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**DECLARATION
OF
PROTECTIVE COVENANTS
OF
THE PRESERVE**

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Exhibit A The Preserve Property

**DECLARATION OF PROTECTIVE COVENANTS
OF THE
PRESERVE**

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, UNITED STATES STEEL LLC, a Delaware limited liability company (herein referred to as **"DEVELOPER"**), has heretofore acquired the fee title interest in, or an option on, the land and real property described in **Exhibit "A"**, annexed hereto and made a part hereof, said land being situated in Jefferson County, Alabama, and referred to herein as **"The Preserve Property"**; and

WHEREAS, DEVELOPER intends to form a planned development (to be known as **"The Preserve"**) on The Preserve Property consisting of commercial, residential, recreational and other areas; and

WHEREAS, DEVELOPER has caused The Preserve Owner's Association, Inc. to be formed for the purpose of providing a non-profit organization to serve as representative of **DEVELOPER** and owners of any part of The Preserve Property which hereafter is made subject to these protective covenants (herein collectively referred to as **"Restrictions"**) with respect to: the assessment, collection and application of all charges imposed hereunder; the enforcement of all covenants contained herein and all liens created hereby; the creation, operation, management and maintenance of the facilities and services referred to hereafter and such other purposes described in its charter; and

WHEREAS, DEVELOPER may desire to subject, from time to time, portions of The Preserve Property intended for development to this Declaration.

NOW, THEREFORE, DEVELOPER does hereby proclaim, publish and declare that any part of The Preserve Property which becomes subject to these Restrictions shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and improved subject to this Declaration, which shall run with the land and shall be binding upon **DEVELOPER** and upon all parties having or acquiring any right, title or interest in any part of The Preserve Property which is subject to this Declaration.

THE RESTRICTIONS CONTAINED HEREIN SHALL NOT APPLY TO OR AFFECT ANY OF THE PRESERVE PROPERTY WHICH IS NOT SUBJECTED SPECIFICALLY BY WRITTEN INSTRUMENT TO THIS DECLARATION.

**ARTICLE I
MUTUALITY OF BENEFIT AND OBLIGATION**

The Restrictions set forth herein are made for the mutual and reciprocal benefit of each and every part of The Preserve Property subjected to the Restrictions (sometimes referred to as **"Property"**)

or "Member's Property") and are intended to create mutual, equitable servitudes upon each such part of the Property and in favor of each and all parts of the Property therein, to create reciprocal rights between the respective owners and future owners of such Property; and to create a privity of contract and estate between the grantees of said Property, their heirs, successors and assigns. The Restrictions do not apply to or affect any part of The Preserve Property which is not subjected specifically by written instrument to this Declaration. All Member's Property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to Member's Property, including, but not limited to, the lien provisions set forth in Article 9.

ARTICLE II ARCHITECTURAL COMMITTEE; ARCHITECTURAL CONTROL

2.1 Preserve Architectural Review Committee. The Preserve Architectural Review Committee (herein the "PARC") shall be composed of at least three (but not more than five) individuals designated and redesignated from time to time (i) by DEVELOPER until control of the PARC is specifically delegated by the DEVELOPER to the POA, and (ii) by the POA after delegation of such control. Delegation of control of the PARC from the DEVELOPER to the POA shall be evidenced by an instrument signed by the DEVELOPER and filed for record in the Probate records of Jefferson County, Alabama. The delegation of such control of the PARC shall not be tied to the transfer of control of the POA from the DEVELOPER to the Class A members of the POA, but rather shall not occur until the DEVELOPER has sold all property described on **Exhibit "A"** hereto, or such sooner time as the DEVELOPER shall determine.

Except as hereinafter provided, the affirmative vote of a majority of the membership of the PARC shall be required in order to adopt or promulgate any rule or regulation, or to make any findings, determinations, ruling or order, or to issue any permit, authorization or approval pursuant to directives or authorizations contained herein. With regard to review of Plans as set forth in this Article II, however, and with regard to all other specific matters (other than the promulgation of rules and regulations) as may be specified by resolution of the entire PARC, each individual member of the PARC shall be authorized to exercise the full authority granted herein to the PARC. Any approval by one such member of any Plans submitted under this Article II, or the granting of any approval, permit or authorization by one such member in accordance with the terms hereof, shall be final and binding. Any disapproval, or approval based upon modification or specified conditions by one such member shall also be final and binding.

2.2 Community Guidelines. The DEVELOPER may prepare the initial Community Guidelines, which may contain general provisions and architectural standards and guidelines applicable to all of The Preserve, as well as specific provisions which may vary among different parts of The Preserve. The Community Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the PARC in considering Plans submitted by an Owner or Builder for review and approval. The Community Guidelines are not the exclusive basis for decisions of the PARC and compliance with the Community Guidelines does not guarantee approval of any application.

DEVELOPER shall have sole and full authority to amend the Community Guidelines as long as it owns any portion of or has a right to expand The Preserve pursuant to the provisions of this Declaration, notwithstanding a delegation of reviewing authority to the PARC, unless the DEVELOPER also delegates the power to amend to the PARC. Upon termination or delegation of

DEVELOPER's right to amend, the PARC shall have the authority to amend the Community Guidelines with the consent of the Board.

Any amendments to the Community Guidelines shall be prospective only and shall not apply to require modifications or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Community Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Community Guidelines less restrictive.

The PARC shall make the Community Guidelines available to Owners and Builders who seek to engage in development within The Preserve. In the DEVELOPER's discretion, such Community Guidelines may be recorded in the public records of Jefferson County, Alabama, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Community Guidelines was in effect at any particular time.

Prior to preparing Plans for a Structure, the Builder or Owner should obtain the most current Community Guidelines from the PARC.

2.3 Approval Required. No Structure as defined in Section 17.22 shall be commenced, erected, placed, moved on to or permitted to remain on any Parcel, nor shall any existing Structure upon any Parcel be altered in any way which materially changes the exterior appearance thereof, nor shall any new use be commenced on any Parcel, unless three sets of Plans (including a description of any proposed new use) thereof shall have been submitted to and approved in writing by the PARC. Any approval granted by the PARC shall be effective only if such approval is in writing. Such Plans shall be in such form and shall contain such information as may be required by the PARC, but in any event shall include: (i) architectural plans, elevations and specifications showing the nature, kind, exterior color schemes, shape, height and materials of all Structures proposed for the Parcel; (ii) a site plan of the Parcel showing the location with respect to the particular Parcel (including proposed front, rear and side setbacks) of all Structures, the location thereof with reference to Structures on adjoining portions of the Property, and the number and location of all parking spaces and driveways on the Parcel; (iii) a grading plan for the particular Parcel; and (iv) a plan for landscaping. All of said Plans shall address the matters set forth in Article IV, as applicable.

2.4 Basis For Disapproval of Plans. The PARC shall have the right to disapprove any Plans submitted hereunder because of any of the following:

- (a) failure of such Plans to comply with any of the Restrictions or the Community Guidelines, including without limitation, any specified architectural styles, or construction details;
- (b) failure to include information in such Plans as may have been reasonably requested;
- (c) objection to the exterior design, appearance or materials of any proposed Structure;
- (d) objections to the location of any proposed Structure upon any Parcel or with reference to other Parcels in the vicinity;
- (e) objection to the site plan, grading plan, drainage plan or landscaping plan for any Parcel;
- (f) objection to the color scheme, finish, proportions, style of architecture, materials, height, bulk, or appropriateness of any proposed Structure;

- (g) objection to parking areas proposed for any Parcel on the grounds of (i) incompatibility to proposed uses and Structures on such Parcel or (ii) the insufficiency of the size of parking areas in relation to the proposed use of the Parcel;
- (h) failure of the Plans to take into consideration the particular topography, vegetative characteristics, natural environment and storm water runoff of the Parcel; or
- (i) any other matter which, in the judgment of the PARC, would render the proposed Structure, Structures or uses inharmonious with the general plan of improvement of the Property or with Structures or uses located upon other Parcels in the vicinity.
- (j) failure of the Plans to comply with construction details of doors, windows, gables, *etc.*

Approval of any such Plans shall terminate and be rendered void if construction is not begun within six (6) months after such approval unless such six (6) month period is extended by agreement with the PARC in which event the extended time period shall be applicable.

In any case where the PARC shall disapprove any Plans submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based. In any such case the PARC shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal can be prepared and submitted for approval.

THE SCOPE OF REVIEW BY THE ARCHITECTURAL COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

2.5 Retention of Copy of Plans. Upon approval by the PARC of any Plans submitted hereunder, a copy of such Plans, as approved, shall be deposited for permanent record with the PARC, and two copies of such Plans bearing such approval, in writing, shall be returned to the applicant submitting the same.

2.6 Community Guidelines; Effect of Approval and Disapproval; Time for Approval. The Community Guidelines may contain rules governing the form and content of Plans to be submitted for approval or requiring specific improvements on Parcels, including, without limitation, exterior lighting and planting, and may contain statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such rules and such statements of policy may be amended or revoked by the DEVELOPER (or the PARC after delegation of the right to amend) at any time as provided in Section 2.2 hereof, and no inclusion in, omission from or amendment of any such rule or statement shall be deemed to bind the PARC to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the PARC's discretion as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any Parcel of any Plans shall not be deemed a waiver of the PARC's right, in its discretion, to disapprove such Plans or any of the features or elements included therein if such Plans or any specifications, features or elements thereof are subsequently submitted for use on any other Parcel or Parcels. Approval of any such Plans relating to any Parcel, however, shall be final as to that Parcel and such approval may not be revoked or rescinded thereafter, provided, (i) that the Structures or uses shown or described on or in such

Plans do not violate any specific prohibition contained in the Restrictions, and (ii) that the Plans, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all Structures on and uses of the Parcel in question.

2.7 Failure to Obtain Approval. If any Structure shall be altered, erected, placed or maintained upon any Parcel, or any new use commenced on any Parcel, otherwise than in accordance with Plans approved by the PARC pursuant to the provisions of this Article II, such alteration, erection, maintenance or use shall be deemed to have been undertaken in violation of this Article II, and without the approval required herein, and, upon written notice from the PARC, any such Structure so altered, erected, placed or maintained upon any Parcel in violation hereof shall be removed or realtered, and any such use shall be terminated, so as to extinguish such violation.

If fifteen (15) days after the notice of such a violation the Owner of the Parcel upon which such violation exists shall not have taken reasonable steps toward the removal or termination of the same, DEVELOPER or the POA shall have the right, through its agents and employees, to enter upon such Parcel and to take such steps as may be necessary to extinguish such violation and the cost thereof shall be a binding, personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this Section 2.7 shall not be valid as against a *bona fide* purchaser (or *bona fide* mortgagee) of the Parcel in question unless a lien shall have been filed in a court of record in the county in which the Parcel is located prior to the recordation among the land records of such county of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

2.8 Certificate of Compliance. Upon completion of the construction or alteration of any Structure upon any Parcel in accordance with Plans approved by the PARC, or on a resale or refinance of a Parcel, the PARC shall, upon written request of the Owner thereof, issue a certificate of compliance in form suitable for recordation, identifying such Structure and the Parcel on which such Structure is placed, and stating that the Plans, the location of such Structure, the maintenance of the Parcel and the use or uses to be conducted thereon have been approved and that such Structure complies with the requirements of the PARC. Preparation and recording of such certificate shall be at the expense of such Owner. Any certificate of compliance issued in accordance with the provisions of this Section 2.8 shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that, as of the date of the certificate, all Structures on the Parcel, and the use or uses described therein comply with all the requirements of this Article II, and with all other requirements of this Declaration as to which the PARC exercises any discretionary or interpretive powers.

2.9 Inspection and Testing Rights. Any agent of DEVELOPER, POA or the PARC may at any reasonable time or times enter upon and inspect any Parcel and any improvements thereon for the purpose of ascertaining whether the maintenance of such Parcel and the maintenance, construction, or alteration of Structures thereon are in compliance with the provisions hereof; and neither DEVELOPER, POA nor the PARC nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection. Any such inspection shall be for the sole purpose of determining compliance with these Restrictions, and neither the making of any such inspection, nor the failure to make any such inspection, shall be relied upon by the Owner of a Parcel or any third persons or entities for any purpose whatsoever; nor shall any such inspection obligate the DEVELOPER, the POA or the PARC to take any particular action based on the inspection.

2.10 Waiver of Liability. Neither the PARC nor any architect nor agent thereof, nor the POA, nor the DEVELOPER, nor any agent or employee of the foregoing, shall be responsible in any way for any failure of Structures to comply with requirements of this Declaration, although a certificate of compliance has been issued, nor for any defects in any Plans submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such Plans, and all persons relying thereon or benefitting therefrom agree not to sue or claim against the entities and persons referred to in this Section 2.10 for any cause arising out of the matters referred to in this Section 2.10 and further agree to and do hereby release said entities and persons for any and every such cause.

