**KIAWAH** **ISLAND** **REAL** **ESTATE**

**RESALE** **LOT** **CONTRACT**

**THIS CONTRACT IS SUBJECT TO ARBITRATION UNDER SOUTH CAROLINA’S UNIFORM ARBITRATION ACT, S.C. CODE ANN. SECTIONS 15-48-10 ET SEQ.**

**PURCHASER:**

(hereinafter called the “Purchaser” with address for notice purposes)

**SELLER:**

(hereinafter called the “Seller” with address for notice purposes)

**AGENT:** Kiawah Island Real Estate, LLC

1 Kiawah Island Parkway

Kiawah Island, South Carolina 29455

(hereinafter called “KIRE”)

**THIS** **RESALE LOT** **CONTRACT** (the “Contract”) being submitted this  day of **,** **20** by KIRE to Purchaser shall become binding upon the parties hereto on the date of acceptance by Seller as provided on the last page hereof.

**WHEREAS,** Seller has appointed KIRE as its duly authorized agent for the sale of the Property described in Paragraph 1 below by a duly executed Listing Agreement; and

**WHEREAS,** Purchaser desires to purchase the Property under the terms and conditions of this Contract;

**NOW,** **THEREFORE,** in consideration of Five and no/100 Dollars ($5.00) and the mutual promises contained in this Contract, Seller and Purchaser agree as follows:

# WITNESSETH

**1.** **THE** **PROPERTY.** Seller agrees to sell and Purchaser agrees to buy, subject to prior sale before receipt by KIRE of this Contract properly executed by both parties hereto and the Downpayment as provided for below, the following described Property, in its present condition: Lot Number ,  Subdivision (), Kiawah Island, South Carolina, bearing Charleston County TMS# (the “Property”), as shown on a plat by  dated the  day of **,** , having latest revision dated the  day of **,** , and recorded in Plat Book , at Page , in the office of the Register of Deeds for Charleston County, South Carolina (the “ROD Office”), and incorporated herein by reference (hereinafter called the “Plat”).

1. **PAYMENT.** The Purchaser agrees to pay as the full purchase price of the Property the total sum of **Dollars** **($****)** (the “Purchase Price”), payable as follows:

(a) The sum of **Dollars ($****)** shall be due as a binder.

(b) The sum of **Dollars** **($****)** shall be paid on or before the day of **,** **20**, as an additional deposit.

(c) The foregoing binder and additional deposit are hereinafter collectively referred to as the “Downpayment”. The Downpayment shall be held in the escrow account of KIRE. In accordance with South Carolina Real Estate License Law, disclosure is hereby given that KIRE’s escrow account is a non interest bearing account.

(d) The balance of the Purchase Price at Closing as follows: **DOLLARS ($****) SHALL BE DUE AND PAYABLE BY WIRE TRANSFER AT CLOSING.**

**3.** **TITLE.** Seller shall convey to Purchaser in fee simple a good and marketable title to the Property, together with any and all easements and other property interests incidental or appurtenant thereto, and be clear of all liens and encumbrances with the exception of the lien of Charleston County taxes for the current year. The Property shall be conveyed subject to (a) any easements shown on the subject Plat; (b) the general easements, equitable restrictions, limitations on use and affirmative obligations to pay charges all as specified in covenants and restrictions recorded in the ROD Office (hereinafter called the “Covenants”); and (c) any other applicable covenants as hereinafter referred to; provided the same do not make the Property unmarketable. The deed of conveyance shall contain covenants of general warranty. Seller shall give possession to Purchaser on the day and at the time of Closing.

**4.** **CLOSING** **COSTS AND** **OTHER FEES.** Each party hereto shall pay those closing costs as customarily paid by sellers and purchasers of real property in Charleston County, South Carolina. Seller shall be responsible for the payment of the deed recording fee currently in the amount of $3.70 per $1,000 of consideration, which is required pursuant to Sections 12-24-10 through 12-24-150 of the South Carolina Code of Laws, 1976, as amended. Purchaser shall be responsible for the payment at Closing of the Kiawah Island Community Association Capital Reserve Contribution which is equal to (a) one year’s annual general assessment on the Property, **OR** (b) .50% (.0050) of the Purchase Price, whichever is greater.

