

8K 576 PG 0611

EXHIBIT "B"  
ARTICLES OF INCORPORATION  
AND BY-LAWS OF  
SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC.,

ARTICLES OF INCORPORATION

OF

SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC.

The undersigned, being of the age of eighteen (18) years or more, does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a nonprofit corporation under and by virtue of the laws of the State of North Carolina.

ARTICLE I

The name of the corporation is Sundune Village Condominium Association, Inc.

ARTICLE II

The period of the duration of the corporation is perpetual.

ARTICLE III

The purposes for which this corporation is organized are:

(A) To maintain and administer the common properties and facilities of the Sundune Village Condominium project, Town of Kill Devil Hills, Atlantic Township, Dare County, North Carolina.

(B) To administer and enforce the covenants and restrictions and to collect and disburse the assessments and charges of said project as same relates to the common properties of the project.

(C) To conduct such services, duties and functions strictly on a nonprofit basis for the mutual benefit of all unit owners of the Sundune Village Condominium Project.

ARTICLE IV

The members of the corporation shall be the record owners of the condominium units and common properties within the Sundune Village Condominium project. The corporation shall have only one class of voting members, the rights of which members shall be designated in the By-laws of this corporation.

ARTICLE V

The directors of the corporation shall be elected by the members in the manner provided by the By-laws.

ARTICLE VI

The address of the initial registered office of the corporation in the State of North Carolina is P.O. Box 1584, Kill Devil Hills, Dare County, North Carolina 27948; and the name of its initial registered agent at such address is Daniel D. Khoury.

ARTICLE VII

The number of directors constituting the initial Board of Directors shall be three (3); and the names and addresses of the persons who are to serve as the initial directors are:

Alan C. Jensen, P. O. Box 2613, Norfolk, VA 23501  
Robert C. Marshall, 617 Whitehurst Landing, Virginia Beach, VA 23464  
Denis E. Grillo, 2317 Madison Avenue, Virginia Beach, VA 23455

ARTICLE VIII

The name and address of the incorporator is: Daniel D. Khoury, P.O. Box 1584, Kill Devil Hills, Dare County, North Carolina 27948.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 1988.

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

NORTH CAROLINA  
DARE COUNTY

I, \_\_\_\_\_, a Notary Public, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing Articles of Incorporation. WITNESS my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 1988.

\_\_\_\_\_  
Notary Public

MY COMMISSION EXPIRES:  
\_\_\_\_\_

BY-LAWS OF  
SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC.,  
A NORTH CAROLINA NONPROFIT CORPORATION

ARTICLE I

NAME, PURPOSE AND APPLICABILITY

1.1 Name. The name of this non-profit, non-stock membership corporation shall be SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC., hereinafter referred to as the "Association".

1.2 Purpose. The purpose of the Association shall be to administer, manage, and operate the condominium property, in accordance with the Unit Ownership Act, the Non-profit Corporation Act of North Carolina, this Declaration, and the Articles of Incorporation and these By-Laws, as may be amended from time to time. The Association shall not engage in any activities other than those directly related to administration of the condominium property and the Unit Owners' responsibility with respect to the same.

1.3 Applicability. These By-Laws are applicable to the property known as SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC., as such property is described on Attachment 1 attached to that certain Declaration Creating Unit Ownership and Establishing Restrictions, Covenants, and Conditions for SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION. These By-Laws are binding on all present or future Owners, tenants, guests, residents, or other persons occupying or using the facilities of such condominium property. The mere acquisition, rental, or act of occupancy of any part of the condominium property will signify that these By-Laws are accepted, ratified, and will be complied with. The provisions of the Declaration Creating Unit Ownership and Establishing Restrictions, Covenants, and Conditions for SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION regarding the governing and administration of the Association are incorporated herein by reference.

ARTICLE II

DEFINITIONS

The definition of words contained in the DECLARATION, Article II shall apply to those words and terms as used in these By-Laws.

### ARTICLE III

#### OFFICES, REGISTERED AGENT, SEAL, FISCAL YEAR

3.1 Principal Office, Registered Office. The principal office of the Association shall be located at P.O. Box 2018, Norfolk, Virginia 23501, or such other places as the Board of Directors may designate from time to time.

3.2 Registered Agent. The initial Registered Agent for the Unit Owners for matters incident to the condominium property and the initial Registered Agent for the Association is Daniel D. Khoury, whose address is Post Office Box 1584, Kill Devil Hills, NC 27948. The Registered Agent for the Association shall also be the Registered Agent for the Unit Owners. The individual serving as Registered Agent may be removed from office and replaced at any time by vote of the Board of Directors of the Association.

3.3 Seal. The seal of the Association shall contain the name of the Association, the word "Seal", and such other words and figures as desired by the Board of Directors. When obtained, the seal shall be impressed in the margin of the minutes of the initial meeting of the Board of Directors.

