

AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
LEE'S CROSSING

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STATE OF GEORGIA  
COUNTY OF COBB

Reference: Deed Book 2152  
Page 407

AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
LEE'S CROSSING

WHEREAS, Lee's Crossing, Ltd., a Georgia limited partnership, recorded a Declaration of Covenants and Restrictions Made Applicable to Certain Lots Owned by Lee's Crossing, Ltd., on February 28, 1980, in Deed Book 2152, Page 407, et seq., Cobb County, Georgia Records (hereinafter referred to as the "Original Declaration"); and

WHEREAS, the Original Declaration has been previously amended by Supplemental Declarations recorded in the Cobb County, Georgia Records as follows:

<u>Recording Date</u>	<u>Deed Book/Page</u>
January 30, 1981	2308/361 <u>et seq.</u>
November 29, 1983	2950/526 <u>et seq.</u>
February 5, 1986	_____/_____ <u> et seq.</u>
July 17, 1987	4563/557 <u>et seq.</u> ;
December 21, 1987	4751/514 <u>et seq.</u> ; and

WHEREAS, additional declarations of covenants were recorded on July 17, 1987, in Deed Book 4563, Page 560, et seq., on March 15, 1989, in Deed Book 4847, Page 132, et seq., and on March 15, 1989, in Deed Book 4847, Page 145, et seq., aforesaid records ("Additional Declarations"), governing certain portions of the Lee's Crossing Property, which Additional Declarations have expired according to their own terms by conveyance of the Club Property recreational facilities to the Association; and

WHEREAS, Article XI, Section 2 of the Original Declaration provides for amendment of the Original Declaration by an instrument signed by members of Lee's Crossing Homes Association, Inc. ("Association"), entitled to cast at least seventy-five (75%) percent of the votes of the Association; and

WHEREAS, members of the Association entitled to cast at least seventy-five (75%) percent of the votes of the Association desire to amend the Original

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

Declaration and have approved this amendment;

NOW, THEREFORE, the Additional Declarations and the Original Declaration, and all exhibits and amendments to the foregoing are hereby stricken in their entirety and the following is simultaneously substituted therefor:

JSL:docs\dec\poa\5560

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

AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR LEE'S CROSSING

1. NAME.

The name of the property is Lee's Crossing, which property is 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).

2. DEFINITIONS.

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

(a) Act means the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended.

(b) Architectural Control Committee or ACC means the committee established to exercise the architectural review powers set forth in Paragraph 10 hereof.

(c) Area of Common Responsibility means the Common Property, together with any areas which become the Association's responsibility under this Declaration or by contract or agreement with any other Person. Public rights-of-way within or adjacent to the Property, may be part of the Area of Common Responsibility.

(d) Articles or Articles of Incorporation mean the Articles of Incorporation of Lee's Crossing Homes Association, Inc., filed with the Secretary of State of the State of Georgia.

(e) Association means Lee's Crossing Homes Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(f) Association Legal Instruments means this Declaration and all exhibits hereto, including the Association's Bylaws, and the plats, all as may be supplemented or amended.

(g) Board or Board of Directors means the elected body responsible for management and operation of the Association.

(h) Bylaws mean the Bylaws of Lee's Crossing Homes Association, Inc.

(i) Common Property means any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(j) Common Expenses mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

(k) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board and the ACC.

(l) Effective Date means the date that this Declaration is recorded in the

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

Cobb County, Georgia land records.

(m) Eligible Mortgage Holder means a holder of a first mortgage secured by a Lot who has requested notice of certain items as set forth herein.

(n) Lot means a portion of the Property intended for ownership and use as a single-family dwelling site as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the Cobb County, Georgia land records.

(o) Majority means those eligible votes, Owners, or other group as the context may indicate totalling more than fifty (50%) percent of the total eligible number.

(p) Mortgage means to any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation, including, but not limited to, a transfer or conveyance of fee title for such purpose.

(q) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(r) Occupant means any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(s) Officer means an individual who is elected to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

(t) Owner means the record title holder of a Lot, but shall not include a Mortgage Holder.

(u) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(v) Property means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference. The Property is a residential property owners development which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. § 44-3-220, et seq. (Michie 1982), as may be amended.

