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 PO Box 3362 Bald Head Island, NC 28461

AMENDED AND RESTATED
 DECLARATION OF COVENANTS, CONDITIONS,
 AND RESTRICTIONS OF
 MIDDLE ISLAND

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into as of this 22nd day of May, 2015, among the Owners of more than sixty-seven percent (67%) of ~~the~~ residential lots on Middle Island in Brunswick County, North Carolina (hereinafter "Middle Island") created from the property ("the Property or the Properties") Bald Head Island Corporation conveyed to Young Realty Co. by deed recorded at Book 399, Page 448, and corrected at Book 499, Page 167 Brunswick County Registry (hereinafter "Owners"), and Middle Island Property Owners Association, Inc., (hereinafter "Association") the signatories being known collectively as the "Declarants," which shall include any and all parties hereafter acquiring any of the described Property. This document may sometimes hereinafter be referred to as the Declaration.

PREAMBLE:

WHEREAS, Bald Head Island Corporation conveyed a tract of land known as Middle Island to Young Realty Co., Inc. by deed recorded at Book 399, Page 448 and corrected at Book 499, Page 167, Brunswick County Registry subject to certain restrictive covenants attached to the deed and correction deed and incorporated into the deeds by reference (hereinafter "Restrictive Covenants"); and,

WHEREAS, the Restrictive Covenants were amended by instruments recorded at Book 814, Page 501 and Book 824, Page 315, Brunswick County Registry; and



WHEREAS, paragraph 16 of the Restrictive Covenants allows a majority of Owners of lots created by the subsequent subdivision of the Property and Bald Head Island Corporation or its successors to amend the Restrictive Covenants; and,

WHEREAS, Declarants own more than one-half of the Lots created by the subsequent subdivision of the Property; and

WHEREAS, Declarants also own more than sixty-seven percent (67%) of the Lots created by the subsequent subdivision of the Property exclusive of the following tracts not in residential use:

- a) 21.33 acre tract per Plat Book 31, Page 245 owned by Bald Head Island Conservancy;
- b) Tract A, a .93 acre tract per Plat Book 31, Page 245, owned by Middle Island Marina, Inc.;
- c) .07 acre, .10 acre and .16 acre tracts described in Deed Book 3400, Page 1318 to be owned by the Association
- d) Reserve Area 4 per Plat Book 31, Page 121, to be owned by the Association;
- e) Reserve Area 5 per Plat Book 31, Page 121, to be owned by the Association;
- f) Tract B per Plat Book 44, Page 18 known as the triangle piece at the entrance to Middle Island; to be owned by the Association;
- g) .58 acre tract per Plat Book 44, Page 36 and Plat Book 24, Page 528 owned by Middle Island Racquet and Swim Club;
- h) 1.07 Acres per Plat Book 31, Page 117; Reserve Area #2 per Plat Book 31, Page 120; Reserve Area # 3 per Plat Book 31, Page 121; .95 acre Reserved Conservation Area per Plat Book 17, Page 443 and Plat Book V, Page 10; Tracts 1 and 2 per Plat Book 29, Page 224; Lot 418 Middle Island Plantation per Plat Book 31, Page 219; Dedicated Green Area (41,729 square feet which also includes 2,621 square feet where equipment shed is located) per Plat Book V, Page 10; and .38 and .39 acre tracts described in Deed Book 2864, Page 656; owned by Smith Island Land Trust;
- i) 0.16 Acre Tract per Plat Book 36, Page 262 owned by the Village of Bald Head Island known as the Middle Island Fire Station; and

WHEREAS, it is in the best interest of the Declarants and to the benefit, interest and advantage of every party now owning or hereafter acquiring any of the Property on Middle Island that the Restrictive Covenants be amended and restated in their entirety; and

WHEREAS, the previous covenants contain provisions for mandatory annual assessments against each lot to provide a fund for those services important to the development and preservation of attractive community appearance, and further to



maintain the privacy and general safety of the Bald Head Island community, and the Declarants now wish specifically to amend and restate the assessment provisions; and

WHEREAS, the preexisting assessment provisions qualify Middle Island as a planned community as defined in the North Carolina Planned Community Act; and

WHEREAS, the undersigned represent the written agreement of more than sixty-seven percent (67%) of the Lot Owners on Middle Island who desire that Middle Island shall be subject to the provisions of the North Carolina Planned Community Act;

NOW THEREFORE, in consideration of the premises, the Declarants agree for themselves and all parties hereafter acquiring any of the Property hereinafter described on Middle Island that the Property shall be and is hereby subject to the following restrictions, covenants, conditions, easements, assessments and liens relating to the use and occupancy thereof, which shall be construed as covenants running with the land which shall be binding on all parties acquiring any right, title or interest in any of the Property and which shall inure to the benefit of each Owner thereof and their successors, heirs and assigns.

**ARTICLE I
PROPERTIES SUBJECT TO THIS DECLARATION**

The Property which shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Brunswick County, North Carolina and consists of all of the Property Bald Head Island Corporation conveyed from Bald Head Island Corporation to Young Realty Co., Inc. by deed recorded at Book 399, Page 448 and corrected at Book 499, Page 167, Brunswick County Registry.