3.4 Fiscal Year. The fiscal year of the Association shall be January 1 through December 31.

### ARTICLE IV

4.1 Qualification. Membership in the Association shall be confined to and consist of the Unit Owners. Membership shall be appurtenant to and inseparable from unit ownership. When there is more than one Unit Owner of a Unit, all such persons shall be members of the Association. No Unit Owner shall be required to pay any consideration whatsoever for his membership. Membership in the Association shall inure automatically to the Unit Owners upon acquisition of the fee simple title, whether encumbered or not, to any one or more units. The date of registration of the conveyance in the Dare County Registry of the unit in question shall govern the date of ownership of each particular unit. However, in the case of death, the transfer of ownership shall occur on the date of death in the case of intestacy, or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate. It shall be the duty of each Unit Owner to register his name and the number of his Unit with the Secretary of the Association. If a Unit Owner does not so register, the Association shall be under no obligation to recognize his membership. The interest of a member in the Association assets cannot be transferred or encumbered except as an appurtenance to his Unit.

4.2 Annual Meetings. The annual meetings of the Unit Owners Association shall be held at least seventy-five days before the beginning of each fiscal year on such date other than Sunday or legal holiday as may be established by the Board of Directors. At such annual meetings, members of the Board of Directors shall be elected by the Unit Owners in accordance

with the requirements of Section 5.4 of these By-Laws. During the Declarant Control Period, the Declarant shall be entitled to designate members of the Board of Directors not elected pursuant to Section 4.4. If the special meeting held pursuant to Section 4.4 is held within six months of a scheduled annual meeting, the annual meeting shall not be held until the following year.

4.3 Place of Meetings. Meetings of the Unit Owners Association shall be held at the principal office of the Unit Owners Association or at such other suitable place convenient to the Unit Owners as may be designated by the Board of Directors.

#### 4.4 Special Meetings.

(a) The President shall call a special meeting of the Unit Owners Association if so directed by resolution of the Board of Directors or upon a petition signed and presented to the Secretary by Owners of at least two units. The notice of any special meetings shall state the time, place and purpose thereof, no business shall be transacted at a special meeting except as stated in the notice.

(b) At the termination of the Declarant control period, but not later than July 15, 1993, a special meeting of the Unit Owners Association shall be held at which a majority of the members of the Board of Directors shall be elected by the Unit Owners.

4.5 Notice of Meetings. The Secretary shall give to each Unit Owner a notice of each annual or regularly scheduled meeting of the Unit Owners at least twenty-one but not more than thirty days, and of each special meeting of the Unit Owners at least seven but not more than thirty days, prior to such meeting, stating the time, place and purpose thereof. The giving of notice in the manner provided in this Section and Section 10.2 of the By-Laws shall be considered service of notice.

4.6 Quorum; Adjournment if No Quorum. A quorum shall consist of members present, in person or by proxy, entitled to cast at least Forty Percent (40%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present.

#### 4.7 Voting.

(a) The total votes in the Association are allocated to units by the Declaration. The votes allocated to the unit may be cast by the Unit Owner of that unit. When there is more than one Unit Owner of a unit, the vote for that unit shall be cast as they shall determine. The vote allocated to a unit shall not be split but shall be voted as a single whole. If there is more than one Unit Owner of a unit and said Unit Owners cannot agree on how to vote for that unit, such vote shall not be cast. The Association shall not be entitled to cast the votes allocated to the units owned by it.

(b) Except where a greater number is required by the Condominium Act, the Declaration or these By-Laws, a Majority of the Unit Owners present is required to adopt decisions at any meeting of the Association.

(c) No Unit Owner may vote at any meeting of the Association or be elected to or serve on the Board of Directors if payment of the assessment of his unit is delinquent more than thirty days and the amount necessary to bring his account current has not been paid at the time of such meeting or election.

4.8 Proxies. A vote may be cast in person or by proxy. Such proxy may be granted by any Unit Owner in favor of only another Unit Owner, the Secretary of the Association, the Declarant or his Mortgagee, or in the case of a non-resident Unit Owner, the lessee of such Unit Owner's unit, his attorney or management agent. Proxies shall be duly executed in writing, shall be witnessed, shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such unit. Except with respect to proxies in favor of a Mortgagee, no proxy shall in any event be valid for a period in excess of one hundred eighty days after the execution thereof.

4.9 Conduct of Meetings. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereto. The President may appoint a person to serve as parliamentarian at the meeting of the Association. The then current edition of Robert's Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Declaration, these By-Laws or the Condominium Act. All votes shall be tallied by tellers appointed by the President or other officer presiding over the meeting.

4.10 Prohibition of Cumulative Voting. There shall be no cumulative voting.

## ARTICLE V

### DIRECTORS

5.1 Initial Board. The first Board shall consist of three (3) persons selected by the Declarant whose names are set forth in the Articles and successors to any thereof elected by the members.

