

Linda Carter
Clerk of Superior Court DeKalb Cty. Ga.
1 1000 01 110 12 110 00 11 11 010 01 011 11 001 01 001 10 110 01 110 1 1001

Return To:
REGINALD A. HUDSPETH, LLC
1770 Indian Trail Road, Suite 280
Norcross, Georgia 30093
(770) 925-1400

DECLARATION OF CONDOMINIUM
FOR
THE GATES AT BOULDERCREST
DEKALB COUNTY, GEORGIA

PLAT for the Condominium recorded in Plat Book 122, Page 72, DeKalb County, Georgia Records.

PLANS for the Condominium recorded in Plat Book 120, Pages 16 thru 56, DeKalb County, Georgia Records.

This document is recorded in Deed Book 12345 Page 20, DeKalb County, Georgia Records.

TABLE OF CONTENTS
FOR
DECLARATION OF CONDOMINIUM
FOR
THE GATES AT BOULDERCREST
DEKALB COUNTY, GEORGIA

	PAGE
ARTICLE I.	
DEFINITIONS.....	2
ARTICLE II.	
MANOR HOMES.....	4
Section 1. Manor Homes Hereby Subjected to the Act and this Declaration.....	4
Section 2. Additional Manor Homes Hereafter Subjected to this Declaration...	4
Section 3. No Effect on Balance of Overall Property.....	6
Section 4. Boundaries of Manor Homes.....	6
Section 5. All Manor Homes Bear the Burdens and Enjoy the Benefits of this Declaration.....	6
Section 6. Easements Over the Manor Homes.....	6
Section 7. Condominium Act Provisions.....	6
Section 8. Unit Types.....	7
ARTICLE III.	
ASSOCIATION PROPERTY.....	7
Section 1. Association Property.....	7
Section 2. Members' Rights in Association Property.....	8
Section 3. Easements Over Association Property.....	8
Section 4. Damage or Destruction of Association Property.....	9
Section 5. Transfer or Encumbrance.....	9
Section 6. Easement Areas.....	9
Section 7. Patios, Stoops, Driveways & Walls.....	9
Section 8. Maintenance of Association Property.....	9
Section 9. Temporary Structures.....	10
Section 10. Vehicles; Trailers; Boats; Automobiles.....	10
ARTICLE IV.	
THE ASSOCIATION.....	10

Section 1.	The Association.....	10
Section 2.	Membership.....	10
Section 3.	Suspension of Membership Rights.....	11
Section 4.	Meetings of the Membership.....	11
Section 5.	Association Acts Through Its Board of Directors.....	11
Section 6.	Professional Management.....	11

ARTICLE V.

ASSESSMENTS.....		11
Section 1.	Assessments: Lien Therefor.....	11
Section 2.	Personal Obligation of Members.....	12
Section 3.	Purposes of Assessments.....	12
Section 4.	Determination of Annual Assessment and Shares Thereof.....	13
Section 5.	Initial Assessments.....	13
Section 6.	Special Assessments.....	14
Section 7.	Effect of Non-Payment of Assessments; Remedies of the Association.....	14

ARTICLE VI.

DAMAGE OR DESTRUCTION OF MANOR HOMES.....	14
---	----

ARTICLE VII.

ARCHITECTURAL CONTROL AND RESTRICTIONS.....	15	
Section 1.	Single-Family Use.....	15
Section 2.	Prohibited Activities.....	15
Section 3.	Nuisances.....	15
Section 4.	Animals.....	15
Section 5.	Signs.....	16
Section 6.	Antennas; Aerials; Satellite Dishes.....	16
Section 7.	Window Air-Conditioners.....	16
Section 8.	Subdivision of Manor Homes.....	16
Section 9.	Removal of Trees.....	16
Section 10.	Storage of Construction Materials.....	16
Section 11.	Utility Pipes.....	16
Section 12.	Garage Doors.....	17
Section 13.	Enforcement of Members.....	17

ARTICLE VIII.

MAINTENANCE OF MANOR HOMES AND EASEMENT AREAS.....	17
--	----

Section 1.	Maintenance and Repair of Manor Homes, Stoops, Patios Driveways and Walks.....	17
Section 2.	Maintenance of Easement Areas.....	17
Section 3.	Fences.....	18
Section 4.	Drainage.....	18
Section 5.	Failure of Maintenance.....	18

ARTICLE IX.

INSURANCE.....	19
----------------	----

Section 1.	Association Property.....	19
Section 2.	Manor Homes.....	19

ARTICLE X.

AMENDMENT.....	19
----------------	----

ARTICLE XI.

MISCELLANEOUS.....	20
--------------------	----

Section 1.	Failure of Enforcement.....	20
Section 2.	Waivers.....	20
Section 3.	Duration.....	20
Section 4.	Notices.....	20
Section 5.	Severability.....	20
Section 6.	Enforcement.....	21
Section 7.	Successors to Declarant.....	21

ARTICLE I.

DEFINITIONS

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Article I, such definitions being cumulative of those set forth elsewhere in this Declaration. In addition, all terms used in this Declaration which are defined in the Act shall have the meanings ascribed to them in the Act, unless other definitions are set forth for the same in this Declaration.

“Act” shall mean the Georgia Condominium Act, O.C.G.A. §44-3-70 et seq.

“Annual Assessment” shall have the meaning specified in Section 4 of Article V hereof, and shall constitute the assessments which, pursuant to the provisions of Article V hereof, shall be levied by the Association against the Manor Homes each year for the purpose of raising the funds necessary to pay the “Annual Expenses” (as that term is defined in Section 3 of Article V hereof).

“Articles of Incorporation” shall mean the Articles of Incorporation of the Association, as the same may be amended from time to time.

“Association” shall mean The Gates at Bouldercrest Homeowners’ Association, Inc., a Georgia non-profit membership corporation.

“Association Property” or “Common Elements” shall have the meaning defined by the Act and shall mean all real property, which is shown and depicted on any Plat recorded in the records of DeKalb, which is neither included within any Manor Home nor dedicated to a governmental authority. As portions of the Overall Property are subjected to this Declaration, all of the realty included within the portion of the Overall Property so subjected to this Declaration shall constitute Association Property, except for the parts thereof that shall constitute Manor Homes and except for the parts thereof that shall be dedicated to a governmental authority.

“Board of Directors” shall mean the Board of Directors of the Association.

“Bylaws” shall mean the Bylaws of the Association, as the same may be amended from time to time.

“Condominium” shall have the meaning defined by the Act and shall be the condominium created pursuant to this Declaration.

“Declarant” shall mean BENCHMARK/BOULDERCREST, LLC, a Georgia limited liability company and BURNHAM BUILDERS, L.P, a Georgia limited partnership, and shall include any successor or assign of such Declarant to which a specific assignment of its rights as Declarant has been made pursuant to this Declaration.

“Declaration” shall mean this Declaration of Condominium, as the same may be hereafter amended in accordance with the terms and provisions of Article X hereof.

“Driveway” shall mean the poured-concrete driveway that was laid down and installed by the builder as part of the initial construction of a Manor Home, or any replacement driveway specifically approved by Declarant or by the Board of Directors.

“First Mortgage” shall mean a Mortgage conveying a first priority lien upon or security title to any Manor Home.

“HUD” shall mean the United States Department of Housing and Urban Development and, in the event that said Department shall be abolished and its operations transferred to another division of the United States government, such other division.

“Limited Common Elements” shall mean the Patios, Walks, Stoops and Driveways serving an individual Manor Home, and any additional portions of the Association Property, which are specifically identified on the Plat as “Limited Common Elements”.

“Manor Homes” or “Units” shall have the meaning defined by the Act and shall be those parcels of real property, and all improvements located thereon, described in Section 1 of Article II of this Declaration, and shown and depicted as Manor Homes on the Plat and each of those additional parcels of real property, and all improvements located thereon, as may hereafter be subjected to this Declaration as Manor Homes in the manner described in Section 2 of Article II of this Declaration.

“Overall Property” shall mean all of that property which is described on Exhibit “A” to this Declaration.

