

STATE OF NORTH CAROLINA

COUNTY OF PENDER

DECLARATION OF CONDOMINIUM  
FOR  
PHASE II OF VISTA COVE CONDOMINIUM

FILED

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JOYCE M. SWICEGOOD  
REGISTER OF DEEDS  
PENDER COUNTY, N.C.

ARTICLE 1

SUBMISSION; DEFINITIONS

Section 1.1. Submission of Property. AMBROGI DEVELOPMENT CO., INC., a North Carolina corporation with an address of P. O. Box 182, Hampstead, North Carolina 28443 ("Declarant"), owner in fee simple of the real estate described in Exhibit "A", located within Topsail Township and Pender County, North Carolina, hereby submits such real estate, including all improvements, easements, rights and appurtenances thereunto belonging to the provisions of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act ("Condominium Act"), and hereby creates with respect to said real estate a condominium to be known as "Phase II of Vista Cove Condominium" ("Condominium").

Section 1.2. Definitions. As used in the Condominium Documents, the following words and phrases shall have the following meanings:

a. "Allocated Interests" means the undivided interest in the Common Elements and Common Expense liability, and votes in the Association, allocated to Units in the Condominium. The Allocated Interests are described in Article 7 of this Declaration and shown on Exhibit "B".

b. "Association" means Phase II of Vista Cove Condominium Association, Inc., a non-profit corporation organized under Chapter 55A of the General Statutes of North Carolina. It is the Association of the Unit Owners pursuant to Section 47C-3-101 of the Condominium Act.

c. "Bylaws" means the Bylaws of the Association, as they may be amended from time to time.

d. "Common Elements" means all portions of the Condominium other than the Units.

Recorded and Verified \_\_\_\_\_  
Joyce M. Swicegood  
Register of Deeds  
Pender County, N.C.

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e. "Common Expenses" means the expenses or financial liabilities for the operation of the Condominium. These include:

(i) expenses of administration, maintenance, repair or replacement of the Common Elements;

(ii) expenses declared to be Common Expenses by the Condominium Documents or by the Condominium Act;

(iii) expenses agreed upon as Common Expenses by the Association; and

(iv) such reasonable reserves as may be established by the Association, whether held in trust or by the Association, for repair, replacement or addition to the Common Elements or any other real or personal property acquired or held by the Association.

f. "Condominium" means the real property described in Exhibit "A", subject to the Declaration of Condominium for Phase II of Vista Cove Condominium.

g. "Condominium Documents" means this Declaration, the Plats and Plans recorded and filed pursuant to the provisions of the Condominium Act, the Bylaws, and the Rules and Regulations as they may be amended from time to time. Any exhibit, schedule, or certification accompanying a Condominium Document is a part of that Condominium Document.

h. "Declarant" means Ambrogi Development Co., Inc., a North Carolina corporation or its successor as defined in Section 47C-1-103(9) of the Condominium Act.

i. "Development Rights" means the rights reserved by the Declarant under Article 6 of this Declaration to create Units, Common Elements, and Limited Common Elements within the Condominium and to withdraw real estate from the Condominium.

j. "Declarant Control Period" means the period prior to the earlier of:

(i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units which may be created to Unit Owners other than a Declarant;

(ii) two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business;

(iii) five (5) years after the first Unit is conveyed to a Unit Owner other than a Declarant.

k. "Director" means a member of the Executive Board.

l. "Eligible Mortgagee" means an institutional lender holding a first mortgage or first deed of trust ("First Mortgage") encumbering a Unit that has notified the Association in writing of its status, stating both its name and address and the Unit number or address of the Unit its First Mortgage encumbers, and has requested all rights under the Condominium Documents. For purposes of Article 16 only, when any right is to be given to an Eligible Mortgagee, such right shall also be given to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National Mortgage Association and any other public or private secondary mortgage market entity participating in purchasing or guarantying mortgages if the Association has notice of such participation.

m. "Executive Board" means the board of directors of the Association.

n. "Improvements" means any construction, structure, fixture or facilities existing or to be constructed on the land included in the Condominium, including but not limited to, buildings, trees and shrubbery planted by the Declarant or the Association, paving, utility lines, pipes, and light poles.

o. "Limited Common Elements" means the portion of the Common Elements allocated for the exclusive use of one or more but fewer than all of the Units by the Declaration or by operation of Section 47C-2-102(2) and (4) of the Condominium Act. The Limited Common Elements in the Condominium are described in Article 3 of this Declaration.

p. "Majority or Majority of Unit Owners" means the owners of more than fifty percent (50%) of the votes in the Association.

q. "Manager" means a person, firm or corporation employed or engaged to perform management services for the Condominium and the Association.

r. "Notice and Comment" means the right of a Unit Owner to receive notice of an action proposed to be taken by or on behalf of the Association, and the right to comment thereon. The procedures for Notice and Comment are set forth in Section 22.1 of this Declaration.

s. "Notice and Hearing" means the right of a Unit Owner to receive notice of an action proposed to be taken by the Association, and the right to be heard thereon. The procedures for Notice and Hearing are set forth in Section 22.2 of this Declaration.

t. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, government subdivision or agency, or other legal or commercial entity.

u. "Plats and Plans" means the Plats and Plans recorded simultaneously with this Declaration in Condominium Book   1  , Pages   41   through       , constituting a part hereof, as the same may be amended from time to time.

v. "Property" means the land, all Improvements, easements, rights and appurtenances, which have been submitted to the provisions of the Condominium Act by this Declaration.

w. "Public Offering Statement" means the current document prepared pursuant to Section 47C-4-103 of the Condominium Act as it may be amended from time to time, and provided to purchasers prior to the time of execution of a purchase agreement.

x. "Rules and Regulations" means Rules and Regulations for the use of Units and Common Elements and for the conduct of persons within the Condominium, adopted by the Executive Board pursuant to this Declaration.

y. "Security Interest" means an interest in real estate or personal property, created by contract or conveyance

which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an Association, and any other consensual lien or title retention contract intended as security for an obligation.

z. "Special Declarant Rights" means the rights reserved for the benefit of a Declarant to:

(i) complete Improvements indicated on the Plats and Plans filed with the Declaration;

(ii) exercise any Development Rights;

(iii) maintain sales offices, management offices, signs advertising the Condominium, and models;

(iv) use easements through the Common Elements for the purpose of making Improvements within the Condominium; or

(v) appoint or remove any officer of the Association or any Executive Board member during the Declarant Control Period.

a.a. "Trustee" means the entity which may be designated by the Executive Board as the Trustee for the receipt, administration, and disbursement of funds derived from insured losses, condemnation awards, special assessments for uninsured losses, and other like sources as defined in the Bylaws. If no Trustee has been designated, the Trustee will be the Executive Board from time to time constituted, acting by majority vote, as executed by the president and attested by the secretary.

b.b. "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 2.2 of this Declaration.

c.c. "Unit Owner" means the Declarant or other Person who owns a Unit. Unit Owner does not include a Person having an interest in a Unit solely as security for an obligation. The Declarant is the initial owner of any Unit created by this Declaration.

ARTICLE 2

## MAXIMUM NUMBER OF UNITS; BOUNDARIES

Section 2.1. Maximum Number of Units. The Condominium upon creation contains ten (10) Units. No additional Units will be added.

Section 2.2. Boundaries. Boundaries of each Unit created by this Declaration are shown on the Plats and Plans as numbered Units with their identifying number and are described as follows:

a. Upper Boundaries: The horizontal or sloping plane or planes of the unfinished lower surfaces of the ceiling bearing structure surfaces, beams, and rafters and of closed fireplace dampers, extended to an intersection with the vertical perimeter boundaries.

b. Lower Boundary: The horizontal plane or planes of the undecorated or unfinished upper surfaces of the floors extended to an intersection with the vertical perimeter boundaries and open, horizontal, unfinished surfaces of trim, sills and structural components.

c. Vertical Perimeter Boundary: The planes defined by the inner surfaces of the studs and framing of the perimeter walls; the unfinished inner surfaces of the masonry walls; the unfinished surfaces of the interior trim, fireplaces, and thresholds along perimeter walls and floors; the unfinished inner surfaces of closed windows and closed perimeter doors; and the innermost unfinished planes of all interior bearing studs and framing of bearing walls, columns, bearing partitions, and partition walls between separate Units.

d. Inclusions: Each Unit will include the spaces and Improvements lying within the boundaries described in Subsections 2.2 a, b, and c, above, and will also include the spaces and Improvements within such spaces containing any space heating, water heating and air conditioning apparatus, smoke detector systems and all electrical switches, wiring, pipes, ducts, conduits, smoke detector systems and television, telephone, and electrical receptacles and light fixtures and boxes serving that

Unit exclusively, the surface of the foregoing being the boundaries of such Unit, whether or not such spaces are contiguous.

e. Exclusions: Except when specifically included by other provisions of Section 2.2, the following are excluded from each Unit: The spaces and Improvements lying outside of the boundaries described in Subsections 2.2a, b, and c, above; and all chutes, pipes flues, ducts, wires, conduits, skylights and other facilities running through or within any interior wall or partition for the purpose of furnishing utility and similar services to other Units and Common Elements or both.

f. Non-Contiguous Portions: Certain Units may include special portions, pieces or equipment such as air conditioning compressors, meter boxes, utility connection structures that are detached or semidetached from the building containing the principal occupied portion of the Units. Such special equipment and storage portions are a part of the Unit notwithstanding their non-contiguity with the residential portions.

g. Inconsistency with Plats and Plans: If this definition is inconsistent with the Plats and Plans, then this definition will control.

### ARTICLE 3

#### LIMITED COMMON ELEMENTS

The following portions of the Common elements are Limited common Elements assigned to the Units as stated:

a. If a chute, flue, pipe, duct, wire, conduit, bearing wall, bearing column, or other fixture lies partially within and partially outside the designated boundaries of a Unit, the portion serving only the Unit is a Limited Common Element, allocated solely to the Unit, the use of which is limited to that Unit, and any portion thereof serving more than one Unit or a portion of the Common Elements is a part of the Common Elements.

b. Any shutters, awnings, window boxes, doorsteps, stoops, decks, porches, balconies, patios and each exterior door

and window or other fixture designed to serve a single Unit that is located outside of the boundaries of the Unit, are Limited Common Elements allocated exclusively to the Unit and their use is limited to that Unit.

c. Stoops and steps at the entrances to building, which provide access to less than all Units, the use of which is limited to the Units to which they provide access.

d. Attic space above each Unit with an attic, the use of which is limited to the Unit beneath it.

e. Stairways, the use of which is limited to certain Units as shown on the Plats and Plans.

f. Chimneys, the use of which is limited to the Unit in which its fireplace is located. In the event of a multiple flue chimney, each flue will be a Limited Common Element allocated to the Unit containing its fireplace while the chimney will be a Limited Common Element allocated to both Units.

g. Utility areas, the use of which is limited to the Unit or Units as shown on the Plats and Plans.

h. Storm windows and storm doors, if any, will be Limited Common Elements of the Unit to which they service.

i. Certain patios and decks, the use of which is limited to the Unit or Units which they adjoin as shown on the Plats and Plans.

j. Exterior doors and windows will be Limited Common Elements allocated to the Units sheltered.

k. Mailboxes, nameplates, and exterior lighting affixed to the building will be Limited Common Elements allocated to the Unit served.

