective Date of the Agreement is attached to the Plan as Exhibit 7.1.

C. Completion Date: The Property Owner projects that the Project should be substantially completed (i.e. essentially all structures erected and/or all necessary infrastructure in place to serve the intended uses) twenty (20) years from the Effective Date.

D. Modification of Commencement or Completion Date: The County recognizes the Development on the Real Property will include a variety of uses and that demand, cost, environmental factors, and other pertinent financial and feasibility considerations fluctuate. Accordingly, the commencement date and schedule of completion set forth in this Agreement are estimates only. The timing of the actual Development of the Project will likely differ because of the multiple variables influencing it. The Parties agree that the commencement date, interim completion dates, and completion date are therefore subject to modification and that the Property Owner may provide to the County updated schedules which shall not constitute an amendment of this Agreement triggering the process for approval of amendments set forth in this Agreement.

E. Failure to Meet Commencement or Completion Date: The Property Owner’s failure to meet the commencement date, an interim completion date, or the completion date shall not, in and of itself, constitute a material breach of this Agreement pursuant to section 6-31-90 of the South Carolina Code, but must be judged based on the totality of circumstances.

19. Term of the Agreement

A. Term: Pursuant to section 6-31-40 of the South Carolina Code, this Agreement shall expire twenty (20) years from the Effective Date unless extended pursuant to the remaining provisions of this Paragraph. The date of the expiration of the term of this Agreement is the termination date.

B. Extension of Term: If the Property Owner provides to the County a written certification during the initial or the first extension term of this Agreement but no later than ninety (90) days prior to the termination date that the gross highland acres within the Real Property then owned by the Property Owner, and/or an entity or entities that have substantially the same ownership as the Property Owner, is twenty-five acres or more, the County, the Property Owner, and/or such entity or entities shall enter an amendment to this Agreement extending the term for an additional five (5) year term from the date of certification; provided, however, the Property Owner is not in material breach of the Agreement. The Property Owner may exercise up to two such five-year extensions. 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.

20. Intentionally Omitted.

21. Submission List
The following package of documents, exhibits, and appendices has been submitted simultaneously with this Agreement and is incorporated herein:

Development Agreement
   Exhibit 1.1-Definitions
   Exhibit 4.1-Legal Description
   Exhibit 4.2-Plat
   Exhibit 4.3-Acreage Breakdown
   Exhibit 4.4-Deed No. 1
   Exhibit 4.5-Deed No. 2
   Exhibit 4.6-Deed No. 3
   Exhibit 4.7-CCPRC Easement Agreement
   Exhibit 4.8-Berkeley Electric Easement Agreement
   Exhibit 4.9-Wetland Survey

Appendices
   Appendix A-The Kiawah River Planned Development District Plan (with exhibits)
   Appendix B-ZLDR, as modified
   Appendix C-Economic Impact Analysis
   Appendix D-Capital Improvements Program/Fiscal Impact Analysis
   Appendix E-Traffic Impact Analysis and Mitigation Plan
   Appendix E-1-Land Use Equivalency Matrix
   Appendix F-Letters of Coordination with Local Government Entities
      1-DOT
      2-BCDCOG
      3-St. John’s Water Co.
      4-Suburban Disposal Services
      5-Charleston County School District
      6-Charleston County Sherriff’s Office
      7-St. John’s Fire Department
      8-Charleston County EMS
      9-Berkeley County Electric Cooperative, Inc.
      10-Comcast
      11-BellSouth
      12-Town of Kiawah Island
      13-Charleston County Parks and Recreation Commission
      14-Town of Seabrook
   Appendix G-Intentionally Omitted
   Appendix H-Stormwater Master Plan
   Appendix I-Hurricane Evacuation Plan
   Appendix J-Cultural Resource Survey
   Appendix K-Proposed Memorandum of Agreement with DHEC and SHPO
   Appendix L-Threatened and Endangered Species Assessment with May 21, 2009 Addendum
   Appendix M-Intentionally Omitted
   Appendix N-Letter of Receipt from the Corps
22. **Amending or Canceling the Agreement**

Subject to the provisions of section 6-31-100 of the South Carolina Code, this Agreement may be amended or canceled in whole or in part only by mutual written consent of the Parties or their successors in interest and, in the case of the Property Owner, its successors in legal title. Any amendment to this Agreement shall comply with the provisions of section 6-31-100. If an amendment affects less than all the persons and entities comprising the Property Owner, then only the County and those affected persons or entities who are Property Owners need to sign such written amendment for it to be effective. Any provision 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. Pursuant to section 6-31-60(B) of the South Carolina Code, a major modification of this Agreement shall occur only after public notice and a public hearing by the County.