5.2 Number and Qualifications of Directors. The Board shall consist of not less than three (3) nor more than five (5) natural persons, as determined at any annual meeting by the members. Declarant during the Declarant Control Period as defined in Article II, Section 2 of the Declaration creating unit ownership for Sundune Village Condominium shall

have the right to designate three (3) Directors for each term during the Declarant Control Period, which directors designated by the Declarant shall not be required to be unit owners as provided by Section 47C-3-103 of the Act. The remaining members and all of the Board of Directors beyond the Declarant Control Period shall be unit owners or the individual nominee of a unit owner which is other than an individual.

5.3 Election of Directors. At the first annual meeting of the members, and at each subsequent annual meeting, the members shall elect the Directors by a majority of the votes cast in the election.

5.4 Term. The terms of the Directors shall be staggered so that at least one (1) but not more than three (3) Directors are elected at any one meeting and so that no Director's term is less than one (1) year nor more than three (3) years. The Directors shall establish rules to implement the provisions of this section. Once elected, a Director shall hold office until his successor has been duly elected and has qualified.

5.5 Removal. Any Director may be removed, with or without cause, by a vote of the members entitled to cast at least sixty-six percent (66%) of the total votes in the Association, at a special meeting called for such purpose, and a successor may then be elected by the members to serve for the balance of the removed Director's term.

5.6 Vacancies. Any vacancy in the Board arising by death or resignation of a Director shall be filled by act of the remaining Directors, whether or not constituting a quorum, and a Director so elected shall serve for the unexpired term of his predecessor in office.

5.7 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally or by mail, telephone, or telegraph, at least seventy-two (72) hours prior to the meeting.

5.8 Special Meetings. Special meetings of the Board may be called by the President and shall be called by the President or the Secretary and held within ten (10) days after written request therefor signed by two (2) directors is delivered to any other Director or the President or the Secretary. Not less than seventy-two (72) hours notice of such special meeting shall be given personally or by mail, telephone, or telegraph to each Director; provided that in case the President or any Director determines that an emergency exists, a special meeting may be called by giving such notice as is possible under the circumstances. All notices of a special meeting shall state the time, place and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

5.9 Quorum; Adjournment if No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a director of the minutes



of a meeting shall constitute the presence of such Director at that meeting for the purpose of determining a quorum.

5.10 Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the Directors present at a meeting shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration or these By-Laws.

5.11 Board Action Without Meeting. Any action that may be taken at a meeting of the Board may be taken without a meeting if such action is authorized in a writing, setting forth the action taken, signed by all Directors.

5.12 Compensation of Directors Restricted. Directors shall receive no compensation for their services, but may be paid for out-of-pocket expenses incurred in the performance of their duties as Directors.

5.13 Powers and Duties of Board. All of the powers and duties of the Association shall be exercised by the Board, including those existing under the common law, applicable statutes, the Act, the Declaration, the Articles, and these By-Laws, as any thereof may from time to time be amended. Such powers and duties shall be exercised in accordance with the provisions of applicable law, the Declaration, the Articles, and these By-Laws, and shall include, but not be limited to, the following:

(a) To prepare and provide to members annually, a report containing at least the following:

(i) A statement of any capital expenditures in excess of two percent (2%) of the current budget or Five Thousand Dollars (\$5,000.00), whichever is greater, anticipated by the Association during the current year or succeeding two (2) fiscal years.

(ii) A statement of the status and amount of any reserve or replacement fund and any portion of the fund designated for any specified project by the Board.

(iii) A statement of the financial condition of the Association for the last fiscal year.

(iv) A statement of the status of any pending suits or judgments in which the Association is a party.

(v) A statement of the insurance coverage provided by the Association in accordance with the requirements of Article IX of the Declaration.

(vi) A statement of any unpaid assessments payable to the Association, identifying the unit and the amount of the unpaid assessment.

(b) To adopt and amend budgets and to determine, and collect assessments to pay the Common Expenses.

(c) To regulate the use of, and to maintain, repair, replace, modify and improve the Common Elements.

(d) To adopt and amend rules and regulations and to establish reasonable penalties for infraction thereof for the general welfare and safety of SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION.

(e) To enforce the provisions of the Declaration, the Articles, these By-Laws, the Act, and rules and regulations by all legal means, including injunction and recovery of monetary penalties.

(f) To hire and terminate managing agents and to delegate to such agents such powers and duties as the Board shall determine, except such as are specifically required by the Declaration, the Articles, these By-Laws, or the Act, to be done by the Board or the members. Notwithstanding the foregoing, the Property, including each unit, shall at all times be managed by a single managing agent. The single managing agent shall not have authority to lease any part of a unit without the approval of the Unit Owner.

(g) To hire and terminate agents and independent contractors.

(h) To institute, defend, intervene in, or settle any litigation or administrative proceedings in its own name on behalf of itself or two (2) or more Unit Owners on matters affecting the Condominium, the Common Elements, or more than one unit.

(i) To establish and dissolve and liquidate, from time to time, reserve accounts for any purpose.

