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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ROSSER FARMS, A RESIDENTIAL SUBDIVISION

February 21, 2006

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STATE OF ALABAMA)
COUNTY OF JEFFERSON)

**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
ROSSER FARMS, A RESIDENTIAL SUBDIVISION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made as of this 21st day of February, 2006, by **UNITED STATES STEEL CORPORATION**, a Delaware corporation ("Developer"), which declares that the real property hereinafter described, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth (sometimes hereinafter referred to as the "Protective Covenants"); and

WHEREAS, the Developer is presently the owner of all of the real property described on Exhibit A attached hereto, a portion of such real property being described in the Plat of Rosser Farms, prepared by Paragon Engineering and recorded contemporaneously herewith in Office of the Judge of Probate of Jefferson County (Bessemer Division), Alabama (such property, together with any other property which may become subject to the Protective Covenants as hereinafter property, being collectively referred to herein as the "Property"); and

WHEREAS, the Developer intends to develop the Property into a residential subdivision, together with Common Areas hereafter described, as part of a planned residential community (collectively, the "Subdivision"); and

WHEREAS, the Developer desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance and value of the Property, which benefit all Owners of the Property and, to this end, desires to subject the Property, together with such additions thereto as may hereafter be made, to the Protective Covenants, all of which are for the benefit of the Property and each Owner thereof; and

WHEREAS, the Developer has created a nonprofit corporation (the "Association") to which it has delegated the responsibility for the management and regulation of the Common Areas and assigned the powers of enforcing the provisions of this Declaration and any additional covenants and restrictions that are placed against property that is now or may hereafter be included in the Development and of levying assessments against the Owners of Lots within the Subdivision to enable the Association to perform such obligations.

NOW, THEREFORE, the Developer declares that the Property and such additions thereto as may hereafter be made pursuant to Section 2.2 hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the Protective Covenants, all of which shall be construed as and deemed to be covenants running with the land and shall be binding on and inure to the benefit of all parties having a right, title or interest in the said Property, as well as their heirs, successors and assigns.

ARTICLE I DEFINITIONS

As used in this Declaration, the following terms shall have the following meanings, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

Section 1.1 **"Additional Property"** shall mean any additional property, which may hereafter be subjected to the Protective Covenants as set forth in Section 2.2 hereof.

Section 1.2 **"Amenity Center"** shall mean the clubhouse, swimming pool and children's playground to be constructed on approximately two (2) acres of the Property in an area to be designated as the "Amenity Center" on a future subdivision map for "Phase II" of the Subdivision, together with all furniture, furnishings, equipment, appliances and other personal property appurtenant to the operation and use of the Amenity Center.

Section 1.3 **"Architectural Review Committee"** or **ARC** shall mean the Architectural Review Committee appointed pursuant to Article IV hereof with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration.

Section 1.4 **"ARC Guidelines"** means and refers to any written architectural, landscaping, and use regulations, specifications, procedures, guidelines and policies which may be promulgated by the ARC in accordance with applicable provisions of this Declaration.

Section 1.5 **"Articles"** shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

Section 1.6 **"Assessment"** shall mean the assessments to be assessed against the Owners pursuant to the authority vested in the Association, and such term shall include annual assessments, special assessments, individual assessments, and Common Area Assessments, all as described in Article VI hereof.

Section 1.7 **"Association"** shall mean and refer to Rosser Farms Homeowners' Association, Inc., an Alabama non-profit corporation, formed or to be formed at or about the same time as the filing of this Declaration under the Alabama Nonprofit Corporation Act, as well as its successors or assigns. This is the Declaration of Protective Covenants to which the Articles and By-Laws of the Association make reference.

Section 1.8 **"Board"** or **"Board of Directors"** shall mean the Board of Directors of the Association.

Section 1.9 **"By-laws"** shall mean the By-laws of the Association, as such by-laws may be amended from time to time.

Section 1.10 **"Common Area"** or **"Commons Areas,"** as the case may be, shall mean and refer to all real and/or personal property, including property which the Association owns, leases, or otherwise maintains for the use or enjoyment of the members of the Association, and

which shall be responsibility of the Association to maintain, and which shall include, without limitation, the following:

- (a) the Amenity Center;
- (b) all detention ponds;
- (c) the entrance area for the Subdivision which is subject to the Entrance Easement;
- (d) all installations for the furnishing of electricity, telephone, natural gas, sanitary sewer, water service and television cable not immediately appurtenant to any Dwelling;
- (e) all outdoor exterior lighting not situated within the boundaries of any Lot;
- (f) landscaping, trees, and walkways not situated within the boundaries of any Lot (which shall include the main entrance, median, and any landscaping within the Entrance Easement);
- (g) all portions of the Property which are designed or designated on the Plat or otherwise for collecting, retaining and discharging surface and subsurface water from the Property, including without limitation all drainage/utility easement areas;
- (h) all private alleys as shown on the Subdivision Record Map as such; and
- (i) any and all other areas designated on the Subdivision Record Map as a "Common Area."

