

Return to: Weissman, Nowack, Curry & Wilco, P.C. [JTL]
1349 West Peachtree Street, 15th Floor
Atlanta, Georgia 30309

STATE OF GEORGIA
COUNTY OF FULTON

Reference: Deed Book 17243
Page 001, et seq.

FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS
FOR CRABAPPLE LAKE PARC AND FIRST AMENDMENT TO
BYLAWS OF LAKE PARC COMMUNITY ASSOCIATION, INC.

WHEREAS, Torrey/Lake Parc L.P., a Georgia limited partnership ("Declarant") recorded the Declaration of Protective Covenants for Crabapple Lake Parc ("Declaration") on October 19, 1993, at Deed Book 17243, Page 001 et seq., Fulton County, Georgia records; and

WHEREAS, Bylaws of Lake Parc Community Association, Inc. ("Bylaws") are recorded in the Fulton County, Georgia records at Deed Book 17243, Page 044 et seq., as Exhibit "C" to the Declaration; and

WHEREAS, Article XII, Section 12.04 of the Declaration provides that the Declaration may be amended upon the written consent of the Owners of at least two-thirds (2/3) of the Lots and the consent of the Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right to unilaterally annex additional property to the Community); and

WHEREAS, Owners of at least two-thirds (2/3) of the Lots have approved these amendments to the Declaration by written consent; and

WHEREAS, the consent of Declarant is not necessary for the approval of these amendments since Declarant neither owns any property for development and/or sale in the Community nor has the right to unilaterally annex additional property to the Community; and

WHEREAS, Article VI, Section 6.04 of the Bylaws provides that the Bylaws may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the Total Association Vote and the consent of the Declarant (so long as Declarant owns any property for development and/or sale in the Community or has the right to unilaterally annex additional property to the Community); and

WHEREAS, at least two-thirds (2/3) of the Total Association Vote have approved these amendments to the Bylaws by affirmative vote or written consent, or any combination thereof; and

WHEREAS, the consent of Declarant is not necessary for the approval of these amendments since Declarant neither owns any property for development and/or sale in the Community nor has the right to unilaterally annex additional property to the Community;

NOW, THEREFORE, the Declaration and Bylaws are hereby amended as follows:

DECLARATION

1.

Article I of the Declaration is hereby amended by adding the following Section 1.19 to the end thereof:

1.19 "Act" shall mean 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 II of the Declaration is hereby amended by adding the following as a new Section thereto:

2.03 Georgia Property Owners' Association Act. The Community 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), as such act may be amended from time to time.

3.

Article IV of the Declaration is hereby amended by deleting that Article in its entirety and substituting the following therefor:

Article IV
Assessments

4.01 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.

4.02 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, such assessments to be established and collected as hereinafter provided; and (iii) specific special assessments levied by the Board hereunder against any particular Lot, including, but not limited to, reasonable fines imposed hereunder and assessments levied under Section 4.03 hereof.

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 Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Fulton County, Georgia records evidencing the lien created under the Act and this Declaration.

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.

The lien provided for herein shall have priority as provided in the Act.

4.03 Individual Assessments. Except as provided below, or elsewhere in the Act or the Declaration of the Bylaws, the amount of all common expenses shall be assessed against all Lots equally.

(a) Notwithstanding the above, the Board of Directors shall have the power to assess specific special assessments pursuant to this Section 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 Section 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 exercise its authority hereunder 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 benefiting less than all of the Lots or significantly disproportionately benefiting all Lots may be specially assessed equitably among all of the Lots which are benefited 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(s) may be specially assessed against such Lot(s), including attorney's fees incurred by the Association, in enforcing the Declaration, Bylaws or Association rules and regulations. .

For purposes of this Section, 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.

4.04 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.

(a) If any assessment or other charge, or any part thereof, is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board, 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 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 may be permitted by the Act, shall accrue from the due date.

If part payment of assessments and related charges is made, the amount received shall be applied by the Board,

in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments.

(b) If assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment. If the Owner fails to pay all amounts currently due within ten (10) days of the date of the notice of delinquency, the Board may then accelerate and declare immediately due all installments of the annual assessment and of any special assessment, without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year, unless reinstated in the Board's discretion.

If assessments, fines or 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, including reasonable attorney's fees actually incurred, and suspend the Owner's and occupant's right to use the Common Property (provided, however, the Board may not deny ingress or egress to or from the Lot).

