

**AMENDED AND RESTATED BYLAWS OF THE MIDDLE ISLAND  
PROPERTY OWNERS ASSOCIATION, INC.  
Current as of July 4, 2018**

**ARTICLE I  
NAME AND LOCATION**

The name of the corporation is **MIDDLE ISLAND PROPERTY OWNERS ASSOCIATION, INC.**, hereinafter referred to as the "Association." The principal office of the corporation shall be located on Middle Island in Brunswick County, North Carolina.

**ARTICLE I  
DEFINITIONS**

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

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

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

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

"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.

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

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

"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 of the Declaration of Covenants.

"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).

“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.

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

“*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.

“*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.

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

“*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.

“*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.

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

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

“*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.

“*Rules and Regulations*” means the Rules and Regulations of the Association, Inc.

“*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.

“*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.

“*Unimproved Lot*” shall be a Lot which is not an Improved Lot.

### **ARTICLE III MEMBERSHIP**

**Section 1. Owners of Assessable Properties.** Every person or entity who is the current Owner of an Assessable Property that is bound by any Covenants subjecting said property to an Assessment by the Association shall be a Member of the Association. The foregoing shall not include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to, and may not be separated from, ownership of any Assessable Property.

**Section 2. Reasonable Rules.** The Board of Directors may make reasonable rules relating to the proof of ownership of an Assessable Property.

### **ARTICLE IV MEETINGS OF THE MEMBERS**

**Section 1. Meeting.** The Annual Meeting of the Members shall occur each year on the Saturday preceding Labor Day, unless postponed by a 2/3 vote of the Board of Directors to a date no later than December 31 of that year. The time and place of the meeting shall be established by the Board of Directors. Special meetings of the Association may be called by the President, a majority of the Board of Directors or by Lot Owners having ten percent (10%), or any lower percentage specified in the Bylaws, of the votes in the Association. Not less than 10 nor more than 60 days in advance of any meeting, the Secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Lot or to any other mailing address designated by the Lot Owner, or sent by electronic means, including by electronic mail over the Internet, to an electronic mailing address designated in writing by the Lot Owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.

Unless the Bylaws provide otherwise, a quorum is present throughout any meeting of the Association if Members entitled to cast ten percent (10%) of the votes which may be cast for election of the Board of Directors are present in person or by proxy at the beginning of the meeting.

In the event business cannot be conducted at any meeting of the Members because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or the Bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirements applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

## **ARTICLE V VOTING RIGHTS**

**Section 1. Entitlement.** The Association shall have one class of voting membership. Subject to the provisions in the Declaration allowing for the suspension of an Owner's vote, Members shall be entitled to one (1) vote for each Lot of which they are the Owner of record. Only Members in good standing who have paid all dues, charges, and assessments shall be entitled to vote. When more than one person holds an ownership interest in any Assessable Property, all such persons shall be Members. The vote for such Assessable Property shall be exercised as they among themselves shall 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. Cumulative voting shall not be permitted. 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.

**Section 2. Voting.** On all matters to be voted upon by the Members of the Association, votes may be cast in person, or by proxy or by written ballot. In addition, pursuant to the provisions of the North Carolina Non-Profit Corporation Act, voting upon any matter may take place by written ballot submitted to all Members entitled to vote on the matter. If the Board of Directors determines that voting by electronic means is feasible, votes may be cast by electronic means, or by written ballot, or both, as directed by the Board of Directors.

**Section 3. Voting Percentage.** A majority of the votes cast in person or by proxy or ballot is necessary for the passage of any motion or question presented at any meeting of the Members; provided, however, that a two-thirds (2/3's) vote of Members voting in person or by proxy shall be required for approval of any Special Assessment as provided in Article XI of these Bylaws.

## **ARTICLE VI BOARD OF DIRECTORS**

**Section 1. Number.** The government and administration of the affairs and the property of the Association shall be vested in a Board of Directors. The Board of Directors will be composed of not less than seven (7) persons or more than nine (9) persons, each of whom shall be a Member of the Association.