Seller hereby discloses to Purchaser that a “Recreation Center Initiation Fee” was imposed on the Property in May of 1994, by the Kiawah Island Community Association, Inc. (“KICA”). Seller (or Seller’s predecessor(s)-in-title to the Property) has paid the initial portion of such fee heretofore billed by KICA. The balance of such fee becomes due and payable upon the issuance by the Kiawah Island Architectural Review Board of a building permit for the construction of a residence on the Property, and will be billed by KICA at such time to the person or entity then holding record title to the Property.

Accordingly, payment of the balance of such fee (which currently is in the amount of the existing annual assessment imposed by KICA for the Property) when billed by KICA, shall be the responsibility of Purchaser, or Purchaser’s successor(s)-in-title holding title to the Property at the time a building permit is issued by the Kiawah Island Architectural Review Board.

**5.** **ADJUSTMENTS.** Purchaser and Seller agree to settle or prorate, annually or as appropriate, as of the Closing Date: (a) real estate taxes, owner association fees/assessments and other appropriate charges for the calendar year of Closing, and (b) any rents, deposits and/or fees associated with leasing. The Closing Attorney shall make tax prorations based on the available tax information deemed reliable by the Closing Attorney. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

**6.** **FINANCING**. This Contract  contingent on Purchaser’s ability to obtain financing for not less than % of the Purchase Price less the assigned value of the furnishings.

(a) If this Contract is contingent upon Purchaser obtaining financing, Purchaser agrees to immediately apply for such financing. This contingency is waived unless Purchaser notifies Seller by , in writing that financing has not been obtained or has been denied. Should Purchaser give said notice to Seller, the parties agree to execute a written release of the other from this Contract and an agreement to hold KIRE harmless, whereupon this Contract shall be null and void, and the Downpayment shall be promptly returned to Purchaser by KIRE.

(b) In the event this Contract is contingent on financing and Purchaser’s loan is delayed due to changes in US Federal lending guidelines and regulations known as the TILA-RESPA Integrated Disclosure rule (TRID), Seller hereby agrees to an automatic extension of the Closing Date of up to fifteen (15) calendar days.

**7.** **ASSESSMENTS** **FOR** **COMMUNITY** **SERVICES.** As more fully provided in the recorded Covenants, Purchaser is required to pay assessments to KICA, which may in each instance be increased as provided in the Covenants, as follows:

Annual General Assessment 2019

Unimproved Property $915.00

Improved Property $1,830.00

Annual Segment Assessment 2019 (Second Security Gate)

Unimproved Property $48.00

Improved Property $96.00

Annual Amenity Assessment 2019 (Property Owners Pool)

Unimproved Property $90.00

Improved Property $180.00

Reserve Assessment 2019 (formerly known as Supplemental Annual Assessment)

Unimproved Property $163.00

Improved Property $325.00

Recreation Center Initiation Fee $915.00\*\*

\*\*When the Kiawah Island Architectural Review Board issues a building permit, the lot status changes from unimproved to improved and this fee becomes due.

