



BP0212089

**THIRD 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 ^C570, 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 10.14, 2011; and,

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

WHEREAS, the text of Section 16(f) as well as Exhibit 16.2 refer to Parcel 12B as having 118.3 acres of highland, with 31.406 acres located between the critical line on the Kiawah River and the then-designated OCRM baseline on the ocean side of Captain Sams Spit; and

WHEREAS, Section 16(f) of the Agreement provides, in part, as follows:

Should the baseline/setback and/or critical lines move (including adjustments as result from periodic measurements by OCRM), allowances and locations for structure placement shall be adjusted accordingly by the parties and confirmed by amendment(s) hereto upon request of either party.

WHEREAS the Office of Coastal Resources Management of the South Carolina Department of Health and Environmental Control (“OCRM”) adjusted the baseline/setback on Captain Sams Spit in 2009; and,

WHEREAS the Property Owner recently commissioned a survey of the highland on Parcel 12B that confirmed the accretion of Captain Sams Spit and increase in acreage of land that is behind the latest OCRM baseline and above the critical line on the Kiawah River side of Captain Sams Spit; and

WHEREAS the licensed surveyor who performed the recent survey for the Property Owner has determined that on or about June 20, 2011, the total acreage of Parcel 12B is now 155.341 acres with 38.226 acres above the critical line and behind the OCRM baseline.

WHEREAS, the Property Owner and the Town desire to amend the Agreement as further described below.

NOW, THEREFORE, in return for the mutual promises herein and other valuable consideration, the Town and Property Owner agree to, and hereby amend, the Agreement as follows:

1. In the second sentence of the first paragraph of Section 16(f) “Captain Sam’s Spit – Parcel 12B” “118.3 acres of highland” is removed and replaced by “155.341 acres of highland.”
2. The acreage for Parcel 12B in the acreage column of Exhibit 4.1 is changed from 118.03 to 155.341.
3. Exhibit 16.2 is hereby replaced with the new Exhibit 16.2, attached hereto.

4. The typos in the references to the Captain Sams Spit provision of the Agreement as "Section 16(g)" under "Future Parklands/Open Space" on pg. 13 and as "¶ 16(g)" in Note 16 to Exhibit 13.2 are hereby changed to refer to "Section 16(f)" and "¶ 16(f)," respectively.

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

IN WITNESS WHEREOF, this Third Amendment to the Agreement has been entered and enacted this 2 day of August, 2011.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

Tomko Ducker
Dwight B. Lane

TOWN OF KIAWAH ISLAND (Town)
(SEAL)

By: *G. Steven Orban*

G. Steven Orban, Mayor

Attest: *Lakesha Y. Shannon*

_____, Clerk of Council




SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:


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

(CORP. 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 Lakesha Y. Shannon, its Clerk of Council, this 2nd day of August, 2011.

Rashonda J. Brown (SEAL)
Notary Public for South Carolina
My Commission Expires: 8/18/2013

RASHONDA J. BROWN
NOTARY PUBLIC
SOUTH CAROLINA



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 17th day August, 2011.

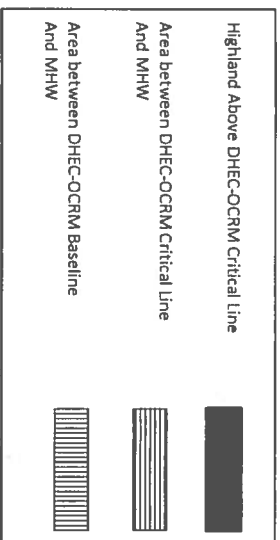
 (SEAL)
Notary Public for South Carolina
My Commission Expires: 12-10-2020

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 17th day August, 2011.

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



PARCEL 12B	
HIGHLAND	38,298 AC
AREA BETWEEN DHEC-OCRM	117,116 AC
BASELINE AND MHW	185,341 AC
TOTAL	

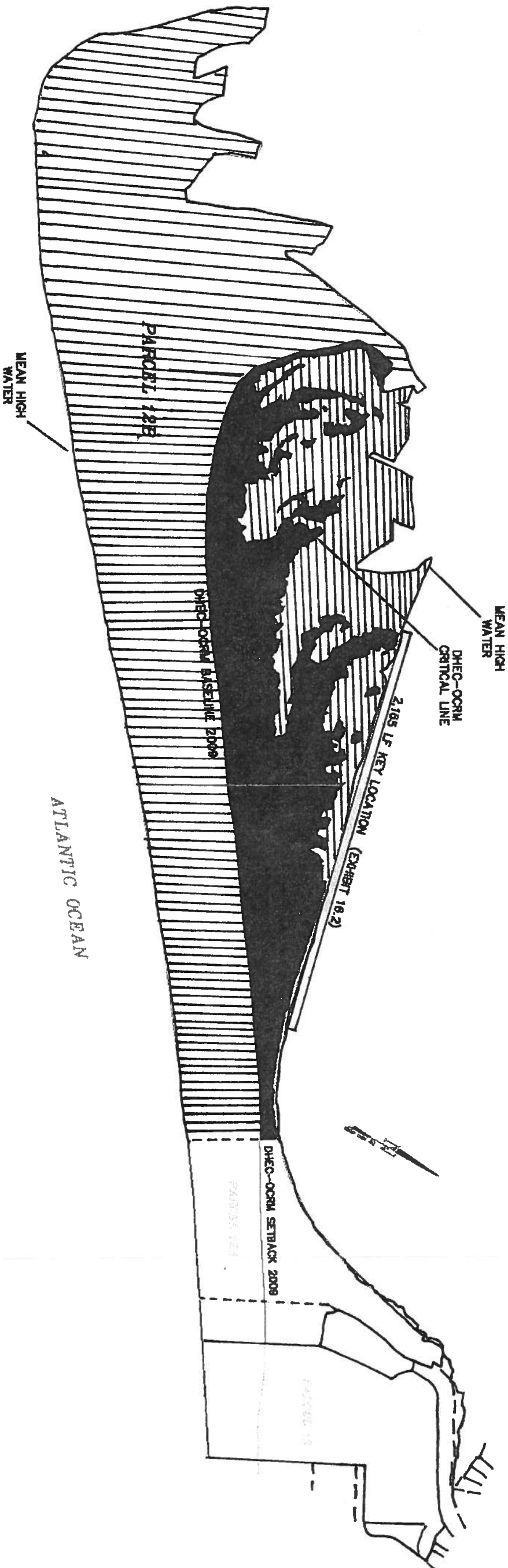


EXHIBIT 16.2 (REVISED JULY 8, 2011)