**Section 2. Term of Office and Term Limits.**

- a) At a special meeting of the Association in September, 2017, the Members of the Association shall elect nine Directors from among the individuals nominated at the special meeting. Not later than 30 days after this election, the Board shall designate three Directors to serve an initial term of one year or until their successors are elected, three Directors to serve an initial term of two years or until their successors are

elected, and three Directors to serve an initial term of three years or until their successors are elected.

- b) Thereafter, the Members of the Association shall elect three Directors at each Annual Meeting of the Association. Except as provided in the preceding paragraph, each Director shall serve a term of three years or until a successor is elected. A Director appointed to fill a vacancy shall hold office until the expiration of the original term or until a successor is elected.
- c) A Director may not serve more than two consecutive terms. A partial term of more than six months in office shall count as a term in office for purposes of this paragraph. No service prior to adoption of this paragraph shall be counted in determining terms served. A Member who has served two consecutive terms shall again be eligible for election or appointment to the Board one year after the end of the Member's most recent term in office

**Section 3. Election.** The number of candidates necessary to fill the vacancies on the Board of Directors receiving the highest number of votes at the Annual Meeting of the Members for each designated term or vacancy shall be declared elected. Voting shall be by written ballot, whether cast in person or by proxy. The Secretary of the Association, or his designee, shall be responsible for tabulating the ballots.

**Section 4. Vacancies.** A vacancy on the Board may be filled by a majority vote of the remaining Directors. The person appointed to fill such vacancy shall serve for the remainder of the term of the Director he or she replaces.

**Section 5. Compensation.** No Director shall receive compensation for any service he or she may render to the Association; provided, however, that Directors who render professional services to the Association that would have been incurred in any event may be compensated, if said services are authorized by the Board, and if such compensation is at a fair and reasonable rate. Any Director shall be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

## **ARTICLE VII NOMINATION OF DIRECTORS**

**Section 1. Nominating Committee.** The Board of Directors shall appoint a Nominating Committee each year consisting of three (3) persons who shall be Members of the Association, at least one (1) of whom shall be a member of the Board of Directors and shall serve as Chairman of the Nominating Committee.

**Section 2. Nominations.** Nominations for election to the Board of Directors shall be made by the Nominating Committee. The Nominating Committee may make as many nominations for election to the Board of Directors as it may desire, but not less than one (1) nominee for each vacancy to be filled. The Nominating Committee shall submit its list of nominees to the Board of Directors. The Board shall publish the list of nominees to the Members by email transmission at least 60 days in advance of the Annual Meeting of the Members.

**Section 3. Nomination by Petition.** A candidate for election to the Board of Directors may also be nominated by written petition signed by no less than ten (10) persons who are Members. For purposes of this provision, if more than one (1) person owns a Lot such persons shall be treated as one (1) Member. The petition must be received by the President or Secretary no later than forty-five (45) days prior to the date set for the Annual Meeting. Any candidate nominated by petition shall be added to the written ballot or proxy which will be posted by mail or electronic means to the membership no later than thirty (30) days prior to the Annual Meeting.

## **ARTICLE VIII MEETINGS OF DIRECTORS**

**Section 1. Regular Meetings.** The Board of Directors shall have a regular meeting in advance of the Annual Meeting of the Members. The purpose of this meeting shall be to set the Agenda for the Annual Meeting of the Members and such other matters as shall properly come before such Meeting. The date, time, and location of this regular meeting shall be determined by the President. In addition, the Board may meet for other purposes properly brought before the meeting.

**Section 2. Special Meetings.** The President or any three (3) Directors may call a Special Meeting of the Board of Directors. Meetings of the Board of Directors shall be held as provided in the Bylaws. At regular intervals, the Board of Directors shall provide Lot Owners an opportunity to attend a portion of Board of Directors meetings and to speak to the Board of Directors about their issues or concerns. The Board of Directors may place reasonable restrictions on the number of persons who speak on each side of an issue and may place reasonable time restrictions on persons who speak.

**Section 3. Annual Meeting.** Each year the Board of Directors shall hold its Annual Meeting to elect officers and to consider any other matters as may be properly brought before the meeting. The Annual Meeting of the Board of Directors may be held immediately following the Annual Meeting of the Members, but in no event later than (30) days after the Annual Meeting of the Members.