23. **Modifying or Suspending the Agreement**

Pursuant to section 6-31-130 of the South Carolina Code, in the event state or federal laws or regulations, including state or federal laws or regulations enacted after the Effective Date, 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**

Pursuant to sections 6-31-40 and 6-31-90(a) of the South Carolina Code, the County’s Planning Director shall review the Project and this Agreement every twelve months to determine the Property Owner’s good faith compliance with the terms of this Agreement. If, as a result of its periodic review, the County finds and determines that the Property Owner has committed a material breach of the terms or conditions of this Agreement, the County 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 County unilaterally may terminate or modify this Agreement; provided, that the County has first given the Property Owner the opportunity: (1) to rebut the County’s finding and determination; or (2) to consent to amend this Agreement to meet the concerns of the County with respect to the findings and determinations.

25. **Severability**

Subject to the provisions of section 6-31-150 of the South Carolina Code, 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. All prior negotiations and representations are superseded and merged herein.

27. **Contingencies**

This Agreement and the Plan are contingent upon (1) their execution and approval in this form by the Parties; and (2) the County’s zoning of the Real Property as a planned development district (with this Appendix A to this Agreement constituting the development plan).

28. **Cooperation**

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. Such cooperation does not require, in the event of such challenge, that a party to this Agreement shall pay for the expense of litigation for any other party.

29. **Governing Law**

This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

30. **Remedies/Non-Binding Arbitration**

A. **Remedies**: If there is a material breach of this Agreement, the non-breaching party may pursue all available legal and equitable remedies. Each party recognizes that the other party may suffer irreparable harm from a material breach of this Agreement and that no adequate remedy at law may exist to enforce this Agreement. Consequently, the Parties agree that any non-breaching party who seeks enforcement of the Agreement may seek the equitable remedies of injunction and specific performance. The County 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 members, officers, managers, employees, agents, and contractors of the Property Owner, and further agrees that no member, officer, manager, employee, agent, and contractor of the Property Owner has any personal, joint, or several liability under this Agreement. Likewise, the Property Owner agrees to look solely to the County’s assets as to any rights it may have against the County under this Agreement, and hereby waives any right to assert claims for personal liability against individuals acting on behalf of the County, its County Council members, officers, agencies, boards, or commissions.

B. **Non-Binding Arbitration**: If there is a dispute between the County and the Property Owner concerning the terms, meaning, interpretation, rights or obligations under this Agreement, the Parties agree to submit such issue(s) to prompt non-binding arbitration before invoking legal proceedings. This non-binding arbitration shall be initiated by one party’s notifying the other in
writing of the dispute and that party’s request for non-binding arbitration as described herein. Each side shall within five (5) days of receipt of such notice pick an arbitrator and these two (2) arbitrators shall pick the third. The Parties shall then promptly convene a conference with the arbitration panel and present their positions. In this conference, the rules of evidence and other legal formalities shall not apply; positions may be stated and need not be presented through testimony, exhibits, or evidence. The majority of the arbitrators shall promptly render their decision. Upon the rendering of the arbitration panel’s decision, either side may then immediately pursue proceedings for legal or equitable remedies. The Parties shall each bear the cost of its appointed arbitrator and equally share the cost of the third arbitrator and any separate expenses associated with the arbitration conference.

31. **Recording**

Within fourteen (14) days after execution of this Agreement, the Property Owner shall record the Agreement with the Charleston County Register of Mesne Conveyances against the Real Property described in Paragraph 4 of this Agreement. The provisions contained herein shall be deemed to run with the land. The burdens of this Agreement are binding upon, and the benefits of this Agreement shall inure to, all successors in interest, successors in title, and assigns of the Parties to this Agreement.

32. **Third Parties**

Notwithstanding any provision herein to the contrary, this Agreement shall not be interpreted to create or bestow any rights, remedies, or obligations on persons or entities that are not Parties or successors or assigns to this Agreement under Paragraph 33 of this Agreement.