#### ARTICLE 4

##### MAINTENANCE, REPAIR AND REPLACEMENT

Section 4.1. Common Elements. The Association will maintain, repair and replace all of the Common Elements, except the portions of the Limited Common Elements which are required by this Declaration to be maintained, repaired or replaced by the Unit Owners.



Section 4.2. Units. Each Unit Owner shall maintain, repair and replace, at his or her own expense, all portions of his or her Unit, except the portions thereof to be maintained, repaired or replaced by the Association.

Section 4.3. Limited Common Elements. Any Common Expense associated with the maintenance, repair or replacement of heat exchanger, heat outlet, enclosures and mechanical attachments will be assessed against the Unit or Units to which the Limited Common Element is assigned.

Common Expenses associated with the maintenance, repair or replacement of components and elements attached to, planted on or a part of patios, decks, balconies, exterior doors and windows will be assessed against the Unit or Units to which the Limited Common Element is assigned. No additional component or element may be attached without consent of the Executive Board upon approval by the covenants control committee, if any. In the event such additional component or element becomes deteriorated or unsightly or is inconsistent with conditions of installation it may be removed or repaired at the Unit Owner's expense as a Common Expense assessment under this Section, after Notice and Hearing. If any such Limited common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element will be assessed equally among the Units to which its is assigned.

Common Expenses associated with the cleaning, maintenance, repair or replacement of all other Limited common Elements will be assessed against all Units in accordance with their Allocated Interests in the Common Expenses.

Each Unit Owner shall be responsible for removing all snow, leaves and debris from all patios, decks, and balconies which are Limited Common Elements appurtenant to two or more Units, the owners of those Units will be jointly responsible for such removal.

Section 4.4. Access. Any Person authorized by the Executive Board shall have the right of access to all portions of the Property for the purpose of correcting any condition threatening a Unit or the Common Elements, and for the purpose of performing installations, alterations or repairs, and for the purpose of reading, repairing, replacing utility meters and related pipes, valves, wires, and equipment provided that such requests for entry are made in advance and that any such entry is at a time reasonably convenient to the affected Unit Owner. In case of an emergency, no such request or notice is required and such right of entry shall be immediate, whether or not the Unit Owner is present at the time.

Section 4.5. Repairs Resulting from Negligence. Each Unit Owner will reimburse the Association for any damages to any other Unit or to the Common Elements caused intentionally, negligently or by his or her failure to properly maintain, repair or make replacements to his or her Unit. The Association will be responsible for damage to Units caused intentionally, negligently or by its failure to maintain, repair or make replacements to the Common Elements. If such expense is caused by misconduct, it will be assessed following Notice and Hearing.

#### ARTICLE 5

##### SUBSEQUENTLY ALLOCATED LIMITED COMMON ELEMENTS

Any portions of the Common Elements now or hereafter improved as parking spaces may be subsequently allocated as Limited Common Elements in accordance with Subsection 6.1c and Article 10 of this Declaration, or may be assigned by Rules and Regulations of the Executive Board, or may be limited by Rules and Regulations to visitors only.

#### ARTICLE 6

##### DEVELOPMENT RIGHTS AND OTHER SPECIAL DECLARANT RIGHTS

Section 6.1. Reservation of Development Rights. The Declarant reserves the following Development Rights:

a. The right by amendment, to allocate as Limited Common Elements not more than twenty (20) of the twenty-eight

(28) parking spaces as shown on the Plats and Plans and assign them to a particular Unit. The eight (8) spaces not allocated will be designated visitor parking and will be utilized on a first come first serve basis.

b. The right to construct underground utility lines, pipes, wires, ducts, conduits and other facilities across the land anywhere in the Condominium for the purpose of furnishing utility and other services to buildings and Improvements to be constructed on any land designated "Development Rights Reserved in this Area" on the Plats and Plans. The Declarant also reserves the right to grant easements to public utility companies and to convey improvements within those easements anywhere in the Condominium for the above-mentioned purposes. If the Declarant grants any such easements, Exhibit "A" will be amended to include reference to the recorded easement.

Section 6.2. Limitation on Development Rights. The Development Rights reserved in Section 6.1 are limited as follows:

a. The Development Rights may be exercised at any time but not more than seven (7) years after the recording of the initial Declaration;

b. No additional Units may be created under the Development Rights;

c. No Development Rights may be exercised unless approved pursuant to Section 16.5 of this Declaration.

Section 6.3. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable, anywhere within the Condominium:

a. To complete Improvements indicated on the Plats and Plans filed with the Declaration;

b. To exercise a Development Right reserved in the Declaration;

c. To maintain sales offices, management offices, signs advertising the Condominium, and models;

d. To use easements through the Common Elements for the purpose of making Improvements within the Condominium;

e. To appoint or remove an officer of the Association or an Executive Board member during the Declarant Control Period subject to the provisions of Section 6.9 of this Declaration.

Section 6.4. Models, Sales Offices and Management Offices.

As long as the Declarant is a Unit Owner, the Declarant and its duly authorized agents, representatives and employees may maintain any Unit owned by the Declarant or any portion of the Common elements as a model unit or sales office or management office.

Section 6.5. Construction; Declarant's Easements. The Declarant reserves the right to perform repairs and construction work, and to store materials in secure areas, in Units and Common Elements, and the further right to control all such work and repairs, and the right of access thereto, until its completion. All work may be performed by the Declarant without the consent or approval of the Executive Board. The Declarant has such an easement through the Common Elements as may be reasonably necessary for the purpose of discharging the Declarant's obligations for exercising special Declarant rights, whether arising under the Condominium Act or reserved in the Declaration. Such easement includes the right to convey utility and drainage easements to public utilities, municipalities, the State of North Carolina, riparian owners or upland owners to fulfill the plan of development.

Section 6.6. Signs and Marketing. The Declarant reserves the right to post signs and displays in the Common Elements to promote sales of Units, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Unit Owners.

Section 6.7. Declarant's Personal Property. The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the premises that has not been represented as Property of the

Association. The Declarant reserves the right to remove from the Property, any and all of the goods and Improvements used in development, marketing and construction, whether or not they have become fixtures.

Section 6.8. Declarant Control of the Association.

a. Subject to Subsection 6.9b, during the Declarant Control Period, a Declarant or persons designated by the Declarant may appoint and remove the officers and members of the Executive Board. A Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before the termination of the Declarant Control Period, but in that event the Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Association or Executive Board, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

b. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Units that may be created to Unit Owners other than a Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units that may be created to Unit Owners other than a Declarant, not less than thirty-three percent (33%) of the members of the Executive Board must be elected by Unit Owners other than the Declarant.

c. Not later than the termination of the Declarant Control Period, the Unit Owners shall elect an Executive Board of at least three (3) members, at least a majority of whom shall be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

d. Notwithstanding any provision of this Declaration or the Bylaws to the contrary, following notice under Section 47C-3-108 of the Condominium Act, the Unit Owners, by a

sixty-seven percent (67%) vote of all persons present and entitled to vote at a meeting of the Unit Owners at which a quorum is present, may remove a member of the Executive Board with or without cause, other than a member appointed by the Declarant.

Section 6.9. Limitations on Special Declarant Rights.

Unless sooner terminated by an amendment to the Declaration executed by the Declarant, any Special Declarant Right may be exercised by the Declarant until the earlier of the following:

- (i) so long as the Declarant owns any Unit; or
- (ii) seven (7) years after recording this Declaration.

Section 6.10. Interference with Special Declarant Rights.

Neither the Association nor any Unit Owner may take any action or adopt any rule that will interfere with or diminish any Special Declarant Right without the prior written consent of the Declarant.

ARTICLE 7

ALLOCATED INTERESTS

Section 7.1. Allocation of Interests. The table showing Unit numbers and their Allocated Interests is attached as Exhibit "B". These interests have been allocated in accordance with the formulas set out in this Article 7.

Section 7.2. Formulas for the Allocation of Interests. The interests allocated to each Unit have been calculated on the following formulas:

a. Undivided Interest in the Common Elements. The percentage of the undivided interest in the Common Elements allocated to each Unit is based on the relative floor area of each Unit as compared to the floor area of all of the Units in the Condominium. For the purpose of this calculation, the floor areas of attics, if any, are not to be counted.

b. Liability for the Common Expenses. Each Unit in the Condominium shall share equally in the Common Expenses of the Condominium so that the percentage of liability for the Common

Expenses allocated to each Unit is calculated by dividing the number 100 by the total number of Units in the Condominium. Nothing contained in this Subsection shall prohibit certain Common Expenses from being apportioned to particular Units under Article 17 of this Declaration.

c. Votes. Each Unit in the Condominium shall have one equal vote. Any specified percentage portion or fraction of Unit Owners, unless otherwise stated in the Condominium Documents, means the specified percentage, portion, or fraction of all the votes as allocated in Exhibit "B".

#### ARTICLE 8

##### RESTRICTIONS ON USE, ALIENATION AND OCCUPANCY

Section 8.1. Use and Occupancy Restrictions. Subject to the Special Declarant Rights reserved under Article 6, the following use restrictions apply to all Units and to the Common Elements:

a. Each Unit is restricted to residential use as a single family residence. A single family residence is defined as a single housekeeping unit, operating on a non-profit, non-commercial basis between its occupants, cooking and eating with a common kitchen and dining area.

b. The use of Units and Common Elements is subject to the Bylaws and the Rules and Regulations of the Association.

Section 8.2. Restrictions on Alienation. A Unit may not be conveyed pursuant to a time-sharing plan.

A Unit may not be leased or rented for a term of less than seven (7) days. All leases and rental agreements shall be in writing and subject to the requirements of the Condominium Documents and the Association.

All leases of a Unit shall be deemed to include a provision that the tenant will recognize and attorn to the Association as landlord, solely for the purpose of having the power to enforce a violation of the provisions of the Condominium Documents against the tenant, provided the Association gives the landlord notice of its intent to so enforce, and a reasonable

opportunity to cure the violation directly, prior to the commencement of an enforcement action.

