

# Proposed KICA Covenant Amendments

## Overview

### **Developer Board Seat & Type E Member**

The first proposed amendment removes the right of the Developer to appoint a Director to the KICA Board. Your Board believes that while this appointment right may have been appropriate during the earlier development of our Island, it now gives the Developer disproportionate representation and influence. More importantly, we believe that all members of the Board should be elected by the eligible Members.

### **Architectural Control Authority**

The second proposed amendment authorizes KICA to exercise or control an architectural review function. The Board believes that it is no longer appropriate for the Developer to control the ARB. A separate work group, the ARB Work Group, is presently working with the Developer on a consensual transition plan. This amendment provides the Association, through the KICA Board, the broad authority necessary to exercise or control such a function whether transferred consensually (as we expect) or otherwise.

### **Rules, Regulations and Enforcement**

The third proposed amendment fully empowers the Board to create and amend the Association's Rules & Regulations as well as related enforcement rights and procedures that are critical to our community. A necessary next step is the upgrade of our existing Rules & Regulations – a process that is well underway, but to do this in full view of the Membership by Board action, not by the cumbersome and inflexible amendment process. This amendment also contains enhanced Member protections related to the more severe enforcement actions.



## Administrative & Notices

The fourth proposed amendment is more administrative than core governance. It updates certain relevant terminology in the Association's Covenants; and it clarifies the mechanics for official notices from the Association to its Members. Finally, it also clarifies that in the event that there are conflicts with South Carolina law, the law will clearly prevail.

## Board of Director Qualifications

The fifth amendment was the result of input the Board received from the community. This new amendment will address a legacy flaw in the KICA Covenants that fails to recognize the various modern forms of property ownership. This amendment creates a clear and practical path for such owners to serve as KICA Board members.

# Frequently Asked Questions (FAQs)

## GENERAL QUESTIONS

- 1. Why are these proposed amendments important to the KICA Community?** KICA's Covenants were written decades ago and in a number of instances, are inconsistent with the nature and aspirations of the current Community. The process of reviewing and carefully modifying our core governance documentation is a strategic priority, builds on the successful efforts of prior Boards/Governance Task Forces, and will continue in the future.
- 2. Why now?** As mentioned above, these amendments represent an ongoing effort of the Association to review and update its core governing documents. The first task was to update the Association's By-Laws which was completed in 2023. The current effort has focused on the Association's Covenants and is far from complete, but the amendments discussed above create significant governance changes that the Board feels are both necessary and timely.
- 3. Various Members have urged that a comprehensive revision of KICA's governing documents is needed and that a 'piecemeal' approach is counterproductive. Why**



**haven't we adopted the comprehensive revision approach?** The Board believes that these 5 amendments are a time-sensitive necessity to our community's governance and should not be delayed by the time required for a comprehensive review and revision. The Board has heard the request that the KICA Covenants need a comprehensive review to remove ambiguity, modernize language and include best governance practices. However, a full rewrite should be thoughtfully considered, planned and budgeted, as the Covenants are a core governance document for our community. The Board is considering a full re-write as an important part of a continuing mandate for the Governance Task Force.

**3a. Updated January 2025:** Although a comprehensive rewrite of the KICA Covenants may be ideal, a full rewrite could take years and tremendous legal fees, so the board chose to pursue five vital and pertinent amendments in attempt to make some improvements now. A comprehensive rewrite is still under consideration, but the board is confident that the proposed amendments are positive and constructive for our members, and believes they are necessary and time sensitive.

**4. Why didn't KICA enforce its derivative rights under the expired Development Agreement ('ARDA') between TOKI and the Developer ("Company") to eliminate the Developer's Board appointment right and challenge the authority of the existing ARB?** The Board has carefully considered the arguments and proposals to take this path including with input from SC counsel. The Board believes the amendment process is a clearer, less expensive and more successful path to necessary change. We believe that the Membership will be persuaded by the strategic value of these governance amendments.

**5. What efforts have been made to ensure the entire Membership is fully informed about the amendments and the voting process?** The proposed amendments were first introduced in March 2024 at the KICA Annual Meeting. Since that time, the Board has discussed the amendments at various board meetings and has released several drafts for community consideration and comment. We appreciate and have carefully considered all the comments received from the community. The Task Force has incorporated many of the community comments into the updated drafts of the covenant amendments. On October 8, the Governance Task Force hosted another community workshop to solicit feedback on the drafted covenant amendments. On November 18, the Board will vote on whether to send



the covenant amendments to the Membership for approval in January 2025. Final drafts of the amendments will be released to the Members well in advance of the November 18 board meeting. The Board encourages all Members to engage in this process and voice their concerns or suggestions.