(j) To borrow money, not to exceed the amount of five thousand dollars (\$5,000.00), for the maintenance, repair, replacement, modification or improvement of common elements and to pledge and pay assessments, and any and all other revenue and income, for such purpose.

(k) To buy units, in foreclosure of an assessment lien, or at any other time or for any other reason, and to sell, lease, mortgage, and otherwise deal in units from time to time owned by the Association.

(l) To impose and receive payments, fees and charges for the use, rental or operation of the Common Elements other than the Limited Common Elements, except for elevators, stairways, hallways and other portions of the Common Elements which provide access to the units.

(m) To grant leases, licenses, concessions and easements through and over the Common Elements.

U O C U O Z I

(n) To impose and collect reasonable charges, including reasonable costs and attorneys fees, for the evaluation, preparation and recordation of amendments to the Declaration, resale certificates required by Chapter 47C-4-107 of the Act, or certificates of unpaid assessments.

(o) To provide for indemnification of the Association's officers and Directors and maintain officers' and Directors' liability insurance.

(p) To impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, these By-Laws or the rules and regulations.

## ARTICLE VI

### OFFICERS

6.1 Designation of Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer. Each officer shall be a Unit Owner or the individual nominee of a Unit Owner which is other than an individual. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an Assistant Treasurer, an Assistant Secretary and such other officers as in its judgment may be necessary.

6.2 Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the members, except that the first Board shall elect officers as soon as practicable after filing of the Declaration.

6.3 Term. Each Officer shall serve until his successor has been duly elected and has qualified.

6.4 Removal. Any officer may be removed, with or without cause, and without notice, by the Board.

6.5 Vacancy. Any vacancy in any office shall be filled by the Board, and an officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

#### 6.6 Powers and Duties of Officers.

(a) President. The President shall be the chief executive officer of the Association; shall have all of the powers and duties incident to the office of a president of a corporation; including, but not limited to, the duty to preside at all meetings of the Board and of the members, and the general supervision of officers in the management of the business and

affairs of the Association; and shall see that all actions and resolutions of the Board are carried into effect.

(b) Vice President. The Vice President shall perform such duties of the President as shall be assigned to him or her by the President, and in the absence of the President shall perform the duties and functions of the President.

(c) Secretary. The Secretary shall keep the minutes of all meetings and actions of the Board and of the members; shall give all required notices to the Directors and members; shall keep the records of the Association except those kept by the Treasurer; shall perform all other duties incident to the office of a secretary of a corporation; and shall perform such other duties required by the Board or the President.

(d) Treasurer. The Treasurer shall have custody of all intangible property of the Association, including funds, securities, and evidences of indebtedness; shall keep the books of the Association in accordance with good accounting practices and principles, and, upon request, shall submit them, together with all vouchers, receipts, records and other papers to the Board for examination and approval; shall deposit all moneys and other valuable effects in depositories designated by the Board; shall disburse funds of the Association as directed by the Board; and shall perform all other duties incident to the office of a treasurer of a corporation.

6.7 Execution of Agreements, etc. All agreements, deeds, mortgages, or other instruments shall be executed by any two (2) officers, or by such other person or persons as may be designated by the Board.

6.8 Compensation of Officers Restricted. No officer shall be compensated for his services in such capacity, but may be reimbursed for out-of-pocket expenses incurred in performing his duties.

## ARTICLE VII

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify such persons, for such expenses and liabilities, in such manner, under such circumstances, and to such extent, as permitted by the appropriate sections of the North Carolina General Statutes, as now enacted or hereafter amended.

## ARTICLE VIII

## COMMON EXPENSES, ASSESSMENTS AND LIENS

8.1 Common Expenses. Common Expenses shall mean and include all sums declared Common Expenses by the Act, or by any specific provision of these By-Laws or the Declaration, and shall include, without limitation, the following: real estate taxes, and other governmental assessments or charges against the Property until the units are separately assessed; premiums for any and all insurance maintained by the Association, including any deductible or coinsurance amount not covered by insurance; utility charges not charged directly to Unit Owners; legal and accounting fees; costs and expenses incurred in connection with any litigation or administrative proceeding pursuant to Section 5.13(h) hereof; deficits remaining from any prior assessment period; the cost, including fees and interests, incurred in connection with any borrowing done by the Association; the cost of all fidelity bonds; costs imposed upon the Association or any part of the Common Elements or the Property by, or incurred by the Association as a result or the performance, enforcement or amendment of, any agreement or easement to which the Association is a party or to which the Common Elements or Property, or any part of either thereof, is or may be subject; amounts determined necessary for reserve funds; and indemnity payments made by the Association pursuant to Article VIII hereof.

8.2 Obligation of Members to Pay Assessments; Amount of Levy. Each Unit Owner shall be personally and severally liable for the Common Expenses that are levied against his unit while a Unit Owner. Each Unit shall be assessed in accordance with that unit's percentage interest of Common Expenses as allocated by the Declaration, as amended.

