

CONCERNED KICA MEMBERS

March 26, 2023

Via E-Mail Delivery (KICA Board: board@kica.us)

Board of Directors

Kiawah Island Community Association

23 Beachwalker Drive

Kiawah Island, SC 29455

Re: Pre-Members' Derivative Lawsuit Demand of Board of Directors

Dear Members of the Board:

The undersigned are Owners and Members (as such terms are defined in the (i) Community Association Covenants, Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. (the "**KICA Covenants**") as recorded in the office of the R.O.D. for Charleston, South Carolina in Book M-114, 407, as amended, and (ii) By-Laws of Kiawah Island Community Association, Inc., a South Carolina non-profit corporation ("**KICA**") as recorded in the office of the R.O.D. for Charleston, South Carolina in Book M-114, page 407). This letter's purpose is to assert a demand on behalf of the undersigned as Owners and Members of KICA that the Board take the below described corrective action to address failures of the Board to exercise its fiduciary duties to KICA.

BOARD'S LEGAL STANDARDS OF CARE

The South Carolina Nonprofit Corporation Act, Section 33-31-101, et seq. (the "**Act**") sets forth clear standards of conduct for the Board. These standards establish that each Member of the Board of KICA has three duties: (1) a duty of care, (2) a duty of good faith, and (3) a duty to act in the best interest of the corporation. In discharging these duties, the Members of the Board are expected to act as fiduciaries of KICA to guide KICA towards a sustainable future by adopting sound, ethical and legal governance and fiscal management policies that advance the mission of KICA pursuant to the KICA Covenants. Such mission includes that KICA is to act as "a vehicle for the administration and enforcement of covenants and restrictions ..." that impact the real property that is known as Kiawah Island.¹

¹ KICA Covenants, Recitals.

DEVIATIONS FROM LEGAL STANDARDS OF CARE

Improper Payments to the ARB – The minutes from recent Board Meetings have disclosed the fact that KICA’s Board has permitted substantial payments over approximately 15 years to be made to the Kiawah Island Company’s (the “**Partners**”) fictitious alter ego doing business as the “*Kiawah Island Architectural Review Board*” (the “**ARB**”) in reliance on the “impending transfer” of the ARB by the Partners to KICA (the “**ARB Improper Payments**”). These payments are improper because: (i) KICA is not permitted to make such payments under the KICA Covenants, (ii) the Partners have received such payments with knowledge that the Partners have no intention to transfer control of the ARB to KICA at any time in the foreseeable future, and (iii) the ARB Improper Payments, and KICA’s express and implied actions to support the operation of the ARB, have enabled the Partners to operate the ARB in violation of the applicable restrictions on the Partners’ authority to review and approve limited matters under the Declaration of Rights, Restrictions Affirmative Obligations and Conditions Applicable to all Property in Kiawah Island as amended (the “**General Covenants**”) as recorded in the office of the R.O.D. for Charleston, South Carolina in Book M-114, page 406.

Improper Sharing of Efforts and Interest with the Partners/ARB – KICA’s scope of authority is limited to (i) taking such action as may be necessary to ensure the enforcement of covenants and restrictions, (ii) owning and maintaining Common Properties, (iii) forming a KICA ARB to regulate building on Common Properties, and (iv) exercising control of the Partners’ ARB if the Partners transfer control of the same to KICA. The Partners have openly stated that they do not intend to transfer control of the ARB to KICA,² and notwithstanding the Board’s knowledge that the Partners have no intention to transfer control of the ARB to KICA, KICA is openly exercising unauthorized actions for the benefit of the Partners’ ARB including:

- KICA allows the Partners’ ARB to piggyback on its CitizenServe portal license.
- The KICA CitizenServe portal seamlessly links users to the Partners’ ARB website over which the Partners maintain exclusive control.
- KICA works seamlessly with the ARB to implement and ensure enforcement of the ARB’s rules and regulations connected with private property grounds and property maintenance.
- KICA has published on CitizenServe misrepresentations concerning the scope of the ARB’s authority and such misrepresentations have improperly clothed the ARB with power which in turn has permitted the ARB to violate the General Covenants.

² Amanda Mole, a representative of the Partners, stated during a recent KICA Board meeting that the Partners have no intention to transfer control of the ARB for so long as the Partners maintain development interests on Kiawah Island. This statement was consistent with Mole’s August 17, 2006 statement that “[w]hile the covenants state that the ARB will ultimately be under the control of the Kiawah Island Community Association ... the ARB will most likely remain under the control of the developer until all KDP property is sold to a third party”. (From The Blog/Architectural Review Board. <https://kica.us/news/architectural-review-board/>) Because of these prior statements of the Partners, KICA’s Board knows or should have known that the Partners have no intention to transfer control of the ARB in any timely manner.

- KICA has devised and implemented encroachment functions to ensure that projects conform to ARB ultra vires regulations.
- KICA has designated a KICA representative to become embedded with the ARB and in this role KICA's ARB representative regularly takes action to ensure the enforcement of ARB-created ultra vires rules and regulations.³
- KICA's representative has become an ostensible agent of the ARB.
- KICA has implemented rules and regulations not authorized under the KICA Covenants and has empowered the ARB to take action to enforce the unauthorized rules and regulations.

