

This Instrument Prepared By:  
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Coral Gables, Florida 33134

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DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR MYSTIC FOREST

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS ("Declaration") is made this 16<sup>th</sup> day of August, 2000 by MYSTIC FOREST INVESTMENTS, L.L.C, a Florida Limited Liability Company ("Mystic or Declarant") and is joined in by MYSTIC FOREST HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit ("Association").

WHEREAS, Mystic is the owner in fee simple of the real property more particularly described on Exhibit "A" ("Property") attached hereto and made a part hereof; and

WHEREAS Mystic desires to develop a community on the Property to be known as "Mystic Forest" as hereinafter set forth and the Association is joining in this Declaration for purposes of reflecting its agreement to succeed to the rights and obligations of Declarant thereunder with respect to such community; and

WHEREAS, in order to develop and maintain Mystic Forest as a planned residential community and to preserve the values and amenities of such community, it is necessary to declare, commit and subject the Property and the improvements now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements; and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance and enforcement; and

WHEREAS, the Association is joining in this Declaration in order to acknowledge its obligations hereunder.

NOW, THEREFORE, in consideration of the premises and covenants herein contained. Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof their heirs, successors and assigns.

The terms used in this Declaration shall be defined as set forth herein unless expressly provided otherwise;

Section 1. "ARCHITECTURAL CONTROL COMMITTEE" shall mean the committee created pursuant to Article VIII hereof.

Section 2. "ARTICLES" shall mean the Articles of Incorporation of the Association which are attached hereto as Exhibit "B", have been filed in the Office of the Secretary of State of the State of Florida, as such Articles may be amended from time to time.

Section 3. "ASSESSMENT" shall mean assessments for which all Owners are obligated to the Association and includes "Individual Lot Assessments," and "Special Assessments" (as such terms are defined in Article VII hereof) and any and all other assessments which are levied by the Association in accordance with the Mystic Forest Documents.

Section 4. "ASSOCIATION" shall mean and refer to MYSTIC FOREST HOMEOWNERS ASSOCIATION, INC., a not for profit Florida corporation, its successors and assigns, existing pursuant to the Articles of Incorporation, filed in the Office of the Secretary of State of the State of Florida, as amended by any amendments thereto, and which Association is responsible for the maintenance, preservation and architectural control of certain properties within Mystic Forest as provided in this Declaration.

Section 5. "ASSOCIATION PROPERTY" shall mean such portion of the Property not included in any Lot, and which is or shall be owned or maintained by the Association, as set forth in this Declaration, for the common use and enjoyment of the Owners, together with landscaping and any other Improvements thereon, including, without limitation, all structures, recreational facilities, gate houses, open spaces, private streets, sidewalks, irrigation, street lights, if any, and entrance features, but excluding any public utility installations thereon; in addition, such portions of the Property as are declared to be Association Property in any Supplemental Declaration, less whatever portions of the Property are declared to be withdrawn from the provisions of this Declaration in any Supplemental Declaration.

Section 6. "BOARD" shall mean the governing body of the Association.

Section 7. "BYLAWS" shall mean the Bylaws of the Association, a copy of which are attached hereto as Exhibit "C", which have been or will be adopted by the Board, as such Bylaws may be amended from time to time.

Section 8. "CONTRIBUTING LOT" shall mean any Lot subject to this Declaration.

Section 9. "CONTRIBUTING LOT OWNER" shall mean the owner of a Contributing Lot.

Section 10. "COUNTY" shall mean Miami-Dade County, Florida.

Section 11. "DECLARANT" shall mean and refer to Mystic Forest Investments, L.L.C., a Florida Limited Liability Company, and any successor or assign thereof which acquires any Lot from Mystic Forest Investments, L.L.C. for the purpose of development and to which Mystic

Forest Investments, L.L.C., a Florida Limited Liability Company, specifically assigns all or part of the rights of Declarant hereunder by an express written assignment recorded in the Public Records of the County. The written election shall give notice as to which rights of Declarant are to be exercised. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant.

Section 12. "DECLARATION" shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration (s).

Section 13. "DIRECTOR" shall mean a member of the Board.

Section 14. "HOME" shall mean a residence constructed on a Lot which is designed and intended for use and occupancy as a single-family residence.

Section 15. "IMPROVEMENT" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located upon the Property, including, but not limited to, buildings, walkways, recreation areas and facilities, sprinkler pipes, gatehouses, roads, driveways, fences, retaining walls, stairs, landscaping, hedges, plantings, poles, swimming pools, and cabanas.

Section 16. "INSTITUTIONAL MORTGAGE" shall mean a mortgage held by an Institutional Mortgagee.

Section 17. "INSTITUTIONAL MORTGAGEE OR INSTITUTIONAL LENDER" shall mean any lending institution owning a first mortgage encumbering any Home or Lot, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution", including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing such a loan; any pension or profit sharing funds qualified under the Internal Revenue Code; or the Veterans Administrative or the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns if the Declarant provides purchase money financing to a third party purchaser for the purchase of a Home or Lot.

Section 18. "INTEREST" shall mean the maximum nonusurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

Section 19. "LEGAL FEES" shall mean: (a) reasonable fees for attorney and paralegal services incurred in connection with: (i) negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and postjudgment proceedings and (ii) collection, of past due Assessments including, but not limited to, preparation of notices and liens, and shall also include (b) court costs through and including all trial and appellate levels and post judgment proceedings.

Section 20. "LOT" shall mean and refer to any lot of land as designated on the Plat upon which a Home is permitted to be erected, together with the Improvements thereon, and any portion of the Property that is declared to be a Lot by a Supplemental Declaration and is not subsequently withdrawn from the provisions of this Declaration by a Supplemental Declaration.

Section 21. "MEMBERS" shall mean and refer to all of those Owners who are members of the Association, as provided herein.

Section 22. "MYSTIC FOREST" shall mean that planned unit development located in Miami-Dade County, Florida, and encompassing the Property and existing in Miami pursuant to this Declaration.

Section 23. "MYSTIC FOREST DOCUMENTS" shall mean this Declaration, the Articles, the Bylaws, and any Rules and Regulations adopted by the Association, as well as any Supplemental Declaration (s).

Section 24. "NOTICE" and "HEARING" shall mean written notice and a public hearing before a tribunal appointed by the Board, at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at Owner's expense, in the manner set forth in the Bylaws.

Section 25. "OPERATING EXPENSES" shall mean the expenses for which Owners are liable to the Association as described in this Declaration and any other Mystic Forest Documents and include, but are not limited to, the costs and expenses incurred by the Association in administering, operating, reconstructing, maintaining, financing, repairing, replacing or improving the Association Property or any portion thereof and Improvements thereon and all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Mystic Forest Documents, including, but not limited to, the cost of any reserves and any other expenses designated to be Operating Expenses by the Board.

Section 26. "OWNER" shall mean and refer to the record owner, whether one or more

persons or entities, of a fee simple title to any Lot which is part of the Property, and includes Declarant for as long as Declarant owns fee simple title to a Lot, but excluding therefrom those having such interest as security for the performance of an obligation.

Section 27. "PARTY WALL" shall mean and refer to the entire wall, from front to rear, and from foundation to roof deck all or a portion of which is used for support of each adjoining structure, situate or intended to be situate on the boundary line between adjoining Lots.

Section 28. "PLAT" means a written instrument filed for record in the Public Records of the County in the manner required by law ("which has not been superseded by a subsequent "Plat") whereby a portion of the Property is described and is subdivided into lots, blocks, parcels or tracts and all or a portion of the Property contained within the Plat be brought within the jurisdiction of this Declaration and/or the Association and shall also include any additional plat added by a Supplemental Declaration.

Section 29. "PROPERTY" shall mean and refer to that certain real property heretofore described in Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of this Declaration and/or the Association; provided, however. Declarant reserves the right to withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

Section 30. "SUPPLEMENTAL DECLARATION" shall mean any instrument executed by Declarant (provided Declarant is the owner thereof), and recorded in the Public Records of the County, for purposes of supplementing or amending this Declaration, declaring certain properties to be or not to be Association Property, or of adding properties to or withdrawing properties from the Property and the provisions of this Declaration. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

## ARTICLE II

Section 1. MYSTIC FOREST. Mystic Forest is comprised of the Property, encompassing Lots and Association Property, all as more particularly defined by this Declaration and, in addition, lands which Declarant may add, but shall in no way be obligated to add, by Supplemental Declaration (s). The Property initially declared hereunder is described in Exhibit "A".

Section 2. GENERAL PLAN OF DEVELOPMENT. Declarant's general plan of development of Mystic Forest contemplates that Mystic Forest will be developed in four (4) phases for a total of seventy-two (72) residential Homes and the Association Property located within the Property. However, Declarant is not obligated to construct seventy-two (72) residential Homes. Phase I will consist of the construction of the improvements on the Association Property and 20 homes. Phases II, III, will consist of the construction of 17 homes each, and Phase IV will consist of the construction of 18 homes. Declarant reserves the right to develop the Property in the order in which the Homes are selling and not in the sequential order of the Phases. Declarant's general plan of development further contemplates that such residential Homes shall be whatever types of structures Declarant may choose which are in conformance with this Declaration. Declarant's general plan of development of Mystic Forest may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to the community contemplated by the plan.

Declarant expressly reserves the right as to the Property, to: (i) commence construction and development when Declarant so desires; (ii) develop the Property upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Property in such manner as it, in its sole discretion, chooses.