8.3 Allocation of Common Surplus. Any common surplus, including funds in reserve accounts, may be allocated to each unit in accordance with its percentage of Common Expenses, and, if allocated, shall be owned by the Unit Owner of that unit, and, if allocated, may be paid to the Unit Owner or credited against that Unit's share of Common Expenses subsequently assessed.

8.4 Preparation of Budget and Levying of Assessment. For each fiscal year, beginning with the fiscal year beginning January 1, 1989, the Board shall prepare a budget, including therein estimates of the amount necessary to pay the Common Expenses, together with amounts considered necessary by the Board for reserves. The Board shall then present the budget for adoption to the Association at the next regularly scheduled meeting. The budget shall be considered adopted upon approval of fifty-one (51%) percent of the votes present and voting at this regularly scheduled meeting. After preparation and adoption of each such budget, the board shall provide each member with a copy, and shall give each member notice of the assessment made against that member's unit based upon such budget and may also state the interest to be charged on delinquent payments thereof. The assessment shall be deemed levied upon the giving of such notice. Provided, however, that the first budget after creation of the Condominium shall be prepared and

adopted by the Board only for the balance of the then fiscal year of the Association, commencing on the date of substantial completion of all structural components and mechanical systems serving more than one unit of the initial building to be constructed, shall be prepared and adopted as soon as practicable after said date of substantial completion, and notice of the amount of assessment against each unit for such balance of the fiscal year shall be given by the Board to each member as soon as practicable after adoption. Such assessment shall be deemed levied upon notice thereof given by the Board.

8.5 Assessment A Lien. Every assessment shall constitute a lien upon each unit assessed from the date the assessment is levied, prior to all other liens except only (i) real estate taxes and other governmental assessments or charges against the unit and (ii) liens and encumbrances recorded before the recordation of the Declaration.

8.6 Payment of Assessments. Assessments shall be payable when notice thereof is given, but shall not be delinquent if paid at the times and in the amounts specified by the Board in the notice of assessment. Except for special assessments, each monthly and quarterly assessment shall be paid on or before thirty days from the date the assessment is billed by the Association. Payments shall be made to the Association, or as the Board may from time to time otherwise direct.

8.7 Lien as Against First Mortgagees. The lien of assessments shall be superior to the lien of a First Mortgage.

8.8 Funds and Reserves. All sums collected by the Association from assessments shall be accounted for as follows:

(a) Reserve Fund for Repairs and Replacements. To this fund shall be credited all sums collected for the purpose of effecting repairs and replacements of structural elements and mechanical equipment, and other Common Elements of the Condominium.

(b) General Operating Reserve Fund. To this fund shall be credited all sums collected to provide a reserve for purposes of providing a measure of financial stability during period of special stress, and may be used to meet deficiencies from time to time as a result of delinquent payments of assessments and other contingencies.

(c) Common Expense Fund. To this fund shall be credited collections of assessments for all operating, insurance and administrative expenses for the current year as well as common profits and surplus from the previous year, and not to be credited to either of the above reserve funds.

(d) Working Capital Fund. All funds, if any, received by the Association for the initial working capital fund of the Association shall be used to pay common expenses in excess of assessments collected and any improvements to the common elements deemed necessary by the Declarant.

The reserve fund for repairs and replacements shall be established by the Board beginning with the fiscal year beginning January 1, 1989 and shall be funded thereafter by regular installments rather than by extraordinary special assessments. The reserve funds described above shall be maintained only in such amounts as deemed necessary or desirable by the Board, subject, however, to the preceding sentence. To the extent maintained, funds therein shall be held in such accounts, and with such depositories as the Board, in its discretion, selects.

8.9 Special Assessments. In addition to the assessments levied pursuant to Section 8.4, the Board, in its discretion, may levy special assessments at such other and additional times as in its judgments are required for:

(a) Maintenance, repair, restoration and reconstruction of the Common Elements, and operation of the Condominium.

(b) Alterations, improvements and additions to the Common Elements; provided, however, that any such special assessment involving an expenditure in excess of Ten thousand and 00/100 (\$10,000.00) Dollars shall be first approved by the members entitled to cast at least fifty percent (50%) of the total votes in the Association at a regular, or special meeting of the Association.

(c) Payment of costs and expenses incurred in curing defaults pursuant to Section 10.1 and 10.5 hereof.

Special assessments made pursuant to this Section shall be a Common Expense, shall be deemed levied upon notice thereof being given to the members subject to such special assessment, and shall be payable as determined by the Board and as set out in such notice.

8.10 Common Expenses Associated with Limited Common Elements or Benefiting Less 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 in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any item of Common Expenses benefiting less than all of the units against the units benefited in proportion to their Common Expense liability.

