

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

PLAT for the Condominium recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, 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 \_\_\_\_\_, Page \_\_\_\_\_, DeKalb County, Georgia Records.

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

THIS DECLARATION OF CONDOMINIUM is made on this \_\_\_\_\_ day of August, 2001, by BENCHMARK/BOULDERCREST, LLC, a Georgia limited liability company and BURNHAM BUILDERS, L.P., a Georgia limited partnership (collectively hereinafter referred to as the “Declarant”).

WITNESSETH:

WHEREAS, the Declarant owns all of that certain real property located in Land Lots 114 and 115 of the 15th District of DeKalb County, Georgia, which real property is more particularly described on Exhibit “A”, hereto attached and made a part hereof (the “Overall Property”); and

WHEREAS, the Declarant intends to develop, in phases, the Overall Property, for residential purposes by the construction thereon of single family condominium units utilizing a manor home format (such condominium units hereinafter called the “Manor Homes”, or the “Units”); and the floor plans relating to the Units were filed in Condominium Plat Book 120, pages 16 thru 56, records of DeKalb County, Georgia (hereinafter “DeKalb”); and

WHEREAS, the Declarant desires to submit the Manor Homes to the condominium form of ownership pursuant to the Georgia Condominium Act (O.C.G.A. §44-3-70 et seq.); and

WHEREAS, the Declarant desires to provide open spaces, lighting fixtures, private streets and walkways, green belts and other facilities (collectively the “Association Property” or “Common Elements”) for the benefit of the persons who shall reside in the Manor Homes; and

WHEREAS, in order to insure the enjoyment of the Common Elements by the residents of the Manor Homes, and in order to protect and enhance the value of the Manor Homes, it is desirable to create an association to own, maintain and administer the Association Property, and to administer and enforce the covenants and restrictions imposed by this Declaration on the Manor Homes and Association Property, and to collect, hold and disburse the charges and assessments provided for in this Declaration; and

WHEREAS, it is intended that every owner of any of the Manor Homes automatically, and by reason of such ownership and this Declaration, become a member of the aforesaid association and be subject to its valid rules and regulations and the assessments and charges made by such association;

NOW, THEREFORE, the Declarant does hereby submit the “Manor Homes” and the “Association Property” (as those terms are hereinafter defined) to the provisions of the Georgia Condominium Act, OCGA §44-3-70 et seq.

## 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

that was recorded in connection with the subjecting the Manor Home to which such Portico is attached to the terms of this Declaration.

“Stoop” shall mean the front stoop that was constructed as part of the original construction of each Manor Home.

“VA” shall mean the United States Department of Veterans Affairs 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.

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

All pronouns used in this Declaration are intended to be gender neutral, and the use of the masculine gender shall be deemed to include the feminine and neuter genders.

## ARTICLE II.

### MANOR HOMES

Section 1. Manor Homes Hereby Subjected to the Act and this Declaration. The Declarant, for itself, its successors and assigns, does hereby covenant that the property, which includes Common Elements and Units, described on Exhibit “B” attached hereto and incorporated herein by reference be and the same hereby is, subjected to the Act and to this Declaration: In addition, the Declarant does hereby subject all of the aforesaid Manor Homes to all of the terms and provisions of the Act which are applicable to “Units” within the meaning of the Act.

The Declarant, for itself, its successors and assigns, hereby further covenants that the above-described property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in the Act and in this Declaration as applicable to the Manor Homes, including, but not limited to, the lien provisions set forth in Article V hereof. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Manor Homes shall be a permanent charge thereon, and shall run with the Manor Homes.

Section 2. Additional Manor Homes Hereafter Subjected to this Declaration. The Declarant may, at any time, and from time to time, prior to 1 August 2008, subject additional portions of the Overall Property to the Act and the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration applicable to Manor Homes and Common Elements by:

(a) executing and recording in the Deed Records of DeKalb, an amendment to this Declaration describing such additional Manor Homes and Association Property and stating



that this Declaration is thereby extended to, and shall thereafter apply to, such additional Manor Homes and Common Elements; and

(b) recording in the Plat Book Records of DeKalb, a Plat showing and depicting the additional Manor Homes or Common Elements being thereby subjected to this Declaration.

From and after the subjecting of such additional Manor Homes or Common Elements to the Act and this Declaration, such additional Manor Homes shall thereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration applicable to Manor Homes, including, without limitation, all lien and assessment provisions set forth in this Declaration. From and after the subjecting of such additional Manor Homes to this Declaration, all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to Manor Homes shall be a permanent charge thereon, and shall run with, such additional Manor Homes.

Notwithstanding the foregoing provisions of this Section 2, however, the maximum number of additional Manor Homes that the Declarant may subject to this Declaration is One Hundred and Seventy (170). In no event shall the Declarant have the right under this Section 2 to subject more than One Hundred and Seventy (170) additional Manor Homes to this Declaration.