ARTICLE 9

EASEMENTS AND LICENSES

All easements or licenses to which the Condominium is presently subject are recited in Exhibit "A" to this Declaration. In addition, the Condominium may be subject to other easements or licenses granted by the Declarant pursuant to its powers under Article 6 of this Declaration.

ARTICLE 10

ALLOCATION AND REALLOCATION OF LIMITED COMMON ELEMENTS

A Common Element not previously allocated as a Limited Common Element may be so allocated only pursuant to provisions of Article 5 of the Declaration. The allocations will be made by amendments to the Declaration, specifying to which Unit or Units the Limited Common Element is allocated.

The Declarant has reserved the right, under Subsection 6.1b of this Declaration, to allocate as Limited Common Elements not more than Twenty ( 20 ) parking spaces. If any such parking spaces are so allocated, they shall be assigned to particular Units by amendment to this Declaration. Any parking spaces which are not allocated as Limited Common Elements at the termination of the Development Rights period may be so allocated by the Association by amendment to this Declaration. All amendments shall specify to which Unit or Units the Limited Common Element is allocated.

No Limited Common Element depicted on the Plats and Plans may be reallocated by an amendment to this Declaration pursuant to this Article 10 except as part of a relocation of boundaries of Units pursuant to Article 12 of this Declaration. Such amendment shall require the approval of all holders of Security Interests in the affected Units, which approval shall be endorsed thereon. The Person executing the amendment shall provide an executed copy thereof to the Association which, if the amendment complies with the provisions of this Declaration and the



Condominium Act, shall record it. The amendment shall contain words of conveyance and must be recorded and indexed in the names of the parties and the Condominium. The parties executing the amendment shall be responsible for the preparation of the amendment and shall reimburse the Association for its reasonable attorneys' fees in connection with the review of the amendment and for the recording costs.

#### ARTICLE 11

##### ADDITIONS, ALTERATIONS AND IMPROVEMENTS

Section 11.1. Additions, Alterations and Improvements by Unit Owners.

a. No Unit Owner will make any structural addition, structural alteration, or structural Improvement in or to the Condominium without the prior written consent thereto of the Executive Board in accordance with Subsection 11.1c.

b. Subject to Subsection 11.1a, a Unit Owner:

(i) may make any other Improvements or alterations to the interior of his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium; and

(ii) may not change the appearance of the Common Elements, or the exterior appearance of a Unit or any other portion of the Condominium, without permission of the Association.

c. A Unit Owner may submit a written request to the Executive Board for approval to do anything that he or she is forbidden to do under Subsection 11.1a or 11.1b(ii). The Executive Board shall answer any written request for such approval, after Notice and hearing, within sixty (60) days after the request thereof. Failure to do so within such time shall not constitute a consent by the Executive Board to the proposed action. The Executive Board shall review requests in accordance with the provisions of its Rules and Regulations.

d. Any applications to any department or to any governmental authority for a permit to make any addition, alteration or Improvement in or to any Unit shall be executed by the Association only. Such execution will not, however, create any liability on the part of the Association or any of its

members to any contractor, subcontractor or materialman on account of such addition, alteration or Improvement or to any person having any claim for injury to persons or damage to property arising therefrom.

e. All additions, alterations and Improvements to the Units and Common Elements shall not, except pursuant to prior approval by the Executive Board, cause any increase in the premium of any insurance policies carried by the Association or by the owners of any Units other than those affected by such change.

The provisions of this Section shall not apply to Declarant in the exercise of any Special Declarant Right.

Section 11.2. Additions, Alterations and Improvements by Executive Board. Subject to the limitations of Section 17.5 and 17.6 of this Declaration, the Executive Board may make any additions, alterations or Improvements to the Common Elements which, in its judgment, it deems necessary.

Section 11.3. Exterior Improvements and Landscaping Within Limited Common Elements. Unit Owners may make exterior Improvements within or as a part of Limited Common Elements constituting decks or balconies or patios consisting of repainting, restaining, addition of architectural detailing, changing of doors and fenestration, planting of gardens, hedges, shrubs, construction of fences, walks, benches, and architectural conceits, provided they are undertaken with the permission of the Executive Board or a covenants control committee established for such purpose, if any, following submission of complete plans prepared by an architect or landscape architect and a review of such board or committee as to consistency with Improvements originally constructed by the Declarant, and consistent with the style and character of the community. No approval will be awarded without Notice and Consent given to the Unit Owners. It is the intent to provide for limited individualization of the exterior appearance of the Units while retaining a character consistent with the overall plan of the Condominium community.

The applicant will pay for the cost of preparation of the application, the cost of professional review, if deemed required by the review entity, and all costs of permits and fees.

ARTICLE 12

RELOCATION OF BOUNDARIES BETWEEN ADJOINING UNITS

Section 12.1. Application and Amendment. Subject to approval of any structural changes and required permits pursuant to Article 11, the boundaries between adjoining Units may be relocated by an amendment to the Declaration upon application to the Association by the owners of the Units affected by the relocation. If the owners of the adjoining Units have specified a relocation between their Units of their Allocated Interests, the application shall state the proposed reallocations. Unless the Executive Board determines, within thirty (30) days after receipt of the application, that the reallocations are unreasonable, the Association shall consent to the reallocation and prepare an amendment that identifies the Units involved, states the reallocations and indicates the Association's consent. The amendment must be executed by those Unit Owners and contain words of conveyance between them, and the approval of all holders of Security Interests in the affected units shall be endorsed thereon. On recordation, the amendment shall be indexed in the name of the grantor and the grantee, and in the grantee's index in the name of the Association.

Section 12.2. Recording Amendments. The Association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining Units, and their dimensions and identifying numbers.

The applicants will pay for the costs of preparation of the amendment and its recording, and the reasonable consultant fees of the Association if it is deemed necessary to employ a consultant by the Executive Board.

ARTICLE 13

## AMENDMENTS TO DECLARATION

Section 13.1. General. Except in cases of amendments that may be executed by the Declarant in the exercise of its Development Rights or by the Association under Article 10 of this Declaration and Section 47C-1-107 of the Condominium Act, or by certain Unit Owners under Article 10 and Section 12.1 of this Declaration and Section 47C-2-118 of the Condominium Act, and except as limited by Section 12.4 and Article 16 of this Declaration, this Declaration, including the Plats and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated.

Section 13.2. Limitation of Actions. An action to challenge the validity of an amendment adopted by the Association pursuant to this Article may not be brought more than one year after the amendment is recorded.

Section 13.3. Recordation of Amendments. Each amendment to the Declaration must be recorded in the county in which the Condominium is located and the amendment is effective only upon recording. An amendment, except an amendment pursuant to Article 12 of this Declaration, must be indexed in the grantee's index in the name of the Condominium and the Association and in the grantor's index in the name of the parties executing the amendment.

Section 13.4. Unanimous Consent Required. Except to the extent expressly permitted or required by other provisions of the Condominium Act, an amendment may not create or increase Special Declarant Rights, increase the number of Units, change the boundaries of a Unit, the Allocated Interests of a Unit, or the uses to which a Unit is restricted, in the absence of the unanimous consent of the Unit Owners.

Section 13.5. Execution of Amendments. An amendment to the Declaration required by the Condominium Act to be recorded by the Association, which has been adopted in accordance with this Declaration and the Condominium Act, must be prepared, executed, recorded and certified on behalf of the Association by an officer  
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of the Association designated for that purpose, or in the absence of designation, by the president of the Association.

Section 13.6. Special Declarant Rights. Provisions in this Declaration creating Special Declarant Rights may not be amended without the consent of the Declarant.

Section 13.7. Consent of Holder of Security Interests. Amendments are subject to the consent requirements of Article 16 of this Declaration.

Section 13.8. Amendments to Create Units or Withdraw Real Estate. To exercise any Development Rights reserved under Section 6.1 of this Declaration, the Declarant shall prepare, execute and record an amendment to the Declaration. The Declarant shall also record either new Plats and Plans necessary to conform to the requirements of Section 47C-2-109(a), (b), and (c) of the Condominium Act or new certifications of the Plats and Plans previously recorded if those Plats and Plans otherwise conform to the requirements of those Sections.

The amendment to the Declaration shall describe any Common Elements and any Limited Common Elements created thereby and designate the Unit to which each Limited Common Element is allocated to the extent required by Section 47C-2-108 of the Condominium Act.

#### ARTICLE 14

##### AMENDMENTS TO BYLAWS

The Bylaws may be amended only by a vote of two-thirds (2/3) of the members of the Executive Board, following Notice and Comment to all Unit Owners, at any meeting duly called for such purpose.

#### ARTICLE 15

##### TERMINATION

Termination of the Condominium may be accomplished only in accordance with Section 47C-2-118 of the Condominium Act.

ARTICLE 16

## MORTGAGEE PROTECTION

Section 16.1. Introduction. This Article establishes certain standards and covenants which are for the benefit of Eligible Mortgagees. This Article is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the case of conflict, this Article shall control.

Section 16.2. Percentage of Eligible Mortgagees. Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean the approval or consent of eligible mortgagees holding First Mortgages in Units which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Units then subject to First Mortgages held by Eligible Mortgagees.

Section 16.3. Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of:

a. Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a First Mortgage held, insured, or guaranteed by such Eligible Mortgagee, as applicable;

b. Any delinquency in the payment of Common Expense assessments owed by an Owner whose Unit is subject to a First Mortgage held, insured, or guaranteed, by such Eligible Mortgagee, which remains uncured for a period of sixty (60) days;

c. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 16.4; and

e. Any judgment rendered against the Association.