**ARTICLE II
DEFINITIONS**

2.1 "Amenities" means the facilities purchased, constructed, erected, or installed on the Common Areas for the use, benefit and enjoyment of Members.

2.2 "Articles" means the Articles of Incorporation of Middle Island Property Owners Association, Inc. as amended from time to time.

2.3 "Assessments", including Annual and Special Assessments are described in Article VIII.

2.4 "Association" shall mean and refer to Middle Island Property Owners Association, Inc., its successors and assigns.

2.5 "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association. It shall include the term Executive Board as that term is used in the North Carolina Planned Community Act.

2.6 "Bylaws" means the Bylaws of the Association, Inc. as amended from time to time.

2.7 "Capel Tract" is the 6.754 acre tract conveyed by the deed recorded at Book 436 Page 53 Brunswick County Registry.

2.8 "Capel Tract Roadway" is the existing roadway extending from the end of East Beach Drive northward across the Capel Tract, including the turnaround at its northerly end. The Roadway shall be maintained privately by the Owners of any Lots on the Capel Tract and is not subject to the restrictions in Section 6.7

2.9 "Common Areas" shall consist of the following:

- a) Bald Head Creek Docks. Two docks located on Bald Head Creek adjacent to the Cape Creek Road right of way,
- b) Beach Access and Beach Access Parking. The access way to the beach located between Lots 187 and 188 and as shown on the plats recorded at Plat Book N, Page 357, and Plat Book 17, Page 219, and Plat Book 29, @ page 224 and running to the Mean High Water Line as well as the beach access parking located directly across East Beach Drive from the beach access.
- c) Beach Access Additional Parking Area. The area shown as MIDDLE ISLAND POA TRACT and containing 12,429.7 Sq. Ft.+/- on the Map of Recombination Middle Island Plantation for Middle Island Racquet and Swim Club, Inc. duly recorded in Map Cabinet 89 at Page 6 of the Brunswick County Registry.
- d) Cape Creek Dock. Tract A according to the plat recorded at Plat Book 31, Page 245 (Parcel 26000042), known as the Marina and Boat house.
- e) Roads. All roads and road rights of way shown on the recorded plats subdividing any portion of the Property described in Article I;
- f) Miscellaneous parcels.
 1. East Beach Drive Entrance Triangle. Tract B consisting of .09 acres as shown on the plat recorded at Plat Book 44, Page 18, Brunswick County Registry (Parcel 26500074);
 2. Parcels at Land's End and adjacent to Marina entrance gate. Reserve Areas 4 and 5 as shown on the plat recorded at Plat Book 31, Page 121, Brunswick County Registry (Parcels 26400060 and 26400061);



3. .16 acre, .07 acre and .10 acre tracts described in the deed recorded at Book 3400, Page 1318, Brunswick County Registry (Parcels 26500068, 26500069, and 2650006901).

2.10 "Common Expense" shall mean and include:

- a) Expenses of and for the administration, maintenance, repair, or replacement of the Common Areas, including for the repair and maintenance of the private roads serving Middle Island;
- b) Expenses declared to be Common Expenses by the provisions of this Declaration or the Bylaws of the Association;
- c) Hazard, liability, or such other insurance premiums which the Association may purchase;
- d) Ad valorem taxes and public assessment charges lawfully levied against Common Areas;
- e) Specific other expenses determined to be common expenses of the Association by at least a 2/3 vote of the Board of Directors.

2.11 "*East Beach Lot*" shall mean an Ocean Front Lot, a Second Row Lot, or a Lot in the Capel Tract.

2.12 "*Improved Lot*" shall be a Lot containing a single family residence for which a Certificate of Occupancy has been issued by the Village of Bald Head Island or other appropriate governmental entity as of December 31 of any year.

2.13 "*Lot*" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, whether improved or unimproved, which may be independently owned and conveyed, and on which a single family residence has been or could be built, with the exception of the Common Areas and plots of land owned by any governmental agency, the Bald Head Island Conservancy, Smith Island Land Trust and/or any of their affiliates.

2.14 "*Maritime Forest Lot*" shall be defined as a Lot that is not an Oceanfront or Second Row Lot.

2.15 "*Member*" means and refers to every Owner of a Lot. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment. The Owner of a Lot may vote on any matter of the Association which requires a vote by the Lot Owners.

2.16 "*Ocean Front Lot*" shall be defined as a lot lying either on the easterly side of the undedicated road designated as East Beach Drive shown on the Plat recorded in Plat Book S at Page 84 in the Brunswick Public Registry, or a Lot on the Capel Tract that extends east of the Capel Tract Roadway.



2.17 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot.

2.18 "Person" means and refers to any individual, limited liability company, corporation, partnership, association, trustee or other legal entity.

2.19 "Property" or "Properties" shall mean and refer to all or a portion of certain real property described in Article I and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

2.20 "Rules and Regulations" means the Rules and Regulations of the Association, Inc.

2.21 "Second Row Lot" shall be defined as a Lot having its easterly lot line as the westerly margin of the undedicated road designated as East Beach Drive, shown on the Plat recorded in Plat Book S at Page 84 in the Brunswick County Public Registry, or a Lot on the Capel Tract that does not extend east of the Capel Tract Roadway.