### 3. LOCATION, PROPERTY DESCRIPTION, AND PLATS.

The Property subject to this Declaration and the Act is located in Cobb County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. Plats of survey relating to the Property have been filed in Plat Book 75, Page 18; Plat Book 77, Page 85; Plat Book 81, Page 77; Plat Book 87, Page 34; Plat Book 105, Page 82; Plat Book 115, Page 48; and Plat Book 118, Page 42 of the Cobb County, Georgia records. The plats of survey are incorporated herein by reference.

4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Membership. Every Owner shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the Bylaws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned, except for splitting of votes as provided in the Bylaws.

(b) Voting. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

Except as otherwise provided herein, each Lot is hereby allocated equal liability for Common Expenses.

(a) Except as provided below, or elsewhere in the Act or the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots in accordance with the budget(s) adopted in accordance with this Declaration.

(b) The Board of Directors shall have the power to assess specially pursuant to this Paragraph and to Section 44-3-225(a) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Paragraph 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.

i) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility hereunder, any Common Expenses benefitting less than all of the Lots or significantly disproportionately benefitting all Lots may be specially assessed equitably among all of the Lots which are benefitted according to the benefit received.

ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots may be specially assessed against such Lot or Lots.

For purposes of this subparagraph, nonuse shall constitute a benefit to less than all Lots or a significant disproportionate benefit among all Lots only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

6. ASSOCIATION RIGHTS AND RESTRICTIONS.

The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have,:

(a) to enter onto Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which

right may be exercised by the Association's Board, officers, agents, employees and managers. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot;

(b) to make and to enforce reasonable rules and regulations governing the use of the Property, including the Lots and the Common Property;

(c) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposing reasonable monetary fines and suspending use and voting privileges and services paid for as a Common Expense, as provided herein and in Section 44-3-223 of the Act. These powers, however, shall not limit any other legal means of enforcing the use restrictions or Association rules and regulations by either the Association or, in an appropriate case, by an aggrieved owner. Any fines imposed shall be considered an assessment against the Lot;

(d) to grant permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Property under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Property;

(e) to control, manage, operate, maintain, replace and, in the Board's discretion, improve all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration;

(f) to deal with the Common Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(g) to represent the Owners in dealing with governmental entities with respect to the Common Property;

(h) to close permanently or temporarily any portion of the Common Property with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within a reasonable time after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open closed Common Property by a majority vote of the total Association vote, cast at a duly called special or annual meeting;

(i) to acquire, hold, and dispose of tangible and intangible personal property and real property.

## 7. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots as may be authorized by the Board.

(b) 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: (i) annual assessments or charges; (ii) special assessments, to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration, including, but not limited to, reasonable fines as may be imposed hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under the Act, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each assessment is made. Such amounts



shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. 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. 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 may be fixed by the Board. No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

(c) Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

i) If any annual or special assessments is not paid in full within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed, and an administrative accounting assessment of \$15.00 may be assessed, without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum or such higher rate as permitted by the Act shall accrue from the due date.

ii) If part payment of assessments and related charges is made, the amount received shall be applied, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

iii) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not limit ingress or egress to or from the Lot).

(d) Computation of Operating Budget and Assessment. At least thirty (30) days prior to the beginning of the Association's fiscal year, the Board shall prepare and adopt a budget covering the estimated costs of operating the Property during the coming year, including any reserve contribution determined appropriate by the Board. The Board shall cause the budget and notice of the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the beginning of the fiscal year for which the budget is to be effective.

Notwithstanding the above, however, if the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year, and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. The new budget and assessment may take effect without a meeting of the members.

(e) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may at any time levy a special assessment against all Owners; provided, however, prior to becoming effective, any special assessment (except as provided in Paragraph 9(b) herein, regarding repair or reconstruction of casualty damage to or destruction of all or part of the Common Property) first shall be approved by the affirmative vote of at least two-thirds (2/3) of Owners present or represented by proxy at a special or annual meeting of the members, notice of which shall specify that purpose.

(f) Statement of Account. Any Owner, Mortgagee, or a Person 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 due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars, 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.