UNDERGROUND CONDITIONS. THE PROPERTY MAY BE LOCATED IN AN AREA WHICH INCLUDES UNDERGROUND MINES, TUNNELS, SINKHOLES AND SUBSURFACE CONDITIONS. THE APPROVAL OF DEVELOPMENT PLANS BY THE ARCHITECTURAL COMMITTEE SHALL NOT BE CONSTRUED IN ANY RESPECT AS A REPRESENTATION OR WARRANTY BY THE ARCHITECTURAL COMMITTEE OR DEVELOPER TO ANY OWNER THAT THE SURFACE OR SUBSURFACE CONDITIONS OF ANY PARCEL ARE SUITABLE FOR THE CONSTRUCTION OF A DWELLING OR OTHER STRUCTURES THEREON. IT SHALL BE THE SOLE RESPONSIBILITY OF EACH PARCEL OWNER TO DETERMINE THE SUITABILITY AND ADEQUACY OF THE SURFACE AND THE SUBSURFACE CONDITIONS OF THE PARCEL. NEITHER DEVELOPER NOR THE ARCHITECTURAL COMMITTEE SHALL BE LIABLE OR RESPONSIBLE FOR ANY DAMAGE OR INJURY SUFFERED OR INCURRED BY AN OWNER OR ANY OTHER PERSON AS A RESULT OF SURFACE OR SUBSURFACE CONDITIONS AFFECTING A PARCEL OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, ANY SURFACE OR SUBSURFACE DRAINAGE OR UNDERGROUND MINES, TUNNELS, SINKHOLES OR OTHER CONDITIONS OR TYPES OF GROUND SUBSIDENCE OCCURRING ON OR UNDER ANY PARCEL.

2.11 Charges/Fees. The PARC shall have the right to establish, amend, change and modify from time to time reasonable charges and fees for the review of any Plans or requests for approval submitted pursuant to the provisions hereof. Furthermore, the PARC shall, upon request and at reasonable charges, furnish to any Parcel Owner a written certificate setting forth whether all necessary PARC approvals have been obtained in connection with any dwelling or other improvements on any Parcel.

2.12 Variances. The PARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the matters set forth in these Protective Covenants. Any variance approved by the PARC shall be in writing and may be further conditioned on receipt of any necessary governmental approvals.

ARTICLE III ZONING AND SPECIFIC RESTRICTIONS

The Restrictions shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by

specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases or the Restrictions shall be taken to govern and control.

ARTICLE IV CHANGING NATURE OF THE PRESERVE; SITE DEVELOPMENT

4.1 Changing Nature of The Preserve; Release. Any person who shall purchase a Parcel in The Preserve shall, by such purchase, be deemed by these Restrictions to acknowledge to the DEVELOPER such person's understanding and agreement that the roadway locations and designs, lot sizes, dimensions and layout, densities, house sizes and designs, walks, parks, Community Facilities and other amenities within The Preserve may change from time to time and may differ or be deleted entirely from those which may be shown on any drawings, plans, renderings, brochures and other marketing materials. Every person or entity who (or which) acquires any interest in The Preserve acknowledges that The Preserve is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to any such changes.

ALL DRAWINGS, PLANS AND RENDERINGS, WHETHER FURNISHED BY THE DEVELOPER, ANY AGENT OF THE DEVELOPER, OR ANY OTHER SOURCE, SHOULD BE CONSIDERED CONCEPTUAL IN NATURE AND NOT AS ANY REPRESENTATION OR WARRANTY THAT THE FINISHED DEVELOPMENT WILL BE LAID OUT OR DEVELOPED IN ACCORDANCE WITH ANY SUCH DRAWINGS, PLANS AND RENDERINGS.

Only a recorded subdivision plat approved by the City of Hoover shall be considered final as to the matters shown thereon; however, DEVELOPER shall have the right to request a change of any recorded subdivision plat in accordance with the procedures therefor established by the City of Hoover. **Each person who shall purchase a Parcel within The Preserve shall, by the acceptance of a Deed to such Parcel, be deemed by these Restrictions to have released the DEVELOPER from any claim, demand, cost or liability in any way arising out of the matters set forth in this Section 4.1.**

4.2 Site to be Staked Prior to Tree Cutting. After the plan for the Structure is approved, the site of the Structure must be staked out and such site approved by the PARC before tree cutting is done. Existing vegetation on each Parcel shall be saved whenever it is practical to do so. All areas on site and outside the areas of disturbance shall be "corded off" with high visibility surveyor's flagging tape and no vegetation shall be removed from the corded areas and no materials may be stored over the roots of this vegetation without prior approval of the PARC. Removal of "underbrush" from the corded areas is expressly prohibited except on PARC approval. No tree may be cut or removed from any Parcel without consent of the PARC until the Plans, including building plans, site plans, and site staking, are approved by the PARC.

4.3 Erosion Control. Erosion control measures, including installation and maintenance of silt fences and, if necessary, temporary detention ponds, shall be taken by the Owner of a Parcel, or his contractors, to protect adjacent properties during construction on such Parcel and thereafter until the soil is stabilized on the Parcel. Such erosion control measures shall be properly maintained at all time during the course of construction and thereafter until the

soil is stabilized. All such erosion control measures, including slope stabilization, must be specified on the grading plan. must be approved by the PARC prior to commencement of grading activities, shall comply with the Best Management Practices of the Alabama Department of Environmental Management, the Jefferson County Storm Water Management Department, AND ALL APPLICABLE LAWS, RULES AND REGULATIONS GOVERNING EROSION CONTROL.

The Owner of a Parcel shall defend, indemnify and hold Developer, the POA and the PARC harmless from and against any and all fines, penalties and costs (including attorneys' fees, consultants' fees, and costs of litigation including trial and appeal) arising out of the Owner's or its contractors' failure to comply with all applicable laws, rules, regulations and ordinances of all local, state and federal governmental agencies relating to erosion control and stormwater maintenance on the Owner's Parcel.

Any storm water retention ponds created during construction on a Parcel shall not remain as permanent ponds after completion of construction unless so provided in the grading, site and landscaping plans submitted to and approved by the PARC.

4.4 Utility Lines and Appurtenances. All gas, water, sewer, telephone, cable television, communication, electrical feeder and service lines, and all other utility lines (collectively "Utility Lines") shall be installed as underground service unless otherwise approved by the PARC. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the PARC; provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of either transformers, telephone pedestals, or other utility hardware. To the extent of the interest of the Owner of a Parcel, the Owner of a Parcel will not erect or grant to any person, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical, telephone, cable television, communication or other utility service on said real estate (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the PARC. Nothing herein shall be construed to prohibit overhead street lighting or ornamental yard lighting where serviced by underground wires or cables. Where underground electric service is to be installed, in order to permit installation of underground electric service to each Parcel for the mutual benefit of all owners therein, no Owner of any such Parcel will commence construction of any house on any such Parcel until such Owner (1) notifies the electric utility that such construction is proposed, (2) grants in writing to the electric utility such rights and easements as the electric utility requires in connection with its construction, operation, maintenance and removal of underground service lateral on each Parcel, and (3) otherwise complies with the Rules and Regulations for Underground Residential Distribution on file with and approved by the Alabama Public Service Commission.

If required by the electric utility, such electric utility, its successors and assigns, may retain title to the underground service lateral and outdoor metering trough or house power box (exclusive of circuit breakers) serving each said house, and said service entrance facilities provided by such utility will not in any way be considered a fixture or fixtures and thereby a part of said real estate, but will remain personal property belonging to such utility, its successors and assigns, in accordance with applicable Rules and Regulations filed with and approved by the Alabama Public Service Commission.

4.5 Connection Points For Utility Lines. To the extent of the interests of the Owner of each Parcel, such Owners agree to connect Utility Lines at points designated by Developer.

4.6 Landscaping. The landscape plan must be approved by the PARC prior to any site disturbance. The landscape plan shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the Parcel. The Owner must faithfully execute the landscape plan as submitted to and approved by the PARC. If the Owner should fail to faithfully execute the landscape plan, the POA shall have the right to enter into a contract with a third party for the execution of the landscape plan as approved, and the cost thereof shall be a binding personal obligation of the Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question. The lien provided in this Section 4.6 shall not be valid as against a *bona fide* purchaser (or *bona fide* mortgagee) of the Parcel in question unless a lien shall have been filed in a court of record in the county in which the Parcel is located prior to the recordation among the land records of such county of the deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

4.7 Colors; Architectural Styles. All exterior building materials must be of colors approved by the PARC. All architecture on each Parcel must be compatible with the "park-like" atmosphere of The Preserve development and must be compatible with surrounding buildings.

4.8 Exterior Lighting. Exterior lighting plans must be set forth on the architectural or landscape plans for a Parcel, and must be approved by the PARC.

4.9 Mailboxes. At the time of construction of a house or building on each Parcel, there must be erected a mailbox bearing the street number. All mailboxes and house numbers must be erected by the Parcel Owner in strict conformity with design criteria established by the PARC, which may be common for every Parcel. If allowed by the Community Guidelines, the PARC may approve the use of multiple mailbox posts or collective mailbox stations or similar mailbox provisions.

4.10 Completion of Construction. When the construction of any Structure is once begun, work thereon must be prosecuted diligently and continuously, and, unless prior written approval has been obtained from the PARC, **all construction must be completed within one (1) year from the date commenced**; provided, that such requirement shall not apply to interior finishes so long as the exterior of the Structure, including, without limitation, all exterior finishes and landscaping, are completed within such time period.

4.11 Occupancy. There shall be no occupancy of any dwelling unit until the interior and exterior of the dwelling is completed, a Certificate of Occupancy for such dwelling has been issued by the appropriate governmental authorities and the PARC has approved the dwelling.

4.12 Construction Period. During all construction, all vehicles, including those delivering supplies, must enter each Parcel on the driveway only as approved by the PARC so as not to unnecessarily damage trees, street paving and curbs. Any damage not repaired by the owner or his contractor will be repaired by DEVELOPER, the POA or the PARC (after ten (10) days written notice) and will be charged to the Owner of such Parcel at a reasonable cost for such services, which charge shall constitute a lien upon such Parcel enforceable by appropriate proceedings at law or equity or as hereinafter provided. During construction, all Parcel Owners must keep the buildings, houses, garages and building sites clean and free of trash and debris. No construction debris will be dumped in any area of The Preserve Property, except in such areas, if any, as may be designated by the DEVELOPER.

ARTICLE V COVENANTS FOR MAINTENANCE

5.1 Keep Parcel in Repair; Liens. Each Owner shall keep all Parcels owned by such Owner, and all improvements therein or thereon, in good order and repair, including the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery, weeding and mulching, and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. If, in the opinion of the POA any Owner fails to perform the duties imposed by the preceding sentence after fifteen (15) days' written notice from the POA to the Owner to remedy the condition in question, the POA shall have the right, through its agents and employees, to enter upon the Parcel in question and to repair, maintain, repaint and restore the Parcel or such improvements and the cost thereof shall be a binding personal obligation of such Owner as well as a lien (enforceable in the same manner as a mortgage) upon the Parcel in question; provided, however, that after control of the POA has been given to the Class A members of the POA, the approval of 51% of the Class A members voting at a properly noticed meeting at which a quorum of Member is present will be required to continue to remedy a violation on a specific Parcel as provided above if the aggregate cost charged hereunder against a single Owner exceeds \$2,000.00 per calendar year, as may be adjusted upward annually, commencing January 1, 2002, in an amount not to exceed five percent (5%) of the maximum amount which could have been charged the preceding year.

5.2 Priority of Lien. The lien provided in Section 5.1 hereof shall not be valid as against a *bona fide* purchaser (or *bona fide* mortgagee) of the Parcel in question unless said lien shall have been filed in the appropriate Probate Office in the county in which the Parcel is located prior to the recordation in the land records of such county of a deed (or mortgage) conveying the Parcel in question to such purchaser (or subjecting the same to such mortgage).

ARTICLE VI GENERAL COVENANTS AND RESTRICTIONS

6.1 General Prohibitions. Without the prior written approval of the PARC:

- (a) No previously approved Structure on any Parcel shall be used for any purpose other than that for which it was originally designed;
- (b) No Parcel shall be combined, split, divided, or subdivided for sale, resale, gift, transfer or otherwise;
- (c) To the extent of the interest of the Owner of a Parcel, no Utility Lines or appurtenances, including without limitation poles, shall be placed or maintained above the surface of the ground of any Parcel; and
- (d) No boat, boat trailer, house trailer, trailer, motor home or any similar items shall be stored in the open on any Parcel for a period of time in excess of twenty-four (24) hours unless such item is not visible from any public street.