**Section 4. Quorum.** Unless the Bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the Board of Directors if persons entitled to cast fifty percent (50%) of the votes on the Board are present at the beginning of the meeting.

In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or the Bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirements applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

**Section 5. Telephonic and Electronic Meetings.** Members of the Board of Directors may participate in, or hold, any meeting by means of a conference telephone call, by electronic

means, or by means of an email exchange. Participation in any meeting by such means shall constitute presence in person at the meeting, and the action taken at any such meeting held or conducted by telephone, electronic means, or email, shall be valid in all respects.

**Section 6. Notices.** All notices of any meeting will include the date, time, location, and the means by which the meeting will be held or conducted if by telephonic or electronic means, and a statement of the purpose of any Special Meeting called. All notices may be communicated in writing, or by electronic means, including telephone, facsimile, or email addressed to each Board member. Notice may be waived, and in any event, five (5) days' notice of any meeting shall be deemed sufficient.

**Section 7. Robert's Rules of Order.** Except as otherwise provided in the Bylaws, meetings of the Association and the Board of Directors shall be conducted in accordance with the most recent edition of Robert's Rules of Order Newly Revised.



**ARTICLE IX  
POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 1. Powers and Duties.** The Board of Directors shall exercise all powers of the Association and do all acts and things necessary to carry out the purposes of the Association. The Board shall exercise the following powers, and perform the following duties:

- (a) Elect the officers of the Association and fill vacancies occurring in any office due to the death, resignation, inability to perform duties, or otherwise;
- (b) Fill vacancies on the Board of Directors due to death, resignation, inability to perform duties, or otherwise;
- (c) Determine the amount of all Assessments to be levied, or proposed, against each Assessable Property in accordance with the terms of the Declaration;
- (d) Declare the office of any Director vacant for failure or inability to perform duties;
- (e) Adopt and publish Rules governing the use of the Common Areas and Amenities;
- (f) Establish usage fees or rental charges for the use of certain Common Properties and Amenities, where appropriate;
- (g) Employ such persons as they deem necessary for the proper operation and management of the Association, and to prescribe their duties
- (i) Procure adequate insurance with regard to the Common Areas and Amenities, procure Officers' and Directors' liability insurance, and procure such other insurance as shall be deemed necessary or appropriate;
- (j) Appoint such committees as may be deemed necessary to carry out the purposes of the Association, or which may be specified or required by the terms and provisions of any Declaration of Covenants, Conditions, and Restrictions for Middle Island; and
- (k) Enforce the terms and provisions of any Declaration of Covenants, Conditions, and Restrictions for Middle Island.
- (l) Within 30 days after adoption of any proposed budget for the planned community, the Board of Directors shall provide to all the Lot Owners a summary of the budget and a notice of the meeting to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. The Board of Directors shall set a date for a

meeting of the Lot Owners to consider ratification of the budget, such meeting to be held not less than 10 or more than 60 days after mailing of the summary and notice. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all the Lot Owners in the Association or any larger vote specified in the Declaration 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.

- (m) The Association shall publish the names and addresses of all officers and Board Members of the Association within 30 days of their election.
- (n) The Association shall make an annual income and expense statement and balance sheet available to all Lot Owners at no charge within 75 days after the close of the fiscal year to which the information relates.
- (o) Except as otherwise specifically provided in the Declaration, the Bylaws or Articles, all rights and powers of the Association may be exercised by the Board without a vote of the Membership. The Association may exercise any other right or privilege given to it expressly by the 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.

## **ARTICLE X OFFICERS**

**Section 1. Officers.** The Board of Directors at their Annual Meeting shall elect to serve for the term of one year or until their successors are elected, a President, a Vice-President, a Treasurer and a Secretary, each of whom shall be a Member of the Association. The offices of Secretary and Treasurer may be combined, and held by one person as Secretary-Treasurer. The Board may appoint such other officers as the Board from time to time determines appropriate, each of whom shall hold office for such period, and have such duties, as the Board may determine.

