

**FIFTH AMENDMENT TO THE
DEVELOPMENT AGREEMENT
BY AND BETWEEN
KIAWAH RESORT ASSOCIATES, L.P., ET AL AND
THE TOWN OF KIAWAH ISLAND**

WHEREAS, the Town of Kiawah Island and Kiawah Resort Associates, L.P. (respectively referred to as "Town" and "Property Owner"), entered a Development Agreement on October 12, 2005 (hereinafter the "Agreement"), effective that same date, recorded in the RMC Office for Charleston County at Book Z 558, Page 004; and

WHEREAS, the Town and the Property Owner entered and recorded the First Amendment to the Agreement in the RMC Office for Charleston County at Book C 570, Page 595 that was effective December 13, 2005; and,

WHEREAS, the Town and the Property Owner entered and recorded the Second Amendment to the Agreement in the RMC Office for Charleston County at Book 0212, Page 088 that was effective August 2, 2011; and,

WHEREAS, the Town and the Property Owner entered and recorded the Third Amendment to the Agreement in the RMC Office for Charleston County at Book 0212, Page 089 that was effective August 2, 2011; and,

WHEREAS, the Town and the Property Owner entered and recorded the Fourth Amendment to the Agreement in the RMC Office for Charleston County at Book 0244, Page 565 that was effective March 6, 2012; and,

WHEREAS the Agreement replaced, according to its terms, a previous Development Agreement, as amended, between the Town and the Property Owner effective September 26, 1994 (hereinafter the "First Agreement") that is recorded in the RMC Office for Charleston County at Book J248, Page 001; and

WHEREAS in Section 16(b) of the First Agreement, titled "10 Mile Strip of Beachfront Property," the Property Owner agreed to convey to Kiawah Island Community Association, Inc. ("KICA") by quitclaim deed before January 1, 1996, a strip of highland and dunes described in the Section 16(b) as:

"... a strip of scenic dunes and high land owned primarily by the Property Owner (some of which is encumbered by the General Covenants, certain view and access easements and other agreements of record) which extends along the Kiawah Island beachfront for approximately 10 miles as generally depicted on Exhibit 16.2. This strip of high land varies in width, but often is 200' to 300' wide and is generally seaward of most residential, resort, or commercial property lines. It generally comprises the area of land abutting most seaward platted residential Lot lines and the mean high water mark of the Atlantic Ocean."

(Hereinafter referenced as the "Beachfront Strip"); and,

WHEREAS Exhibit 16.2 to the First Agreement was a graphic illustration of the location of the Beachfront Strip that established the western terminus of the Beachfront Strip as the eastern boundary and extended eastern boundary of Parcel 13 of the First Agreement, known as the Beachwalker Ocean Parcel (TMS No. 207-05-00-118) in the First Agreement; and

WHEREAS, to implement the transfer of the Beachfront Strip to KICA, Property Owner executed a deed to KICA recorded at Book N265, Page 406, and Corrective and Confirmatory Deed recorded at Book No. L304, Page 459, in the RMC Office for Charleston County (hereinafter, the "Deed"); and

WHEREAS the Agreement (entered in 2005) listed and described Parcel 12A as Beachwalker Park, Parcel 12B as Captain Sam's, and Parcel 13 as Beachwalker Ocean; and

WHEREAS Exhibit 1.3 to the Agreement is an illustration of the location of the Parcels owned by the Property Owner at the time of entry of the Agreement and shows that the Property Owner owned all the land to the high water mark, including the dunes and beachfront, west of the eastern boundary and extended eastern boundary of Parcel 13; and,

WHEREAS it has come to the attention of the Property Owner that the property description in the Deed encompassed land beyond the intended western terminus of the Beachfront Strip described in the First Agreement including land that is seaward of the Parcel known as Beachwalker Park that was listed and identified as Parcel 12 under the First Agreement and Parcel 12A under the Agreement that was not required to be included in the property description nor conveyed to KICA (all land so described and conveyed hereinafter shall be referred to as the "Additional Land"); and,

WHEREAS the Additional Land has remained a part of TMS No. 207-05-00-0011 on the real property tax records of Charleston County and reflected there as owned by Property Owner, and has never been formally subdivided into a separate TMS parcel; and,

WHEREAS Property Owner desires to reconfirm the intent under the First Agreement that the Beachfront Strip does not include the Additional Land; and

WHEREAS Property Owner and Town desire to confirm their intent under the Agreement as well as their intent and belief at the time the Agreement was entered that the land comprising Parcels 12A and 12B as depicted on Exhibit 1.3 to the Agreement, including the Additional Land, was owned by the Property Owner and subject to the Agreement by virtue of such ownership; and