Section 3. ASSOCIATION PROPERTY. The Association Property shall consist of the property indicated on the Plat as Association Property or as property reserved for or dedicated to the Association. The Association Property shall be used for recreational and social purposes as well as other proper purposes by the Association and the Owners and their family members, guests, invites and lessees in accordance with the Mystic Forest Documents. Association Property may not be altered, modified, removed or replaced by Owners or their family members, guests, invites or lessees.

The portions of Mystic Forest described in this Section 3 shall constitute the Association Property and shall be used solely in accordance with the covenants impressed upon the Association Property as follows:

A. Recreation Tract. Mystic Forest will include a recreation area designated on the Plat as Tract A, ("Recreation Tract") which shall include, but is not limited to, a swimming pool, club house, patio deck, cabana bath, open space and parking. The Recreation Tract shall be part of the Association Property and shall be used for recreational purposes by the Association, and the Owners and their family members, guests, invites and lessees. Such portion, if any, of the Recreation Tract upon which Declarant has constructed, or hereinafter constructs Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. All of the Recreation Tract including, but not limited to, the swimming pool, shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses. All parking spaces (including one handicap space) within the Recreation Tract shall be used for proper purposes by those using the

recreational facilities while using such facilities, and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Recreation Tract shall be maintained, administered and ultimately owned by the Association.

Declarant reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Recreation Tract or to change the facilities planned for the Recreation Tract. The decision as to whether to construct additional recreational facilities, or to change the planned facilities, and the erection thereof shall be in the sole discretion of Declarant.

B. Streets, Drives, Roads and/or Roadways. The "Streets," "Drives," "Roads" and/or "Roadways" are those portions of the Property designated as such on the Plat and which are reserved for or dedicated to the Association but specifically excluding any street or roadway dedicated to the public on the Plat. The Streets, Drives, Roads and/or Roadways shall be used as private roads by Declarant, the Association and the Owners, their family members, guests, lessees and invites in accordance with the provisions of this Declaration. The Streets, Drives, Roads and/or Roadways shall be maintained, administered and ultimately owned by the Association.

C. Landscaped Areas or Grassed Areas. The "Landscaped Areas" and "Grassed Areas" are those portions of the Property designated as such on the Plat and are to be used, kept and maintained as such by Declarant, the Association and the Owners, their family members, guests, lessees and invites in accordance with the provisions of this Declaration. The Landscaped Areas and Grassed Areas shall not include those portions of an Owner's Lot which the Owner is required to maintain pursuant to this Declaration. The Landscaped Areas and Grassed Areas shall be ultimately owned by the Association and shall be administered and maintained by the Association.

D. Entranceways. Those portions of Mystic Forest designated as signage easements on the Plat shall be owned and maintained by the Association.

E. Gate House. The Declarant shall construct a Gate House on Association Property, in a location to be determined by Declarant, to be utilized to provide a secured entranceway to the Property, and for purposes of exercising control of ingress and egress to the Property. The gate house shall be manned and maintained by the Association, and shall be used only for such purposes.

F. Right to Add Additional Improvements. Such portions of the Association Property upon which Declarant has constructed, or hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located thereon. Declarant reserves the right, but shall not be obligated, to construct additional facilities upon the Association Property. The decision as to whether to construct additional facilities and the erection thereof shall be in the sole discretion of Declarant.

Section 4. COSTS. All costs associated with operating, maintaining, repairing and replacing the Association Property shall be the obligation of the Association. The Association Property shall be conveyed to the Association in accordance with the provisions of Article III, Section 6 hereof.

Section 5. PRIVATE USE. For the term of this Declaration, the Association Property is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Owners, their family members, guests, invites and lessees, but only in accordance with this Declaration.

A. Notwithstanding anything in this Declaration to the contrary, however, Declarant hereby expressly reserves the right to use the Association Property in connection with the sale and marketing by Declarant of Homes in Mystic Forest and other communities developed by Declarant or its affiliates, including, but not limited to, the holding of sales and marketing meetings, engaging in sales promotions and related sales and marketing activities.

B. Except for rights of use expressly reserved to Declarant, the Association Property shall be for the sole and exclusive use of the Owners and residents of Mystic Forest and their family members, guests, invites and lessees.

C. The administration, management, operation and maintenance of the Association Property shall be the responsibility of the Association, all as is provided herein and in the Mystic Forest Documents.

D. The right to use the Association Property shall be subject to the rules and regulations established by the Association.

Section 6. MODEL ROW. Declarant hereby reserves the right to construct a "model row(s)" in Mystic Forest. The "model row(s)" may contain models for Mystic Forest or another community, as Declarant and/or any of Declarant's affiliates may so determine, in their sole discretion. The "model row(s)" may also contain parking and fencing across Streets, Drives, Roads and/or Roadways as Declarant may determine in its sole discretion. In the event that Declarant and/or any of Declarant's affiliates constructs a "model row(s)" in Mystic Forest, such "model row(s)" may be used for such period of time that Declarant and/or any of Declarant's affiliates determines to be necessary. By his acceptance of a deed for a Lot in Mystic Forest, each Owner agrees and acknowledges that Declarant and/or any of Declarant's affiliates have a right to construct a "model row(s)" and that Declarant and/or any of its affiliates have an easement over Mystic Forest for ingress and egress to and from the "model row(s)" "model row(s)" and to use and show the models to prospective purchasers in Mystic Forest or another community being developed by Declarant and/or any of Declarant's affiliates, as long as such "model row(s)" exists.



**ARTICLE III**  
**ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY**

**Section 1. ADDITIONS.** Declarant may from time to time, in its sole discretion by recording appropriate Supplemental Declaration (s) in the Public Records of the County, add other real property to the Property governed by this Declaration, and may declare other property (including any Improvements thereon) to be Lots or Association Property. Upon the recording of a Supplemental Declaration, the property described therein shall be deemed part of the Property as if it were originally included therein and subject to this Declaration. Any such Supplemental Declaration may submit real property to such modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient to reflect or adapt to any changes in circumstances or differences in the character of the other property. Nothing contained in this Section shall be construed to require the joinder by or entitle a right to consent by Owners of Lots upon the Property or the Association to any such Supplemental Declaration; provided, however, the Association shall join in the execution of any such Supplemental Declaration at the request of Declarant.

**Section 2. DESIGNATION OF ADDITIONAL ASSOCIATION PROPERTY.** The Declarant may, from time to time, by recording Supplemental Declarations in the County, designate additional portions of the then existing Property owned by it to be Association Property.

**Section 3. DISCLAIMER OF IMPLICATION.** Only the real property described in Exhibit "A" hereto is submitted and declared as the Property subject to this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required pursuant to this Declaration, no other property shall in any way be deemed to constitute a portion of the Property or be affected by the covenants and restrictions expressly binding the Property as provided by the terms of this Declaration.

**Section 4. ABSENCE OF OBLIGATION.** Nothing in this Declaration shall be construed to require the Declarant to add to the Property encumbered by this Declaration or to require it to declare any portion of any properties added to the Property to be Association Property, nor shall anything in this Declaration be construed to require the Declarant to declare any portion or portions of the existing Property as Association Property.

**Section 5. WITHDRAWAL.** Notwithstanding anything herein to the contrary. Declarant reserves the absolute right at any time to withdraw portions of the Property from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the County; provided, however, that, to be effective, any such Supplemental Declaration must be executed by the declarant, the Owner of each Lot located on the Property sought to be withdrawn (if any), and each holder of an Institutional Mortgage on a Lot located on the Property sought to be withdrawn (if any). Nothing contained in this Section shall be construed to require the joinder or

consent by Owners of Lots upon the portion of the Property which is not withdrawn by such Supplemental Declaration, such Owners' Institutional Mortgagees, or the Association.

**Section 6. TITLE TO THE ASSOCIATION PROPERTY.** The Association Property is hereby dedicated to the joint and several use in common of the Owners of all Lots that may, from time to time, constitute part of the Property. When title to all Lots which are subject to the provisions hereof has been conveyed to non-Declarant purchasers, or three (3) years after the conveyance of the first Home and Lot to a non-Declarant purchaser, whichever occurs first, or earlier at Declarant's option exercisable from time to time, as to any portions of the Association Property, the Declarant or its successors and assigns shall convey and transfer to the Association, by quit claim deed, the fee simple title to the Association Property free and clear of any liens and the Association shall accept such conveyance holding title for the Owners as aforesaid. Such conveyance shall be subject to any real estate taxes and assessments for the year in which the Association Property is transferred; any covenants, conditions, restrictions, reservations, limitations, then of record; the easements herein set out; and any zoning ordinances then applicable, and this Declaration, as amended from time to time.

The Association shall accept this conveyance of the Association Property and shall pay all costs of such conveyance including documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall not, however, impair in any way the Declarant's rights and easements as set forth in this Declaration.

Commencing upon the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Association Property in a continuous and satisfactory manner without cost to the general taxpayers of the County. The Association shall be responsible for the payment of real estate taxes, if any, against the Association Property including taxes on any Improvements and any personal property thereon accruing from and after the date this Declaration is recorded.

The Owners of Lots (including Declarant as to Lots owned by it) shall have no personal liability for any damages for which the Association is legally liable or arising out of or connected with the existence or use of any Association Property or any other property required to be maintained by the Association.

Subject to the foregoing, the Declarant may mortgage any or all portions of the Association Property to finance construction and development expenses provided that the mortgagee recognizes the rights of Owners under this Declaration and neither the Association nor any Owner is personally liable for paying the mortgage. In such event, neither the Association nor the Owners of Lots upon the Property shall be required to join in or be entitled to consent to such mortgage. The Association Property shall be released from any such mortgage no later than the date same is conveyed to the Association.