“Patio” shall mean the poured-concrete patio that was laid down and installed adjacent to each Manor Home as part of the original construction of such Manor Home, and any additional area around the poured-concrete patio specifically designated by the Board of Directors as a part of the patio.

“Person” shall mean a natural person, corporation, trust, partnership or any other legal entity.

“Plat” shall mean, collectively, the plat that is identified in Section 1 of Article II of this Declaration, and all plats that are hereafter recorded in the Condominium Plat Records of DeKalb, pursuant to the provisions of Section 2 of Article II of this Declaration, in connection with the subjecting of additional Manor Homes to this Declaration. The Plat shall comply with the requirements of the Act.

“Portico” shall mean the portico that was constructed as part of the original construction of certain of the Manor Homes, said portico being located in the front of, and extending across the entire width of, the front boundary of such Manor Home. Each Portico is depicted on the Plat

All portions of the Overall Property which shall be transferred to the Association by the Declarant (a) shall be conveyed to the Association by limited warranty deed free of debt encumbrance, and (b) shall be conveyed to the Association subject to the rights and easements set forth in Sections 2 and 3 of this Article III, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements.

Section 2. Members' Rights in Association Property. Every owner of any Manor Home shall have a non-exclusive right and easement of enjoyment and use in and to all portions of the Association Property, except for Stoops, Patios, Driveways and Walks (which shall be Limited Common Elements), and such right and easement shall be appurtenant to, and shall pass with, the title to the Manor Home(s) owned by such owner. Such right and easement of enjoyment and use are and shall be subject to the easements which are described in Section 3 of this Article III, to all other provisions of this Declaration relating to the use of the Association Property, and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Association Property, and to the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the owner of any Manor Home during any period in which any assessment which is due to the Association from such owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of its published rules and regulations.

Section 3. Easements Over Association Property. All Association Property shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) An easement across, in, under, over and through the Association Property for the purposes of the construction, installation, repair, maintenance and use of all utility and drainage lines, wires, pipes and similar facilities as may be reasonably necessary for the provision of utility services (including, water, sewer, gas, electric, cable television and telephone services) to the Manor Homes;

(b) An easement in favor of Declarant for the exclusive use of such portions of the Association Property as may be reasonably desirable, convenient or incidental to the construction and installation of improvements on, and the sale of, any Manor Home, including, but not limited to, sales and business offices, storage areas, construction yards and signs. Such easements shall be exercisable by any and all persons whom the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and builders of Manor Homes, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate at such time as the construction of the Manor Home has been completed and all of the Manor Homes shall have been conveyed to owners thereof who shall not have acquired the Manor Homes for the purpose of immediate resale of the same. Such easements shall and do exist without affecting the obligation of the owner of any Manor Home to pay assessments or charges coming due during such period of time as portions of the Association Property shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(c) The easements described in Sections 6 and 7 of this Article III; and

(d) An easement for the continued maintenance, repair, replacement and use of the area on which the air-conditioning compressor serving any Manor Home is located, such easement to be appurtenant to the Manor Home served by such air-conditioning compressor.

Section 4. Damage or Destruction of Association Property. All damage that shall occur to any improvements located on any Association Property on account of any casualty shall be repaired in all events. Such repairs shall be undertaken and completed as soon after the occurrence of any such casualty as is reasonably practicable. All repairs to any improvements located on the Association Property shall be made in accordance with plans and specifications that shall be approved for the same by the Board of Directors of the Association.

Section 5. Transfer or Encumbrance. In no event shall the Association abandon, encumber, dedicate, sell or transfer, directly or indirectly, any portion of the Association Property unless such abandonment, encumbrance, dedication, sale or transfer shall be first approved in writing by the owners of no fewer than sixty-seven percent (67%) of the Manor Homes. In no event shall the Association abandon, encumber, dedicate, sell or transfer any portion of the Association Property consisting of a Stoop or Easement Area.

Section 6. Easement Areas. There shall be appurtenant to each Manor Home an easement for the exclusive use and enjoyment of the Easement Area that is depicted on the Plat recorded in connection with the subjecting of such Manor Home to the terms of this Declaration as being appurtenant to such Manor Home. Such easement shall include the rights to plant shrubbery, plants, trees, flowers, bushes, grass, ivy and other foliage in and on such Easement Area, and to erect a fence in accordance with the provisions of Article VIII, Section 3 of this Declaration.

Section 7. Patios, Stoops, Driveways and Walks. The Patio, Stoop, Driveway and Walk that are annexed to each Manor Home shall constitute Limited Common Elements which are reserved for the exclusive use of such Manor Home.

Section 8. Maintenance of Association Property.

(a) Except for the maintenance of the portion of each Easement Area enclosed by a fence in accordance with Article VIII, Section 3, which maintenance is required to be performed by the owner of the Manor Home to which such Easement Area is annexed (as provided for in Section 2 of Article VIII of this Declaration), and except for the maintenance and repair of the Patio, Stoop, Driveway and Walk which is required to be performed by the owner of the Manor Home to which such Patio, Stoop, Driveway and Walk are attached or annexed (as provided for in Section 1 of Article VIII of this Declaration), the Association shall be responsible for the maintenance and repair of all Association Property.

(b) In no event shall any person construct, place, install, plant or mount any structure, plant, tree, shrub or other item on any part of the Association Property (including within any Easement Area), except only for (i) fences permitted under the provisions of Section

3 of Article VIII hereof, (ii) items placed or installed on the Patios in accordance with all other terms and restrictions set forth in this Declaration, (iii) plants, shrubbery, trees, flowers, bushes, grass, ivy or other foliage planted in an Easement Area pursuant to the exercise of the easement set forth in Section 6 of this Article III, and (iv) items placed with the prior, written permission of the Board of Directors.

Section 9. Temporary Structures. Subject to the right of the Declarant to promote the sale of Manor Homes, no structure of a temporary character, including, without limitation, any trailer, tent, shack, garage or other building, shall be permitted on any part of the Association Property at any time, whether temporarily or permanently, except with the prior written consent of the Board of Directors. No temporary building, trailer, garage or building in the course of construction shall be used, temporarily or permanently, as a residence on any lot.

Section 10. Vehicles; Trailers; Boats; Automobiles. All vehicles belonging to owners or occupants of any Manor Home shall be parked in the garage of such Manor Home, and not in the driveway of such Manor Home or on the streets or common driveways which are part of the Association Property. Guests of the owner or occupant of any Manor Home may park vehicles in the driveway of such Manor Home for a period not to exceed six hours at a time. No boats, trailers, recreational vehicles, motorcycles, trucks of a capacity of one ton or more or unlicensed vehicles may be parked in the driveway or yard of any Manor Home, or in any streets or common driveways which are part of the Association Property. Any maintenance or repair of any vehicle must be accomplished inside of the garage of a Manor Home with the garage door closed, and no maintenance or repairs on any vehicle may be performed on the driveway of any Manor Home or on any part of the Association Property.

ARTICLE IV.

THE ASSOCIATION

Section 1. The Association. Prior to the date this Declaration has been filed for record with the Clerk of the Superior Court of DeKalb County, Georgia, the Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the ownership, management and operation of the Association Property, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as the Board of Directors shall deem to be in the best interests of the members of the Association. Declarant shall maintain control of the Association for the maximum period of time permitted by OCGA Section 44-3-101.

Section 2. Membership. Every person who is, or who becomes, a record owner of a fee or undivided fee interest in any Manor Home is and shall be a member of the Association; provided, however, that any such person who holds such interest merely as security for the performance of an obligation shall not be a member of the Association. The transfer of ownership of a fee or undivided fee interest in any Manor Home shall automatically transfer

common expenses pursuant to O.C.G.A. §44-3-80, regardless of the floor area of such Manor Home.

As more fully provided in § 44-3-80 of the Act, all sums lawfully assessed by the Association against any Manor Home and the owner thereof, shall, from the time the sums became due and payable, be the personal obligation of the owner of such Manor Home and constitute a lien in favor of the Association on such Manor Home prior and superior to all other liens whatsoever, except: as provided in OCGA Section 44-3-109.