**8.** **RIGHT** **OF** **REPURCHASE.** THE PROPERTY IS SUBJECT TO A RIGHT OF FIRST REFUSAL IN FAVOR OF KIAWAH RESORT ASSOCIATES, L.P. (“KRALP”) PURSUANT TO ARTICLE II, PARAGRAPH 12 OF THE KIAWAH GENERAL COVENANTS RECORDED IN BOOK M114, PAGE 406 IN THE ROD OFFICE, AS AMENDED. PURCHASER ACKNOWLEDGES AND AGREES, THAT IF, IN THE FUTURE, PURCHASER DESIRES TO SELL THE PROPERTY AND RECEIVES AN ACCEPTABLE OFFER TO PURCHASE, THE PROPERTY SHALL FIRST BE OFFERED FOR SALE TO KRALP FOR THE SAME PRICE, AND KRALP SHALL HAVE THIRTY (30) DAYS WITHIN WHICH TO EXERCISE ITS OPTION TO PURCHASE THE PROPERTY. IF KRALP FAILS OR REFUSES, WITHIN THIRTY (30) DAYS AFTER RECEIPT OF WRITTEN NOTICE OF THE PRICE AND TERMS, TO EXERCISE ITS OPTION TO PURCHASE THE PROPERTY AT THE OFFERED PRICE, THEN PURCHASER SHALL HAVE THE RIGHT TO PROCEED WITH THE SALE OF THE PROPERTY, SUBJECT TO THE REMAINING PROVISIONS OF THE COVENANTS AND THIS CONTRACT. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO IMPAIR THE RIGHT OF FORECLOSURE OF A MORTGAGE ON THE PROPERTY. THIS PROVISION SHALL SURVIVE THE CLOSING HEREUNDER.

**9.** **DEFAULTS.**

(a) In the event of a default in the performance of any obligations of Purchaser pursuant to this Contract, except as provided in Paragraph 18 hereof, Seller (i) shall be released from any further obligations to Purchaser pursuant to this Contract and (ii) shall be entitled to the remedy of specific performance whereby Purchaser shall be required to perform, or (iii) Seller shall be entitled to retain the Downpayment as agreed liquidated damages, it being the intention and agreement of the parties hereto that the amount of such Downpayment shall act as a fair measure of compensation for actual damages incurred by Seller as a result of Purchaser’s said default. In the event Seller shall require specific performance, the Downpayment shall apply to the Purchase Price and Purchaser shall be responsible for the payment of reasonable attorneys’ fees and Actual Cost Incurred by Seller incident to any suit for specific performance against Purchaser resulting from such default.

(b) In the event of a default in the performance of any obligations of Seller pursuant to this Contract, Purchaser (i) shall be entitled to terminate this Contract and receive a refund of any Downpayment; provided, however, that no termination of this Contract by Purchaser shall be effective until written notice thereof has been delivered to Seller, and Purchaser shall not be entitled to terminate this Contract on account of any default of Seller which has been cured, or (ii) subject to the exclusion set forth below, Purchaser shall be entitled to an action for specific performance whereby Seller shall be required to perform. In the event Purchaser shall require specific performance, the Downpayment shall apply to the Purchase Price and Seller shall be responsible for the payment of reasonable attorneys’ fees and Actual Cost Incurred by Purchaser incident to any suit for specific performance against Seller resulting from such default.

(c) “Actual Cost Incurred” shall include all costs and expenses incurred or obligated for by Purchaser, Seller or KIRE in an effort to consummate this sale. Such costs shall include, but are not limited to, the cost of credit report, appraisal, survey, copy costs and other inspections and reports.

(d) If this Contract is terminated, both parties shall execute a written release of the other from this Contract which will stipulate the disposition of the Downpayment and an agreement to hold KIRE harmless.

**10. SURVEY AND BUILDING REGULATIONS.**

(a) KIRE strongly recommends that Purchaser obtain a legal survey of the Property to verify size, shape and configuration of the Property, location and square footage of improvements, setbacks, any other pertinent dimensions, the location of the SCDHEC-OCRM critical line and any possible encroachments. Neither KIRE nor its representatives shall be responsible to Purchaser or Seller with respect to the accuracy of the Plat or any matter that would have been disclosed by full survey of the Property.

(b) Purchaser acknowledges that it is the responsibility of Purchaser and Purchaser’s closing attorney to perform due diligence with regard to the Property, to examine the title and confirm any applicable development ordinances or regulations as well as restrictive covenants or other matters that may affect the Property.