6.2 Preservation of Trees. No tree having a diameter of six (6) inches or more (measured from a point two feet above ground level) shall be removed from any Parcel without the express written authorization of the PARC. This Section 6.2 shall be read in conjunction with Section 4.2, and the

provisions of both Sections, where applicable, shall be observed prior to any tree cutting. The PARC, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. If it shall deem it appropriate, the PARC may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 6.2, the DEVELOPER, the POA and the PARC and the respective agents of each may come upon any Parcel during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither POA, nor the PARC, nor DEVELOPER, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

6.3 Animals. No animals, livestock (including, without limitation, horses, pigs, goats and other hoofed animals, whether or not considered domesticated), insects or poultry of any kind shall be raised, bred or kept on any Parcel, except that dogs and/or cats and other household pets may be kept on each Parcel provided they are not kept, bred or maintained for any commercial purpose, subject to appropriate zoning ordinances. No household pets shall be permitted to run at large and shall be kept on a leash at all times when they are allowed off of their owner's property. No animals may be kept in the front yard of a Parcel. Any animals to be kept outside must be kept within a rear-yard fenced area (physical fences, not electronic fences) approved by the PARC.

6.4 Signs. No signs shall be erected or maintained on any Parcel unless authorized in writing by the PARC. One sign advertising the Parcel for sale or lease, not in excess of four (4) square feet, and not greater than four (4) feet above ground level, shall be permitted without the consent of the PARC, except that during construction, the builder shall be allowed to display a sign. If permission is granted, PARC may restrict the size, color and content of all signs. No off-premises signs shall be allowed.

6.5 Temporary Structures. No temporary building, trailer, garage or building in the course of construction or other temporary structure shall be used, temporarily or permanently, as a residence or temporary housing or the like on any Parcel. If approved by the PARC, such a structure may be used as a construction office, storage facility, or security station during construction or other special purpose.

6.6 Accumulation of Refuse. No lumber, metals, bulk materials or trash shall be kept, stored, or allowed to accumulate on any Parcel, except building materials during the course of construction of any approved Structure. No harmful or noxious materials shall be stored, either inside any Structure, or outside any Structure on any Parcel, if said materials pose any significant threat to public health and safety or to individuals employed or living within or in proximity to such Structures. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day a pick-up is to be made. At all other times, trash and garbage containers shall be screened in such a manner so that they cannot be seen from adjacent and surrounding property, and as approved by the PARC. All trash and garbage containers shall be kept in a clean and sanitary condition. The PARC, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage and screening of the same on the Property.

6.7 Pipes. No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Parcel above the surface of the ground, except hoses and movable pipes used for irrigation purposes. Meters and valves for utilities shall be located underground, if feasible. If such meters and valves must be placed above ground, they shall be located at points approved in writing by the

PARC, and proper screening shall be required. Hoses and movable pipes shall be stored out of site when not in use.

6.8 Mining. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Parcel, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Parcel. No derrick or other structure designed for use in boring oil or natural gas shall be erected, maintained or permitted upon any Parcel.

6.9 Obstructions; Maintenance of Hedges and Plants. Except to the extent approved in the Plans for a Parcel, no fence, wall, hedge or shrub planting which obstructs sight lines from any roadways within the Property shall be placed or permitted to remain on any Parcel. The POA shall have the right, but not the obligation, to enter upon any Parcel and trim or prune, at the expense of the Owner (subject to any applicable limitations set forth in Section 5.1), any hedge or other planting which in the opinion of the POA, by reason of its location upon the Parcel or the height to which it is permitted to grow, is unreasonably detrimental to the adjoining property or obscures the view of street traffic or is unattractive in appearance; provided, however, that the Owner shall be given fifteen (15) days' prior written notice of such action. This Section 6.9 shall not be construed as imposing any obligation or responsibility upon the POA to take any action whatsoever with regard to fences, walls, hedges or other plantings.

6.10 Business Activity. No profession or home industry shall be conducted in or on any part of a Parcel which has been deed restricted for residential use without the specific written approval of the PARC. The PARC, in its discretion, upon consideration of the circumstances in each case, and particularly the effect on surrounding property, may permit a Parcel which has been deed restricted for residential use to be used in whole or in part for the conduct of a profession or home industry. No such profession or home industry on a Parcel which has been deed restricted for residential use shall be permitted, however, unless such profession or home industry use is considered by the PARC to be compatible with a high quality residential neighborhood. The following activities, without limitation, may be permitted by the PARC in its discretion: music, art and dancing classes; day nurseries; fraternal or social club meeting place; seamstress services; and office for use by the Resident of a Parcel without any employees.

PORTIONS OF THE PRESERVE PROPERTY MAY BE DEVELOPED FOR COMMERCIAL USES COMPATIBLE WITH A RESIDENTIAL NEIGHBORHOOD, AND NOTHING IN THIS SECTION 6.10 OR THESE RESTRICTIONS SHALL IN ANY WAY PROHIBIT OR LIMIT ANY SUCH COMMERCIAL DEVELOPMENT.

6.11 Model House, Real Estate Office. All else herein notwithstanding, with the written approval of the PARC, any Parcel may be used by the DEVELOPER or its agent for a model home, model building or for a real estate office until 2025, or such earlier time as the DEVELOPER so designates; provided, that there shall be no time limit with respect to any Commercial Parcel.

6.12 Clothes Lines. No clothing or any other household fabrics shall be hung in the open on any Parcel unless the same are hung from an umbrella or retractable clothes hanging device which (i) is enclosed by a fence or other enclosure at least six inches higher than such hanging articles so as not to be visible from the front of the Parcel and so as to limit visibility from other sides of the Parcel, and (ii) is removed from view when not in use. Any such fence or other enclosure must be approved by the PARC.

6.13 Use Authorized by PARC. Notwithstanding other provisions herein, the PARC may authorize any Owner with respect to his Parcel to:

- (a) temporarily use a single family dwelling house for more than one family;
- (b) maintain a sign other than as expressly permitted herein;
- (c) locate Structures other than the principal dwelling house within set-back areas; or
- (d) use Structures other than the principal dwelling house for residence purposes on a temporary or permanent basis.

6.14 Outside Burning. Outside or open burning of trash, refuse or other material upon any Parcel is prohibited, except with the prior written consent of the PARC. The PARC, in its sole discretion, and provided that the same is not otherwise prohibited by applicable law, may allow the burning of trees and brush during the clearing of a Parcel and the initial construction of improvements on such Parcel.

6.15 Nuisance. No obnoxious, offensive or illegal activities shall be carried on upon any Parcel nor shall anything be done on any Parcel which may be or may become an annoyance or nuisance to the neighborhood or which would be in violation of any applicable governmental law, ordinance or regulation.

6.16 Automobiles, Trucks and other Vehicles. No automobiles or other vehicles will be stored on any Parcel or Common Area or kept on blocks unless in the basement or garage of a house or building. Boats, utility trailers, recreational vehicles and travel trailers must either be parked or stored in the basement or garage of a house or building or within a completely enclosed structure on a Parcel, which structure must be approved by the PARC. No tractor trailer trucks, panel vans or other commercial trucks, commercial automobiles or other commercial vehicles (which shall include any vehicle with business or other signs displayed on or visible from the outside of the vehicle – other than standard-size license tag signs) shall be parked or stored on any Parcel or roadway or area within the Property, except during initial construction of a house or building on a Parcel. The prohibitions in this Section shall not apply to temporary parking of trucks and other commercial vehicles providing commercial services to the Parcel or to the efforts and activities of DEVELOPER in connection with developing The Preserve.

6.17 Dishes and Antennas. No satellite, microwave dishes or antennas (except those dishes which are eighteen (18) inches or less) or television or radio antennas shall be placed on any Parcel unless first approved in writing by the PARC in its sole discretion, but in no event shall satellite, microwave dishes or television or radio antennas be visible from any public street (not including alleys) within the Property.

6.18 Crops. No Parcel shall be cultivated for crops of any sort, except gardens of reasonable size, which are to be located at the rear of a dwelling and not visible from any public street (not including alleys).

6.19 Structures in Yard. Firewood piles shall be located only at the rear of a house or building and should be screened from view from public streets (not including alleys) and adjacent Parcels. Children's toys, swingsets, jungle gyms, trampolines and other outdoor recreational equipment and appurtenances shall be allowed only at the rear or behind a house or building and shall be located

so as not to be visible from any public street (not including alleys). Free-standing playhouses and tree houses must be approved by the PARC; no above ground swimming pools shall be allowed on any Parcel. No statues, water fountains, ponds, bird baths, flagpoles or furniture shall be placed or maintained on the front or side yard of any Parcel without the approval of the PARC. All outdoor furniture for any house or building shall be kept and maintained only at the rear or behind the house or building, except for furniture which may be located on porches located in the front or side of a house. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall. Barbecue grills and other outdoor cooking equipment and apparatus shall be located only at the rear of a house or building and should not be visible from any public street (not including alleys). **No rocks, rock walls, fencing or other substance shall be placed on any Parcel as a front or side yard border for the purpose of preventing vehicles from parking on, in front of or beside such Parcel.** Seasonal or holiday decorations (such as Christmas trees and lights, pumpkins, Thanksgiving decorations) shall be promptly removed from any Parcel, or the exterior of any house or building, within fifteen (15) days following such holiday, and shall not be installed or put up more than thirty (30) days in advance of the holiday.

6.20 Flow of Water. To insure the maintenance of the natural beauty, no Parcel Owner or Resident shall be allowed to dam up any creeks which flows through The Preserve nor shall any Owner or Resident change the flow of said creek or any wet weather streams. This provision shall not apply to the DEVELOPER in the development of The Preserve.

6.21 Motorized Vehicles on Community Facilities and Open Areas. Motorized vehicular traffic of any type (including, without limitation cars, trucks, motorcycles and three and four wheelers) is strictly prohibited on any Community Facilities or Open Areas except (i) on roadways and parking areas designated for motorized vehicles, (ii) maintenance vehicles of the Association or its contractor as may be required by the DEVELOPER or the POA for maintenance or construction, and (iii) motorized wheelchairs and similar vehicles for handicapped individuals.

6.22 Roads. Without limitation to the provisions of Section 4.1 hereof, DEVELOPER reserves the right to construct any road or other improvements within The Preserve, to change or extend any then present road or other street grades, if necessary, without liability to any Owners or other person or entity for any claims for damages.

ARTICLE VII EASEMENTS

7.1 Drainage Easements. Except with prior written permission from DEVELOPER, or (when so designated by DEVELOPER) from the PARC, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated herein, or as may hereafter appear on any plat of record in which reference is made to these Restrictions. DEVELOPER may cut drainways for surface water wherever and whenever such action may appear to DEVELOPER to be necessary in order to maintain reasonable standards of health, safety and appearance; provided, however, that DEVELOPER's right to cut drainways on an Owner's Property shall terminate when the principal structure and approved landscaping on such property have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health and appearance. The provisions hereof shall not be construed to impose any obligation upon DEVELOPER to cut such drainways.

7.2 Grading. DEVELOPER may at any time make such cuts and fills upon any Parcel or other part of The Preserve Property and do such grading and moving of earth as, in its judgment, may be necessary to improve or maintain the streets in or adjacent to The Preserve Property and to drain surface waters therefrom; and may assign such rights to Jefferson County or to the City of Hoover, Alabama; provided however, that after Plans for the principal Structure upon a Parcel shall have been approved by the PARC as provided herein, the rights of DEVELOPER under this Section 7.2 shall terminate with respect to all parts of such Parcel other than the easement area thereof, except that DEVELOPER or any such municipal or public authority shall thereafter have the right to maintain existing streets and drainage structures.

7.3 Utilities. DEVELOPER reserves the right for itself, and grants to the POA, and grants to all utility providers with the specific written approval of the DEVELOPER and subject to such fees as DEVELOPER may charge, perpetual non-exclusive easements throughout The Preserve (but not through a Structure) to the extent reasonably necessary for the purpose of:

- (a) installing utilities and infrastructure, cable and other systems for sending and receiving data and/or other electronic signals, and security and similar systems, to serve The Preserve;
- (b) installing walkways, pathways and trails, drainage systems, street lights, and signage on property which DEVELOPER or the POA owns or within public rights of way or easements reserved for such purpose on recorded plats;
- (c) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 7.3(a) and (b) above; and
- (d) access to read utility meters.

