

KIAWAH ISLAND
COMMUNITY
A SSOCIATION



REDLINE DRAFT
By-Laws

—
KICA.US

AUGUST 2023



Table of Contents

SECTION	TITLE	PAGE
ARTICLE I	NAME & LOCATION	5
ARTICLE II	DEFINITIONS	5
ARTICLE III	MEMBER MEETINGS & REFERENDUM RIGHTS	9
Section 1	Annual Meeting of the Members	
Section 2	Special Meeting of the Members <u>and Action by Written or Electronic Ballot</u>	
Section 3	Notice of Member Meetings	
Section 4	Proxies	
Section 5	Quorum for Member Meetings	
Section 6	Ballots	
Section 7	Association Actions Requiring a Referendum	
Section 8	Member-initiated Referendums	
Section 9	Member Eligibility	
ARTICLE IV	BOARD OF DIRECTORS	12
Section 1	Number of Director Positions	
Section 2	Director Qualifications	
Section 3	Elected Term	
Section 4	Staggered Terms	
Section 5	Removal of Elected Directors by Members	
Section 6	Removal of Elected Directors by the Board	
Section 7	Discontinuation of the Right of the Type E Member to Appoint a Director	
Section 8	Compensation	
Section 9	Board Elections	
Section 10	Director Position Vacancies	
Section 11	Increasing or Decreasing the Number of Director Positions	



Section 12	Resignation of Elected Directors	
SECTION	TITLE	PAGE
Section 13	Director Conflicts of Interest	
ARTICLE V	BOARD MEETINGS	16
Section 1	Regular Board Meetings	
Section 2	Special Board Meetings	
Section 3	Emergency Board Meetings	
Section 4	Quorum for Board Meetings	
Section 5	Conduct of Board Meetings	
Section 6	Agendas for Board Meetings	
Section 7	Director Votes	
Section 8	Executive Sessions	
Section 9	Actions by Directors Without a Meeting	
Section 10	Right of Dissenting Directors	
ARTICLE VI	POWERS & DUTIES OF THE BOARD OF DIRECTORS	18
Section 1	Powers	
Section 2	Duties	
ARTICLE VII	OFFICERS	20
Section 1	Officers of the Board and the Association	
Section 2	Election of Officers	
Section 3	Officer Terms	
Section 4	Resignation and Removal of Officers	
Section 5	Officer Vacancies	
Section 6	Powers and Duties of Officers	
Section 7	Chief Operating Officer	
ARTICLE VIII	COMMITTEES & TASK FORCES	21
Section 1	Community Committees and Task Forces	
Section 2	Formation of Community Committees and Task Forces	
Section 3	Powers of Community Committees and Task Forces	
Section 4	Procedures and Reporting for Community Committees and Task Forces	



SECTION	TITLE	PAGE
Section 5	Committees of the Boards	
Section 6	Powers of Committees of the Board	
Section 7	Special Litigation Committees	
ARTICLE IX	MERGER AND CONSOLIDATION	23
ARTICLE X	MISCELLANEOUS	23
Section 1	Inspection of Records	
Section 2	Indemnification	
Section 3	Construction	
Section 4	Corporate Seal	
Section 5	Amendments	
Section 6	Fiscal Year	
Section 7	Grammar	
Section 8	Severability	
Section 9	Effect on Prior By-Laws	



KIAWAH ISLAND
COMMUNITY
ASSOCIATION

By-Laws of the Kiawah Island Community Association

ARTICLE I

Name & Location

The name of the corporation is “Kiawah Island Community Association, Inc.”, a South Carolina mutual benefit non-profit corporation, hereinafter referred to as the “Association”. The principal office of the corporation is located at 23 Beachwalker Drive, Kiawah Island, Charleston County, South Carolina; 29455.

ARTICLE II

Definitions

The following words and terms when used in these By-Laws or any modification thereto shall have the following meanings:

1. “**Board of Directors**” or “Board” or “Directors” means, collectively, 1) those Members elected to Director Positions (as defined in Article IV, Section 1) to govern the affairs of the Association during their term (“Elected Directors”) and 2) the director appointed by the Type E Member (the “Type E Director”) in both cases pursuant to Article III of the Association Covenants. Any reference to simply “Director” herein means such clause is applicable to Elected Directors, individually, and the Type E Director.
2. “**Covenants**” means, collectively:
 - 2.1. “**Association Covenants**” means the most recent adopted and recorded version of the Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., dated December 21, 1977, and recorded in the office of the REGISTER OF DEEDS for Charleston, South Carolina in Book M-114, page 407;
 - 2.2. “**General Covenants**” means the most recent adopted and recorded version of 1) DECLARATION OF RIGHTS, RESTRICTIONS, AFFIRMATIVE OBLIGATIONS AND CONDITIONS APPLICABLE TO ALL PROPERTY IN KIAWAH ISLAND recorded December 29, 1977, in the REGISTER OF DEEDS Office in Charleston County, South Carolina in Book M114, page 406, and amended by instrument recorded in Book Z-124, page 305; and



- 2.3. “**Ancillary Covenants**” means the most recent adopted and recorded version of, collectively, 1) the CLASS “A” COVENANTS FOR SINGLE-FAMILY RESIDENTIAL AREAS IN KIAWAH ISLAND originally recorded February 19, 1976 in the REGISTER OF DEEDS Office in Charleston County, South Carolina in Book T108, page 406; 2) the CLASS “B” COVENANTS FOR MULTI-FAMILY RESIDENTIAL AREAS IN KIAWAH ISLAND originally recorded February 19, 1976 in the REGISTER OF DEEDS Office in Charleston County, South Carolina in Book T108, page 340; and 3) the COVENANTS AFFECTING PATIO HOME SITES IN KIAWAH ISLAND originally recorded February 19, 1976 in the REGISTER OF DEEDS Office in Charleston County, South Carolina in Book T108, page 341
3. “**Business Day(s)**” means any day except any Saturday, any Sunday, or any day which is a legal holiday in the State of South Carolina.
4. “**Electronic Means**” refers to communications delivered or received by the Association by electronic mail (not inclusive of telephonic text messages). The Association must create and retain a retrievable record of any communication it sends or receives by Electronic Means.
5. “**Good Standing**” means and refers to the status of Members who have not had their rights as Members terminated, expelled, or suspended by a majority vote of the Board of Directors, acting in accordance with Section 33-31-621 of the SCNC Act, as a result of 1) being delinquent or in arrears in the payment of any and all Annual Assessments, Special Assessments (both as defined in Article V of the Association Covenants), or charges of the Association; 2) being in default of any of the Member’s obligations under the Association Covenants and these By-Laws; or 3) being in violation of the KICA Rules and Regulations (as hereinafter defined).
6. “**KICA Rules and Regulations**” means the most recent and adopted version of the AMENDED OVERVIEW OF RULES AND REGULATION OF THE KIAWAH ISLAND COMMUNITY ASSOCIATION, INC last recorded December 10, 2018 in the REGISTER OF DEEDS Office in Charleston County, South Carolina in Book 0765, page 301, as may be further amended or, in the event such version is determined to be invalid or unenforceable for any reason, then the most recently adopted and recorded version of KICA’s rules and regulations that is valid and enforceable, as may be further amended.
7. “**Meeting**” means and refers to a gathering of a quorum (as defined Article III, Section 5 herein) of the Members or a quorum (as defined in Article V, Section 4 herein) of the Board of Directors, as applicable, to hear, discuss, or deliberate upon any item of business that is within the authority of the Members or the Board of Directors. Meetings shall be held at specific times, dates and such places within the Town of Kiawah Island, as may be designated by the Board of Directors unless provided for to the contrary herein. A Meeting may also be conducted by conference telephone, teleconference, video conference, or online audio and web conferencing platform, either together with or separate from an in-person meeting, in such a manner that the participants at the Meeting can participate in real time and may hear each other simultaneously during the Meeting. A person participating in a Meeting by either or any of these means or methods is deemed to be present in person or personally at the meeting. Members and Directors shall conduct themselves at any Meeting in a professional and businesslike manner at all times. The Board may prohibit or reasonably restrict audio or video recording of any Meeting by anyone other than the Association.
8. “**Member(s)**” means all Owners who are Members of the Association as provided in Article III Section 1 of the Association Covenants.
9. “**Member Meeting(s)**” means either an Annual Meeting of the Members or a Special Meeting of the Members as set forth in Article III of these By-laws.