Section 16.4 Consent Required.

a. Changes in the Condominium Documents. Notwithstanding any lower requirement permitted by this Declaration or the Condominium Act, no amendment of any material provision of the Condominium Documents by the Association or Unit Owners described  
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in this Subsection 16.4a may be effective without the vote of at least sixty-seven percent (67%) of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Condominium Act) and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. "Material" includes, but is not limited to, any provision affecting:

- (i) assessments, assessment liens or subordination of assessments liens;
- (ii) voting rights;
- (iii) reserves for maintenance, repair and replacement of Common Elements;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Elements or Limited Common Elements except that when Limited Common Elements are reallocated by agreement between Unit Owners, only those Units Owners and only the Eligible Mortgagees holding First Mortgages in such Units must approve such action;
- (vi) rights to use Common Elements and Limited Common Elements;
- (vii) boundaries of Units except that when boundaries of only adjoining Units are involved, then only those Unit Owners and the Eligible Mortgagees holding First Mortgages in such Unit or Units must approve such action;
- (viii) convertibility of Units into Common Elements or Common Elements into Units;
- (ix) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium;
- (x) insurance or fidelity bonds;
- (xi) leasing of units;
- (xii) imposition of restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (xiii) establishment of self-management when professional management had been required previously by any Eligible Mortgagee;
- (xiv) restoration or repair of the project after a hazard damage or partial condemnation in a manner other than that specified in the Condominium Documents;

(xv) termination of the Condominium after occurrence of substantial destruction or condemnation; and

(xvi) the benefits of Eligible Mortgagees.

b. Actions. Notwithstanding any lower requirement permitted by the Declaration or the Condominium Act, the Association may not take any of the following actions other than rights reserved to the Declarant as Special Declarant Rights without the approval of at least fifty-one percent (51%) of the Eligible Mortgagees:

(i) convey or encumber the Common Elements or any portion thereof (as to which an eighty percent (80%) Eligible Mortgagee approval is required). (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium will not be deemed a transfer within the meaning of this clause);

(ii) the establishment of self-management when professional management had been required previously by any Eligible Mortgagee;

(iii) the restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;

(iv) the termination of the Condominium for reasons other than substantial destruction or condemnation, as to which a sixty-seven percent (67%) Eligible Mortgagee approval is required;

(v) the alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;

(vi) the merger of this Condominium with any other condominium;

(vii) the granting of any easements, leases, licenses and concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Condominium and excluding any lease, licenses or concessions for no more than one year);

(viii) the assignment of the future income of the Association, including its rights to receive Common Expense assessments;

(ix) any action taken not to repair or replace the Property.

c. The Association may not change the period for collection of regularly budgeted Common Expense assessments without the consent of all Eligible Mortgagees.

d. The failure of an Eligible Mortgagee to respond within thirty (30) days to any written request of the Association for



approval of a non-material addition or amendment to the Condominium Documents shall constitute an implied approval of the addition or amendment.

Section 16.5 Development Rights. No Development Rights may be exercised or voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interest in the Development Rights consent to the exercise, abandonment, or termination.

Section 16.6 Inspection of Books. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

Section 16.7 Financial Statements. The Association shall provide any Eligible Mortgagee which submits a written request, with a copy of an annual financial statement within ninety (90) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if any Eligible Mortgagee requests it and pays the cost of such audit.

Section 16.8 Enforcement. The provisions of this Article are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

Section 16.9 Attendance at Meetings. Any representative of an Eligible Mortgagee may attend and address any meeting which a Unit Owner may attend.

Section 16.10 Appointment of Trustee. In the event of damage or destruction under Article 20 or 21 or condemnation of all or a portion of the Condominium, any Eligible Mortgagee may require that such proceeds be payable to a Trustee established pursuant to Subsection 1.2a.a. Proceeds will thereafter be distributed pursuant to Article 21 or pursuant to a condemnation award. Unless otherwise required, the members of the Executive Board acting by majority vote through the president may act as Trustee.

ARTICLE 17. ASSESSMENT AND COLLECTION OF COMMON EXPENSES

Section 17.1 Apportionment of Common Expenses. Except as provided in Section 17.2, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown on Exhibit B to this Declaration.

Section 17.2 Common Expenses Attributable to Fewer Than All Units.

a. Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.

b. Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against the Unit which benefits from the service.

c. Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against the Unit.

d. An assessment to pay a judgment against the Association may be made only against the Units in the Condominium at the time the judgment was entered, in proportion to their Common Expense liabilities.

e. If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against his Unit(s).

f. Fees, charges, late charges, fines, collection costs, and interest charged against a Unit Owner pursuant to the Condominium Documents and the Condominium Act are enforceable as Common Expense assessments.

Section 17.3 Lien.

a. The association has a lien on a Unit for an assessment levied against the Unit which remains unpaid for a period of thirty (30) days or longer from the time it is filed of  
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record in the Office of the Clerk of Superior Court of Pender County, North Carolina. Fees, charges, late charges, fines and interest charged pursuant to the Condominium Act and the Condominium Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment becomes immediately due and payable when the first installment thereof remains unpaid in such manner, and the full amount of the assessment shall constitute a lien from the time of such filing.

b. A lien under this section is prior to all other liens and encumbrances on a Unit except;

(i) liens and encumbrances (including, but not limited to, a mortgage or deed of trust on the Unit) recorded before the docketing of the lien in the Office of the Clerk of Superior Court; and

(ii) liens for real estate taxes and other governmental assessments or charges against the Unit. This Subsection does not affect the priority of mechanics' or materialmen's liens.

c. A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three (3) years after the docketing thereof in the Office of the Clerk of Superior Court.

d. This section does not prohibit an action to recover sums for which Subsection 17.3a of this section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

e. A judgment, decree or order in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

f. The Association's lien may be foreclosed as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes of North Carolina.

g. If a holder of a first mortgage or first deed of trust of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure of a first mortgage or first deed of trust, such purchasers, and its heirs, successors and assigns, shall not be liable for the assessments against such

Unit which became due prior to acquisition of title to such Unit by such purchaser. Such unpaid assessments shall be deemed to be Common Expenses collectible from all the Unit Owners including such purchaser, and its heirs, successors and assigns.

h. Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

Section 17.4. Budget Adoption and Ratification. Within thirty (30) days after adoption of a proposed budget for the Condominium, the Executive Board shall provide a summary of the Budget to each Unit Owner, and shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Unless at that meeting eighty percent (80%) of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a budget proposed by the Executive Board.

Section 17.5. Ratification of Non-Budgeted Common Expense Assessments. If the Executive Board votes to levy a Common Expense assessment not included in the current budget, other than one enumerated in Section 17.2 of this Declaration, in an amount greater than fifteen (15) percent of the current annual operating budget, the Executive Board shall submit such Common Expense to the Unit Owners for ratification in the same manner as a budget under Section 17.4.

Section 17.6. Certificate of Payment of Common Expense Assessments. The Association upon written request shall furnish to a Unit Owner a statement setting out the amount of unpaid assessments against the Unit. The statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Executive Board and each Unit Owner.

Section 17.7. Monthly Payment of Common Expenses. All Common Expenses assessed under Sections 17.1 and 17.2 shall be due and payable monthly.

Section 17.8. Acceleration of Common Expenses Assessments. In the event of default for a period of thirty (30) days by any Unit Owner in the payment of any Common Expense assessment levied against his or her Unit, the Executive Board shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year to be immediately due and payable.

Section 17.9. Commencement of Common Expense Assessments. Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs or on such earlier date as the Executive Board determines.

Section 17.10. No Waiver of Liability for Common Expenses. No Unit Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use of enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

Section 17.11. Personal Liability of Unit Owners. The owner of a Unit at the time a Common Expense assessment or portion thereof is due and payable is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless he or she agrees to assume the obligation.

#### ARTICLE 18

##### RIGHT TO ASSIGN FUTURE INCOME

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least fifty-one percent (51%) of the votes in the Association are allocated, at a meeting called for that purpose, and the Eligible Mortgagee consent described in Article 16.

ARTICLE 19

## PERSONS AND UNITS SUBJECT TO THE CONDOMINIUM DOCUMENTS

Section 19.1 Compliance with Condominium Documents.

All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Condominium Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the entering into occupancy of a Unit constitutes agreement that the provisions of the Condominium Documents are accepted and ratified by such Unit Owner, tenant, mortgagee or occupant, and all such provisions recorded in the Office of the Register of Deeds of Pender County, North Carolina are covenants running with the land and shall bind any persons having at any time any interest or estate in such Unit.

Section 19.2 Adoption of Rules and Regulations. The Executive Board may adopt Rules and Regulations regarding the use and occupancy of Units affecting the Common Elements, Limited Common Elements and the activities of occupants, subject to Notice and Consent.

ARTICLE 20

## INSURANCE

Section 20.1 Coverage. To the extent reasonably available, the Executive Board shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Executive Board determines that any insurance described herein will not be maintained, the Executive Board shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Unit owners and Eligible Mortgagees at their respective last known addresses.

Section 20.2. Property Insurance

## a. Property insurance covering:

(i) the project facilities (which term means all buildings on the Property, including the Units and all fixtures, equipment and any Improvements and betterments whether part of a Unit or a Common Element, and such personal property of Unit Owners as is normally insured under building coverage), but excluding land, excavations, portions of foundations below the under surface of

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the lowest floors, underground pilings, pipes, flues and drains and other items normally excluded from property policies; and

(ii) all personal property owned by the Association.

b. Amounts. The project facilities for an amount (after application of any deductions) equal to one hundred percent (100%) of their actual cash value at the time the insurance is purchased and at each renewal date. Personal property owned by the Association for an amount equal to its actual cash value.

The Executive Board is authorized to obtain appraisals periodically for the purpose of establishing said replacement costs of the project facilities and the actual cash value of the personal property, and the cost of such appraisals shall be a Common Expense.

The maximum deductible for insurance policies shall be \$10,000 or one percent (1%) of the policy face amount.

The difference between the policy deductible and \$250 shall be paid by the Association as a Common Expense. The deductible portion of \$250 shall be paid by each of the Unit Owner(s) suffering a loss.

c. Risks Insured Against. The insurance shall afford protection against "all risks" of direct physical loss commonly insured against.

d. Other Provisions. Insurance policies required by this Section shall provide that:

(i) the insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of a Unit Owner.

(ii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iii) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(iv) loss must be adjusted with the Association.

(v) Insurance proceeds shall be paid to an insurance trustee designated in the policy for that purpose, and in the absence of such designation to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's Mortgagee.

(vi) the insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association as well as each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(vii) the name of the insured shall be substantially as follows: "Trustees for Phase II of Vista Cove Condominium Association, Inc. for the use and benefit of the individual owners and lien holders as their interest may appear.

Section 20.3 Liability Insurance. Liability insurance, including medical payments insurance, in an amount determined by the Executive Board but in no event less than \$1,000,000 covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the activities of the Association.

a. Other Provisions. Insurance policies carried pursuant to this section shall provide that:

(i) each Unit Owner is an insured person under the policy with respect to liability arising out of the interest of the Unit Owner in the Common Elements or membership in the Association.

(ii) the insurer waives the right to subrogation under the policy against a Unit Owner or members of the household of a Unit Owner.

(iii) an act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under the policy.

(iv) if, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the policy of the Association provides primary insurance.

(v) the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a Security Interest to whom a certificate or memorandum of insurance has been issued at their last known addresses.

Section 20.4. Fidelity Bonds. A blanket fidelity bond may be provided for anyone who either handles or is responsible for funds held or administered by the Association, whether or not they receive compensation for their services.



