Planning Commission
December 5, 2018

Supplementary Packet

• Application SDP-000014-2018 Support Documents
DATE: October 8, 2018
TO: John Taylor
CC: Ray Pantlik
FROM: Mark Permar
RE: Preliminary Plat Parcel 13

John….To assist in your review of the Preliminary Plat for Parcel 13, as identified in the 2013 Amended and Restated Development Agreement (DA) between the Town of Kiawah Island (TOKI) and Kiawah Resort Associates, L. P. (KRA), we provide the following summary:

**Background**
KRA has conducted a series of internal planning studies for Parcel 13 over the past 5 years assessing alternative land use and circulation patterns. These alternatives tested various uses as permitted in the DA, but have generally focused on an integrated residential and amenity neighborhood located at the western limit of the West Beach resort community. Development of the first phase of this area was initiated by Timbers Resort, approximately 2 years ago, with the introduction of a 21 unit fractional project that will be available for occupancy late this year.

This parcel has been consistently a part of the vision for West Beach Village since original Planned Development District (PDD) entitlements for Kiawah Island were approved by Charleston County in 1975. Specifically, this parcel allowed for a broad range of uses consistent with the early concept of an island strongly influenced by resort activities. One of my first assignments as a new employee of the company in 1979 was to test various residential types in order to meet a growing market for people interested in an intimate resort village where everything a guest would need is within a short 5 minute walk. These alternative studies included additional Shipwatch, Duneside and/or Seascape Villas that provided a mix of 1, 2 and 3 bedroom units that were accessed from an extended Duneside Road. Studies in this area were ended when the focus for future development shifted to the development of East Beach Village in 1980; however, the plan for Parcel 13 remained flexible for prompt development if needed by not terminating Duneside Road with a cul-de-sac. The only building that was executed within Parcel 13 was relocation of an employee beach facility from east of Oceanwoods Homes to a site immediately east of the PRC parking area, in order to make way for Mariners Watch Villas. This building burned down sometime in the 1980s, but the parking area remains and is now used for Kiawah Island Club Member beach access.
Parcel 13 remained an important part of the business modeling conducted in a multi-year assessment for the Kuwaiti owners in 1980-81, in a document known as Plan-to-Completion, by including over 150 residential units and beachside amenities all accessed from Duneside Road; however, company focus remained down island with subsequent phases of East Beach Village and Vanderhorst. With passage of the Tax Reform Act in 1986, company development shifted away from intense multi-family residential to low-density homesite development. Ultimately the original Kuwaiti owner sold all remaining assets to a new entity that was the precursor to KRA in 1988, the same year the TOKI was formed. One of the first acts of the newly formed jurisdiction was to confirm the PDD entitlements and vision for Kiawah Island as a “Seaside Resort Community”.

In 1994, after over a year of intense negotiations, the TOKI and KRA entered into the first of what has become a series of DAs that clarify entitlements for all lands owned by KRA. At the time of the 1994 DA, KRA committed to elimination of a third resort village at Rhett’s Bluff and substantial reduction of both overall residential counts and commercial allocations, to allow for resort focus on the remaining West Beach and East Beach villages. The community desired, and KRA agreed to, a more balanced approach to resort and residential uses. With that in mind, Parcel 13 was identified as an appropriate location for additional hotel rooms (325) and/or high density residential development as accessed from Duneside Road. In a subsequent update of the DA, KRA further agreed to elimination of the hotel room allowance on Parcel 13 in exchange for potential low-density detached single family development on Capt Sams. All residential (R-3) and commercial (C) entitlements were retained for Parcel 13 as presently described in the 2013 Amended and Restated DA.

Over 4 years ago Timbers Resort approached KRA about the potential for developing a high-quality fractional residential development within Parcel 13. This lead to a renewed assessment of a master plan that balances 21st century residential development within an area formed in the late 1970s. Residential development patterns as permitted within the standards of the DA were evaluated and particular focus was given to primary vehicular access. At the time, it was not clear what if any KIGR redevelopment plans/timing were for the old resort core and there was little understanding of the potential impact of public traffic to the PRC parking would have on residences within Parcel 13. Based upon the evaluation at the time, it was determined the better vehicular access pattern would be to provide access from Beachwalker Drive. A plat was submitted to allow for conveyance of the Timbers Resort parcel and subsequent building permit issuance. Since that early plat submittal there has been significant progress and initial implementation of the KIGR plans for West Beach and a much better assessment of the substantial negative impacts associated with public traffic accessing the PRC parking area.

Over the past year, KRA has proposed an alternative vehicular circulation pattern to provide access to Timbers Resort and future residential development within Parcel 13 by extending Duneside Road. This initially included potential connectivity to Beachwalker/Cape Charles and a second controlled security gate as well as localized improvements to trails and trail road crossings to enhance safety for both existing and future residents/guests within the immediate area. KICA registered their concerns about connectivity and forwarded notification of these concerns to the TOKI. Within the past 3 months there has been a concerted effort by both KICA and KRA to resolve particular areas of concern to balance entitlements allowed as a
matter of right, that permit the proposed development of Parcel 13, with concerns of owners within the immediate area. Based upon recent discussions, KICA and KRA are formulating a Memorandum of Understanding (MOU) that addresses these concerns.