2.22 "Time Share" means any attempt to create rights to occupy a Lot or Lots or the improvements on any Lot or Lots for five or more separated periods of time over a period of at least five years as more fully described in N.C. Gen. Stat. § 93A-41 and any subsequent amendments thereto. It does not include the occupancy rights of up to three tenants in common in fee simple ownership of a Lot or the right of a trustee or an entity, including but not limited to a limited liability company, partnership or corporation to allocate occupancy rights of a Lot held in trust among up to three separate families of beneficial owners who do not share a common ancestor.

2.23 "Unimproved Lot" shall be a Lot which is not an Improved Lot.

ARTICLE III
PROPERTY RIGHTS

3.1 *Easement of Enjoyment.* Every Owner subject to this Declaration, the Articles, the Bylaws, the Rules and Regulations and any other applicable Covenants, shall have a right and easement of enjoyment in, to and over the Common Areas for recreation, access, ingress and egress, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to:

- a) the right of the Association to adopt, publish, and enforce rules and regulations as provided in Article V, and
- b) the right of the Association to suspend an Owner's easement in, to, and over the Common Areas other than the roads for any period during which any Assessment or fine against his or her Lot remains unpaid;



3.2 *Delegation of Use.* Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas and Amenities to the members of his or her family, to his or her contract purchasers, and to tenants or guests residing in Owners single family residence; provided, however, consistent with existing deed restrictions, the right to use the Cape Creek Dock and the Maritime Forest Sanctuary at the west end of Cape Creek Road may not be delegated to tenants, contract purchasers, or unaccompanied guests.

3.3 *Parking Rights.* The Association may regulate the parking of golf carts, bicycles, boats, trailers and other such items on the Common Areas. No vehicles shall park on the roads or right of ways of Middle Island.

3.4 *Title to the Common Areas.* Middle Island Plantation, LLC hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Areas to the Association, free and clear of all encumbrances and liens, prior to the recording of this Amended and Restated Declaration.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

4.1 *Membership.* Every Owner will be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot which is subject to Assessment by the Association. There will be only one Membership per Lot. If a Lot is owned by more than one Person, all Co-Owners will share the privileges of that Membership. The Membership rights of an Owner which is a corporation, partnership, limited liability company, or other legal entity may be exercised by any officer, director, partner, member, manager, or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association. The Board of Directors may make reasonable rules relating to the proof of Ownership of a Lot.

4.2 *Voting.* The Association shall have one class of voting Membership. Subject to the provisions herein allowing for the suspension of an Owner's vote, Members shall be entitled to one vote for each Lot in which they hold the interest required for Membership by this Article. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for each Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any single Lot, and no fractional vote shall be cast with respect to any Lot. Members may notify the Secretary of the Association of the name of the individual who is entitled to cast the vote for that Lot in writing prior to any meeting; absent such notification the Member's vote will be suspended if more than one person seeks to exercise such voting right. The Membership rights of an Owner which is a corporation, partnership, limited liability company, or other legal entity may be exercised by any officer, director, partner, member, manager or trustee or by any other individual designated from time to time by the Owner in a written instrument provided to



the Secretary of the Association. If the Association desires, voting may be accomplished by electronic means. If required for recording purposes, a Certification as to the requisite vote may be made by the appropriate officers of the Association and filed with the Association's records, and if need be in the Brunswick County Registry.

ARTICLE V RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

5.1 *Personal Property and Real Property for Common Use.* The Association may acquire, hold, and dispose of tangible and intangible personal property and real property.

5.2 *Rules.* The Association, through its Board, may make, revoke, amend and enforce reasonable rules governing the use of the Common Properties. In addition it may through its Board further define or limit and where specifically authorized hereunder, it may grant variances from the strict application of the covenants and restrictions set forth in this Declaration. Such rules shall be binding upon all Owners and Users.

5.3 *Enforcement.* The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If authorized under the Rules and Regulations adopted in accordance with Section 5.2, and after hearing held in accordance with §47F-3-107.1 of the North Carolina Planned Community Act, the Association may impose sanctions for violations of this Declaration, the Articles, the Bylaws, or Rules and Regulations, including reasonable monetary fines, suspension of the right to vote, and suspension of the right to use any recreational facilities or Amenities or Common Areas other than the roads. In addition, the Association may exercise self-help to cure violations, and may suspend any services it provides to the Lot of any Owner who is more than thirty (30) days delinquent in paying any Assessment or other charge due to the Association.

5.4 *Board Authority and Implied Rights.* Except as otherwise specifically provided in this Declaration, the Bylaws or Articles, all rights and powers of the Association may be exercised by the Board. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, or the North Carolina Nonprofit Corporation Act, or other applicable laws or reasonably implied therefrom or reasonably necessary to effectuate any such right or privilege.

5.5 *Indemnification.* To the maximum extent allowed by North Carolina law, the Association will indemnify every officer, director, and committee member against all expenses, including reasonable 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) to which he or she may be party by reason of being or having been an officer, director or committee member.

5.6 *Management and Administration.* The management and administration of the Association and Common Areas will be the sole right and responsibility of the Association. The management will be carried out in accordance with the terms and conditions of this Declaration, the Articles, Bylaws and Rules and Regulations; or they may be delegated.

5.7 *Association Insurance.* The Association as a Common Expense will maintain all insurance coverage it believes desirable and is reasonably available, including, but not limited to officers' and directors' liability insurance, general liability insurance, Workman's Compensation insurance and casualty insurance.