(c) By executing this Contract, Purchaser and Seller agree to indemnify and hold KIRE, its agents, employees and representatives, harmless from any loss, cost, expense, liability incurred or sustained or claims for damages by reason of any information that would have been disclosed by a current survey, title search or determination of applicable development standards and restrictive covenants, or other investigations of the Property.

**11. SPECIAL CONDITIONS.**

**12. ACKNOWLEDGEMENT OF RECEIPT OF THE DISCLOSURE OF BROKERAGE RELATIONSHIPS.**

**(Seller initial applicable choices)**

\_\_\_\_\_\_\_\_ Seller hereby acknowledges that Seller has received a copy of the “Acknowledgement of Receipt of the Disclosure of Brokerage Relationships” and pursuant to the disclosure:  
      
 \_\_\_\_\_\_ Seller hereby acknowledges that Seller has received “customer” service in this real estate transaction, or   
      
 \_\_\_\_\_\_ Seller hereby acknowledges that Seller has received “client” service in this real estate transaction.

**(Purchaser initial applicable choices)**

\_\_\_\_\_\_\_\_ The Purchaser hereby acknowledges that Purchaser has received a copy of the “Acknowledgement of Receipt of the Disclosure of Brokerage Relationships” and pursuant to the disclosure:  
      
 \_\_\_\_\_\_ Purchaser hereby acknowledges that Purchaser has received “customer” service in this real estate transaction, or

    \_\_\_\_\_\_ Purchaser hereby acknowledges that Purchaser has received “client” service in this real estate transaction.

**13. FORCE MAJEURE.**  In the event any action or obligation under this Contract is delayed, caused, impeded or prevented by Force Majeure (i.e., hurricanes, earthquakes, tornados, floods, fire, acts of God, wars, acts of terrorism or any other cause not reasonably within the control of Purchaser or Seller), all time periods, including the Closing Date, shall be extended for the period that such Force Majeure prevents performance under this Contract; provided, however, that if such Force Majeure prevents performance under this Contract for more than sixty (60) days beyond the Closing Date, either party may terminate this Contract by providing written notice to the other party, and the Downpayment shall be immediately refunded to Purchaser.

**14.** **BROKERAGE** **FEE.** Seller agrees to sell the above described Property on the terms and conditions stated in the foregoing Contract, and does hereby approve, ratify and confirm such Contract in all respects. Further, Seller acknowledges the employment of KIRE as the real estate broker in this transaction and agrees to pay said broker a fee under a previously executed listing agreement. The said brokerage fee is to be paid at the Closing of this transaction and shall be deducted from the Downpayment herein before described and disbursed from KIRE’s escrow account at Closing. If there is not a sufficient Downpayment deposited to cover the brokerage fee, the balance shall be disbursed by cashier's check or wire transfer at the time of Closing. Purchaser and Seller do hereby release, acquit, and forever discharge KIRE, its agents, servants, representatives, heirs, administrators, successors and assigns, of and from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, on account of, or in any way growing out of any and all known and unknown injuries and damages of whatsoever nature, whether past, present or future, and the results of such injuries and damages, incurred in connection with, occasioned by or resulting from the execution, delivery and closing of the transaction contemplated in this Contract.

**15.** **APPLICABLE** **LAW** **AND** **ENTIRE** **AGREEMENT.** This Contract shall be governed, enforced and construed in accordance with the laws of the State of South Carolina, and shall be binding on the parties hereto and their respective heirs, devisees, executors, administrators, successors, and assigns. The parties further covenant and agree that this written instrument supersedes any and all others, and constitutes and expresses the entire agreement between the parties and there is no other agreement, oral or otherwise, varying or modifying the terms of the same.

**16.** **MISCELLANEOUS.** The term “Purchaser” as used herein shall be deemed to refer to and include all persons, if more than one, who execute this Contract as Purchaser.

