

**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 10<sup>th</sup> 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 KIAWAH 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, 3<sup>rd</sup> 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"

**THE KIAWAH RIVER, JOHNS ISLAND, SOUTH CAROLINA DEVELOPMENT  
AGREEMENT**

**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 22<sup>nd</sup> day of December, 2009 and is effective on the 1<sup>st</sup> 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

simultaneously herewith, attached hereto as Appendix A, and incorporated herein by reference. 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

representatives, its successors in interest, successors in title and/or assigns pursuant to this *Agreement*. The burdens and benefits shall run with the land.

**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**

<b>Permitted Uses</b>	<b>Not to Exceed (“nte”)</b>	<b>Minimum Acreage</b>	<b>Maximum Acreage</b>	<b>Maximum Density</b>	<b>Maximum Floor Area Ratio</b>
<b>Single Family Detached</b>	nte 1285		550	4/acre	
<b>Single Family-Attached</b>	nte 320		50	10/acre	
<b>Multi-Family</b>	nte 320		50	20/acre	
<b>Housing for the Work Force</b>	up to 117		40	20/acre	
<b>Retirement Housing</b>	nte 160		50	Note 6	
<b>All Residential</b>	nte 1285 excluding Retirement Housing		600	1.01/acre	
<b>Commercial</b>	nte 80,000 square feet		12		2
<b>Self-Service Storage/Mini-Warehousing, Boat/RV Storage</b>	50% of the floor area shall count against <i>GLA</i>			Subject to 12 acre maximum for Commercial	
<b>Accommodations</b>	nte 450 <i>Guest Rooms</i> or <i>Villas</i>		50		2
<b>Open Space</b>		635.31			

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 Units* being equivalent to one (1) *Guest Room*, or stated differently, 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

*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 200<sup>th</sup> *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 on-going 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*:

<u>Year</u>	<u>Percentage Complete</u>
5	0-25%
10	26-50%
15	51-75%
20	76-100%

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:

\_\_\_\_\_

\_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**COUNTY OF CHARLESTON**

By: \_\_\_\_\_

A. Victor Rawl  
Chairman, County Council

Attest: \_\_\_\_\_

Kristen Salisbury  
Clerk to Council

**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: \_\_\_\_\_

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:\_\_\_\_\_