ARTICLE VI
 LOT GUIDELINES AND SETBACK REQUIREMENTS
 ARCHITECTURAL REVIEW AND OTHER MATTERS
 PERTAINING TO THE BEAUTY AND AESTHETICS OF
 MIDDLE ISLAND

6.1 *Ocean Front Lots and Access.* In order to limit pedestrian traffic over the primary and secondary dunes and to limit damage to said dunes, all access from Middle Island to East Beach shall be only by wooden walkways having a minimum width of four (4) feet, raised a minimum of twelve (12) inches but not more than a maximum of eighteen (18) inches above the ground, with stairs extending beyond the primary dune. Railings are permitted only where required by the building codes. An Owner of an Ocean Front Lot may construct a walkway between the residence and the beach, but the plans for the walkway must be submitted to the Association for review and approval, as provided in Section 6.19.

6.2 *Additional Docks.* In order to maintain the esthetic beauty of symmetry of Middle Island and its marshes, no private docks may be erected or constructed by Lot Owners on Middle Island. The Association, for itself and its successors or assigns, reserves the right to construct an additional dock or docks on or adjacent to the Association's Common Areas bordering the creeks.

6.3 *Beginning Height of Residence above Mean Sea Level.* All single family residences shall meet the minimum levels above mean sea level as required by the Village of Bald Head Island.

6.4 *Maximum Height of Residence.* Except with the prior written approval of the Association or its designee, all residences shall have a maximum height of thirty-five (35) feet measured from the lowest point of the building foundation. Provided, however, on Maritime Forest Lots the roof line of the residence shall not exceed the height of the tree line canopy to the extent reasonably possible.

6.5 *Minimum and Maximum Size of Residence.* Residences shall have a minimum of 1600 square feet of enclosed living area exclusive of garages, boat sheds, terraces, decks and open porches. Residences, out buildings and driveways constructed on any Maritime Forest Lot shall not cover or overhang more than twenty-five (25%) percent of the total Lot square footage. Building improvements on any Lot shall not exceed 7,500 heated square feet; provided, however, that when either a) two or more Lots have been combined to form a new Lot, or b) when a platted Lot other than a Maritime Forest Lot exceeds twenty one thousand seven hundred eighty square feet, then building improvements on the resulting Lot shall not exceed 10,000 heated square feet.

6.6 *Removal of Sand Dune or Ridge.* The elevation of any sand dune or ridge or both, shall not be removed, reduced, cut down or otherwise changed or caused to be removed, reduced, cut down or changed, except with the written permission of any required governmental authorities and the Middle Island Property Owners Association, Inc. or its designee.

6.7 *Driveways, Parking and Turnaround Areas.* Driveways constructed on Maritime Forest Lots shall be a maximum of eight (8) feet in width, exclusive of the apron at the road interface. Driveways constructed on Ocean Front or Second Row Lots shall be a maximum of twelve (12) feet in width, exclusive of the apron at the road interface. Parking and turn around areas on all Lots shall not exceed 1,000 square feet without the approval of the Association.

6.8 *Minimal Disturbance of Soil and Vegetation.* Mown grass and lawns are not permitted.

6.9 *Tree Removal.* Unless approved by the Village of Bald Head, on-site trees shall not be removed except as necessary for the construction of the single-family residence, accessory buildings, fences, walks, parking access or driveway access. In order to minimize disturbances of the soil, trees and understory vegetation, soil disturbing activities and site alteration shall be minimized in order to provide for the location of the residence, accessory improvements, driveway access and parking and utility service improvements.

6.10 *Side Setback Lines.* No building or structure shall be located within ten (10) feet of the side lot line of any East Beach Lot; nor within fifteen (15) feet of the side lot line on any Maritime Forest Lot. All vegetation within the side set-back area shall be left undisturbed.

6.11 *Front Setback Lines.* No building or structure shall be located within thirty-five (35) feet of the lot line on any roadway abutting any Lot.

6.12 *Rear Setback Lines, Maritime Forest Lots.* No building or structure shall be located within twenty-five (25) feet of the rear lot line of any Maritime Forest Lot.

6.13 *Rear Setback Lines, Ocean Front Lot.* No building roof line or other covered structure, except approved stairs, uncovered decks and wooden walkways for beach access, shall be located within seventy-five (75) feet of the rear lot line (the line nearest the Atlantic Ocean) of any Ocean Front Lot. The siting of the all oceanfront structures is also subject to architectural review and approval under Section 6.19.

6.14 *Setback Lines, Lots 207, 208, 209 and 210.* Notwithstanding anything contained herein to the contrary, on Lots 207, 208, 209 and 210, no dwelling, accessory building, fence or other structure shall be erected or placed farther than 200 feet from the front property line, which is also the margin of an undedicated road designated as East Beach Drive on the Plat recorded in Plat Book S at Page 84 in the Brunswick County Public Registry.

6.15 *Size of Lots.* All Ocean Front Lots shall have at least 85 feet of Ocean front footage and contain at least 10,200 square feet. All Maritime Forest Lots shall be at least one-half (½) acre in size.