The proposed Preliminary Plat for Parcel 13 includes an extension of the Duneside Road (in the name of Southern Pines Lane) that ends in a cul-de-sac and does not connect to Cape Point. This would clearly preclude any vehicular traffic from a back entrance to Kiawah Island. In response to the concerns raised by KICA, KRA has agreed to enter into a MOU that provides the following assurances to minimizing future development impacts within the immediate area:

- Define a specific area accessible by Duneside Road/Southern Pines Lane that is limited to no more than 120 future Residential Dwelling Units and related amenities
- A specified area north of Southern Pines Lane is limited to no more than 4 residential buildings
- Timbers Resort 21 Dwelling Units will have access from Duneside Road/Southern Pines Lane
- All other residential Dwelling Units within Parcel 13 will have vehicular access from Beachwalker Drive and shall not have direct vehicular access to Duneside Road/Southern Pines Lane
- Member parking for a potential western Kiawah Island Beach Club accessed from Duneside Road/Southern Pines Lane shall be limited to 30 spaces from within Parcel 13 and shall be in addition to off-street parking requirements for residential Dwelling Units
- Additional Member parking, commercial deliveries, service and employees for a potential western Kiawah Island Beach Club access shall be from Cape Point
- All commercial traffic associated with construction of residential and amenity structures shall be accessed from Beachwalker Drive/Cape Point if at all feasible
- KRA proposes to participate in a collaborative effort to improve nearby existing trails and pedestrian circulation safety and beach access

John, the above content is an attempt by KRA to provide a brief summary of the consistency of entitlements and intent of development for Parcel 13 over the 40 plus year history of this area of Kiawah Island. Additionally, recognizing the nearby owner concerns of potential development within an area of the island that has not seen any substantial new development since the late 1970’s, we have listed the commitments by KRA to self-impose restrictions to minimize the impact during construction and ultimate occupancy of residential dwellings that are substantially below the 234 Dwelling Units permitted as a matter of right within Parcel 13. Although we are still in the process of evolving a master plan for the entirety of the parcel, we will be ready to present to the planning commission members select examples, with normal disclaimers, of the type of studies we are doing in order to give them a sense of development pattern. Contact me at your convenience if you have any questions about this summary.

Thanks….mark
October 4, 2018

VIA HAND DELIVERY

Mr. John W. Taylor, Jr.
Planning Director
Town of Kiawah Island Community Development Department
4475 Betsy Kerrison Parkway
Kiawah Island, SC 29455

Re: Revised Beachwalker East Preliminary Plat

Dear John,

Thank you for your time yesterday to provide a cursory review of the above referenced preliminary plat. I have enclosed the fully executed copies of the required ownership and restrictive covenants affidavits. Also included is a copy of the access easement which is referenced in the exception stated in the restrictive covenant affidavit.

I understand SW+A Surveying Inc. has provided your office with the full-sized prints of the plat and Mark Permar will be providing a background narrative on the intended use of the modified Southern Pines Lane proposed on this plat.

Thanks for your assistance in this application.

Sincerely,

Ray C. Pantilick, P.E.
Director of Development

CC: Kevin Kuzio, SW+A Surveying Inc.
Mark Permar, Principal-permar inc.
PERMIT APPLICATION: RESTRICTIVE COVENANTS AFFIDAVIT

I, Jordan Phillips, Vice President of Coral Canary GP, L.L.C., General Partner of Klawah Resort Associates, L.P. (KRA), and Vice President of KDP II LLC (KDPII), have reviewed the restrictive covenants applicable to Parcel Identification Number(s) 207-05-00-001, 0011, 118, 122 & 124 located south of Beachwalker Road, in the Town of Kiawah Island, Charleston County, South Carolina, and the proposed permit application is not contrary to, does not conflict with, and is not prohibited by any of the restrictive covenants, as specified in South Carolina Code of Laws, Section 6-29-1145, except as follows:

KRA, KDPII and Timbers Klawah Acquisition Partners, LLC ("Timbers") previously entered into the attached recorded Access and Construction Easement Agreement ("Agreement"), whereby KRA and KDPII granted easements to Timbers for access to and from Lot 3 via Cape Point Road and Southern Pines Lane as shown on prior recorded plats. KRA, KDPII and Timbers are finalizing an amendment to the Agreement ("Amendment") to grant alternative access over the reconfigured Southern Pines Lane via Duneside Road once a revised plat is approved and recorded. However, until the Amendment is executed, the proposed preliminary plat application conflicts with the Agreement to the extent that the preliminary plat proposes to terminate access to Lot 3 from Cape Point Road and provide alternative access solely from Duneside Road.

The proposed preliminary plat is being submitted with the approval and consent of Timbers, the owner of Lot 3, Southern Pines Lane (Parcel 13C) as shown on said plat, and Timbers has joined in the execution of this Affidavit to evidence its consent to the submittal of the subject preliminary plat. KRA, KDPII and Timbers will provide a copy of the executed Amendment prior to the Planning Board meeting in connection with this application.

Klawah Resort Associates, L.P.
By: Coral Canary GP, L.L.C.
Its: General Partner

KDP II LLC
By:

Name: Jordan Phillips, Vice President
Date: 10.3.18

Consented to by:
Timbers Klawah Acquisition Partners, LLC
By: Chris Burden
Its: Authorized Signatory

Effective July 1, 2007, South Carolina Code of Laws Section 6-29-1146 requires local governments to inquire in the permit application, or in written instructions provided to the applicant, if a tract or parcel of land is restricted by a recorded covenant that is contrary to, conflicts with or prohibits an activity for which a permit is being sought. (Section 6-29-1146 is copied on the back of this page)

For Staff Use Only
Received by __________ Date __________ Application Number: __________
STATE OF SOUTH CAROLINA  )
COUNTY OF CHARLESTON  )

AFFIDAVIT OF OWNERSHIP
Application #_________
(Beachwalker East – Parcel 13)

KNOW ALL MEN BY THESE PRESENTS that KIAWAH RESORT ASSOCIATES, L.P.
and KDP II LLC:

1. Own those certain parcels of land located in the Town of Kiawah Island, Charleston
County, South Carolina, designated as the Cape Point Right-of-Way, Cape Point Right-of-Way
Extension, Proposed Southern Pines Lane Right-of-Way, Lot 1, Lot 2, and the .768 acre area entitled
“Portion of Land Titled to KDP II LLC to be Conveyed to Kiawah Resort Associates LP,” on a
proposed plat 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, bearing Charleston County Tax Map Sequence Numbers 207-05-00-118, 207-05-
00-122, 207-05-00-124, and a portion of TMS Numbers 207-05-00-001 and 0011.