**Section 2. Duties.** The duties of the officers are as follows:

### **PRESIDENT**

The President shall preside at all meetings of the Board of Directors; shall enforce the provisions of these Bylaws, shall enforce any Rules adopted by the Board, and shall perform such other duties as the Board may determine.

## **VICE-PRESIDENT**

The Vice-President shall act in the place and stead of the President in the event of the President's absence, inability or refusal to act, and shall perform such other duties as the Board may determine.

## **SECRETARY**

The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, keep the corporate seal of the Association and affix it on all papers requiring same, serve all notices of meetings required by these Bylaws, keep appropriate current records showing the Members of the Association together with their contact information, and shall perform such other duties as the Board may determine.

## **TREASURER**

The Treasurer shall cause to be collected, held, and disbursed, under the direction of the Board of Directors, all monies of the Association, and it shall be the Treasurer's duty to collect monies due the Association on account of Dues, Assessments, and other fees or charges. The Treasurer shall keep or cause to be kept regular books of account and all financial records of the Association, and shall prepare budgets and financial statements, when and in the form requested by the Board of Directors. The Treasurer shall deposit or cause to be deposited all monies of the Association in an account or accounts in the Association's name, in the bank or banks designated by the Board of Directors. The President and/or Secretary shall, on behalf of the Association, have the authority to prepare, execute, certify and record any amendments or restatements of the Declaration as that term is defined in the North Carolina Planned Community Act.

## **ARTICLE XI ASSESSMENTS**

**Section 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.

**Section 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.

**Section 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 in the Declaration or elsewhere in these Bylaws.

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.

**Section 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.

**Section 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.

**Section 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 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..
- 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.

**Section 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 (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.
- 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 (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 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 (2/3) of all the Maritime Forest Lots entitled to vote on this issue.

**Section 8.** *Notice and Quorum for Any Action Authorized Under Section 6c) or Section 7.* Written Notice of any meeting called for the purpose of taking any action authorized under Section 6c) or 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 (½) 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.

**Section 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 or administrative person employed by 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.

**Section 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.

**Section 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.

**Section 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 XII 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

## **ARTICLE XIII USE RESTRICTIONS**

**Section 1. Rules and Regulations.** The Board of Directors of the Association shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Areas. It being the intent that the Lots shall, to the reasonable extent possible, be kept in an uncluttered state. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in the Declaration. Such rules and regulations may also include, in the case of violations of these Bylaws or the Restrictive Covenants, suspension of the right to vote and suspension of the right to use any recreational facilities or Common Areas other than the roads.

**Section 2. Use of Properties.** No portion of the Properties shall be used except for single family residential purposes and purposes incidental or accessory thereto, for recreational purposes primarily for the benefit of Middle Island property owners, or for conservation purposes.

**Section 3. Quiet Enjoyment.** No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

**Section 4. Animals.** No animals, livestock or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes.

## **ARTICLE XIV COMMITTEES**

**Section 1. Appointment.** The Board of Directors may appoint such Committees as it deems necessary or appropriate. The Board shall define the duties or tasks to be undertaken or completed by any Committee appointed. All Committees, and the persons thereon, shall serve at the pleasure of the Board. All Committees appointed pursuant to this section shall be for the purpose of assisting or advising the Board, and shall have no authority to do any act



for or on behalf of the Board or the Association, or bind the Board or the Association in any way.

**Section 2. Architectural Review Committee.** In conformity with the provisions of the Restrictive Covenants, the Board of Directors shall, from time to time, appoint or reconstitute an Architectural Review Committee which may be composed of one (1) or more Members of the Association. The Architectural Review Committee shall perform the duties and responsibilities established for it by the Declaration.

**Section 3. Vacancies.** The Board shall fill any vacancy occurring on the Architectural Review Committee, and may fill any vacancy occurring on any other Committee.

## **ARTICLE XV CORPORATE SEAL**

The Association shall have the seal in circular form having within its circumference the words: "MIDDLE ISLAND PROPERTY OWNERS ASSOCIATION, INC."

## **ARTICLE XVI FISCAL YEAR**

The fiscal year of the Association shall begin on the first (1<sup>st</sup>) day of January and shall end on the thirty-first (31<sup>st</sup>) day of December.