**Section 7. PARKING RIGHTS.** The Association may maintain upon the Association

Property parking spaces for Owners, occupants, visitors and guests. The use of such parking spaces by Owners, occupants, visitors and guests shall be subject to duly adopted rules and regulations of the Association.

**ARTICLE IV  
OWNER'S PROPERTY RIGHTS**

Section 1. OWNER'S EASEMENTS OF ENJOYMENT. Every Owner, family member, guest, lessee, agent or invitee of an Owner shall have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of Association Property, which easement shall be appurtenant to, and shall pass with, title to the respective Lot, in common with all other Owners, their family members, guests, lessees, agents and invites. This right shall be subject to the following conditions and limitations:

A. The right and duty of the Association to reasonably limit the number of guests, invites or lessees of an Owner using the Association Property.

B. The right and duty of the Association to levy Assessments against each Lot for the purpose of maintaining, repairing and replacing the Association Property and facilities thereon in compliance with the provisions of this Declaration and the restrictions on portions of the Property from time to time recorded by the Declarant.

C. The right of the Association to establish uniform rules and regulations pertaining to the use of the Association Property.

D. The right of the Association to establish uniform rules and regulations pertaining to the Lots for the purposes of enhancing the aesthetic uniformity of the Property.

E. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, with the vote or written assent of two-thirds (2/3) of the total voting interests, to borrow money for the purpose of improving the Association Property and facilities thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners.

F. The right of the Association to dedicate, release, alienate, or transfer all or any part of the Association Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication, release, alienation, or transfer shall be effective, unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation or transfer.

G. The right of the Association to grant easements, rights-of-way or strips of land, where

necessary, for utilities, sewer facilities, cable T.V., and other services over the Association Property to serve the Association Property and other portions of the Property without vote of the Owners.

H. The right of the Declarant and Declarant's officers, directors, partners, employees, agents, licensees, and invites to the nonexclusive use of the Association Property and the facilities thereon, without charge, for sales, display, access, ingress, egress, construction, and exhibit purposes.

1. The right of the Association, by action of the Board, to reconstruct, replace, or refinish any Improvement or portion thereof upon the Association Property, in accordance with the original design, finish, or standard of construction of such Improvements, or of the general Improvements within the Association Property, as the case may be.

J. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs, and ground cover upon any portion of the Association Property.

K. The right, however not the duty, of the Association, by action of the Board to seek the vacation of publicly dedicated streets, if any, upon the Property.

L. The easements provided elsewhere in this Declaration, including, but not limited to, this Article IV.

M. The rights of the Association to provide for the maintenance, preservation and architectural control of Lots and other properties as set forth in this Declaration.

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Association Property to the members of his family, or to the lessees who reside in his Home, subject to all of the rules and regulations presently in effect and any which may become effective in the future, and further subject to reasonable regulation by the Board.

Section 3. RECOGNITION OF EXISTING EASEMENTS. Each Owner, by acceptance of a deed or other instrument of conveyance, recognizes and consents to the easements reserved and/or granted with respect to the Property under this Declaration.

Section 4. EASEMENTS FOR VEHICULAR TRAFFIC. In addition to the general easements for use of the Association Property reserved herein, there shall be, and Declarant hereby reserves, grants, and covenants for itself and all future Owners, its family members, guests, invites, lessees, and Institutional Mortgagees of the Property (or portions thereof), and to the Association, that all of the foregoing shall have a perpetual nonexclusive easement appurtenant for vehicular traffic over (i) all streets dedicated to the public use, if any (as well as

alcoves, cul de sacs, and other private, paved areas abutting or serving the same), and (ii) any private Streets, Drives, Roads and/or Roadways within or upon the Property.

**Section 5. ACCESS EASEMENT.** Declarant hereby reserves perpetual, nonexclusive easements of ingress and egress over and across (i) any and all streets dedicated to the public use, if any (as well as alcoves, cul de sacs, and other private, paved areas abutting or serving the same), and (ii) any private Streets, Drives, Roads and/or Roadways and driveways within or upon the Property and all other portions of the Property which are necessary or convenient for enabling Declarant to carry on the work referred to in this Declaration, which easements shall be for the use of the Declarant, Declarant's employees or agents. Declarant's successors and assigns. Owners, and the respective lessees, employees, agents, invites, and licensees of Declarant and Owners.

**Section 6. GRANT AND RESERVATION OF EASEMENTS.** Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association, and Declarant as hereinafter specified for the following purposes:

**A. Utility and Services Easements.** An easement or easements to provide for: (a) installation, service, repair and maintenance of the equipment required to provide utility services to the Association Property and the Lots including (but not limited to) power, electric transmission, light, telephone, cable T.V., gas, water, sewer and drainage, and (b) governmental services, including (but not limited to), police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purpose for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

**B. Easement for Encroachment.** An easement for encroachment in favor of an Owner in the event any portion of his Home or appurtenant Improvements such as a fence now or hereafter encroaches upon any of the Lots as a result of minor inaccuracies in survey, construction or due to settlement or movement. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Owner thereof or his designees.

**C. Easement to Enter Upon Lots.** An easement or easements for ingress and egress in favor of the Association, including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Mystic Forest Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Association Property and to maintain any Lot, including the parking areas thereon, if any, in the event the Owner thereof fails to do so.

D. Easement Over Association Property. An easement of enjoyment in favor of all Owners, their family members, guests, invitees and lessees in and to the Association Property which shall be appurtenant to and shall pass with title to every Lot in the Property, subject to the following:

1. The right of the Association to grant permits, licenses and easements over the Association Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operating of the Property; and

2. All provisions set forth in the Mystic Forest Documents.

E. Easement for Roof Overhang. An easement or easements to provide for the roof overhang in favor of an Owner including rights of access for persons or equipment necessary to maintain, repair and replace such roof overhang.

F. Drainage and Irrigation Easement. An easement for drainage, flowage and irrigation over, under and upon the Property, including each of the Lots, in favor of the Association and each of the Owners, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair the water drainage system, flowage pipes and irrigation pipes.

Section 7. ASSIGNMENTS. The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any City, County or State government or agency thereof, or any duly licensed or franchised public utility, or any other designee of Declarant. The Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of this Declaration.

Notwithstanding anything in this Declaration to the contrary, all easement rights reserved or granted to Declarant shall terminate upon Declarant no longer holding title to any Lot or Home on the Property for sale in the ordinary course of business. In addition, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION: BOARD; DURATION OF THE ASSOCIATION

Section 1. MEMBERSHIP AND VOTING RIGHTS. Membership in the Association shall be established and terminated as set forth in the Articles. Each Member shall be entitled to the

benefit of, and subject to, the provisions of the Mystic Forest Documents. The voting rights of the Members shall be as set forth in the Articles.

Section 2. BOARD. The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

Section 3. DURATION OF ASSOCIATION. The duration of the Association shall be perpetual, as set forth in the Articles.

#### ARTICLE VI

#### COVENANT TO PAY ASSESSMENTS: ESTABLISHMENT OF LIENS: COLLECTION OF ASSESSMENTS: COLLECTION BY DECLARANT: CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES

Section 1. AFFIRMATIVE COVENANT TO PAY ASSESSMENTS. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the Mystic Forest Documents; and (ii) maintain, operate and preserve the Association Property for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Contributing Lot and Contributing Lot Owner the affirmative covenant and obligation to pay to the Association (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Lot Assessments and Special Assessments. Each Owner other than Declarant by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the Mystic Forest Documents.

The following expenses of the Association are hereby declared to be Operating Expenses which the Association is obligated to assess and collect, and which the Contributing Lot Owners are obligated to pay as provided herein or as may be otherwise provided in the Mystic Forest Documents:

1. Any and all taxes and tax liens which may be assessed or levied at any and all times against the Association Property or against any and all personal property Improvements thereon;
2. All charges levied for utilities providing services for the Association Property such as water, gas, electricity, telephone, cable television, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed to an Owner;
3. The premiums on policies of insurance including, but not limited to, fidelity

insurance coverage and liability and casualty insurance for the Association Property;

4. The premium for flood insurance if the Association elects to purchase flood insurance for the Association Property;

5. Insurance for the buildings containing the Homes, the premiums on such policies of insurance including, but not limited to, liability, casualty and flood (if the property is in a designated flood zone), in such form and in such amounts as is reasonably determined by the Declarant and thereafter the Association, to afford protection for such risks as from time to time are customarily covered with respect to buildings and improvements similar to the Homes in construction and use;

6. Any sums necessary, including reserves, for the maintenance, repair and replacement of (i) the Association Property and all improvements located thereon and (ii) such structural components, including but limited to the common roofs and of any Home if the Lot Owners elect to have the Association maintain and repair structural components and roofs;

7. Administrative and operational expenses; and

8. Any and all expenses deemed to be Operating Expenses by the Association.

The Operating Expenses with respect to the Association Property are payable by each Contributing Lot Owner to the Association notwithstanding the fact that Declarant may not have as yet conveyed title to the Association Property to the Association.