Section 1.11 "**Control Period**" shall have the meaning ascribed to it in Section 11.1 hereof.

Section 1.12 "**Declaration**" shall mean this entire document, as same may from time to time be amended.

Section 1.13 "**Developer**" shall mean United States Steel Corporation, a Delaware corporation, its successor and assigns, if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

Section 1.14 "**Dwelling**" shall mean a dwelling constructed on the Property in accordance with the restrictions and conditions set forth in Article V hereof and the ARC Guidelines.

Section 1.15 "**Entrance Easement**" shall have the meaning ascribed to it in Section 3.1 hereof.

Section 1.16 "**Living Area**" shall mean enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating, and air conditions equipment, exclusive porches, garages, basements, carports, or attics.

Section 1.17 "**Lots**" shall mean and refer to the individual lots shown on the Subdivision Record Map, as the same may be amended from time to time. A Lot shall be deemed "Developed" when all offsite streets and utilities have been completely installed. A Lot shall be deemed "Improved" when a Dwelling has been completely constructed thereon.

Section 1.18 "**Member**" shall mean any person who is a member of the Association. Every Owner shall be a Member.

Section 1.19 "**Mortgage**" shall mean any mortgage or other security device encumbering a Lot or Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office of Jefferson County (Bessemer Division), Alabama.

Section 1.20 "**Mortgagee**" shall mean the holder of any Mortgage.

Section 1.21 "**Occupant**" shall mean and include any Owner, the family members, guests, tenants, agents, employees or invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees and any other person who occupies or uses any Dwelling within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Dwelling.

Section 1.22 "**Owner**" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot or Dwelling, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

Section 1.23 "**Property**" shall mean and refer to the real property more particularly described on Exhibit A attached hereto, including all the Lots within the Subdivision, all Common Areas, and all easements as reflected on the Subdivision Record Map.

Section 1.24 "**Protective Covenants**" shall mean all of those covenants, conditions and restrictions contained in this Declaration.

Section 1.25 "**Purchaser**" shall mean any person who acquires any Lot.

Section 1.26 "**Single Family Unit**" shall mean a group of one or more persons each related to the other by marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

Section 1.27 "**Subdivision**" shall mean all sectors or phases of Rosser Farms, collectively, and any amendments or supplements thereof.

Section 1.28 "**Subdivision Record Map**" shall mean the recorded map or plat for Rosser Farms, prepared by Paragon Engineering, and recorded in the Office of the Judge of Probate of Jefferson County (Bessemer Division), Alabama contemporaneously herewith, and any amendments or supplements thereof.

ARTICLE II
PROPERTY SUBJECT TO RESTRICTIONS

Section 2.1 **General Declaration.** The Property which presently is and shall be held, transferred, sold, conveyed, and occupied subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration is located in Jefferson County, Alabama. Any part of such Property and each Lot or Dwelling thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of such Property and any Lot or Dwelling thereof. This Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration in accordance with Section 2.2 hereof.

Section 2.2 **Additional Property.** Developer reserves the right, in its sole and absolute discretion and without the consent of the Association or its Members or by an Owner, Occupant, or Mortgagee of any Lot or Dwelling, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office of Jefferson County (Bessemer Division), Alabama, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration stating the Instrument Number in the Probate Office of Jefferson County (Bessemer Division), Alabama where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.2 of this Declaration.

Section 2.3 **Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer.** With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify

the provisions of this Declaration as the same apply to any such Lot, without the consent of the Association, or its Members or by any Owner, Occupant, or Mortgagee of any Lot or Dwelling.

Section 2.4 **Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot or Dwelling within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners, Occupants and all future and subsequent Owners and Occupants of any Lot or Dwelling within the Property, and (c) to create a privity of contract and estate between the Owners and Occupants, their respective heirs, successors and assigns.