Except as otherwise provided in the Act (and provided that the number of additional Manor Homes does not exceed the maximum for the same that is hereinabove set forth), no approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject any portion of the Overall Property to this Declaration as additional Manor Homes or Common Elements. Declarant makes no representation or warranty whatsoever as to when or if all or any portion of the Overall Property will be made subject to this Declaration. Declarant shall have the right to add all or any portion of, or none of, the Overall Property to this Declaration at such time and in such manner as Declarant, in its sole discretion, deems appropriate. In the event part or all of the Overall Property is not made subject to this Declaration, Declarant makes no representation or warranty whatsoever as to how the remainder of the Overall Property will be used or what will be constructed thereon.

Additional property may be added to this Declaration at different times and from time to time. Any additional Units added to the Condominium will be restricted exclusively to residential use. Any additional structures will be architecturally compatible with any then existing structures in terms of quality of construction, the principal materials to be used and architectural style. No assurances are made as to what other improvements, if any, will be made on any additional property. No assurances are made that any Units created on any additional property will be substantially identical to the Units on the originally submitted Property. No limitations are placed on the Declarant's right to create Limited Common Elements on any portion of the additional Property. Upon any expansion of the Condominium, each Manor Home will continue to have one vote, and liability for common expenses will be divided equally among the Units existing within the Condominium from time to time.

Section 3. No Effect on Balance of Overall Property. Notwithstanding anything contained in this Declaration which may be construed to the contrary, this Declaration does not create any charge, lien, encumbrance, restriction, or limitation on any portion of the Overall Property other than the Manor Homes described in Section 1 of this Article II, unless and until any additional portion of the Overall Property is subjected to this Declaration as Manor Homes or Association Property in the manner set forth, respectively, in Section 2 of this Article II or in Section 1 of Article III, and then, only from that time forward.

Section 4. Boundaries of Manor Homes. The boundaries of each Manor Home shall be as follows:

(a) The side boundary of each Manor Home shall be 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, shall be 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.

(b) In the event of any discrepancy between the boundaries of a Manor Home, as described in this Section 4, and the boundaries of such Manor Home shown on the applicable Plat, the description of the boundaries of the Manor Home set forth in this Section 4 shall control. All of the area within the boundaries of each of the Manor Homes, as herein described, and as shown and depicted on the applicable Plat, shall for all purposes constitute real property which may be owned in fee simple, subject to the terms, provisions, liens, charges, covenants, easements and restrictions of this Declaration.

Section 5. All Manor Homes Bear the Burdens and Enjoy the Benefits of this Declaration. Every person who is a record owner of a fee or undivided fee interest in any Manor Home does, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title to such Manor Home, agree to all of the terms and provisions of this Declaration. Each of the Manor Homes is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 6. Easements Over the Manor Homes. The Manor Homes shall be subject to, and the Declarant does hereby grant to the appropriate grantees thereof, the following easements:

(a) Each Manor Home shall be subject to all easements which are shown and depicted on the Plat as affecting and burdening such Manor Home;

(b) Each Manor Home shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go in and upon such Manor Home under the circumstances, and for the purposes, described in Article VIII of this Declaration.

Section 7. Condominium Act Provisions. The following information is included as required by the Act:

- (a) The name of the Condominium is “The Gates at Bouldercrest Condominium”.
- (b) The Condominium is in DeKalb County.
- (c) The Submitted Property is described on Exhibit B attached hereto. The Submitted Property has no horizontal boundaries.
- (d) The Unit boundaries are described in Article II Section 4 of this Declaration.
- (e) The Limited Common Elements are described in the Definitions section.
- (f) There are no common elements, which may subsequently be assigned as Limited Common Elements.
- (g) Each Unit has an equal undivided interest in the Common Elements.
- (h) Each Unit has one vote.
- (i) Each Unit has an equal share of liability for common expenses.
- (j) There are no limitations or restrictions on the powers of the Association and the Board of Directors.
- (k) This Declaration was prepared by R. Hudspeth, Reginald A. Hudspeth, LLC, 1770 Indian Trail Road, Suite 280, Norcross, GA 30093.
- (l) Restrictions on the general use of the Condominium are contained in this Declaration.
- (m) Provisions for expansion of the Condominium are set forth in Article II, Section 2 of this Declaration.

Section 8. Unit Types. Architectural plans for each type of Manor Home have been filed with the Clerk of Superior Court of DeKalb County.

### ARTICLE III.

#### ASSOCIATION PROPERTY

Section 1. Association Property. The Declarant shall have the right to transfer and convey to the Association any portion of the Overall Property. All portions of the Overall Property, which the Declarant shall so transfer or convey to the Association, shall thereafter constitute Association Property. Said right may be exercised by the Declarant any time, and from time to time, prior to 1 August 2008.