Section 2. ESTABLISHMENT OF LIENS. Any and all Assessments made by the Association in accordance with the provisions of the Mystic Forest Documents with Interest thereon and costs of collection, including, but not limited to Legal Fees, are hereby declared to be a charge and continuing lien upon each Contributing Lot against which each such Assessment is made. Each Assessment against a Contributing Lot, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Contributing Lot Owner of such Contributing Lot. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Such Assessments shall be a lien superior to any other liens save and except tax liens and mortgage liens, unless the lien for Assessments is recorded before the mortgage lien. Notwithstanding anything to the contrary herein contained, where an Institutional Mortgagee of record obtains title to a Contributing Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquiror of title, its successors or assigns, shall only be liable for the share of Assessments pertaining to such Contributing Lot or chargeable to the former Contributing Lot



Owner thereof which became due 6 months prior to the acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the Assessment against the Contributing Lot in question is secured by a claim of lien for Assessments that is recorded prior to the recordation of the mortgage which was foreclosed or with respect to which a deed in lieu of foreclosure was given.

**Section 3. COLLECTION OF ASSESSMENTS.** In the event any Contributing Lot Owner shall fail to pay any Assessment, or installment thereof, charged to such Contributing Lot Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

1. To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.
2. To advance on behalf of the Contributing Lot Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Contributing Lot Owner (s) is liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may thereupon be collected by the Association from the Contributing Lot Owner (s) and such advance by the Association shall not waive the default.
3. To file an action in equity to foreclose its lien at any time after the effective date thereof as provided in Section 2 hereinabove. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.
4. To file an action at law to collect said Assessment plus Interest and all costs of collection thereof, including, but not limited to Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.
5. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of TWENTY-FIVE DOLLARS (\$25) by the Association to defray additional collection costs.

**Section 4. COLLECTION BY DECLARANT.** In the event for any reason the Association shall fail to collect the Assessments, Declarant shall at all times have the right (but not the obligation) : (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant, together with Interest and costs of collection, including, but not limited to Legal Fees; using the remedies available to the Association against a Contributing Lot Owner as set forth in Section 3 above, which remedies are hereby declared to be available to Declarant.

**Section 5. RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES TO PAY ASSESSMENTS AND RECEIVE REIMBURSEMENT.** Declarant and any Institutional Mortgagee (s) shall have the right, but not the obligation, jointly or singularly, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Contributing Lot(s). Further, Declarant and any Institutional Mortgagees shall have the right, but not the obligation, jointly or singularly, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association where the same are overdue and where lapses in policies or services may occur. Declarant and any Institutional Mortgagees paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to Legal Fees, and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

#### **METHOD OF DETERMINING ASSESSMENTS AND ALLOCATION OF ASSESSMENTS**

**Section 1. DETERMINING AMOUNT OF ASSESSMENTS.** The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the Mystic Forest Documents. The total anticipated Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) shall be apportioned equally among the total number of Lots by dividing the total anticipated Operating Expenses as reflected by the Budget, other than those Operating Expenses which are properly the subject of a Special Assessment (adjusted as hereinafter set forth), by the total number of Lots, with the quotient thus arrived at being the "Individual Lot Assessment." Notwithstanding anything in the Mystic Forest Documents to the contrary, any assessment for legal expenses incurred by the Association to begin legal proceedings against Declarant shall be deemed an Operating Expense which is properly the subject of a Special Assessment and not the subject of a regular Individual Lot Assessment.

**Section 2. ASSESSMENT PAYMENTS.** The Individual Lot Assessments shall be payable quarterly, in advance, on the first day of January, April, July and October of each year, provided, however, at the Association's option, individual Lot Assessments may be payable monthly. The Individual Lot Assessments, and the quarterly installments thereof, as well as all Assessments provided for herein and all installments thereof may be adjusted from time to time by the Board to reflect changes in the Budget or in the event that the Board determines that the Assessments or any installment thereof is either less than or more than the amount actually required. Until the "Turnover Date" (as defined in the Articles), the Declarant shall be exempt from paying any Individual Lot Assessment. However, the Declarant shall be responsible, until the Turnover Date, to pay to the Association the shortfall between the actual cost of maintaining the Association Property minus any Individual Lot Assessments collected and actual expenditures

made by the Association in maintaining the Association Property.

**Section 3. SPECIAL ASSESSMENTS.** "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Mystic Forest Documents and whether or not for a cost or expense which is included within the definition of "Operating Expenses," those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring Improvements for, or on, the Association Property or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any "Individual Lot Assessment." Any such Special Assessments assessed against Contributing Lots and Contributing Lot Owners thereof shall be paid by such Contributing Lot Owners in addition to any other assessments. Special Assessments shall be assessed in the same manner as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date, except for any Special Assessment levied pursuant to Article IX Section 1. E. hereinafter, shall require the affirmative assent of at least two-thirds (2/3) of all Contributing Lot Owners represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Prior to the Turnover Date, a Declarant controlled Board may make a Special Assessment without the consent of the Contributing Lot Owners.

**Section 4. LIABILITY OF CONTRIBUTING OWNERS FOR INDIVIDUAL ASSESSMENTS.** By the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges that each Contributing Lot and the Contributing Lot Owners thereof are jointly and severally liable for their own Individual Lot Assessment and their applicable portion of any Special Assessments as well as for any and all other Assessments for which they are liable as provided for herein. Such Contributing Lot Owners further recognize and covenant that they are jointly and severally liable with the Contributing Lot Owners of all Contributing Lots for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessments and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner who is or becomes a Contributing Lot Owner, for himself and his heirs, executors, successors and assigns, that in the event Contributing Lot Owners fail or refuse to pay their Individual Lot Assessment or any portion thereof or their respective portions of any Special Assessments or any other Assessments, then the other Contributing Lot Owners may be responsible for increased Individual Lot Assessments or Special Assessment or other Assessments due to the nonpayment by such other Contributing Lot Owners, and such increased Individual Lot Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments hereunder as provided in the Mystic Forest Documents.

Section 5. **WORKING CAPITAL CONTRIBUTION.** Each Owner who purchases a Lot with a Home thereon from Declarant shall pay to the Association at the time legal title is conveyed to such Owner, a "Working Capital Contribution." The Working Capital Contribution shall be an amount equal to a two months' share of the annual Operating Expenses applicable to such Lot pursuant to the initial Budget (which may be different from the Budget in effect at the time of closing). The purpose of the Working Capital Contribution is to insure that the Association will have cash available for initial start-up expenses, to meet unforeseen expenditures or to acquire additional equipment and services deemed necessary or desirable by the Board. Working Capital Contributions are not advance payments of Individual Lot Assessments and shall have no effect on future Individual Lot Assessments, nor will they be held in reserve. Working Capital Contributions may be used to offset Operating Expenses.

Section 6. **WAIVER OF USE.** No Owner, other than Declarant, may exempt himself from personal liability for assessments duly levied by the Association. No Owner may release the Lot owned by him from the liens and charges hereof either by waiver of the use and enjoyment of the Association Property and the facilities thereon or by abandonment of his Home.

#### ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

Section 1. **MEMBERS OF THE COMMITTEE.** The Architectural Control Committee, sometimes referred to in this Declaration as the "Committee", shall consist of three members. The initial members of the Committee shall consist of persons designated by Declarant. Each of said persons shall hold office until all Lots and Homes have been conveyed or at such earlier time as the Declarant may, at its sole option, elect. Thereafter, each new member of the Committee shall be appointed by the Board and shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the Committee, other than those designated by the Declarant, may be removed at any time without cause. The Board shall have the sole right to appoint and remove all members of the Committee other than those designated by the Declarant.

#### Section 2. **REVIEW OF PROPOSED CONSTRUCTION.**

A. Subject to Section B of this Section 2, no buildings, fences, walls, pools, roofs, gutters or rain spouts, antennae, aerials, microwaves, external enclosures (including entry screen and patio screen enclosures), landscaping (including hedges and massed plantings) or other Improvements shall be commenced, erected, installed, altered, modified, painted, planted, or maintained on the Property, including the Lots, nor shall any canopy, shutters, or window coverings be attached to or placed upon outside walls or roofs of any Home or building by any Owner other than Declarant until and unless two (2) complete sets of the plans and specifications prepared by an architect, landscape architect, engineer or other person found to be qualified, showing the nature,

dimensions, materials and location of the same have been submitted to and approved in writing by the Committee.

B. The Committee shall approve proposals of plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated will not be detrimental to the appearance of the surrounding area of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Committee may also issue rules or guidelines setting forth procedures for the submissions of plans and specifications. If the proposed construction, alterations or additions are to a portion of the Improvements which the Association is obligated to maintain, said approval shall also be subject to approval by the Board. The Committee may condition its approval of proposals in such a manner as it deems appropriate and may require the submission of additional information prior to approving or disapproving such plans.

C. The Committee shall have thirty (30) days after delivery of all required materials to approve or reject any such plans and, if not approved within such thirty (30) day period as extended by the Association, such plans shall be deemed rejected, provided that, in any event, no such addition, construction or alteration shall be made by any Owner which is detrimental or inconsistent with the harmony, appearance or general scheme of the Property as a whole.

D. Notwithstanding any provision in this Article to the contrary, the approval of the Committee shall not be required for any additions, changes or alterations within any Homes if such additions, changes or alterations are not visible from outside of such Homes. All changes and alterations shall be subject, independently, to all applicable governmental laws, statutes, ordinances, rules and regulations.

E. Notwithstanding anything to the contrary herein contained, no construction, reconstruction, addition or alteration by Declarant shall require the prior approval or any certificate of consent of the Committee.

Section 3. MEETINGS OF THE COMMITTEE. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8 hereof. In the absence of such designation, the vote of any two members of the Committee shall constitute an act of the Committee.