Section 2. Personal Obligation of Members. Each member of the Association, by acceptance of a deed or other conveyance to the Manor Home(s) owned by such member, irrespective of whether it shall be so expressed in any such deed or other conveyance, and by acceptance of ownership of such Manor Home(s), and by taking record title to such Manor Home(s), shall be deemed to covenant and agree to pay to the Association:

(a) His share of the Annual Assessments which shall be levied by the Association in accordance with Section 4 hereof; and

(b) When properly authorized in accordance with Section 5 or 6 hereof initial assessments, special assessments, such annual and special assessments to be fixed, established and collected from time to time as hereinafter provided.

All such assessments, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be the personal obligation of the person who is the owner of the Manor Home against which such assessments are levied at the time such assessments become due and payable. The covenant to pay assessments herein stated is and shall be a covenant running with the land.

Section 3. Purposes of Assessments. The assessments levied on an annual basis by the Association pursuant to Section 4 of this Article V shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: repair and maintenance of all Association Property which is to be maintained by the Association; payment of all governmental charges, taxes and assessments which shall be levied against all Association Property; payment of all costs and expenses incurred by the Association in connection with its operations; payment of the premiums for all policies of property and liability insurance maintained by the Association with respect to Association Property; payment of the premiums for all fidelity bonds which shall be obtained by the Association; the maintenance of reserves for the repair and replacement of improvements located on the Association Property and for such other purposes as the Board of Directors shall determine; the payment of the fees of such management firms as the Board of Directors shall employ (which management firms may be affiliated with Declarant); accounting charges and administrative fees in managing the business and affairs of the Association; and payment of the fees for the provision of such

professional services as the Board of Directors shall determine to be required by the Association, including legal, accounting and architectural services.

Section 4. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserve fundings based upon such estimate and providing for the total annual assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied against all of the members of the Association for any fiscal year is herein referred to as the "Annual Assessment"). Initially, the Annual Assessment shall be in the amount of \$800.00 per Manor Home per year. The amounts so determined by the Board of Directors shall be levied against all of the members of the Association and the Manor Homes. The amount of the Annual Assessment that shall be levied against each Manor Home shall be equal. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Manor Home, to the owner of every Manor Home prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Manor Home shall be due and payable to the Association in monthly, quarterly or annual installments, as determined by the Board of Directors. After notice of the same shall have been given to all of the members of the Association by the Board of Directors, Assessments shall be paid to the Association when due without further notice. So long as Declarant has the right to control the Board of Directors of the Association, the Annual Assessments for a particular year shall not increase by more than the greater of (i) the percentage increase in the Consumer Price Index for all Urban Consumers, U.S. City average, or (ii) 5% above the Annual Assessment for the preceding year.

Section 5. Initial Assessments.

(a) In addition to the Annual Assessments described in Section 4 and the Special Assessments described in Section 6, at the time each Manor Home is first sold or conveyed to an owner other than the Declarant or builder, the purchaser or grantee of such Manor Home shall pay to the Association a one-time initial assessment in the amount of \$300.00. The Board of Directors may change the amount of the Initial Assessment from time to time. Such funds shall be used for the purpose of providing working capital to the Association, and for such other purposes as may be determined by the Board of Directors.

(b) At the time of any transfer of title to a Manor Home, other than (i) a transfer by Declarant (ii) a transfer by a builder to the first occupant of a Manor Home, or (iii) any transfer occurring prior to the issuance of a Certificate of Occupancy for such Manor Home, there shall be paid to the Association a one-time transfer fee in the amount of \$50.00. The Board of Directors may change the amount of such fee from time to time. Such funds shall be used to

reimburse the Association for reasonable costs and expenses incurred in processing transfers of ownership, and in printing and distributing copies of this Declaration and the Bylaws.

Section 6. Special Assessments. If, for any reason, including non-payment of any assessments to the Association by the persons liable therefor, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Manor Homes and the owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this Section 5 shall be payable at such times and in such installments as the Board of Directors shall determine. Each Manor Home shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this Section 6.

Section 7. Effect of Non-Payment of Assessments; Remedies of the Association.

(a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual or special assessment, or any installment of any annual or special assessment, which is payable by him to the Association, the entire amount of such assessment, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. As more fully provided in § 44-3-109 of the Act, all such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every Manor Home owned by the delinquent member, which lien shall bind such Manor Home or Manor Homes in the hands of the then owner, and his heirs, devisees, successors and assigns.

(b) All amounts which the Board of Directors shall declare to be due and payable pursuant to this Section 7 shall bear interest from the date of delinquency at the rate of ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the member of the Association personally obligated to pay the same, or foreclose its lien upon the Manor Home or Manor Homes of such member, in either of which events such member shall also be liable to the Association for all costs and attorneys' fees which the Association shall incur in connection with the collection of such delinquent amounts.

ARTICLE VI.

DAMAGE OR DESTRUCTION OF MANOR HOMES

The owner of each Manor Home shall be responsible for insuring such Manor Home. In the event of damage to or destruction of a Manor Home, the owner, and not the Association, shall be responsible for repairing or restoring such Manor Home. In the event of the occurrence of any damage or destruction by fire or other casualty to any one or more Manor Homes, such damage or destruction shall be repaired or rebuilt by the owner in all events. All repair, reconstruction or rebuilding of any Manor Home shall be substantially in accordance with the

plans and specifications for such damaged or destroyed Manor Home prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by both the owner of the Manor Home which is to be so repaired, reconstructed or rebuilt, and by the Board of Directors. The work of repairing, reconstructing or rebuilding any damaged or destroyed Manor Home shall be completed as soon after the occurrence of such damage or destruction as is reasonably practicable at no cost or expense to the Association. The owner of any Manor Home which is to be repaired, reconstructed or rebuilt pursuant to the provisions of this Article VI shall be responsible for the completion of such work in the manner, and within the time requirements, set forth in this Article VI.

ARTICLE VII.

ARCHITECTURAL CONTROL AND RESTRICTIONS

In order to provide for the maximum enjoyment of the Manor Homes by all of the residents thereof and to provide protection for the value of the same, the use of the Manor Homes shall be restricted to, and shall be only in accordance with, the following provisions:

Section 1. Single-Family Use. All of the Manor Homes shall be restricted exclusively to single-family residential use. The term "single-family" shall include one or more related or unrelated adults, as well as the children of any such adults. No Manor Home shall at any time be used for any commercial, business or professional purpose. Notwithstanding the foregoing, however, nothing set forth in this Section 1 shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any Manor Home as the Declarant shall determine (including, but not limited to, using any Manor Home as a model home and a sales office); or (b) the owner of any Manor Home from using such Manor Home as an office, provided that such use does not create regular customer or client traffic to and from such Manor Home and no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Manor Home.

Section 2. Prohibited Activities. No noxious or offensive activity shall be conducted on any Manor Home. Each owner of any Manor Home, his family, tenants, guests and invitees, shall refrain from any act or use of his Manor Home which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Manor Home.

Section 3. Nuisances. No nuisance shall be permitted upon or within any Manor Home. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Manor Home.

Section 4. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats, or other household pets (not in excess of 2) may be kept provided they are kept in accordance with the duly adopted Rules and Regulations of the Association, and provided further, they are not kept, bred or maintained for any commercial purpose, and do not constitute a disturbance to neighbors.

Section 5. Signs. No sign of any kind or character shall be erected or displayed to the public on any portion of any Manor Home without the prior written consent of the Board of Directors, except for customary name and address signs and one "for sale" sign advertising a Manor Home for sale, which shall be not larger than three square feet per side. The restriction herein stated shall include the prohibition of placement of any sign within any Manor Home in a location from which the same shall be visible from the outside. In the event any sign is placed on a Manor Home or on the Association Property in violation of this section, the responsible party shall be subject to a fine as set forth in Section 13 below.