2. Said properties were conveyed (i) to Kiawah Resort Associates, L.P. by deed of
conveyance of Kiawah Resort Associates, a South Carolina joint venture dated June 26, 1992, and
recorded in Book L215, page 486, and Quit-Claim Deed of the Kiawah Island Community
Association, Inc. dated December 7, 2017, and recorded in Book 0685, page 017 in the Register of
Deeds Office for Charleston County, S.C.; and (ii) to KDP II LLC by Special Warranty Deed of
Kiawah Development Partners II, Inc. dated May 31, 2013, and recorded in Book 0335, page 077 in
said ROD Office.

Sworn to before me this 3rd day of October, 2018.

Notary Public for South Carolina
My commission expires: 12-10-2020

KIAWAH RESORT ASSOCIATES, L.P.
(Corp. Seal)

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

By: ____________________________
Jordan Phillips
Its: Vice President

Sworn to before me this 3rd day of October, 2018.

Notary Public for South Carolina
My commission expires: 12-10-2020

KDP II LLC (Corp. Seal)

By: ____________________________
Jordan Phillips
Its: Vice President

ELISABETH F. NIMMONS
Notary Public for South Carolina
My Commission Expires: 12-10-2020
ACCESS AND CONSTRUCTION EASEMENT AGREEMENT

K&L Gates LLP
134 Meeting Street, Suite 500
Charleston, South Carolina 29401
Attention: Brian Wildstein, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THIS ACCESS AND CONSTRUCTION EASEMENT AGREEMENT (this “Agreement”), dated January 31, 2017 (the “Effective Date”), is made by and between KIAWAH RESORT ASSOCIATES, L.P., a Delaware limited partnership (“Grantor,” and together with its successors, assigns and successors-in-title, the “Grantor Parties”), KDP II LLC, a South Carolina limited liability company and an affiliate of Grantor (“KDP II”), and TIMBERS KIAWAH ACQUISITION PARTNERS, LLC, a Delaware limited liability company, its successors and permitted assigns (“Grantee”).

WITNESSETH:

WHEREAS, Grantor owns all that certain real property (the “KRA Property”) located in the Town of Kiawah Island, Charleston County, South Carolina, and designated as (i) “Lands of Kiawah Resort Associates LP, TMS #207-05-00-118” containing 860,612 square feet/ 19.757 acres, and (ii) “Proposed Cape Point Right-of-Way ‘Area B’” containing 2.359 square feet/ 0.054 acres (“Proposed Cape Point Right-of-Way ‘Area B’”), each as shown on that certain plat prepared by Seamon Whiteside & Associates Surveying, LLC, entitled “CONDITIONAL SUBDIVISION PLAT OF PARCEL 13, TMS #207-05-00-118, BEACHWALKER EAST, KIAWAH RESORT ASSOCIATES LP, LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA”, dated June 4 2016, last revised on July 12, 2016, and recorded in the RMC Office for Charleston County, South Carolina (the “Land Records”), in Book L16, at Page 0413 (the “Recorded Plat”);

WHEREAS, KDP II owns that certain real property located in the Town of Kiawah Island, Charleston County, South Carolina, designated as “Proposed Cape Point Right-of-Way ‘Area A’”, a portion of TMS #207-05-00-0011, as such parcel is shown on the Boundary Line Adjustment Plat recorded in the Land Records in Book L11, at Page 0226, containing 13,602 square feet/ 0.312 acres, as shown on the Recorded Plat (the “Proposed Cape Point Right-of-Way ‘Area A’”);

WHEREAS, contemporaneously herewith, Grantee is purchasing from Grantor that certain portion of the KRA Property designated as “Proposed Lot 3” on the Recorded Plat, comprising approximately 3.48 acres of land (the “Timbers Property”; the remainder of the KRA
Property minus the Timbers Property being sometimes hereinafter referred to as the “Residual Property”); and

WHEREAS, Grantee plans to develop on the Timbers Property a project containing multifamily residential dwelling units including, without limitation, vacation multiple ownership interests and short term residential occupancy, together with appropriate ancillary non-public facilities and services for use only of owners of the Timbers Property, their authorized guests and family members, and including a private residence club, food and beverage service, spa services, concierge services, beach services, and vacation exchange and rental services (the “Grantee’s Project”).

WHEREAS, as a condition of the sale of the Timbers Property and to facilitate development of the Grantee’s Project, Grantor has agreed to provide Grantee with (or cause the provision of) (i) legal access to the Timbers Property from a public roadway through a recorded easement, (ii) certain drainage and utility easements; and (iii) a construction easement across a portion of the Residual Property, all on the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of TEN DOLLARS ($10.00), the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Permanent Access, Drainage and Utility Easements.