6.16 *Single Family Residences.* The Lots shall be used for single-family residential purposes only. No structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single-family dwelling and one (1) accessory building, which may include a detached private garage and/or guest suite, provided the use of the accessory building does not include any activity normally conducted as a business. The accessory building may not be constructed prior to the construction of the main building. A guest suite without cooking facilities may be included as a part of the main building or accessory building, but such suite may not be rented or leased except as a part of the entire premises, including the main building.

6.17 *Natural Beauty.* It is the intent and purpose of the Association to maintain Middle Island as an exclusive single family residential community of the highest quality and at the same time endeavor to retain, to the extent possible, the natural and native unspoiled beauty now existing on Middle Island, and to that end the following restrictive uses and limitations are placed on the Property and all Lots.

- a) No propane or similar tanks or storage receptacles, including garbage and trash, shall be exposed to public view. If above ground they shall be properly screened and enclosed. If underground, they shall be approved underground receptacles and placed in a safe area.
- b) Each Lot Owner shall maintain and preserve his or her Lot or Lots and single family residence and any out buildings in a clean, orderly and attractive appearance within the spirit of this development, as set out above. Failure on the part of a Lot Owner to adhere to such proper, clean, orderly and attractive maintenance of his property, upon thirty (30) days' written notice given to such Lot Owner by the Association may subject the Lot Owner to a suit for specific performance.

- c) No open or exposed storage, including junk or abandoned items of personal property, shall be maintained on any Lot; no trash or refuse, including leaves, shall be burned in an open incinerator on the Property.
- d) No household pets shall be permitted to run at large within Middle Island.
- e) In an effort to effectively control obnoxious insects and pests the Association reserves for itself, its agents and employees, the right to enter upon the Property and use such measures and pursue such courses as deemed necessary to control such insects and/or pests.
- f) The Association reserves for itself the rights to enforce strict conformity to such regulations as enacted and to use such legal means as are necessary to protect the ecology of Middle Island.
- g) The Owners of any Lots and any delegated users under section 3.2 shall comply with any Dune Protection Ordinance or like governmental restriction in force in Brunswick County and/or the Village of Bald Head Island.
- h) The drilling of private wells for irrigation purposes or for any other purpose is expressly prohibited unless the plans and specifications are approved in advance, in writing, by the appropriate governmental authorities and the Association's Board of Directors.
- i) Any boats and trailers stored on a Lot shall be screened from public view from any roadway.
- j) All signs, whether for sale or rent or the like shall be approved by the Association.

6.18 *Parking.* Parking on the traveled streets on Middle Island shall be prohibited at all times. Each Lot Owner shall provide off street parking space for his and his family's use and the use of their guests. Any vehicle violating this restriction may be removed by the Association and towing charges assessed with the impounding of the vehicle.

6.19 *Architectural Review.* In order to assure that the maximum balance of view, privacy and breeze will be available to each home located within the development; to assure that all structures will be located with regard to the topography of each individual Lot site, taking into consideration the height of the dunes, the location of the trees on each Lot and similar considerations, and to assure that the design takes into account the natural environment and is compatible with existing architectural styles on Bald Head Island, the Association, reserves for itself, its successors or assigns the right to control and to decide the precise design, site and location of all dwellings, accessory buildings, fences, walls, screens, and other structures, erected, placed or altered on Middle Island. No site preparation or initial construction, erection or installation of any improvements, including, but not limited to, residences, outbuildings, fences, walls, screens (whether by plants or structures) and other structures shall be undertaken upon Middle Island unless the plans and specifications therefor showing the nature, kind, shape, height, materials, including color schemes, and location of the proposed

improvements shall have been first submitted to the Association or its designee and have been expressly approved in writing by such entity or its designee. The Association through its Board shall designate an Architectural Review Committee to perform the review function, but retains final approval authority. The Association agrees to continue the existing review relationship with the Bald Head Association's Architectural Review Committee until such time as Middle Island Plantation, LLC has sold the last of its remaining Unimproved Lots. The Association through its Board may promulgate additional standards and guidelines consistent with the standards set forth above. Notwithstanding the above the Association reserves the option to continue using the Bald Head Island Property Owners Association Architectural Review Committee. Appeals from the decision of the Architectural Review Committee shall be to the full Board of Directors of the Association, whose decision shall be binding.

6.20 *Temporary Structures.* No temporary structures, such as trailers, tents, canopies or mobile homes, will be placed on any Lot within the Properties; provided, however, that in the course of the construction of the building as set out above, the contractor or builder may have shelters or storage sheds used in the course of the construction and for no other purpose, which will be removed from the premises within ten days after the completion of such construction. No tents or canopies will be placed on any Lot without the written consent of the Association.

6.21 *Variances.* The Board in its discretion by a vote of at least two-thirds of the Members of the Board may allow reasonable variances and adjustments of this Declaration in order to alleviate practical difficulties and hardship in their enforcement and operation. No variance shall violate the spirit or the intent of this document to create a subdivision of Lots owned in fee by various persons, with each such Owner having an easement upon areas owned by the Association.

6.22 *Grandfathering of existing non-conforming structures.* Any non-conforming structure, driveway or other improvement, existing on a Lot as of the execution of this Declaration shall be deemed in compliance with the provisions of this Article. In the event the non-conforming structure is damaged, it may be replaced provided the location, design, and size of the structure are not materially changed.

