

AGREEMENT

THIS AGREEMENT TO CONVEY REAL PROPERTY (“Agreement”) is made this 31 day of Jan 2024 (“Effective Date”), by and between **Kiawah Resort Associates, L.P.** (“KRA”), **KDP, II, LLC** (“KDP”) (collectively **KRA and KDP are “KRA/KDP”**), and **Kiawah Island Community Association, Inc.** (“KICA”) (collectively **KRA, KDP, and KICA are “Parties” and may be individually referenced as “Party”**).

WHEREAS, The Town of Kiawah Island (the “Town”) and KRA, together with all subsidiaries thereof and other entities identified as the Property Owner therein, entered into that certain Amended and Restated Development Agreement dated December 5, 2013, and recorded on December 9, 2013, in the Charleston County Register of Deeds in Book 0377, Page 802. (the “ARDA”);

WHEREAS, Paragraph 16(f) of the ARDA provides as follows:

On or before the Termination Date of this Agreement, Property Owner shall convey to KICA (for nominal consideration by quitclaim deed) such areas of highland depicted in light green and cream on Exhibit 16.2 as are then seaward (as to land on the ocean side of Parcel 12B) of the crest of the primary , oceanfront dune, less only such areas/lots as may have been encumbered by easements or conveyed to third parties (e.g., lot owners, KICA, etc. pursuant to the authorizations hereinabove noted).

(hereinafter “Captain Sams Spit Conveyance”)

WHEREAS, the ARDA termination date occurred on December 4, 2023, and KICA has made demand upon the Property Owner for the Captain Sams Spit Conveyance;

WHEREAS, KDP is the current owner of the real property identified as the Captain Sams Spit Conveyance in accordance with that certain deed dated May 31, 2013, and recorded with the Charleston County Register of Deeds in Book 0335, Page 077;

WHEREAS, KRA/KDP is conducting a survey on the real property identified as the Captain Sams Spit Conveyance and seeks additional time to complete the survey and obtain approval of the plat needed for conveyance of such property to KICA;

WHEREAS, KICA asserts that KDP has an obligation to proceed with the conveyance to KICA under Paragraph 16(f) of the ARDA; and KDP denies it has an obligation to proceed with the conveyance to KICA under Paragraph 16(f) of the ARDA under the circumstances and instead has reached this agreement with KICA to resolve any controversy over the Captain Sams Spit Conveyance;

WHEREAS, the Parties have reached an agreement to settle all disputes solely as to the Captain Sams Spit Conveyance under Paragraph 16(f) of the ARDA and seek to contractually obligate the Parties to such agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby STIPULATED AND AGREED by and between the undersigned Parties that this matter between the Parties is hereby resolved as follows:

1. **QUITCLAIM DEED FROM KDP TO KICA.** Within ten (10) days of the Effective Date of this Agreement, KDP shall prepare, at its own expense, a quitclaim deed that conveys that certain real property identified as the Captain Sams Spit Conveyance to KICA for nominal consideration (“Deed”) and present such Deed to KICA for KICA’s review and approval. KDP and KICA further agree to negotiate in good faith any revisions to the Deed requested by KICA that effectuate the Captain Sam’s Spit Conveyance by the Property Owner to KICA as identified in Paragraph 16(f) of the ARDA. Within five (5) days of receiving notice of KICA’s

approval of the Deed prepared by KDP, KDP agrees to execute the Deed, through the use of a signatory who is legally authorized to bind KDP. Upon execution of the Deed, KRA/KDP agrees to deliver the executed Deed to the Escrow Agent as described in Paragraph 2 herein.

2. **ESCROW AGENT.** The Parties agree to the appointment of a mutually acceptable escrow agent (“Escrow Agent”) to hold the executed Deed for a period of ninety (90) days following the Effective Date of this Agreement. The Parties acknowledge and agree that on the earlier of the ninety-first (91st) day following the Effective Date of this Agreement or another date mutually agreed to by the Parties, the Escrow Agent shall record the Deed with Charleston County Register of Deeds unless instructed by KICA to delay the recording of the Deed for the purpose of amending the Deed property description as described in Paragraph 5 herein. The Escrow Agent shall be appointed by the Parties within ten (10) days from the Effective Date of this Agreement. The Parties further agree that the cost of the Escrow Agent for services connected with this Agreement will be divided with fifty percent (50%) to be paid by KRA/KDP and fifty percent (50%) to be paid by KICA.

3. **FORBEARANCE OF CLAIMS AGAINST KRA/KDP BY KICA FOR 90 DAYS.** In exchange for the commitments of KRA/KDP provided herein, KICA agrees to the forbearance of filing any legal or equitable claims, including binding arbitration, for a period of ninety (90) days from the Effective Date of this Agreement against KRA/KDP arising out of or in any way involving the Property Owner’s obligations provided in Paragraph 16(f) of the ARDA, including, the Captain Sam’s Spit Conveyance.

4. **SATISFACTION AND RELEASE.** KICA agrees the delivery of the deed of conveyance by KDP to KICA and its later recording fully satisfy KRA’s obligations related to the

Captain Sam's Spit Conveyance described in Paragraph 16(f) of the ARDA, and KICA hereby releases KDP from any further liability for any claim related thereto, effective upon recording of the deed.