33. **Successors and Assigns**

A. **Binding Effect:** This Agreement shall be binding on the personal representatives, successors in interest, successors in title, and assigns of the Property Owner in the ownership or Development of any portion of the Real Property or the Project. A purchaser or other successor in title of any portion of the Real Property shall be responsible for performance of the Property Owner’s obligations hereunder as to the portion of the Real Property so transferred and shall have the rights afforded to the Property Owner hereunder with respect to the portion of the Real Property conveyed. The Property Owner shall be released from obligations under this Agreement upon the sale of Tracts, Lots or Development Parcels as to the property conveyed, and the purchaser shall become the responsible party with regard to this Agreement as to the Tract, Lot or Development Parcel so conveyed. This Agreement shall also be binding on the County and all future County Councils for the duration of this Agreement, even if the County Council members change.

B. **Transfer of Real Property:** The Property Owner shall be entitled to transfer any portion or all of the Real Property to a purchaser(s) and assign its rights and obligations under this Agreement. If the Property Owner transfers to an unrelated third party a Lot or Development Parcel within the Real Property on which the Property Owner is required to provide and/or construct certain Facilities, 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 Lot or Development Parcel conveyed and the Property Owner shall provide a copy of such Agreement to the County. Notwithstanding anything to the contrary contained herein, the exceptions and restrictions to transfer contained in this Paragraph 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 this Agreement.

C. Release of Property Owner: In the event of the sale or other conveyance of all or a portion of the Real Property and compliance with the conditions set forth herein, 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 considered as 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 the Property Owner (or its successors or assigns) to the County, sent by certified or registered mail or publicly licensed message carrier, return receipt requested, the County 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 County will respond to such a 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 party making the request.

34. General Terms and Conditions

A. 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 County Council taken with the same formality as the vote approving this Agreement, no officer, official or agent of the County has the power to amend, modify or alter this Agreement or waive any of its conditions as to bind the County by making any promise or representation not contained herein. Any amendments are subject to Paragraph 22 of this Agreement.

B. 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.

C. Intentionally Omitted.
D. Notices: All notices hereunder shall be given in writing by certified mail, postage prepaid, at the following addresses:

1. Notice to the Property Owner:

   c/o
   Kiawah River Investment, LLC
   Attention: John Darby
   Post Office Box 242
   Charleston, South Carolina 29402

   With Copy to:

   G. Trenholm Walker
   Walker Gressette Freeman & Linton, LLC
   Post Office Drawer 22167
   Charleston, South Carolina 29413-2167

2. Notice to the County:

   County of Charleston
   Attention: Planning Director
   Lonnie Hamilton, III Public Services Building
   4045 Bridge View Drive, Suite A-314
   Charleston, SC 29405-7464

   With Copy to:

   County of Charleston
   Attention: County Attorney
   Lonnie Hamilton, III Public Services Building
   4045 Bridge View Drive, Suite B-314
   Charleston, SC 29405-7464

The address for any party or person may be changed by proper notice to the other parties or persons involved.

E. 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.

IN WITNESS WHEREOF this Agreement has been executed, delivered, and sealed by the Parties on the day and year first above written.
WITNESSES:

COUNTY OF CHARLESTON

By: _______________________
A. Victor Rawl
Chairman, County Council

Attest: _______________________
Kristen Salisbury
Clerk to Council

WITNESSES:

KIAWAH RIVER
INVESTMENT, LLC
By: Beach O’Hear Pointe, LLC
Its: Managing Member

By: The Beach Company
Its: Manager

By: _______________________
John C.L. Darby
Its: President and CEO

By: _______________________
 Its: _______________________

35
STATE OF SOUTH CAROLINA    )
COUNTY OF CHARLESTON     )

ACKNOWLEDGMENT

THE FOREGOING INSTRUMENT was acknowledged before me by CHARLESTON COUNTY, SOUTH CAROLINA, by A. Victor Rawl, its Council Chairman, and Kristen Salisbury, its Clerk of Council, this ___ day of _______________, 2019.

__________________________________________________________________________

(SEAL)

Notary Public for South Carolina
My Commission Expires:__________

STATE OF SOUTH CAROLINA    )
COUNTY OF CHARLESTON     )

ACKNOWLEDGMENT

THE FOREGOING INSTRUMENT was acknowledged before me by KIAWAH RIVER INVESTMENT, LLC, by Beach O’Hear Pointe, LLC, its Managing Member, by The Beach Company, its Manager, by John C.L. Darby, its President and Chief Executive Officer, and ____________________, its ________________________________, this ___ day of __________, 2019.

__________________________________________________________________________

(SEAL)

Notary Public for South Carolina
My Commission Expires:__________