

FOURTH AMENDMENT TO MUTUAL AGREEMENT AND RELEASE

THIS FOURTH AMENDMENT TO MUTUAL AGREEMENT AND RELEASE ("**Fourth Amendment**") is hereby made and entered into as of the ____ day of September, 2016 (the "**Effective Date**"), by and between Dewey Beach Enterprises, Inc. ("**DBE**"), Ruddertowne Redevelopment, Inc. ("**RR**"), Dewey Beach Condo, LLC ("**DC**"), Lighthouse Cove Dewey Beach Land, LLC ("**LC Land**"), Lighthouse Cove Dewey Beach Land Unit C, LLC ("**LC Unit C**"), Lighthouse Cove Dewey Beach Land Unit F, LLC ("**LC Unit F**"), Lighthouse Cove Dewey Beach Land Unit H, LLC ("**LC Unit H**"), Lighthouse Cove Dewey Beach Land Unit L, LLC ("**LC Unit L**") Lighthouse Cove Dewey Beach Land Unit L-A ("**LC Unit L-A**"), Lighthouse Cove Development Company I, LLC ("**LC I**") (DC, LC Land, LC Unit C, LC Unit F, LC Unit H, LC Unit L LC Unit L-A, and LC I collectively referred to herein as the "**Condo Owners**" and together with DBE and RR, the "**Owners**") and the Town of Dewey Beach, DE ("**Dewey Beach**" or the "**Town**").

BACKGROUND

WHEREAS, the DBE and RR entered into a Mutual Agreement and Release dated December 6, 2010, as amended on February 19, 2011, further amended on February 26, 2011, and further amended on January 24, 2015 (the "**Agreement**"), to resolve the Litigation (as defined in the Agreement) and to set forth zoning and building restrictions in connection with the Property (as defined in the Agreement) for the construction of a mixed-use project (the "**Project**") including a hotel and residential condominium units; and

WHEREAS, the Project is taking longer to construct than originally anticipated; and,

WHEREAS, the Town is willing to grant additional time subject to the terms and conditions set forth herein; and,

WHEREAS, with the Third Amendment, the Town agreed to forego certain space in the Project in exchange for cash payments, which payments later funded acquisition of other better-suited property for the Town and its needs; and,

WHEREAS, the Third Amendment did not specifically mention the 15 parking spaces for the Town associated with the foregone space, and so the parties wish to make clear that the Owners need not provide such spaces; and,

WHEREAS, the Third Amendment allowed for single-room condominium units (the "Small Unit Condos" as such term is defined in the Third Amendment) but did not address the parking requirement for such units, and so the parties wish to clarify the parking requirements for such units; and,

WHEREAS, the Town desires further security to ensure the construction and completion of the required 85 public parking spaces as required by the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties agree that the Agreement shall be amended as follows:

1. **Incorporation of Recitals.** The foregoing recitals are incorporated into and made a part of this Fourth Amendment.

2. **Review Fund.** Pursuant to the Dewey Code, §185-82, the Owners shall deposit \$35,000 (the "Review Fund") with the Town in a non-interest bearing escrow account, which Review Fund shall be used by the Town to pay the cost of outside consultants (legal, engineering and construction) retained by the Town to assist in the review and supervision of the Project effective as of January 25, 2016. All payments made shall be made in the Town's sole discretion, provided, however, that the Town shall provide Owners with redacted copies of invoices as requested. Owners shall replenish the Review Fund as necessary with additional deposits, whenever the Review Fund shall fall below \$5,000. Upon the issuance of the final permanent certificate of occupancy for the Project, any remaining funds shall be returned to Owners within 20 days of such issuance. To the extent, funds are not replenished within 10 business days from the date of request, all further reviews and approvals for the Project will cease until the funds are replenished.

3. **Phasing of Final Improvements.** Final construction of the Project shall occur in two phases – phase 1.6 and phase 2.0. Phase 1.6 shall be for 27 condominium units, additional parking, the pool, the gazebo, and other improvements as set forth in the plans submitted to the Town and Sussex County for Phase 1.6. Phase 2.0 shall be for the balance of the Project.