8.11 Failure to Prepare a Budget and Levy Annual Assessment; Deficiencies in Procedure. The failure of the Board or delay of the Board in preparing any budget, and to levy or in levying assessments, shall not constitute a waiver or release of the members' obligation to pay assessments whenever the same shall be determined and levied by the Board. Until a new assessment is levied by the Board pursuant to Section 8.4 each member shall

continue to pay the assessment then previously levied pursuant to Section 8.4 in the same amount and at the same periodic times as levied, or as the Board may otherwise advise in writing. Also, any deficiencies or inadequacies in the procedure followed by the Board in levying an assessment shall not in any way affect its validity or the obligation of members to pay such assessment.

8.12 Assessment Roll; Certificate. All assessments shall be set forth upon a roll of the units, which shall be available in the office of the Association for inspection at all reasonable times by members and security holders, and their duly authorized representatives. Such roll shall include, for each unit, the name and address of the member or members, all assessments levied, and the amount of all assessments unpaid. The Association, upon written request, shall furnish to a Unit Owner, or his authorized agent, a recordable certificate setting forth the amount of unpaid assessments currently levied against his unit. The certificate shall be furnished within seven (7) business days after receipt of the request and shall be binding upon the Association and all Unit Owners. For such certificate a reasonable fee may be charged by the Board.

8.13 Default and Enforcement. If any assessment, or installment thereof, remains delinquent for ten (10) days, then that assessment, and all other assessments against that unit, may be declared by the Board to be immediately due and payable in full, with interest, without further notice, and may be foreclosed by the Association in the manner provided by Chapter 47C-3-115 of the Act. All fees, late charges, attorney's fees, fines or interest levied or collected by the Association in connection with any unpaid assessments shall have the same priority as the assessment to which they relate. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien and the Association shall further be entitled to interest at the highest rate allowed by law on any such advances made for such purpose.

The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any condominium unit from the date on which payment of any assessment or installment thereof became delinquent, and the Association shall be entitled to the appointment of a receiver to collect the same.

In addition to the foregoing, and without waiving its lien, the Association may sue to obtain a money judgment for the amount of any delinquent assessment, or installment thereof, together with interest, and the members so sued and liable for such assessment shall pay all costs of collection, including reasonable attorneys' fees, with interest thereon at the same rate as charged on the assessments being collected from the date incurred until paid.



All persons, firms or corporations who shall acquire by whatever means, any interest in the ownership of any condominium unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice to the lien rights granted to the Association and shall acquire such interest in any condominium unit expressly subject to such lien rights.

8.14 Interest on Delinquent Assessments. Assessments or installments thereof, paid before they become delinquent, shall not bear interest, but all delinquent sums shall bear interest at the rate set forth in the notice levying the assessment, not exceeding the rate of interest allowed by the Act, from the date delinquent until paid. If no interest rate is set forth in such notice, such interest rate shall be the maximum allowed by the Act. All payments upon account shall be applied first to interest and then to the assessment, or installment thereof, longest delinquent. All such interest shall have the same priority as the assessment on which such interest accrues.

## ARTICLE IX

### RELOCATION AND ALTERATION OF UNITS

9.1 Procedure. If any Unit Owner desires to (i) relocate the boundaries of his Unit pursuant to Chapter 47C-2-114 of the Act, (ii) remove partitions or create apertures pursuant to Chapter 47C-2-113 of the Act, or (iii) make any improvements or alterations to his unit which impair the structural integrity or mechanical systems of, or lessen the support of any portion of, the Condominium, the procedure set out in this Article shall be followed. No Unit Owner shall paint or alter the exterior of his unit, including the doors and windows, nor shall any Unit Owner paint or latex the exterior of SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION without the prior written consent of the Board of Directors as hereinafter set forth.

9.2 Notice to and Consent of Board. Prior to doing any work of the kind set out in Section 9.1, the Unit Owner shall give notice to the Board of his intent to do such work and request and receive the written consent thereto of the Board or, on appeal, the Association. With such notice shall be given (i) a statement of the work to be done, (ii) a copy of the plans and specifications for the work, and (iii) such additional information relative to the proposed work as the Board may reasonably request. Upon receiving all such information and any fees and charges requested by the Board, the Board shall set a date for a meeting on the proposed work which shall be within fifteen (15) days after such information and fees and charges are received. Notice of such meeting shall be given to all members of the Association in the same manner as a notice of a special Board meeting. At the meeting, the Board shall receive such testimony and evidence as it deems appropriate. The meeting may be continued from time to

time by the Board. At the meeting or at such later time but, in any event, not later than sixty (60) days after such meeting, the Board shall decide whether to consent or not to consent to such work. Written notice of such decision shall be given to said Unit Owner and all members.

9.3 Appeal to Association. The Unit Owner proposing to do the work, or members representing ten percent (10%) or more of the total votes in the Association, may appeal the decision of the Board to the Association by filing a signed written request for an Association meeting on the work proposal. The written request must be filed with the Secretary within ten (10) days of the date of the notice of the Board's decision.