4.05 Computation of Operating Budget and Assessment. Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, and the Board shall establish the annual assessment or installments for the coming year. The Board shall cause the budget and notice of the assessment(s) to be delivered to each Owner at least thirty (30) days prior to the due date for such assessment, or the first installment thereof. The budget and the assessment shall become effective unless disapproved at a duly called Association annual meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

If the Board fails for any reason to determine the budget for the succeeding year or the membership disapproves the budget, then and until such time as a budget shall have been 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 Owners at least thirty (30) days prior to the proposed effective date thereof.

4.06 Special Assessments. In addition to the other assessments authorized herein, the Board may at any time levy a special assessment against all Owners, with notice thereof sent to all Owners. However, any assessment which would cause the total of special assessments levied against any lot in one calendar year to exceed two hundred (\$200.00) dollars first must be approved by at least two-thirds (2/3) of those Owners voting by ballot or written consent under Article II, Section 2.11 of the Bylaws, or present or represented by proxy at a duly called special or annual meeting of the members, notice of which shall specify that purpose. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

4.07 Capital Budget and Contribution. The Board may prepare an annual or multi-year capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Section 4.05 above.

4.08 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 such 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 or such higher amount as may be authorized under the Act, 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. The Association may require an additional fee not to exceed twenty-five (\$25.00) dollars if the Association provides a copy of the Declaration and Bylaws to any such Person in connection with a closing or otherwise upon request.

4.09 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 Board's option, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account

4.10 Initiation Fee. Subsequent to the recording of this amendment in the Fulton County land records, the

Owner of each Lot shall pay to the Association at the time of acquisition of such Lot, whether such acquisition is as the first Owner of the Lot or as a subsequent Owner, a non-refundable initiation fee. The initial fee shall be Two Hundred and no/100 Dollars (\$200.00) and can be changed from time to time by the Board of Directors. No change shall be effective until it is revised in the Fulton County Land Records. No initiation fee shall be deemed an advance payment of regular or special assessments. Notwithstanding anything to the contrary herein, no initiation fee shall be due from any person or entity who takes title through foreclosure (or deed in lieu of foreclosure) upon the lien of any first priority mortgage covering the Lot and the lien of any secondary purchase money mortgage covering the Lot. This initiation fee shall be an assessment which is the personal obligation of the Owner, and shall constitute a lien which may be collected as provided in Section 4.04 of this Article.

4.

Article VI, Section 6.03 of the Declaration is hereby amended by adding the following paragraph to the end thereto:

In the event that the Architectural Review Committee or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the Architectural Review Committee's decision to the Board of Directors. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the Architectural Review Committee, the decision of the Architectural Review Committee, and the application of the Owner to the Architectural Review Committee. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen (14) days from the date of the Architectural Review Committee's notice to the Owner of its decision, the decision of the Architectural Review Committee shall become final and all rights of appeal shall terminate and thereafter be void.

5.

Article VI, Section 6.07 of the Declaration is hereby amended by striking that Section in its entirety and substituting the following therefor:

6.07 Leasing. In order to protect the equity of the individual Lot Owners within the Community, to carry out the purpose for which the Community was formed by preserving the character of the Community as a homogeneous residential Community of predominantly owner-occupied homes, and to prevent the Community from assuming the character of a renter-occupied complex, leasing of Lots shall be governed by the restrictions imposed by this Section. Except as provided herein, the leasing of Lots shall be prohibited.

(A) Definition. "Leasing," for purposes of the Declaration, is defined as the regular, exclusive occupancy of a Lot by any person or persons other than the Owner; provided, however, leasing shall not include exclusive occupancy by the spouse, child or parent of an Owner and shall not include the occupancy by a roommate of an Owner who occupies the Lot as such Owner's primary residence.

(B) General. Owners desiring to lease their Lots may do so only if they have applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Lot provided that such Leasing is in strict accordance with the terms of the permit and this Section. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Paragraph. All permits shall be valid only as to a specific Lot Owner and Lot and shall not be transferable between either Lots or Lot Owners. Further, each Owner shall be limited to two permits regardless of the number of Lots each such Owner shall own.

(C) Leasing Permits. An Owner's request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than ten percent (10%) of the total number of Lots in the Community. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Lot to a third party (excluding sales or transfers to an Owner's spouse, a person cohabitating with the Owner, or a corporation, partnership, company, or legal entity in which the Owner is a principal); (2) the failure of a Lot Owner to lease his or her Lot within six months of the Leasing Permit having been issued; (3) the failure of a Lot Owner to have his or her Lot leased for any consecutive six month period thereafter; or (4) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit.