   (a) Grantor’s Grant of Permanent Easements. Grantor hereby grants and conveys to Grantee, for the benefit of the Timbers Property and use by Grantee and its employees, agents, licensees, guests, contractors, successors, assigns and successors-in-title (collectively, the “Grantee Parties”), the following, perpetual, non-exclusive easements (collectively with the Proposed Cape Point Right-of-Way “Area A” Easement defined in Section 1(b) below, the “Permanent Access, Drainage and Utility Easements”): (i) an easement over and across (x) the Proposed Cape Point Right-of-Way “Area B” (together with the Proposed Cape Point Right-of-Way “Area A”, the “Cape Point Right-of-Way”), and (y) that portion of the Residual Property depicted on the Recorded Plat as the “Proposed Southern Pines Lane Right-of-Way” (the “Southern Pines Lane Right-of-Way”, and together with the Cape Point Right-of-Way, the “Right-of-Way Easement Area”), for the installation of underground utilities and vehicular and pedestrian ingress and egress from Beachwalker Road over the Cape Point Right-of-Way and the Southern Pines Lane Right-of-Way to the Timbers Property; and (ii) such stormwater and drainage easements as may be shown on or required by the approved stormwater and drainage plan submitted jointly by Grantor and Grantee to the South Carolina Department of Health and Environmental Control (“DHEC”) for stormwater management on the Timbers Property and adjacent property owned by Grantor, which plan contemplates drainage from the Timbers Property via a pipe passing under the Southern Pines Lane Right-of-Way to a drainage ditch and existing pond located adjacent to or on the Residual Property.

   (b) KDP II’s Grant of Permanent Easement. Subject to the terms and conditions set forth in this Agreement, from and after the Effective Date, KDP II hereby grants and conveys to Grantee, for the benefit of the Timbers Property and use by the Grantee Parties, a perpetual, non-exclusive easement over and across the Proposed Cape Point Right-of-Way “Area
2. **Temporary Access Easements.**

(a) **Grant.** Subject to the terms and conditions set forth in this Agreement, commencing on the Effective Date and continuing until termination of such easements pursuant to Section 4, below, Grantor grants and conveys to Grantee, for use by Grantee and the Grantee Parties, temporary, non-exclusive easements (collectively, the “Temporary Construction Easements”) over and across the following areas depicted on the construction staging plan attached hereto as Exhibit A (the “Staging Plan”): (a) the thirty-five (35) feet wide area labeled on the Staging Plan as the “initial construction site access road”, extending from Beachwalker Road to the Southern Pines Lane Right-of-Way (the “Temporary Access Road Area”); and (b) the areas labeled on the Staging Plan as “Construction Double-Wide Trailer” and “Concrete/Truck Tire Wash Station” (together, the “Construction Staging Areas”).

(b) **Construction.** Grantee shall perform the following work at its sole cost and expense and as determined reasonably necessary by Grantee in connection with Grantee’s construction of the Grantee’s Project (collectively, the “Temporary Easement Work”): (i) clear and prepare for vehicular access the Temporary Access Road Area and that thirty-five (35) feet wide portion of the Southern Pines Lane Right-of-Way lying between the Temporary Access Road Area and Grantee’s Project (the “Southern Pines Lane Temporary Access Area”), which is necessary to complete the provision of construction vehicle and pedestrian access from Beachwalker Road to the Grantee’s Project over the Temporary Access Road Area and the Southern Pines Lane Temporary Access Area; (ii) install and construct any temporary construction road needed for Grantee’s use of the Temporary Access Road Area, excluding the Right-of-Way Easement Area, which shall remain the responsibility of Grantor; and (iii) clear and prepare for use, as necessary, the Construction Staging Areas. All Temporary Easement Work shall be performed in a good and workmanlike manner and in accordance with and subject to Grantee’s obtaining all permits, authorizations and approvals as may be required by applicable governmental or administrative authorities (including, without limitation, the Kiawah Island Architectural Review Board) and restrictive covenants of record. Grantor, at its sole cost and expense, shall use good faith efforts to cooperate with Grantee and shall use commercially reasonable efforts to obtain such planning approvals as may be necessary for the Temporary Construction Easements with sufficient time to prevent delay in the anticipated commencement date of Grantee’s construction of the Grantee’s Project; provided, however, that Grantor shall not be responsible for any delays resulting from Force Majeure (as defined in Section 5, below).

3. **Timing of Staging and Use of Easements.**

(a) **Temporary Construction Easements.** Subject to any Temporary Easement Suspension Periods (defined below), Grantee shall have access to the Temporary Access Road Area and Construction Staging Areas commencing on the Effective Date and continuing until termination of the Temporary Construction Easements pursuant to Section 4, below. Upon at least two (2) business days’ prior notice from Grantor that Grantor requires Grantee to temporarily vacate the Temporary Access Road Area to facilitate construction of improvements.
contemplated by Grantor (any such time period being referred to as a "Temporary Easement Suspension Period"), Grantee shall cease using the Temporary Access Road Area during the Temporary Easement Suspension Period, provided that Grantor either provides alternative vehicular and pedestrian access to the Grantee’s Project during the Temporary Easement Suspension Period, or Grantee determines, in its reasonable discretion, that no delay in construction of the Grantee’s Project will result from such suspension of use of the Temporary Access Road Area.

