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[SPACE ABOVE RESERVED FOR RECORDING DATA]

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Attention: Rebecca F. Drube

STATE OF GEORGIA  
COUNTY OF FULTON

CROSS REFERENCE: Deed Book 29517  
Page 312

**AMENDMENT TO THE DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR ABBOTTS RUN AND SUBMISSION TO  
THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT ("POAA")**

This Amendment to the Declaration of Covenants, Conditions and Restrictions for Abbots Run (hereafter referred to as "Declaration Amendment") is made on the date signed below.

WITNESSETH:

**WHEREAS**, Lea Capital Group, LLC, a Georgia limited liability company ("Declarant"), executed a Declaration of Protective Covenants, Conditions and Restrictions for Abbots Run on September 15, 2000, and recorded it on September 27, 2000 in Deed Book 29517, Page 312, *et seq.*, Fulton County, Georgia land records (hereinafter referred to as the "Declaration"); and

**WHEREAS**, the Declaration was subsequently amended by an amendment recorded in the Fulton County, Georgia Records as follows:

<u>Recording Date</u>	<u>Deed Book/Page</u>
March 3, 2003	34328/109
March 30, 2007	44729/119

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**THIS AMENDMENT SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA PROPERTY OWNERS' ASSOCIATION ACT, O.C.G.A. SECTION 44-3-220, ET SEQ.**

**CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING ASSESSMENTS DUE ON LOTS.**

**WHEREAS**, Abbotts Run Homeowners Association, Inc. (hereafter referred to as "Association") is the homeowners association identified and defined within the Declaration;

**WHEREAS**, Article VII, Section 3 of the Declaration provides that, five years after the Declaration is record, the Declaration may be amended by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners; and

**WHEREAS**, the Declaration was recorded more than five years ago and pursuant to Article VII, Section 3 of the Declaration at least seventy-five (75%) percent of the Lot Owners have agreed to amend the Declaration by executing individual amendment agreement forms which are maintained in the Association's records and incorporated herein by reference as permitted in Bowman v. Walnut Mountain Property Owners Association, Inc., 251 Ga. App. 91, 553 S.E.2d 389 (2001).

**WHEREAS**, these amendments are not material with respect to the Mortgagee of a Lot in that they do not materially and adversely affect the security title or interest of any Mortgagee; provided, however, if a court of competent jurisdiction determines that these amendments do so without such Mortgagee's consent, then these amendments shall not be binding on the Mortgagee so involved, unless it consents hereto; and if such consent is not forthcoming, then the provisions of the Declaration prior to these amendments shall control with respect to the affected Mortgagee;

**NOW, THEREFORE**, the Declaration is hereby amended as follows:

1.

**Article I, Section 1 of the Declaration is hereby amended by adding the following to the end thereof:**

All of the Properties in the Abbotts Run development shall be owned in fee simple and subject to the provisions of this Declaration and the Georgia Property Owners' Association Act, O.C.G.A., Section 44-3-220, et seq. The Property subjected to this Declaration constitutes a residential property owners' development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie, 1982), as such act may be amended from time to time.

2.

**Article I of the Declaration is hereby amended by adding the following Sections 11 through 13 to the end thereof:**

**Section 11.** "Act" shall mean and refer to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as such Act may be amended from time to time

**Section 12.** "Common Expenses" shall mean and refer to the expenses incurred or anticipated to be incurred for the general benefit of all Lots, including, but not

limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Association Properties.

**Section 13.** "Eligible Mortgage Holder" shall mean and refer to a holder of a first Mortgage secured by a Lot who has submitted a request in writing to the Association to receive notices shall be deemed an Eligible Mortgage Holder. Such notice must include the mortgage holder's name and address and the Lot number or address of the property in the Community secured by such mortgage.

3.

Article IV of the Declaration is hereby deleted in its entirety and the following new Article IV is substituted therefor to incorporate the provisions of the Georgia Property Owners' Association Act:

**ARTICLE IV  
ASSESSMENTS**

**Section 1. Purpose of Assessment.** The Association shall have the power to levy assessments as provided herein and in the Act. Assessments shall be used for any purpose the Board of Directors determines will benefit the Owners or the Properties.