**6. Is the Board confident that the amendments will be approved?** Yes - because the Board is convinced that each of the amendments is a meaningful improvement in the Association's governance and that each is consistent with KICA's Strategic Statement. However, the Board recognizes that all change is hard. It is also a challenge, regardless of the merit of the proposed amendments, to achieve the very high required quorum and the approval level. We encourage Members to study the amendments and recognize their necessity and timeliness.

**7. How exactly is Quorum calculated?** Quorum is achieved when 60% of the total possible votes of the Membership have been cast. If this quorum threshold is not met, our Covenants provide for a second round of voting where the quorum threshold is 50%. The ballot will be reviewed by South Carolina legal counsel. The proposed covenant amendments will be included with the director election on one ballot, in January 2025. The ballot must be completed fully to be counted. Voters will have an opportunity to vote separately on each amendment: YES; NO; or ABSTAIN. 75% of the non-abstaining votes must be in favor of each Amendment for the Amendment to be approved.

**7a: Update January 2025:** A quorum of 60% is required for a valid covenant amendment vote. An eligible member may choose to vote to approve or deny each amendment, or abstain; these votes or abstentions count toward quorum. However, an amendment will pass or fail based on 75% approval of the non-abstaining voters only. This means those who vote for or against the amendment decide the outcome. This has been confirmed by KICA's legal counsel.

**8. Has KICA and the Board gotten legal advice on each of the amendments from South Carolina counsel?** Yes. The Governance Task Force and the Board have worked closely with South Carolina legal counsel throughout this drafting process. The Board will not proceed unless it is fully comfortable with the amendments and the advice of its legal counsel.



- 9. What happens if one or more of the amendments fails?** While we are confident that what the Board is proposing is clearly beneficial for the Association and its Members, we understand that we represent a diverse community, with many points of view. The amendments will be voted on individually, not as a package. If one or more of the amendments is unsuccessful, the Board will seek to understand the Membership's views and choose a path forward that is best for the community.
- 10. How can the Membership be confident that the voting and voting processes will be fair?** The process will be very transparent and is time tested. The ballot and voting procedures will be reviewed by South Carolina legal counsel. An independent and experienced third-party voting service will be engaged. We expect the vast majority of our Members to vote electronically on a voting platform KICA has used successfully in the past for Board director elections.
- 11. Does the Developer support the five amendments to the KICA Covenants?** The Developer does not support removal of the Type E membership and board appointment right. The Developer does support the revisions to the architectural review authority language in the KICA Covenants as well as empowering the KICA Board to establish Rules & Regulations with the ability to enforce as needed to uphold Kiawah's property values and member experience. Additionally, the Developer supports the Director qualification clarification and the other administrative corrections and updates.
- 12. Does the Resort support the covenant amendments?** A member of the Board has met with Kiawah Island Golf Resort, as a Member of the Association, to discuss both the content and purpose of these amendments. The Resort has committed to their careful review of the amendments.
- 13. What portion of the eligible votes are controlled by Kiawah Partners and by Kiawah Island Golf Resort?** Based upon the director election held earlier in 2024, Kiawah Partners holds less than 2% of the vote and Kiawah Island Golf Resort holds approximately 10% of the vote.



**14. Is KICA Staff supportive of these amendments?** Yes. Senior KICA Staff have been an integral part of the entire process - from start to finish.

**15. The Amendment process has been delayed from its initially published timeline, why?**

The subject matter is complex and it is important to get this right for the community. We have received valuable member feedback on the amendments, and the Governance Task Force required time to thoughtfully consider this feedback. It is the Board's intent to provide carefully considered amendments to the Membership for a vote in January 2025.

## **TYPE E MEMBER AMENDMENT QUESTIONS**

**16. How will the Type E Member Amendment affect the voting rights of the Developer (“Company”)?** If adopted, the amendment will terminate the Developer's right to appoint a member of the KICA Board and will abolish the special “Type E” membership category. To the extent the Developer continues to qualify as a Type A, B, C or D Member by virtue of its property holdings, it may vote in the manner and to the extent prescribed for such Membership category.

**16a. Update Jan 2025:** The removal of the Type-E Membership category removes the special membership right reserved solely for the developer, their right to appoint a board seat. With the removal of the seat on the KICA Board of Directors, the developer will have restored the same rights as all other existing member types (residential: Type A or commercial: Type B & C), based on their property ownership. No additional rights are granted to the developer with this amendment. The developer currently has very few Type A votes, in this late stage of development.

**17. What will happen to the Board composition if this amendment is approved?** The amendment would go into effect 60 days after the affirmative vote of the Membership. The Board will need to conduct a special election to fill the seat vacated by the developer. For a period of time, it is expected that the Board will have six (6) members, until the newest community member representative is elected to replace the vacated Developer seat.