ARTICLE VII

TIME SHARES; COMBINATION, SUBDIVISION, ADJUSTMENT OF LOTS

7.1 *Time Shares.* In no event may an Owner create Time Shares in any Lot or in any improvement on a Lot.

7.2 Lots may be combined or subdivided and Lot boundaries may be adjusted, provided that the resulting Lot or Lots all comply with Section 6.15; except that once two or more Lots have been combined into a single Lot, that Lot may not later be subdivided. In the event of such combination, subdivision, or adjustment, the Owner shall provide the



Association with a copy of the recorded plat effecting the combination, subdivision, or boundary line adjustment.

ARTICLE VIII COVENANT FOR ASSESSMENTS

8.1 *Obligation of Assessments.* Each Owner of any Lot shall pay to the Association: (1) Annual Assessments or charges and (2) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided. The Annual and Special Assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Property at the time when the Assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them but shall remain as a continuing lien (until paid) upon the Property upon which each such Assessment is made.

8.2 *Purpose of Assessments.* The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and general welfare of the Lot Owners of Middle Island and in particular for the improvement and maintenance of the Common Areas, including, but not limited to, the maintenance, repair and reconstruction of private roads, beach access, parcels of land, walks, parking areas, structures, fixtures, and Cape Creek and Bald Head Creek docks, bulkheads, and boat launch ramps situated on the Common Areas. The maintenance will include the cutting and removal of weeds and grass and the removal of trash and rubbish and any other maintenance necessary for the use and enjoyment of the Common Areas, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, vehicles, tractors, equipment, materials, management and supervision, the payment of taxes and public assessments assessed against the Common Areas, the procurement and maintenance of insurance in accordance with this Declaration, the employment of attorneys to represent the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, roads, paving, grading, landscaping, signage, repairs of beach access docks, bulkheads, gates, if applicable, and any other general major expense for which the Association is responsible, and such other needs as may arise.

8.3 *Specific and General Reserve Funds.* The Association shall establish and maintain separate specific reserve funds for the periodic maintenance, repair and replacement of each of the following specific Common Areas and Amenities:

- a) Gravel roads
- b) Paved roads
- c) Cape Creek and Bald Head Creek docks, bulkheads and boat launches
- d) East Beach access and associated parking areas



e) Equipment and vehicles

The Board may also establish a specific reserve fund for any other Common Area or Amenity.

Major repair, replacement, and capital improvement expenditures for a given asset shall be made from these specific reserve funds. Funds may be transferred between specific reserve funds if approved by at least 2/3 of the Board Members. Specific reserve funds may be supplemented by specific assessments only as provided for elsewhere in this Declaration.

In addition, the Association shall establish and maintain a general reserve fund, which may be used for unanticipated current year operating expenses (such as emergency repairs, post-storm expenses, and administrative expenses including insurance and legal costs) or may be transferred all or in part to one or more specific reserve funds if approved by at least 2/3 of the Board Members.

Although each specific and general reserve fund shall be separate for accounting purposes including the determination of the annual contribution to each special and general reserve fund, the funds may be held in a single reserve fund account at a financial institution.

8.4 *Emergency Expenditures.* In the event assets or the public safety is at imminent risk, any three (3) Members of the Board of Directors may authorize the necessary expenditure in order to save the assets or protect the public safety and may transfer reserves from specific reserves to general reserves or general reserves to specific reserves in order to fund the emergency expenditure.

8.5 *Method of adopting the annual budget and determining the Annual Assessments.*

- a) The Association's fiscal year shall be the calendar year.
- b) Proposed Budget. By October 15 of each year, the Board shall adopt a proposed budget for the next fiscal year, including operating costs and contributions to the reserve funds.
- c) Proposed Annual Assessment for each Lot. Based on the proposed budget, the Board shall determine the proposed Annual Assessment for each Lot. The Annual Assessment for each lot shall be determined by allocating the expenses and reserve contributions for each budget category equally among all the Lots except as follows:
 - i. For gravel road maintenance and repair expenses and for contributions to the gravel road reserve fund, an East Beach Lot shall be assessed 1/3 of the amount that a corresponding Maritime Forest Lot would be assessed.
 - ii. For all budget categories, an Unimproved Lot shall be assessed 50% of the amount it would be assessed if it were an Improved Lot.



- d) Annual meeting to consider the budget. For fiscal years beginning after 2015, an annual meeting of Lot Owners to consider the budget shall be held between November 15 and December 15 preceding the fiscal year. Before November 1 of each year, the Board shall send the proposed budget and proposed Annual Assessments to the Association Members, together with a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. There is no requirement of a quorum at the meeting, and the budget is ratified unless at that meeting a majority of all the Lot Owners in the Association rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Executive Board.
- e) Adoption of the budget for fiscal year 2015. Lot Owners received the proposed 2015 budget and assessments as part of the Board's mailing regarding this Amended and Restated Declaration. A Lot Owner's approval of the Amended and Restated Declaration shall be deemed an approval of the proposed 2015 budget.

8.6 *Limitations on the Annual Assessments.*

- a) For the year 2015, the Annual Assessment per lot shall be as follows:

	Improved	Unimproved
Maritime Forest Lot	\$2,041	\$1,021
East Beach Lot	\$1,576	\$ 788

Provided however such Annual Assessments may be prorated for a partial year.