(b) Southern Pines Lane Right-of-Way. Notwithstanding anything in this Agreement to the contrary, commencing on the Effective Date and continuing until such date that Grantor’s contractor has (i) applied an initial layer of asphalt across the Southern Pines Lane Right-of-Way, and (ii) approved construction vehicle use of the Southern Pines Lane Right-of-Way (the “Initial Paving Date,” anticipated to be June 26, 2017), Grantee agrees that it will not access the Southern Pines Lane Right-of-Way without Grantor’s prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that during such period, Grantee shall have the right, at its sole cost and expense, to access (from the Temporary Access Road Area) and clear, rough grade, and apply stone base to the Southern Pines Lane Temporary Access Area. Grantor and Grantee shall cooperate to coordinate construction of the Temporary Construction Easements and Permanent Access, Drainage and Utility Easements. Upon at least two (2) business days prior notice from Grantor that Grantor or its contractor needs to close access over the Southern Pines Lane Temporary Access Area to complete paving or other work, Grantee shall refrain from using that area during the completion of such work; provided, however, that Grantor shall use commercially reasonable efforts to provide alternative access to the Grantee’s Project during such time periods. From and after the Initial Paving Date (and prior to such date with Grantor’s consent as provided for above), and during the construction of the Grantee’s Project, Grantee may, on a non-exclusive and temporary basis, use a portion of the Southern Pines Lane Right-of-Way for additional lay down, staging, and parking of construction vehicles and secondary site access to the Grantee’s Project. Upon completion of the Grantee’s Project, to the extent reasonably necessary to repair any damage caused by Grantee’s use of the Southern Pines Right-of-Way (normal wear and tear excepted), or to the extent desired by Grantee to restore the visual aesthetics of the roadway, Grantee will promptly repave the Southern Pines Right-of-Way with a second layer of asphalt at Grantee’s sole cost and expense.

4. Termination. The Temporary Construction Easements shall terminate automatically and be of no further force and effect upon the earlier of: (a) the date that KDP II, Grantor and/or its contractor complete construction of a paved roadway traversing the Right-of-Way Easement Area (unless Grantor elects by written notice to Grantee requiring that Grantee must continue using the Temporary Access Road Area and the Construction Staging Area in lieu of the Right-of-Way Easement Area, or unless Grantee’s construction vehicles are too large to access the Timbers Property via the Right-of-Way Easement Area, in which case Grantee shall be permitted to continue using the Temporary Access Road Area for such limited purpose with Grantor’s prior written consent, not to be unreasonably withheld, conditioned or delayed); (b) completion of construction of the Grantee’s Project, as evidenced by issuance of applicable governmental approvals for occupancy of the buildings comprising the Grantee’s Project (the “Project Completion Date”); or (c) the date that Grantee notifies Grantor in writing that Grantee no longer requires the use of the Temporary Construction Easements (the earlier of such dates,
the "Temporary Construction Easement Termination Date"). If so requested by Grantor in writing on or following the Temporary Construction Easement Termination Date, Grantee shall promptly execute for Grantor’s recordation in the Land Records a partial termination of easement terminating the Temporary Construction Easements. Within thirty (30) days following the Temporary Construction Easement Termination Date, Grantee shall, at its sole cost and expense, restore the portion of the Residual Property impacted by Grantee’s use of the Temporary Construction Easements to substantially the same condition the property was in prior to Grantee’s use, excluding the replacement of vegetation, trees, shrubs or other landscaping.

5. **Definitions.** As used herein the following terms have the following meanings:

   (a) **"Easement"** means, collectively, the Permanent Access, Drainage and Utility Easement, the Temporary Construction Easements, and any other easement created pursuant to this Agreement.

   (b) **"Easement Area"** means, collectively, the Temporary Road Access Area, the Construction Staging Areas, the Right-of-Way Easement Area, and the Southern Pines Lane Temporary Access Area.

   (c) **"Force Majeure"** means any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other causes of any kind whatsoever which are beyond the reasonable control of the applicable party.

6. **Reservation of Rights.** Grantor and KDP II reserve, for the benefit of themselves and any successors, assigns, and successors-in-title, all other rights in and to the Easement Area which are not expressly granted to Grantee pursuant to Sections 1 and 2 hereof, including, without limitation, the right to grant other easements within, or access to, the Easement Area (including, without limitation, access, construction and/or utility easements, permits and licenses), provided, however, that Grantor’s use does not unreasonably interfere with Grantee’s use of the Easements provided in this Agreement.

7. **No Parking, No Blocking.** Grantee shall not park or permit parking in the Easement Area, except for those portions of the Southern Pines Lane Right-of-Way and the Construction Staging Areas designated for parking and staging on Exhibit A during the times authorized for such use pursuant to this Agreement. Except as expressly permitted otherwise herein, Grantee shall not block, and shall not permit the blocking of, access to or use of any portion of the Easement Area or obstruct or interfere in any way with the free flow of vehicular and pedestrian traffic across any Easement Area.

8. **Maintenance.**

   (a) **Permanent Easement Maintenance.** Subject to the possible conveyance of the Easements to a homeowners’ or other community association ("HOA"), Grantor, at its sole cost and expense, shall repair, maintain and, if destroyed, replace the Easement Area (except for the Proposed Cape Point Right-of-Way “Area A”, which shall be repaired, maintained and, if destroyed, replaced by KDP II) and all associated access, drainage and utility improvements in good condition and repair, except for any damage resulting from the acts or negligent omissions or willful misconduct of Grantee or any of the Grantee Parties, which damage Grantee shall
promptly repair at its sole cost and expense after receipt of written notice from Grantor (or KDP II, as applicable) requesting such repair and containing the reason of Grantor (or KDP II) for concluding that such damage resulted from the act or negligent omission or willful misconduct of Grantee or any of the Grantee Parties. From and after the date, if ever, that ownership of the Permanent Access, Drainage and Utility Easements and related improvements are transferred to a HOA, the repair, replacement, maintenance and reimbursement obligations of Grantor, Grantee and KDP II under this Section 8 with respect to the Permanent Access, Drainage and Utility Easements shall terminate and be of no further force or effect, except with respect to any then-outstanding repair or reimbursement obligations pertaining to the Permanent Access, Drainage and Utility Easements not otherwise assumed by the HOA.