**18. Is reference to the “Master Development Plan” still needed in the KICA Covenants?**

Yes, the “Master Development Plan” is the current version of the Kiawah Island Map. It is frequently updated to reflect new subdivisions and neighborhoods, proposed commercial and future development areas, bike trails, beach access areas, properties designated as “Woodland Conservation,” etc. For example, Company conveyances and other properties donated to the Kiawah Conservancy are designated as Woodland Conservation on the “Master Development Plan.” The Company can no longer convey property to KICA without its explicit consent.

**19. Is reference to the “KIAWAH ISLAND PROPERTY BUYER'S GUIDE” still**

**needed in the KICA Covenants?** No, the ILSA Property Report is currently the written disclosure under the Interstate Land Sales Act that is provided to purchasers of Company lots. The ILSA Property Report includes detailed information regarding the Covenants, KICA, and ownership and maintenance of the various amenities and facilities available for use by property owners and others.

## **ARB AMENDMENT QUESTIONS**

**20. Why should I vote in favor of this amendment unless I know exactly how a KICA**

**ARB would function and be organized?** Every aspect of a new ARB is being studied by a dedicated ARB Work Group. No transition will take place without detailed plans being shared with the community and formally approved by the KICA Board. The ARB Work Group is currently in Phase III of their work and expect to issue their next report prior to the Amendment vote. Much more work is required, and changes will need to be negotiated with the Developer for this transition to occur consensually. However, the amendment is a key governance step in this process. The amendment confirms KICA’s authority to create and administer an architectural review function. This will avoid further delays in the transition process, when a structure and operating plan is prepared and fully approved by the Board.

**21. Does KICA even have the staff and skills necessary to operate the ARB today?** No.

The Board clearly recognizes the importance and value of a professionally staffed ARB. This is an essential component of any transition plan. It is anticipated that any transition plan



would be executed in several phases over a multi-year period. Senior KICA staff is also engaged in developing the transition plan.

**22. Does the proposed Architectural Control Amendment address Member complaints directed to the current ARB, such as those relating to issues of arbitrary enforcement, excessive deposits, etc.?** Not directly. This is not the purpose of the amendment. The ARB Work Group is presently refining both a governance structure and an operational and administrative framework to address concerns that Members have raised. The KICA Board acknowledges that strict adherence to development standards have contributed to an exceptional aesthetic (and property values) on Kiawah Island.

**23. Will the new ARB require a general operating subsidy from the Membership of KICA?** It is anticipated that there will be associated costs and this is being reviewed by the ARB Work Group. Budget estimates will be part of their Phase III report.

**24. If the ARB Amendment passes, will a property owner need to seek approval from both the present Developer operated ARB and an Association ARB for new construction, major and minor renovations, etc.? How will this process be coordinated?** It is not the intent of either the present Developer ARB or a new Association ARB to require property owners to comply with the requirements of two separate architectural review boards. The ARB Work Group and Developer ARB are working on an orderly transition plan. The expectation is that each organization will have discrete architectural review responsibilities during any transition period, and that the breadth of these responsibilities will change during the transition period. The ARB Work Group and Developer ARB are sensitive to the confusion that could exist for Members during this transition period. The ARB Amendment requires that the Association ARB publish an Architectural Review Plan to keep the Members informed of the architectural review guidelines and processes during the transition and beyond.

**25. Don't the General (aka Developer) Covenants reserve architectural control to the Developer ("Company")?** Yes. The Developer is currently working with the ARB Work Group on a plan that outlines how and when architectural controls would be transitioned.





The proposed amendment removes current limiting language and provides KICA with broad authority to manage these functions in the future regardless of transition status.

- 26. Are the references to “Architectural Control” and “Architectural Review” in the KICA Covenants intended to be distinguishable?** No, the terms “Architectural Control” and “Architectural Review” are understood presently to have the same meaning in the KICA Covenants.
- 27. Do we anticipate a legal challenge to the architectural review rights given to KICA under the proposed amendment, and are these architectural review rights permitted by the General Covenants?** We do not expect a legal challenge; in fact, KICA and the Company are working hard to create a consensual and efficient transition of the current ARB function to KICA. That said, KICA’s legal counsel has provided meaningful input to our draft amendment and has given us assurances as to its legality and enforceability. KICA believes that a coordinated transition is in the interest of both parties and especially KICA members.
- 28. Will the Covenant Amendment jeopardize KICA’s existing, but unexercised, architectural authority over common properties?** No, this Amendment will broaden the Association’s ARB Authority to all Properties, not just Common Properties.
- 29. Should the Partners fail to delegate or assign its current ARB authority, under what authority would the Association step in and exercise some or all of the architectural review rights or powers described in the General Covenants?** KICA is working hard to negotiate a sensible and consensual transition agreement. If this amendment is passed, the Association will be in a better position to address a non-consensual outcome if needed.
- 30. Does KICA have the authority to charge fees, impose fines and require deposits should it be empowered to exercise architectural control?** Yes, this authority has been clearly spelled out within the Amendment itself and will be approved by the Membership. KICA’s legal counsel has confirmed that this authority is consistent with South Carolina law.