Section 6. Antennae; Aerials; Satellite Dishes. No antenna, satellite dish or other reception device of any kind or nature whatsoever shall be placed on the exterior of any Manor Home unless the same is specifically approved in writing by the Board of Directors, or by an architectural control committee appointed by the Board of Directors. The Board of Directors may, but shall not be required to, adopt specific rules, regulations and design criteria for the placement of antennae, satellite dishes and other reception devices on the exterior of the Manor Homes.

Section 7. Window Air-Conditioners. No air-conditioner shall be installed in any window of any Manor Home, nor shall any air-conditioner be installed on any Manor Home so that the same protrudes through any exterior wall of such Manor Home.

Section 8. Subdivision of Manor Homes. No Manor Home may be further subdivided into any smaller Manor Home.

Section 9. Removal of Trees. Except during initial construction of a Manor Home, no trees shall be removed from the Association Property without the prior written approval of the Board of Directors. The Board of Directors, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Association Property.

Section 10. Storage of Construction Materials. No lumber, materials, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate on any Lot except building materials during the course of construction, maintenance or repair of any approved structure by the Declarant. Trash, garbage or other waste shall not be permitted to remain in public view except on days of trash collection. All containers or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. If a central trash collection area is designated by the Association, then these areas will be under the control of the Association and all members will abide by the current regulations regarding the use of these trash enclosures.

Section 11. Utility Pipes. No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained above the surface of the ground. Easements have been reserved for sewers, drainage and utility installations and maintenance for such purposes and uses as are shown on the recorded Plat for the Association Property. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage, or interfere with the installation and maintenance of utilities, or which may change the direction or flow of

drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

Section 12. Garage Doors. Garage doors shall generally be kept closed, except for entering and exiting, and shall not be left open for periods of time in excess of two hours.

Section 13. Enforcement by Members. Any violations of the above-stated Restrictions must be rectified by the owner of the affected Manor Home(s) within 24 hours of receipt of notice from the Declarant or the authorized representative of the Association; otherwise the owner(s) of the Manor Home(s) which is/are in violation shall be subject to fines in such amounts as may be established by the Board of Directors beginning 24 hours after receipt of said notice, and continuing until rectified, and said fines shall constitute liens against the subject Manor Home(s) until paid. The decision of the Board of Directors regarding imposition of a fine shall be final and shall not be subject to appeal or further review.

ARTICLE VIII.

MAINTENANCE OF MANOR HOMES AND EASEMENT AREAS

Section 1. Maintenance and Repair of Manor Homes, Stoops, Patios, Driveways and Walks. Except as hereinbelow provided, the owner of each Manor Home shall be obligated to maintain and repair the entirety of his Manor Home, including all walls and the roof of such Manor Home. The owner of each Manor Home shall also be obligated to maintain and repair the Stoop, Patio, Driveway and Walk which is attached to his Manor Home, including any fence surrounding the Patio. The foregoing repair responsibilities shall include all brick, stucco and concrete portions of the portions of the Manor Home to be so maintained. Such maintenance and repair work shall be performed at the sole cost and expense of the owner of such Manor Home. All exteriors of all Manor Homes and all Stoops, Patios, Driveways and Walks shall be maintained in a condition which is satisfactory to the Board of Directors. In no event shall any change be made to the exterior appearance of any Manor Home (including, without limitation, painting and the application of any brick, stucco, paneling or other siding), unless such change has been first approved in writing by the Board of Directors. The Board of Directors shall have the right to adopt rules for the placement of any items on the Stoops, Patios, Driveways and Walks, and all items placed on the Stoops, Patios, Driveways and Walks must comply with the terms of such rules. The owner of each Manor Home shall have a non-exclusive easement to go on the Association Property to the extent reasonably necessary to maintain and repair the Stoop, Patio, Driveway and Walk serving such Manor Home.

Notwithstanding the foregoing provisions of this Section 1, the Association shall be responsible for the maintenance, repair and replacement of all shutters which in connection with the original construction of such Manor Home shall have been mounted on the portion of each Manor Home that connects to the adjoining Manor Home.

Section 2. Maintenance of Easement Areas. The owner of the Manor Home to which each Easement Area is annexed shall be obligated to keep and maintain any portion of the Easement Area enclosed within a fence erected in accordance with Section 3 of Article VIII in a

neat, sanitary and attractive condition which is satisfactory to the Board of Directors. Such maintenance shall include, without limitation, cutting the grass, weeds and other vegetation, removing dead trees, shrubs and other plants and pruning and otherwise maintaining all plants, shrubbery, trees, flowers, bushes, grass, ivy and other foliage as may be planted in and on the Easement Area pursuant to the exercise of the easement rights set forth in Section 6 of Article III of this Declaration. The Association shall be responsible for maintaining all portions of the Easement Areas of the Manor Homes located outside any fence erected in accordance with Section 3 of Article VIII.

Section 3. Fences. The owner of every Manor Home shall have the right to erect on the Association Property a fence to enclose all or any part of the Patio that is annexed to his Manor Home. All fences which are installed to enclose all or any portion of a Patio must be constructed and installed within such area adjacent to the Patio as may be established by the Board of Directors, and in accordance with design standards and criteria established by the Board of Directors.

In no event shall any fence be erected pursuant to the provisions of this Section 3 unless the design of such fence shall conform to the standardized design which shall be so maintained in effect by the Board of Directors.

In the event that the owner of any Manor Home shall elect to erect any such fence pursuant to the provisions of this Section 3, the owner of the Manor Home to which such fence is annexed shall be responsible for the repair, maintenance and replacement of such fence.

Section 4. Drainage. The owner of each Manor Home shall be responsible for maintaining any drainage structures which constitute a part of that owner's Manor Home, and any drainage structures which originally were constructed by the builder of such Manor Home.

Section 5. Failure of Maintenance. In the event that the owner of any Manor Home shall fail to maintain any portion of such Manor Home, or the Stoop, Patio, Driveway or Walk that is attached to such Manor Home, or any Easement Area that is annexed to the same (including any fence that may have been erected in such Easement Area), all as required under the terms and provisions of this Article VIII, the Board of Directors shall have the right, exercisable by it or through its agents or employees, and after giving the owner of such Manor Home at least five (5) days notice and an opportunity to correct the unsatisfactory condition, to enter upon the Manor Home, Stoop, Patio, Driveway or Walk and/or Easement Area, as applicable, and correct the unsatisfactory condition. The owner of the Manor Home upon which, or upon the Stoop, Patio, Driveway, Walk or Easement Area attached or annexed to which, such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all of the liens, and shall be subject to the same means of collection, as are the assessments and charges provided for in Article V of this Declaration. In addition, all such costs shall be paid to the Association by such owner at the same time as the next due annual assessment payment, as provided in Section 4 of Article V of this Declaration, or at such earlier time, and in such installments, as the Board of Directors shall determine.

ARTICLE IX.

INSURANCE

Section 1. Association Property. It shall be the duty of the Association to obtain and maintain in effect at all times:

(a) a policy of casualty insurance on all improvements located on the Association Property, except for any Stoops, Patios, Driveways and Walks, and fences as shall have been erected by any owners within the Easement Area; and

(b) a comprehensive policy of public liability insurance.

Each such insurance policy shall have such limits of coverage, and provide for such deductibles, as shall be determined by the Board of Directors. Such insurances may be provided by a self-insurance program maintained by the Declarant.

Section 2. Manor Homes. The owner of each Manor Home shall obtain and maintain in effect at all times a master multi-peril policy of property insurance covering all insurable portions of such Manor Home, and the Stoop, Patio, Driveway and Walk which is annexed to such Manor Home, on a replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value, based upon replacement cost, of the same.

ARTICLE X.
AMENDMENT

The terms, provisions, covenants and restrictions of this Declaration may be amended upon the approval of such amendment by: (a) Unit owners to which two-thirds of the votes in the Association pertain; and (b) Declarant, if Declarant then has an unexpired option to add any additional property to the Condominium. During any such time as the Declarant has the right to control the Association; the right to amend this Declaration shall be otherwise restricted as provided in O.C.G.A. §44-3-93. Declarant may unilaterally amend this Declaration to the extent required in order to meet the requirements of HUD or VA for providing mortgage financing for the Manor Homes.