4. **Building Permit Extension Fees.** The existing building permit shall be extended to September 8, 2017 and such extension shall cost \$50. Thereafter, provided Owners are not in default under the Agreement as amended by this Fourth Amendment, the building permit may be extended for four additional one-year terms. The cost for the first extension shall be \$50,000 (for a total of \$50,050); the cost for the second extension shall be \$150,000 (for a total cost of \$200,050); the cost for the third extension shall be \$400,000 (for a total cost of \$600,050) which may be paid on a monthly pro-rated basis, so that if less than a full year is needed, the extension fee need only be paid for the months or portions thereof needed (for example, if Owners needed an additional 3 months and 10 days, then they would pay \$133,333.33, representing \$33,333.33 per month for four months) ; and the cost for the fourth and final extension shall be \$800,000 (for a total of \$1,400,050) which fee need only be paid for the months or portions thereof needed. Owners shall notify the Town at least thirty days in advance of the expiration of the building permit and shall pay the then-applicable extension fee no later than the beginning of the next extension. No further extensions beyond those set forth in this paragraph shall be permitted.

5. **Security for 85 Public Parking Spaces.** In addition to all other security and letters of credit required to be supplied, Owners shall provide an additional Letter of Credit in form and substance acceptable to the Town in the amount of \$600,000 to secure construction of the 85 public parking spaces in addition to all other spaces required by applicable code provisions or the Agreement as amended by this Fourth Amendment. In the event Owners have failed to construct, provide or otherwise make available the 85 public parking spaces on or by the expiration of the building permit for the Project (as the building permit may have been extended by payment of fees as allowed by paragraph 5 above), then the Town shall be entitled to draw on the full amount of said letter of credit, as well as exercise any and all other remedies which it may have or be afforded. The letter of credit required by this paragraph shall also secure the payment obligation set forth in paragraph 8 below up to the then-unpaid amount due under paragraph 8.

6. **Clarification of Parking Requirements.** The parties hereby clarify and confirm that the 15 parking spaces required by the Agreement for the Town, which spaces were for the now foregone Town space in the Project, are no longer required. The parties further clarify and confirm that the number of required parking spaces for the Small Unit Condos is one space for each such condominium unit.

7. **Baywalk and Gazebo.** As part of Phase 1.6, the Owners shall cause the gazebo to be constructed, and the same shall be completed prior to the start of Phase 2.0. Notwithstanding anything else to the contrary, to the greatest extent reasonably possible under existing regulations and physical constraints, the gazebo shall be 500 square feet in size but in no event less than 250 square feet in size. Following completion of the baywalk and gazebo, in the event the baywalk and gazebo are destroyed in whole or in part, and the baywalk or gazebo is not repaired within 9 months following the casualty, then, following the expiration of the 9 months, Owners shall pay the Town \$5,000 per month until such time as the baywalk and gazebo are fully repaired or replaced, unless such repair or reconstruction is prohibited by then-existing laws or regulations, in which case the parties shall negotiate and Owners shall reconstruct or repair a replacement baywalk and gazebo in form and location as reasonably close to the original in size and form as reasonably permitted by then-existing laws or regulations.

8. **Payment by Owners.** In addition to all other payments required from Owners, in consideration for this Amendment, Owners shall pay the Town three hundred thousand (\$300,000) dollars, such payment to be made at the rate of \$5,000 per month, with a final payment of the unpaid balance due and owing upon the earlier to occur of (i) the expiration of the building permit for the Project as the same may have been extended pursuant to paragraph 4 above or (ii) issuance of the final certificate of occupancy for the Project, it being specifically understood that such final certificate of occupancy shall not be issued until such time as payment of the outstanding balance is paid in full.

9. Except as set forth herein, the Agreement is hereby ratified and confirmed by the parties hereto and remains in full force and effect. The Agreement, as amended by this Fourth Amendment, sets forth the full and complete understanding of the parties, and neither party shall be bound by any covenants, agreements, statements, representations or warranties, oral or written, not set forth in the Agreement or this Fourth Amendment. The Agreement, as modified by this Fourth Amendment, may not be further modified or amended unless such modification or amendment is in writing and signed by the parties hereto. No waiver of any of the provisions of the Agreement, as modified by this Fourth Amendment, shall be valid unless the same is in writing and is signed by the party against whom enforcement is sought.

10. Any capitalized terms used in this Fourth Amendment and not otherwise defined herein shall have the same meanings as in the Agreement.

11. This Fourth Amendment shall be governed by and construed according to the laws of the State of Delaware.

12. This Fourth Amendment may be signed in one or more counterparts (or with counterpart signature pages) which, taken together, shall constitute a fully executed Fourth Amendment and shall be considered a single document. The transmission of a signed counterpart of this Fourth Amendment by facsimile or by portable document file shall have

the same force and effect as delivery of an original signed counterpart of this Fourth Amendment, and shall constitute valid and effective delivery for all purposes.