Section 2.5 **Development of Property.** Developer shall have the right, but not the obligation, for so long as Developer owns any Lot or Dwelling in the Property, to make improvements and changes to all Lots or Dwellings owned by Developer, including, without limitation, (i) changes in the location of the boundaries of any Lots or Dwellings owned by Developer, (ii) installation and maintenance of any water, sewer and any other utility systems and facilities, and (iii) installation of security and trash and refuse facilities.

Section 2.6 **Subdivision Plat.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, the subdivision plat of the Property setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots owned by Developer.

ARTICLE III EASEMENTS

Section 3.1 **Grant of Nonexclusive Easements to Owners:**

(a) **Common Areas.** Subject to the terms and conditions of this Declaration and the rules and regulations from time to time established by the Association with respect to the Common Areas, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with all other Owners and Occupants. The easement and rights granted pursuant to this Section 3.1(a) are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot.

(b) **Entrance Easement.** Developer hereby declares an easement across the Common Area shown on the Subdivision Record Map for a landscaped entrance area into the Subdivision (the "Entrance Easement"). The Entrance Easement shall constitute a Common Area and shall

be subject to all terms and conditions set forth in this Declaration with respect to Common Areas.

Section 3.2 **Utility Easements.** Developer reserves for itself and the Association the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, surface drainage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, surface water drainage, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the Subdivision Record Map or as may hereafter appear on any plat of record of Property subject to these Protective Covenants. Without limitation upon the foregoing, Developer specifically reserves a ten (10) foot easement on the rear property line and a five (5) foot easement on the side of each Lot for surface water drainage, together with the right to construct within such reserved easement such swales and other surface water drainage systems as Developer shall, in its sole discretion, deem necessary. In addition, no utility junction boxes, enclosures, pedestals or other above ground utility apparatus (other than street lights) may be situated in the front yard of any Lot which is served by a rear private alley, unless the approval of the ARC is first obtained.

Section 3.3 **Additional Easements and Uses.** For so long as the Developer owns any Lot, the Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint the Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as the Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board of Directors of the Association, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Probate Office of Jefferson County (Bessemer Division), Alabama. Such right of the Developer and/or the Association shall also include the right to provide for such simultaneous or concurrent usage of any presently existing or additional easements for such purposes, not infringing upon their stated purposes, as it may deem necessary or desirable, including, but not limited to, their use for the recreational purposes of the Owners, Occupants, and the Owner's and Occupant's respective tenants, employees, guests, invitees, licensees and agents.

Section 3.4 **Reservation of General Access Easement.** Developer does hereby establish and reserve for the Association and its respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any improvements thereon in order to determine compliance with the provisions of this Declaration and/or other applicable regulations or covenants, and (b) the performance of the duties of the Association hereunder, including, without limitation, taking any action required or permitted to be taken by the Association pursuant to any of the terms or provisions of this Declaration and/or other applicable regulations or covenants; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner of such Lot directly affected thereby.

Section 3.5 **Additional Documents.** All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

Section 3.6 **Limitations.** Any easements which may be created pursuant to this Article III shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot and are further subject to the following limitations:

- (a) All provisions of this Declaration and the Articles and By-Laws of the Association;
- (b) All the rules and regulations governing the use and enjoyment of the Common Areas which may or may have been or may hereafter be adopted by the Association; and
- (c) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property.

ARTICLE IV ARCHITECTURAL CONTROL

Section 4.1 ARC Guidelines.

(a) The general architectural objective of the Developer for the Property is to create a neighborhood of Dwellings constructed in high quality styles, design, materials, and colors. All Dwellings shall be constructed in conformity with the ARC Guidelines and in accordance with the provisions of this Declaration. The Developer, by the terms of this Declaration, has charged the ARC with the approval of all Dwellings, prior to construction, so as to determine that all Dwellings meet the ARC Guidelines. In appropriate cases, the ARC shall be entitled to grant variances from the ARC Guidelines, as described in Section 4.6 hereof.

(b) The ARC is hereby empowered and authorized to formulate and promulgate ARC Guidelines to govern (i) the review, approval, rejection, form, content and provisions of all landscaping or architectural submissions, and (ii) the rules and regulations governing restrictions as to the use of the Property. The ARC will provide a copy of the ARC Guidelines, and any

amendments thereto, to each Owner. Such ARC Guidelines must be followed by all applicants submitting plans for review and approval by the ARC. Decisions of the ARC shall be based upon the uniform application of such reasonable, but high, standards as are consistent with the ARC Guidelines, such standards to include, among other things, the harmony of external design including roof style (pitch, shingle and color), chimney, exterior siding (material and color), windows and trim, shutters (color and style), front doors, garage doors, location in relation to surrounding structures and topography, variation in front set backs, the type, kind and character of buildings, structure and other improvements, and aesthetic qualities in general.