All work associated with the exercise of the easements described in this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person or entity exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into any Structures on a Parcel, nor shall it unreasonably interfere with the use of any Parcel and, except in an emergency, entry onto any Parcel shall be made only after reasonable notice to the Owner or occupant.

ARTICLE VIII ASSESSMENT OF ANNUAL CHARGE

8.1 Assessment. For the purpose of providing Funds for use as specified in Article X hereof, and subject to the provisions of Section 8.2 hereof, the POA shall in each year, commencing with the year 2002, assess against the Assessable Property a charge (which shall be uniform with respect to all Assessable Property) equal to a specified number of dollars per Parcel; provided, that the charge for Commercial Parcels shall be as set forth in Section 8.4 hereof. Each such Parcel shall be charged with and subject to, a lien for the amount of such separate assessment which shall be deemed the "Annual Charge" with respect to such Parcel. Provided however, that so long as there are Class B Members of the POA, and unless otherwise approved by 51% of the Class A Members of the POA voting at a properly noticed meeting at which a quorum of Members is present, the maximum annual charge per Parcel shall not exceed \$500.00; provided, that such maximum amount

may be increased as set forth in Section 10.6 hereof. It is specifically understood and represented that the utility charges to each Parcel, including sewer, water, electricity, telephone, gas (if any) and other utilities are the separate and personal responsibility of the Parcel Owner and are not part of any assessments provided for herein. The Annual Charge provided in this Section 8.1 shall be in addition to the fees and assessments set forth in Sections 8.3, 12.3 and 12.4 hereof.

8.2 Date of Commencement of Annual Charge. As soon as may be practical in each year, POA shall send a written bill to each Member stating (i) the amount of the Annual Charge assessed against each such Parcel or Commercial Parcel (as limited in Section 8.1 during the time when there are Class B Members of the POA), stated in terms of the total sum due and owing as the Annual Charge, and (ii) that unless the Member shall pay the Annual Charge within thirty (30) days following the date of receipt of the bill the same shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid. The Annual Charge on Commercial Parcels shall be paid at the same time as other Parcels.

8.3 Special Assessments. If approved by 51% of the Class A Members of the POA voting at a properly noticed meeting at which a quorum of Members is present, the POA may assess against the Assessable Property a charge (which shall be uniform with respect to all Assessable Property), in addition to the fees and assessments set forth in Section 8.1, 12.3 and 12.4 hereof, equal to a specified number of dollars per Parcel for special projects approved by the POA. Each such Parcel shall be charged with and subject to, a lien for the amount of such special assessment. For purposes of this Section 8.3, Commercial Parcels shall be subject to the same special assessments as other Parcels.

8.4 Commercial Parcel Annual Charge. The Annual Charge for Commercial Parcels shall be the amount of the Annual Charge set forth in Section 8.1 hereof, multiplied by 2.50. The multiplier provisions of this Section shall not apply to any special assessments provided by Section 8.3 hereof.

8.5 Date of Commencement of Special Assessments. As soon as may be practical after the adoption by the POA of a special assessment under Section 8.3 hereof, the POA shall send a written bill to each Member to whom the assessment applies stating (i) the amount of the assessment against such Parcel or Commercial Parcel, stated in terms of the total sum due and owing, and (ii) that unless the Member shall pay the assessment within thirty (30) days following the date of receipt of the bill the same shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid.

8.6 Effect of Nonpayment of Assessments; Remedies of POA. If the Member shall fail to pay the Annual Charge, or any special assessment within sixty (60) days following receipt of the bill referred to in Section 8.2 or 8.5 hereof, and within thirty (30) days after additional written notice that the Member is delinquent in his payment, in addition to the right to sue the Member for a personal judgment, the POA shall have the right to enforce the lien hereinafter imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures, as in the case of mortgages under applicable law, and the amount due by such Member shall include the Annual Charge and any such special assessment, as well as the cost of such proceedings, including a reasonable attorney's fee, and the aforesaid interest. In addition, the POA shall have the right to sell the property at public or private sale after giving notice to the Member (by registered mail or by publication in a newspaper of general circulation in the County where the Parcel or Commercial Parcel is situated at least once a week for three successive weeks) prior to such sale.

8.7 Certificate of Payment. Upon written demand by a Member, the POA shall within a reasonable period of time issue and furnish to such Member a written certificate stating that all Annual Charges, Annual Preserve Club Dues (Section 12.4), and any special assessments (including interest and costs, if any) have been paid with respect to any specified Parcel or Commercial Parcel as of the date of such certificate, or if all Annual Charges, Annual Preserve Club Dues, and special assessments have not been paid, setting forth the amount of such Annual Charges, Annual Preserve Club Dues, and special assessments (including interest and costs, if any) due and payable as of such date. The POA may make a reasonable charge for the issuance of such certificates which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the POA and any *bona fide* purchaser of, or lender on, the Parcel or Commercial Parcel in question.

ARTICLE IX IMPOSITION OF CHARGE AND LIEN UPON PROPERTY

9.1 Creation of Lien for Assessments. All Member's Property shall be subject to a continuing lien for assessments and the Annual Preserve Club Dues levied by the POA in accordance with the provisions of this Declaration. The Annual Charge and the Annual Preserve Club Dues, together with interest thereon and the costs of collection thereof (including reasonable attorney's fees) as herein provided, shall be a charge on and shall be a continuing lien upon the Member's Property against which each such assessment or charge is made (including, without limitation, Commercial Parcels).

9.2 Creation of Lien for the Preserve Club Initiation Fee. All Member's Property (including, without limitation, Commercial Parcels) shall be subject to a lien for the Preserve Club Initiation Fee as set forth in Section 12.3 hereof, which shall be a charge on and shall be a continuing lien upon the Member's Property against which Fee is made. Except with respect to sales to Builders as set forth in Section 12.3 hereof, the Preserve Club Initiation Fee shall be due at the moment a Member purchases a Parcel in The Preserve. The lien for the Preserve Club Initiation fee shall attach immediately upon the delivery of a deed to a Parcel and prior to the granting of any mortgage on such parcel.

9.3 Submission of Portions of The Preserve Property. DEVELOPER may desire to subject from time to time portions of The Preserve Property intended for development to this Declaration in accordance with Article XV, and the same will thereby be subjected to this Declaration as Member's Property for the purpose, among others, of submitting such property to the lien described in Section 9.1. Except as provided herein, Member's Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration applicable to Member's Property, including, but not limited to, the lien provisions set forth in Section 9.1 and Section 9.2.

9.4 Personal Obligation of Members. Each Member, by acceptance of a deed or other conveyance to Member's Property, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the POA, or to cause to be paid to the POA, the Annual Charges and the Preserve Club Initiation Fee. The Preserve Club Initiation Fee and each such assessment, together with interest and costs of collection, including reasonable attorney's fees, in addition to being a lien on the property as set forth in Sections 9.1 and 9.2 above,

also shall be the personal obligation of the person or entity who was the owner of such Member's Property at the time when the assessment or the Preserve Club Initiation Fee fell due.

9.5 Subordination of Lien to Mortgages. The lien of any assessment or charge authorized herein under Section 9.1 with respect to Member's Property is hereby made subordinate to the lien of any *bona fide* mortgage on such member's Property if, but only if, all assessment and charges levied against such Member's Property falling due on or prior to the date such mortgage is recorded has been paid. **The lien for the Preserve Club Initiation Fee under Section 9.2 hereof attaches the moment title is transferred on a parcel and specifically shall be prior to and superior to all mortgages on a Parcel.** The sale or transfer of any Member's Property pursuant to a mortgage foreclosure proceeding or a proceeding in lieu of foreclosure or the sale or transfer of such Member's Property pursuant to a sale under power contained in a mortgage on such property shall extinguish the Section 9.1 lien for assessments which arose after the date of the mortgage and which became due prior to the date of such sale, transfer or foreclosure, but the POA shall have a lien on the proceeds of such sale senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Member's Property has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time when he is the owner of such property. The Board may at any time, either before or after the mortgaging of any Member's Property, waive, relinquish or quitclaim in whole or in part the right of the POA to assessments, fees and other charges collectible by the POA with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

ARTICLE X USE OF FUNDS

10.1 Use of Funds. Except as specifically limited or allowed in other provisions hereof, the POA shall apply all funds received by it pursuant to these Restrictions, and from any other source, reasonably for the benefit of property owned by the POA and its Members, and specifically to the uses set forth below, unless other uses are approved by 51% of the votes of Class A Members of the POA voting at a properly noticed meeting at which a quorum of Members is present. With the understanding that, at the POA's discretion, funds shall be applied to operations and maintenance before being applied to capital improvements, funds shall be applied for the following uses:

- (a) repayment of principal and interest of any loans of the POA;
- (b) the costs and expense of the POA, for the benefit of the Property, Members, and Residents, relating to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation, and subsidizing of such of the following as the Board, in its discretion, may from time to time establish or provide:
 - (i) The Preserve Club;
 - (ii) Community Facilities; and
 - (iii) any or all projects, services, facilities, studies, programs, systems and properties relating to: parks, recreational facilities or services; walkways, curbing, gutters, sidewalks, landscaping; directional and informational signs; streets or roads; street, road and alley lighting, signal and sign facilities; facilities or arrangement for

facilities for the collection, treatment and disposal of garbage, trash and refuse; facilities for the fighting and preventing of fires; traffic engineering programs, traffic signals and parking facilities; lakes and dams; beautification projects within The Preserve Property; holiday decorations; collective mailbox stations; POA business or social functions; professional fees; casualty, errors and omissions and liability insurance, and such other insurance as may be required by law or otherwise deemed appropriate by the Board; facilities and provisions for the security of Members, Members' Property, Residents and POA Land; general maintenance and clean-up; and reserve accounts as deemed appropriate or necessary by the POA; and

- (c) the maintenance of other property not owned by the POA including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the appearance of The Preserve or otherwise benefits The Preserve.

10.2 Obligations of POA with Respect to Funds. The POA shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Charges or otherwise, and may carry forward as surplus any balances remaining or set aside in reserve accounts as deemed appropriate or necessary by the POA; nor shall the POA be obligated to apply any such surpluses to the reduction of the amount of the Annual Charge in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of POA and the effectuation of its purposes. Neither the DEVELOPER nor the POA represents that any or all of the services described in Section 10.1 will be provided and nothing herein shall obligate the DEVELOPER or the POA or its Directors to undertake to provide such services. The POA shall make available to all Members of the POA an annual accounting of funds expended and balances remaining within one hundred twenty (120) days after the end of any calendar year, such accounting to be at the POA's expense.

10.3 Authority of POA to Contract. The POA shall be entitled to contract, subject to the last sentence of Section 10.4, with any corporation, firm or other entity for the performance of the various undertakings of the POA specified in Section 10.1, and such other undertakings as may be approved by 51% of the votes of Class A Members of the POA voting at a properly noticed meeting at which a quorum of Members is present, and the performance by any such entity shall be deemed the performance of the POA hereunder.

10.4 Authority of POA to Borrow Money. The POA shall be entitled to borrow money for the uses specified in Section 10.1 without any additional approval up to an outstanding principal balance of \$50,000.00. Any borrowing over such amount shall require the approval of 51% of the votes of Class A Members of the POA voting at a properly noticed meeting at which a quorum of Members is present.

10.5 Authority of POA to make Capital Expenditures; Limitation on Capital Improvement Assessments. The POA shall be entitled to make capital expenditures for the uses specified in Section 10.1 without any additional approval, or for other uses as may be approved as provided therein, as limited by the last sentence in Section 10.4. So long as the DEVELOPER is entitled to elect a majority of the Board of the POA, the POA shall not make or charge the Members any special capital improvement assessments in excess of \$50,000.00 per year; however, this limitation specifically shall not apply to assessments for non-capital matters including, without limitation, operating expenses, maintenance, repayment of principal and interest on loans authorized or approved pursuant to Section 10.4 hereof, insurance, professional fees, reserves, expenses related

sanitation, security and fire prevention or fighting, and other similar or dissimilar costs and expenses.

10.6 CPI Adjustments. The dollar amounts in Sections 8.1, 10.4, 10.5, 12.3, 12.4 and 16.10 may be increased effective January of each year (the "**Adjustment Year**"), beginning January, 2003, to reflect the percentage increase in the Revised Consumer Price Index – All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1982-84 = 100) (herein the "**CPI**") from the CPI for January, 2002 to the CPI for January of the respective Adjustment Year.

