

FILED & RECORDED
CLERK SUPERIOR COURT
GWINNETT COUNTY, GA.

01 JUN -5 AM 11:38

TOM LAWLER, CLERK

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

012-0546

DECLARATION
OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE OAKS AT CHARLESTON COMMONS SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by SUNNY HILL PARTNERS, LLC, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is or will be the Owner of certain real property in Land Lots 93, 94 and 102 of the 7th District, County of Gwinnett, State of Georgia ("Land"), which is more particularly described on Exhibit "A" annexed hereto and incorporated herein by reference.

All Lots in this Planned Unit Development ("PUD") are subject to the Covenants. Additional land may be added to this Declaration in accordance with Article VII, Section 4.

NOW THEREFORE, Declarant hereby declares that the Land shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, which are for the purpose of protecting the value and desirability of, and which shall run with the Land and be binding on all parties having any right, title or interest in the described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each holder thereof.

082249

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to CHARLESTON COMMONS HOMEOWNERS ASSOCIATION, INC., its successors and assigns.

Section 2. "Board of Directors" shall mean and refer to the Association's board of directors as provided for in the Association's Articles of Incorporation and By-Laws as set out per Exhibit "B" annexed hereto and incorporated herein by reference.

Section 3. "Common Area" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All that tract or parcel of land lying and being in Land Lots 93, 94 and 102 of the 7th District, Gwinnett County, Georgia, being designated as "Open Space" and "Recreation Area" as per final subdivision plat for The Oaks At Charleston Commons Subdivision, Unit One, dated April 11, 2001 and recorded in Plat Book 89, Page 155-157, Gwinnett County, Georgia Records, which plat is incorporated herein by reference.

The Declarant hereby certifies that, if there is a Common Area, it has been conveyed to the Association free and clear of all encumbrances.

Absolute liability is not imposed on Members for damage to the Common Area, if any, or Lots, including improvements, in the PUD; instead, Members are only responsible for their own negligence and the negligence of their minor children, employees, and agents as provided by Georgia State Law.

In the event a Common Area is later added to the PUD, the Common Area shall not be subject to assessments. The expenses for maintenance and any improvement of the Common Area, including taxes, shall be paid by the Association. The designated Common Area is not dedicated for the use by the general public but is dedicated to the common use and enjoyment of the Members of the Association.

Section 4. "Declarant" shall mean and refer to SUNNY HILL PARTNERS, LLC, its successors or assigns.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Property with the exception of the Common Area, if any, and delineated public streets.

Section 6. "Member" shall mean and refer to those persons entitled to membership as provided in this Declaration.

Section 7. "Other Builder" shall mean and refer to any individual or entity which acquires one or more undeveloped Lots from the Declarant for the purpose of development.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any improved Lot on which there exists a completed home which is or has ever been occupied as a residence, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and excluding those Lots owned by the Declarant and Other Builders.

Section 9. "Property" or "Land" shall mean and refer to that certain real property herein described, and such additional property thereto as may hereafter be brought within the jurisdiction of the Association in accordance with Article VII, Section 4.

Section 10. "Subdivision" shall mean and refer to all or any portion of the Land which has been recorded as such per plat in the office of the Superior Court of Gwinnett County, Georgia.

ARTICLE II

PROPERTY RIGHTS

Section 1. Member Easements of Enjoyment. Every Member shall have a right and easement of enjoyment in and to the Common Area, if any, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreation facility, if any, situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use the recreational facilities by a Member for any period during which any assessment against a member's Lot remains unpaid;

(c) the right of the Association to suspend the right to the use the facilities by a Member for a period not to exceed 60 days, following the "cure" of an infraction for any infraction of the Association's disseminated rules and regulations;

(d) conditioned on a written instrument signed by 2/3rds of each class of Members agreeing to such action and the purposes and conditions thereof and subject to existing easements, the right of the Association to (i) dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility; or (ii) mortgage or convey all or any part of the Common Area.

Section 2. Reservation of easement to the Association. The Association, its agents or assigns shall have and is hereby granted an easement as necessary or incidental for ingress and egress over thru and across any Lot or Common Area to (i) maintain, repair, remove, or replace the Subdivision "Amenities", hereinafter described, or Subdivision detention pond(s); or (ii) to cure a violation of this Declaration by removal of the item(s) causing the violation (e.g. sign, vehicle, or other matter whatsoever) which constitutes the violation or to otherwise cure the violation by performing such maintenance or other corrective action necessary to cure the violation.

Section 3. Delegation of Use. Declarant, any Owner or Other Builder may delegate, in accordance with this Declaration, his right of enjoyment to the Common Area and facilities, if any, to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. The Declarant, every Owner and every Other Builder shall be Members of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

Section 2. The Association shall have two classes of voting Membership:

Class A. Class A Members shall be all Owners and Other Builders, and Class A Members shall be entitled to one vote for each Lot owned. When more than one person and/or entity holds an interest in any Lot all such persons and/or other entity shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant or assigns and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

- (a) when 75% of the lots are deeded to homeowners,
- or
- (b) June 1, 2004 (the reasonable estimated time to market 75% of the Lots).

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments or Charges. Each "Owner" (but not the "Declarant" or "Other Builders") by acceptance of a deed for any Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association:

- (a) annual assessments or charges;

(b) special assessments for capital improvements, or other purposes; or

(c) other assessments or charges as may be established as hereinafter provided.