Section 4.2 **Method of Architectural Control.** So as to establish and maintain the ARC Guidelines set forth in this Declaration, no improvement or structure of any kind, including, without limitation, any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, window awnings or other exterior window covering, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed, or maintained upon a Lot, nor shall any addition, change, or alteration therein, thereof, or thereto be made, unless and until the plans and specifications, showing the color, nature, kind, shape, elevation, materials and location of the same, together with such information as the ARC may require, shall have been submitted to and approved in writing by the ARC.

Section 4.3 **ARC Membership.** The ARC shall consist of four (4) members and the initial members shall be appointed by the Developer. In the event of the death, resignation or other termination of any members, the Developer during the Control Stage (as hereafter defined) shall have full authority to appoint successor members. The Developer's appointed members shall serve until all Lots are sold by the Developer whereupon, the Developer's control and authority and Developer's appointed members to the ARC shall cease. Upon the sale and closing of the last Lot in the subject subdivision, the Association shall assume full control and authority over the ARC. Developer (as long as it owns any Lots in the subdivision) and the Association (from and after the time that it has assumed control of the ARC) reserve the right to remove any member from the ARC at any time with or without cause, in such parties' sole discretion.

Section 4.4 **Release.** Neither the ARC nor any member thereof shall be liable to any Owner, Occupant or to any other party for any damage, loss, or prejudice suffered on account of the approval or disapproval of any plans, drawings, or specifications, whether or not defective, or the execution or filing of any action, motion, certificate, petition, or protest in the courts of the United States or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct. Neither the ARC nor any member thereof shall have any liability for structural defects, building code compliance, or similar issues, the sole responsibilities of the ARC being limited to aesthetic approvals and compliance with this Declaration. Without limitation on the foregoing, the ARC shall have no obligation to review any submittals for their compliance with applicable building codes or other inadequacy or deficiency, and approval of any submitted plans by the ARC shall not constitute a basis for any liability of the members of the ARC, the Developer, members of the Board or the Association as regards any failure of such approved plans to conform to any applicable building codes or other inadequacy or deficiency in the said plans. Neither the ARC, nor any of its members, shall in any way or manner be held liable to any Owner, the Association or any other person or entity for its good faith exercise of the discretionary authority herein conferred.

Section 4.5 **Powers and Duties.** The ARC shall have the following powers and duties:

(a) To require submission to the ARC of plans and specifications for any improvement or structure of any kind, and any change, modification, or alteration thereof, including, without limitation, any such improvement or change to any Dwelling, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, statuary, signs, flags, flag poles, water fountains, yard sets, decorative building, landscaping, landscape device or object, the construction or placement of which is or is proposed upon any Lot. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ARC and shall include but not necessarily be limited to:

- (i) An accurately drawn and dimensional plot plan showing all setbacks, easements, drives and walks;
- (ii) A foundation plan, floor plan, landscape plan, and exterior elevations of the Dwellings as they will actually appear after all back filling and landscaping is done from finished ground up;
- (iii) All plans must include a specifications list of proposed materials and samples of exterior materials and colors which cannot be adequately described on the plans, and of materials with which the ARC is unfamiliar; and
- (iv) The name and address of the Lot Owner's Contractor who will construct the residence and all other improvements to the Lot.

The ARC may also require such additional information as reasonably may be necessary for the ARC to evaluate completely the proposed structure or improvement in accordance with this Declaration. All information submitted to the ARC shall be delivered to the office of McKay Management Corporation, One Riverchase Office Plaza, Suite 200, Birmingham, Alabama 35244, (205)733-6700/(205)733-6710 fax, Attn: Mr. Joe McKay, or such other address as may be reflected by the ARC in a duly recorded instrument filed in the Probate Court of Jefferson County (Bessemer Division), Alabama.

(b) To approve or disapprove the submitted plans and specification for any Dwelling, improvement, structure as herein above described prior to commencement of construction or such Dwelling, improvement, or structure within thirty (30) days of submission of the documentation required herein. Partial submissions shall not be permitted.