Section 4. NO WAIVER OF FUTURE APPROVALS. The approval of the Committee of any proposals of plans and specifications or drawings for any work done or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any identical or

similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant.

Section 5. COMPENSATION OF MEMBERS. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. INSPECTION OF WORK. Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any work for which approved plans are required under this Article, the submitting party shall give written notice of completion to the Committee.

B. Within thirty (30) days after written notice of completion, the Committee or its duly authorized representatives may inspect such Improvement. If the Committee finds such work was not done in substantial compliance with the approved plans it shall notify the submitting party in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the submitting party to remedy such noncompliance.

C. If upon the expiration of fifteen (15) days from the date of such notification, the submitting party shall have failed to remedy such noncompliance, notification shall be given to the Board in writing of such failure. Upon such notice and hearing, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the submitting party shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board's ruling. If the submitting party does not comply with the Board's ruling within such period, the Board, at its option, may either remove the Improvement or remedy the noncompliance, and the submitting party shall reimburse the Association, upon demand, for all expenses incurred in connection therewith, including Interest and Legal Fees. If such expenses are not promptly repaid by the submitting party to the Association, the Board shall levy a Special Assessment against such submitting party for reimbursement, and said Special Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as liens for Operating Expenses.

D. If for any reason notification is not given to the submitting party of acceptance within thirty (30) days after receipt of said written notice of completion from the submitting party, the Improvement and/or alteration shall be deemed to be in noncompliance with said approved plans.

Section 7. NON-LIABILITY OF COMMITTEE MEMBERS. Neither the Committee nor any member thereof, nor its duly authorized Committee representative, nor Declarant, shall be liable to the Association or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties

hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall have any liability. The Committee's review and approval or disapproval of plans submitted to it for any proposed Improvement shall be based solely on considerations of the overall benefit or detriment to the community as a whole. The Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes. Furthermore, approval by the Committee of any plans and specifications does not excuse any Owner from also receiving approvals as required by all applicable governmental agencies.

Section 8. VARIANCE. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. If such variances are granted no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the Improvements for which the variance was granted.

#### ARTICLE IX MAINTENANCE AND REPAIR OBLIGATIONS

##### Section 1. BY THE ASSOCIATION.

A. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Association Property and the roofs, and exterior maintenance as follows: paint, gutters, downspouts and exterior building surfaces of the Homes. Should any damage be caused to any Home by virtue of the Association's failure to maintain the Association Property as herein required or by virtue of any work which may be done or caused to be done by Association in the maintenance, repair or replacement of any Association Property, the Association shall, at its expense, repair such damage. The Association shall not, however, be responsible for any damages by reason of loss of use, hardship, distress, any Owner's time or any other consequential, incidental or punitive damages, or any damage caused by Owner, his guests, invitees, contractors, employees, family members, tenants or heirs, successors or assigns, which shall be added to and become part of the assessment to which such Lot is subject.

B. The Association shall operate, maintain and repair a water sprinkler system constructed over, through and upon the Association Property as it shall deem appropriate. There is hereby reserved in favor of the Association the right to enter upon the Association Property for the purpose of operating, maintaining, repairing and replacing a water sprinkler system over, through and upon the Association Property.

C. The Association shall be responsible for the maintenance, repair and replacement of all private streets, including the drainage system located within the Association Property, and concrete walls located upon the Association Property and there is hereby reserved in favor of the

Association the right to enter upon any and all parts of the Association Property and Lots for such purpose. The Association may, to the extent permitted by the appropriate governmental authority, also provide maintenance of all City, County, district or municipal properties which are located within or in a reasonable proximity of the Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Property, including the right to enhance the landscaping in any public rights of way. Finally, the Association may, at such times as it is providing for maintenance of the private streets, also elect to repair, replace and otherwise provide for and maintain the parking areas within the Lots.

D. The Association, by action of its Board, may make minor and insubstantial alterations and Improvements to the Association Property having a cost not in excess of FIVE THOUSAND DOLLARS (\$5,000). All other alterations and Improvements must first be approved by the Owners of not less than sixty percent (60%) of the total voting interests of the Association. No alteration or Improvement may be made to the Association Property which materially and adversely affects the rights of the Owner of any Lot to the enjoyment of his Lot or the Association Property unless the Owner and all mortgagees holding recorded mortgages on such Lot consent thereto in writing.

E. The Association shall (i) maintain, repair and replace all Party Walls and supporting structural components and (ii) insure the improvements (excluding personal property contained therein) against casualty loss and other hazards. The Association shall be responsible for establishing appropriate reserves for Party Walls and for applicable insurance premiums and collecting for all of the foregoing. The Association shall cause the Homes to be maintained and following a casualty loss, shall promptly repair and restore the Homes to their condition prior to the casualty all in accordance with the original plans and specifications for such Homes as modified by any approved additions or changes to same.

E. All expenses incurred by the Association in connection with the services and maintenance described in Paragraphs A through E, inclusive, are Operating Expenses, payable by each Owner under the provisions of this Declaration concerning Assessments. Should the maintenance, repair or replacement provided for in Paragraphs A through E of this Section I be caused by the negligence or misuse by an Owner, his family, guests, servants, invites, or lessees he shall be responsible therefor; and the Association shall have the right to levy a Special Assessment against the Owner of such Lot, and said Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as liens for Operating Expenses.

F. The Association has the reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of Mystic Forest.

## Section 2. BY THE OWNERS.

A. The Owner of each Lot must keep and maintain the Lot and the Improvements thereon,



including equipment and appurtenances, in good order, condition and repair, and must perform promptly all maintenance and repair work within his Home which, if omitted, would adversely affect Mystic Forest, the other Owners or the Association and its Members. The Owner of each Lot shall be responsible for any damages caused by a failure to so maintain such Lot and Home. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structure constructed in upon or below the Lot, and physical items attached or connected to such structure that run beyond the boundary line of the Lot which exclusively service or benefit the Lot and Home, except as provided in Article IX, Section 1 hereof. The painting and caulking and maintenance of the exterior surface of the doors and windows of the physical structure of the Home shall be done by the Owner, and, the exterior surface of such doors and windows shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. However, an Owner cannot change the color or appearance of any exterior part of the Home unless the prior approval of the Architectural Control Committee is obtained. The Owner of a Lot further agrees to pay for all utilities, such as telephone, cable television, water, sewer, sanitation, electric, etc., that may be separately billed or charged to each Home. The Owner of each Lot shall be responsible for insect and pest control within the Lot and Home. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at his own expense, is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

B. The Party Walls shall be maintained by the Owners which are physically served by said Party Wall as follows:

1. Each Owner shall be responsible for maintaining that portion of the Party Wall within the interior of such Owner's Home in good condition and repair.
2. No Owner may modify or alter a Party Wall without the express written permission of the other Owner who is served by said Party' Wall and the Association and in no event may the structural integrity of any building be affected.
3. In the event of casualty, insurance proceeds shall be used to immediately reconstruct a Party Wall with each Owner being responsible for half (1/2) of reconstruction not covered by insurance proceeds. Either Owner may initiate said reconstruction activities upon a notice of undertaking granted to the other Owner.
4. Should either Owner sharing a Party Wall desire to replace the building now on such Owner's respective Home with a new building, that Owner shall have the privilege of cutting into the wall to erect and install the necessary posts, columns, and supports for the new building. Such Owner

shall have the further privilege to enter on the property of the other Owner and construct thereon the necessary footing for such posts, columns and supports insofar as it may be necessary to place the footing on the property of the other Owner, and insofar as the footing may be constructed without injury to the property of the other Owner.

5. Neither Owner shall decrease the Party Wall's thickness, and all additions thereto or extension thereof shall be of at least the same thickness as the Party Wall as it currently exists and shall be constructed of the same or similar materials and of like quality. All such additions or extensions shall be constructed in uniformity with all laws, ordinances, and regulations of Miami-Dade County of the State of Florida then in effect. No such additions or extension shall injure the adjoining Owner or in any way impair the benefits and support which the Party Wall provides to the adjoining building.

C. The Owner of each Lot shall maintain and care for any lawns which are encompassed within the Lot. "Maintenance and care" within the meaning of this Subsection "C" shall include irrigating, mowing, edging, fertilizing, and spraying of lawns, and replacement of sod. All lawns shall be maintained free from unsightly bald spots or dead grass and shall be uniform in texture and appearance with surrounding lawns in Mystic Forest.

D. The Owner of each Lot shall maintain and care for all landscaping encompassed within the Lot. "Maintenance and care" within the meaning of this Subsection "D" shall include irrigating, fertilizing, spraying and trimming of landscaping and replacement of same so that, at a minimum, the initial landscaping for the Lot provided by the Declarant shall be maintained.

E. Subject to the provisions of Paragraph Section 1, Paragraph E of this Article, if a Home is damaged by fire or other casualty, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless otherwise authorized by the Board and shall be otherwise subject to all provisions of Article VIII hereof.

F. If the Association ceases to carry the insurance on the Homes as herein provided, each Owner shall keep his Home insured in an amount not less than its full replacement value against loss or damage by fire, windstorm, or other hazards. Evidence of such coverage shall be furnished to the Association promptly upon the Board's request. The Association and the adjacent Owners shall be named as additional insureds with respect to any Party Walls and Common Roofs covered by such insurance.