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

membership in the Association, and in no event shall such membership be severed from the ownership of such Manor Home.

Section 3. Suspension of Membership Rights. The membership rights of any member of the Association, including the right to vote and to use the Association Property (except for the right to use the Association Property for access to and from the Manor Home owned by such member), may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the member's property in favor of the Association

Section 4. Meetings of the Membership. All matters concerning the meetings of members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in the Act, this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 5. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the members of the Association must vote. No member of the Board of Directors of the Association or any officer of the Association shall be personally liable to any owner of any Manor Home for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 6. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any person or other entity to manage the affairs of the Association, or any part thereof, and may enter into such agreement for the management of the Association Property as the Board of Directors deems to be in the best interests of the Association.

## ARTICLE V.

### ASSESSMENTS

Section 1. Assessments; Lien Therefor. The Declarant, as the owner of all of the Manor Homes, hereby covenants, and 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, shall be deemed to covenant and agree to pay to the Association all assessments and charges which are levied by the Association against the Manor Home(s) owned by such person in accordance with the terms and provisions of this Declaration. Annual Assessments for each Manor Home shall begin to accrue at the time as such Manor Home is first submitted to this Declaration. Each Manor Home shall have an equal share of the liability for

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: \_\_\_\_\_  
Fred J. Schwaemmle, Jr., Manager

\_\_\_\_\_  
Witness

\_\_\_\_\_  
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

**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, 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 15<sup>th</sup> 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.

5.

**Article IX, Section 1 is deleted in its entirety and replaced with the following:**

Section 1. Type and Scope of Insurance Coverage.

(a) Insurance for Fire and Other Perils.

(i) As a common expense, the Association shall obtain, maintain, and pay the premiums upon, a “master” or “blanket” type policy of property insurance covering all of the common elements, Limited Common Elements and Units including such fixture and equipment, as were standard features of such Units when first conveyed. All references herein to a “master” or “blanket” type policy of property insurance, are intended to denote single entity condominium insurance coverage. The policy shall be in an amount equal to 100% of current replacement cost of the condominium exclusive of land, foundation, excavation, and other items normally excluded from coverage. The name of the insured under such policy shall be the Association. Loss payable shall be in favor of the Association, as a trustee, for each Unit owner and each such owner’s mortgagee. The Association shall hold any proceeds of insurance in trust for Unit owners and their first mortgage holders, as their interests may appear. Each Unit owner and each Unit owner’s mortgagee, if any, shall be beneficiaries of the policy in the percentage of common ownership or in an amount determined pursuant to a reasonable formula prescribed in the Declaration or appropriate exhibit thereto. Certificates of insurance shall be issued to each Unit owner and mortgagee upon request. The policy must also provide that it may not be cancelled or substantially modified, 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. Policies are unacceptable where:

- (A) under the terms of the insurance carrier’s charter, by-laws, or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC, or the designee of FNMA or FHLMC; or
- (B) by the terms of the carrier’s charter, by-laws or policy, loss payments are contingent upon action by the carrier’s board of directors, policyholders, or members, or
- (C) the policy includes any limiting clauses (other than insurance conditions) which could prevent FNMA, FHLMC, or the borrowers from collecting insurance proceeds.

(ii) The policy must also provide for the following:

- (A) a waiver of the right subrogation against Unit owners individually;
- (B) that the insurance is not prejudiced by any act or neglect of individual Unit owners which is not in the control of such owners collectively; and
- (C) the policy includes is primary in the event the Unit owner has other insurance 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

- (B) extended coverage endorsement, and 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 of 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:

Benchmark/Bouldercrest, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Fred J. Schwaemmle, Jr., Manager

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

SIGNATURES CONTINUED ON NEXT PAGE

Signed, Sealed and Delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

Burnham Builders, L.P.

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

By: \_\_\_\_\_  
R. K. Greene, Manager



**CONSENT AND JOINDER OF LENDER**

For value received the undersigned ("Lender"), who is owed an indebtedness that is secured by recorded deed (s) to secure debt upon part or all of the land affected by the Declaration and the First Amendment to the Declaration, does hereby join in the execution of this First Amendment to consent to such First Amendment and to the Declaration.

SunTrust Bank.

Signed, Sealed and Delivered  
in the presence of:

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Attest: \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

S:\CONDO\Gates@Bouldercrest\The Gates Amend.doc

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

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.

\_\_\_\_\_  
Witness

Benchmark/Bouldercrest, LLC  
A Georgia Limited Liability Company

\_\_\_\_\_  
Notary Public

By: \_\_\_\_\_  
Ralph B. Davis, Manager