If current Leasing Permits have been issued for ten percent (10%) of the total number of Lots in the Community, no additional Leasing Permits shall be issued (except for Hardship Leasing Permits, as set forth below) until the number of outstanding current Leasing Permits falls below ten percent (10%) of the total number of Lots in the Community. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued a Leasing Permit if they so desire when the number of current outstanding Leasing Permits issued falls to less than ten percent (10%) of the total number of Lots in the Community. The issuance of a Hardship Leasing Permit to an Owner

shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

(D) **Hardship Leasing Permits.** If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion. In making such a determination, the Board may take any factor into account, including: (1) the nature, degree, and likely duration of the hardship, (2) the number of Hardship Leasing Permits which have been issued to other Owners, (3) the Owner's ability to cure the hardship, and (4) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (1) a Lot Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six months from the date that the Lot was placed on the market, sell the Lot except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot. Hardship Leasing Permits shall be valid for a term not to exceed one year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit.

(E) **Leasing Provisions.** Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(1) **Notice.** At least seven (7) days prior to entering into the lease of a Lot, the Owner shall provide the Board of Directors with a copy of the proposed lease, the name, address, and home and business telephone numbers of the proposed lessee and the names of all other people occupying the Lot, the Owner's address other than at the Lot, and such other information as the Board may reasonably require. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto. Within ten (10) days from the execution of the approved lease by both parties, the Owner shall provide the Board with a copy of the executed lease.

(2) **General.** Lots may be leased only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless approved in writing by the Board. No transient tenants may be accommodated in a Lot. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. All leases shall be for a period of at least six months, except with written Board approval. The Lot Owner must provide the tenant copies of the Declaration, Bylaws, and Association rules and regulations, and the lease form shall provide that the Owner has done so.

(3) **Liability for Assessments and Compliance With Declaration, Bylaws, and Rules and Regulations.** Any lease of a Lot in the Community shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner 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 a lease by existence of this covenant on the Lot. Any lessee, by occupancy of a Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(a) **Liability for Assessments.** Lessee agrees to be personally obligated for the payment of all assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the lessee or which become due as a consequence of lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Lot Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

When a Lot Owner who is leasing his or her Lot fails to pay any assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board of Directors, lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by lessee; provided, 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. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent lessee would be required to make such payments to the Association if lessee were the owner of the premises during the term of the agreement and any other period of occupancy by lessee.

(b) **Compliance with Declaration, Bylaws, and Rules and Regulations.** Lessee shall abide by and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall

control the conduct of all other occupants and guests in order to insure compliance with the foregoing. Lessee acknowledges that the violation by lessee or any occupant living with lessee of any provision of the Declaration, Bylaws, or rules and regulations adopted thereunder shall constitute a default under this lease. Owner shall cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule and regulation for which a fine is imposed, such fine may be assessed against the lessee and/or the Owner; provided, however, if a fine is not paid by the lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Board of the lessee's failure to do so. Unpaid fines shall constitute a lien against the Lot. Any lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by lessee, any occupant, or any person living with lessee is deemed to be a violation of the terms of 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 Lake Parc Community Association, Inc., acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee on behalf and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the tenant, any costs, including attorney's fees and court costs, associated with the eviction shall be specially assessed against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

(c) 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 and other amenities.

(F) Applicability of this Section. Leases existing on the date which this Amendment is recorded in the Fulton County, Georgia property records shall not be subject to the terms of Section and such leases may continue in accordance with the terms of the Declaration as it existed prior to the recording date of this Amendment. 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 Section. Any Owner of a Lot which is leased on the effective date of this Declaration shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Amendment is recorded in the Fulton County, Georgia property records.

6.

Article XII, Section 12.03 of the Declaration is hereby amended by deleting that Section in its entirety and substituting therefor the following:

12.03. Duration. The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit if and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided in the Act.

BYLAWS

1.

Article II, Section 2.04 of the By-Laws is hereby amended by deleting that Section in its entirety and substituting the following therefor:

2.04 Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each Owner of Lots of record or to the Lots a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. If any Owner wishes notice to be given at an address other than his or her Lot, the Owner shall designate such other address by written notice to the Secretary. The mailing or delivering of a meeting notice as provided in this Section shall constitute proper service of notice.

IN WITNESS WHEREOF, the undersigned officers of Lake Parc Community Association, Inc. hereby certify that these Amendments to the Declaration and Bylaws were duly adopted by the required vote of the Association membership and any required notices were duly given.

This day of , 20 .

LAKE PARC COMMUNITY ASSOCIATION, INC.

By: _____ [SEAL]
President

Attest: _____ [SEAL]

Secretary

Sworn to and subscribed to
before me this _____ day of
, 20__ .

Witness

Notary Public