ARTICLE XI RIGHTS OF ENJOYMENT IN COMMUNITY FACILITIES

11.1 Community Facilities. DEVELOPER may convey or cause to be conveyed, sold or leased to the POA, subsequent to the recordation of this Declaration, certain tracts of land within The Preserve Property for park, roads, walkways or trails, waterways, clubhouses and other recreational, community and related purposes, including, without limitation, The Preserve Club Property. The conveyances or leases may restrict the uses of the property being conveyed. Such tracts, together with such other parts of the POA Land as the Board may by resolution from time to time hereafter designate for use by Members and Residents are sometimes hereinafter collectively referred to as "**Community Facilities**".

11.2 Easement of Enjoyment of Community. Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to all Community Facilities, and such easement shall be appurtenant to and shall pass with every Parcel upon transfer. All Residents who are not Members shall have a non-transferable privilege to use and enjoy all Community Facilities for so long as they are Residents within the defined meaning of that term. All such rights, easements, and privileges, however, shall be subject to the right of the POA to adopt and promulgate reasonable rules and regulations pertaining to the use of Community Facilities which shall enhance the preservation of such facilities, the safety and convenience of the users thereof, or which, in the discretion of the Board, shall serve to promote the best interests of the Owners and Residents. The POA shall have the right to charge Owners and Residents reasonable admission and other fees in connection with the use of any Community Facility. In establishing such admission and other fees, the Board may, in its absolute discretion, establish reasonable classifications of Owners and of Residents; such admission and other fees must be uniform within each such class but need not be uniform from class to class. The POA shall have the right to borrow money, subject to the limitations in Section 10.4, for the purpose of improving any Community Facility and, in aid thereof, to mortgage the same and the rights of any such mortgagee shall be superior to the easements herein granted and assured.

11.3 Suspension of Rights. The POA shall have the right to suspend the right of any Member (and the privilege of each Resident claiming through such Member) to use The Preserve Club or Community Facilities for any period during which the Annual Charge or any special assessments assessed under Article VIII hereof, the Preserve Club Initiation Fee or the Annual Preserve Club Dues remain overdue and unpaid, or in connection with the enforcement of any rules or regulations relating to such Community Facilities or The Preserve Club Facilities adopted by the Board of the POA from time to time. This right of the POA to suspend rights shall be in addition to and cumulative with any other right or remedy of the POA, the DEVELOPER (so long as it is a member of the POA), their successors or assigns, or any other party to whose benefit these Restrictions inure, under these Restrictions or at law or inequity, to enforce the provisions hereof. **No such suspension**

shall relieve the Member of his obligation to pay the Annual Charge, Preserve Club Initiation Fee or other dues, fees or charges assessed hereunder.

11.4 Right of POA to Convey. Notwithstanding the rights, easements and privileges granted under this Article XII, the POA shall nevertheless have the right and power to convey any property referred to in Section 11.1 hereof free and clear of all such rights, easements and privileges if such conveyance is to a public body for public use and if such conveyance is approved by 51% of the Class A Members of the POA voting at a properly noticed meeting at which a quorum of Members is present.

11.5 Restrictions and Easements Over Open Spaces. DEVELOPER may create, either prior to or as a part of any conveyances to the POA, easements and rights of way over and/or affecting the property conveyed to the POA including but not limited to easements relating to utilities, sewers, construction and roads. Any such conveyance to the POA by DEVELOPER shall be subject to all restrictions, reservations, easements, rights of way and agreements of record.

ARTICLE XII THE PRESERVE CLUB

12.1 General. The Preserve Club is a Community Facility and is that part of the POA Land which is devoted to recreational use, including, without limitation, a clubhouse and swim facilities, and which, by the nature of its use, shall have special rules and regulations which apply to the use of The Preserve Club Property which are not generally applicable to other portions of The Preserve. The Preserve Club is not a separate legal entity, but rather is a part of the POA. Except as set forth in Section 12.8 hereof, all Members of the POA are "members" of The Preserve Club.

12.2 Facilities. The DEVELOPER shall construct The Preserve Club facilities and shall lease or, from time to time, sell or convey the same to the POA. The Preserve Club facilities shall initially consist of a park (the "Initial Preserve Club Facilities"), and later may be expanded to include swim facilities, a community town hall and other parks or other amenities (the "Expanded Preserve Club Facilities") (collectively, "The Preserve Club Facilities").

**NEITHER THE DEVELOPER NOR THE POA REPRESENT OR
WARRANTY THAT ANY OF THE EXPANDED PRESERVE CLUB
FACILITIES SHALL BE CONSTRUCTED.**

12.3 The Preserve Club Initiation Fee. Except as set forth in Section 12.8 hereof and in the next paragraph of this Section, each Member, at the time such Member purchases a Parcel in The Preserve, shall, in addition to all other fees and assessments, pay a one-time "Preserve Club Initiation Fee" for the use of The Preserve Club Facilities; **provided, that the Preserve Club Initiation Fee shall be charged only to the first purchaser of each Parcel in the Preserve from the Developer, and thereafter no Preserve Club Initiation Fees shall be charged on subsequent re-sales of such Parcel.** Except as set forth in Section 12.8 hereof, no Member shall be exempted from the Preserve Club Initiation Fee, including any exemption based on non-use of The Preserve Club Facilities. No Member which shall thereafter sell its Parcel in The Preserve shall be entitled to any refund of all or any portion of the Preserve Club Initiation Fee. The purpose of the Preserve Club Initiation Fee is solely to reimburse the DEVELOPER for the cost of The Preserve Club Facilities and The Preserve Club Property (purchase and development costs). Except as set forth in the last paragraph of this Section, no portion of the Preserve Club Initiation Fee is intended for

POA or The Preserve Club operating costs or expenses, repairs, replacements or reserves. For Members purchasing Parcels in The Preserve prior to the end of calendar year 2002, the Preserve Club Initiation Fee shall be \$2000.00. Thereafter, the Preserve Club Initiation Fee may be increased as set forth in Section 10.6 hereof.

A Builder shall not be required to pay the Preserve Club Initiation Fee until the earlier of (i) two (2) years from the date of the initial Parcel purchase, or (ii) the closing of the resale to a house purchaser. Receipt of the Preserve Club Initiation Fee from the Builder or from the initial purchaser of a newly-constructed house on the Parcel shall satisfy the requirement for the Preserve Club Initiation Fee.

All Preserve Club Initiation Fees shall be deposited by the POA into a separate interest-bearing escrow account at a financial institution approved by the POA and DEVELOPER (the "**Club Escrow Account**"). At the end of each calendar quarter, and at such more frequent times as the DEVELOPER shall request, the POA shall pay all funds then in the Club Escrow Account (principal and interest – except such amount as may be necessary to maintain a minimum balance in the account) to the DEVELOPER as consideration for the cost of The Preserve Club Land and the construction of The Preserve Club Facilities. At such time as the DEVELOPER has recovered all actual costs of the Initial Preserve Club Facilities (including land purchase and development costs), plus interest thereon at a rate equal to the greater of (i) 7% per annum, or (ii) DEVELOPER's actual interest costs, DEVELOPER shall not be entitled to any further disbursements from the Club Escrow Account; provided, that if Developer, from time to time, subsequently conveys or leases additional Expanded Preserve Club Facilities to the POA, or Developer makes additional improvements to Preserve Club Facilities previously conveyed, then DEVELOPER shall again be entitled to receive the funds in the Club Escrow Account on the schedule set forth above until such time as DEVELOPER has recovered all actual costs of the then existing Expanded Preserve Club Facilities (including land purchase and development costs), plus interest thereon at a rate equal to the greater of (i) 7% per annum, or (ii) DEVELOPER's actual interest costs.

The POA may continue to collect the Preserve Club Initiation Fee from new Members (who are the first purchaser from the Developer of a specific Parcel in the Preserve) after the Development Cost Recovery Date; however, at such time the Preserve Club Initiation Fee shall no longer be required to be deposited into the Club Escrow Account (which shall then be closed at the option of the Board of the POA) and such fees may be used by the POA for such purposes as determined by the Board of the POA, including without limitation, operating costs of the POA, and expenses, repairs, replacements or reserves for Preserve Club Facilities or other Community Facilities.

The Preserve Club Initiation Fee provided in this Section 12.3 shall be in addition to the fees and assessments set forth in Sections 8.1, 8.3 and 12.4 hereof.

12.4 The Preserve Club Dues. For the purpose of providing funds for the operation, maintenance, functions, uses, reserves and other costs and expenses relating to the Preserve Club, and except as set forth in Section 12.8 hereof, the POA shall in each year, commencing with the year 2002, assess against the Assessable Property a charge (which shall be uniform with respect to all Assessable Property) equal to a specified number of dollars per Parcel. Each such Parcel shall be charged with and subject to, a lien for the amount of such separate assessment which shall be deemed the "**Annual Preserve Club Dues**" with respect to such Parcel. At the discretion of the POA, the Annual Preserve Club dues may be billed in annually, or in monthly or quarterly increments. Provided however, that so long as there are Class B Members of the POA, and unless otherwise approved by 51% of the Class A Members of the POA voting at a properly noticed

meeting at which a quorum of Members is present, the maximum annual charge per Parcel shall not exceed \$500.00; provided, that such maximum amount may be increased as set forth in Section 10.6 hereof. The POA shall send a written bill to each Member to whom the Annual Preserve Club Dues applies stating (i) the amount of the Annual Preserve Club Dues then owing for such Parcel, and (ii) that unless the Member shall pay the amount then owing within thirty (30) days following the date of receipt of the bill the same shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid. The Annual Preserve Club Dues provided in this Section 12.4 shall be in addition to the fees and assessments set forth in Sections 8.1, 8.3 and 12.3 hereof.

12.5 Effect of Nonpayment of the Annual Preserve Club Dues; Remedies of POA. If the Member shall fail to pay the Annual Preserve Club Dues within sixty (60) days following receipt of the bill referred to in Section 12.4 hereof, and within thirty (30) days after additional written notice that the Member is delinquent in his payment, in addition to the right to sue the Member for a personal judgment, the POA shall have the right to enforce the lien hereinafter imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures, as in the case of mortgages under applicable law, and the amount due by such Member shall include the Annual Preserve Club Dues, as well as the cost of such proceedings, including a reasonable attorney's fee, and the aforesaid interest. In addition, the POA shall have the right to sell the property at public or private sale after giving notice to the Member (by registered mail or by publication in a newspaper of general circulation in the County where the Parcel is situated at least once a week for three successive weeks) prior to such sale.

12.6 Limited Exemption for the Annual Preserve Club Dues for Builders. Persons who purchase a Parcel in The Preserve solely for the purpose of constructing a residential house for resale on such Parcel (herein, a "Builder"), shall not be required to pay the Annual Preserve Club Dues (or such parts thereof as may be billed from time to time) with respect to such Parcel for a period of two (2) years following the conveyance of title to the Parcel to such Builder from the Developer; provided, that the Annual Preserve Club Dues for the then current year shall be come due on the earlier of (i) two (2) years from the date of the conveyance of title to the Parcel to such Builder from the Developer, or (ii) the closing of the resale to a house purchaser.

12.7 The Preserve Club Rules. The POA shall have the right from time to time to adopt rules governing the use of The Preserve Club Facilities which may be different than rules governing the use of other Community Facilities. Without limitation, such rules may govern hours of use, reservations, safety matters, noise, dress, adult supervision, sanitation, guests, food and beverages, alcoholic beverages (or prohibition thereof), and other similar or dissimilar items.

12.8 Commercial Parcels. If any Commercial Parcels should be developed within The Preserve, membership in The Preserve Club, if any, any specials rules or limitations, and the applicability of the Preserve Club Initiation Fee and the Annual Preserve Club Dues, and the amounts thereof, or any other substitute fees or charges relating to The Preserve Club and such Commercial Parcels shall be contained in an amendment to this Declaration executed by the Developer and filed for record in the Probate Office of Jefferson County, Alabama.

12.9 Non-Voting Members of The Preserve Club. As more particularly set forth in Section 13.3(c) hereof, the POA may establish non-voting memberships whose rights are limited to use of The Preserve Club Facilities on a daily, weekly, monthly or other time period. Fees for such non-voting memberships shall be set from time to time for the Board of the POA. such non-voting members may be Residents or non-Residents.

ARTICLE XIII MEMBERSHIP AND VOTING RIGHTS

13.1 General. The structure of the POA is contained in its Charter and By-Laws. The matters discussed in Sections 13.2 to 13.5 are summaries of some of the provisions of the Charter of the POA. The Charter and by-laws of the POA cover each of these matters, in addition to others, in greater detail, and should be consulted for a full explanation of the rights and obligations appurtenant to membership in the POA.

13.2 All Parcel Owners Are Members of POA. Every Owner of a Parcel constituting Member's Property shall, by virtue of such ownership, be a Member of the POA. Membership shall be appurtenant to, and may not be separated from the ownership of any property which is Member's Property.