**Section 2. Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments and other charges levied pursuant to this Declaration and the Bylaws. Except as provided below, or elsewhere in the Act, the amount of all Common Expenses shall be assessed against all the Lots equally.

All assessments and charges levied against a Lot and its Owner, together with interest, costs and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be: (1) a charge and a continuing lien against such Lot; and (2) the personal obligation of the person or entity who is the Owner of the Lot on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Lot. The Association, in the Board's discretion, may record a notice of such lien in the Fulton County, Georgia land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority as provided in the Act.

Assessments shall be paid in such manner and on such dates as determined by the Board of Directors. No Owner may exempt him or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

**Section 3. Delinquent Assessments.** All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner's debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 10 days of the due date, or such later date as may be provided by the Board of Directors:

(a) a late charge equal to the greater of \$10.00 or 10% of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner;

(b) interest at the rate of 10% per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date;

(c) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges through the remainder of the year without notice or warning to the delinquent Owner. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and

(d) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law.

If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Association Properties are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Lot.

If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorneys' fees, costs and expenses, then to costs and attorneys' fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

**Section 4. Computation of Operating Budget and Assessment.**

To establish the annual assessment for a fiscal year, the Board of Directors shall prepare a budget covering the estimated costs of operating the Properties, which

may include a reserve contribution as provided below. The Board shall provide the budget to the Owners at least 21 days before the due date of such assessment, or the first installment thereof. The budget and the assessment shall become effective unless, before the due date of such assessment, a majority of the total Association membership votes to disapprove them at a duly called membership meeting.

If the membership disapproves the proposed budget or the Board of Directors fails for any reason to determine a new budget, the budget then in effect shall continue until a new budget is adopted as provided herein. The Board may adopt an adjusted budget at any time during the year following the procedure specified above.

The budget shall not operate as a limitation on expenditures by the Board of Directors. The budget is merely an estimate of Common Expenses on which the Board establishes the annual assessment.

**Section 5. Special Assessments.** In addition to all other assessments and charges provided for herein, the Board of Directors may levy a special assessment against all Owners for any purpose. Special assessments totaling more than, in the aggregate, an amount equal to the annual assessment in any fiscal year must first be approved by at least a majority of those Owners either voting by written consent or ballot, or at least a majority of those Owners present or represented by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting.

**Section 6. Specific Assessments.** In addition to the all other assessments and charges provided for herein, the Board of Directors may levy specific special assessments as provided for in this Declaration, including reasonable fines and costs incurred by the Association for self-help remedies, or pursuant to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

**Section 7. Capital Budget and Contribution.** The Board of Directors may prepare an annual or multi-year capital reserve budget and may establish a capital reserve fund contribution based on such budget. Capital reserve budgets should take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

**Section 8. Initiation Fee.** In addition to all other assessments, fees and charges provided for herein, the purchaser or grantee of every Lot shall be assessed and be subject to a non-refundable, non-prorated initiation fee ("Initiation Fee") upon each and every conveyance or transfer of the Lot to any person other than to the spouse or heir of the Owner. The Initiation Fee shall be an amount equal to the annual assessment applicable to such Lot at the time of such conveyance or transfer. The Initiation Fee shall be due and payable by the purchaser or grantee at the time of conveyance or transfer of the Lot and shall be collected at the closing of each such conveyance or transfer. The Initiation Fee

shall constitute a specific special assessment and continuing lien against such Lot, and a personal obligation of the Owner of such Lot.