**17. WITHHOLDING.**

1. In the event Seller is not a resident of the State of South Carolina, Purchaser and Seller agree to comply with South Carolina state law requiring Purchaser to withhold from Seller’s net proceeds the statutory percentage of Seller’s gain on the transaction contemplated hereby. The amount of such gain shall be calculated by Seller and provided to Purchaser in writing prior to or at the time of Closing. Purchaser and Seller acknowledge and agree to comply with said laws, and Purchaser is hereby authorized and empowered by Seller to withhold said amount and forward the same to the South Carolina Tax Commission.

(b) Seller further acknowledges and agrees that in the event Seller is not a citizen of the United States, Seller may be subject to a Federal withholding in the amount of fifteen percent (15%) of the Purchase Price, which said sum shall be in addition to the State of South Carolina withholding referred to above.

**18.** **CLOSING.** Closing shall be held on the day of **,**  no later than 4:00 PM at the offices of or at such other place, time and date as shall be mutually agreed in writing by Seller and Purchaser, **TIME** **OF** **SAID CLOSING** **BEING** **OF** **THE** **ESSENCE** (the “Closing”). Should the title to the Property prove to be defective, Seller shall not be required to take any action or otherwise incur any expense to render title to the Property marketable, provided that Seller shall have thirty (30) days from the date of notification of any defect in the title to remove or correct the same. Should at the expiration of said thirty (30) days Seller fail to render title to the Property marketable, Purchaser may at his option terminate his obligation to purchase the Property, in which event Seller authorizes KIRE to return to Purchaser the Downpayment and any other amounts paid by Purchaser to Seller hereunder, and both parties agree to execute a written release of the other and an agreement to hold KIRE harmless, or Purchaser may accept such title as Seller can convey and conclude this transaction without any diminution in the Purchase Price, with Closing to be held before the expiration of said thirty (30) day period**.**

**19. FACSIMILE AND E-MAIL SIGNATURES.** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer pursuant to this Contract may be communicated by use of a fax or electronic e-mail for the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

**20. ARBITRATION.** Seller, Purchaser and KIRE agree that any controversy or dispute between or among all or any of them that cannot be concluded by consensual resolution shall be litigated, concluded and decided by final binding arbitration in accordance with the rules and procedures of the American Arbitration Association (“AAA”) for the resolution of commercial disputes. If the parties to the dispute agree in writing, they may use an alternative means of selecting the arbitrator(s) and conducting the arbitration. The award of the arbitrator(s) shall still be final and binding. The arbitration shall be conducted in Charleston, South Carolina, unless the parties to the dispute agree in writing on a different location. In addition to awarding the appropriate relief, the arbitrator(s) shall have the power to award against the losing party the administrative expenses of the arbitration and the fees of the arbitrator(s). Seller, Purchaser and KIRE hereby waive their right to litigate in civil court proceedings, including their right to a jury trial. Seller, Purchaser and KIRE agree that any proceeding to vacate or confirm the award must be pursued in the Court of Common Pleas for Charleston County. If the Court confirms the award, the award may be immediately enrolled as a civil judgment.

**21. EXPIRATION OF OFFER.** This offer, unless accepted or countered by Seller, shall automatically terminate at  o’clock on **,** . Time is of the essence.

**THIS IS A LEGALLY BINDING AGREEMENT. BOTH PURCHASER AND SELLER SHALL SEEK FURTHER LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. BOTH PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT. BOTH PURCHASER AND SELLER ACKNOWLEDGE RECEIVING, READING AND UNDERSTANDING THE** **SOUTH CAROLINA DISCLOSURE OF REAL ESTATE BROKERAGE RELATIONSHIPS FORM.**

Signed and sealed by each party as of the dates below.

**PURCHASER:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

SIGN AS NAME IS TO APPEAR ON DEED‑‑DATE‑‑

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

SIGN AS NAME IS TO APPEAR ON DEED‑‑DATE‑‑

**SELLER:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

SIGN AS NAME APPEARS ON DEED‑‑‑‑‑‑‑DATE‑‑

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

SIGN AS NAME APPEARS ON DEED‑‑‑‑‑‑‑DATE‑‑

KIRE Listing Executive:

KIRE Sales Executive:  Rev. 12/2018