9.4 Meeting and Decision of the Association. Upon filing of an appeal, a special meeting of the members of the Association shall be called. The notice of meeting shall be sent out within ten (10) days after such filing, and the meeting shall be held within thirty (30) days after such filing. The meeting may be continued from time to time by the chairman. The provisions of Article IV hereof shall apply to such meeting. At such meeting the members shall decide to consent or not to consent to such work. The decision of the Association shall be final.

9.5 Fees. The Board may require the Unit Owner proposing to do the work to pay reasonable fees and charges to cover the costs to be incurred by the Association in giving notice of and holding meetings pursuant to this Article.

9.6 Conditions. The Board or, on appeal, the Association, may impose conditions on any consent to such work to protect the Common Elements, units and the Condominium, and to insure that the provisions of the Act, Declaration and these By-Laws are complied with, including without limitation, the furnishing to the Association of payment and performance bonds, or other security acceptable to the Board, to ensure that the proposed work is timely completed pursuant to the plans and specifications therefor and all costs thereof paid.

9.7 Controlling Procedure. The procedure set out in this Article shall control over any contrary provisions in the Act.

## ARTICLE X

### COMPLIANCE, ENFORCEMENT, FINES AND PENALTIES

10.1 Default and Remedies. A default in or failure to comply with any of the terms, conditions, obligations, and provisions of the Act, the Declaration, these By-laws, the Articles or the rules and regulations, as the same may be amended from time to time, by any Unit Owner or Occupant, shall be grounds for relief that may include, without intending to limit the same or to constitute an election of remedies, an action to recover

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finances and penalties as determined by the Board, sums due for damages, an injunction, or any combination thereof, and which relief may be sought by the Association, an aggrieved Unit Owner, or by any person or class of persons adversely affected. Also, if any member fails to perform an obligation under the Act, the Declaration, these By-laws, the Articles or such rules and regulations, then the Association may, but is not obligated to, perform the same for the member's account, and for such purpose may enter upon his Unit, may make necessary repairs, advance expenses or other sums necessary to cure the default, and for such expenses and costs may levy a special assessment against the Unit owned by such defaulting member. The Association also shall be entitled to suspend the right of a defaulting Unit Owner to vote as a member of the Association until the default is cured.

10.2 Notice of Default and Failure to Cure. In the event of any such default or failure, the Board shall serve upon or mail to the defaulting member, and to each First Mortgagee of that member's Unit if required under the Declaration, a written notice specifying the nature of the default, the cure thereof, and the time within which the cure shall be effected. Within the time limit specified in the notice, the defaulting member may cure the default specified, or serve upon or mail a written notice to the Board requesting a hearing before the Board. If a hearing is so requested, the Board shall thereafter serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a notice specifying the time and place for such hearing. At the hearing, the Board shall take such evidence and hear such testimony as it deems necessary or desirable. The Board shall not exercise any remedies to obtain relief from the default until the hearing is over and the Board has made its determination and served upon or mailed the same to the defaulting member and each such First Mortgagee. The hearing may be continued from time to time as determined by the Board. Upon taking such evidence and hearing such testimony, the Board, at the hearing or at such later time, shall determine, in writing, and at its sole option, to waive the default in whole or in part, to extend the time within which the default may be cured, or proceed immediately to levy a fine or penalty, or to exercise any one or more of the remedies available to the Board due to such default. The Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a copy of its determination. If the defaulting member (i) does not cure the default or request a hearing within the time limit specified in the original notice of default given pursuant to this Section, or (ii) so requests a hearing, but fails to cure the default (to the extent not waived by the Board) within the extended time, if any, granted by the Board after hearing then the Board shall serve upon or mail to the defaulting member, and to each such First Mortgagee which was entitled to notice of the default as above provided, a written notice of such member's failure to effect a cure, and the Board may then proceed to take such action as it deems necessary to obtain relief.

10.3 Remedy of Abatement in Addition to Other Remedies. In the event a member fails to effect the cure specified by the Board within the time period set out in (i) or (ii) of Section 10.2 hereof, whichever is

applicable, where the default is a structure, thing, or condition existing in or on the premises of the member's Unit, the Board, or its duly authorized representative, shall have the right to enter upon the premises of the member's Unit in which, on which or as to which, such default exists; and summarily to abate and remove, at the defaulting member's expense (and levy an assessment therefor as provided in Section 10.1 hereof), the structure, thing or condition constituting the default, and the Board, the Association, and their agents, employees, and representatives shall not thereby be deemed guilty of any manner of trespass.

10.4 Injunction. Any person or class of persons entitled to seek relief for any such default or failure may obtain a temporary restraining order, injunction or similar relief, without first using the procedure established by Section 10.2 hereof, if such default or failure creates an emergency or a situation dangerous to persons or property.