(c) In the event the ARC fails to approve or disapprove any submitted plans by notice in writing sent to the applicant within thirty (30) days following submission to the ARC, then, unless an extension of time has been accepted by the applicant, the applicant may (i) at any time thereafter inform the ARC and the Board, by written notice sent separately to both the ARC and the Board, of the ARC's failure to approve or disapprove the applicant's submitted plans (which notice shall specifically list and identify all materials comprising the applicant's submitted plans), and (ii) if the ARC shall fail to approve or disapprove the applicant's submitted plans within thirty (30) days following its receipt of the said notice, the submitted plans will be

deemed to be approved by the ARC to the extent same conform to all other express terms and provisions of this Declaration. The approval by the ARC of any plans and specifications for any Dwelling, improvement, or structure shall not be deemed a waiver of the right to object to any of the features or elements embodied in any subsequent plans and specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. If any Dwelling, improvement, or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the ARC, or shall not be completed, changed, modified or altered in accordance with the approvals granted by the ARC, then the Owner shall, upon and in accordance with a demand by the ARC, cause the Dwelling, improvement, or structure either to be restored to its original condition or to comply with the plans and specification as approved by the ARC, and shall bear all costs and reasonable attorneys' fees of the ARC. Any agent or member of the ARC may at any reasonable time enter any building or property subject to the jurisdiction of the ARC which is under construction or on or in which the agent or member may believe that a violation of these Protective Covenants is occurring or has occurred. Prior to the use or occupancy of any Dwelling, improvement, or structure constructed or erected on any Lot, the Owner thereof shall apply for certification from the ARC that the construction thereof has been completed in accordance with the plans and specifications approved by the ARC. In the event that the ARC shall fail, for a period of thirty (30) days from the date of receipt of such application, to give or deny such certification, the same shall be deemed to have been given. The ARC, may from time to time, delegate to a person or persons the right to approve or disapprove plans and specifications and to issue such certification.

(d) To adopt fees which may be designed to reimburse the ARC for the necessary and reasonable costs incurred by it in processing requests for ARC approval of any matters under its jurisdiction. Such fees, if any, shall be payable to the ARC, in cash, at the time that any application for approval is sought from the ARC.

(e) Neither the ARC nor any architect or agent thereof nor the Developer shall be responsible to check for any defects in any plans or specifications 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 specifications.

(f) The initial three members of the ARC appointed by the Developer are as follows: Charles G. Arcara, Joe McKay, Mike Robertson, and Jammie Cowden.

Section 4.6 **Variances.** The ARC, in its discretion, shall have the authority to modify the requirements of the Protective Covenants upon the request for a variance from such requirements by an Owner with respect to its Lot. If the Committee grants a requested variance, the nonconforming improvements subject to said request shall not be deemed to be in violation of the Protective Covenants. The granting or denial of a request for variance shall be in writing and shall not be binding on the Committee, nor shall it have any precedential value, on any further variance requests by the Owner or another Owner.

Section 4.7 **Additional Remedies.** In addition to any other remedies set forth in this Declaration, in the event any of the provisions of this Article IV or any other provisions of this Declaration or any rules and regulations promulgated by the ARC or the Association hereunder

are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the Association shall have the right, at its option, (subject to any applicable notice and/or cure periods expressly set forth herein) to do any or all of the following: (a) deny a contractor access to the subject Lot or Dwelling until the Owner, Occupant, or contractor submits a plan for correction of the violation that is approved by the ARC or the Association and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Lot or Dwelling until any work in place which does not comply with the plans and specifications approved by the ARC or the Association for such improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to cure such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article shall be paid by such Owner as an Individual Assessment, and if the same is not paid when due, shall bear interest and shall be subject to the lien provided for herein and shall be subject to foreclosure as provided herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any other enforcement rights specified in this Declaration.

ARTICLE V RESTRICTIONS

Section 5.1 **Use Restrictions.** The Property will be used for residential purposes only, and no trade or business purposes (other than home offices to be approved by the ARC and subject to any restrictions and limitations as the ARC may reasonably request), including all types of home industry, will be permitted. No building or structure other than a Dwelling shall be erected on any Lot within the Property except as otherwise permitted herein. Prohibited uses include, but are not limited to:

(a) dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners;

(b) raising, breeding, or keeping of any animals, birds, or fowl; provided that an Owner shall be permitted to keep not more than two dogs (2) and/or cats as domestic pets on a single Lot and provided further that the ARC may approve more animals to be kept as domestic pets on a Lot if such animals are to be kept in an enclosed area approved by the ARC;

(c) exploring, mining, boring, quarrying, drilling or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas; and

(d) use of a Dwelling by more than a Single Family Unit.