WHEREAS this Fifth Amendment is intended to be a reaffirmation of what is clearly shown on Exhibit 16.2 of the First Agreement and Exhibit 1.3 of the Agreement; and,

WHEREAS, the Agreement provides in Section 22 that the Agreement may be amended; and,

WHEREAS, the Property Owner desires to amend the Agreement to clarify and state their mutual intent with respect to the Beachfront Strip and the real property subject to both the First Agreement and the Agreement;

NOW, THEREFORE, the Town and Property Owner confirm and agree (1) that the Property Owner's intent was that the western terminus-boundary of the Beachfront Strip be the eastern boundary and extended eastern boundary of Parcel 13 as described in the First Agreement and the Agreement, known as the Beachwalker Ocean Parcel (TMS No. 207-05-00-118), as illustrated on Exh. 16.2 to the First Agreement recorded at Book J248 Page 366 in the RMC Office for Charleston County; (2) that the Property Owner did not intend that the Beachfront Strip include the Additional Land, which is west of the intended western terminus-boundary of the Beachfront Strip; and, (3) that the intent of the Property Owner at the time of entry of the Agreement was that the Additional Land was part of Parcels 13 and 12A as described in the Agreement.

All other terms, conditions, and provisions of the Agreement, as duly amended, shall remain in full force and effect.

IN WITNESS WHEREOF, this Fifth Amendment to the Agreement has been entered and enacted this 2nd day of October, 2012.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

Annika Zucker

[Signature]

TOWN OF KIAWAH ISLAND (Town)
(SEAL)

By: *G. Steven Orban* 10/10/2012

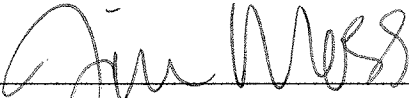
G. Steven Orban, Mayor

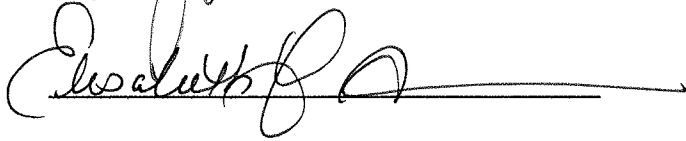
Attest: *Petra S. Reynolds*

Petra Reynolds, Clerk of Council

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

(CORP. SEAL)






KIAWAH RESORT ASSOCIATES, L.P.
(Property Owner) (Seal)

By: D&W Investments, Inc.,
(a South Carolina corporation)


2 North Adger's Wharf
Charleston, SC 29401
Its: General Partner

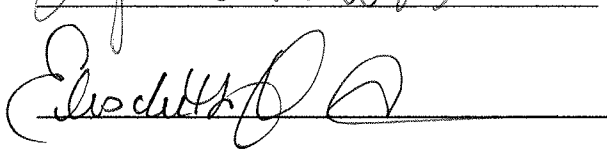
By: 

Charles P. Darby, III
Its: President

AND


(CORP. SEAL)





By: TWD Investments, LLC
(A South Carolina limited liability
Company)

2 North Adger's Wharf
Charleston, SC 29401
Its: General Partner

By: 

Charles P. Darby, III
Its: Manager

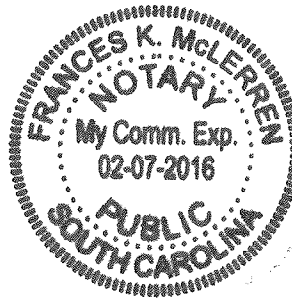
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

**ACKNOWLEDGMENT
(TOWN)**

THE FOREGOING INSTRUMENT was acknowledged before me by the TOWN OF KIAWAH ISLAND, by G. Steven Orban, its Mayor, and Petra Reynolds, its Clerk of Council, this 16 day of October, 2012.

 (SEAL)


Notary Public for South Carolina
My Commission Expires: 2/7/2016



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT
(Property Owner - D&W)

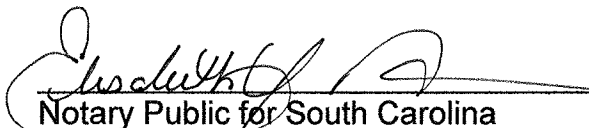
THE FOREGOING INSTRUMENT was acknowledged before me by KIAWAH RESORT ASSOCIATES, L.P., by D&W Investments, Inc., (a South Carolina corporation), its General Partner, by Charles P. Darby, III, its President, this 26th day October, 2012.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-10-2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT
(Property Owner - TWD)

THE FOREGOING INSTRUMENT was acknowledged before me by KIAWAH RESORT ASSOCIATES, L.P., by TWD Investments, LLC, (a South Carolina limited liability company), its General Partner, by Charles P. Darby, III, its Manager, this 26th day October, 2012.

 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-10-2020