G. If an Owner fails to comply with the foregoing provisions of this Section 2, the Association may proceed in court to enforce compliance. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner a Special Assessment equal to the cost of premiums, and any such Special Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

H. If a failure to comply with the provisions of this Section 2 relates to the Owner's obligation to maintain the Home, party Wall, or landscaping, then, in addition to the exercise of all other remedies, the Association shall have the right to secure those services necessary to correct such failure to comply and to impose the cost of such corrective action upon the noncomplying Owner, provided the following procedures are adhered to:

1. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. Included in the notice shall be the date and time of the next board meeting. The Owner shall immediately take the necessary corrective action or appear at the Board meeting to contest the corrective action. Any such notice shall be given at least five (5) days prior to the date of the Board meeting at which the Owner may be heard.
2. Hearing. Should the Owner not take the required corrective action, the noncompliance shall be presented to the Board after which the Board shall hear reasons why corrective action should not be taken. A written decision of the Board shall be submitted to the Owner not later than twenty-one (21) days after said meeting.
3. Assessment. Should the Owner not then take the required corrective action within seven (7) days of the Board's written decision, the Board shall undertake the corrective action at the Owner's cost. The cost of corrective action, if any, shall be paid not later than thirty (30) days after notice of the imposition for Assessment of the said cost. Such cost shall be treated as an Assessment subject to the provisions for the collection of Assessments as otherwise set forth herein.

Section 3. DAMAGE TO BUILDINGS. Any Home which has suffered damage may apply through the Owners thereof for approval to the Architectural Control Committee for reconstruction, rebuilding, or repair of the Improvements therein. The Architectural Control Committee shall grant such approval only if upon completion of the work the exterior appearance will be substantially similar to that which existed prior to the date of the casualty. If the obligation for repair falls upon the Association, Architectural Control Committee approval will not be required prior to the commencement of such work, so long as the exterior appearance will be substantially similar to that which existed prior to the date of the casualty.

The Owner or Owners of any damaged building, the Association, and the Architectural Control Committee shall be obligated to proceed with all due diligence hereunder and the responsible parties shall commence reconstruction within three (3) months after the damage occurred and complete reconstruction within one (1) year after the damage occurs, unless prevented by causes beyond his or its reasonable control.

The Declarant shall be exempt from the provisions of this Section 3, provided that any such reconstruction, rebuilding or repairs made by the Declarant shall be consistent, as to the exterior appearance, with the Improvements as they existed prior to the damage or other casualty.

ARTICLE XI  
RULES AND REGULATIONS

All of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may, from time to time, be adopted by the Association;

Section 1. ENFORCEMENT. Failure of an Owner to comply with such rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof.

In addition to all other remedies and in the sole discretion of the Board, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invites, lessees or employees to comply with any rule or regulation provided the following procedures are adhered to:

A. Notice. The Association shall notify the Owner in writing of the infraction or infractions and its intention to impose a fine on the Owner. Included in the notice shall be the date and time of the next Board meeting. The Owner shall immediately comply or appear at the Board meeting to contest the infraction or the fine. Any such notice shall be given at least five (5) days prior to the date of the Board meeting at which the Owner may be heard.

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner not later than twenty-one (21) days after said meeting.

C. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. A fine shall be treated as an Assessment subject to the provisions of the collection of Assessments as otherwise set forth herein, and shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration.

E. Action by Association. In addition to imposing a fine and when it shall be deemed appropriate, the Association shall have the right (s) to undertake the corrective action not performed by the noncomplying Owner and (ii) to be reimbursed by the Owner for any and all costs associated therewith.

F. Non-Exclusive Remedy. These fines shall not be construed to be exclusive and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. However, any penalty paid by the offending Owner shall be deducted from or offset against

any damages which the Association may otherwise be entitled to recover by law from such Owner.

Section 2. NUISANCES. No obnoxious or offensive activity shall be carried on about the Lots or in or about any improvements, Homes, or on any portion of Mystic Forest nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Homes which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements, Homes or Lots. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, large power equipment or large power tools, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Board.

Section 3. PARKING AND VEHICULAR RESTRICTIONS. Parking upon the Property shall be restricted to the drive located upon each Lot. No parking on the streets or swales is permitted. No Owner shall keep any vehicle on the Lots which is deemed to be a nuisance by the Board. No Owner shall conduct repairs taking more than twenty-four (24) hours (except in an emergency) or restorations of any motor vehicle, boat, trailer, or other vehicle upon the Lots. No commercial vehicle, trailer, boat or boat trailer may be parked or stored on the Property. No bus or tractor-trailer or any other truck larger than a full-size pickup truck may be parked on the Property, except temporarily as in the case of a moving van or other such vehicle necessary to provide service to an Owner and with the exception of any vehicles necessary for any construction activity being performed by or on behalf of Declarant.

Section 4. NO IMPROPER USE. No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover, relating to any Home shall be corrected by, and at the sole expense of, the Home's Owner.

Section 5. LEASES. No portion of a Home (other than an entire Home) may be rented. All leases shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Homes. The Owner of a leased home shall keep the Association apprised at all times of his current mailing address and phone number in the event the Association needs to notify the Owner of any default by tenant. The Owner of a leased Home shall be jointly and severally liable with his tenant for compliance with the Mystic Forest Documents and to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the

Association whether before or after such lease was entered into.

Section 6. ANIMALS AND PETS. Only common domesticated household pets may be kept on any Lot or in a Home, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Property. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. Under no circumstances may a pit bull be permitted on the Property. Any pet must be carried or kept on a leash when outside of a Home or fenced-in area. No pet shall be kept loose or tied up when outside of a Home or in any screened porch or patio, unless someone is present in the Home. No barking shall be allowed which may be or become an unreasonable annoyance or nuisance to any owner. An Owner shall immediately pick up and remove any solid animal waste deposited by his pet on the Property. An Owner is responsible for the cost of repair or replacement of any Association Property damaged by his pet.

Each Owner who determines to keep a pet thereby agrees to indemnify the Association and Declarant and hold them harmless against any loss or liability of any kind or character whatsoever arising from or growing out of his having any animal on the Property.

Section 7. ADDITIONS AND ALTERATIONS. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, including doors, without the prior written approval of (i) the Committee as set forth in Article VIII of this Declaration, which approval may be withheld for purely aesthetic reasons, and (ii) all applicable governmental entities.

Section 8. INCREASE IN INSURANCE RATES. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

Section 9. SLOPES AND TREES. No Owner may engage in any activity which will change the slope or drainage of Lot. No additional trees are permitted to be planted on the Property without the prior written consent of Declarant for as long as Declarant owns a Lot, and thereafter without the prior written consent of the Board.

Section 10. SIGNS. No sign, display, poster, or other advertising device of any kind may be displayed in public view of any portion of any building or other Improvement in the Property without the prior written consent of the Board. Signs, regardless of size, used by Declarant, its successors or assigns, for advertising during the construction and sale period of Mystic Forest or other communities developed and/or marketed by Declarant or its affiliates and other reasonable signs authorized by Declarant shall be exempt from this Section. Such sign or signs as Declarant may be required to erect under the terms of an Institutional Mortgage shall be exempt from this Section.

Section II. TRASH AND OTHER MATERIALS. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Association Property, or other portions of the Property, except in sanitary, self-locking containers located in appropriate areas, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other property in the vicinity thereof or to its occupants. No clothing or other household items shall be hung, dried, or aired in such a way as to be visible from the Association Property or another Lot. No stripped-down vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of the Property, except within an enclosed structure approved by the Committee and appropriately screened from view (except when accumulated during construction by Declarant, during construction approved by the Committee, or when accumulated by the Association for imminent pick-up and discard).

Section 12. TEMPORARY STRUCTURES. No tent, shack, shed or other temporary building or improvement, other than separate construction and sales trailers to be used by Declarant, its agents and contractors, for the construction and sale of Mystic Forest or other communities, shall be placed upon any portion of the Property, either temporarily or permanently. No trailer, motor home or recreational vehicle shall be: (a) used as a residence, either temporarily or permanently, or (b) parked upon the Property.

Section 13. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, boring or mining operations of any kind shall be permitted upon or on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 14. SEWAGE DISPOSAL. No individual sewage disposal system shall be permitted on any of the Property.

Section 15. WATER SUPPLY. No individual water supply system shall be permitted on any of the Property, except that wells are permitted for the irrigation of landscaping only.

Section 16. FENCES. Any fence placed upon any Lot must be approved by the Committee, as provided in Article VIII hereof, prior to installation. In no event may a fence be placed in the area between the front of a Home and the Street, Drive, Road or Roadway at the front of the Lot on which the Home is situated. In the event that the Board or the Committee, in its sole discretion, determines that a fence is not acceptable, the Board or the Committee may require the Owner to remove the fence; and, if the Owner does not comply in a timely fashion, the Board or the Committee may cause the fence to be removed and assess any and all expenses of such removal against the Owner as a Special Assessment. The Owner assumes complete responsibility to maintain the fence, including, but not limited to, trimming any grass, ivy or other plants from the fence. In the event the Committee approves the installation of a fence, it shall also have the right to require installation of landscaping, also



subject to the committee's approval, at the time the fence is installed.

Section 17. ANTENNAE. All antennae, microwave receiving devices or satellite receiving devices shall be no greater than eighteen (18") inches in diameter and shall be placed or erected only in the rear patio area of any Lot.

Section 18. DECLARANT EXEMPTION. Declarant plans to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other property being developed or marketed by Declarant or its affiliates. The completion of that work and the sale, rental and other transfer of Homes is essential to the establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither Owners, the Association, nor the Architectural Control Committee shall do anything to interfere with Declarant's activities.

In general, the restrictions and limitations set forth in this Article shall not apply to the Declarant or to Lots owned by the Declarant. Declarant shall specifically be exempt from any restrictions which interfere in any manner whatsoever with Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article in addition to whatever remedies at law to which it might be entitled.