10. **“Membership List”** means a list of all Members prepared and maintained by the Association in compliance with the requirements of Section 33-31-1601 (c) of the SCNC Act which shall be available for inspection by any or all Members, their agents or attorneys at Member Meetings and at other times pursuant to Section 33-31-720 (g) of the SCNC Act.
11. **“Notice”** means a notice issued by the Association to its Members as required by the Association Covenants and these By-laws regarding a Meeting or other action requiring approval by the Members. A Notice shall be (1) delivered to Members in writing, either in person, or by mail at the last known address as shown on the Association records, or (2) transmitted by Electronic Means to the last Member-reported electronic mail address, respectively, of a Member as shown on the records of the Association. If the Association properly mails or transmits the Notice, the Member is deemed to have been given notice whether or not the Member actually receives it.
 - 11.1. If a lot or property is jointly owned or co-owned by more than one person or entity, Notice to one co-owner or joint owner is deemed Notice to all co-owners or joint owners. Similarly, Notice to one ~~Owner~~ of a lot or property is deemed Notice to all ~~Owners~~ of the lot or property. If a Member fails to give the Association an effective address, the Notice may be sent (1) to the address of the Member’s developed property and/or (2) to the Member’s address shown on the then-current property tax rolls for the lot or property.
 - 11.2. For purposes of these By-Laws, when any property is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, Notice of any Meeting shall be made or delivered as in the manner as stated above to one such joint owner, and such Notice shall be deemed Notice to all joint owners of such property.
12. **“Owner(s)”** is as defined in Article I (l) of the Association Covenants.
13. **“Petition”** means a formal request or demand, signed by Members in Good Standing, that the Association take or not take certain actions as permitted and further specified by the Association Covenants and these By-laws. A Petition must contain a written statement detailing the facts involved and the action requested. A written Petition or electronic Petition (including but not limited to signatures collected through an “on-line” petition service) shall be allowed, provided that each signer’s identity is reasonably discernable. A Kiawah property address must be provided by each signer. While any Member may sign a Petition, only one Member’s signature per property shall be counted toward calculating whether required thresholds have been achieved.
 - 13.1. Upon achieving a required threshold, a Petition shall be delivered to the Secretary in person or personally, by mail or Electronic Means by a Member (the “Submitting Member”). The Association shall have seven (7) days to review Member signatures and provide conclusive evidence, if any, to the Members that there are not enough signatures from Members in Good Standing to achieve the threshold required by the action requested otherwise such Petition shall be deemed as valid (the “Petition Signature Review”). The Association shall not be responsible for soliciting signatures.
14. **“Prohibited Language”** is defined as any specific language in a Member-initiated or Director-initiated communication required to be circulated by the Association to the Members pursuant to these By-laws (a “Required Communication”), that is defamatory or profane. Subject to the provisions of this Section (14), the Association shall not be required to circulate any communication that contains Prohibited Language. Upon submission to the Association of a Required Communication, the Secretary (or in all instances in this Section (14), the Vice Chair if the Secretary is submitting the Required Communication) shall 1) notify the Board of the submission and 2) conduct a review of the Required Communication to determine if it contains what would be viewed

Deleted: resident

Deleted: residents

Deleted: n

Deleted: n



by a reasonable person to be Prohibited Language. The Secretary shall notify the submitting Member or Director of such determination not more than three (3) Business Days following its submission by the Member or Director to the Association. Should the Secretary reasonably determine the proposed communication contains Prohibited Language, the Secretary shall suggest specific changes, to the extent reasonably possible, to the submitting Member or Director to alter or remove such Prohibited Language with such notice of determination. If the submitting Member or Director agrees to such changed language, the Required Communication shall be deemed to no longer contain Prohibited Language and it shall be distributed to the Members by the Association. Should the Secretary fail to respond as required herein within three (3) Business Days, the language of the Required Communication shall be deemed not to contain Prohibited Language and the Required Communication shall be distributed to the Members by the Association.

15. **“Record Date”** means the date upon which a Membership List identifying Members who are eligible to vote in a Regular or Special Election and/or participate in Members Meetings is finalized.
16. **“Regular Election”** means a vote of the Members conducted annually for any Director Positions (as defined in Article IV, Section 1 of these By-laws) for which terms are expiring. Votes for Regular Elections shall be conducted utilizing a Voting Tabulation Service (as defined in ~~Section (24)~~ of this Article II) and otherwise in accordance with Section 33-31-708 of the SCNC Act. All Regular Elections shall be conducted over at least a thirty (30) day period but no more than a thirty-five (35) day period from the date ballots are issued to Members.
17. **“SCNC Act”** means the South Carolina Nonprofit Corporation Act of 1994, S.C. Code §§ 33-31-101, et seq. as amended.
18. **“SCHA Act”** means the South Carolina Homeowners Association Act of 2018, S.C. Code §§ 27-30-110, et seq. as amended.
19. **“Secretary”** means the Secretary of the Board and Association as elected by the Board pursuant to Article VII of these By-laws who shall receive all correspondence, notices and any other submissions referred to in these By-laws at the address of the Association provided that if the position of Secretary is vacant, such correspondence, notices or other submissions may be sent to any other Officer (as defined in Article VII of these By-laws). The Secretary shall be responsible for the custody of all Association records.
20. **“Special Election”** means any vote of the Members required or caused by provisions of these By-laws or the Association Covenants other than for a Regular Election. Votes for Special Elections shall be calculated in accordance with Article III, Section 2 of the Association Covenants and shall be conducted utilizing a Voting Tabulation Service (as defined in ~~Section (24)~~ of this Article II) and otherwise in accordance with Section 33-31-708 of the SCNC Act. All Special Elections shall be conducted over at least a thirty (30) day period but not more than a thirty-five (35) day period from the date ballots are issued to Members.
21. **“Supermajority”** means a minimum of one additional Director beyond a simple majority of Directors.
22. **“Total Base Vote”** means the total number of possible votes calculated on any Record Date pursuant to the formulas set out in Article III, Section 2, of the Association Covenants. The Total Base Vote calculated for any Regular Election, Special Election or Members Meeting shall be included in any announcement or Notice of the same and further announced by the Association at Member Meetings. The Total Base Vote most recently announced by the Association shall be used for the purposes of calculations required under these By-laws unless specifically provided to the contrary herein.

Deleted: s

Deleted: y

Deleted: Section

Deleted: Section

Deleted: s

Deleted: y



- 23. “**Type E Member**” means Kiawah Island Company Limited, a corporation duly organized and existing under the laws of the territory of the British Virgin Islands, and its successors and assigns.
- 24. “**Voting Tabulation Service**” means a third-party voting service engaged by the Association for the purpose of issuing, collecting and counting of Ballots for all Regular Elections and Special Elections.

ARTICLE III:
Members Meetings & Referendum Rights

Section 1: Annual Meeting of the Members

An Annual Meeting of the Members is a Meeting that shall be held within the first three (3) calendar months of each year but in no event more than seventy (70) days after the Record Date for such a Meeting. The Record Date for an Annual Meeting of the Members is ten (10) days before the date the Notice is distributed and/or published to the Members. The Record Date is effective for any adjournment of the Annual Meeting of the Members, provided the date of the adjourned Meeting is not more than thirty (30) days after the original Meeting. Any vote of the Members associated with an Annual Meeting of the Members shall be conducted ~~in accordance with the provisions for a Regular Election or Special Election, as applicable, both as defined in Article II, Sections 16 and 20, respectively.~~ The conduct of the Annual Meeting of the Members shall, otherwise, meet the requirements of Section 33-31-701 of the SCNC Act.

- Deleted: in advance of such a Meeting
- Deleted: of
- Deleted: p.
- Deleted: u.
- Deleted: →

Section 2: Special Meeting of the Members and Action by Written or Electronic Ballot

A Special Meeting of the Members is a Meeting that may be called, pursuant to and in accordance with the provisions of Section 33-31-702 of the SCNC Act, by a) a majority vote of the Board of Directors, or b) a Petition by Members representing votes that comprise at least five percent (5%) of the Total Base Vote (the “Special Meeting Threshold”) as calculated based upon a Record Date as of the close of business on the thirtieth (30th) day before the Petition is delivered to the Secretary. The Association shall decide the date, time, and location of the Meeting and whether voting may take place by written or electronic ballot in accordance with the provisions for a Regular Election or Special Election as defined in Article II, Sections 16 and 20, respectively. If called by Petition and the Association fails to schedule the Meeting within thirty (30) days of the submission of the Petition, a Member who has signed the Petition may set the date, time and location (within the Town of Kiawah Island) of such a Meeting, may decide whether voting may take place by written or electronic ballot, and the Association must cooperate with the demanding Member to provide Notice to the Members and hold the Meeting.

Except involving the removal of an Elected Director as provided for in Article IV, Section 5, or when any provision of the SCNC Act provides to the contrary, any action that may be taken at any Annual, Regular, or Special Meeting of the Members may be taken without such a Meeting if such action is approved by written or electronic ballot as authorized by Section 33-31-708 of the SCNC Act and shall be conducted in accordance with the provisions for a Regular Election or Special Election as defined in Article II, Sections 16 and 20, respectively.

Deleted: Other than as provided for in Article IV, Section 5 of these By-laws and any other provision of the SCNC Act providing to the contrary, any vote of the Members associated with a Special Meeting of the Members shall be conducted in advance of, or, pursuant to the provisions of Section 33-31-708 of the SCNC Act, in lieu of such a Meeting, in either case in accordance with the provisions of a Special Election as defined in Article II, Section u.



Section 3: Notice of Member Meetings

A Notice stating the place, day, and hour of a Members Meeting shall be provided to Members not less than thirty (30) days nor more than sixty (60) days before the date of the Members Meeting. All Notices for Members Meetings shall include proposed actions and a descriptive statement of each action that is being presented to the Members and if applicable, the ballot for a Regular Election and/or Special Election. A Notice for a Special Meeting of the Members must identify the purpose of such a Meeting.

Section 4: Proxies

~~Any Member in Good Standing may vote and transact business at any Meeting and any Regular Election or Special Election by proxy authorized in writing. Valid proxies shall be considered in establishing quorum requirements for any Regular or Special Meeting of Members and any Regular Election or Special Election.~~

Any proxy shall set forth the Meeting at which the proxy is valid and shall only be valid for that Meeting. To be valid, a proxy must be signed and dated on a proxy form provided or approved by the Association and filed, prior to the opening of the Meeting for which it is to be used, by personal delivery, mail, or Electronic Means to the Voting Tabulation Service or the Secretary. Proxies may be revoked by written notice delivered to the Association or by request in person by the proxy giver at a Meeting for which the proxy is given. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Deleted: Any Member in Good Standing may execute a proxy only for purposes of allowing quorum to be established for a Regular or Special Meeting of Members and any Regular Election or Special Election associated therewith.

Section 5: Quorum Required for Members Meetings

Quorum requirements for Members Meetings and any votes and actions related thereto shall be as set forth in Article III, Section 6 of the Association Covenants unless superseded by an alternate quorum requirement elsewhere in the Association Covenants.

Section 6: Ballots

Written or electronic ballots must be returned to the Voting Tabulation Service, or if mandated by the Association, to the Secretary, by such date and time as set forth in the Notice of the Members Meeting (the "Ballot Due Date"). Ballot decisions may also be made by phone to the Voting Tabulation Service, or the Association if mandated by the Association. Only those ballots cast by the Ballot Due Date shall be counted in calculating the achievement of quorum requirements, the election of Elected Directors and the approval or rejection of any other proposed actions. A Member satisfies the requirement or mechanics of casting a ballot by meeting the requirements set out above. Once cast, a written, electronic, or telephonic ballot may not be revoked. The form of all ballots shall comply with the requirements Section 33-31-708 of the SCNC Act. No Director or candidate for a Director Position, Officer, Member, or Association staff member is permitted to request or receive any information from the Voting Tabulation Service regarding any Regular or Special Election prior to the Ballot Due Date other than the total number of votes that have been cast for purposes of determining how many more votes are needed to achieve quorum requirements and as to whether or not individual Members have voted solely to allow the Association to communicate with such Members to encourage them to vote.

Section 7: Association Actions Requiring a Referendum

Actions by the Association requiring a referendum of the Members are delineated in the Association Covenants (a "Required Referendum"), including but not limited to Article I(u); Article III, Section 5; Article V, Sections 3 through 5; and Article VI, Section 5. A Special Election shall be conducted for any Required Referendum. The Record Date for any Special Election for a Required Referendum shall be ten (10) days



before the Notice and ballot for a Required Referendum is sent to the Members. The percentage of the vote required to “pass” a Required Referendum shall be as specified in the Association Covenants for the particular action under consideration. If Members returning ballots by the Ballot Due Date collectively representing not less than the required percentage approve of the proposed action by selecting “For” (which together with “Against” shall be the only choices on the ballot), it shall be deemed to “pass” and the action voted upon shall be deemed to have been authorized by the Members. The Association may not undertake any action requiring a Required Referendum without complying with these provisions. For clarification, there is no quorum requirement for a Special Election for a Required Referendum unless specified to the contrary in the Association Covenants.

Section 8: Member-initiated Referendums

Pursuant to Article III, Section 5 of the Association Covenants and in recognition that the “A”, “B”, “C”, and “D” Members now elect a majority of the Board of Directors, the Members may undertake a Petition to require that a referendum be held regarding any action of the Board of Directors (a “Disputed Action Petition”). The process for any Disputed Action Petition and referendum related thereto shall be as follows:

1. If Members, whose votes, as calculated pursuant to Article III, Section 2 of the Association Covenants collectively representing at least five percent (5%) of the Total Base Vote, sign a Disputed Action Petition, the Association shall circulate the Petition to all Members using the Association’s usual and customary methods for communicating with individual Members within five (5) Business Days of the Disputed Action Petition being delivered to the Secretary. The Association may conduct a Petition Signature Review concurrent with the five (5) Business Day period between delivery of the Disputed Action Petition to the Secretary and the circulation of the Disputed Action Petition to the Members. The Association must circulate the Disputed Action Petition to Members in its original, unaltered form unless it contains Prohibited Language (as defined in Section 14 of Article II).
2. If 1) Members, whose votes, as calculated pursuant to Article III, Section 2 of the Association Covenants collectively representing not less than twenty five percent (25%) of the Total Base Vote, sign a Disputed Action Petition, and 2) the Disputed Action Petition is submitted to the Secretary within thirty (30) days of the Board voting to approve such an action (provided that such thirty (30) day period will not commence for any Action by Directors Without a Meeting as defined in Article V, Section 9 herein until such vote is ratified at a Meeting), the Disputed Action Petition shall be deemed to have achieved the “Referendum Threshold”.
3. The Association shall conduct the Petition Signature Review (as defined in Article II, Section 13.) Provided, if the Association does not provide the conclusive evidence required by the Petition Signature Review, the Association shall conduct a Special Election commencing not more than thirty (30) days following the end of the seven (7) day Petition Signature Review period.
4. A Special Election shall be conducted for a referendum related to a Disputed Action Petition. The Record Date for any Special Election related to a Disputed Action Petition shall be ten (10) days before the Notice and Ballot for the Special Election is sent to the Members.
5. If Members representing, collectively, fifty-one percent (51%), or more of votes returned during the voting period approve overturning the Board action identified in the Disputed Action Petition by selecting “For” (which together with “Against” shall be the only choices on the ballot), it shall be deemed to “pass” and the Board action that is identified in the Disputed Action Petition shall be deemed null and void. For clarification, there is no quorum requirement for a Special Election for a Disputed Action Petition.

Deleted: sub

Deleted: s

Deleted: n

Deleted: n



Section 9: Member Eligibility

Any Member not in Good Standing on the applicable Record Date is ineligible to a) vote in a Regular Election or Special Election, b) participate in a Members Meeting, and c) be counted or accounted for purposes of determining a quorum of the Members. In addition, a Member not in Good Standing may not submit or sign a Petition.

ARTICLE IV

Board of Directors

Section 1: Number of Director Positions

A Board of Directors shall consist of Three (3), Five (5), Seven (7), Nine (9) or Eleven (11) director positions (“Director Positions” or, individually, a “Director Position”) as determined by the Board provided that any change in the number of Director Positions shall require the affirmative vote of a Supermajority of the Directors. All but one of the Director Positions shall be filled by Elected Directors with the remaining Director Position filled by the Type E Director. Should the Board decide to change the number of Director Positions, such Director Positions shall be filled or eliminated, as applicable, in accordance with Section 11 of this Article IV.

Section 2: Director Qualifications

All Elected Directors must be Eligible Members. An Eligible Member is 1) a Member in Good Standing, and 2) a natural person. If the Member is a trust, any trustee of such trust shall be a Member for the purposes of this section. If the Member is a corporation, partnership, or LLC, such entity may designate a person who shall be a Member for purposes of this section subject to reasonable written evidence of the designation being provided to the Board.

Section 3: Elected Term

Elected Directors shall be elected for a single three-year term, unless elected for a term of less than three (3) years in a Special Election pursuant to Sections 10 or 11 of this Article IV. Any decrease in the number of directors or term of office does not shorten an incumbent director’s term. This paragraph of Article IV, Section 3, applies only to those Elected Directors who commenced serving their term as an Elected Director after this section was adopted. If this section was adopted during the term of an Elected Director, then this paragraph has no effect on that Elected Director until the Elected Director commences a new term.

Deleted: have three (3)-

Deleted: s

No Elected Director (including incumbent directors) may serve consecutive terms or more than two terms in total.

Section 4: Staggered Terms

Terms for Elected Directors shall be staggered such that one-third (1/3) of the total number Director Positions for Elected Directors shall be filled by an election each year. If the number of Director Positions for Elected Directors changes and is not divisible by three (3) into a whole number, the Board shall set the initial Elected Term(s) as either one (1), two (2) or three (3) years for any new Director Positions for Elected



Directors created pursuant to Sections 7 and 11 of this Article IV to maintain this distribution as closely as possible. In the case that multiple Director Positions with different initial Elected Terms are contested in a single Special Election pursuant to this Article IV, Section 4, the Director Position(s) with the longer term(s) will be awarded to the Member(s) receiving the greater number of votes.

Section 5: Removal of Elected Directors by the Members

Any one or more Elected Directors may be removed by the Members pursuant to the provisions of Sections 33-31-725 and 33-31-808 of the SCNC Act. The removal of an Elected Director by the Members may only take place at a Meeting and may not take place by written consent or written or electronic ballot. ~~Members may vote by proxy at any such Meeting.~~ Members may initiate the removal process pursuant to a Petition for a Special Meeting. ~~Any Elected Director whose removal becomes subject to a vote of the Members at a Special Meeting, may prepare a statement of defense to be circulated to the Members by the Association concurrent with the issuance of a Notice and ballots for a Special Election and Special Meeting and further, the Elected Director shall be given the opportunity to speak at any Special Meeting during which the removal shall be debated, discussed and/or voted upon. A Special Meeting for the removal of an Elected Director shall be subject to the quorum requirement of Article III, Section 6 of the Association Covenants.~~

Deleted:

Section 6: Removal of Elected Directors by the Board

Subject to the provisions of Section 33-31-808 of the SCNC Act, any Elected Director who a) has had three consecutive absences from regularly scheduled Board Meetings or b) has failed to pay Assessments when due and the Association has filed a lien related thereto, may be removed by the affirmative vote of a Supermajority of the other Directors. This Article IV, Section 6, applies only to those Elected Directors who commenced serving their term as an Elected Director after this section was adopted. If this section was adopted during the term of an Elected Director, then the section has no effect on that Elected Director until the Elected Director commences a new term.

Section 7: Discontinuation of the Right of the Type E Member to Appoint a Director

Should the right of the Type E Member to appoint a Director discontinue for any reason whatsoever, an Elected Director shall replace the Type E Director and shall be elected pursuant to the provisions of Section 10 of this Article IV.

Section 8: Compensation

No Elected Director shall receive compensation for any services rendered to the Association. However, any Elected Director may be reimbursed for actual expenses incurred in the performance of duties upon approval of such expenses by the Board. In addition, Elected Directors are prohibited from soliciting or accepting any compensation, gratuity, or other remuneration that would improperly influence or would appear to a reasonable person to improperly influence their decisions or would result or would appear to a reasonable person to result in a Conflict of Interest.

Section 9: Board Elections

Regular Elections and Special Elections for Director Positions shall be held as provided for in these By-laws. The number of votes each Member is eligible to cast shall be calculated in accordance with Article III, Section 4 of the Association Covenants. The Members receiving the greatest number of votes in either a Regular Election or Special Election for Director Positions shall be elected. The results of a Regular Election shall be



announced no later than the Annual Meeting while the results for a Special Election for a Director Position shall be announced no later than ten (10) days following the Ballot Due Date.

Section 10: Director Position Vacancies

If a Director Position held by an Elected Director becomes vacant by reason of death, resignation, retirement, or disqualification of the Elected Director, the Director Position shall remain vacant until a Special Election is held to elect an Eligible Member to serve for the remaining term, if any, of the vacated Director Position. The Special Election shall be conducted concurrent with the next scheduled Regular Election but shall be treated separately from the Regular Election. Any Eligible Member seeking to be elected to a Director Position shall be required to declare whether election is being sought to a full-term Director Position or to complete the term of the vacated Director Position. An Eligible Member may not simultaneously seek election to a full-term Director Position and to complete the term of a vacated Director Position. In addition to the forgoing provisions, a Special Election that is not concurrent with a Regular Election may be held to fill a vacated Director Position if i) the Special Election would be completed prior to the final day that Members may apply to run for a Director Position (the "Regular Election Commencement") and ii) a Supermajority of the Directors remaining on the Board affirmatively agree to hold a Special Election for such a purpose.

Section 11: Increasing or Decreasing the Number of Director Positions

Should the Board decide to add new Director Positions in compliance with Section 1 of this Article IV, a Special Election shall be held to fill such new Director Positions. The Elected Term of the new Director Positions shall be set by the Board to achieve compliance with the provisions of Section 4 of this Article IV. Should the Board decide to reduce the number of Director Positions, such a reduction shall be achieved by not holding elections to fill the first Director Positions becoming vacant for any reason herein including, but not limited to, the expiration of a Director Position term, until the total number of Director Positions equals the reduced number agreed to by the Board pursuant to Section 1 of this Article IV. Once Director Positions have been eliminated, the Board shall adjust the terms of future elections for Director Positions as needed to achieve compliance with the provisions of Section 4 of this Article IV. Under no circumstance shall the Board have the right to require an Elected Director to resign to effectuate a reduction in the number of Director Positions nor appoint any Member to fill any new Director Position.

Deleted: the

Section 12: Resignation of Elected Directors

An Elected Director may resign at any time by sending a written notice of such resignation to the office of the Association, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. If an Elected Director is no longer a Member, the transfer of title of the Member's property shall automatically constitute a resignation.

Section 13: Director Conflicts of Interest

This Section is intended to supplement or augment but not replace any applicable federal or state laws governing conflicts of interest applicable to South Carolina nonprofit corporations, including but not limited to Section 33-31-831(d) of the SCNC Act. Nothing herein shall be construed as diminishing the duties that every Director owes to the Association under the provisions of the SCNC Act.



1. A Director shall have a conflict (a “Director Conflict”) if (1) there is a transaction with the Association in which the director has a direct or indirect interest as defined in Section 33-31-831(d) of the SCNC Act or (2) there is a matter coming before the Board where the Director has an interest which would impair or reasonably be perceived as impairing the Director’s independence and the objectivity of judgement in making a decision that is in the best interest of the Association. All Directors have a broad fiduciary duty to the Board and the Members to use due diligence in all decision making, to ensure all decisions are in the best interest of the Association and to always act within the scope of the Board’s and the Association’s authority.
2. A Director shall inform the Board if the Director believes there are facts and circumstances which would create a Director Conflict with respect to that Director.
3. A Director may bring forward facts and circumstances pertaining to another Director which may create a Director Conflict with respect to that other Director.
4. A Director should recuse himself/herself/themself from the transaction or matter in question in the event the Director has a Director Conflict and any vote of a Director with a Director Conflict shall not be counted on a transaction or matter where the Director has a Director Conflict.
5. A matter or transaction may be approved by a majority vote of Directors without a Director Conflict, but in no case by a single Director.
6. Resolutions of a Director Conflict.
 - 6.1. All questions as to whether a Director has a Director Conflict shall be resolved by a majority vote of the Board in which the Director with the purported conflict may not vote.
 - 6.2. If the Board vote regarding a Director Conflict results in a tie vote or the Director with the alleged Director Conflict does not accept the vote of the Board, then the Board shall submit and refer the question for a binding resolution to a single neutral and impartial arbitrator pursuant to the Commercial Arbitration Rules promulgated by the American Arbitration Association utilizing its Expedited Procedures, with jurisdiction and venue for such arbitration to be in the Town of Kiawah Island, South Carolina. The Directors asserting there is a conflict shall be the claimants and shall submit the Demand for Arbitration. The Directors asserting there is no conflict shall be the respondents. KICA shall pay all fees (except for counsel, consultant and expert fees as noted below) associated with the arbitration, including but not limited to, the filing fees and arbitrator fees, subject to subsequent allocation as part of the award. The Directors waive any right or obligation to have KICA retain or pay for counsel, consultants or experts in or associated with the arbitration. The arbitration shall be determined and resolved based on written submissions and no discovery or motions shall be allowed. The intent is for the question of a conflict of interest to be resolved as expeditiously, summarily, and informally as is practicable. As a condition of a Board Member’s service on the Board, the Directors have consented to this arbitration provision respecting Director Conflicts and shall be deemed to have each waived and relinquished any right to appeal, contest, or litigate the decision by the arbitrator on the subject or to seek review of the arbitrator’s decision by any court or other tribunal.
7. Director Conflicts of the Type E Director should be additionally evaluated as if the Director is the “Company” (as defined in the Association Covenants).
8. Notwithstanding the forgoing:
 - 8.1. It shall not be a Director Conflict for a Director to nominate or vote for himself in any election(s) for a Director, Officer, Committee, Task Force, or other position to which Directors or Members generally are eligible.



- 8.2. A Director Conflict also shall not exist solely based on the fact that a Director may directly or indirectly benefit from a service or benefit which the Association provides or may provide to its Members generally.
- 8.3. Disagreeing with or voting against a Board action does not create a Director Conflict and the Board cannot withhold information or disallow such a Director from participating in any and all deliberations regarding such a matter.

ARTICLE V

Board Meetings

Section 1: Regular Board Meetings

Regular Board Meetings shall be Meetings of the Directors held at least six (6) times each year as set forth in the published annual calendar of the Board which calendar shall be published no later than five (5) Business Days following the Annual Meeting of the Members.

Section 2: Special Board Meetings

A Special Board Meeting shall be a Meeting of the Directors called by or at the request of the Chair or any two Directors by giving Notice not less than three (3) Business Days prior to any Special Board Meeting to each Director and to the Members.

Section 3: Emergency Meetings

Emergency Meetings of the Board without Notice may only be held in the event of a flood, typhoon, fire, earthquake, volcanic eruption, tsunami, hurricane, cyclone, tornado or other Acts of God that cause catastrophic losses for Kiawah Island.

Section 4: Quorum for Board Meetings

A majority of the Directors shall constitute a quorum for the transaction of business at any Board Meeting.

Section 5: Conduct of Board Meetings

The Chair, or if the Chair is not in attendance, the Vice Chair shall chair Board Meetings. All Board Meetings shall be deemed to be adjourned the earlier of (a) the approval by the Directors of a motion to adjourn or (b) ten (10) hours following the commencement of the Board Meeting. Other procedures regarding the Conduct of Board Meetings shall be, to the extent not addressed in these By-laws, guided, but not bound, by Robert's Rules in Brief. Any failure by the Board to follow any provision of Robert's Rules in Brief shall not affect the validity of any otherwise lawful action of the Board and shall not be employed to create liability against the Association or any of its Directors or Officers.

Section 6: Board Meeting Agendas

Board Meeting Agendas (or "Agendas") will be published at least three (3) Business Days prior to the date of the Meeting (other than for Emergency Meetings if impracticable) and shall include a list of the topics to be



considered with a description sufficient to allow the Directors and Members to prepare for the Meeting. Copies of materials to be presented at the Meeting should be included with the Agenda when the Agenda is published. Agendas should generally include the following topics in the order noted: i) Member comments on agenda topics, (ii) Board Officer and COO comments and reports, (iii) Old business, (iv) New business, (v) Director comments, and (vi) Member comments on KICA-related matters. The Board may allow additional Member comments during the Meeting.

Section 7: Director Votes

Each Director shall have one vote. The vote or act of a majority of the Directors present at a Board Meeting at which a quorum is present shall be required for such a vote or act to be a binding vote of the Board for all purposes, unless a greater number of Directors is required by law, the Association Covenants, or these By-Laws. A Director who is present at a Board Meeting at which a properly motioned action is taken on any Association matter is presumed to have assented to the action unless such Director dissents or abstains pursuant to the conditions of 33-31-824(c) of the SCNC Act. No action shall be deemed to have been taken on any matter unless the vote or abstention of each Director present is taken and recorded in the minutes of a Board Meeting. Directors may not vote by proxy or by secret ballot.

Section 8: Executive Sessions

Any Member shall have the right to attend any Board Meeting, provided that, subject to the limitations of this Section, the Board may meet, prior to or following any Board Meeting, with only Directors, or any combination of Directors and Association staff and any invited guests, whose presence is determined in the Board's discretion to be relevant to the subjects to be discussed, in attendance ("Executive Session").

Notwithstanding the foregoing, Directors may only vote on the following matters in an Executive Session: (a) requesting or obtaining legal advice from legal counsel where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege or the settlement of legal claims; (b) personnel matters, including but not limited to the employment, appointment, compensation, salary, suspension, removal, promotion, demotion, discipline, or release of an employee of the Association; (c) the negotiation of contracts where the terms are required to be kept confidential pursuant to a written non-disclosure agreement provided that any vote to approve a contract may not be taken in Executive Session; (d) collection of unpaid Assessments, fees or fine; (e) appeals of commercial assessments; or (f) issues related to individual Members including Committee or Task Force appointments or appeals of determinations of violations of Rules and Regulations or other obligations under the Association Covenants and/or these By-laws.

If the Board plans to meet in Executive Session as permitted herein, the agenda for the Regular Board Meeting or Special Board Meeting shall indicate as such and shall include a general description of the matters to be discussed in the Executive Session using classifications (a) through (f) above. The chair of the Board Meeting shall announce to the Association any actions taken during an Executive Session concurrent with the approval of the minutes from the previous Meeting. Any action taken during the Executive Session, including how each Director voted, shall be recorded in the minutes of the Board Meeting at which such actions are announced without disclosing the identity of any Members or employees associated with such actions.



Section 9: Actions by Directors Without a Meeting

Any action by the Board between Regular Board Meetings may be taken without a Meeting only if all Directors consent to taking such an action. A Director's consent to an action without a Meeting is satisfied or made effective by delivering or submitting the Director's signed consent to the Secretary in person, by mail or by Electronic Means. A signed consent represents the approval of the Director to the proposed action without further action or a vote required. Any action without a Meeting so approved has the effect of a Meeting vote and may be described as such in any document. Any action approved without a Meeting must be ratified at the next Regular Board Meeting and must be included in the Association's minutes or minute book. The Association shall also include an announcement of any action approved without a Meeting in the first regular weekly communication of the Association to the Members following the approval of any such action.

Section 10: Right of Dissenting Directors

A Director disagreeing with a vote of the Board shall have the right to file a dissent provided the dissenting Director advises the entire Board in writing two (2) Business Days after the vote in question of the intent to file a dissent. The dissenting statement (or statements if submitted by more than one Director) shall be submitted to the Secretary within four (4) Business Days after the vote in question. Any statement in support of the vote taken shall also be provided to the Secretary within four (4) Business Days after the vote in question. The Secretary shall then review the statements for Prohibited Language, and provided there is none, send all statements to the entire Board. Final versions of the dissenting and supporting statements shall be submitted to the Secretary within two (2) Business Days after the statements are sent to the entire Board. The Secretary shall cause all final statements to be sent electronically to all Members at the same time and in the same format. In that electronic communication, the Secretary shall note the substance of the vote in question and state that the dissenting and/or supporting statements are being sent in connection with that vote. The Secretary shall not comment further on the matter in the communication although the Secretary may submit or join in a separate statement dissenting from or supporting the vote in question.

ARTICLE VI

Powers & Duties of the Board of Directors

Section 1: Powers

Except as otherwise provided by law, the Articles of Incorporation, the Association Covenants, or these By-Laws, the ultimate authority over the management and conduct of the business and affairs of the Association shall be exercised by or under the direction of the Board of Directors. The business and property of the Association shall be managed and controlled by the Board. The Board shall have all requisite power, duty, and authority to perform its obligations under the Association's Articles of Incorporation, the Association Covenants, the General Covenants, these Bylaws, the SCNC Act, and the SCHA Act, as amended including, without limitation, the power, duty, and authority to enforce the provisions of the Association Covenants and these Bylaws, to acquire and pay for, out of the funds received from the collection of assessments pursuant to the Association Covenants, all goods and services necessary or appropriate for the proper functioning of the Association in accordance with the Association Covenants and these Bylaws and to mortgage the property of



the Association and to pledge the revenues of the Association as security for loans made to the Association, which loans shall be used by the Association in performing its authorized functions.

Section 2: Duties

It shall be the duty of the Board of Directors to:

1. cause to be kept a complete record of all its acts and corporate affairs in compliance with Section 33-31-1601 of the SCNC Act;
2. adopt and amend the annual budget for the Association and to post or provide the budget, as approved by the Board, to all Members;
3. oversee the performance of the COO, and, in a manner compliant with each Director's legal duties, assure that the COO's duties are being properly performed;
4. as more fully provided in the Association Covenants, to:
 - 4.1. determine and fix the amounts for all assessments and fees as authorized in the Association Covenants;
 - 4.2. send Notice of all assessments to every Owner or Member subject thereto;
 - 4.3. take such actions as the Board of Directors deems appropriate to collect assessments and charges of the Association, to enforce or foreclose the lien against any property for which assessments are not paid within one hundred twenty (120) days after the due date, or to bring an action at law against the Owner personally obligated to pay the same; and
 - 4.4. create and operate an Architectural Review Board when the Board determines it is appropriate to do so and once operating, to maintain records of all its actions;
5. issue, or to cause an appropriate officer to issue, upon demand by any person liable for any assessment, a certificate pursuant to Article V, Section 10, of the Association Covenants setting forth whether or not said assessment has been paid. A reasonable charge may be made by the Association for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
6. procure, cause to be purchased, and maintain adequate liability and hazard insurance on property and facilities owned or leased by the Association; liability insurance to protect any person who is or was a director, officer, employee, committee or task force member, or agent of the Association, or is or was serving at the request of the Association in all cases limited as to when the person was acting in such capacity; and any other insurance as the Board of Directors may deem appropriate or necessary;
7. cause all officers, employees, agents, or independent contractors having fiscal responsibilities to be bonded or insured, as it may deem appropriate;
8. enforce the provisions of the Association Covenants, these Bylaws, and the KICA Rules and Regulations, including but not limited at its discretion actions to enjoin violations or to seek other legal or equitable remedies for a breach thereof, including recovery of damages, attorneys' fees, and costs or expenses;
9. operate the Association in compliance with the Association Covenants, these By-laws and the SCNC Act in all material respects;
10. cause any and all amendments to these By-laws, the Association Covenants and/or the KICA Rules and Regulations to be (a) submitted for recording and (b) posted on the KICA website; in both cases not less than thirty (30) days following approval;
11. cause the Common Properties, Restricted Common Properties, and Purchased Common Properties (as such terms are defined in Article I of the Association Covenants) and the roads, facilities, and facilities located thereon to be adequately maintained or improved;



- perform such other and further duties as the Board of Directors may deem necessary or desirable for the preservation or maintenance of the Association's property and facilities.

ARTICLE VII Officers

Section 1: Officers of the Board and Association

The Officers of the Board and the Association shall be a Chair, Vice Chair, Secretary, and Treasurer, all of whom shall be Elected Directors. In addition, the Chief Operating Officer (as defined in Section 7 of this Article VII) shall be an officer of the Association.

Section 2: Election of Officers

The election of Officers shall take place at the first Board Meeting following the Annual Meeting. A majority vote of Directors, inclusive of the Elected Director who is being considered for an Officer position, shall be required to elect any Officer.

Section 3: Officer Terms

Officers shall each hold office for a one (1) year term commencing on the date of the Annual Board Meeting and ending at the next occurring Annual Board Meeting. Any Officer whose Elected Term as a Director has not expired will be eligible for reelection as an Officer.

Section 4: Resignation and Removal of Officers

An Elected Director may be removed as an Officer (but not as an Elected Director) by an affirmative vote of a Supermajority of the other Directors (i.e. not including the Elected Director who is being considered for removal). Removal may only occur at a Meeting.

An Officer may resign at any time by giving written notice to the Board, the Chair, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein provided that an Officer's resignation or removal as an Elected Director shall automatically terminate an associated Officer position.

Section 5: Officer Vacancies

The Board may fill a vacancy in any office. The Officer elected to such vacancy shall serve for the remainder of the term of the replaced Officer.

Section 6: Powers and Duties of Officers

To the extent consistent with the Association Covenants and By-Laws, Officers shall each have powers and duties prescribed by policies adopted by the Board.



Section 7: Chief Operating Officer

The Board shall employ a salaried staff executive who shall have the title of Chief Operating Officer (“COO”) on such terms and conditions as the Board shall determine. The COO shall be the chief operating officer of the Association with the responsibility to perform the duties as required by the Board and as set forth in the COO’s employment contract. The COO shall be subject to the Board’s oversight. The Board, by a Supermajority vote, may remove the COO in its discretion with or without cause, subject to and without prejudice to the contractual provisions or rights, if any, applicable to the COO. The COO shall be an ex-officio member of the Board, shall attend Board meetings, shall make periodic reports to the Board, and may participate in Board discussions, but shall have no vote. The COO may act as a conduit for and help facilitate the transmittal of attorney-client communications or other privileged information between the Board and the Association’s legal counsel without causing a waiver or relinquishment of any privilege. The COO shall have responsibility for the day-to-day administration and operations of the Association. The COO directs and administers all aspects of the operations: the common areas, infrastructure, staff, and all activities and Member relations. In addition, the COO shall assist the Board in setting strategies for the future. The COO shall have such other powers and duties as may be prescribed by the Board. The COO shall be authorized to execute such contracts, notes, mortgages, security interests, and similar instruments binding the Association, under the seal of the Association, as may be approved by the Board, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Association. The COO shall be prohibited from soliciting or accepting any compensation, gratuity, or other remuneration from any party other than the Association that would improperly influence or would appear to a reasonable person to improperly influence their decisions or would result or would appear to a reasonable person to result in a conflict of interest.

ARTICLE VIII

Committees and Task Forces

Section 1: Community Committees and Task Forces

Community Committees and Task Forces may be created by a charter adopted by a majority of the Directors at a Meeting subject to the requirements of Section 33-31-825 of the SCNC Act. Committees shall be for matters that are expected to extend indefinitely while Task Forces shall be for matters that are expected to be completed in a defined time frame. All Community Committees and Task Forces shall be comprised of at least two (2) non-Director Members and at least one (1) Director.

Section 2: Formation of Community Committees and Task Forces

The Board shall assign one or more Directors to chair Community Committees and Task Forces. The Director(s) designated as chair shall then draft a charter for the Community Committee or Task Force. The charter shall include the following: (i) the specific task(s) assigned to the Community Committee or Task Force, (ii) the time period when the work is to be performed, (iii) the number of Members who will be on the Community Committee or Task Force, (iv) any costs expected to be incurred by the Community Committee or Task Force, and (v) the terms of the Members who will serve on the Community Committee or Task Force. The charter shall be presented to the Board for approval and, if approved by majority vote, the



Association shall then solicit all of its Members to apply to be on the Community Committee or Task Force. The chair(s) of the Committee or Task Force shall then recommend to the Board for approval by majority vote, the Members, from those that applied, that should be appointed to the Community Committee or Task Force.

Section 3: Powers of Community Committees and Task Forces

Community Committees and Task Forces shall have no authority to bind the Association and the Board may not delegate such authority to bind the Association to any course of action, including, but not limited to taking any action in contravention of Section 33-31-825(e) of the SCNC Act. Any and all actions recommended by Community Committees and Task Forces shall be subject to the approval of the Board by majority vote or by such a percentage of Directors or Members otherwise required by these By-laws or the Association Covenants pertaining to the matter at hand.

Section 4: Procedures and Reporting for Community Committees and Task Forces

Community Committees and Task Forces may adopt their own written procedural rules provided such rules are consistent with the charter of the Board creating the Committee or Task Force. Committee charters will be reviewed by the Board every three (3) years. Not less often than twice per annum, the chair of a Community Committee or Task Force shall report to the Board at a Regular Meeting of the Board as to the activities of the Community Committee or Task Force. A Community Committee or Task Force will not be permitted to incur costs for outside services or vendors unless approved by the Board. Advance notice of all Community Committee and Task Force meetings will be provided to the Board and any Director shall have the right to attend any Community Committee or Task Force meeting whether or not such Director is a member of the Community Committee or Task Force.

Section 5: Committees of the Board

The Board, by majority vote, may form one or more Committees of the Board subject to the requirements of Section 33-31-825 of the SCNC Act. All Committees of the Board shall be comprised of all Directors that do not have a Conflict of Interest with regard to the matter being undertaken by such a Committee of the Board provided that, other than for a Special Litigation Committee, Directors may voluntarily waive their right to participate on any Committee of the Board. In no event, however, may a Committee of the Board have fewer than two (2) Directors.

Section 6: Powers of Committees of the Board

Except as provided in Section 7 below, the Board may not delegate its authority to bind the Association to any course of action to a Committee of the Board. Any and all such actions recommended by a Committee of the Board shall be subject to the approval of the Board by majority vote or by such number of Directors or Members otherwise required by these By-laws or the Association Covenants pertaining to the matter at hand.

Section 7: Special Litigation Committees

If any legal action is threatened or brought against the Association or the Board, if the Association or Board receives a demand to bring an action to enforce a right of the Association, or if the Association is named as or made a party to a derivative action, by resolution adopted by a majority of the Directors, the Board may delegate the authority of the Board to a Committee of the Board formed pursuant to the provisions of Section 5 of this Article VIII (a "Special Litigation Committee") to investigate the claims or action and



determine on behalf of the Association or recommend to the Board whether it is in the best interests of the Association to pursue or continue any or all of the claims asserted, defend or seek dismissal of any or all of the claims, and/or settle or discontinue any or all of the claims. The Special Litigation Committee shall not have any authority in contravention of section 33-31-825(e) of the SCNC Act. The Board's delegation of authority to a Special Litigation Committee may but need not include, among other authority, the power to retain separate and independent legal counsel or other professionals to advise or represent the Special Litigation Committee or Committee in the matter delegated by the Board. All members of any Special Litigation Committee shall protect and preserve the confidentiality of attorney-client communications, attorney work product, and other confidential material unless the Special Litigation Committee waives privileges and confidentiality by resolution adopted by a majority vote of the Special Litigation Committee.

ARTICLE IX

Merger and Consolidation

To the extent, as permitted by, and in the manner provided by law, including but not limited to the provisions of Article 11 of the SCNC Act, the Association may participate in mergers and consolidation with other non-profit associations organized for the same purpose, provided, however, that any such mergers or consolidation shall require unanimous approval by the Board of Directors of the Association and the affirmative vote of Members representing two-thirds (2/3) of the Total Base Vote at a Meeting duly called for such purpose.

Upon merger or consolidation of the Association with another association or associations, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing property, together with the covenants and restrictions established upon any other property, as one plan. No merger or consolidation shall change, without limitation, the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interest of Members of the Association.

ARTICLE X

Miscellaneous

Section 1: Inspection of Records

A Member may inspect and copy records of the Association as permitted by Section 33-31-1602 of the SCNC Act upon written notice at least five (5) Business Days before the date on which the Member wishes to inspect and copy such records. The Association may impose a reasonable charge covering the cost of labor and material for copies of any documents provided to the Member. The files and records of any attorney who performs services for the Association are not records of the Association and are not subject to inspection by Members.



Section 2: Indemnification

Officers, Directors, Committee members and Task Force members (collectively “Serving Member(s)”), while acting in such capacity, shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. Serving Members shall have no personal liability for any contract or other commitment made or action taken in good faith on the Association’s behalf.

Subject to South Carolina law, the Association shall indemnify every Serving Member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which the Serving Member may be a party by reason of being or having been a Serving Member, except that such obligation to indemnify shall be limited to those actions for which the indemnitee’s personal liability is limited under this Section.

This right to indemnification shall not be exclusive of any other rights which any present or former Serving Member may have. The Association shall maintain general liability and directors and officers liability insurance to assist in funding this obligation. The Association also may, but is not required to, purchase and maintain insurance on behalf of an individual, who is or was a Serving Member, against liability asserted against or incurred by a Serving Member in that capacity or arising from the Serving Member’s status even if the Association would not have the power to indemnify the person against the same liability under the provisions of the SCNC Act.

Section 3: Construction

In the event of a conflict between the Association Covenants and the Articles of Incorporation or the By-Laws, the Association Covenants shall control; and in the case of any conflict between the Articles of Incorporation and the By-Laws that the Association Covenants do not resolve, the Articles of Incorporation shall control.

Section 4: Corporate Seal

The Association shall have a seal in circular form having within its circumference the words: Kiawah Island Community Association, Inc., State of South Carolina, 1976.

Section 5: Amendments

These By-Laws may be altered, amended, or repealed in whole or part and new By-Laws may be adopted by either the Board or the Members pursuant to the provisions of Sections 33-31-1021, 1022, 1023 and 1024 of the SCNC Act and this Section 5.

1. Amendments by the Board shall be enacted by the affirmative vote of a Supermajority of the Directors at a Regular Board Meeting, except for those provisions in these By-laws that otherwise require a unanimous vote of the Directors which shall require the same to amend. The text of any By-laws amendment proposed by the Board must be published and distributed to the Members not less than thirty (30) days prior to the Regular Board Meeting at which such amendment shall be voted upon.
2. Amendments by the Members shall be enacted by a Special Meeting pursuant to the provisions of Article III, Section 2 (b) of these By-laws. If Members representing, collectively, a majority of votes



returned during the voting period for a Special Election required by such a Special Meeting, approve the By-laws amendment by selecting "For" (which together with "Against" shall be the only choices on the ballot), it shall be deemed to "pass" and By-laws amendment shall be deemed approved. A Special Election for the purpose of amending these By-Laws shall be subject to the quorum requirements of Article III, Section 6 of the Association Covenants.

3. Any conflicts between Board amendments and Member amendments shall be governed by Section 33-31-1021 of the SCNC Act.
4. Any amendments to this Section 5 must be approved by the Members by a Special Meeting pursuant to the provisions of Article III, Section 2 (b) of these By-laws. If Members representing, collectively, a majority of votes returned during the voting period for a Special Election required by such a Special Meeting, approve the amendment to this Section 5 by selecting "For" (which together with "Against" shall be the only choices on the ballot), it shall be deemed to "pass" and amendment to this Section 5 shall be deemed approved. A Special Election for the purpose of amending this Section 5 shall be subject to the quorum requirements of Article III, Section 6 of the Association Covenants.

Section 6: Fiscal Year

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year.

Section 7: Grammar

Wherever a word is used in the singular or plural it shall be read and construed as whichever would best apply.

Section 8: Severability

The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or affect the balance of these By-Laws or the Association Covenants.

Section 9: Effect on Prior By-laws

Upon adoption and recordation in accordance with Section 27-30-130 of the SCHA Act, these By-laws shall fully supersede and replace any and all prior By-laws of the Association, which shall have no further force or effect.