## ENFORCEMENT AMENDMENT QUESTIONS

- 31. Wasn't the 2018 Amendment covering this topic approved by the Membership?** Yes. However, the 'approved' amendment was not properly recorded with Charleston County in the timeframe required by SC Law. The Board considers the 2018 amendment to be moot. However, it is important to note that our existing Rules and Regulations, that contain similar language, were properly approved and recorded with the County and are therefore fully enforceable.
- 32. Even if the earlier amendment was not properly approved, isn't the framework that it represented appropriate?** Initially, the Governance Task Force sought to replicate that framework in a new amendment. However, after considerable discussion, the Governance Task Force concluded that guidelines for rules and regulations are too complex to try to define via the Covenant process. A broader approach granting to the Association the right to adopt rules, regulations and enforcement rights, seemed more appropriate. The proposed amendment also includes Member protections related to the more significant enforcement options. The Board believes that fair and transparent Association rules, regulations and enforcement measures are a vital and appropriate concern of the Membership. The Board is committed to a comprehensive review and updating of the Association's Rules and Regulations. This effort is currently well underway. Any recommended changes will be formally approved in a public Board meeting after thorough vetting with and by the Community.
- 32a: Updated January 2025:** For purposes of clarity, this amendment explicitly contains the requirement that any rule violation is subject to Notice and Appeal. Member protections are further strengthened by adding a provision that requires explicit Board of Directors approval prior to enforcement of the most severe sanctions for rule violations, such as filing a lien or suspension of voting rights.
- 33. Shouldn't the existing KICA Rules and Regulations be re-written first and before asking the Members to approve a new enforcement Covenant amendment?** This work is currently underway. It will include input from KICA staff, the Security Committee, Governance Task Force, KICA Members and legal counsel. It is the Board's intention to



release the revised Rules and Regulations to the community for comment, prior to a Board vote. Ultimately, the Rules & Regulations will be approved by the KICA Board at a public board meeting.

**34. Does the proposed Amendment have a negative impact on any rights of due process to allow a Member to contest any asserted violations of any of KICA's Rules and Regulations?** No. Members currently have the right to appeal a violation through senior KICA staff and up to the Board. The amendment will include enhanced Member protections, such that more significant enforcement options will require the specific approval of the Board.

**35. When will property liens be permitted?** Property liens are one of the most extreme enforcement measures any community association has. Its use is and will be limited. Further, the placement of a lien on a Member's property, such as for failure to pay assessments or related to rules violations, will require the Board's specific, prior approval.

## ADMINISTRATIVE AMENDMENT QUESTIONS

**36. What is the purpose of this amendment?** This amendment is administrative in nature. It updates terminology and governmental references that have changed since the Covenants were last revised/approved. It clarifies the existing voting approval percentages and updates the provisions relating to official 'Notices' to Members.

**37. Why are only these covenant changes being addressed when there are other administrative changes that could be considered in the KICA Covenants?** We are not done! The KICA Covenants were originally drafted almost 50 years ago, and other changes and updates could be undertaken. However, given the amount of time and effort it will take for a total revision of the KICA Covenants, the Board and the Governance Task Force decided to first address changes most critical to the community, such as the Developer's board seat and architectural review authority.

**38. Isn't this amendment a distraction to the other important amendments?** We do not believe so. This Amendment, while administrative in nature, is still important.



## BOARD OF DIRECTOR QUALIFICATIONS QUESTIONS

**39. While this amendment will resolve a significant uncertainty as to member eligibility to serve on the Board, are there other member rights that need to be clarified?** We think other key member rights such as voting and access to Association amenities are not in doubt or ambiguous. However, the Governance Task Force will continue to research and solicit input from the Community on this question in the next phase of its work.

**39a. Updated January 2025:** This amendment corrects a serious technical flaw in our covenants relating to board service eligibility, which prevents those who own properties through a legal entity structure, like an LLC, from serving on the board. This amendment will prevent disenfranchisement of many Members and their spouses from serving on the KICA Board. The amendment allows the legal entity owner to designate a single natural person as eligible to run for and serve on the KICA Board. Although a few members have suggested that “qualifications” should be specified for designees, the board does not feel this is necessary or appropriate. We are confident that KICA members are fully capable of assessing the qualifications or suitability of Board candidates.

