

members of the Board of Directors of the Association, amendment of this Declaration shall be made without consent of the Company”; and

WHEREAS, Kiawah Resort Associates, LP, entered a Development Agreement with the Town of Kiawah Island recorded at Book J 248, Page 1 in the RMC Office for Charleston County (this Development Agreement and nine amendments thereto hereinafter collectively referenced as the “Initial Agreement”); and

WHEREAS, under the terms of the Initial Agreement, Kiawah Resort Associates, LP, as the Company under the KICA Covenants agreed to temporarily refrain from exercising its right to elect a majority of the board of directors of KICA as further set forth in the Section 18 of the Initial Agreement; and,

WHEREAS, Kiawah Resort Associates, LP and the Town of Kiawah Island have entered a new Development Agreement on or about _____, 2005, recorded in the RMC Office for Charleston County at Book _____, Page _____ (hereinafter the “Development Agreement”) and

WHEREAS, Section 21 of the Development Agreement provides, in part, that the Initial Agreement is terminated except for those rights, obligations, and provisions expressly preserved by the Development Agreement;

NOW, THEREFORE, in return for the mutual promises and other consideration set forth in the Development Agreement, Kiawah Resort Associates, LP, does for itself, its successors, and assigns, in its capacity as the Company under the KICA Covenants, hereby permanently waive its right to appoint a majority of the board of directors of KICA under Article III, Sections 2 and 4 of the KICA Covenants on the terms and conditions described herein:

1. Kiawah Resort Associates, LP retains and expressly reserves its right under Article VIII, Section 2 of the KICA Covenants that the consent of the Company must be obtained for all amendments to the KICA Covenants. Kiawah Resort Associates, LP, hereby ratifies and reaffirms its prior consents to all prior amendments and addenda to the KICA Covenants recorded in the RMC Office for Charleston County before the date of this Limited Waiver.
2. Kiawah Resort Associates, LP retains the right to appoint one member of the board of directors of KICA.
3. Kiawah Resort Associates, LP retains the right to require that the following action shall require the dual approval of both (1) the director appointed by the Company under the KICA Covenants and (2) the remaining directors of KICA: The replacement of G. Trenholm Walker and the firm of Pratt-Thomas, Epting & Walker, PA as legal counsel to KICA. This provision shall not apply if KICA legal counsel has a non-waivable conflict of interest or otherwise declines such representation for a given matter or if a majority of the board of KICA determines that there is a conflict of interest with respect to a particular matter.

These retained rights of Kiawah Resort Associates, LP, its successors and assigns shall expire upon the occurrence of Transition under the KICA Covenants, or the termination of the Development Agreement, whichever occurs first.

IN WITNESS WHEREOF, Kiawah Resort Associates, LP, by its hand and seal does execute and agree to this limited waiver of rights under the KICA Covenants.

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

(CORP. SEAL)

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

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

211 King Street, Suite 300
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)

211 King Street, Suite 300
Charleston, SC 29401
Its: General Partner

By: _____
Charles P. Darby, III
Its: Manager

