

**DECLARATION OF
RESTRICTIVE COVENANTS
(Southern Pines Lane)**

THIS DECLARATION OF RESTRICTIVE COVENANTS ("**Declaration**") is made this ____ day of November 2018, by and between **Kiawah Resort Associates, L.P.** a Delaware limited partnership ("**KRA**") and **Kiawah Island Community Association, Inc.**, a South Carolina non-profit corporation ("**KICA**").

RECITALS

WHEREAS, KRA is the owner of that certain road right-of-way known as "**Southern Pines Lane**," located within the "Beachwalker East" property at the western end of Kiawah Island, Charleston County, South Carolina, and shown on a plat prepared by SWA Surveying, LLC, entitled "A Preliminary Subdivision Plat TMS #207-05-00-0011, TMS #207-05-00-001, 118, 122, 123 and 124 Beachwalker East" dated August 29, 2018, more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Burdened Property**"); and

Commented [A1]: Note – Will need to refer to the recorded plat in the final version for recording

WHEREAS, KICA is the master association of owners of properties on Kiawah Island, S.C., established pursuant to the Declaration of Covenants and Restrictions of The Kiawah Island Community Association, Inc. executed by KICA and Kiawah Island Company Limited dated December 21, 1977, and recorded December 29, 1977, in Book M114, page 407 in the office of the Register of Deeds for Charleston County, S.C., as amended (the "**KICA Covenants**"), and the owner of certain roads, real property and Common Properties on Kiawah Island, including specifically, Duneside Road, which is adjacent to and contiguous with the Burdened Property and is more particularly described on **Exhibit B** attached hereto and incorporated herein by reference (the "**Benefitted Property**"); and

WHEREAS, in consideration of Five and No/00 (\$5.00) Dollars, certain mutual promises and agreements between KRA and KICA, and other promises contained herein, the receipt and sufficiency of which is hereby acknowledged, KRA has agreed to place certain restrictive covenants on the Burdened Property, in order to alleviate concerns by the KICA Board and membership relating to use of the Burdened Property for access to and from Cape Point Road and/or Beachwalker Road.

NOW THEREFORE, KRA hereby declares that the Burdened Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of and used subject to the following restrictive covenants, which shall run with the land and be binding on KRA, all future owners of the Burdened Property, and their respective successors, assigns and successors-in-title, lessees, or other occupiers and users:

1. **Restriction on Use.** KRA, on behalf of itself, its successors and assigns, hereby agrees that for a period of ninety-nine (99) years (the "**Term**") following the date hereof, the Burdened Property shall not be extended or used to provide a vehicular connection to or access from Cape Point Lane and/or Beachwalker Road to Duneside Road without the written consent of KICA. The restriction contained herein shall not inure to the benefit of or be enforceable by

any subsequent owner of the Benefitted Property that is not a successor in interest to KICA under the KICA Covenants.

2. **Recording; Amendment; Termination.** This Declaration shall be recorded in the ROD Office and may be amended only by a recorded document signed by KRA and KICA. This Declaration shall automatically terminate upon the expiration of the Term without the requirement of any further recorded document.

3. **Property Transfers.** KRA shall include the following notice on all deeds used to convey any interest in the Burdened Property including but not limited to all conveyances in which the grantee is afforded an easement of use and enjoyment in the Burdened Property (provided that failure to comply with this paragraph does not impair the validity or enforceability of these restrictive covenants):

NOTICE: This Property Subject to Declaration of Restrictive Covenants Recorded at [*insert book and page references, county(ies), and date of recording*].

4. **No Third Party Beneficiary.** The provisions of this Declaration are for the benefit of and are enforceable only by KICA or its successor in interest under the KICA Covenants as owner of the Benefitted Property and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Declaration.

5. **Remedies and Defenses.** KRA agrees, acknowledges, and affirms that the restrictions made and entered into by KRA is a material and indispensable inducement for, and condition of, certain agreements and transactions by among the parties hereto and their affiliates. KRA agrees, acknowledges, and stipulates that the remedies of any party claiming under, by, or through this instrument is not limited to damages or other remedies at law and such claiming party seeking relief for violation of this Declaration shall have available, at its sole election, declaratory, injunctive, and other equitable relief including, but not limited to, specific performance in any action for breach or enforcement of this Declaration. KRA agrees, acknowledges, and stipulates that it will neither raise as a defense nor contend in any action or proceeding for breach or enforcement of this Declaration that the claiming party would have an adequate remedy at law, and KRA hereby waives all alleged defenses or contentions to this effect. KRA hereby recognizes, agrees and stipulates that this Declaration is hereby effective, enforceable, valid, material, continuous, essential, necessary and beneficial for the use and benefit of KICA and the Benefitted Property, and each party hereby waives any defenses, challenges, or arguments in opposition to a proceeding for breach or enforcement of this Declaration either to the effect, or any manner premised on any suggestion or contention that either this Declaration is not effective, enforceable, valid, material, continuous, appurtenant, necessary, or beneficial or that the harm or benefit to the Benefitted Property is non-existent or of limited or insufficient value due to size, use, location, or form of ownership or that this Declaration is of limited duration less than the Term, or that there is any defense (affirmative or otherwise) which, directly or indirectly, challenges the due execution, effective creation, or enforceability of this Declaration, or that this Declaration constitutes either covenants in gross or personal covenants. Nothing contained in this paragraph shall in any way constitute a waiver of

any defense available at law or in equity in any suit brought to enforce this Declaration by a party not entitled to enforce this Declaration.