## **ARTICLE XVII INDEMNIFICATION OF OFFICERS & DIRECTORS**

**Section 1. Indemnity.** In addition to any indemnification required or permitted by law, any person who at any time serves or has served as a Director or Officer of the Association shall have the right to be indemnified by the Association to the full extent allowed by law, including, without limitation, all right to indemnification under the North Carolina Non-Profit Corporation Act, N.C. Gen. Stat. § 55A-1 *et. seq.*, against liability and litigation expense arising out of such status or activities in such capacity. "Liability and litigation expense" shall include costs and expenses of litigation (including reasonable attorneys' fees), damages, damage awards, judgments, fines, punitive damages, and amounts paid in settlement, which are actually and reasonably incurred or imposed in connection with, or as a consequence of, any threatened, pending or completed action, suit, or proceeding, whether civil, criminal, administrative or investigative, including appeals. In no circumstances, however, shall the Association indemnify any such person against any liability or litigation expense incurred on account of activities which were at the time taken known or believed by such person to be clearly in conflict with the best interests of the Association. Furthermore, the Association shall not indemnify such person under this section: (i) in connection with a proceeding by, or on behalf of, of the Association in which such person was adjudged liable to the Association, or (ii) in connection with any proceeding in which such person was adjudged liable on the basis that personal benefit was improperly received by such person, as provided by N. C. Gen. Stat. § 55A-8-51(d).

**Section 2. Application For Indemnity Or Advance Expenses.** A Director or Officer may apply to the Association in writing for indemnification or advance expenses. Such applications shall be addressed to the President or, in the absence of the President, to any officer of the Association. The Association shall respond in writing to such applications as follows: to a request for indemnity under Section 1, within thirty days after receipt of the application; to a request for advance expenses, within fifteen days after receipt of the application.

**Section 3. Insurance.** The Association shall purchase such types and amounts of insurance as it deems appropriate, including, but not limited to, property, general liability and workers compensation insurance and insurance as provided by N.C. Gen. Stat. § 55A-8-57, on behalf of any person who is or was a Director or Officer of the Association against any liability asserted against him or her, or incurred by him or her in any such capacity, or arising out of his or her status as such. 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, boat house 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 Article XI Section 7 of the Bylaws.

## **ARTICLE XVIII CONFLICTS**

If there is any conflict between the terms or provisions of the Declaration, the Articles, or the Bylaws the terms or provisions of the Restrictive Covenants shall take precedence over the terms or provisions of the Articles and/or Bylaws. Likewise in the event of a conflict between the terms or provisions of the Articles and Bylaws the terms or provisions of the Articles shall take precedence over the Bylaws.

## **ARTICLE XVIX AMENDMENTS**

**Section 1. By Members.** These Bylaws may be altered, amended, or repealed, or new Bylaws may be adopted, by a vote of not less than 2/3 of the Members voting in person or by proxy or ballot at any Annual or Special Meeting of the Members. A proposed amendment must be set forth in the notice of the meeting at which the Members are to consider and vote upon the amendment.

**Section 2. By The Board of Directors.** These Bylaws may be altered, amended, or repealed, or new Bylaws may be adopted, by the Board of Directors at any regular or special meeting of the Board, provided that (i) written notice of the meeting shall be given to the Members in accordance with Article IV, hereof, which notice shall set forth the proposed amendment or other action under consideration; (ii) the Members shall have the right to be heard with respect to any action under consideration; and (iii) that three-fourths (3/4) of the Board approves the amendment or other action under consideration. Provided, however, that only the Members may alter, amend, or repeal, as provided in Section 1 of this Article, any

Bylaw that pertains to Annual Dues Assessments or Special Assessments to fund Common Expenses.

IN WITNESS WHEREOF, these Amended Bylaws of the Middle Island Property Owners Association, Inc. were adopted by the Members at a meeting of the Members held on September 5th, 2015. At least two-thirds (2/3's) of the Members voting in person or by ballot or proxy approved these Amended and Restated Bylaws.

\_\_\_\_\_  
President  
Middle Island Property Owners Association, Inc.

ATTEST:

\_\_\_\_\_  
Secretary  
(SEAL)