

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

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

RECITALS

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

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

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

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

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

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

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

NOW THEREFORE, the Parties agree:

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

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2. **Parties.** Parties to this Agreement are the Property Owner and the Town.

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

4. **Legal Description of the Real Property.** The Real Property which is the subject of this Agreement is described as follows:
 - (i) All real property on Kiawah Island currently owned by the Property Owner and the subsequent owners of this real property as provided for in Section 33 herein.

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

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

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

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

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

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

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

9. **Legislative Act.** Any change in the standards established by this Agreement or to laws pertaining to the same shall require the approval of the Town Council, subject to compliance with applicable statutory procedures and consistent with Paragraph 10 (A) of this Agreement. This Agreement constitutes a legislative act of the Town Council of the Town. The Town Council adopted this Agreement only after following procedures required by Code Section 6-31-10 *et seq.* This Agreement shall not be construed to create a debt of the Town as referenced in Section 6-31-145.

10. **Applicable Land Use Regulations.**

- (a) **Applicable Laws and Land Development Regulations.** Except as otherwise provided by this Agreement or by Section 6-31-10 *et seq.*, the Laws applicable to the Development of the Real Property, subject to this Agreement, are those in force at the time of the execution of this Agreement. The Town shall not apply

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

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

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

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

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

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(d) Road Codes and Subdivision Regulations.

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

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

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

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

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

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

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

1. **RESIDENTIAL USES**

(a) **Permitted Uses**

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

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(b) New Dwelling Units

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

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

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

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

(c) Building Development Standards

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