#### ARTICLE XII DAMAGE OR DESTRUCTION TO ASSOCIATION PROPERTY

Section 1. Damage to or destruction of all or any portion of the Association Property shall, notwithstanding any provision in this Declaration to the contrary, be handled as follows:

A. If insurance proceeds are sufficient to effect total restoration of damaged or destroyed Association Property, then the Association shall cause such Association Property to be repaired and reconstructed substantially as it previously existed.

B. If insurance proceeds are insufficient to effect total restoration, and the cost of restoration exceeds such proceeds by TWENTY-FIVE THOUSAND DOLLARS (\$25,000) or less, then the Association shall cause the Association Property to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as an Assessment proportionally against each of the Contributing Lots in accordance with the provisions of Article VI herein.



C. If the insurance proceeds are insufficient to effect total restoration and the cost of restoration of the Association Property exceeds said proceeds by over TWENTY-FIVE THOUSAND DOLLARS. (\$25,000), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (a) to rebuild and restore in substantially the same manner as the Improvements existed prior to the damage or destruction and to raise the necessary funds by levying equal construction Assessments against all Contributing Lots; (b) to rebuild and restore in a manner less expensive in replacing these Improvements; or (c) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Association Property shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, no decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements shall be effective without the prior written approval of Declarant as long as Declarant owns all or any portion of the Property.

D. Each Owner shall be liable to the Association for any damage to the Association Property not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family, lessees, invites and guests, both minors and adults.

E. In the event that the repairs and replacements were paid for by any Special Assessments as well as insurance proceeds and regular Assessments, then, if after the completion of and payment for the repair, replacement, construction or reconstruction there shall remain any excess in the hands of the Association, it shall be presumed that the monies disbursed in payment of any repair, replacement, construction and reconstruction were first disbursed from insurance proceeds and regular Assessments and any remaining funds shall be deemed to be the remaining Special Assessments which shall be returned to the Contributing Lot Owners by means of a pro rata distribution in accordance with the collection of such Special Assessments.

Flood insurance for the Association Property, if available under the National Flood Insurance Program, shall be purchased, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all buildings and other insurable property located in the flood hazard area.

Section 2. CONDEMNATION. In the event the Association receives any award or payment arising from the taking of any Association Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total voting interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of Lots as their respective interests may appear.

Section 3. WAIVER OF SUBROGATION. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, the Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement of said persons, but only to the extent that such insurance proceeds are received in compensation for such loss.

#### ARTICLE XIII GENERAL PROVISIONS

Section 1. CONFLICT WITH OTHER MYSTIC FOREST DOCUMENTS. In the event of any conflict between the provisions hereof and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Association, the provisions of this Declaration shall control.

Section 2. NOTICES. Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) any Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; and (ii) the Association, certified mail, return receipt requested, at 9240 Sunset Drive, Suite 216, Miami, Florida 33173, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 9240 Sunset Drive, Suite 216, Miami, Florida 33173, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners.

Section 3. ENFORCEMENT. The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Lot and/or Home), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees.

Section 4. INTERPRETATION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of recreational facilities and Association Property. Article, Section and Paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect

the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

Whenever the context so requires or admits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

Section 5. SEVERABILITY. In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

Section 6. CERTAIN RIGHTS OF DECLARANT. Notwithstanding anything to the contrary herein contained, no Improvements constructed or installed by Declarant shall be subject to the approval of the Association or the Owners or the provisions and requirements of this Declaration, although it is the intent of Declarant to create a community with a common scheme of development. Notwithstanding the other provisions of this Declaration, Declarant reserves for itself, and Declarant and its nominees shall have, the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Homes or real property within or outside Mystic Forest, including, but not limited to, the right to maintain models and a sales and/or leasing office, a construction office, a service office, place signs, employ sales, leasing, construction and service personnel, use the Association Property and model Homes, and Declarant further reserves the right to make repairs to the Association Property and to carry on construction activity for the benefit of the Property. Declarant, and its nominees, may exercise the foregoing rights without notifying the Association. Any such models, sales and/or leasing office, construction office, service office, signs and any other items pertaining to such sales, leasing, construction or service efforts shall not be considered a part of the Association Property and shall remain the property of Declarant. This Section 6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Mystic Forest Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section 6, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the Property securing any such loan to Declarant, or acquires title thereto

by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section 6, which are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Mystic Forest Documents, shall terminate upon Declarant no longer owning any portion of the Property (and having any equitable or legal interest therein) or upon such earlier date as Declarant shall notify the Association in writing of Declarant's voluntary election to relinquish the aforesaid rights and privileges.

Section 7. DISPUTES AS TO USE. In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

Section 8. AMENDMENT AND MODIFICATION. The process of amending or modifying this Declaration shall be as follows:

A. Amendments to this Declaration shall be made by: (i) the consent of the Owners owning at least sixty-seven percent (67%) of all Lots; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning at least sixty-seven percent (67%) of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

B. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the Owners.

C. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Institutional Mortgagee under the Mystic Forest Documents without the specific written approval of such Declarant, Association and/or Institutional Mortgagee affected thereby. Finally, notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 6 of this Article XII and any such amendment shall be deemed to impair and prejudice the rights of Declarant.

D. A true copy of any amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Property requesting notice. The amendment shall become effective upon the recording of a Certificate of Amendment to this Declaration setting forth the amendment or modification amongst the Public

Records of the County.

E. Notwithstanding anything contained herein to the contrary. Declarant may, without the consent of any Owners, file any amendments which may be required by an Institutional Mortgagee for the purpose of satisfying its development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any such Declarant's filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by the United States Department of Housing and Urban Development.

Section 9. DELEGATION. The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

Section 10. TERM. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property, and inure to the benefit of Declarant, the Association, Owners, and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless an instrument agreeing to terminate this Declaration signed by Owners owning at least sixty-seven percent (67%) of the Lots and Institutional Mortgagees holding first mortgages encumbering at least sixty-seven percent (67%) of all Lots encumbered by first mortgages held by Institutional Mortgagees is recorded amongst the Public Records of the County, upon which 30 days subsequent to such recording this Declaration shall be terminated.

In the event this Declaration is terminated or the Association ceases to exist for any reason, the Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Association Property in the manner described herein.

A. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Mystic Forest Documents and the books, records and audited financial statements of the Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Association.

B. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot and the legal description of such Lot, the Association shall provide such Listed Mortgagee with timely written notice of the following:

1. Any condemnation, loss or casualty loss which affects any material portion of the Association Property;
  2. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
  3. Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot; and
  4. Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his obligations under the Mystic Forest Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.
- C. Right of Listed Mortgagee to Receive Financial Statement. Any Listed Mortgagee shall, upon written request made to the Association, be entitled to audited financial statements for the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request. The audited financial statements shall be available within 120 days following the end of the Association's fiscal year.

Section 12. APPROVAL OF ASSOCIATION LAWSUITS BY OWNERS. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- A. The collection of Assessments;
- B. The collection of other charges which Owners are obligated to pay pursuant to the Mystic Forest Documents ;
- C. The enforcement of the use and occupancy restrictions contained in the Mystic Forest Documents;
- D. In an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Association Property or to Owner (s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4) of the Owners); or
- E. Filing a compulsory counterclaim.

Section 13. COMPLIANCE WITH PROVISIONS. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot except as elsewhere herein provided does and shall be conclusively deemed to have consented to and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property. Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than Declarant.

Section 14. SECURITY. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Additionally, NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL MEMBERS AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY LOT OR HOME, AND TENANTS, GUESTS, AND INVITES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, DECLARANT, OR ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT: (a) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (b) THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD AND THE COMMITTEE, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR HOMES, AND TO THE CONTENTS OF LOTS OR HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD AND THE COMMITTEE, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE,



RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

Section 15. COVENANT RUNNING WITH THE LAND. All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Lots and Homes and the Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of the Declarant and subsequent Owner(s) of the Homes, Lots, and Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall it be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Owners, lessees, and occupants of the Lots and Homes shall be subject to and shall comply with the provisions of this Declaration and such Articles, Bylaws and applicable rules and regulations as exist and may from time to time be amended. The acceptance of a deed of conveyance to a Lot, or the entering into a lease of or occupancy of a Home, shall constitute an adoption and ratification by such Owner, lessee, or occupant of the provisions of this Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Association, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

Section 16. NO PUBLIC RIGHT OR DEDICATION. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Association Property to the public, or for any public use.

Section 17. NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE ASSOCIATION PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

IN WITNESS WHEREOF, this Declaration has been signed by Declarant and joined in by the Association on the respective dates set forth below.



WITNESSES AS TO DECLARANT:

Signature

Signature

DECLARANT:

MYSTIC FOREST INVESTMENTS, L.L.C.,  
a Florida Limited Liability Company

by:

WITNESSES AS TO ASSOCIATION:

Signature

Signature

ASSOCIATION:

MYSTIC FOREST HOMEOWNERS  
ASSOCIATION INC., a Florida corporation

by:

STATE OF FLORIDA  
COUNTY OF DADE

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of August, 2000,  
by Antonio Sarmiento, as President of Marant Corporation, a Florida Corporation,  
as manager of Mystic Forest Investments, L.L.C., a Florida limited Liability  
Company, on behalf of the corporation. He is personally known to me  
or has produced Personality History as identification.