These actions on the part of KICA are in clear violation of the General and KICA Covenants. The KICA Covenants do not permit KICA's involvement in ARB matters while the ARB is controlled by the Partners. Because of these actions, KICA has become a willing participant in the Partners' unauthorized expansion of their Limited Powers of Review and Approval (defined below). KICA's complicity with the Partners' scheme to expand the operation of the ARB beyond the Limited Powers of Review and Approval has exposed KICA to substantial joint-party liability connected with damages to others caused by the unauthorized actions of the ARB. The Partners derive substantial economic benefit from sole control of the ARB to the detriment of KICA and its Members, including the receipt of fees, deposits, and fines that the ARB imposes in violation of the limited authority that has been granted to the Partners pursuant to the General Covenants. The Board's failure to prevent KICA from becoming complicit in the Partners' scheme to expand the operations of the ARB beyond their limited authority under the General Covenants is a violation of the Boards' standards of care under the Act and South Carolina common law.

Failure to Enforce the General Covenants – The Partners have limited review and approval authority granted to them under the General Covenants (collectively, the “**Limited Powers of Review and Approval**”). The Partners created the ARB to exercise their Limited Powers of Review and Approval. The Partners have grossly exceeded their Limited Powers of Review and Approval and their actions are in many cases arbitrary, capricious, and unreasonable.⁴ The Partners' improper exercise of unauthorized review and approval rights has damaged many stakeholders on Kiawah Island. KICA has been complicit in the Partners' improper expansion of their Limited Powers of Review and Approval. Given KICA's active support of the Partners' unauthorized actions, KICA has exposed itself to joint-party liability stemming from the Partners' actions and, therefore, KICA has a duty under the Act and South Carolina common law to enforce the General Covenants to mitigate its liability. Under the KICA Covenants (see Recitals and Article VI Section 3(k)) and the General Covenants (Article VII Section 2) KICA has the right to take all actions necessary to enforce the General Covenants. Additionally, the Partners' unauthorized expansion and improper exercise of their Limited Powers of Review and Approval has damaged KICA inasmuch as KICA has permitted the ARB to review and approve plans connected with

³ From the Blog/KICA Core Functions: Livability <https://kica.us/news/kica-core-functions-livability/>

⁴ The Partners regularly do not adhere to their own guidelines for the development of projects that are owned by the Partners and their successors in interest.

improvements to KICA's Common Properties (as defined in the KICA Covenants), and such review and approval has resulted in KICA taking actions to address the ARB's requirements that are not within the ARB's Limited Powers of Review and Approval. KICA's failure to act to prevent the ARB's exercise of authority over the KICA Common Areas is a breach of the Board's duties.

Failure to Enforce Rights & Prevent Conflicts of Interest – Pursuant to the KICA Covenants, the Partners had a designated appointed representative on KICA's Board (the "**Partners' Representative**"). Pursuant to the clear and unambiguous language of the Amended and Restated Development Agreement by and between Kiawah Resort Associates, L.P. and the Town of Kiawah Island Adopted December 3, 2013 (the "**Development Agreement**"), the Partners' Representative is no longer entitled to sit on the KICA Board.⁵ Notwithstanding the sunset of the Partners' right to appoint a Partners' Representative, the KICA Board has failed to enforce the Partners' agreement to relinquish their right to appoint the Partners' Representative. Because of the Board's failure to enforce KICA's rights under the Development Agreement, the Partners have continued to improperly appoint a representative to the KICA Board (the "**Partners' Illegitimate Representative**"). Currently Amanda Mole ("Mole") is the Partners' Illegitimate Representative. Mole also serves as the Director of Architecture for Kiawah Partners. In such a role she is an active member of the Partners' senior management team, and, oversees the Partners' ARB. Mole in her illegitimate role as a KICA Board Member regularly votes on matters that directly and indirectly involve the Partners' interests and the ARB. The KICA Board's failure to eliminate the expired seat on the Board connected with the Partners' Representative and/or restrict Mole from voting on matters that involve the Partners' interests and/or the ARB is a violation of the laws of South Carolina, including but not limited to the Act, and exposes KICA to substantial risk of liability for actions involving the Partners' violation of the Limited Powers of Review and Approval.

DEMAND

Given the above, the undersigned hereby demand that the Board remove Mole from the Board and take action during the next KICA Board Meeting to demand that the Partners immediately turn over control of the ARB to KICA, and absent such turnover, to approve KICA's commencing legal action against the Partners and the ARB to seek a Court's declaration to determine the scope

⁵ See Paragraph 18(a) and Exhibit 18-1 of the Development Agreement. Pursuant to these provisions of the Development Agreement, the Partners agreed that their right to appoint the Partners' Representative terminated on January 1, 2018.

KICA Board/Demand

March 26, 2023

Page 5

of the Partners' Limited Powers of Review and Approval under the terms of the General Covenants, and a declaration that the Partners' current operation of the ARB is in violation of the Limited Powers of Review and Approval established under the General Covenants. The undersigned reserve the right to proceed derivatively on KICA's behalf if the Board fails to take the above action on or before the next Board meeting.

Concerned Owners/Members:

Timothy Hazel /s/

Address: 283 Governors Dr.

Perry B. Molinoff /s/

Address: 10 Blue Heron Pond

Lawrence Rutkowski /s/

Address: 232 Sparrow Hawk

Todd Boney /s/

Address: 3532 Shipwatch

cc: W. Andrew Gowder, Jr., Esq. (via e-mail: andy@austengowder.com)
Preserve Kiawah Board of Directors