(b) Temporary Easements. Grantee shall, at its sole cost and expense, repair, maintain, and, if destroyed, replace the Temporary Access Road Area and the Construction Staging Areas in good condition and repair, and to the extent required in compliance with such permits, authorizations and approvals as may be required by applicable governmental or administrative authorities (including, without limitation, the Kiawah Island Architectural Review Board) and any restrictive covenants of record, except for any damage resulting from the acts or negligent omissions or willful misconduct of any of the Grantor Parties, which damage Grantor shall promptly repair at its sole cost and expense upon receipt of written notice from Grantee requesting such repair and containing Grantee’s reason for concluding that such damage resulted from the act or negligent omission or willful misconduct of Grantor or any of the Grantor Parties. If Grantor utilizes the Temporary Access Road Area and the Construction Staging Areas during construction or development of the Residual Property (beyond satisfying Grantor’s obligations contemplated by this Agreement), Grantee shall invoice Grantor for fifty percent (50%) of the costs reasonably incurred by Grantee to maintain such easement area(s) used, except with respect to any damage resulting from the acts or negligent omissions or willful misconduct of Grantee, Grantor or any Grantee Party or Grantor Party, in which case the offending party (either Grantor or Grantee) shall be responsible to the other party for such costs. From and after the Temporary Construction Easement Termination Date, Grantee’s repair and reimbursement obligations set forth in this Section 8 shall terminate and be of no further force or effect, except with respect to: (i) any pending or then-outstanding repair or reimbursement obligations pertaining to any portion of the Temporary Access Road Area and/or the Construction Staging Area; (ii) the extent Grantor elects by written notice to Grantee requiring that Grantee continue using the Temporary Access Road Area and the Construction Staging Area in lieu of the Right-of-Way Easement Area during construction of the Grantee’s Project, pursuant to Section 4(a) hereof; and (iii) the extent to which Grantee is permitted by Grantor pursuant to Section 3(b) above to continue using the Temporary Access Road Area to accommodate the size of Grantee’s construction vehicles, in which case Grantee shall continue to repair and maintain the Temporary Access Road Area and the Construction Staging Area as set forth herein.

9. Indemnification. Grantee, Grantor and KDP II shall each protect, defend, release and save harmless the other and the other’s affiliates, members, partners, officers, employees, directors, managers and agents (“Indemnified Parties”) from and against any and all claims, demands, loss, damage, expense (including reasonable attorneys’ fees), liens, charges and liability of every kind and description, including personal injury, loss of life, and property damage (collectively, “Claims”), arising from the exercise of any of the rights granted under this Agreement, or the use or occupancy of, or any activities on or about, the Easement Area by any
of them or their respective Indemnified Parties, except to the extent arising out of the gross negligence or willful misconduct of the other or any of their respective Indemnified Parties. The indemnity obligations under this Agreement include, but are not limited to, all Claims against any of the Indemnified Parties by any employee or former employee of Grantee or Grantor or any of their affiliates or respective contractors or subcontractors. For this purpose, the indemnifying party expressly and specifically waives, only in respect of the Indemnified Parties, all immunity and limitation on liability under any worker’s compensation or industrial insurance act that may be applicable in the case of such a claim by any employee or former employee or its affiliates or any of their respective contractors or subcontractors. The obligations of this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. Insurance.

(a) Grantee shall procure and continuously maintain a commercial general liability insurance policy with limits of no less than $2,000,000 per occurrence and $3,000,000 in the aggregate, and otherwise sufficient to cover Grantee’s indemnification obligations hereunder (the “CGL Policy”). Any and all contractors and subcontractors performing any work permitted hereunder shall at all times during the performance of such work obtain and maintain the same CGL Policy. Additionally, at all times, Grantee shall obtain and maintain, and/or cause its contractors and subcontractors to obtain and maintain, worker’s compensation insurance as required under applicable law, and contractual liability insurance, automobile liability insurance and any other insurance reasonably requested by Grantor, each on an occurrence basis, with respect to Grantee’s obligations hereunder, and with limits that are reasonably acceptable to Grantor.

(b) All insurance required under this Section 10 shall: (i) be provided by a company lawfully authorized to do business in the State of South Carolina having a rating of at least A+VII by Best’s Rating Guide; (ii) be endorsed to name Grantor, KDP II and any affiliate reasonably requested by Grantor or KDP II as an additional insured; (iii) state that the policy is primary and without any right of contribution by Grantor or KDP II or any insurance effected by either or Grantee; (iv) be written on an occurrence basis; (v) provide that coverages afforded under the policy will not be modified, canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to Grantor and KDP II; and (vi) contain a waiver of subrogation clause with respect to the parties thereto.

(c) Prior to Grantee’s use of the Easement, and thereafter, upon renewal or replacement of any insurance required under this Section 10 and upon Grantor’s or KDP II’s reasonable periodic request, Grantee shall provide Grantor and KDP II evidence of the insurance coverages required hereunder in form reasonably acceptable to Grantor.

(d) After the fifth (5th) anniversary of this Agreement, the insurance amounts required by this Section 10 shall be subject to reasonable annual adjustment from time to time by Grantor and/or KDP II.

11. Liens. Grantee will not suffer or permit to be enforced against the Residual Property or the Proposed Cape Point Right-of-Way “Area A” any mechanics, materialmen’s or contractor’s liens or any judgment or claim for damage arising from Grantee’s construction of
any temporary construction road or other work in the Easement Area, or its exercise of its rights hereunder (collectively, the "Liens"). If any such Lien is claimed, Grantee shall cause the same to be removed from title to the Residual Property or the Proposed Cape Point Right-of-Way "Area A", as applicable, within thirty (30) days after receiving notice of such Lien and in all events before any action is brought to enforce the same against the Residual Property or the Proposed Cape Point Right-of-Way "Area A", as applicable. Grantor will not suffer or permit to be enforced against the Easement Area (minus the Proposed Cape Point Right-of-Way "Area A"), and KDP II will not suffer or permit to be enforced against the Proposed Cape Point Right-of-Way "Area A", any mechanics, materialmen's or contractor's liens or any judgment or claim for damage arising from Grantor's or KDP II's construction of any road or other work in the Easement Area, or its exercise of its rights hereunder (collectively, the "Liens"). If any such Lien is claimed, Grantor or KDP II, as applicable, shall cause the same to be removed from title to its portion of the Easement Area within thirty (30) days after receiving notice of such Lien and in all events before any action is brought to enforce the same against such portion of the Easement Area.