13.3 Classes of Membership. The classes of membership are contained in the Charter and By-Laws of the POA.

- (a) Class A Members shall be all persons owning one or more Parcels (including commercial Parcels) constituting Member's Property excepting those persons who are Class B Members.
- (b) The Class B Members shall be the DEVELOPER, and any successor in ownership to all or part of the Developer's interest in The Preserve.

The Class B membership shall terminate and the then Class B members shall become Class A members at such time as (a) all the then Class B members so designate in a writing delivered to the Association, or (b) at such time as the DEVELOPER no longer owns any of The Preserve Property or any Parcel.

- (c) The Charter or the By-Laws of the POA may provide for other non-voting members of the POA. Such other non-voting members may include, as determined by the Board of the POA, and without limitation, non-voting memberships whose rights are limited to use of The Preserve Club Facilities on a daily, weekly, monthly or other time period. Fees for non-voting memberships shall be set from time to time for the Board and such non-voting memberships shall not be subject to the Annual Charge under Article IX or the Preserve Club Initiation Fee.

13.4 Voting Rights: Class B Members. Except on such matters as to which this Declaration, the Charter, or the By-Laws of the POA specifically require the votes of the Class A Members, and until December 31, 2010, or such earlier time as the Class B membership may terminate, as provided herein, the Class B Members shall be vested with the sole voting rights in POA, and the Class A Membership shall have no voting rights.

13.5 Voting Rights: Class A Members. Subject to the provisions of Section 13.4, each Class A Member shall have one vote for each Parcel owned by such Member. After December 31, 2010, the Class A Members shall have the right to elect a minority of the Board of Directors of the POA. Where a Parcel is owned by more than one person or entity, there shall be only one Member and one vote for such Parcel, and the Owners of the Parcel shall designate in a writing to the Board the name of the person who is the Member and who shall be authorized to cast the vote for such Parcel.

13.6 Conflict. In the event of a conflict between the terms of this Declaration and the Charter of the POA, the terms of the Charter shall control.

ARTICLE XIV THE ADDITION OF OPEN SPACES

14.1 Additions to Open Space. DEVELOPER, or such of its successors and assigns as shall have been specifically granted the right to submit additional property to this Declaration as set forth in this Article, may from time to time during the development of The Preserve, but on or before December 31, 2025, convey or cause to be conveyed additional property to the POA and such property shall become Open Spaces; provided, that upon the DEVELOPER's written request, the POA shall reconvey to the DEVELOPER any unimproved portions of such Open Space which DEVELOPER originally conveyed to the POA for no consideration to the extent conveyed by the DEVELOPER in error or needed by the DEVELOPER to make minor adjustments in property lines.

14.2 Permissible Conditions or Restrictions on Additional Open Space. Property conveyed to the POA as additional Open Spaces may be improved or unimproved land and may be subject to permanent or periodic flooding or may be land under water. The grantor may convey such additional Open Spaces subject to easements for the construction, installation, maintenance, repair, use and access of roadways, service roads, Utility Lines, or other public service utilities or facilities, and subject to the reserved right in favor of a person owning The Preserve Property for reasonable use and access to facilitate the development of such property and subject to other rights of way, easements, restrictions, and agreements of record.

ARTICLE XV THE SUBMISSION OF ADDITIONAL MEMBER'S PROPERTY

15.1 Submission of Additional Member's Property. DEVELOPER may at any time during the pendency of this Declaration add all or a portion of The Preserve Property, along with any additional property now or hereafter acquired by Developer, to the Property which is covered by this Declaration. Additional member's Property may be submitted to the provisions of this Declaration by an instrument executed by DEVELOPER, its successors or assigns in the manner required for the execution of deeds. Such instrument shall:

- (a) refer to this Declaration stating the book or books of the records of Jefferson County, Alabama, and the page numbers where this Declaration is recorded;
- (b) contain a statement that such Additional Member's Property is conveyed subject to the provisions of this Declaration, or some specified part thereof (as limited by Section 16.4);
- (c) contain an exact description of such Additional Member's Property, and
- (d) contain such other or different covenants, conditions and restrictions as DEVELOPER shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such Additional Member's Property.

Upon the recording of such instrument in the Probate Office of Jefferson County, Alabama, such additional property shall be Member's Property and the owner or owners of such Member's Property shall thereupon be members of the POA.

15.2 All Member's Property Bears the Burdens and Enjoys the Benefits of this Declaration. Every person who is an owner of a fee interest in any portion of the Member's Property does by reason of taking such title agree to all of the terms and provisions of this Declaration (except as they may be modified in the deed to such Property, subject to the limitations in Section 16.4 hereof). All present and later added Member's Property is subject to the burdens and shall enjoy the benefits made applicable hereunder to Member's Property.

ARTICLE XVI GENERAL

16.1 Grantee's Acceptance. The grantee of any Parcel subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, whether from DEVELOPER or a subsequent owner of such Parcel, shall accept such deed or other contract upon and subject to each and all of these Restrictions herein contained.

16.2 Indemnity For Damages. Each and every Parcel Owner and future Parcel Owner, in accepting a deed or contract for any Parcel subject to these Restrictions, agrees to indemnify DEVELOPER for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, walkways or other aspects of public ways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines owned by DEVELOPER, or for which DEVELOPER has responsibility, at the time of such damage.

16.3 Severability. Every one of the provisions and restrictions hereof is hereby declared to be independent of, and severable from the rest of the provisions and restrictions hereof, and of and from every other one of the provisions and restrictions hereof, and of and from every combination of the provisions and restrictions in this Declaration, and in the event that any one or more of the terms or provisions contained herein shall be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

16.4 Right of Developer to Modify Restrictions With Respect to Unsold Parcels. With respect to any unsold Parcel, DEVELOPER may include in any contract or deed hereinafter made or entered into such modifications and/or additions to these Restrictions as DEVELOPER in his discretion desires; provided, however, that these Restrictions may not be modified in any contract or deed to except such Parcel from the assessment provisions of Article IX or to lessen or extend the voting rights as provided in these Restrictions or in the Charter and By-Laws of the POA.

16.5 Captions. The captions preceding the various sections, paragraphs and subparagraphs of these Restrictions are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

16.6 Effect of Violation on Mortgage Lien. No violation of any of these Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property, provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to these Restrictions as fully as any other Owner of any portion of the Property.

16.7 No Reverter. No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

16.8 Duration and Amendment. The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by DEVELOPER, the POA, the PARC, and the Owner of any Parcel included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2035, after which time said Restrictions shall be automatically extended for successive periods of ten years.

So long as DEVELOPER is a Class B Member of the POA, DEVELOPER may unilaterally amend this Declaration for any purpose. Thereafter, DEVELOPER may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Parcels; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan, Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Parcels; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Parcel unless the Owner shall consent in writing. Any instrument so amending this Declaration shall be filed for recording in the Probate Office of Jefferson County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

Except as provided above in this Section 16.8, this Declaration may not be amended in any respect (except with regard to the annexation of Additional member's Property) except by the execution of an instrument signed by the DEVELOPER (so long as the DEVELOPER owns a Parcel) and not less than 75% of the Class A Members of the POA voting at a properly noticed meeting at which a quorum of Member is present, which instrument shall be filed for recording in the Probate Office of Jefferson County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. Except as provided above in this Section 16.8, after December 31, 2035, this Declaration may be amended and/or terminated in its entirety by an instrument signed by the DEVELOPER (so long as the DEVELOPER owns a Parcel) and not less than 55% of the of the Class A Members of the POA voting at a properly noticed meeting at which a quorum of Member is present, which instrument shall be filed for recording in the Probate Office of Jefferson County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

16.9 Enforcement. In the event of a violation or breach of any of these Restrictions or any amendments thereto by any Owner, or employee, agent, or lessee of such Owner, then the Owner(s) of Parcel(s), the POA, DEVELOPER (so long as it is a member of the POA), their successors and assigns, or any party to whose benefit these Restrictions inure shall have the right, but not the obligation, to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said Restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may

deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against a Parcel Owner may be awarded a reasonable attorney's fee against such Parcel Owner.

16.10 Processing Charge related to Violations of Restrictions. In addition to any other rights, charges or assessments of the POA set forth herein, including without limitation any costs or expenses provided in Section 16.9, in the event that the POA has issued to any Member a written notice of the violation of any provision of these Restrictions and such violation has not been cured or provisions been made to cure, to the reasonable satisfaction of the POA, within thirty (30) calendar days from the date of such written notice, then the POA shall have the right to impose a processing charge against such Member in the amount of \$10 per day beginning on the 31st day after such notice until such violation has been cured to the reasonable satisfaction of the POA. The processing charge is not a fine or penalty, but rather is a charge intended to compensate the POA for its costs in pursuing its various remedies, administrative costs, consulting with advisors, and for monitoring the violation. The processing charge will not necessarily reflect the actual costs to the POA, which costs may be less than or greater than the processing charge in any particular instance. The processing charge set forth herein shall be a binding personal obligation of such Member as well as a lien (enforceable in the same manner as a mortgage) upon the Member's Parcel in question. The processing charge shall be subject to increase as set forth in Section 10.6 hereof

16.11 Certificate of Violation. In addition to any other rights or remedies available to the POA hereunder or at law or equity, the POA shall have the right to file in the Records of Jefferson County, Alabama, a Certificate or Notice of Violation of these Restrictions (which violation shall include, without limitation, nonpayment of the Annual Charges and/or failure to comply with Community Guidelines) upon failure of a Parcel Owner to correct a violation of these Restrictions within thirty (30) days after written notice of the violation has been given by the POA to the Parcel Owner.

16.12 Interpretation by POA. The POA shall have the right to construe and interpret the provisions of this Declaration, and absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefitted or bound by the provisions hereof.

16.13 Assignment by POA. The POA shall be empowered to assign its rights hereunder to any successor nonprofit members corporation (herein referred to as the "Successor Corporation") and, upon such assignment the Successor Corporation shall have all the rights and be subject to all the duties of the POA hereunder.

16.14 No Waiver. The failure of any party entitled to enforce any of these Restrictions herein contained shall in no way be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such violation or breach occurring prior or subsequent thereto; provided,

however, that approval of Plans pursuant to Article II shall be binding on any and all parties as a conclusive determination that such Plans are conformity with these Restrictions.

16.15 Safety and Security. Each Owner and Resident, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in The Preserve. The POA may, but shall not be obligated to, maintain or support certain activities within The Preserve designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the POA nor DEVELOPER shall in any way be considered insurers or guarantors of safety or security with The Preserve, nor shall either be held liable for any loss, injury or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any system or measures, including any mechanism or system for limiting access to The Preserve, cannot be compromised or circumvented, nor that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all Residents of its Parcel(s), that the POA, its Board and committees, and the DEVELOPER, are not insurers or guarantors of security or safety and that each person with The Preserve assumes all risk of personal injury and loss or damage to property, including dwellings, houses, units, buildings and other Structures and the contents thereof, resulting from acts of third parties.

ARTICLE XVII DEFINITIONS

17.1 Assessable Property. That part of The Preserve Property which is subjected to these Restrictions except such part or thereof as may from time to time constitute "Exempt Property" as defined in Section 17.10.

17.2 Association or POA. The Preserve Owner's Association, Inc., its successors and assigns.

17.3 Association Land or POA Land. That part of The Preserve Property which may at any time hereafter be owned by the Association so long as the Association or successor thereof may be the owner or lessee thereof.

17.4 Board. The Board of Directors of the Association.

17.5 Charter. The Articles of Incorporation of The Preserve Owner's Association, Inc.

17.6 Commercial Parcel. Any Parcel which is restricted for commercial uses or developed in a manner which allows commercial uses.

17.7 Declaration. This Declaration of Protective Covenants of The Preserve applicable to Member's Property which shall be recorded in the Probate Records of Jefferson County, Alabama, as the same may from time to time be supplemented or amended in the manner described therein.

17.8 Deed. Any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any part of The Preserve Property subjected to these Restrictions.

17.9 Developer. United States Steel, LLC, a Delaware limited liability company, its successors and assigns.

17.10 Exempt Property. Shall mean and refer to all land owned by The Preserve Owner's Association, Inc. or a Successor Corporation for so long as the POA or such Successor Corporation shall be the owner thereof;

17.11 Member. A person or other entity who is a record owner of Member's Property, or, if such a class of membership is created by the Board, a non-voting member of the POA which may or may not be a record owner of Member's Property.

17.12 Member's Property, Property or Subject Property. That portion of The Preserve Property which shall have been submitted to this Declaration for the purpose of creating a lien for assessments in favor of POA. The term shall include each such new parcel of land at the time that the same is subjected to the Declaration as aforesaid.