Section 20.5. Unit Owner Policies. An insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit.

Section 20.6. Worker's Compensation Insurance. The Executive Board shall, if covered, obtain and maintain worker's compensation insurance to meet the requirements of the laws of the State of North Carolina.

Section 20.7. Directors' and Officers' Liability Insurance. The Executive Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all of the Directors and officers of the Association in such limits as the Executive Board may, from time to time, determine.

Section 20.8. Other Insurance. The Association may carry other insurance which the Executive Board considers appropriate to protect the Association or the Unit Owners.

Section 20.9. Premiums. Insurance premiums shall be a Common Expense.

#### ARTICLE 21

##### DAMAGE TO OR DESTRUCTION OF PROPERTY

Section 21.1. Duty to Restore. A portion of the Condominium for which insurance is required under Section 47C-3-113 of the Condominium Act or for which insurance carried by the Association is in effect, whichever is more extensive, that is damaged or destroyed must be repaired or replaced promptly by the Association unless:

a. the Condominium is terminated;

b. repair or replacement would be illegal under a state statute or municipal ordinance governing health or safety;

or

c. eighty percent (80%) of the Unit Owners, including each owner of a Unit or assigned Limited Common Element that will not be rebuilt, vote not to rebuild.

Section 21.2. Cost. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense.

Section 21.3. Plans. The Property must be repaired and restored in accordance with either the original plans and specification or other plans and specifications which have been approved by the Executive Board, a majority of Unit owners and fifty-one percent (51%) of Eligible Mortgagees.

Section 21.4. Replacement of Less than Entire Property.

a. The insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium.

b. Except to the extent that other persons will be distributees:

(i) the insurance proceeds attributable to a Unit and Limited Common Elements that is not rebuilt must be distributed to the owner of the Unit and the owner of the Unit to which the Limited Common Elements were allocated, or to lienholders, as their interests may appear; and

(ii) the remainder of the proceeds must be distributed to each Unit Owner or lienholder, as their interests may appear, in proportion to the Common Element interests of all the Units.

c. If the Unit Owners vote not to rebuild a Unit, the allocated interests of the Unit are reallocated upon the vote as if the Unit had been condemned under Section 47C-1-107(a) of the Condominium Act, and the Association promptly shall prepare, execute and record an amendment to the Declaration reflecting the reallocations.

Section 21.5. Insurance Proceeds. The Trustee, or if there is no Trustee, then the Executive Board of the Association, acting by the President, shall hold any insurance proceeds in trust for the Association, Unit Owners and lienholders as their interests may appear. Subject to the provisions of Subsection 21.1a through Subsection 21.1c, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and the Association, Unit Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Condominium is terminated.

Section 21.6. Certificates by the Executive Board. The Trustee, if any, may rely on the following certifications in writing made by the Executive Board:

a. whether or not damaged or destroyed property is to be repaired or restored;

b. the amount or amounts to be paid for repairs or restoration and the names and addresses of the parties to whom such amounts are to be paid.

#### ARTICLE 22

##### RIGHTS TO NOTICE AND COMMENT; NOTICE AND HEARING

Section 22.1. Right to Notice and Comment. Before the Executive Board amends the Bylaws or the Rules and Regulations, whenever the Condominium Documents require that an action be taken after "Notice and Comment", and at any other time the Executive Board determines, the Unit Owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Unit Owner in writing and shall be delivered personally or by mail to all Unit Owners at such address as appears in the records of the Association, or published in a newsletter or similar publication which is routinely circulated to all Unit Owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Executive Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Unit Owner to be heard at a formally constituted meeting.

Section 22.2 Right to Notice and Hearing. Whenever the Condominium Documents require that an action be taken after "Notice and Hearing", the following procedures shall be observed: the party proposing to take the action (e.g., the Executive Board, a committee, an officer, the manager, etc.) shall give written notice of the proposed action to all Unit Owners or occupants of Units whose interest would be significantly affected by the proposed action. The notice shall include a general

statement of the proposed action and the date, time and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to insure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision but shall not bind the decision makers. The affected person shall be notified of the decision in the manner in which notice of the meeting was given.

Section 22.3. Appeals. Any person having a right to Notice and Hearing shall have the right to appeal to the Executive Board from a decision of persons other than the Executive Board by filing a written notice of appeal with the Executive Board within ten (10) days after being notified of the decision. The Executive Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

#### ARTICLE 23

##### EXECUTIVE BOARD

Section 23.1. Minutes of Executive Board Meetings. The Executive Board shall permit any Unit Owner to inspect the minutes of Executive Board meetings during normal business hours. The minutes shall be available for inspection within fifteen (15) days after any such meeting.

Section 23.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in this Declaration, the Bylaws or the Condominium Act. The Executive Board shall have, subject to the limitations contained in this Declaration and the Condominium Act, the powers and duties necessary for the administration of the affairs of the Association and of the Condominium which shall include, but not be limited to, the following:

- a. adopt and amend Bylaws, Rules and Regulations;

- b. adopt and amend budgets for revenues, expenditures and reserves;
- c. collect assessments for Common Expenses from Unit Owners;
- d. hire and discharge managing agents;
- e. hire and discharge employees and agents, other than managing agents, and independent contractors;
- f. institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violation of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit owners on matters affecting the Condominium;
- g. make contracts and incur liabilities;
- h. regulate the use, maintenance, repair, replacement and modification of the Common Elements;
- i. cause additional Improvements to be made as a part of the Common Elements;
- j. acquire, hold, encumber and convey in the Association's name any right, title or interest to real property or personal property, but Common elements may be conveyed or subjected to a Security Interest only pursuant to Section 47C-3-112 of the Condominium Act;
- k. grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;
- l. impose and receive a payment, fee or charge for use, rental or operation of the Common Elements, other than Limited Common Elements described in Section 47C-2-102(2) and (4) of the Condominium Act, and for services provided to Unit Owners;
- m. impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy reasonable fines for violations of this Declaration, Bylaws, and the Rules and Regulations of the Association;
- n. impose a reasonable charge for the preparation and recordation of amendments to this Declaration, and resale

certificates required by Section 47C-4-109 of the Condominium Act or a statement of unpaid assessments;

o. provide for the indemnification of the Association's officers and the Executive Board and maintain director's and officer's liability insurance;

p. assign the Association's right to future income, including the right to receive Common Expense assessments;

q. exercise any other powers conferred by this Declaration or the Bylaws;

r. exercise any other power that may be exercised in this state by legal entities of the same type as the Association;

s. exercise any other power necessary and proper for the governance and operation of the Association; and

t. by resolution, establish committees of Directors, permanent and standing, to perform any of the above functions designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However actions taken by a committee may be appealed to the Executive Board by any Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 23.3. Executive Board Limitations. The Executive Board may not act on behalf of the Association to amend this Declaration, to terminate the Condominium or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any terms.

#### ARTICLE 24

#### CONDEMNATION

If part or all of the Condominium is taken by any power having the authority of eminent domain, all compensation and damages for and on account of the taking shall be payable in accordance with Section 47C-1-107 of the Condominium Act.

ARTICLE 25

MISCELLANEOUS

Section 25.1. Captions. The captions contained in the Condominium Documents are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of the Condominium Documents nor the intent of any provision thereof.

Section 25.2. Gender. The use of the masculine gender refers to the feminine and neuter genders and the use of the singular includes the plural, and vice versa, whenever the context of the Condominium Documents so require.

Section 25.3 Waiver. No provision contained in the Condominium Documents is abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 25.4 Invalidity. The invalidity of any provision of the Condominium Documents does not impair or affect in any manner the validity, enforceability or effect of the remainder, and in such event, all of the other provisions of the Condominium Documents shall continue in full force and effect.

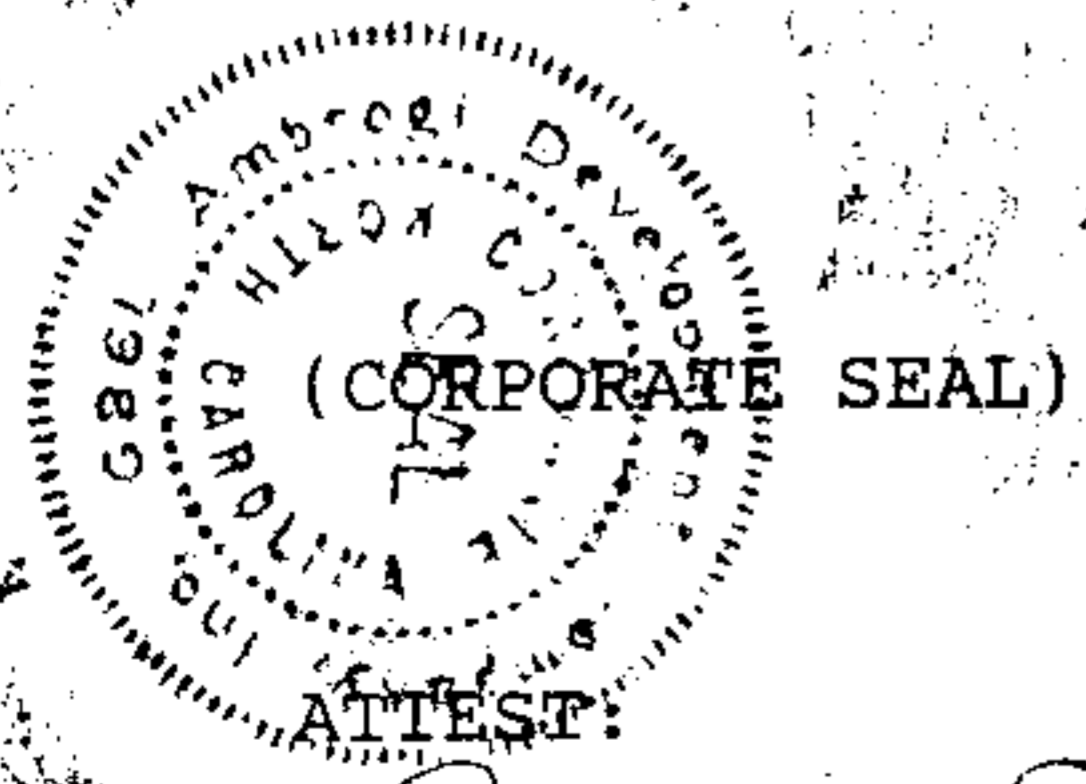
Section 25.5. Conflict. The Condominium Documents are intended to comply with the requirements of the Condominium Act. In the event of any conflict between the Condominium Documents and the provisions of the Condominium Act, the provisions of the Condominium Act shall control. In the event of any conflict between this Declaration and any other Condominium Document, this Declaration shall control.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed this 31 day of August, 1990.