12. Remedies. In the event either Grantor, KDP II or Grantee fails to comply with any of their respective obligations under this Agreement, and such failure continues in excess of fifteen (15) days after the offending party receives written notice from one or more of the non-offending parties of such failure, then either or both of the non-offending parties shall have the right, but not the obligation: (i) to enforce compliance with this Agreement in any manner provided for by law or in equity, including but not limited to (a) an action for damages (excluding special, consequential or punitive damages), and (b) an action for injunctive relief, whether to enjoin any violation or to specifically enforce the provisions of this Agreement; or (ii) to perform such delinquent obligation(s) on behalf of the offending party and be reimbursed by the offending party for the costs incurred in remedying the default, together with interest thereon at the rate equal to the prime rate of interest as published from time to time in the Eastern Edition of the Wall Street Journal plus two percent (2%), and all costs of collection, if any, including reasonable attorneys' fees. Notwithstanding the foregoing, if the defaulted obligation is susceptible of cure but cannot reasonably be cured within such fifteen (15) day period, and provided that the offending party shall have commenced to cure such defaulted obligation with such fifteen (15) day period and thereafter diligently and expeditiously proceeds to cure the same, such fifteen (15) day period shall be extended for such time as is reasonably necessary for the offending party in the exercise of due diligence to cure such default, such additional period not to exceed sixty (60) days. The obligations of this Section 12 shall survive the expiration or earlier termination of this Agreement.

13. Attorneys' Fees. In any action involving the enforcement or interpretation of this Agreement, including appeals, the prevailing party in such litigation shall be entitled to recover, from the non-prevailing party, the prevailing party's reasonable attorneys' fees, costs and disbursements.

14. Notices. Notices given pursuant to this Agreement shall be in writing and given either by actual delivery of the subject into the hands of the party entitled to receive it or by mailing the notice in the United States mail, certified mail, return receipt requested, or by overnight delivery using a reputable commercial courier (e.g., FedEx, UPS) to the address
provided below, or to such other address as the parties may have communicated to one another by notice served in accordance with the provisions of this section:

If to Grantor: Kiawah Resort Associates, L.P.
1 Kiawah Island Parkway
Kiawah Island, SC 29455
Attention: Patrick Melton
Tel: (843) 768-3400
Fax: (843) 768-3468
Email: pmelton@southstreetpartners.com

If to KDP II: KDP II LLC
1 Kiawah Island Parkway
Kiawah Island, SC 29455
Attention: Patrick Melton
Tel: (843) 768-3400
Fax: (843) 768-3468
Email: pmelton@southstreetpartners.com

If to Grantee: Timbers Kiawah Development, LLC
C/o Timbers Services Group, LLC
181 Bluffton Road, Suite F1012
Bluffton, SC 29910
Attention: Chris Burden
Tel: (843) 837-2552
Fax: (970) 963-4616
Email: cburden@timbersresorts.com

15. Entire Agreement. This Agreement contains all the terms agreed to by the parties hereto relating to its subject matter. It replaces all previous written and oral discussions, understandings, and agreements. Any oral representations or modifications concerning this instrument shall be of no force and effect. Any modification of this Agreement must be in writing and must be signed by all affected parties.

16. No Partnership. Nothing contained in this Agreement shall be deemed or construed to create a relationship of principal and agent, partnership or joint venture, or any other association between any of the parties hereto.

17. No Waiver. No failure or delay of either party in exercising any right, power, or privilege hereunder shall operate as a waiver of such party’s right to require strict compliance with any term of this Agreement.

18. Compliance with Laws. Grantee, Grantor and KDP II shall promptly comply with all laws, ordinances, orders and regulations of all applicable governmental authorities in the exercise of each of their rights under this Agreement. Grantee shall also observe such rules and
regulations as may be adopted by Grantor and/or KDP II from time to time for the safety, care and cleanliness of their respective portions of the Easement Area.

19. **Run with the Land.** The provisions of this Agreement shall run with the land and bind title to the Residual Property and the Proposed Cape Point Right-of-Way “Area A”, be binding upon and inure to the benefit of the Timber Property and all parties hereto, and their respective heirs, personal representatives, successors, assigns and successors-in-title.

20. **No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Residual Property or the Proposed Cape Point Right-of-Way “Area A.” No easements, except as specifically set forth herein, shall be implied by this Agreement; in that regard, and without limiting the foregoing, no easements for parking or signage are granted or implied.

21. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be held to be invalid or unenforceable, then and in that event, the parties intend that the remainder of this Agreement shall not be affected thereby, and the parties intend that in lieu of each clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

22. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina, without reference to its conflicts of laws principles.

23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, and all of which together shall be deemed to constitute one original agreement.

[Signatures on Following Pages]
IN WITNESS WHEREOF, the undersigned have executed and delivered this Access and Construction Easement Agreement under seal as of the first 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., a Delaware limited liability company
Its: General Partner

By:
Name: Jordan Phillips
Its: Vice President

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ACKNOWLEDGMENT

I, Elizabeth F. Nimmons, a Notary Public in and for the County and State aforesaid, certify that Jordan Phillips, as Vice President of Coral Canary GP, L.L.C., personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of Coral Canary GP, L.L.C., as general partner of Kiawah Resort Associates, L.P.

