

# Memo

To: Board of Directors – The Gates at Bouldercrest Unit Owners Association, Inc.  
From: Karl Enderle  
Date: October 15, 2008  
Re: Maintenance Responsibility

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This memorandum is in response to your recent inquiry concerning the respective maintenance responsibilities of the Association and the Manor Home owners under the Declaration of Condominium for The Gates at Bouldercrest (the “Declaration”).

In order to understand the respective maintenance responsibilities of the Association and the Manor Home owners under the Declaration, it is first necessary to understand what constitutes a “Manor Home.” Article II, Section 4 of the Declaration defines the boundaries of the Manor Homes. The side boundary, as defined by Article II, Section 4(a) of the Declaration, is a line consistent with and along the center of all firewalls separating a Manor Home from another Manor Home. The front and rear boundary and the side boundary of each Manor home which does not separate a Manor Home from another Manor Home, is a line consistent with and along the outer, exterior surface of the outside wall of such Manor home. There are no horizontal, or upper and lower, boundaries of each Manor Home.

## **OWNERS’ MAINTENANCE RESPONSIBILITY**

Article VIII of the Declaration outlines the Owners’ maintenance responsibility. Under Article VIII, Section 1, each Owner is responsible for the maintenance and repair of the entirety of his or her Manor Home, including all walls and the roof of such Manor Home. Each Owner is also responsible to maintain and repair the Stoop, Patio, Driveway, and Walk which is attached to his or her Manor Home, including any fence surrounding the Patio.

Pursuant to Article III, Section 6 of the Declaration, there is appurtenant to each Manor Home an easement for the exclusive use and enjoyment of the Easement Area that is depicted on the Plat. Such easement includes 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.

Under Article VIII, Section 2 of the Declaration, the owner of the Manor Home to which each Easement Area is annexed is obligated to maintain any portion of the Easement area within a fence. This maintenance obligation includes, 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.

Under Article VIII, Section 3, the owner of every Manor Home has the right to erect on the Association Property a fence to enclose all or any part of the Patio that is annexed to his or her Manor Home. The owner of the Manor Home to which such fence is annexed is responsible for the repair, maintenance and replacement of such fence.

### **ASSOCIATION'S MAINTENANCE RESPONSIBILITY**

The Association's maintenance responsibility is found in several different provisions throughout the Declaration. Generally, pursuant to Article III, Section 8 of the Declaration, the Association is responsible for the maintenance and repair of all "Association Property." Association Property is defined as 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.

The general responsibility to maintain the Association Property excludes any of the Association Property or Easement Area annexed to a Manor Home due to the owner enclosing such area with a fence. (see Article VII, Section 2 of the Declaration)

The Association is also responsible for the maintenance, repair, and replacement of all shutters which in connection with the original construction of the Manor Homes were mounted on the portion of each Manor Home that connect to the adjoining Manor Home. (See Article VIII, Section 1 of the Declaration)

### **UNCLEAR MAINTENANCE RESPONSIBILITY**

Because the Association is generally responsible to maintain all portions of the Condominium which are outside a line consistent with and along the outer, exterior surface of the outside wall of each Manor Home, there are certain areas for which maintenance responsibility is unclear. The following are areas that have previously been raised as being unclear.

Exterior Lighting: Based on the foregoing, exterior lighting attached to the side of a building is the maintenance and repair responsibility of the Association. Such exterior lighting does not fall within the boundaries of a Manor Home, nor is the maintenance responsibility for such exterior lighting expressly assigned to the owner of a Manor Home by the Declaration. If the exterior lighting is on an exterior wall which has been enclosed by a fence, however, such exterior lighting would then be the Manor Home owner's responsibility to maintain, since it would be within a portion of the Easement Area enclosed by the owner with a fence. We understand that at least a few owners have replaced the exterior lighting attached to their Manor Homes. The Association may take the position that any exterior lighting replaced by an owner is an improvement made to the Association Property, and is now, therefore, the obligation of the owner to maintain and repair. We believe, however, that any exterior lighting originally installed by the developer would be the obligation of the Association to repair and maintain (unless, as stated above, it has been annexed to the Unit by an enclosure.

Roofs: As provided above, the Declaration specifically states that the Manor Home owners are responsible for the maintenance of the “roof” of a Manor Home. The Declaration, however, does not specify in detail what is included within the term “roof.” It is clear that all portions of the roof and roof framing system within the boundaries of a Manor Home are the owner’s responsibility, since there are no horizontal boundaries to a Manor Home. We believe it to be reasonable for the Association to take the position that any overhang portions, including the soffits and fascia boards, are a part of the entire roofing system, or “roof,” which is the owner’s responsibility to maintain, repair and replace pursuant to Article VIII of the Declaration. Please note, however, that an owner could argue that such portions of the building are outside the boundaries of a Manor Home and should be the Association’s responsibility to repair and maintain. We are comfortable, however, with a determination that such portions are a part of the entire “roof” or roofing system, which the individual owner is obligated to maintain.

Other items attached to, but outside the boundaries of, the Manor Homes: Maintenance responsibility for items such as shutters not originally installed by the developer and covered under Article VIII, Section 1 of the Declaration, and portico pillar supports is difficult to determine without having visual evidence of such portions of the Condominium. However, if any item or property, including gutters and down spouts, shutters and portico pillars, is (1) located on a portion of the Condominium which lies (i) outside the boundaries of a Manor Home or (ii) outside any Easement Area enclosed by a fence, or (2) is not specifically assigned as the maintenance responsibility of the owner of a Manor Home (e.g., the roofs and any Stoop, Patio, Driveway and Walk which are attached to a Manor Home), such item or property is the maintenance and repair responsibility of the Association.

## **MAINTANANCE RESPONSIBILITY CHART**

Attached to this memorandum as Exhibit “A” is a chart which outlines maintenance responsibilities based on the above. The chart is not meant to present an exhaustive list. If there are any questions that arise with regard to an item that is not included on the chart, please do not hesitate to contact us.

**Exhibit "A"**

**MAINTENANCE RESPONSIBILITY**

	<b>ASSOCIATION</b>	<b>OWNER</b>
Stoop attached to Manor Home		<b>X</b>
Patio attached to Manor Home		<b>X</b>
Driveway attached to Manor Home		<b>X</b>
Walk attached to Manor Home		<b>X</b>
Fence surrounding patio		<b>X</b>
Brick, Stucco and concrete portions of the Manor Home		<b>X</b>
Original shutters mounted on the portion of each Manor Home that connects to the adjoining Manor Home	<b>X</b>	
Easement Area annexed to a Manor Home by a fence, including 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 such Easement Area		<b>X</b>
Fence erected by Manor Home owner to annex Easement Area		<b>X</b>
Drainage structures which constitute part of a Manor Home		<b>X</b>
Association Property (all real property which is shown and depicted on any Plat which is neither included within any Manor Home nor dedicated to a governmental authority)	<b>X</b>	
Original exterior lighting NOT on a wall enclosed by a fence erected by a Manor Home owner	<b>X</b>	

Original exterior lighting on a wall enclosed by a fence erected by a Manor Home owner		<b>X</b>
Exterior lighting installed by a Manor Home Owner		<b>X</b>
Mailboxes	<b>X</b>	
Roof and roof framing system (includes soffits and fascia boards)		<b>X</b>
Gutters and downspouts NOT enclosed by a fence erected by a Manor Home owner	<b>X</b>	
Gutters and downspouts enclosed by a fence erected by a Manor Home owner		<b>X</b>
Other items and property outside the boundaries of a Manor Home or outside any Easement Area enclosed by a fence installed by a Manor Home owner	<b>X</b>	