AMBROGI DEVELOPMENT CO., INC.

BY: Thomas R. Ambrogi  
President

Annella J. Long  
Secretary



STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, Jamie D. Ryan, a Notary Public of the County and State aforesaid, certify that Pamela S. Long personally came before me this day and acknowledged that she is \_\_\_\_\_ Secretary of AMBROGI DEVELOPMENT CO., INC., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President, sealed with its corporate seal and attested by Pamela S. Long as its \_\_\_\_\_ Secretary.

WITNESS my hand and notarial seal, this the 31<sup>st</sup> day of August, 1990.

Jamie D. Ryan  
NOTARY PUBLIC

My Commission Expires:

July 18, 1995

(SEAL)



North Carolina Pender County

The foregoing (or annexed) certificate of

Jamie D. Ryan

\_\_\_\_\_ is certified to be correct.

This 5 day of Sept. A.D. 1990

Joseph M. Swigood  
Register of Deeds



EXHIBIT ADESCRIPTION OF LAND AND RECORDED EASEMENTS  
AND LICENSES APPURTENANT THERETO

1. Description of Land: A tract or parcel of land lying in Topsail Township, Pender County, North Carolina, more particularly described as follows:

BEGINNING at an iron pipe located in the southeast right of way line of State Road #1563 North 39 degrees 17 minutes 06 seconds east from the intersection of the southeastern right of way line of State Road 1563 and the northeastern line of Jones Road as shown on a map entitled "Map of Survey of Sloop Point South Section "A" as recorded on Map Book 23 at Page 37 of the Pender County Registry, said point also marking the northwest corner of Phase I of Vista Cove Condominiums; running thence from said beginning south 46 degrees 33 minutes 55 seconds east 285.00 feet to an iron pipe marking the northeast corner of Phase I of Vista Cove Condominiums; thence north 39 degrees 77 minutes 03 seconds east 199.67 feet to a point; thence north 46 degrees 33 minutes 25 seconds west 285.00 feet to an iron pipe in the above mentioned southeastern right of way line of State Road 1563, running thence with said right of way line, South 39 degrees 17 minutes 06 seconds West 199.71 feet to the beginning point and containing 1.3031 acres as surveyed by Johnie C. Garrason, R.L.S. No L-1347 in January, 1988.

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EXHIBIT "B"

## TABLE OF INTERESTS

<u>Unit No.</u>	<u>Percentage Share of Common Elements</u>	<u>Percentage Share of Common Expenses</u>	<u>Vote in the Affairs of the Association</u>
A1	10%	10%	1
A2	10%	10%	1
A3	10%	10%	1
A4	10%	10%	1
A5	10%	10%	1
A6	10%	10%	1
A7	10%	10%	1
A8	10%	10%	1
A9	10%	10%	1
A10	10%	10%	1

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BYLAWS  
OF  
PHASE II VISTA COVE CONDOMINIUM ASSOCIATION, INC.  
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BYLAWS OF PHASE II VISTA COVE CONDOMINIUM ASSOCIATION, INC.ARTICLE 1. INTRODUCTION

These are the Bylaws of Phase II Vista Cove Condominium Association, Inc. Initial capitalized terms are defined in Article 1 of the Declaration.

ARTICLE 2. EXECUTIVE BOARD

Section 2.1. Number and Qualification; Termination of Declarant Control.

a. The affairs of the Condominium and the Association shall be governed by an Executive Board, which, until the termination of the Declarant Control Period, shall consist of three persons, and following such date shall consist of three persons, the majority of whom, excepting the Directors appointed by the Declarant, shall be Unit owners. If any Unit is owned by a partnership or corporation, any officer, partner or employee of that Unit Owner shall be eligible to serve as a Director and shall be deemed to be a Unit Owner for the purposes of the preceding sentence. Directors shall be elected by the Unit owners except for those appointed by the Declarant. At any meeting at which Directors are to be elected, the Unit Owners may, by resolution, adopt specific procedures for conducting the elections, not inconsistent with these Bylaws.

b. The terms of at least one-third (1/3) of the Directors not appointed by the Declarant shall expire annually, as established in a resolution of the Unit Owners setting terms.

c. Section 6.9 of the Declaration shall govern appointment of Directors of the Executive Board during the Declarant Control Period.

d. The Executive Board shall elect the officers. The Directors and officers shall take office upon election.

e. At any time after Unit owners other than the Declarant are entitled to elect a Director, the Association shall call and give not less than ten (10) nor more than fifty (50) days' notice of a meeting of the Unit Owners for this purpose. Such meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

Section 2.2. Powers and Duties. The Executive Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Condominium Act. The Executive Board shall have, subject to the limitations contained in the Declaration and the Condominium Act, the powers and duties necessary for the administration of the affairs of the Association and of the Condominium which shall include, but not be limited to, the following:

- a. Adopt and amend Bylaws and Rules and Regulations;
- b. Adopt and amend budgets for revenues, expenditures and reserves;
- c. Collect assessments for Common Expenses from Unit Owners;
- d. Hire and discharge managing agents;
- e. Hire and discharge employees and agents other than managing agents and independent contractors;
- f. Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Declaration, Bylaws or Rules and Regulations in the Association's name on behalf of the Association or two or more Unit Owners on matters affecting the Condominium;
- g. Make contracts and incur liabilities;
- h. Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- i. Cause additional Improvements to be made as a part of the Common Elements;
- j. Acquire, hold, encumber and convey in the Association's name any right, title or interest to real estate or personal property but Common elements may be conveyed or subjected to a Security Interest only pursuant to Section 47C-3-112 of the the Condominium Act;
- k. Grant easements for any period of time including permanent easements, and leases, licenses and concessions for no more than one year, through or over the Common Elements;

l. Impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements, other than Limited Common Elements described in Section 47C-2-102(2) and (4) of the Condominium Act, and for services provided to Unit Owners;

m. Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy a reasonable fine for a violation of the Declaration, Bylaws or Rules and Regulations of the Association;

n. Impose a reasonable charge for the preparation and recording of an amendment to the Declaration, resale certificate required by Section 47C-4-109 of the Condominium Act or a statement of unpaid assessments;

o. Provide for the indemnification of the Association's officers and Executive Board and maintain directors and officers' liability insurance;

p. Assign the Association's right to future income, including the right to receive Common Expense assessments;

q. Exercise any other powers conferred by the Declaration or Bylaws;

r. Exercise any other power that may be exercised in the state by a legal entity of the same type as the Association;

s. Exercise any other power necessary and proper for the covenants and operation of the Association; and

t. By resolution, establish committees of Directors, permanent and standing, to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Unit Owners and the Executive Board. However, actions taken by a committee may be appealed to the Executive Board by a Unit Owner within forty-five (45) days of publication of such notice, and such committee action must be ratified, modified or rejected by the Executive Board at its next regular meeting.

Section 2.3. Standard of Care. In the performance of their duties, the officers and members of the Executive Board shall be

deemed to stand in a fiduciary relationship to the Association and the Unit Owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

Section 2.4. Additional Limitations. The Executive Board shall be additionally limited pursuant to Article 23 of the Declaration.

Section 2.5. Manager. The Executive Board may employ a manager for the Condominium at a compensation established by the Executive Board, to perform such duties and services as the Executive Board shall authorize. The Executive Board may delegate to the manager only the powers granted to the Executive Board by these Bylaws under Subsections 2.2c, e, g and h. Licenses, concessions and contracts may be executed by the manager pursuant to specific resolutions of the Executive Board, and to fulfill the requirements of the budget.

Section 2.6. Removal of Directors. The Unit Owners, by a sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any Director of the Executive Board with or without cause, other than a Director appointed by the Declarant.

Section 2.7. Vacancies. Vacancies in the Executive Board caused by any reason other than the removal of a Director by a vote of the Unit Owners, may be filled at a special meeting of the Executive Board held for that purpose at any time after the occurrence of any such vacancy, even though the Directors present at such meeting may constitute less than a quorum, in the following manner:

a. as to vacancies of Directors whom Unit Owners other than the Declarant elected, by a majority of the remaining such Directors constituting the Executive Board;

b. as to vacancies of Directors whom the Declarant has the right to appoint, by the Declarant.

Section 2.8. Regular Meetings. The first regular meeting of the Executive Board following each annual meeting of the Unit Owners shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Unit Owners at the meeting at which such Executive Board shall have been elected. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the Directors shall be present. The executive Board may set a schedule of additional regular meetings by resolution and no further notice is necessary to constitute such regular meetings.

Section 2.9. Special Meetings. Special meetings of the Executive Board may be called by the President or by a majority of the Directors on at least three (3) business days' notice to each Director. The notice shall be hand-delivered or mailed and shall state the time, place and purpose of the meeting.

Section 2.10. Location of Meetings. All meetings of the Executive Board shall be held within Pender County, North Carolina unless all Directors consent in writing to another location.

Section 2.11. Waiver of Notice. Any Director may waive notice of any meetings in writing. Attendance by a Director at any meeting of the Executive Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required and any business may be transacted at such meeting.

Section 2.12. Quorum of Directors. At all meetings of the Executive Board, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the meeting. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time. At any adjourned meeting at which a quorum is present any business which may have been transacted at the meeting originally called may be transacted without further notice.



Section 2.13. Compensation. Directors shall serve without compensation but may be reimbursed by the Association for necessary expenses actually incurred in connection with his or her duties.

Section 2.14. Consent to Association Action. If all of the Directors or all of the committee members of a committee established for such purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Association, such action shall be a valid Association action as though it had been authorized at a meeting of the Executive Board or the committee, as the case may be. The Secretary shall file such consents with the minutes of the meetings of the Executive Board.

### ARTICLE 3. UNIT OWNERS

Section 3.1. Annual Meeting. Annual meetings of Unit Owners shall be held on the date specified in the notice of such meeting given pursuant to Section 3.5. At such meeting, the Directors shall be elected by ballot of the Unit Owners, in accordance with the provisions of Article 2. The Unit Owners may transact other business at such meetings as may properly come before them.

Section 3.2. Budget Meeting. Meetings of Unit Owners to consider proposed budgets shall be called in accordance with Sections 17.4 and 17.5 of the Declaration. The budget may be considered at annual or special meetings called for other purposes as well.

Section 3.3. Special Meetings. Special meetings of the Association may be called by the President, by a majority of the members of the Executive Board, or by Unit Owners comprising forty percent (40%) of the votes in the Association.

Section 3.4. Place of Meetings. Meetings of the Unit Owners shall be held at the Property, or may be adjourned to such suitable place convenient to the Unit Owners as may be designated by the Executive Board or the President.