Notary Public for South Carolina
My commission expires: 12-10-2020

ELISABETH F. NIMMONS
Notary Public for South Carolina
My Commission Expires: 12-10-2020

Access and Construction Easement Agreement
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

By: 
Name: Jordan Phillips
Title: Vice-President

KDP II LLC, a South Carolina limited liability company

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ACKNOWLEDGMENT

I, ELISABETH F. NIMMONS, a Notary Public in and for the County and State aforesaid, certify that Jordan Phillips, as Vice President of KDP II LLC, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of KDP II LLC.

My commission expires: 12-10-2020

ELISABETH F. NIMMONS
Notary Public for South Carolina
My Commission Expires: 12-10-2020
STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ACKNOWLEDGMENT

I, ________________________, a Notary Public in and for the County and State aforesaid, certify that ________________________, as ________________________ of Timbers Kiawah Acquisition Partners, LLC, and ________________________, as ________________________ of Timbers Kiawah Acquisition Partners, LLC, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of Timbers Kiawah Acquisition Partners, LLC.

Notary Public for South Carolina
My commission expires:

See attached certificate

[Access Easement Agreement]  Signature Page
CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On January 30, 2017 before me, Sarah E. Frayer, Notary Public, personally appeared Derek Smith and Taejo Kim, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sarah E. Frayer
Sarah E. Frayer, Notary Public
My Commission Expires: Dec 3, 2019

(Signature)

(S Seal)
CONSENT, JOINER AND SUBORDINATION OF MORTGAGEE
TO ACCESS AND CONSTRUCTION EASEMENT AGREEMENT

BANK OF AMERICA, N.A., a national banking association ("Mortgagor"), which has an interest in and to the KRA Property and the Proposed Cape Point Right-of-Way "Area A" (as those terms are defined in the Easement Agreement referred to below), by virtue of: (i) that certain Mortgage, Assignment of Rents and Leases and Security Agreement, dated December 22, 2010, executed by and between KIAWAH DEVELOPMENT PARTNERS, LLC, a South Carolina limited liability company (successor by conversion to Kiawah Development Partners, Inc., a South Carolina corporation) ("KDP"), KDP II LLC, a South Carolina limited liability company (successor-in-interest to Kiawah Development Partners II, Inc., a South Carolina corporation, and Kiawah Land Development, LLC, a South Carolina limited liability company) ("KDP II"), CASSIQUE GARDEN COTTAGES, LLC, a South Carolina limited liability company ("CGC"), and KIAWAH RESORT ASSOCIATES, L.P., a Delaware limited partnership ("KRA"), in favor of Mortgagee, recorded in the RMC Office for Charleston County, South Carolina (the "RMC Office"), in Book 0162, at Page 848, as amended by that certain First Amendment to Mortgage, Assignment of Rents and Leases and Security Agreement, dated May 31, 2013, and recorded in the RMC Office in Book 0335, at Page 114, and further amended by that certain Second Amendment to Mortgage, Assignment of Rents and Leases and Security Agreement, dated December 17, 2014, and recorded in the RMC Office in Book 0447, at Page 291 (collectively, the "Mortgage"); (ii) that certain Assignment of Leases, dated December 22, 2010, executed by KDP, KDP II, CGC and KRA in favor of Mortgagee, recorded in the RMC Office in Book 0162, at Page 849 (the "Assignment"); and (iii) that certain UCC-1 Financing Statement in favor of Mortgagee recorded in the RMC Office at folder 2010-24054, and continued in folders 2013-13713, 2013-13718, and 2013-13716 (collectively, the "Financing Statement"), hereby consents to and joins in the execution and delivery of that certain Access and Construction Easement Agreement by and between KRA and Timbers Kiawah Acquisition Partners, LLC, a Delaware limited liability company, its successors and permitted assigns, dated as of January 31, 2017, to be recorded in the RMC Office (the "Easement Agreement"), and does hereby subordinate the Mortgage, the Assignment and the Financing Statement to the Easement Agreement. The effect of this subordination is that Mortgagee shall not be entitled, as a result of the exercise of any rights or remedies under the Mortgage, the Assignment or the Financing Statement, to extinguish, foreclose, terminate or alter the Easement Agreement, or transfer any portion of the Residual Property encumbered by the Easement Agreement: free and clear of the Easement Agreement. Nothing in this instrument shall impose any liability or obligation of any kind on Mortgagee under the Easement Agreement, and by executing this instrument Mortgagee does not assume any such liability.

WITNESSES:

[Signature]

BANK OF AMERICA, a national banking association

By: [Signature]

Name: [Name]

Title: [Title]
ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
 )
County of Orange )

On January 31, 2017 before me, Marilyn R. Smith, Notary Public, personally appeared

Dirk Geiger, who proved to me on the basis of satisfactory evidence to be the person

whose name is subscribed to the within instrument and acknowledged to me that she executed

the same in her authorized capacity, and that by her signature on the instrument the person,

or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the

foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]

(Seal)
RECORDED

Date: February 3, 2017
Time: 2:57:27 PM

Book: 0614
Page: 805

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
NOVIT & SCARMINACH, P.A.
PO BOX 14
HILTON HEAD, SC 29933

MAKER:
KIAWAH RESORT ASSOC

RECIPIENT:
KDP II LLC AL

Original Book: Original Page:

# of Pages: 18
Note: 

Recording Fee $10.00
Extra Reference Cost $-
Extra Pages $13.00
Postage $0.50
Chattel $-
TOTAL $23.50

DRAWER CLERK
Drawer 5 ANF