Any amendment to the terms, provisions, covenants or restrictions of this Declaration shall become effective only upon the recording in the Deed Records of DeKalb County, Georgia, of an instrument certified by the incumbent Secretary of the Association, which shall: (a) set forth such amendment; and (b) certify that the amendment has been duly approved as required herein.

The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate.

Each person who shall own any Manor Home, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title thereto, and each holder of a Mortgage upon any portion of any Manor Home, by acceptance of such Mortgage, thereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided in this Article X.

ARTICLE XI.

MISCELLANEOUS

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the owner of any Manor Homes, then the owner of any other Manor Homes shall have the right to file an action in the Superior Court of DeKalb County, Georgia, for an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2. Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with and bind the land (the Manor Homes), shall be and shall remain in effect, and shall inure to the benefit of, and be enforceable by, the Association, and by any owner of any Manor Homes, their respective legal representatives, heirs, successors and assigns, perpetually.

Section 4. Notices. Any notice required to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mails, postage prepaid, addressed to the member to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of any Manor Homes owned by such member. The date of service shall be the date of mailing.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration

or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 6. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons or other entities violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Manor Homes, to enforce any liens created by this Declaration.

Section 7. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of the Overall Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant.

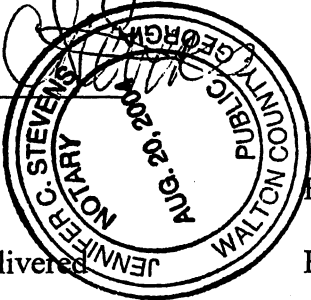
IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized representatives, the day and year above set forth.

BENCHMARK/BOULDERCREST, LLC

Signed, sealed and delivered in the presence of:

By: [Signature]
Fred J. Schwaemmle, Jr., Manager

[Signature]
Witness

[Signature]
Notary Public


BURNHAM BUILDERS, L.P.

Signed, sealed and delivered in the presence of:

By: Peach State Equity Holding Company, Inc.,
General Partner

By: _____
Kenneth C. Bray, Vice President

Witness

Notary Public

Schwaemmle/Bouldercrest Dec of Condo 3

List of Exhibits

Exhibit A – Legal Description

Exhibit B – Submitted Property

Exhibit C – Bylaws of Association

Exhibit A
Bagley/Total Tract
Legal Description

All that tract or parcel of land lying and being in Land Lots 114 and 115 of the 15th District of DeKalb County, Georgia, being more particularly described as follows:

BEGINNING at a 1/2 inch rebar found on the southwesterly right-of-way of Bouldercrest Road, being located 1584.6 feet northwesterly from the point of intersection of the southwesterly right-of-way of Bouldercrest Road with the right-of-way of Key Road; thence south 43° 42' 27" west 249.59 feet to a 1/2 inch rebar found; thence south 47° 21' 17" east 94.96 feet to a 1/2 inch rebar found; thence north 88° 05' 35" west 525.09 feet to a 1 inch crimp top pipe found; thence south 21° 18' 26" west 63.71 feet to a 1/2 inch crimp top pipe found; thence south 18° 10' 56" west 235.36 feet to a 3/4 inch crimp top pipe found; thence north 87° 54' 10" west 2755.42 feet to a point which is the common corner of Land Lots 111, 112, 113 and 114; thence along the line dividing Land Lots 113 and 114 north 01° 11' 17" east 797.01 feet to a point; thence south 88° 07' 17" east 1368.67 feet to a 1 inch crimp top pipe found; thence south 88° 14' 23" east 227.76 feet to a 1 inch crimp top pipe found; thence south 88° 19' 37" east 76.01 feet to a 1 inch crimp top pipe found; thence south 88° 13' 30" east 347.83 feet to a 2 inch crimp top pipe found; thence south 88° 11' 16" east 230.01 feet to a 1 inch crimp top pipe found; thence south 88° 11' 16" east 603.40 feet to a point; thence south 02° 06' 21" west 217.11 feet to a 3/4 inch open top pipe found; thence south 88° 02' 25" east 199.49 feet to a 1/2 inch rebar found; thence north 63° 40' 19" east 265.89 feet to a point on the southwesterly right-of-way of Bouldercrest Road; thence along the right-of-way of Bouldercrest Road south 43° 15' 44" east 261.37 feet to a 1/2 inch rebar found marking the TRUE POINT OF BEGINNING.

The foregoing property is described in accordance with a survey for Benchmark prepared by Patterson & Dewar Engineers, Inc., dated March 31, 2000, bearing the certification of George E. Ingram, Georgia Registered Land Surveyor No. 1980. Said parcel contains 56.77 acres, according to said survey.

LESS AND EXCEPT that portion of the above-described property described on Exhibit "A-1" attached hereto and incorporated herein by this reference.

EXHIBIT "A-1"
LESS AND EXCEPT PARCEL

All that tract or parcel of land lying and being in Land Lot 114 of the 15th District, DeKalb County, Georgia, containing 18.755 acres and being shown on plat of survey for Benchmark, dated 11-29-00, prepared by Patterson & Dewar Engineers, Inc., bearing the seal of George E. Ingram, Ga. R. L. S. No. 1980, and being more particularly described as follows:

BEGINNING at a point marked by an iron pin set at the corner common to Land Lots 111, 112, 113 and 114 of the 15th District, DeKalb County, Georgia, run thence along the land lot line common to Land Lots 113 and 114, north 01 degrees 11 minutes 17 seconds east a distance of 797.01 feet to a point marked by an iron pin set; thence leaving the common land lot line, run south 88 degrees 07 minutes 17 seconds east a distance of 1,097.01 feet to a point in the centerline of a creek ("Centerline"), run thence along said Centerline, which is the property line, the following courses and distances: south 07 degrees 42 minutes 31 seconds west a distance of 61.08 feet to a point; south 20 degrees 23 minutes 23 seconds east a distance of 42.57 feet to a point; south 62 degrees 05 minutes 53 seconds west a distance of 228.94 feet to a point; south 14 degrees 10 minutes 07 seconds west a distance of 93.28 feet to a point marked by an iron pin found ; south 05 degrees 23 minutes 43 seconds east a distance of 82.18 feet to a point marked by an iron pin found; south 78 degrees 05 minutes 14 seconds east a distance of 34.84 feet to a point; south 22 degrees 06 minutes 18 seconds east a distance of 112.29 feet to a point; south 33 degrees 58 minutes 48 seconds east a distance of 125.11 feet to a point; south 45 degrees 48 minutes 45 seconds east a distance of 137.04 feet to a point; south 27 degrees 41 minutes 35 seconds west a distance of 59.43 feet to a point; south 85 degrees 40 minutes 02 seconds east a distance of 118.84 feet to a point; south 54 degrees 19 minutes 37 seconds east a distance of 45.32 feet to a point; south 20 degrees 34 minutes 02 seconds east a distance of 31.63 feet to a point; thence leaving the Centerline, run north 87 degrees 54 minutes 10 seconds west a distance of 1,286.37 feet to a point marked by an iron pin set at the common land lot corner and the POINT OF BEGINNING.

or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a Majority or a quorum.

Section 7. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" mean more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

Section 8. Purpose. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Condominium and performing all of the other acts that may be required to be performed by the Association pursuant to the Act, the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Act, the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Article II Meetings of Members

Section 1. Annual Meetings. The regular annual meeting of the members shall be held during the fourth quarter of each year with the date, hour, and place to be set by the Board of Directors. No annual meeting of the Association shall be set on a legal holiday

Section 2. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President or Secretary, by request of any two (2) members of the Board of Directors, or upon written petition of Owners holding at least fifteen percent (15%) of the total eligible Association vote. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition setting the date, time and location of the meeting (which is not required to be the date, time or location requested in any petition submitted to the Association), and the Secretary shall provide notice of the meeting in accordance with these Bylaws. Any special meeting called pursuant to written petition shall be set within thirty (30) days of the date of the petition.