- b) For fiscal year 2016 and all years thereafter, the Board shall not increase the per lot Annual Assessment for a class of Lots over the full Annual Assessment (and not prorated Assessment for a partial year such as fiscal year 2015) for the previous year by more than Five (5%) per cent.
- c) The maximum Annual Assessment may be increased above the increase permitted in Section 8.6 b) above only by a vote of Members representing at least two-thirds (2/3) of the Lots who cast votes in person by ballot or by proxy, at a meeting duly called for this purpose as set forth in Section 8.8.
- d) In consideration of the contribution to the paving of East Beach Drive by the Owners of the Capel Tract and their agreement to maintain the roadway located on the Capel Tract, the Association grants the existing Capel Improved Lot a waiver of dues for ten (10) years beginning with the first Assessment. Thereafter, the existing Capel Improved Lot shall be assessed dues in the same manner as all other Lots. This waiver of dues does not apply to any other Lot that may be created by subdivision within the Capel Tract. Any such Lot created by subdivision shall be assessed dues in the

same manner as all other Ocean Front or Second Row Lots, as of and after it is subdivided.

8.7 Special Assessments. In addition to the Annual Assessments authorized above, the Association may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, or any unusual administrative or legal expense incurred by the Association or for the replenishment of any reserves.

- a) Requirements for approval of a Special Assessment. Any Special Assessment must be approved by a vote of Members representing at least two-thirds ($\frac{2}{3}$) of the Lots who cast votes in person by ballot or by proxy at a meeting duly called for this purpose as set forth in Section 8.8.
- b) Allocation of a Special Assessment. If part or all of the Special Assessment is for a purpose related to a specific asset or assets, that part of the Special Assessment shall be allocated to Lots in the same ratio that Annual Assessments for the underlying asset are allocated in Section 8.5c). Any part of the special assessment not related to a specific asset or assets shall be allocated in the same ratios as the Annual Assessments for assets other than gravel roads, as set forth in Section 8.5c).
- c) Allocation of a Special Assessment to pave gravel roads. Notwithstanding other provisions in this Declaration, any Special Assessment for the costs associated with a decision to pave the gravel roads in whole or in part, including but not limited to, legal fees, engineering, infrastructure and paving costs, shall be allocated entirely to the Maritime Forest Lots, without regard to whether they are developed or undeveloped; furthermore, only Owners of Maritime Forest lots shall be entitled to cast votes for or against any such Special Assessment and such Special Assessment to pave the gravel roads must be approved by a vote of Members representing at least two-thirds ($\frac{2}{3}$) of all the Maritime Forest Lots entitled to vote on this issue.

8.8 Notice and Quorum for Any Action Authorized Under Section 8.6 c) or Section 8.7. Written Notice of any meeting called for the purpose of taking any action authorized under Section 8.6 c) or 8.7 shall be sent to all Members not less than ten (10) days or more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies or ballots entitled to cast fifty percent (50%) of all the votes allocated to the Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. This provision shall continue to reduce the quorum by fifty (50%) percent from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.



8.9 *Due Dates of Annual Assessments and Certification of Payments Due and Outstanding.* The Annual Assessments for 2015 shall be due 30 days after the Common Areas have been conveyed to the Association and the Association has sent written notice of the Annual Assessment to each Owner. In subsequent years, the Board of Directors shall establish the due date and shall send written notice of the Annual Assessment to every Owner at least 20 days before the due date. The Association shall, upon request, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth the Assessments on a specified Lot that have been paid and any Assessments that are still outstanding. Any certificate so given shall be conclusive evidence of payment of the Assessments stated therein.

8.10 *Effect of Nonpayment of Assessments; Remedies of the Association.* Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Property in the same manner in which Deeds of Trust may be foreclosed under Power of Sale pursuant to Chapter 45 of the N.C. General Statutes, or its successors, and in either event interest, costs and reasonable attorney's fees of any such action shall be added to the Assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Areas or abandonment of his Lot. Should any deficiency remain after the foreclosure, the Association may also bring an action against the Owner for said deficiency.

8.11 *Subordination of the Lien to Mortgages.* The lien of the Assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

8.12 *Exempt Property.* All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the Assessments created herein.

ARTICLE IX
FEES

The Association may impose reasonable fees for dockage, for use of the boat ramps, for boat or boat trailer storage on Association Common Areas, for architectural review, for additional or replacement keys or keycards, and for services provided to an Owner, such as boat launching or lot maintenance. The Association may impose a reasonable road impact fee for new construction and for major renovation projects. The Association also may impose reasonable fees for access to the Common Areas by renters of Middle Island properties. The Association may assert a claim of lien for unpaid fees on the Lots



of the non-paying owner and will have the right to foreclose the claim of lien in the manner set out in Section 8.10.

ARTICLE X INSURANCE

10.1 *Ownership of Policies.* All insurance policies upon the Common Areas shall be purchased by the Association for the benefit of the Association.

10.2 *Coverage.* The following details the insurance coverage provisions.