13. The effective date of this Fourth Amendment shall be the date upon which the last required signatures necessary to complete this Fourth Amendment is affixed and the duly signed Fourth Amendment has been delivered to both parties hereto, which date shall be inserted as the Effective Date referenced above.

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DRAFT

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as a sealed instrument under Delaware law as of the Effective Date referenced above.

DEWEY BEACH ENTERPRISES, INC.

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

RUDDERTOWNE REDEVELOPMENT, INC.

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

TOWN OF DEWEY BEACH, DELAWARE

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

DEWEY BEACH CONDO, LLC

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

**LIGHTHOUSE COVE DEWEY BEACH
LAND, LLC**

**By: Dewey Beach Enterprises, Inc.,
Member**

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

**LIGHTHOUSE COVE DEWEY BEACH
LAND UNIT C, LLC**

**By: Dewey Beach Enterprises, Inc.,
Member**

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

**LIGHTHOUSE COVE DEWEY BEACH
LAND UNIT F, LLC**

**By: Dewey Beach Enterprises, Inc.,
Member**

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

**LIGHTHOUSE COVE DEWEY BEACH
LAND UNIT H, LLC**

**By: Dewey Beach Enterprises, Inc.,
Member**

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

**LIGHTHOUSE COVE DEWEY BEACH
LAND UNIT L, LLC**

**By: Dewey Beach Enterprises, Inc.,
Member**

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

**LIGHTHOUSE COVE DEWEY BEACH
LAND UNIT L-A, LLC**

**By: Dewey Beach Enterprises, Inc.,
Member**

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

**LIGHTHOUSE COVE DEVELOPMENT
COMPANY I, LLC**

**By: Dewey Beach Enterprises, Inc.,
Member**

By: _____ (SEAL)

Name:

Title:

Date: _____, 2016

STATE OF DELAWARE)
)ss
COUNTY OF SUSSEX)

The foregoing instrument was acknowledged before me this __ day of _____, 2016, by Diane Hanson, as Mayor of the Town of Dewey Beach, a political subdivision of the State of Delaware.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

DRAFT

STATE OF DELAWARE)
)ss
COUNTY OF SUSSEX)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, as Authorized Representative of Dewey Beach Enterprises, Inc., a Delaware corporation, on behalf of the corporation.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

STATE OF DELAWARE)
)ss
COUNTY OF SUSSEX)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, as Authorized Representative of Dewey Condo, LLC., a Delaware limited liability company, on behalf of the company.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

STATE OF DELAWARE)
)ss
COUNTY OF SUSSEX)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, as Authorized Representative of Dewey Beach Enterprises, Inc., a Delaware corporation, Member of Lighthouse Cove Dewey Beach Land, LLC, a Delaware limited liability company.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

STATE OF DELAWARE)
)ss
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, as _____ of Dewey Beach Enterprises, Inc., a Delaware corporation, Member of Lighthouse Cove Dewey Beach Land Unit C, LLC, a Delaware limited liability company.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

STATE OF DELAWARE)
)ss
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, as _____ of Dewey Beach Enterprises, Inc., a Delaware corporation, Member of Lighthouse Cove Dewey Beach Land Unit F, LLC, a Delaware limited liability company.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

STATE OF DELAWARE)
)ss
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, as _____ of Dewey Beach Enterprises, Inc., a Delaware corporation, Member of Lighthouse Cove Dewey Beach Land Unit H, LLC, a Delaware limited liability company.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

STATE OF DELAWARE)
)ss
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, as _____ of Dewey Beach Enterprises, Inc., a Delaware corporation, Member of Lighthouse Cove Dewey Beach Land Unit L, LLC, a Delaware limited liability company.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

STATE OF DELAWARE)
)ss
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, as _____ of Dewey Beach Enterprises, Inc., a Delaware corporation, Member of Lighthouse Cove Dewey Beach Land Unit L-A, LLC, a Delaware limited liability company.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

STATE OF DELAWARE)
)ss
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, as _____ of Dewey Beach Enterprises, Inc., a Delaware corporation, Member of Lighthouse Cove Development Company I, LLC, a Delaware limited liability company.

[Notary Seal]

Notary Public
Name:
My Commission Expires:

