

**KIAWAH ISLAND COMMUNITY ASSOCIATION, INC.,
A SOUTH CAROLINA NON-PROFIT, NON-STOCK CORPORATION**

**A RESOLUTION OF THE BOARD OF DIRECTORS
ESTABLISHING A POLICY REGARDING THE RELEASE OF LEGAL FILES**

A Regular Meeting of the Board of Directors of the Kiawah Island Community Association, Inc. (hereinafter "Association") was duly called by the Board's Chairperson and conducted on December 9, 2024, pursuant to Article V, Section 1, of the Association's By-Laws at which a quorum of the Board was present.

WHEREAS, the Association's Board of Directors wishes to establish a policy regarding the Association's legal files and its confidential communications covered by privilege (e.g., attorney-client privilege, attorney work product, litigation files, confidential settlement agreements); and

WHEREAS, the Association deems it prudent to encourage and promote maximum candor of communications by the Board with the Association's attorneys and legal advisors while also guarding against the inadvertent release of privileged information and the unintended waiver of privileges; and

WHEREAS, the Association's Board of Directors also recognizes there may be a need to engage legal counsel to provide legal opinions that are intended to be released to the Association's Members or publicly;

NOW, THEREFORE, BE IT RESOLVED by the Association's Board of Directors as follows:

1. Unless counsel's engagement specifically states otherwise, any attorney or law firm employed or retained by the Association shall represent the Association acting through its duly authorized constituents and the attorney-client privilege shall belong to the Association, not its individual constituents.

2. The Board recognizes the importance of building and maintaining trust, openness, and transparency with the Association's Members. However, the Board is constrained by its duty to act in the best interests of the Association. It generally does not serve the Association's best interest to waive or relinquish privileges or other legal protections applicable to the Association's documents. It further serves the Association's best interests for its Board, officers, employees, and agents to have the utmost confidence in communicating candidly with the Association's legal counsel without concern that this information will be disclosed outside the attorney-client relationship.

3. The Board's policy is that the members of the Board and the Association's officers, employees, and agents should be required to maintain the confidentiality of the Association's legal files and privileged communications and that any privileges applicable to such materials should be preserved and not waived except upon specific deliberation and decision by the Board. Legal files generally include, but are not limited to, any writings in paper or electronic format involving the Association's formal and informal communications with its legal counsel regarding legal advice, notes or memoranda of communications with legal counsel, legal counsel's opinion letters,

attorney work product, drafts of contracts or other legal documents created by or submitted to legal counsel for review, sensitive litigation files, legal invoices, confidential settlement agreements involving litigation or threatened litigation, board packets and officer or employee reports discussing legal counsel's advice or opinions, and executive session minutes relating to legal advice or legal opinions.

4. While the Association acknowledges the right of its Members to inspect certain of its records in accordance with the provisions of the South Carolina Nonprofit Corporation Act, S.C. Code Ann. § 33-31-101 *et seq.*; the South Carolina Homeowners Association Act, S.C. Code Ann. § 27-30-110 *et seq.*; and the Association's By-laws, it further acknowledges that such right of inspection is not absolute. Members shall not be entitled to inspect the Association's legal files, unless specific authorization is granted by the Board or the particular records are subject to inspection by law. The mere fact that an attorney-client relationship exists between an attorney and the Association does not mean their communications shall be subject to inspection by the Association's Members.

5. Individual members of the Association's Board as well as the officers, employees, and agents of the Association are prohibited from releasing or disclosing the Association's legal files or its privileged materials to any third party, including but not limited to other Members of the Association, unless the Board specifically authorizes such release or disclosure. Only the Board, as a whole, may authorize the release or disclosure of the Association's privileged information or the waiver of privilege. Any such authorization shall be approved by majority vote of the Board and shall occur on the record at a duly called and constituted Meeting of the Board or in accordance with the Association's By-laws governing actions by Directors without a Meeting. Additionally, pursuant to Article VIII, Section 7, of the Association's By-laws, the decision to release or disclose the legal files of a Special Litigation Committee that has separate and independent legal counsel shall be approved by majority vote of the members of the Special Litigation Committee.

6. While it is not feasible to articulate an all-encompassing or exhaustive list of the various factors or considerations which could justify the Board or the Special Litigation Committee in deciding to release or refuse to release otherwise privileged material, these considerations may include, but not are not limited to, whether the disclosure is in the best interests of the Association; whether the information relates to pending or threatened litigation or an ongoing civil or criminal investigation; whether the disclosure could implicate the privacy interest or personal information of a Director, Member, officer, employee, or agent; whether the disclosure could lead to the waiver of privileges applicable to other materials; whether the disclosure could inhibit or dissuade candid communications between legal counsel and the Association's Directors, officers, employees, or agents; the potential burden and expense upon the Association to disclose the information; and whether legal counsel advises or recommends that the disclosure be made or not be made.

7. The Board may deem it proper from time to time to authorize the Association's legal counsel to provide legal opinions or statements intended to be released to or shared with the Association's Members or publicly. In such instances, the disclosure of the legal opinion or statement shall not be considered as a waiver of any privileges applicable to any other records or legal files of the Association.

8. The Chairperson of the Board of Directors shall sign this Resolution and the Secretary of the Board of Directors shall attest thereto, and this Resolution shall be in full force

and effect immediately upon adoption. A copy of this Resolution shall be posted to the Association's Membership.

ADOPTED AND DONE this 9th day of December, 2024, by positive vote of the majority of the Board members present:

AYES: 7
NOES: 0
ABSENT: 0
ABSTAIN: 0

KIAWAH ISLAND COMMUNITY
ASSOCIATION, INC.



Kevin Donlon, Chairperson of Board of Directors

Attest:



Paul Hennessy, Secretary