5. **SURVEY OF CAPTAIN SAM'S SPIT.** Upon KRA/KDP's receipt thereof, KRA/KDP agrees to provide a copy to KICA of the survey being performed on the area known as Captain Sam's Spit on Kiawah Island, South Carolina, which includes the real property identified as the Captain Sam's Spit Conveyance.

6. **AMENDMENT OF QUITCLAIM DEED PROPERTY DESCRIPTION.** Within five (5) days of KRA/KDP's receipt of the property survey identified in Paragraph 5 herein, KRA/KDP agrees to prepare any necessary amended property description for the Deed that will effectuate the Captain Sam's Spit Conveyance, at its own expense, and provide such amended property description to KICA for KICA's review and approval. The Parties acknowledge and agree that the amended property description may be incorporated into the Deed recorded by the Escrow Agent with the Charleston County Register of Deeds and the determination of whether to incorporate such amended property description into the Deed shall be at KICA's sole discretion.

7. **RECORDING OF QUITCLAIM DEED.** The Parties agree that the timing of the recording of the Deed at the Charleston County Register of Deeds shall be at KICA's sole discretion and may be recorded at any time after ninety (90) days from the Effective Date of this Agreement or another date mutually agreed to by the Parties. KRA/KDP agree to the payment of any recording fees associated with KICA's recording the Deed with the Charleston County Register of Deeds and shall submit payment upon receipt of such invoice or upon request for payment for the recording fee by the Escrow Agent. The Parties further recognize that the final

property description in the deed and the recording of the deed are conditioned on the Town's Planning Commission's granting of a waiver of certain standards in the subdivision ordinances of the Town of Kiawah Island under Town Ordinance Sec. 14-254 so that the plat of the land to be conveyed will be approved and recorded. The Parties will use good faith efforts to seek this waiver at the regular monthly meeting of the Town's Planning Commission on March 6, 2024.

8. **CONVEYANCE OF CAPTAIN SAMS MARSHLANDS.** KRA agrees that it shall convey the marsh acreage on the river side of Captain Sams to KICA in a manner similar to KRA's prior conveyance of marsh acreage to KICA under Section 16(a) of the ARDA once a survey of the critical line is accomplished and any necessary approvals are obtained.

9. **NO ADMISSION.** Neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by KRA, KDP, or KICA of any liability, unlawful conduct of any kind or violation by KRA, KDP, or KICA of any law, rule or regulation nor that they or any of them are required to make the Captain Sams Spit Conveyance.

10. **OPPORTUNITY TO REVIEW.** The Parties acknowledge that they have had an opportunity to review this Agreement with counsel, understand the terms set forth herein, and are aware of the terms contained herein.

11. **SEVERABILITY.** Should any provision of this Agreement set forth herein be declared illegal or unenforceable by any court of competent jurisdiction, such that it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

12. **VENUE AND GOVERNING LAW.** This Agreement shall be governed by the laws of the State of South Carolina without regard to its conflict of law provisions.

13. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement between the Parties and supersedes all prior oral or written agreements, understandings, representations or warranties between the parties. The Parties acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with their decision to sign this Agreement, except those set forth in this Agreement.

14. **AMENDMENTS.** This Agreement may not be amended, modified, altered, or changed, except by a written agreement which is both signed by all Parties and which makes specific reference to this Agreement.

15. **BINDING EFFECT.** This Agreement shall be binding on and shall inure to the benefit the Parties, their successor, and assigns, including subsequent boards of KICA.

16. **EXECUTION IN COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be considered an original. All the counterparts together shall constitute one and the same instrument.

17. **NOTICE.** Any notices hereunder and delivery of documents as described in this Agreement shall be given in writing by certified mail, postage prepaid, at the following addresses:

To Kiawah Resort Associates, L.P.:

Jordan Phillips
South Street Partners
701 East Bay Street, Suite 518 |
Charleston, SC 29403
Email: jphillips@southstreetpartners.com

With copies to:

G. Trenholm Walker, Esq.
Walker, Gressette, & Linton, LLC
P.O. Box 22167
Charleston, SC 29403-2247
walker@wglfirm.com

To KDP II, LLC:

KDP II, LLC
South Street Partners
701 East Bay Street, Suite 518 |
Charleston, SC 29403
Email: jphillips@southstreetpartners.com

With copies to:

G. Trenholm Walker, Esq.
Walker, Gressette, & Linton, LLC
P.O. Box 22167
Charleston, SC 29403-2247
walker@wglfirm.com

To Kiawah Island Community Association, Inc.:

Kiawah Island Community Association, Inc.
Attn: Shannon White
23 Beachwalker Drive
Kiawah Island, SC 29455
shannon.white@kica.us

With copies to:

H. Brewton Hagood, Esq.
Timothy J.W. Muller, Esq.
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401
bhagood@rosenhagood.com
tmuller@rosenhagood.com

[SIGNATURE PAGES TO FOLLOW]

Dated: Jan 31, 2024

KIAWAH RESORT ASSOCIATES, L.P.

By: Coral Canary GP, L.L.C.

Its: General Partner


By: Jordan Phillips
Title: Vice President

Dated: Jan 31, 2024

KDP II, LLC


By: Jordan Phillips
Title: Vice President

Dated: Jan 31, 2024

**KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC.**


By: Shannon M. White
Title: Chief Operating Officer