17.13 Open Spaces or Common Areas. The Preserve Property which is conveyed to the Association by the owners or Developers of The Preserve or a part thereof and which is designated as an open space or area.

17.14 Owner. The Owner of Member's Property.

17.15 Parcel. Any unit, lot, part or parcel of The Preserve Property which is subjected to this Declaration. Unless the context requires otherwise, the term "Parcel" shall include "Commercial Parcels".

17.16 Plans. The plans and specifications for the construction of a structure on a Parcel.

17.17 POA or Association. The Preserve Owner's Association, Inc., its successors and assigns.

17.18 POA Land or Association Land. That part of The Preserve Property which may at any time hereafter be owned or leased by the POA so long as the Association or successor thereof may be the owner or lessee thereof.

17.19 Property, Member's Property or Subject Property. That portion of The Preserve Property which shall have been submitted to this Declaration for the purpose of creating a lien for assessments in favor of POA. The term shall include each such new parcel of land at the time that the same is subjected to the Declaration as aforesaid.

17.20 Resident. Any persons or persons occupying or leasing Member's Property. A Resident may or may not be an Owner.

17.21 Restrictions. The covenants, agreements, easements, charges and liens created or imposed by this Declaration.

17.22 Structure. Any thing or device, the placement of which upon any Parcel may affect the appearance of such Parcel, including by way of illustration and not limitation, any building, garage, porch, shed, greenhouse or bathhouse, playhouse, coop, pen or cage, covered or uncovered patio, mailbox, swimming pool, clothes line, radio, television or satellite antenna, fence, curbing, paving,

wall, trees, shrubbery or hedge more than two (2) feet in height, signboard or any temporary or permanent living quarters (including any house trailer or motor home) or any other temporary or permanent improvement to such Parcel.

"Structure" shall also mean (i) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Parcel, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Parcel and (ii) any change in the grade of any Parcel of more than six inches from that existing at the time of purchase by each Owner.

17.23 Subject Property, Member's Property or Property. That portion of The Preserve Property which shall have been submitted to this Declaration for the purpose of creating a lien for assessments in favor of POA. The term shall include each such new parcel of land at the time that the same is subjected to the Declaration as aforesaid.

17.24 The Preserve or Preserve Property. The property described as The Preserve in the Declaration and other property which may be acquired by Developer and developed as a part of The Preserve. That part of The Preserve subjected to the Declaration is referred to as "Property", "Subject Property", or "Member's Property".

17.25 The Preserve Club. The recreation club operated by the POA which may provide recreation amenities to Residents of The Preserve and to other persons as permitted by the POA.

17.26 The Preserve Club Property. Any property (real or personal) owned, leased or operated by the POA for the benefit of Residents of The Preserve and such other persons as permitted by the POA.

17.27 Tract. A contiguous piece of real property under one ownership.

IN WITNESS WHEREOF, this Declaration of Protective Covenants of The Preserve has been executed by United States Steel LLC, a Delaware limited liability company, effective the 15th day of November, 2001.

UNITED STATES STEEL LLC,
a Delaware limited liability company



By: *Tha Shown*

Title: *General Manager - Southeast*

USX Realty Development,
a Division of United States Steel LLC

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Michael M. Partain, a Notary Public in and for said County in said State, hereby certify that Thomas G. Howard, whose name as Gen. Mgr. - Southeast of USX Realty Development, a Division of **UNITED STATES STEEL LLC**, a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this the 15th day of November, 2001.

Michael M. Partain
Notary Public

NOTARIAL SEAL

My commission expires: 2-25-2005

This Instrument Prepared by:
Randolph H. Lanier
BALCH & BINGHAM LLP
1901 Sixth Avenue North
Suite 2600
Birmingham, Alabama 35203

THE PRESERVE PROPERTY

Tract of land situated in the NE $\frac{1}{4}$, SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ of Section 15, Township 19 South, Range 3 West of the Huntsville Principal Meridian and being more particularly described as follows:

Begin at the NE corner of the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ S15, T19S, R3W and run westerly along the north line of said $\frac{1}{4}$ - $\frac{1}{4}$, 720.64 feet; thence left 90°-00'-00" and run southerly 338.18 feet to a point on the centerline of Hurricane Branch; thence right 123°-46'-13" and run northwesterly along said centerline 56.65 feet; thence left 34°-56'-44" and run westerly along said centerline 30.05 feet; thence right 11°-48'-41" and run northwesterly along said centerline 310.52 feet; thence right 2°-35'-03" and run northwesterly along said centerline 72.46 feet; thence right 3°-56'-28" and run northwesterly along said centerline 316.80 feet; thence right 20°-14'-33" and run northwesterly along said centerline 111.53 feet; thence left 29°-21'-49" and run northwesterly along said centerline 64.25 feet; thence right 13°-59'-33" and run northwesterly along said centerline 56.62 feet; thence left 28°-49'-08" and run southwesterly along said centerline 39.57 feet; thence right 47°-49'-54" and run northwesterly along said centerline 42.99 feet; thence right 14°-14'-12" and run northwesterly along said centerline 47.00 feet; thence right 11°-36'-05" and run northwesterly along said centerline 63.33 feet; thence left 107°-16'-17" and run southwesterly 150.87 feet; thence left 24°-00'-00" and run southwesterly 830.00 feet; thence right 10°-00'-03" and run southwesterly 529.99 feet; thence right 20°-00'-02" and run southwesterly 680.02 feet; thence left 39°-59'-42" and run southwesterly 270.00 feet; thence left 50°-00'-27" and run southwesterly 1770.04 feet; thence left 68°-59'-34" and run southerly 699.98 feet; thence left 136°-28'-03" and run northeasterly 918.66 feet, more or less, to a point on the north line of the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of S15, T19S, R3W; thence right and run easterly along the north line of said $\frac{1}{4}$ - $\frac{1}{4}$ 659.5 feet, more or less, to the NE corner of said $\frac{1}{4}$ - $\frac{1}{4}$; thence right and run southerly along the east line of said $\frac{1}{4}$ - $\frac{1}{4}$ to a point on the south line of said S15; thence left and run easterly along said south line to the SE corner of said S15; thence left and run northerly along the east line of said S15 to the NE corner of the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said S15, said corner being the POINT OF BEGINNING.

Tract contains approximately 309 acres.

EXHIBIT A

THE PRESERVE PROPERTY

A parcel of land situated in the NE¼ of the NE¼ of Section 15, Township 19 South, Range 3 West of the Huntsville Principal Meridian, being more particularly described as follows:

Commence at the southeast corner of the NE¼ of NE¼ of S15, T19S, R3W; and run westerly along the south line of said ¼-¼ 80.04 feet to the POINT OF BEGINNING; thence continue westerly along the previous course and along the south line of said ¼-¼ for a distance of 311.47 feet; thence 96°-41'-34" to the right and leaving said south line, proceed northerly for a distance of 152.55 feet to the southerly right-of-way line of Patton Chapel Road (right-of-way-width: 120 feet); thence 103°-30'-49" to the right, proceed southerly along said southerly right-of-way line for a distance of 33.79 feet to the point of curvature of a tangent curve to the left having a central angle of 24°-26'-53", a radius of 537.46 feet, and a chord of 227.60 feet which deflects 12°-12'-26" to the left; thence proceed southeasterly along the arc of said curve 229.33 feet; thence 31°-39'-07" to the right, from chord, and leaving said southerly right-of-way line, proceed southeasterly 44.31 feet; thence, 48°-36'-26" to the right, proceed southerly 80.0 feet to the POINT OF BEGINNING.

Tract contains approximately .81 acres.

State of Alabama - Jefferson County
I certify this instrument filed on:
2001 NOV 15 P.M. 13:47
Recorded and \$
and \$ 102.00
\$ 102.00
Total \$
MICHAEL E. BOLIN, Judge of Probate
200163/3723 BESS

EXHIBIT A

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**AMENDMENT NO. 1 TO THE
DECLARATION OF PROTECTIVE COVENANTS
OF THE
PRESERVE**

KNOW ALL MEN BY THESE PRESENTS, That:

WHEREAS, UNITED STATES STEEL LLC, a Delaware limited liability company, filed the Declaration of Protective Covenants of the Preserve (the "**Restrictions**") at Instrument No. 200163/3723, in the Office of the Probate Judge of Jefferson County, Alabama (Bessemer Division); and

WHEREAS, UNITED STATES STEEL CORPORATION, a Delaware corporation, is the successor by way of conversion to United States Steel, LLC (and remote successor to USX Corporation) (said United States Steel Corporation, as such successor, is referred to herein as "**DEVELOPER**"); and

WHEREAS, DEVELOPER desires to modify the Restrictions as provided in this Amendment No. 1 for the purpose of creating additional easements with respect to certain areas of The Preserve Property designated as "Cottage Lots".

NOW, THEREFORE, DEVELOPER does hereby proclaim, publish and declare that the said Declaration of Protective Covenants of the Preserve is amended as set forth herein.

**ARTICLE VII
EASEMENTS**

A new Section 7.4 and 7.5 is added to Article VII of the Restrictions as follows:

"7.4 Cottage Lot Use Easements. The majority of Cottage Lots shall be developed with houses having a courtyard on one side (the "**courtyard side**") and a narrow side setback on the other side (the "**non-courtyard side**"). Further, the majority of Cottage Lots shall be subject to a "use" easement located on the non-courtyard side of the Cottage Lot (the "**Use Easement**"). This Use Easement shall be for the benefit of the Cottage Lot adjoining such Use Easement (the "**Beneficiary Lot**"). A diagram reflecting typical Use Easement locations is attached to this Amendment No. 1 as **Exhibit A**. Unless otherwise indicated on the subdivision plat for a particular Cottage Lot or other recorded instrument, the Use Easement shall be 3 ½ feet in width and shall be located on the non-courtyard side of the Cottage Lot granting this easement (the "**Granting Lot**") and adjacent to the courtyard side of the Beneficiary Lot. The length of the Use Easement shall be from the front lot line to the rear lot line of the Granting Lot. It is the intent hereof that the Use Easement area shall have the appearance of being part of the yard of the Beneficiary Lot.

- (a) **Allowable Uses of the Use Easement Area by the Beneficiary Lot Owner.** The Use Easement may be used by the Beneficiary Lot Owner only for minor landscaping, such as grass, flowers and small shrubs (not exceeding 24" in height). Any landscaping installed by

the Beneficiary Lot Owner in the Use Easement shall be properly maintained by the Beneficiary Lot Owner.

(b) **Allowable Uses of the Use Easement Area by the Granting Lot Owner.** The Use Easement Area may be used by the Granting Lot Owner for:

- (i) Access by the Granting Lot Owner, his contractors, agents and employees, to the Use Easement side of the Granting Lot structure for maintenance, repair and reconstruction of the Granting Lot structure.
- (ii) Access by utility company representatives for reading, maintenance, repair and replacement of any utility meters or utility lines serving the Beneficiary Lot structure and located within the Use Easement Area.
- (iii) The placement of underground utilities, and placement of Granting Lot structure footings, cornice overhangs and fireplace offsets.

(c) **Restrictions on the Use of the Use Easement Area by the Beneficiary Lot Owner.**

- (i) No permanent improvements, ponds, pools, cooking grills, lawn furniture, basketball goals or posts, or other similar or dissimilar improvements shall be placed or maintained in the Use Easement area, other than fence posts or brick/stone columns as approved in writing by the PARC.
- (ii) Without the written consent of the Granting Lot Owner, which may be withheld in the sole discretion of the Granting lot Owner, and, if given, may be retracted at any time without cause, the Beneficiary Lot Owner shall not apply or cause to be applied to the Use Easement Area any pesticides, herbicides or other chemicals.
- (iii) The Beneficiary Lot Owner shall use reasonable care to avoid having irrigation or watering by the Beneficiary Lot Owner spray or pool up against the Granting Lot Structure.
- (iv) Title to the Use Easement area shall remain in the Granting Lot Owner, and the Granting Lot Owner shall have limited use of the Use Easement Area as set forth in subparagraph (b) hereof. Any use of the Use Easement area by the Beneficiary Lot Owner shall be subject to such limited use rights of the Granting Lot Owner. Without limiting the foregoing, in the event of any damage or destruction to any landscaping installed or maintained by the Beneficiary lot Owner in the Use Easement area in the reasonable exercise of the allowable use rights of the Granting Lot Owner (other than wanton acts by the Granting Lot Owner), the Beneficiary Lot Owner shall have no claim for damages against the Granting Lot Owner, its contractors, agents, employees and utility company representatives with respect to such damaged or destroyed landscaping, all of which claims are waived by the Beneficiary Lot Owner.
- (v) The use of the Use Easements by the Beneficiary Lot Owner must not result in damage or injury to the Granting Lot or the improvements thereon and must not unreasonably interfere with or interrupt the use and enjoyment of the Granting Lot. The Beneficiary Lot Owner shall, at his sole expense, promptly repair, replace or

restore any and all Granting Lot improvements which may be damaged by him in the exercise of the easement rights granted. The Owner of the Granting Lot shall be held harmless by the Beneficiary Lot Owner from all loss, liability, cost or expense incurred in connection with the exercise of the Beneficiary Lot Owner's easement rights unless occasioned by the Granting Lot Owner's own negligence or intentional misconduct.