**Section 9. Foreclosure Administration Fee.** It is recognized that foreclosures of mortgages on Lots create substantial administrative and other burdens on the Association. These additional burdens on the Association include, but are not limited to, having to monitor the status of mortgages and legal periodicals to determine when foreclosures occur, searching the Fulton County, Georgia land records to determine the names of the purchasers at foreclosure sales, contacting the foreclosure purchasers/owners regarding foreclosure-purchaser responsibilities and assessment obligations and updating Association records multiple times to deal with just a single Lot. Pursuant to this Declaration and Section 44-3-225(a) of the Act, the Association is authorized to assess individual Owners certain fees and expenses occasioned by and benefiting just those Owners or those Owners' Lots. In accordance with these provisions, and in addition to annual assessments, special assessments, and other charges provided for in this Declaration, any person or entity who acquires a Lot at a foreclosure sale of the mortgage on such Lot, or by deed in lieu of a foreclosure, will be required to pay the Association a Foreclosure Administration Fee of \$1,000.00 at the time the foreclosure deed or deed in lieu of foreclosure is recorded in the Fulton County, Georgia records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration.

**Section 10. Statement of Account.** Any Owner, Mortgagee, or a person or entity having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Lot. The Association shall respond in writing within five business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Lot.

**Section 11. Surplus Funds and Common Profits.** Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account.

**Section 12. Exempt Property.** The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated to and accepted by a local public authority and devoted to public use; and (b) all Association Properties; provided, however, that no land or

improvement devoted to dwelling or commercial use shall be exempt from said assessments, charges and liens.

4.

Article VII, Section 3 is hereby deleted in its entirety and the following is substituted therefor:

**Section 3. Amendment.**

(a) **Member Approval Procedure.** Except where a higher vote is required for action under any other provisions of this Declaration, the Bylaws or by the Act, this Declaration may be amended with the approval of Owners holding 2/3 of the total Association vote. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Fulton County, Georgia land records.

(b) **Eligible Mortgage Holder Approval.** In addition to approval by the Owners as provided above, material amendments to this Declaration and the Bylaws must be approved by Eligible Mortgage Holders who represent at least 51% of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within 30 days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

(c) **Amendments to Comply with Law or Conform Documents.** Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration and the Bylaws to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between this Declaration, the Bylaws, the Articles, and applicable laws.

(d) **Validity of Amendments.** No Person shall be permitted to bring any legal action to challenge the validity of an amendment to this Declaration or the Bylaws more than one year after the recording thereof in the Fulton County, Georgia land records.

5.

Article VII is hereby amended by the addition of a new Section 5 and Section 6 to the end thereof that read as follows:

**Section 5. Duration.** The covenants and restrictions of this Declaration shall run with and bind the real property that is part of the Properties perpetually to the extent provided in the Act.

**Section 6. Conflicts.** The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, this Amendment, the Declaration, the Articles of Incorporation, and the By-laws, together with those reasonably implied to affect the purposes of the Association. If there is a conflict or inconsistency between the Act, the Georgia Nonprofit Corporation Code, this Amendment, the Declaration, the Articles of Incorporation or the By-laws, such laws and documents, in that order, shall prevail.

6.

Except as stated herein, the terms and provisions of the Declaration shall remain unchanged.

IN WITNESS WHEREOF, the undersigned officers of the Abbotts Run Homeowners Association, Inc., hereby certify that the above Amendment to the Declaration was duly adopted and that individual declaration agreement instruments are maintained in the corporate records in accordance with Bowman v. Walnut Mountain Property Owners Association, Inc., 251 Ga.App. 91; 553 S.E.2d 389 (2001).

This 10<sup>th</sup> day of DECEMBER, 2015.

SWORN TO AND SUBSCRIBED  
BEFORE ME this 10<sup>th</sup> day  
of DECEMBER, 2015.

ABBOTTS RUN HOMEOWNERS  
ASSOCIATION, INC.

Madelin Rivera  
Witness

By: [Signature] [SEAL]  
President

Shobha Kulkarni  
Notary Public

Attest: [Signature] [SEAL]  
Secretary

[NOTARY SEAL]

[CORPORATE SEAL]

**SHOBHA KULKARNI**  
NOTARY PUBLIC  
Forsyth County  
State of Georgia  
My Comm. Expires March 25, 2019

Deed Book 55688 Pg 577  
Cathelene Robinson  
Clerk of Superior Court  
Fulton County, Georgia