10.5 Recovery of Attorney's Fees and Costs. In any proceeding arising because of an alleged default by a member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable proceeding and such reasonable attorneys' fees as may be allowed by the court, with interest thereon at the lower of (i) 4% over the prime rate announced by the Wachovia Bank and Trust Company at the time the costs are incurred and (ii) the highest rate allowed by law at the time the costs are incurred, from the dates such costs are incurred until paid.

10.6 Nonwaiver of Covenants. The failure of the Association or of any member thereof to enforce any term, provision, right, covenant, or condition that may be granted by the Declaration, these By-laws, the Articles, the rules and regulations or the Act, as the same may from time to time be amended, shall not constitute a waiver or abrogation of the right of the Association or a member to enforce such term, provision, right, covenant, or condition in the future, irrespective of the number of violations or breaches thereof that may have occurred.

10.7 Assessment of Liens. Assessment liens shall be enforced pursuant to Article VIII hereof and not pursuant to this Article X.

## ARTICLE XI.

### AMENDMENT

An amendment to these By-laws shall be made and approved in the manner, and shall be subject to the same restrictions relative to Article XII of the Declaration, and once made, shall become effective when recorded in the same manner and place as an amendment to the Declaration.

## ARTICLE XII.

## GENERAL PROVISIONS

## 12.1 Rules and Regulations.

(a) The Board, including the first Board, may promulgate from time to time such rules and regulations as it deems reasonable and necessary governing the administration, management, operation, and use of the Common Elements so as to promote the common use and enjoyment thereof by Unit Owners and Occupants and for the protection and preservation thereof. In addition, the Board may adopt such rules and regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Unit Owners and Occupants, including, without limitation, the right to adopt such rules and regulations with reference to tenants and leases. In no event shall any rules or regulations be inconsistent or materially more restrictive than the provisions contained in the Declaration and these By-Laws and the initial Rules and Regulations prepared by the Declarant. Any such rules or regulations adopted by the Board may be amended, modified, or revoked, and new and additional rules and regulations may be adopted by members at an annual or special meeting of the members. Any such act of the members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(b) Uniform Application. All rules and regulations shall be equally and uniformly applicable to all Unit Owners of Units in the floor levels above the second floor level, as shown on the Floor Plans. Except as provided in the previous sentence, all rules and regulations shall be equally and uniformly applicable to all Unit Owners, Occupants and Units, but need not be equally and uniformly applicable if it is determined that such unequal or non-uniform application is in the best interest of the Association or if equal and uniform application is not practicable.

(c) Copies Furnished. Copies of all such rules and regulations and any amendments thereto shall be furnished to all members, and a copy shall be posted or otherwise made available to members at the office of the Association. However, failure to furnish, or post, or make available, such rules and regulations shall not affect in any way their validity or enforceability.

(d) Rules Hereby Established. The rules and regulations attached to the public offering statement are referenced and adopted as if fully set forth herein.

12.2 Parliamentary Authority. Robert's Rules of Order, Newly Revised, shall govern the conduct of Association proceedings when not in conflict with the Declaration, these By-Laws, the Articles, the Act, or any statutes of the State of North Carolina applicable thereto. The chairman of the meeting shall have the authority to appoint a parliamentarian.

12.3 Compliance with the Act; Conflict; Severability. These By-Laws are established in compliance with the Act, as amended. Should any of the terms, conditions, provisions, paragraphs, or clauses of these By-Laws conflict with any of the provisions of said Act, the provisions of said Act shall control unless the Act permits these By-Laws to override the Act, in which event these By-Laws shall control. In the case of any conflict between the provisions of these By-Laws and the Declaration, the Declaration shall control. If any term, provision, limitation, paragraph, or clause of these By-Laws, or the application thereof to any person or circumstance, is judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these By-Laws, or the application thereof to any other person or circumstance.

IN WITNESS WHEREOF, the Declarant has caused these By-Laws to be signed and sealed by its duly authorized officers, as its act and deed, on that date set forth within the acknowledgement hereof.

SUNDUNE VILLAGE CONDOMINIUM ASSOCIATION, INC.

By [Signature] (SEAL)  
President

ATTEST:

[Signature] (SEAL)  
Secretary

(CORPORATE SEAL)

SUNDUNE VILLAGE Condominium Association, Inc.

SEAL-STAMP

NORTH CAROLINA, DARE County.  
I, a Notary Public of the County and state aforesaid, certify that ROBERT C. MARSHALL  
personally appeared before me this day and acknowledged that he is Sec  
Sundune Village Condominium Association a North Carolina corporation, and that by autho  
given and as an act of the corporation, the foregoing instrument was signed in its name by its  
President, sealed with its corporate seal and attested by him as its Sec  
Witness my hand and official stamp or seal, this 8th day of July, 19 88.  
My Commission expires 01-30-90 [Signature]

Use Black Ink

The foregoing Certificate(s) of \_\_\_\_\_

is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page her  
By \_\_\_\_\_ REGISTER OF DEEDS FOR \_\_\_\_\_ C  
Deputy/Assistant Register of Deeds.