(g) Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after applying such common profits to the payment of Common Expenses shall, at the Board's option, either be credited to the next assessment chargeable to the Owners or added to the Association's reserve account.

## 8. INSURANCE.

(a) The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

(c) Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

(d) All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefitted parties, as further identified in subparagraph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth:

i) All policies shall be written with a company licensed to do business in Georgia.

ii) All policies on the Common Property shall be for the benefit of the Association and its members.

iii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

iv) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

v) All casualty insurance policies shall have an inflation guard

endorsement and an agreed amount endorsement if these are reasonably available.

vi) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following: (a) a waiver of subrogation by the insurer as to any claims against the Board, the Association's manager, the Owners and their respective tenants, servants, agents, and guests; a) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash; (b) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners; (c) a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee; (d) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and (e) that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

(e) In addition to the other insurance required by this Paragraph, the Board shall obtain workmen's compensation insurance, if and to the extent necessary under applicable laws, and a fidelity or similar bond on directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus an amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

(f) Individual Insurance. By taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on his or her Lot and structures constructed thereon meeting the same requirements as set forth in subparagraphs (a) and (c) of this Paragraph for insurance on the Common Property. Each Owner further covenants and agrees that in the event of damage and destruction of structures on his Lot, the Owner shall either proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the ACC, or clear the Lot to its natural state. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

#### 9. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Common

Property as a result of fire or other casualty, unless eighty (80%) percent of the Lot Owners vote not to proceed with the reconstruction and repair of the structure, the Board or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Common Property, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Lot Owners without the necessity of a vote of the members or compliance with Paragraph 7(e) above. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be Association common funds to be used as directed by the Board.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board. To the extent insurance proceeds are available, the Association may reconstruct or repair owner improvements damaged as a result of fire or other casualty.

(d) Encroachments. Encroachments upon or in favor of Lots which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Lot Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Property was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Lot Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

10. ARCHITECTURAL CONTROLS.

(a) Architectural Standards. Except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Property, or make any exterior change, alteration, or construction (including painting involving a color change and landscaping involving regrading and/or shrub or tree planting or removal as defined in the Association's design guidelines), nor erect, place or post any object, sign, antenna, clothesline, playground equipment, light (except for reasonable seasonal decorative lights displayed between Thanksgiving and January 15), or other thing on the exterior of the buildings or Lots or on any Common Property, without first obtaining the written approval of the Architectural Control Committee ("ACC"). The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC shall be the sole arbiter of the application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which does not have ACC approval or is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Property alterations or additions, and any request in substantial compliance therewith shall be approved. Additionally, the Board or ACC may publish written standards for landscaping improvements or modifications on Lots which may be made without ACC approval. The ACC or the Board may allow such encroachments on the Common Property as it deems acceptable.

If the ACC fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this subparagraph (a) will be deemed complied with; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the rules and regulations.

(b) Architectural Control Committee. The ACC shall constitute a standing committee of the Association and shall consist of three (3) members, being at least one (1) Board member and two (2) additional members appointed by the Board from the Association membership. The chairperson of the ACC shall be a Board member.

(c) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition, or alteration.

(d) Limitation of Liability. Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board nor the ACC shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modifications to any Lot.

(e) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans

and specifications or drawings for any work done or proposed, or in connection with any other matter requiring Board or ACC approval, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(f) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the benefitted Lot.

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the ACC.

(g) General Controls applicable to Lots.

i) All containers for garbage and other refuse shall be visually screened from any street or side yard view.

ii) All outside air-conditioning compressors, meter boxes and similar items shall be visually screened from any street and may not be located on the front side of any house.

iii) No tree houses and no exposed above-ground tanks for the storage of fuel or water or any other substance are permitted on any Lot.

iv) All exposed metal roof flashing, stack vents, attic ventilators, and metal chimney caps on a Lot must be located on the rear side of the house's roof and may be installed only with ACC approval of installation, type, location and color. Gutters and downspouts on a Lot may be installed only with ACC approval of installation, type, location and color.

v) No chain link fencing is permitted on any Lot. The location, construction, material, design and color of all fencing shall require the prior approval of the ACC.