Section 3.5. Notice of Meetings. Except for budget meetings which will be noticed not less than fourteen (14) nor more than thirty (30) days after the mailing of the notice thereof, not less than ten (10) nor more than fifty (50) days in advance of a 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 Unit or to the mailing address designated in writing by the Unit Owner. No action shall be adopted at a meeting except as stated in the notice.

Section 3.6. Waiver of Notice. Any Unit Owner may, at any time, waive notice of any meeting of the Unit Owners in writing, and such waiver shall be deemed equivalent to the receipt of such notice.

Section 3.7. Adjournment of Meeting. At any meeting of Unit Owners a majority of the Unit Owners who are present at such meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 3.8. Order of Business. The order of business at all meetings of the Unit Owners shall be as follows:

- a. Roll call;
- b. Proof of notice of meeting;
- c. Reading of minutes of preceding meeting;
- d. Reports;
- e. Establish number and term of memberships of the Executive Board (if required and noticed);
- f. Election of inspectors of election (when required);
- g. Election of Directors of the Executive Board (when required);
- h. Ratification of budget (if required and noticed);
- i. Unfinished business; and
- j. New business.

Section 3.9. Voting.

- a. If only one of several owners of a Unit is present at a meeting of the Association, the owner present is entitled to cast the vote allocated to the Unit. If more than one of the owners
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are present, the vote allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners cast the vote allocated to the Unit without protest being made promptly to the person presiding over the meeting by another owner of the Unit.

b. The vote allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of a vote by the other owners of the Unit through a duly executed proxy. A Unit Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

c. The vote of a corporation or business trust may be cast by any officer of such corporation or business trust in the absence of express notice of the designation of a specific person by the board of directors or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust owner is qualified so to vote.

d. Votes allocated to a Unit owned by the Association may not be cast.

Section 3.10. Quorum. Except as otherwise provided in these Bylaws, the Unit owners present in person or by proxy, at any meeting of Unit Owners, (but no less than sixty percent (60%) of the members) shall constitute a quorum at such meeting.

Section 3.11. Majority Vote. The vote of a majority of the Unit Owners present in person or by proxy at a meeting at which a

quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required in the Declaration, these Bylaws, or the Condominium Act.

ARTICLE 4. OFFICERS

Section 4.1. Designation. The principal offices of the Association shall be the President, the Vice President, the Secretary and the Treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an Assistant Treasurer and Assistant Secretary, and such other officers as in its judgment may be necessary. The President and Vice President, but no other officers, need be Directors. Any two officers may be held by the same person, except the offices of President and Secretary. The office of Vice President may be held by the Treasurer.

Section 4.2. Election of Officers. The officers of the Association shall be elected annually by the Executive Board at the organization meeting of each new Executive Board and shall hold office at the pleasure of the Executive Board.

Section 4.3. Removal of Officers. Upon the affirmative vote of a majority of the Directors, any officer may be removed, either with or without cause, and his or her successor may be elected at any regular meeting of the Executive Board, or at any special meeting of the Executive Board called for that purpose.

Section 4.4. President. The President shall be the chief executive officer of the Association. He or she shall preside at all meetings of the Unit Owners and of the Executive Board. He or she shall have all of the general powers and duties which are incident to the officer of President of a non-profit corporation organized under the laws of the State of North Carolina, including but not limited to the power to appoint committees from among the Unit Owners from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association. He or she may fulfill the role of Treasurer in the absence of the Treasurer. The President, as attested by the Secretary, may cause to be prepared

and may execute amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 4.5. Secretary. The Secretary shall keep the minutes of all meetings of the Unit Owners and the Executive Board. He or she shall have charge of such books and papers as the Executive Board may direct and he or she shall, in general, perform all the duties incident to the office of Secretary of a non-profit corporation organized under the laws of the State of North Carolina. The Secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and the Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 4.6. Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data. He or she shall be responsible for the deposit of all monies and other valuable effects in such depositories as may from time to time be designated by the Executive Board, and he or she shall in, general, perform all the duties incident to the office of Treasurer of a non-profit corporation organized under the laws of the State of North Carolina. He or she may endorse on behalf of the Association for collection only, checks, notes and other obligations, and shall deposit the same and all monies in the name of and to the credit of the Association in such banks as the Executive Board may designate. He or she may have custody of and shall have the power to endorse for transfer on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others.

Section 4.8. Agreements, Contracts, Deeds, Checks, etc. Except as provided in Section 4.4, 4.6, 4.7 and 4.10 of these Bylaws, all agreements, contracts, deeds, leases, checks and other

instruments of the Association shall be executed by any officer of the Association or by such other person or persons as may be designated by the Executive Board.

Section 4.9. Compensation. No officer of the Association shall receive compensation for acting as such but may be reimbursed by the Association for necessary expenses actually incurred in connection with his or her duties.

Section 4.10. Resale Certificates and Statements of Unpaid Assessments. The Treasurer, Assistant Treasurer, or a manager employed by the Association, or, in their absence, any officer having access to the books and records of the Association, may prepare, certify, and execute resale certificates and statements of unpaid assessments in accordance with Sections 47C-3-102(12) and 47C-4-109 of the Condominium Act.

The Association may charge a reasonable fee for preparing resale certificates and statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Executive Board. The Association may refuse to furnish resale certificates and statements of unpaid assessments until the fee is paid. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

#### ARTICLE 5. ENFORCEMENT

Section 5.1. Abatement and enjoining of Violations by Unit Owners. The violation of any of the Rules and Regulation adopted by the Executive Board, or the breach of any provision of the Condominium Documents shall give the Executive Board the right, after Notice and Hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

a. to enter the Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist therein) that is existing and creating a danger to the Common Elements contrary to the intent and meaning

of the provisions of the Condominium Documents, and the Executive Board shall not thereby be deemed liable for any manner of trespass; or

b. to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

Section 5.2. Fine for Violation. By resolution, following Notice and Hearing, the Executive Board may levy a fine of up to \$150 for violations of the Condominium Documents or Rules and Regulations.

#### ARTICLE 6. INDEMNIFICATION

The Directors and officers of the Association shall be entitled to indemnification as provided in Chapter 55A (the Non-Profit Corporation Act) of the North Carolina General Statutes, the provisions of which are incorporated herein by reference.

#### ARTICLE 7. RECORDS

Section 7.1 Records and Audits. The Association shall maintain financial records, including but not limited to the records set forth in Section 7.3, sufficiently detailed to enable the Association to comply with the Condominium Act. The financial records shall be maintained and audited in accordance with Article 16 of the Declaration. The cost of the audit shall be a Common Expense unless otherwise provided in the Condominium Documents.

Section 7.2. Examination. All records maintained by the Association or by the manager shall be available for examination and copying by any Unit Owner, or by any holder of a Security Interest in a Unit, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

Section 7.3. Records. The Association shall keep the following records:

a. An account for each Unit which shall designate the name and address of each Unit Owner, the name and address of each

mortgagee who has given notice to the Association that it holds a mortgage on the Unit, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account, and the balance due.

b. An account for each Unit Owner showing any other fees payable by the Unit Owner.

c. A record of any capital expenditures approved by the Executive Board.

d. A record of the amount, and an accurate account of the current balance of any reserves for capital expenditures, replacement and emergency repairs, together with the amount of those portions of reserves designated by the Association for a specified project.

e. Balance sheets and income and expense statements of the Association.

f. The current operating budget adopted pursuant to Section 47C-3-115(a) of the Condominium Act and ratified pursuant to the procedures of Section 47C-3-103(c).

g. A record of any unsatisfied judgments against the Association and the existence of any pending suits in which the Association is a defendant.

h. A record of insurance coverage provided for the benefit of Unit Owners and the Association.

i. A record of the cost of the maintenance of the Common elements.

j. Tax returns for state and federal income taxation.

k. Minutes of proceedings of Unit Owners, Directors, committees of Directors and waivers of notice.

ARTICLE 8. MISCELLANEOUS

Section 8.1. Notices. All notices to the Association or the Executive Board shall be delivered to the office of the manager, or if there is no manager, to the office of the Association, or to such other address as the Executive Board may hereafter designate from time to time, by notice in writing to all Unit Owners and to all Eligible Mortgagees. Except as



otherwise provided, all notices to any Unit Owner shall be sent to his or her address as it appears in the records of the Association. All notices to Eligible Mortgagees shall be sent, except where a different manner of notice is specified elsewhere in the Condominium Documents, by registered or certified mail to their respective addresses, as designated by them from time to time, in writing, to the Association. All notices shall be deemed to have been given when mailed except notices of changes of address which shall be deemed to have been given when received.

Section 8.2. Fiscal Year. The Executive Board shall establish the fiscal year of the Association.

Section 8.3. Waiver. No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 8.4. Office. The principal office of the Association shall be on the Property or at such other place as the Executive Board may from time to time designate.

ARTICLE 9. AMENDMENTS TO BYLAWS

The Bylaws may be amended only pursuant to the provisions of Article 14 of the Declaration.

The foregoing Bylaws are certified to be the Bylaws adopted by consent of the Directors of Phase II Vista Cove Condominium Association, Inc., dated AUGUST 31, 1990.

PHASE II VISTA COVE CONDOMINIUM ASSOCIATION, INC.

(CORPORATE SEAL)

BY: Thomas R. Ambrosi  
President

ATTEST:

Pamela S. Love  
Secretary



RULES AND REGULATIONS  
OF  
PHASE II VISTA COVE CONDOMINIUM

(Initial Capitalized Terms are Defined in  
Article 1 of the Declaration)

The following rules apply to all owners and occupants of  
Units.

ARTICLE 1. USE OF UNITS AFFECTING THE COMMON ELEMENTS

Section 1.1. Occupancy Restrictions. Units are  
limited to occupancy by single families as defined in the  
Declaration.

Section 1.2. No Commercial Use. Except for those  
activities conducted as a part of the marketing and development  
program of the Declarant, no industry, business, trade or  
commercial activities, non-residential storage, or other  
non-residential use of a Unit, shall be conducted, maintained or  
permitted on any part of the Condominium, nor shall any signs,  
window displays, except for a nameplate not exceeding nine (9)  
square inches in area on the main door of each Unit, be  
maintained or permitted on any part of the Common Elements or any  
Unit, nor shall any Unit be used or rented for transient, hotel  
or motel purposes. "For Sale" signs not exceeding four (4)  
square feet in area may be posted at the entrance of the Unit for  
sale.

