

TOWN OF SEABROOK ISLAND

ORDINANCE NO. 2019-10

ADOPTED _____

AN ORDINANCE ADOPTING A SETTLEMENT AGREEMENT BETWEEN THE TOWN OF SEABROOK ISLAND, ATLANTIC PARTNERS II LLC, BRP KIAWAH, LLC, AND BALFOUR BEATTY CONSTRUCTION, LLC, RELATING TO THE ISSUANCE OF AN ENCROACHMENT PERMIT FOR A PROPOSED 200-UNIT SENIOR LIVING FACILITY ON SEABROOK ISLAND ROAD, AND OTHER MATTERS RELATED THERETO

WHEREAS, Atlantic Partners II LLC, a South Carolina limited liability company (hereinafter, "Atlantic") owns certain real property located within the municipal limits of the Town of Kiawah Island (hereinafter, the "Construction Site"); and

WHEREAS, Atlantic and its affiliate, Kiawah Partners, is coordinating with BRP Kiawah, LLC, a real estate investment and development company (hereinafter, the "Developer") and Balfour Beatty Construction, LLC, a provider of general contracting services (hereinafter, "BB"), to construct a 200-unit Senior Living Facility (hereinafter, the "SLF") at the Construction Site; and

WHEREAS, On July 16, 2018, Atlantic made application to the Town of Seabrook Island (hereinafter, the "Town") for an encroachment permit to provide access to and from the Construction Site and the future SLF via Seabrook Island Road; and

WHEREAS, under the Town's ordinances, Atlantic's application for an encroachment permit was referred to the Town's Planning Commission for review and approval prior to the issuance thereof; and

WHEREAS, On October 5, 2018, the Town's Planning Commission granted Atlantic's application for an encroachment permit, subject to nine specific conditions; and

WHEREAS, Atlantic took exceptions to each of the nine conditions imposed by the Planning Commission and on October 19, 2018, filed a Notice of Appeal in the Charleston County Court of Common Pleas against the Town and its Planning Commission pursuant to S.C. Code Ann. § 6-29-1150(D)(1); and

WHEREAS, On January 24, 2019, at a Pre-Litigation Mediation pursuant to S.C. Code Ann. § 6-29-1155, the Town, Atlantic, the Developer and BB (hereinafter, the "Parties") entered into a Memorandum of Understanding which sets forth in general terms the resolution of the Parties with respect to Atlantic's objection to the conditions imposed by the Planning Commission; and

WHEREAS, the Settlement Agreement (hereinafter, the "Agreement") sets forth the terms and conditions upon which the Town will grant and Atlantic will accept an encroachment permit; and

WHEREAS, the Mayor and Council believe that the terms of the Agreement will adequately protect the safety and general welfare of the Town’s residents, visitors and the traveling public, and that adoption thereof would be in the best interest of the Town;

NOW, THEREFORE, pursuant to the authority granted by the Constitution and the General Assembly of the State of South Carolina, **BE IT ORDAINED BY THE MAYOR AND COUNCIL FOR THE TOWN OF SEABROOK ISLAND:**

SECTION 1. Approving the Settlement Agreement. The Agreement between the Town, Atlantic, the Developer and BB, which is attached hereto as Exhibit A, is hereby approved and shall be considered an ordinance of the Town. Violations of any of the terms contained within the Agreement shall be deemed to be a violation of municipal ordinance and shall be subject to the provisions outlined in the Town Code for the Town of Seabrook Island, including, but not limited to, the penalty provisions contained within Section 1-7 (General Penalty) and the adjudication provisions contained within Chapter 10 (Court).

SECTION 2. Execution. The Mayor is hereby authorized to sign the Agreement on behalf of the Town, in addition to any other documentation which may be required to effectuate the settlement with Atlantic, the Developer and BB.

SECTION 3. Severability. If any section, subsection, paragraph, clause, or provision of this ordinance shall be deemed to be unconstitutional, unenforceable, or otherwise invalid by the final decision of a court of competent jurisdiction, it shall be construed to have been the legislative intent of Town Council to pass said ordinance without such unconstitutional provision, and the validity of all remaining sections, subsections, paragraphs, clauses, or provisions of said ordinance shall not be affected thereby. If said ordinance, or any provision thereof, is held by the final decision of a court of competent jurisdiction to be inapplicable to any person, group of persons, property, kind of property, circumstances or set of circumstances, such holding shall not affect the applicability thereof to any other persons, property or circumstances.

SECTION 4. Conflicting Ordinances. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby modified so as to conform with the provisions of this ordinance.

SECTION 5. Effective Date. This ordinance shall be effective from and after the date of adoption.

SIGNED AND SEALED this ____ day of _____, 2019, having been duly adopted by the Town Council for the Town of Seabrook Island on the ____ day of _____, 2019.

First Reading: September 17, 2019
Public Hearing: September 17, 2019
Second Reading: September 24, 2019

TOWN OF SEABROOK ISLAND

Ronald J. Ciancio, Mayor

ATTEST

Faye Allbritton, Town Clerk