OFFICIAL NOTARY SEAL  
MERIDA D GALCERAN  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC727969  
MY COMMISSION EXP. MAR. 25, 2002

Notary Public, State of Florida

STATE OF FLORIDA

COUNTY OF DADE

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of August, 2000,  
by Antonio Sarmiento, as Manager of Mystic Forest Homeowners Association, Inc., a Florida  
corporation, on behalf of the corporation. He is personally known to me or has produced  
Personality History as identification.

Notary Public, State of Florida

OFFICIAL NOTARY SEAL  
MERIDA D GALCERAN  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC727969  
MY COMMISSION EXP. MAR. 25, 2002

Exhibit "A"

The plat of **MYSTIC FOREST** as recorded July 18, 2001, under Clerk's File Number 01R379712, in Plat Book 157, at Page 72, of the Public Records of Miami-Dade County, Florida.

BYLAWS  
OF  
MYSTIC FOREST HOMEOWNERS ASSOCIATION, INC.

Section 1. Identification of Association

These are the Bylaws of Mystic Forest Homeowners Association, Inc. ("Association") as duly adopted by its Board of Directors ("Board"). The Association is a corporation not for profit, organized pursuant to Chapter 617, Florida Statutes.

1.1. The office of the Association shall be for the present at Miami, Florida 33175 and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the Association shall bear the name of the Association, the word "Florida" and the words "Corporation Not For Profit. "

Section 2. Explanation of Terminology

The terms defined in the Articles of Incorporation of the Association ("Articles") as well as in the Declaration of Covenants, Restrictions and Easements for Mystic Forest ("Declaration") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

Section 3. Membership; Members' Meetings; Voting and Proxies

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

3.3. Special meetings (meetings other than the Annual Members'

Meeting) of the Members shall be held at any place within the County whenever called by the President or Vice President or by a majority of the Board. A special meeting must be called by such President or Vice President upon receipt of a written request from Members having the right to vote at least one-third (1/3) of the total number of votes entitled to be cast by Members at any such special meeting.

3.4. Except as otherwise provided in the Articles, a written notice of all Members' meetings, whether the Annual Members' Meeting or special meetings (collectively "Meeting"), shall be given to each Member entitled to vote thereat at his last known address as it appears on the books of the Association and shall be mailed to the said address not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notice of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the Mystic Forest Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast thirty percent (30%) of the total number of votes of the Members.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written "Proxy" (as hereinafter defined) shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the Mystic Forest Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. At any Annual Members' Meeting when elections of Directors are to occur, written ballots are to be supplied to Members for such purposes. Furthermore, at any Annual Members' Meeting at which Directors are to be elected, the "Chairman" (as hereinafter defined in Paragraph 7.2 hereof) shall appoint an "Election Committee" consisting of three (3) Members to supervise the election, count and verify ballots and Proxies, disqualify votes if such disqualification is justified under the circumstances and to certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3.8. If a quorum is not in attendance at a Meeting, the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Such votes may be cast in person or by Proxy. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast according to such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of ten percent (10%) of the votes represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

#### Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant appointed Directors, Directors must be Members or the parents, children or spouses of Members.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his successor is duly elected and qualified or until he resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of their election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. No further notice of the organizational meeting shall be necessary.

4.5. Regular meetings of the Board may be held at such time; and places in the County as shall be determined from time to time by a majority of Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3rd) of the Directors. Such special meeting may be held in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally or by mail, telephone or telegraph at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director.

4.7. Notice of all board and committee meetings shall be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except for an emergency meeting. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered at the meeting and the nature of the assessments.

4.8 A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meetings of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further

notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The minutes shall be maintained in written form or in another form that can be converted to written form within a reasonable time.

4.12. The Board shall have the power to appoint an "Executive Committee (s)" of the Board consisting of not less than three (3) Directors. An Executive Committee(s) shall have and exercise such powers of the Board as may be delegated to such Executive Committee(s) by the Board.

4.13. Meetings of the Board shall be open to all Members on such terms as the Board may determine. However, the Board may also hold closed meetings to the extent permitted by applicable law.

4.14. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of Directors.

#### Section 5. Powers and Duties of the Board

5.1 All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the Mystic Forest Documents, as well as all of the powers and duties of a director of a corporation not for profit.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association fund. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

#### Section 6. Late Fees

An Owner who fails to timely pay any Assessment shall be charged a

late charge of TWENTY-FIVE DOLLARS (\$25) by the Association for such late Assessment. Owners shall be responsible to pay all legal fees (including, but not limited to, attorney and paralegal fees and court costs) incurred in connection with the collection of late Assessments whether or not an action at law to collect said Assessment and foreclose the Association's lien has been commenced. The Board has authorized the following initial schedule of fees for such circumstances:

(a) ONE HUNDRED FIFTY DOLLARS (\$150) for a Claim of Lien plus recording costs, attorneys' fees and sending of Notice of Intention to Foreclose;

(b) ONE HUNDRED DOLLARS (\$100) for a Satisfaction of Lien plus recording costs; and

(c) Any further action would require an hourly computation of attorney and/or paralegal time spent pursuing collection of such unpaid Assessments.

#### Section 7. Officers of the Association

7.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except where the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President. Secretary or Assistant Secretary.

7.2. The President shall be the chief executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he may, in his discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall preside at all meetings of the Board and the Members; provided, however, that the President may appoint a substitute.

7.3. In the absence or disability of the President, a Vice President shall exercise the powers and perform the duties of the President. If more than one (1) Vice President, the Board shall designate which Vice President is to perform which duties. The Vice President (s) shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board. In the event there shall be more than one Vice President elected by the Board, then they shall be designated "First," "Second,"



etc., and shall exercise the powers and perform the duties of the presidency in such order.

7.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the, Secretary under the supervision of the Secretary.

7.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

7.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude the contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of Mystic Forest.

#### Section 8. Resignations

Any Director or officer may resign his post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Lots owned by any Director or officer other than appointees of Declarant shall constitute a written resignation of such Director or officer.

#### Section 9. Accounting Records; Fiscal Management

9.1. The Association shall use the cash basis method of accounting and shall maintain accounting records in accordance with good accounting practices, which shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and

dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; and (ii) an account for each Contributing Lot within Mystic Forest which shall designate the name and address of the Contributing Lot Owner thereof, the amount of Individual Lot Assessments and all other Assessments, if any, charged to the Contributing Lot, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due.

9.2. The Board shall adopt a Budget (as provided for in the Declaration) of the anticipated Operating Expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget Meeting") called for that purpose to be held during the month of November of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the Operating Expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, and each Contributing Lot Owner shall be given notice of the Individual Lot Assessment applicable to his Contributing Lot(s). The copy of the Budget shall be deemed furnished and the notice of the Individual Lot Assessment shall be deemed given upon its delivery or upon its being mailed to the Contributing Lot Owner shown on the records of the Association at his last known address as shown on the records of the Association.

9.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a pro rata basis any expenses which are prepaid in any one calendar year for Operating Expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating Expenses and for all unpaid Operating Expenses previously incurred; and (v) items of Operating Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating Expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the cash basis method of accounting.

9.4. The Individual Lot Assessment shall be payable as provided for in the Declaration.

9.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating Expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results

from there being greater Operating Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Individual Lot Assessment.

9.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in, which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

9.7. A report of the accounts of the Association shall be made annually by an accountant and a copy of the report shall be furnished to each Member who requests same in writing no later than the first day of April of the year following the year for which the report is made. The report shall be deemed to be furnished to the Member upon its delivery or mailing to the Member at his last known address shown on the records of the Association.

#### Section 10. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or rescind then existing rules and regulations for the operation of Mystic Forest; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the Mystic Forest Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Notwithstanding the foregoing, where rules and regulations are to regulate the use of specific portions of the Association Property, same shall be conspicuously posted at such facility and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view towards protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

#### Section II. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of meetings of all Members and the Board/provided, however, if such rules of order are in conflict with any of the Mystic Forest Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

#### Section 12. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his ownership. The Association shall maintain such information. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

#### Section 13. Amendment of the Bylaws

13.1. These Bylaws may be amended as hereinafter set forth in this Section 13.

13.2. Any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

(i) 67% of the vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by 67% of the action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or

(ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

13.3. Notwithstanding any of the foregoing provisions of this Section 13 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board as described in the Articles, which First Board shall have the power to amend, modify, adopt and repeal any Bylaws with the consent of 67% of the Members.

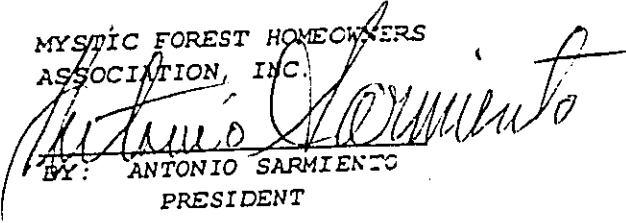
13.4. Notwithstanding the foregoing provisions of this Section 13, there shall be no amendment to these Bylaws which shall abridge, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant for so long as Declarant holds at least one (1) Lot for sale in the ordinary course of business; or (ii) any Institutional Mortgagee, as such term is defined in the Declaration, without the prior written consent of such Institutional Mortgagee.

13.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment of addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

#### Section 14. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

MYSTIC FOREST HOMEOWNERS  
ASSOCIATION, INC.

  
BY: ANTONIO SARMIENTO  
PRESIDENT

RECORDED IN OFFICIAL RECORDS DEPARTMENT  
OF DADE COUNTY  
RECORD VERIFIED  
HARVEY RUVIN  
CLERK CIRCUIT COURT