vi) Outside clothes lines are not be permitted on any Lot.

vii) No house, garage, playhouse, outbuilding, fence, wall or any other above-ground structure, or shrubs, flowers or other vegetation which obstruct horizontal sight lines at elevations between two and six feet above the street shall be erected, placed, planted, or permitted to remain on any portion of any corner Lot within such Lot and the right-of-way and a line connecting said common boundaries at points thirty (30) feet from the intersection of said common boundaries. In the case of any rounded corner Lot, the thirty (30) feet shall be measured from the point formed by the intersection of said common boundaries as extended. The same sight line limitations shall apply to the area of every Lot within a ten foot radius emanating from the intersection of any boundary line of any Lot with the edge of a driveway pavement. Trees may be planted and maintained within any of such areas in the foliage line if maintained at a sufficient height to prevent obstruction of such sight lines.

viii) The design, construction and installation of all decorative planting islands, vegetable gardens, and rock gardens must receive prior approval of

the ACC. The design, construction and installation of all sculptures, statuary, planters, birdbaths, birdhouses, fountains and other similar decorative items which are visible from any street or side yard must receive prior approval of the ACC.

ix) All Lots, together with the exterior of all improvements shall be maintained in a neat and attractive condition. Such maintenance shall include, but shall not be limited to, painting, staining, repairing, replacing, and caring for roofs, gutters, downspouts, building surfaces and other exterior improvements and caring for the grounds of each Lot (whether improved or unimproved), including trees, shrubs, grass and walks. All approved exterior improvements must be completed promptly and in a timely manner.

x) All mailboxes must be black and of a style approved by the ACC or consistent with Standards adopted by the ACC. All mailbox posts must be of a style and color consistent with the Standards established by the ACC or be approved by the ACC.

xi) All dwelling units on any Lot shall have an enclosed garage with adequate space for two automobiles. No carports are permitted on Lots.

xii) While energy conservation are encouraged within Lee's Crossing, all exterior energy saving devices, machines, equipment and material shall require the prior approval of the ACC.

xiii) Vinyl siding may be permitted on dwellings at the Property if approved by the ACC.

xiv) No trees measuring six (6) inches or more in diameter at a point two (2) feet above ground level, flowering trees, shrubs or any evergreens may be removed or radically pruned or trimmed from any Lot without prior approval of the ACC, unless located within ten (10) feet of a building, within ten (10) feet of the approved site of such building or within the path of any approved proposed driveway or walkway. Excepted herefrom shall be damaged trees or shrubs and trees or shrubs which must be removed because of an emergency.

#### 11. USE RESTRICTIONS.

Each Owner of a Lot shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of this Declaration, the Bylaws and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

Use restrictions regarding use of Lots and the Common Property are as follows and also as may be adopted by the Board in accordance with the terms hereof and as specified in the Bylaws.

(a) Use of Lots.

i) Residential Use. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Property, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within the dwelling so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the dwelling; (b) the business activity does not involve visitation of the Lot by employees, clients, customers, suppliers or other business invitees; provided, however, this provision shall not preclude delivery of materials or items by United States Postal delivery or by other customary parcel delivery services (U.P.S., Federal Express, etc.); (c) the business activity conforms to all zoning requirements for the Property; (d) the business activity does not increase traffic in the Property; (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the Board's sole discretion.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

ii) Single Families. No Lot shall be occupied by more than a total of two persons per bedroom in the dwelling on the Lot, but not to exceed a total of ten (10) people per dwelling.

(b) Subdivision of Lots and Outbuildings. No Lot may be subdivided into a smaller Lot and no structure of a temporary character, trailer, tent, shack, carport, garage or other outbuilding shall be erected or used by any Owner or Occupant on any portion of the Property, either temporarily or permanently, without Board approval.

(c) Use of Common Property. There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without prior written Board consent, except as specifically provided herein.

Any Owner(s) who is(are) permitted by the Board to reserve a portion of the Common Property shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Property and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

(d) Prohibition of Damage, Nuisance and Noise. Without prior written Board consent, nothing shall be done or kept on the Property or any part thereof which would increase the rate of insurance on the Common Property, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.