Section 1.3. Access by Executive Board. The Executive  
Board, the manager or its designated agent, may retain a passkey  
to all Units for use in emergency situations only. No Unit Owner  
shall alter any lock or install a new lock on any door of any  
Unit without immediately providing the Executive Board, the  
manager or its agent, with a key therefor. At the Unit Owner's  
option, he or she may provide the key to be enclosed in a sealed  
envelope with instructions that it only be used in emergencies  
with a report to him or her as to each use and the reason  
therefor.

Section 1.4. Electrical Devices or Fixtures. No  
electrical device creating electrical overloading of standard

circuits may be used without permission from the Executive Board. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner from whose Unit it shall have been caused.

Section 1.5. Trash. No storage of trash will be permitted in or outside any Unit in such a manner as to permit the spread of fire or encouragement of vermin.

Section 1.6. Displays Outside Units. Unit Owners shall not cause or permit anything other than curtains and conventional draperies, and holiday decorations to be hung, displayed or exposed at or on the outside of windows or outside of Units without the prior consent of the Executive Board or such committee established by the Executive Board having jurisdiction over such matters, if any.

Section 1.7. Painting Exteriors. Owners shall not paint, stain, or otherwise change the color of any exterior portion of the building without the prior consent of the Executive Board or such committee then established having jurisdiction over such matters, if any.

Section 1.8. Cleanliness. Each Unit Owner shall keep his or her Unit in a good state of preservation and cleanliness.

Section 1.9. Electrical Usage. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

## ARTICLE 2. USE OF COMMON ELEMENTS

Section 2.1. Obstructions. There shall be no obstruction of the Common Elements, nor shall anything be stored outside of the Units without the prior consent of the Executive Board except as hereinafter expressly provided.

Section 2.2. Trash. No garbage cans or trash barrels shall be placed outside the Units. No accumulation of rubbish, debris or unsightly materials shall be permitted in the Common elements, except in designated trash storage containers, nor shall any rugs or mops be shaken or hung from or on any of the windows, doors, balconies, patios or terraces.

Section 2.3. Proper Use. Common Elements shall be used only for the purposes for which they are designed. No person shall commit waste on the Common elements or interfere with their proper use by others, or commit any nuisance, vandalism, boisterous or improper behavior on the Common Elements which interferes with, or limits the enjoyment of the Common Elements by others.

Section 2.4. Trucks and Commercial Vehicles; Other Vehicles. Trucks having more than four tires and commercial vehicles are prohibited in the parking areas and driveways, except for temporary loading and unloading, or as may be designated by the Executive Board. The parking of boats, trailers, motorcycles, motor homes, and off-road or unlicensed recreational vehicles is prohibited in the parking areas or driveways.

Section 2.5. Alterations, Additions or Improvements to Common Elements. No alterations, additions or Improvements may be made to the Common Elements, without the prior consent of the Executive Board or such committee established by the Executive Board having jurisdiction over such matters, if any. No clothes, sheets, blankets, laundry or any other kind of articles other than holiday decorations on doors only, shall be hung out of a building or exposed or placed on the outside walls, doors of a building or on trees, and no sign, awning, canopy, shutter or antenna shall be affixed to or placed upon the exterior walls or doors, roof or any part thereof or exposed on or at any window.

ARTICLE 3. ACTIONS OF OWNERS AND OCCUPANTS

Section 3.1. Annoyance or Nuisance. No noxious, offensive, dangerous or unsafe activity shall be carried on in any Unit, or the Common elements, nor shall anything be done therein either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants. No Unit Owner or occupant shall make or permit any disturbing noises by himself or herself, his or her family, servants, employees, agents, visitors, and licensees, nor do or permit anything to be done by such persons that will interfere with the

rights, comforts or convenience of other Unit Owners or occupants. No Unit Owner or occupant shall play or suffer to be played, any musical instrument or operate or suffer to be operated a phonograph, television set or radio at such high volume or in such other manner that it shall cause unreasonable disturbances to other Unit Owners or occupants.

Section 3.2. Compliance With Law. No immoral, improper, offensive or unlawful use may be made of the Property and Unit Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of North Carolina, and all ordinances, rules and regulations of the County of Pender. The violating Unit Owner shall hold the Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or non-compliance therewith.

Section 3.3. Pets. No animals, birds or reptiles of any kind shall be raised, bred, or kept on the Property or brought on the common elements, except for: no more than one dog of gentle disposition; no more than two cats, or other household pets, approved by the Executive Board as to compatibility with the Condominium. Pets may not be kept, bred or maintained for any commercial purposes. Any pet causing or creating a nuisance or unreasonable disturbance or noise shall be permanently removed from the Property upon three (3) days' written Notice and Hearing from the Executive Board. In no event shall any dog be permitted in any portion of the Common elements unless carried or on a leash. No dog shall be kept in any patio or terrace. The owner shall hold the Association harmless from any claim resulting from any action of his or her pet. Seeing eye dogs and hearing ear dogs will be permitted for those persons holding certificates of necessity.

Section 3.4. Indemnifications for Actions of Others. Unit Owners shall hold the Association and other Unit Owners and occupants harmless from the actions of their children, tenants, guests, pets, servants, employees, agents, invitees or licensees.

Section 3.5. Lint Filters on Dryers; Grease Screens on Stove Hoods. All dryers will have lint filters, which will remain installed and prevent lint from accumulating in the vent duct. All stove hoods will have grease screens, which will remain installed and prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept in clean, good order and repair by the Unit Owner.

#### ARTICLE 4. INSURANCE

Section 4.1. Increase in Rating. Nothing shall be done or kept which will increase the rate of insurance on the building, or contents thereof, without the prior consent of the Executive Board. No Unit Owner shall permit anything to be done or kept on the Property which shall result in the cancellation of insurance coverage on the building, or contents, thereof, or which will be a violation of any law.

Section 4.2. Rules of Insurance. Unit Owners and occupants shall comply with the rules and regulations contained in any fire and liability insurance policy on the Property.

Section 4.3. Reports of Damage. Damage by fire or accident affecting the Property, and persons injured by or responsible for any damage, fire or accident must be promptly reported to the manager or a Director by any person having knowledge thereof.

#### ARTICLE 5. RUBBISH REMOVAL

Section 5.1. Deposit of Rubbish. Trash container locations will be designated by the Executive Board or the manager. Pickup will be from those locations only. Occupants will be responsible for removal of trash from their Units to the pickup locations. Trash is to be deposited within that location and the area is to be kept neat, clean and free of debris. Long-term storage of rubbish in the Units is forbidden.

#### ARTICLE 6. MOTOR VEHICLES

Section 6.1. Compliance With Law. All persons will comply with North Carolina laws, Department of Motor Vehicle regulations, and applicable ordinances on the roads, drives and Property.

Section 6.2. Limitations on Use. The use of Limited Common element parking spaces is limited to use by the occupant of the Unit to which it is assigned as a Limited Common element. Parking areas shall be used for no other purpose than to park motor vehicles, and loading or unloading.

ARTICLE 7. RIGHTS TO DECLARANT

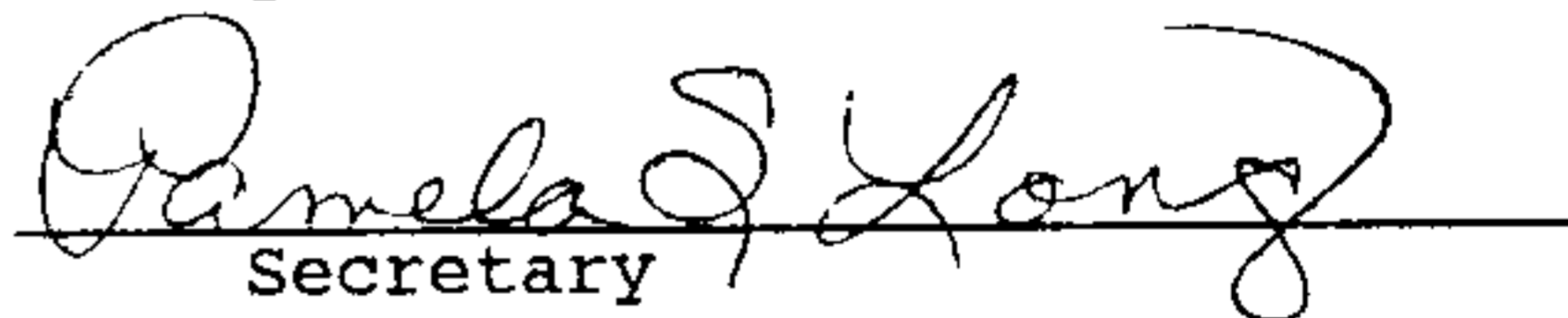
The Declarant may make such use of the unsold Units and Common Elements as may facilitate completion and sale of the Condominium including, but not limited to, maintenance of a sales office, the showing of the Common Elements and unsold Units, the display of signs, the use of vehicles, and the storage of material.

ARTICLE 8.

Section 8.1. Consent in Writing. Any consent or approval required by these Rules and Regulations must be obtained in writing prior to undertaking the action to which it refers.

Section 8.2. Complaint. Any formal complaint regarding the management of the Property or regarding actions of other Unit Owners shall be made in writing to the Executive Board or an appropriate committee.

Certified to be the initial Rules and Regulations adopted by the Executive Board (of the Phase II Vista Cove Home Owners' Association on its date of organization.

  
Secretary



## EXHIBIT "E"

## BUDGET FOR PHASE II VISTA COVE CONDOMINIUM (ESTIMATED)

	<u>Annual All Units</u>	<u>Annual Per Unit</u>	<u>Monthly All Units</u>	<u>Monthly Per Unit</u>
Administrative Expenses (includes banking, secretarial and office supplies)	\$ 120.00	\$ 12.00	\$ 10.00	\$ 1.00
Operating Expenses				
Electricity	360.00	36.00	30.00	3.00
Pest Control	120.00	12.00	10.00	1.00
Trash and Garbage Removal	<u>636.00</u>	<u>63.60</u>	<u>53.00</u>	<u>5.30</u>
Total	\$1,116.00	\$111.60	\$93.00	\$ 9.30
Repairs and Maintenance				
Grounds	1,440.00	144.00	120.00	12.00
Building	<u>200.00</u>	<u>20.00</u>	<u>16.67</u>	<u>1.67</u>
	\$1,640.00	\$164.00	\$136.67	\$ 13.67
Fixed Expenses				
Insurance	\$2,013.00	\$201.30	\$167.75	\$ 16.78
Reserves				
Roof (30 years)	\$3,500.00	)	Price estimates based on 1990	
Building (5 years)	3,000.00	)	prices, reserve funds may be raised	
		)	through special assessments.	
TOTAL EXPENSES	\$4,889.00	\$488.90	\$407.42	\$ 40.75

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