



December 14, 2023

KICA Board of Directors
Kiawah Island Community Association
23 Beachwalker Dr.
Kiawah Island, SC 29455

Re: ARDA – Captain Sams

Dear KICA Board Members:

I am writing to respond to the unsigned letter from the KICA Board of Directors to Kiawah Development Partners, LLC dated December 4, 2023. The letter states it is to “provide notice to the Property Owner, as defined in the Amended and Restated Development Agreement (ARDA), of certain obligations under Section 16(f) of the ARDA.” In particular, the letter refers to two excerpts from Section 16(f) and states that the Property Owner has not provided notice of its intent to comply with the quoted provisions of Section 16(f). The letter requests that the Property Owner respond with the details of its position with respect to the “obligations” that are asserted to be “for the benefit of KICA.”

Let me start by saying that we have been diligent in making sure the Kiawah Partners’ entities that were party to the ARDA fulfilled their conveyance obligations under the ARDA. In particular, KRA, LP recently conveyed to KICA all marshes and lowlands contiguous to Kiawah Island including those lands below mean high water and isolated lands above mean high water identified on Exhibit 16.1 of the Development Agreement, which are not specifically excepted in Section 16(a) and/or are identified as Parcels in Exhibit 4.1. That transfer completed the conveyance obligations of the Property Owner.

Turning to Captain Sams, KRA, LP and KDP II, LLC do not agree with KICA’s apparent interpretation of Section 16(f). KRA, LP gave up the right to develop a 325-room hotel immediately east of Beachwalker Park in return for the defined development rights on Captain Sams. Similarly, KRA, LP’s willingness to agree to the conveyance of the land seaward of the crest of the primary oceanfront dune to KICA *after* development was in return for receiving the benefit of the development described in the section. Despite its persistent efforts to realize that development, KDP, II, LLP was prevented from doing so. When all the terms of this section are considered together, along with the attached exhibit, the conclusion is inescapable that the entire provision contemplated that the development was to occur before the limited transfer to KICA, yet that development was made impossible by the courts.

We also must disagree with the assertion in the letter that Section 16(f) was intended for the benefit of KICA. It was intended for the benefit of the Property Owner. Section 30, titled "Third Parties," states: "Notwithstanding any provision herein to the contrary, this Agreement shall not be binding and shall have no force or effect as to persons or entities who are not Parties or Successors and Assigns to this Agreement."

We trust that we have sufficiently stated Kiawah Partners' position as requested by you.



Jordan Phillips
Partner