Section 3. Notice of Meetings. Notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by posting a sign at the entry to the Subdivision at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, denoting the time, date and place of the meeting.

Section 4. Waiver of Notice. Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place

pays the amount owed, and the vacancy shall be filled as provided in Section 5 below. Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings may be removed by the vote of a Majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 5. Vacancies. Vacancies in the Board caused by any reason, except the removal of a director by vote of the membership or by Declarant, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office for the remainder of the term of the director being replaced. Notwithstanding anything to the contrary herein, any director who is an officer, director or other designated agent of an entity member and whose position becomes vacant for any reason, may be replaced by the entity who is the Owner unless there has been a transfer of ownership of the Unit, in which case, the vacancy shall be filled by the remaining directors, even if less than a quorum at any meeting of the directors.

Section 6. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 7. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed but shall not be entitled to discuss the proposed contract during the discussion. Notwithstanding anything herein, the directors, during the period of Declarant control, shall be authorized on behalf of the Association to enter into contracts with the Declarant and its affiliates.

Section 8. Nomination. Nomination for election to the Board shall be made by a Nominating Committee which shall be appointed by the Board of Directors at least thirty (30) days prior to the annual meeting to serve a term of one (1) year and shall consist of at least one (1) Board member and at least two (2) other members of the Association who are not Board members. The members of the Nominating Committee shall be announced at the annual meeting. The Nominating Committee may nominate any number of qualified individuals, but not less than the number of directors to be elected. The nominations shall be made at least fourteen (14) days prior to the annual meeting. Nominations shall also be allowed from the floor at the meeting. Each candidate shall be given a reasonable opportunity to communicate his or her qualifications to the membership prior to the election. No member shall be nominated for election to the Board, nor permitted to run for election, if more than thirty (30) days past due in the payment of any assessment. Failure to comply with this Section shall in no way invalidate the election of directors who were not nominated in accordance with the provisions hereof.

Section 9. Elections. All members of the Association eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

B. Meetings.

Section 1. Regular Meeting. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every six (6) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership.

Section 2. Special Meeting. Special meetings of the Board may be called by the President on two (2) days notice to each director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 3. Waiver of Notice Any director may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

Section 4. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. A Majority of directors shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 5. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 6. Action Without a Meeting. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a majority of the directors consent in writing to such action. Such written consents must describe the action taken and be signed by no fewer than a majority of the directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

C. Powers and Duties.

Section 1. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Condominium and may do all such acts and things as are not by the Act, the Declaration, the Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in the way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget, in which there shall be established the

contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of the Common Elements;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Elements, Association property, and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. §14-3-302, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof including, without limitation, monetary fines;

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Elements in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Act and the Declaration, and paying the premium cost thereof;

(k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(m) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 2. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract by the Association with or without cause

and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

Section 3. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Common Elements and facilities, and for other purposes, with the approval of a Majority of the members of the Association.

Section 4. Liability and Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member (including directors, officers, and committee members appointed by Declarant during the period of Declarant control) against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association in determining whether to indemnify a director, officer or committee member shall not input knowledge to said director, officer or committee member from any source whatsoever, but instead any such determination shall be based on the actual knowledge of the director, officer or committee member. The officers, directors and committee members 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, directors and committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member 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, director or committee member or former officer or director may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

D. Committees.

Section 1. Architectural Control Committee. The Board may establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Condominium as provided in the Declaration.

Section 2. Other Committees. There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

Section 3. Service on Committees. Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Article IV Officers

Section 1. Designation. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. A Vice President may be elected

at the discretion of the Board.

Section 2. Election of Officers. The Association officers shall be elected annually by the Board at the first Board meeting following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

Section 3. Removal of Officers. Upon the affirmative vote of a Majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6. Vice President. The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

Section 8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 9. Other Officers. Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

Section 10. Agreements. Contracts. Deeds. Leases. Etc. All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article V Rule Making and Enforcement

Section 1. Authority and Enforcement. The Condominium shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Units and the Common Elements; provided, copies of all such rules and regulations shall be furnished to all

of the parking rules and regulations or performing maintenance on any Unit upon a failure by the Unit Owner to so do) or by Suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section (2) of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Unit or upon any portion of the Common Elements to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules and regulations; provided, however, written notice shall be given to the Owner of the Unit at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Unit Owner and shall be collected as provided herein for the collection of assessments.

Article VI Miscellaneous

Section 1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

- (a) If to a Unit Owner, at the address which the Unit Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Unit of such Owner;
- (b) If to an Occupant, at the address of the Unit occupied; or
- (c) If to the Association or the Board of Directors, at the principal office of the Association, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 4. Gender and Grammar. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Fiscal Year. The fiscal year of the Association may be set by Board resolution, and, in the absence thereof, shall be the calendar year.

Section 6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board and a financial statement prepared. However, after having received the Board's financial statement review at the annual meeting, the Owners may, by a majority of the Association vote, require that the accounts of the Association be audited as a Common Expense by an independent accountant. Such statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Unit upon submission of a written request and must be available within one hundred twenty (120) days of the Association's fiscal year end. If an audited financial statement by an independent accountant is not required, a mortgage holder may have an audited statement

prepared at its own expense.

If Additional Property is submitted to the Condominium so that the Condominium contains fifty (50) Units or more, the accounts of the Association shall be audited as a Common Expense by an independent accountant after the close of each fiscal year. Such audited statement shall be made available to the holder, insurer, or guarantor of any first mortgage on a Unit upon submission of a written request and must be available within one-hundred twenty (120) days of the Association's fiscal year end.

Section 7. Conflicts. The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Act, the Georgia Nonprofit Corporation Code, the Declaration, these By-laws, or the Articles of Incorporation, then the provisions of the Act, the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Unit, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or Bylaws, in which case such higher vote shall be necessary to amend, these Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding two-thirds (2/3) of the total vote of the Association and the Declarant, as long as the Declarant owns a Unit in the Condominium. No amendment shall become effective until it is certified by the President and Secretary of the Association and recorded in the DeKalb County Georgia Records. Any amendment duly certified and recorded shall be conclusively presumed to have been duly adopted in accordance with the Declaration and Bylaws. Owners whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the amendment requirement.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendments effective date. No action to challenge any such amendment may be brought after such time.

Section 9. Books and Records.

(a) All members of the Association and any holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member or mortgagee wishes to inspect and copy:

(i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;

(ii) its Bylaws or restated Bylaws and all amendments to them currently in effect;

(iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(iv) resolutions adopted by either its members or Board of Directors relating to the

characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;

(v) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(vi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(vii) a list of the names and business or home addresses of its current directors and officers; and

(viii) its most recent annual report delivered to the Secretary of State.

(b) A member may inspect and copy the following records upon written notice of at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection 9(a);

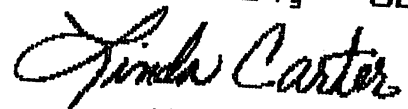
(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

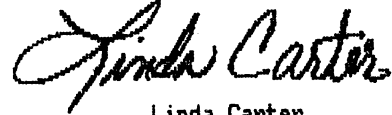
The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member.

Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting.

Deed Book 12345 Pg 62



Linda Carter
Clerk of Superior Court DeKalb Cty. Ga.
I solemnly swear that the foregoing is a true and correct copy of the original as the same appears in the records of the Court.



Linda Carter
Clerk of Superior Court DeKalb Cty. Ga.
I HEREBY DO AND HAVE THE HONOR TO SIGN IN WITNESS OF WHICH THE SEAL AND SIGNATURE OF THE CLERK OF SUPERIOR COURT DEKALB COUNTY, GEORGIA

RETURN TO: R.A. HUDSPETH, 1770 Indian Trail Road, Suite 280, Norcross, Georgia 30093 (770) 925-1400

Cross Reference: Deed Book 12345, Page 20

**FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM
FOR THE GATES AT BOULDERCREST**

WHEREAS, the Declaration Of Condominium For The Gates at Bouldercrest ("Declaration"), recorded at Deed Book 12345, Page 20, DeKalb County, Georgia Records, provides that Declarant may amend the Declaration in accordance with Article X of the Declaration.