- a) To the extent insurance is reasonably available, the Association will maintain property and casualty insurance on the common elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of such insurance after application of any deductibles shall be not less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. If the insurance described in this subsection (a) of this section is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.
- b) The Association has determined that the insurance described in subsection (a) above is not reasonably available with respect to: roads, lots, docks, bulkheads, launching ramps, gates, parking areas, boathouse at Cape Creek Dock, and other parcels of land, as well as its leasehold interest in the equipment and maintenance shed. These properties are not subject to the mandatory repair and replacement provisions of § 47F-3-113 of the Planned Community Act, but may be repaired or replaced using funds available from the current year operating budget, the specific asset reserve fund, the general reserve fund, or a Special Assessment approved by the property owners as described in section 8.7 of this declaration.

10.3 *Liability.* Public liability insurance shall be secured by the Association with limits of liability totaling no less than Two Million Dollars (\$2,000,000) per occurrence. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary, including, but not limited to, Directors and Officers insurance.

10.4 *Premiums.* Premiums for insurance policies purchased by the Association shall be paid by the Association.

10.5 *Proceeds.* All insurance policies purchased by the Association shall be for the benefit of the Association and its mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association. Proceeds on account of damage to Common Areas and facilities held for the Association shall be paid to any mortgagee of the Association and the Association as their interests shall



appear. In the event a mortgagee endorsement has been issued for any Lot, the share of the proceeds for the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

10.6 *Fidelity Insurance or Bond.* All persons responsible for or authorized to expend funds, or otherwise deal in the assets of the Association or those held in trust, may be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties.

ARTICLE XI EASEMENTS

11.1 *Easements.* All of the Properties, including Lots and Common Areas, shall be subject to such easements for, water lines, sanitary sewers, storm drainage facilities, utilities lines, cable TV and fiber optic or similar lines as shall be established by the Declarants or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Areas conveyed to it, such further easements as are requisite for the convenience, use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarants and its agents and employees an easement and right of ingress, egress and regress across all Common Areas, now or hereafter owned by the Association, for the purpose of construction of improvements within the Common Areas.

11.2 The Association, reserves unto itself, its successors and assigns, perpetual, alienable and releasable easements within the Properties the right on, over and under the ground to erect, maintain and use the roads, electric and telephone poles, wires, cables, fiber optic or similar lines, conduits, sewers, septic systems, water mains, and other suitable equipment for the conveyance of electricity, telephone, cable TV, gas, sewer, water and other public conveniences or utilities on, in and over the rear and/or front ten (10) feet of each Lot and ten (10) feet along the side of each Lot or parcel within the Properties. Further, the Association reserves the right to subject the Lots on Middle Island to a contract with Progress Energy or other electric utility for the installation of underground electric cables and/or the installation of street lighting, either or both of which may require an initial payment and/or a continuing monthly payment to Progress Energy or other electric utility by the Owner of each Lot or parcel. All telephone, electric and other utility lines and connections between the main utility lines and residence and other buildings located on each building site shall be concealed and located underground so as not to be visible.

11.3 *Encroachments.* All Lots shall be subject to easements for the encroachments constructed on adjacent Lots by Declarants to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves, gutters and downspouts and walls.



11.4 *Easement over Common Areas.* An easement is hereby established over the Common Areas and facilities for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, firefighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

ARTICLE XII
 GENERAL PROVISIONS

12.1 *Enforcement.* The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

12.2 *Mediation.* In the event a dispute between the Association and an Owner cannot be satisfactorily resolved, either the Owner or the Association may request mediation under North Carolina General Statutes §7A-38.3F.

12.2 *Severability.* Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

12.3 *Amendment.* The covenants and restrictions of this Declaration shall run with and bind the land and the Lots and Common Areas on Middle Island. This Declaration may be amended or amended and restated by an affirmative vote or written agreement signed by Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

12.4 *Rights of Note Holders.* Any institutional holder of a first mortgage on a Lot will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and shall have the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its mortgage, (e) receive written notice of any sixty-day (60) delinquency in the payment of Assessments or charges owed by the Owner of any Lot on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.



12.5 *Conflict.* In the event of a conflict of a provision or provisions in this Declaration or any amendment thereto and the Articles of Incorporation or Bylaws of the Association, the terms of this Declaration or any amendment thereto shall take precedence over such provision of the Articles of Incorporation or Bylaws.

12.6 *Heirs, Successors and Assigns.* This Declaration shall be binding on the undersigned, their heirs, successors and assigns and all Lot Owners on Middle Island now and forever.

12.7 *Certification of Execution of Amended and Restated Declaration.* By joining in the execution of this instrument, the Association certifies the foregoing instrument has been agreed to in writing by Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated and a majority of the Owners of Lots created by the subsequent subdivision of the Property after it was acquired by Young Realty Co. Inc.

IN WITNESS WHEREOF, the Declarants have executed this instrument, or in the case of corporate entities, have caused this instrument to be executed, by authority of its Board of Directors this the 22nd day of May, 2015.

Middle Island Property Owners Association, Inc.

By: 
Name: Alan J. Reyder
Office: President

STATE OF NORTH CAROLINA



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COUNTY OF NEW HANOVER

I, Myra Y. Hewett, a Notary Public of the State and County aforesaid, certify that Alan J. Reyner personally appeared before me this day and acknowledged that he is President of Middle Island Property Owners Association, Inc., a nonprofit corporation, and that he/she as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and seal this the 22nd day of May, 2015.

Myra Y. Hewett
Notary Public
My Commission Expires: 7-4-2015