- (vi) The Beneficiary Lot Owner shall grant access to the Granting Lot Owner, his contractors, agents, employees and utility company representatives for the purposes set forth in subparagraph (b) above.
 - (vii) Once the Granting Lot structure has been completed, the Beneficiary Lot Owner shall be required to construct or install appropriate fencing, landscaping, or other improvements allowed by the PARC. The Beneficiary Lot Owner shall be responsible for continued maintenance of all such improvements. Any fencing or improvements installed by the Beneficiary Lot Owner shall be "free-standing" where practical. If the PARC agrees that it is reasonably necessary to attach a fence column or post to the Granting Lot structure, then the Owner of the Beneficiary Lot shall be responsible for any damages caused to the Granting Lot structure from time to time by such attachment.
- (d) **Restrictions on the Use of the Use Easement Area by the Granting Lot Owner.** The following restrictions shall apply to the Granting Lot structure and the use of the Use Easement by the Granting Lot Owner:
- (i) The Use Easement side of the Granting Lot structure must abut the 3'-6" setback along the property line.
 - (ii) No windows or wall openings below five (5) feet above any finished floor level shall be allowed the Use Easement side of the Granting Lot structure, and no doorways or direct access from the Granting Lot structure shall be provided along the length of the Use Easement.
 - (iii) It is recommended (but not required) that no exterior water faucets be installed along the Use Easement side of the Granting Lot structure, and that no dryer or stovetop vents, or utility meters be located along the length of the easement.
 - (iv) A properly sized and installed rain gutter shall be installed along the length of any roof edge of the Granting Lot structure which would shed water onto the Use Easement. The down-spout discharge must be properly installed as to redirect the discharge water away from that portion of the Use Easement area located along and immediately adjacent to the side of the Granting Lot structure.
 - (v) The Granting Lot Owner shall use reasonable care in the exercise of its rights to the Use Easement Area in subparagraph (b) above not to damage landscaping installed in such Use Easement Area by the Beneficiary Lot Owner; however, it is acknowledged that shrubs may be trimmed so as keep branches from touching the Granting Lot structure, and landscaping will inevitably be damaged during any re-painting or repairs on the side of the Granting Lot structure along the Use Easement.

- (vi) It is strongly suggested (but not required) that the exterior wall of the Granting Lot structure abutting the Use Easement be constructed of a maintenance free material and/or finish. The Granting Lot Owner is required to maintain the structural improvements which abut the Use Easement in the same regularity and manner as all other portions of the Granting Lot improvements.
- (e) **Commencement of Use Easement.** The Beneficiary Lot Owner may make use of Use Easement prior to such time as the Granting Lot structure is constructed and completed; however, any such use shall be subject to damage or destruction to landscaping existing or installed in the Use Easement caused during construction of the Granting Lot structure, and the Beneficiary Lot shall have no claim for any such damages to landscaping, all of which damages are hereby released.

7.5 Cottage Lot Temporary Construction Easements.

- (a) **Where Use Easements Exist.** It is acknowledged that the Use Easement Area described in Section 7.4 may not be wide enough to allow safe or practical maintenance, repair or construction access to the Granting Lot structure (such as, by way of example only, the recommended set-back distance for a ladder reaching to the upper floor or roof of the Granting Lot structure may be greater than the 3'-6" width of the Use Easement). Accordingly, during any maintenance, repair or construction on the Granting Lot structure, the Owner of the Granting Lot shall have a temporary construction easement on the Beneficiary Lot in an area running parallel and adjacent to the Use Easement, and extending onto the Beneficiary Lot for a maximum of 6' (or to the edge of the structure on the Beneficiary Lot with respect to those portions of the Temporary Construction Easement where less than 6' exists from the edge of the Use Easement to the edge of the structure on the Beneficiary Lot). Similarly, during any maintenance, repair or construction on the Beneficiary Lot structure, the Owner of the Beneficiary Lot shall have a temporary construction easement on Use Easement Area of the Granting Lot.

Use of Temporary Construction Easement by Granting Lot Owner. The use of the temporary construction easement provided in this Section 7.5(a) by the Granting Lot Owner must not result in damage or injury to the Beneficiary Lot or the improvements thereon (although some damage to grass or landscaping may be inevitable) and must not unreasonably interfere with or interrupt the use and enjoyment of the Beneficiary Lot. The Granting Lot Owner shall, at his sole expense, promptly repair, replace or restore any and all Beneficiary Lot improvements and landscaping which may be damaged by him in the exercise of the Temporary Construction Easement rights granted. The Owner of the Beneficiary Lot shall be held harmless by the Granting Lot Owner from all loss, liability, cost or expense incurred in connection with the exercise of the Granting Lot Owner's Temporary Construction Easement rights unless occasioned by the Beneficiary Lot Owner's own negligence or intentional misconduct.

Use of Temporary Construction Easement by Beneficiary Lot Owner. The use of the temporary construction easement provided in this Section 7.5(a) by the Beneficiary Lot Owner must not result in damage or injury to the Granting Lot or the improvements thereon (although some damage to grass or landscaping may be inevitable) and must not unreasonably interfere with or interrupt the use and enjoyment of the Granting Lot. The Beneficiary Lot Owner shall, at his sole expense, promptly repair, replace or restore any and all Granting Lot improvements and landscaping which may be damaged by him in the

exercise of the temporary construction easement rights granted. The Owner of the Granting Lot shall be held harmless by the Beneficiary Lot Owner from all loss, liability, cost or expense incurred in connection with the exercise of the Beneficiary Lot Owner's temporary construction easement rights unless occasioned by the Granting Lot Owner's own negligence or intentional misconduct.

- (b) **Where no Use Easements Exist.** In those cases where houses are constructed on two adjoining Cottage Lots and the non-courtyard sides of such houses also are adjacent (and thus no Use Easement arises – the strip of land running along the non-courtyard side of each of such house being referred to as the "Setback Area"), then each such Cottage Lot shall have a temporary construction easement on the Setback Area of the adjoining Cottage Lot in an area running parallel and adjacent to the non-courtyard side of the house on such adjoining Cottage Lot. For the purposes of this Section 7.5(b), and at any particular time, the Cottage Lot making use of such a temporary construction easement shall also be referred to as a "Beneficiary Lot", and the Cottage Lot then being subject to the use of a temporary construction easement by the adjoining Cottage Lot Owner shall also be referred to as a "Granting Lot".

The use of the temporary construction easement provided in this Section 7.5(b) by a Beneficiary Lot Owner must not result in damage or injury to the Granting Lot or the improvements thereon (although some damage to grass or landscaping may be inevitable) and must not unreasonably interfere with or interrupt the use and enjoyment of the Granting Lot. The Beneficiary Lot Owner shall, at his sole expense, promptly repair, replace or restore any and all Granting Lot improvements and landscaping which may be damaged by him in the exercise of the temporary construction easement rights granted. The Owner of the Granting Lot shall be held harmless by the Beneficiary Lot Owner from all loss, liability, cost or expense incurred in connection with the exercise of the Beneficiary Lot Owner's temporary construction easement rights unless occasioned by the Granting Lot Owner's own negligence or intentional misconduct."

ARTICLE XVII DEFINITIONS

Section 17.9 of Article XVII of the Restrictions is redrafted in its entirety to read as follows:

"17.9 Developer. United States Steel Corporation, a Delaware corporation (successor by way of conversion to United States Steel, LLC), its successors and assigns."

A new Section 17.28 is added to Article XVII of the Restrictions as follows:

"17.28 Cottage Lot. Any Parcel which is designated on a recorded subdivision plat of The Preserve Property or in a deed from the DEVELOPER as a "Cottage Lot". Further, the following Parcels are hereby designated as "Cottage Lots":

Lot(s) 67 - 78, Final Plat of The Preserve Phase II, as recorded in Map Book 36, Page 43, Probate Office of Jefferson County, Alabama (Bessemer Division); and

Lot(s) 85 - 88, 98 - 101, and 112, Final Plat of The Preserve Phase III, as recorded in Map Book 37, Page 7, Probate Office of Jefferson County, Alabama (Bessemer Division)."

Except as set forth herein, all other terms and conditions of the Restrictions shall remain in full force and effect.

The "Effective Date" of this Amendment No. 1 shall be the date on which it is executed by the DEVELOPER.

IN WITNESS WHEREOF, United States Steel Corporation, a Delaware corporation, has caused this Amendment No. 1 to the Declaration of Protective Covenants of The Preserve to be executed effective the day of January 17, 2003.

UNITED STATES STEEL CORPORATION,
a Delaware corporation



By: Thomas S. Brown

Title: General Manager - Southeast

USS Real Estate, a division of United States Steel Corporation

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Mary Ann H. McCraw, a Notary Public in and for said County in said State, hereby certify that Thomas S. Brown, whose name as General Manager - SE of USS Real Estate, a division of UNITED STATES STEEL CORPORATION, a Delaware corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 17th day of January, 2003.

Mary Ann H. McCraw
Notary Public

NOTARIAL SEAL

My commission expires: 3/14/2006

This Instrument Prepared by:
Randolph H. Lanier
BALCH & BINGHAM LLP
1901 Sixth Avenue North
Suite 2600
Birmingham, Alabama 35203

Amendment No. 1 to the
Declaration of Protective Covenants of The Preserve

CONSENT OF LOT OWNERS

The undersigned, being the Owner of the Parcels of The Preserve Property described below which are being designated herein as "Cottage Lots", hereby join into and consent to this Amendment No. 1, and agree that this Amendment No. 1 shall amend the Declaration of Protective Covenants of The Preserve to the same extent as if originally contained in the Restrictions.

Owner of Lots 67 and 70 - 78, Final Plat of The Preserve Phase II, as recorded in Map Book 36, Page 43, Probate Office of Jefferson County, Alabama (Bessemer Division)

WITNESS:

F & H DEVELOPMENT, INC.

Alan B. ThomasBy: Nickolas Harvey
Its: PresidentDate Executed: 1/19/03, 2002

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Mary H. Whitehead, a Notary Public in and for said County in said State, hereby certify that Nickolas Harvey, whose name as President of F & H DEVELOPMENT, INC., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 14th day of January, 2002.

Mary H. Whitehead
Notary Public

NOTARIAL SEAL

My commission expires: 7-25-06

The undersigned, being the Owner of the Parcels of The Preserve Property described below which are being designated herein as "Cottage Lots", hereby join into and consent to this Amendment No. 1, and agree that this Amendment No. 1 shall amend the Declaration of Protective Covenants of The Preserve to the same extent as if originally contained in the Restrictions.

Owner of Lot 69, Final Plat of The Preserve Phase II, as recorded in Map Book 36, Page 43, Probate Office of Jefferson County, Alabama (Bessemer Division)

WITNESS:

Kim Crocker

John Salter
John Salter

Date Executed: 2-4-03, 2002

Kim Crocker

Syble Salter
Syble Salter

Date Executed: 2-4-03, 2002

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Richard A. Moolheisen, a Notary Public in and for said County in said State, hereby certify that John Salter and wife, Syble Salter, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the date the same bears date.

Given under my hand this the 5th day of February, 2003

Richard A. Moolheisen
Notary Public

NOTARIAL SEAL

My commission expires: 12-3-06

The undersigned, being the Owner of the Parcels of The Preserve Property described below which are being designated herein as "Cottage Lots", hereby join into and consent to this Amendment No. 1, and agree that this Amendment No. 1 shall amend the Declaration of Protective Covenants of The Preserve to the same extent as if originally contained in the Restrictions.

Owner of Lot 68, Final Plat of The Preserve Phase II, as recorded in Map Book 36, Page 43, Probate Office of Jefferson County, Alabama (Bessemer Division)

WITNESS:

Dwight A. McKay

Richard Meelheim

Richard Meelheim

Date Executed: 1/22/02, 2002

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, Jessica A. Davis, a Notary Public in and for said County in said State, hereby certify that **Richard Meelheim**, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the date the same bears date.

Given under my hand this the 22nd day of January, 2002.

Jessica A. Davis
Notary Public

NOTARIAL SEAL

My commission expires: 7-23-03