NOW THEREFORE, the Declarant hereby amends the Declaration as follows:

1.

Exhibit "B" of the Declaration is amended to subject the following land to the Declaration

All that tract or parcel of land lying and being in Land Lot 114 of the 15th District, DeKalb County, Georgia all as shown and depicted on that certain plat of survey entitled Phase Two, The Gates at Bouldercrest a Condominium Plat, prepared by Busbee Surveying Co., Inc., certified by Ricky C. Busbee, Ga. R. L. S. No. 2496, dated September 10, 2001, and recorded in Plat Book 123, Page 98, DeKalb County, Georgia Records.

LESS AND EXCEPT the following Manor Homes for which construction has NOT YET BEGUN, to wit:

Units 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, Block "A" and Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, Block "B".

2.

The last sentence of Article IV, Section 1 is deleted and replaced as follows:

The Declarant shall maintain control of the Association until the earlier of:

- (a) 120 days after the date by which 75 percent of the Units have been conveyed to unit Purchasers, or
- (b) the maximum period of time permitted by OCGA Section 44-3-101.

3.

Article V is appended as follows:

Section 8. Subordination of the Lien to Mortgage. The lien of the assessments provided by the Declaration shall be subordinate to the lien of any First Mortgage that is held or was originated by an institutional lender. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to First Mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. Mortgagees are not required to collect assessments.

4.

Article VI is deleted in its entirety and replaced with the following:

CONDEMNATION, LOSS OR DESTRUCTION.

Section 1. Condemnation. The Association shall represent the Unit owners in condemnation proceedings or other matters appertaining to the common elements, and the Association is the attorney-in-fact for the Unit owners with regard thereto. In the event of a taking of the common elements by a condemning authority, the compensation therefore shall be payable to the Association in trust for Unit owners and the holders of First Mortgages as their interests may appear.

Section 2. Loss or Destruction.

(a) Any restoration or repair of the Condominium after condemnation or damage due to an insurable hazard shall be substantially in accordance with the Declaration and the original plans and specifications unless the approval of the eligible holders of First Mortgages on units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated, is obtained.

(b) Any election to terminate the Condominium regime must require the approval of the eligible holders of First Mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated.

(c) No reallocation of interests in the common elements resulting from a partial condemnation or partial destruction of the Condominium may be effected without the approval of the eligible holders of First Mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such eligible holders are allocated. NOTE: As used in this section, the term "eligible holder, insurer or guarantor" shall mean a holder, insurer or guarantor of a First Mortgage on a Unit, which has requested notice in accordance with the provisions of Article XI, Section 9(a), infra.

covering the same loss.

(iii) The policy, as a minimum, shall afford protection against the following:

- (A) loss or damage by fire or other perils normally covered by the standard extended coverage endorsement, and
- (B) all other perils which are customarily covered with respect to condominiums similar in construction, location and use, including all perils normally covered by the standard "all-risk" endorsement, where such is available

(b) Liability Insurance. The Association shall maintain comprehensive general liability insurance coverage covering all of the common elements and public ways of the Condominium. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location, and use. However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation:

- (i) legal liability of the insured for property damage,
- (ii) bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements, and
- (iii) legal liability arising out of lawsuits related to employment contracts of the Association.

Such policies shall provide that they may not be cancelled or substantially modified, by any party, without at least 10 days' prior written notice to the Association and to those loss payees included in certificates of insurance issued under the policy.

(c) Flood Insurance. If the Secretary of Housing and Urban Development determines that any Unit is located within an area which has been officially identified as having special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), the Association shall obtain and pay the premiums upon, as a common expense, a "master" or "blanket" policy of flood insurance on the buildings and any other property covered by the required form of policy (herein insurable property), in an amount deemed appropriate by the Association, but not less than the lesser of:

- (i) the maximum coverage available under the NFIP for all buildings and other insurable property within the condominium to the extent that such buildings and other insurable property are within an area having special flood hazards; or
- (ii) 100% of current replacement cost" of all such buildings and other insurable property within such area. Such policy shall be in a form, which meets the criteria set forth in the most current Guidelines on the subject issued by the Federal Insurance Administrator.

(d) Fidelity Bonds. Blanket fidelity bonds shall be maintained for all officers, directors, and employees of the Association or its agents, who handle or are responsible or administer Association funds. Such fidelity bonds shall name the Association as an insured and shall not be less than the estimated maximum funds, including reserve funds, in the custody of the Association or its agents, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to the aggregate of 3 months assessments on all Units plus reserve funds. The bonds shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The Association shall pay the premiums on all bonds required herein, except those maintained by the management agent, as a

common expense. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association.

(e) Qualifications of Insurance Carriers. The Association shall use generally acceptable insurance carriers.

6.

Article XI is appended as follows:

Section 8. Restrictions on Leasing. No Manor Home shall be offered for lease unless

- (a) the lease is in writing and is subject to the terms of the Declaration and the By-Laws; and
- (b) the initial term of the lease is not less than six months.

Section 9. First Lien Holders' Rights. A holder, insurer or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer or guarantor and the unit number), will be entitled to timely written notice of actions affecting their interests as to:

- (a) Any proposed amendment of the Condominium changing the:
 - (i) boundaries of any Unit or exclusive easements appurtenant,
 - (ii) appurtenant interest of Units in the common elements or liability for common expenses,
 - (iii) votes appurtenant to the Units re the affairs of the Association; or
 - (iv) the purposes to which any Unit or the Condominium's common elements are restricted.
- (b) Any proposed termination of the condominium regime.
- (c) Any delinquent payments of assessments or charges regarding a Unit subject to the mortgage of such eligible holder, insurer or guarantor, where such delinquency has continued for a period of 60 days.

IN WITNESS WHEREOF, the undersigned Declarant has set its hand and seal this ____ day of September 2001.

Signed, Sealed and Delivered in the presence of.

Witness

Benchmark/Bouldercrest, LLC

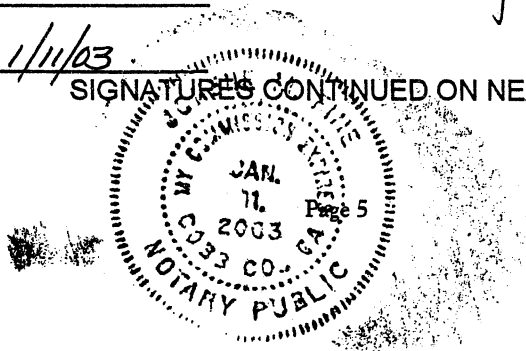
By: Fred J. Schwaemmle, Jr., Manager

Jonene M. Foxe

Notary Public

My Commission Expires: 1/11/03

SIGNATURES CONTINUED ON NEXT PAGE



Linda Carter

Linda Carter
Clerk of Superior Court Dekalb Cty. Ga.
Burnham Builders, L.P.

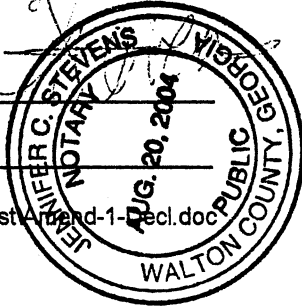
Signed, Sealed and Delivered
in the presence of:

[Signature]

Witness

Notary Public
My Commission Expires:

S:\CONDO\Gates@Bouldercrest Amend-1-Decl.doc

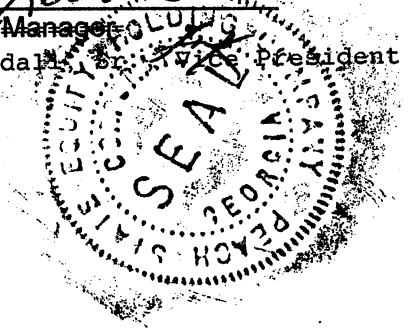


By: Peach State Home Equity Holding
Company, Inc. General Partner

By:

[Signature]

R. K. Greene, Manager
Larry W. Kendall, Sr. Vice President



Linda Carter

Linda Carter
Clerk of Superior Court DeKalb Cty. Ga.