6. **Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Declaration shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Declaration, and the invalid, void or unenforceable term, clause, word, condition, provision or agreement shall be reformed to the extent possible in order to give its intended effect and/or meaning so long as the economic or legal substance of this Declaration is not affected in any manner materially adverse to any party.

7. **Further Assurances.** Each of the parties hereto shall execute and deliver such additional documents and take such actions as may be reasonably requested in order to fully carry out the intent and purpose of this Declaration.

8. **Attorney's Fees.** The prevailing party in any action or proceeding brought under this Declaration shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees which shall be payable whether or not such action is prosecuted to judgment.

9. **Waiver of Jury Trial.** EACH OF THE PARTIES WAIVES, TO THE FULL EXTENT PERMITTED BY LAW, THE RIGHT TO A JURY TRIAL IN ANY LITIGATION CONCERNING THIS DECLARATION OR ANY DEFENSE, CLAIM, COUNTERCLAIM, CLAIM OF SET-OFF OR SIMILAR CLAIM OF ANY NATURE.

10. **Governing Law.** This Declaration shall be governed by, and construed and enforced in accordance with the laws of the State of South Carolina.

11. **Notices.** Whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Declaration, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered (a) upon the earlier of actual receipt and three (3) business days after deposit in the United States mail, registered or certified mail, return receipt requested, with the proper postage prepaid, (b) one (1) business day after deposit with a nationally recognized overnight courier with all charges prepaid or (c) when hand-delivered, all of which shall be addressed to the party to be notified and sent to the address below or to such other address as may be substituted by notice given as herein provided:

As to KRA:

Kiawah Resort Associates, L.P.
1 Kiawah Island Parkway

As to KICA

Kiawah Island Community Association, Inc.
23 Beachwalker Road

Kiawah Island, SC 24955

Kiawah Island, SC 29455

12. **Binding Effect.** This Declaration shall be binding upon the parties hereto, their heirs, successors, successors in title, and assigns and shall run with the title to the Burdened Property and the Benefitted Property (except as otherwise provided herein).

13. **Waiver of Default.** The failure of a party to insist in any one or more instances upon the performance of any provisions of this Declaration shall not be construed as a waiver or relinquishment of such party's rights to future performance of such provision, and the other party's obligation in respect of such future performance shall continue in full force and effect.

14. **Headings: Entire Agreement.** The headings in this Declaration are for reference only and shall not affect the interpretation of this Declaration. This Declaration supersedes all prior agreements, understandings, representations and statements, if any, regarding the subject matter contained herein, whether oral or written.

15. **No Right to Contribution.** It is expressly agreed by the parties that until such time, if any, as the Burdened Property is owned by KICA, its successors and/or assigns, as a "Common Property" under the KICA Covenants, the owner of the Burdened Property and the beneficiaries of any easement of use and enjoyment in the Burdened Property has no right to contribution from the owner of the Benefitted Property for any costs associated with the maintenance, repair, replacement, or improvement of the Burdened Property.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, KRA has duly executed this Declaration of Restrictive Covenants as of the date written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
a Delaware limited partnership

By: Coral Canary GP, L.L.C.,
Its: General Partner

By: _____
Jordan Phillips

Its: Vice President

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF CHARLESTON

I, _____, a Notary Public in and for the County and State aforesaid, certify that the foregoing instrument was acknowledged before me this ____ day of October, 2018, by Kiawah Resort Associates, L.P., a Delaware limited partnership, by Coral Canary GP, L.L.C., its General Partner, by Jordan Phillips, its Vice President.

Notary Public for South Carolina
My commission expires: _____

IN WITNESS WHEREOF, KICA has duly executed this Declaration of Restrictive Covenants as of the date written above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

**KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC.**

By: _____
James J. Bailey, Jr.

Its: Chief Operating Officer

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF CHARLESTON

I, _____, a Notary Public in and for the County and State aforesaid, certify that the foregoing instrument was acknowledged before me this ____ day of October, 2018, by Kiawah Island Community Association, Inc., by James J. Bailey, Jr., its Chief Operating Officer.

Notary Public for South Carolina
My commission expires: _____

EXHIBIT A

THE BURDENED PROPERTY

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, known and designated as "**Southern Pines Lane**," a right-of-way predominantly 50' in width, on shown on a plat prepared by Seamon Whiteside & Associates Surveying, LLC entitled "A Preliminary Subdivision Plat TMS #207-05-00-0011, TMS#207-05-00-001, 118, 122, 123 and 124 Beachwalker East Kiawah Resort Associates, LP, and KDP II LLC Located in the Town of Kiawah Island Charleston County, South Carolina" dated August 29, 2018, last revised on October 2, 2018, a copy of which said plat is attached hereto as Exhibit A-1 and incorporated herein by reference, said right-of-way having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.

Note: Will need to revise this description to reference the approved conditional or final plat, when recorded (Preliminary plats are not recorded).

EXHIBIT A-1

Attach Plat

EXHIBIT B

BENEFITED PROPERTY

All those certain pieces, parcels or tracts of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, comprising the "**Duneside Road**" right-of-way, and shown as "Duneside Road" and/or "Duneside Road Extention" (sic) on plats recorded in Plat Book AG at page 128, Plat Book AH at page 65, Plat Book AJ at page 83, Plat Book AK at page 115, and Plat Book AR at page 5, in the office of the Register of Deeds for Charleston County, S.C., said right-of-way having such location, butts and bounds, metes, courses and distances as will by reference to said plats more fully appear.