Noxious, destructive or offensive activity shall not be carried on upon the Property. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, nuisance or annoyance to other Owners or Occupants. No Owner or Occupant of a Lot may use or allow the use of the Lot or any portion of the Property in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or Occupants of a portion of the Property, or in such a way as to constitute, in the Board's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

No damage to or waste of the Common Property, or any part thereof, or of the exterior of any building constructed upon any Lot shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Lot.

(e) Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Property is prohibited, except for use by law enforcement officers and display for the limited purpose of transporting lawful firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1.

(f) Pets. No Owner or Occupant may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Property, as determined in the Board's discretion. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors, except for short periods of time within fenced areas on Lots. No dog house or other structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Property without prior ACC approval. All pets must be kept on a leash and be under the physical control of a responsible person at all times while outdoors, except when confined in fenced areas on a Lot. Feces left upon the Common Property by dogs must be removed by the owner of the dog or the person responsible for the dog.

No potbellied pigs may be brought onto or kept at the Property at any time. No dogs determined in the Board's sole discretion to be dangerous dogs may be brought onto or kept on the Property at any time by any Lot Owner, Occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner or Occupant or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Property upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

(g) Parking. No Owner or Occupant may keep or bring onto the Property more than a reasonable number of vehicles per Lot at any time, as determined by the Board. Vehicles only may be parked in garages, on driveways, or on designated paved or concrete parking areas or other areas authorized in writing by the Board.

Disabled and stored vehicles are prohibited from being parked on the Property, except in garages. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Property outside of a garage for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, boat trailers, trucks (including pickup trucks with a load capacity in excess of 1/2 ton), full-size vans (excluding mini-vans or utility vehicles used as passenger vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors are also prohibited from being parked on the Property, except in garages or other areas designated or approved by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans and commercial vehicles shall be allowed temporarily on the Common Property during normal business hours for the purpose of serving any Lot or the Common Property, but without written Board consent, no such vehicle shall be authorized to remain on the Property overnight outside of a garage.

If any vehicle is parked on any portion of the Property in violation of this subparagraph or in violation of the Association's rules, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after forty-eight (48) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Property stating the name and telephone number of the entity which will do the towing. If forty-eight (48) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Lot or dwelling, is obstructing the flow of traffic, is parked in any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. The Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(h) Abandoned Personal Property. Personal property (other than an automobile as provided for in Paragraph 11(g) and appropriate outdoor furniture or items authorized under Paragraph 11(m) hereof) is prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Property outside of a dwelling on a Lot without prior written Board permission.

If the Board, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Property in violation hereof, then the Board may remove and either discard or store the property in a location which the Board may determine, after placing a notice on the personal property and/or on the front door of the Lot of the owner of such property, if known, specifying the nature of the violation and stating that after two (2) days the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

In addition, the Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation hereof may, without prior notice to its owner or user, be removed by the Board and either discarded or stored in a location determined by the Board; provided, however, the Board shall give the owner, if known, notice of the property's removal and location within three (3) days after the removal. If personal property is removed in accordance herewith, neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal. Notwithstanding anything to the contrary herein, the Board may elect to impose fines

or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property.

(i) Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Property without prior written Board approval, except: (i) one professional security sign per ground floor window and/or door of a dwelling, not to exceed eighteen (18") square inches in size, (ii) one (1) weather-resistant, professionally lettered "For Rent" or "For Sale" sign not to exceed two (2') feet by two (2') feet in size, on a Lot being offered for sale or for lease, and (iii) one (1) weatherproof, professionally lettered political sign supporting a candidate for election, which may not be erected more than thirty (30) days prior to the election and must be removed within twenty-four (24) hours after the election. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.

(j) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Lot and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in sealed plastic bags and placed in proper receptacles designated by the Board for collection or shall be removed from the Property.

(k) Impairment of Dwellings and Easements. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another dwelling or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their Owners or Occupants.

(l) Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property, except in a garage. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, patio furniture, grills, and bicycles may be kept outside of a dwelling on the Lot.