After Recording Return To:
Benchmark/Bouldercrest, LLC
102-F
6111 Peachtree Dunwoody Rd.
Atlanta, GA 30328

Return To:
RONALD A. BUOSPETH, LLC
1770 Indiana Trail Road, Suite 280
Norcross, GA 30093
(770) 925-1400

Cross Reference to Declaration of Condominium,
for The Gates at Bouldercrest,
recorded in Deed Book 12345, Page 20,
DeKalb County Records.

THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM
FOR THE GATES AT BOULDERCREST

This AMENDMENT to the Declaration of Condominium for The Gates At Bouldercrest, made this 26th day of October 2001, by Benchmark/Bouldercrest, LLC a Georgia Limited Liability Company, hereinafter referred to as "the Declarant."

WITNESSETH:

WHEREAS, Benchmark/Bouldercrest, LLC, a Georgia Limited Liability Company, is the owner of certain real property located in DeKalb County, Georgia, and

WHEREAS, Benchmark/Bouldercrest, LLC, a Georgia Limited Liability Company, filed the Declaration of Condominium for The Gates At Bouldercrest on August 3, 2001 at Deed Book 12345, Page 20, DeKalb County, Georgia Deed Records.

NOW, THEREFORE, for and in consideration of the above premises and for mutual considerations, it is hereby agreed that the Declaration of Condominium for The Gates At Bouldercrest, be amended as follows:

- 1.. That Article III, Section 10 is hereby deleted and replaced with the following:

Section 10. Vehicles; Trailers; Boats; Automobiles. All vehicles belonging to owners or occupants of any Manor Home shall be parked in the garage and/or driveway of such Manor Home, and not on the streets or common driveways which are part of the Association Property. Residents and guests are to park in driveway whenever possible. Garages must be maintained for parking and not converted into living space. No boats, trailers, recreational vehicles, motorcycles, trucks of a capacity of one ton or more or unlicensed vehicles may be parked in the driveway or yard of any Manor Home, or in any streets or common driveways which are part of the Association Property. Any maintenance or repair of any vehicle must be accomplished inside of the garage of a Manor Home with the garage door closed, and no maintenance or repairs on any vehicle may be performed on the driveway of any Manor Home or on any part of the Association Property.

- 2.. Except as amended hereby, the original Terms and Conditions of the declaration remain in full force and effect.

IN WITNESS WHEREOF, the Undersigned hereto sets its hand and seal the date herein first above written.

John R. Grant
Witness

Benchmark/Bouldercrest, LLC
A Georgia Limited Liability Company

By: *Ralph B. Davis*
Ralph B. Davis, Manager

Joanne M. Lince
Notary Public



Signed, sealed and delivered
in the presence of:

[Signature]
Witness

[Signature]
Notary Public
My Commission Expires: _____



BURNHAM BUILDERS, L.P.
By Peachstate Equity Holding Company, Inc

By: [Signature]
[Signature]
SEAL
PEACHSTATE EQUITY HOLDING COMPANY
WINNETT COUNTY, GA

Deed Book 12600 Pg 315

[Signature]
Linda Carter
Clerk of Superior Court DeKalb Cty. Ga.

TWENTY NINTH AMENDMENT TO DECLARATION OF CONDOMINIUM
FOR THE GATES AT BOULDERCREST

This AMENDMENT to the Declaration of Condominium for The Gates At Bouldercrest, made this 13th day of October 2003, by Benchmark/Bouldercrest, LLC a Georgia Limited Liability Company, hereinafter referred to as "the Declarant."

WITNESSETH:

WHEREAS, Benchmark/Bouldercrest, LLC, a Georgia Limited Liability Company, is the owner of certain real property located in DeKalb County, Georgia, and

WHEREAS, Benchmark/Bouldercrest, LLC, a Georgia Limited Liability Company, filed the Declaration of Condominium for The Gates At Bouldercrest on August 3, 2001 at Deed Book 12345, Page 20, DeKalb County, Georgia Deed Records.

NOW, THEREFORE, for and in consideration of the above premises and for mutual considerations, it is hereby agreed that the Declaration of Condominium for The Gates At Bouldercrest, be amended as follows:

1. That Article VII, Section 6 is hereby deleted and replaced with the following:

Section 6. Antennae; Aerials; Satellite Dishes. No antenna, satellite dish or other reception device of any kind or nature whatsoever shall be placed on the front or side exterior of any Manor Home or in plain sight from the street unless the same is specifically approved in writing by the Board of Directors, or by the architectural committee appointed by the Board of Directors. If new location is approved by architectural committee then the new location must be reasonably out of site from the street.

2. That Article VII, Section 12 is hereby deleted and replaced with the following:

Section 12. Garage Doors. Garage doors shall generally be kept closed, except for entering and exiting, and shall not be left open for periods of time in excess of two hours. Size and Color (White) must be typical of original design. The architecture committee will decide on a case-by-case basis if design changes are submitted.

3. Article VII, Section 14 is hereby added as the following:

Section 14. Front Side Window Treatments. A usual and customary window treatment will be placed in the street side windows within 90 days. The treatments will be preferably white blinds or white curtains.

4. Article VII, Section 16 is hereby added as the following:

Section 16. Personal Patios and Driveways. No painting. Gray stain preferred. Other colors, stain, or materials will be considered, but have to be approved by the architecture committee. Driveway applications of any kind have to be approved by the architecture committee.

5. Article VII, Section 17 is hereby added as the following:

Section 17. Glass Block Windows. Glass block windows are to be limited to exterior bathroom windows only. Only translucent, non-colored, non-multicolored blocks are to be used.

8. Article VII, Section 20 is hereby added as the following:

Section 20. Front Doors. Please submit any design changes not typical of original to the architectural committee for a case by case analysis.

9. Article VII, Section 21 is hereby added as the following:

Section 21. Skylights. Please submit any design choices to the architectural committee for a case by case analysis.

10. Article VIII, Section 3 is hereby deleted and replaced with the following:

Section 3. Personal Fences. The owner of every Manor Home shall have the right to erect on the Association Property a fence to enclose all or any part of the Patio that is annexed to his Manor Home. All fences which are installed to enclose all or any portion of a Patio must be constructed and installed within such area adjacent to the Patio as may be established by the Board of Directors or the architecture committee, and in accordance with design standards and criteria established by the Board of Directors and the architecture committee.

In no event shall any fence be erected pursuant to the provisions of this Section 3 unless the design of such fence shall conform to the standardized design which shall be so maintained in effect by the Board of Directors and the architecture committee.

Privacy type natural wooden fence preferred. Any other design options must be submitted and approved by the committee. Each fence must be typical 6 feet tall. If color, stain, or other options are needed, then plans need to be submitted to committee. Fence Limits: center of storage unit to center of storage unit and five feet, with at least a foot of room left, past the edge of the patio. Needs to have an exit gate of same design, color, and height of rest of fence and has to be on center portion of fence. Exceptions may be made for corner units, which may put exit on open side of unit. If privacy fence added, the home owner/resident is allowed to change his/her fenced area without community restrictions. If fence is ever removed, exposed areas have to be brought up to community design codes within 60 days.

In the event that the owner of any Manor Home shall elect to erect any such fence pursuant to the provisions of this Section 3, the owner of the Manor Home to which such fence is annexed shall be responsible for the repair, maintenance and replacement of such fence.

11. Except as amended hereby, the original Terms and Conditions of the declaration remain in full force and effect.

IN WITNESS WHEREOF, the Undersigned hereto sets its hand and seal the date herein first above written.

Witness

Benchmark/Bouldercrest, LLC
A Georgia Limited Liability Company

Notary Public

By: _____
Ralph B. Davis, Manager