(m) Garage Sales. No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Property without prior written Board consent, and such shall not last more than 2 days and shall not be permitted more than 3 times in any year. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

(n) Garages. No Owner or Occupant shall park his or her car or other motor vehicle on any portion of the Property, other than in the garage or on paved areas.

(o) No Transient Tenants. No transient tenants or Occupants shall be accommodated in a dwelling on a Lot. For purposes hereof, a tenant shall be considered transient if the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument, for such occupancy, and the tenant occupies the Lot for less than thirty (30) consecutive days.

(p) Window Treatments. Unless otherwise approved in writing by the Board, windows on dwellings on Lots shall have appropriate and customary window treatments.

## 12. LEASING.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Paragraph.

(a) Definition. "Leasing," for purposes of this Declaration, is defined as

regular, exclusive occupancy of a Lot by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Roommates of an Owner Occupant shall not be considered leasing hereunder.

(b) Leasing Provisions. Leasing of Lots shall be governed by the following provisions:

i) General. Lots may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. All leases must be for an initial term of not less than six (6) months, except with Board approval of a shorter term. Within seven (7) days after executing a lease agreement for the lease of a Lot, the Owner shall provide the Board with a copy of the lease and the names of the lessee and all other people to occupy the Lot. The Owner must provide the lessee copies of the Declaration, Bylaws, and rules.

ii) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Lot, covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Lot:

a) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and Association rules and shall control the conduct of all other Occupants and guests to ensure compliance. The Owner shall cause all Occupants of his or her Lot to comply with the Declaration, Bylaws, and Association rules, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Lot are fully liable and may be sanctioned for any such violation. If a fine assessed against the lessee is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Lot.

Any such violation by the lessee, any Occupant, or any person living with the lessee, is deemed to be a default under the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from any such violation, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with these terms. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be specifically assessed against the Lot and the Owner thereof as an expense which benefits the leased Lot and the Owner thereof.

b) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities.

c) Liability for Assessments. When a Lot Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of

occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(c) Applicability of this Paragraph 12. Leases existing on the Effective Date hereof shall not be subject to the terms of subparagraph (b) above. Such leases may continue in accordance with the terms of the Original Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Paragraph. Any Owner of a Lot which is leased on the Effective Date hereof shall provide the Board a copy of the lease agreement within thirty (30) days request by the Board.

This Paragraph 12 shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

13. SALE OF LOTS.

Within ten (10) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot.

14. MAINTENANCE RESPONSIBILITY.

(a) Association's Responsibility. The Association shall maintain, keep in good repair and, in the Board's discretion, improve the Common Property consistent with the Community-Wide Standard. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping, grass areas, paving and other improvements situated on the Common Property. The Association shall also maintain and keep in good repair all water and sewer pipes or facilities which serve more than one (1) Lot, whether located within or without the Lot's boundaries to the extent that such pipes and facilities are not maintained by public, private, or municipal utility companies.

Upon Board resolution and approval of a Majority of the members present or represented by proxy at a duly constituted meeting of the members, the Association may assume responsibility for providing additional exterior maintenance upon Lot improvements and/or responsibility for maintenance of landscaping and walkways within the boundaries of Lots. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

(b) Owner's Responsibility. Except as provided in subparagraph (a) above, all maintenance of the Lot shall be the responsibility of the Owner thereof. Such maintenance shall be performed consistent with this Declaration and the Community-Wide Standard. Any maintenance which involves an exterior change, including, without limitation, repainting of the exterior of improvements in a different color, shall require prior ACC approval.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Property by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Property) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

Each Owner shall also be obligated:

i) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Lots.

ii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

iii) Not to make any alterations in the portions of the Lot which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Lot which would or might jeopardize or impair the safety or soundness of any Lot without first obtaining the written consent of the Board of Directors of the Association and all Lot Owners and Mortgagees of the Lots affected, nor shall any Lot Owner impair any easement without first obtaining written consent of the Association and of the Lot Owner or Owners and their Mortgagees for whose benefit such easement exists.

iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Lot Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Lot Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Lot Owner's next chargeable assessment.

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Lot, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Lot or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Lot resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board.

(c) Failure to Maintain. If the Board determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be an assessment and lien against the Owner and the Lot.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Lot, which shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

(d) Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one Board term to another. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No Board decision or interpretation shall constitute a binding precedent with respect to subsequent Board decisions or interpretations.

15. MORTGAGEE'S RIGHTS.

(a) Unless at least two-thirds (2/3) of the first Mortgagees or Lot Owners give their consent, the Association shall not:

i) by act or omission seek to abandon or terminate the Property or the Association;

ii) change the pro rata interest or obligations of any individual Lot for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards;

iii) partition or subdivide any Lot;

iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property (the granting of utility easements or easements or rights-of-way for public purposes consistent with the intended use of the Common Property by the Association or architectural changes, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or

v) use hazard insurance proceeds for losses to any portion of the Property (whether to Lots or to Common Property) for other than the repair, replacement, or reconstruction of such portion of the Property.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Lot Owners where a larger percentage vote is otherwise required by the Association Legal Instruments for any of the actions contained in this Paragraph.

(b) Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Upon written request to the Association, identifying the name and address of the holder and the Lot number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

i) any condemnation loss or any casualty loss which affects a material portion of the Property or any Lot on which there is a first Mortgage held by such Eligible Mortgage Holder;

ii) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Lot Owner of any other obligation under the Association Legal Instruments which is not cured within sixty (60) days;

iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

(e) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 12 and 13 governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Lot pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Lot acquired by the Mortgagee.

#### 16. GENERAL PROVISIONS.

(a) Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Property; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Property. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) Dispute Resolution. Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

(c) No Discrimination. No action shall be taken by the Association or the



Board of Directors which would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

(d) Indemnification. The Association shall indemnify every officer and director against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

(e) Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

17. EMINENT DOMAIN.

Whenever all or any part of the Common Property shall be taken or conveyed in lieu of or under threat of condemnation by any authority having power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. If the taking involves a portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five (75%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Property to the extent lands are available therefor. The provisions of Paragraph 9, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken if improvements are not restored or replaced.

18. EASEMENTS.

(a) Easements for Use and Enjoyment. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his or her Lot, subject to the following provisions:

i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;

ii) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the recreational facilities in the Property for any period during which any assessment against his or her Lot which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;

iii) the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Lot or other property located within the Property.); and

iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the members of the Association.

Any Lot Owner may delegate his or her right of use and enjoyment in and to the Common Property and facilities located thereon to the members of his or her family, his or her tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of his or her Lot, if leased.

(b) Easements for Utilities. There is hereby reserved to the Association blanket easements upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which the Association may have installed to serve the Property. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement.

(c) Easement for Entry. The Association shall have an easement to enter onto any Lot for emergency, security, safety, and for other purposes reasonably necessary for the proper maintenance and operation of the Property, which right may be exercised by the Association's Board, officers, agents, employees and managers. Except in an emergency situation, entry shall be only during reasonable hours and after notice to the Owner or Occupant. This right of entry shall include the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event that an Owner fails or refuses to cure the condition upon request by the Board.

#### 19. AMENDMENTS.

Except where a higher vote is required for action under any other provisions of this Declaration, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. 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 Cobb County, Georgia land records. Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent 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 thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

20. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment, court order or otherwise shall not affect its application to other circumstances or affect any other provision(s), which shall remain in full force and effect.

21. DURATION.

The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

22. PREPARER.

This Declaration was prepared by Jay S. Lazega, Weissman, Nowack, Curry & Zaleon, P.C., 181 Fourteenth Street, Second Floor, Atlanta, Georgia 30309.

IN WITNESS WHEREOF, the undersigned officers of Lee's Crossing Homes Association, Inc., hereby certify that the above amendment to the Original Declaration was duly adopted by an agreement executed by members of the Association entitled to cast at least seventy-five (75%) percent of the votes of the Association, whose signed consent is a part of the permanent records of the Association.

This \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

LEE'S CROSSING HOMES ASSOCIATION, INC.

By: \_\_\_\_\_ [SEAL]  
President

Attest: \_\_\_\_\_ [SEAL]  
Secretary

[CORPORATE SEAL]

Sworn to and subscribed to  
before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 199\_\_.

Witness

Notary Public

[NOTARY SEAL]

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