The assessments or charges, whether they be annual, special, fines or other, together with interest, costs and reasonable attorney's fees (collectively the "Sum"), shall be a charge on the Lot(s) and shall be a continuing lien thereon. The Sum, shall also be the personal obligation of the Owner of such Lot(s) at the time when assessed or incurred. The personal obligation for the Sum shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied and provided for herein shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the Members and their tenants and, in particular, for the servicing, improvement and maintenance of the following:

(a) the amenities of the Subdivision, even though such amenities may be located, partially or entirely, on a contiguous public right of way, Lot or Common Area, when such improvements are or were made by the Declarant or the Association, to enhance the look, desirability, uniformity or pleasantness of the Subdivision (such improvements are collectively herein referred to as the "Amenities"). The Amenities include, without limitation: (i) the entrance area statement (e.g. signs, monuments, walls, landscaping or landscape islands, berms, slopes, fences, lighting, irrigation, drainage or other improvements whatsoever) and (ii) the inclosure improvements of the perimeter of the Property (e.g. fencing, walls, hedges, landscaping, close or other improvements whatsoever);

(b) the Common Area, if any, and such improvements or facilities related thereto;

(c) the detention ponds and such improvements or facilities related thereto which are shown on the Subdivision Plat or revision thereof or are subsequently added by the Declarant or Association; and

(d) in the event the Subdivision sidewalks are not maintained or replaced by the controlling municipal or county authority, then, in that event, for the maintenance or replacement thereof.

Section 3. Maximum Annual Assessment. Until January 1, 2003, the annual assessment shall be \$ 150.00 dollars per Lot payable in advance. Each year thereafter the annual assessment may be increased:

- (a) without a vote by the Members by not more than 10% above the assessment for the previous year; or
- (b) with an affirmative 2/3rd majority vote, held in accordance with the by-laws, of each class of Members entitled to vote.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum permitted above.

Section 3.5. Capital Contributions. Upon the sale of a Lot upon which there is a home that can be resided in, there shall be collected from the Purchaser at the closing of said purchase, and paid to the Association, a one time up-front capital contribution of \$ 120.00 and if not so collected, shall be a lien upon the Lot until paid.

Section 4. Special Assessments for Capital Improvements or Other Purposes. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Land, including fixtures and personal property related thereto or for the other benefit of the Association provided that any such special assessment shall be authorized with an affirmative 2/3rd majority vote, held in accordance with the by-laws, of each class of Members entitled to vote. If the special assessment is approved, the Board of Directors shall determine the date when payment thereof shall be due.

Section 5. Notice and Quorum for Any Action. Sufficient notice of any meeting called for the purpose of taking any action authorized by this Declaration is sufficient by posting a sign at the entry to the Subdivision at least 72 hours prior to the meeting denoting the time, date and place of the meeting, and, if applicable, the fact that a special assessment will be considered at such meeting. At any meeting,

the presence of Members or of their proxies entitled to cast 40% of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, a "subsequent" meeting may be called subject to the same notice requirement, and the required quorum shall then be one half of the required quorum at the preceding meeting. No "subsequent" meeting shall be held more than 60 days after the first set meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Owners and may be collected on a yearly or other basis as determined by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall be calculated as to all Lots to which it applies on the day of the conveyance of the Lot to an Owner. The annual assessments shall run for a calendar year from January 1 to and including December 31. The first annual assessment shall be a prorated on the current assessment amount through December 31st of the year of purchase and shall be collected from the Owner at the closing. The Board of Directors shall fix the amount of the annual assessment and notice thereof shall be provided to every Owner by mail or posting, generally fifteen (15) days or more before it is due. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 12 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or file and foreclose it as a lien on the Lot, or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of a Lot.

Section 9. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect

the assessment lien. However, the sale or transfer of any Lot pursuant to 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. No sale or transfer shall relieve a Lot from liability for any assessments thereafter becoming due or from the lien thereof. Mortgagees are not required to collect assessments. Failure to pay assessments does not constitute a default under an insured mortgage.

Section 10. Exempt Property. Any portion of the Land dedicated to and accepted by a local public authority or owned by a charitable or nonprofit organization exempt from taxes of the State of Georgia shall be exempt from the assessments created herein, except no Lot devoted to dwelling use shall be exempt from said assessments.

ARTICLE V

ARCHITECTURAL CONTROL

Section 1. Requirement for Plan Approval. Except for the Declarant, no improvement or structure, including, without limitation, any building, fence, wall or home, shall be commenced, erected or maintained upon any part of the Property, nor shall any exterior addition, change or alteration thereto be made until the written plans and specifications showing the nature, kind, shape, height, materials, and location of such ("Plans") have been submitted via certified mail, return receipt requested to the Board of Directors or to the Architectural Control Committee, if any, appointed by the Board of Directors, whose composition shall include at least one member of the Board of Directors and, such Plans are approved in writing as to harmony of external and internal design and location in relation to surrounding structures and topography. Approval of the Plans shall be in writing and within ninety (90) days of their receipt. In the event the Plans have not been disapproved but no written approval is forthcoming within ninety (90) days after the Plans are received, then the Plans shall be deemed approved, provided, however, that other Sections of this Article and of this Declaration shall continue to be enforceable in actions at law or in equity, including injunction and Temporary Restraining Order, by the Board of Directors, Architectural

Control Committee, Declarant, Other Builders or Owners unless a waiver of said requirement was expressly granted in writing by the Board of Directors or the Architectural Control Committee. All dwelling units must be a minimum of 1,600 square feet for one-story homes and 1,800 square feet for two-story homes.

Section 2. Exterior Rules. The following, and such additional architectural landscaping or maintenance rules as the Board of Directors or the Architectural Control Committee shall adopt shall be enforceable in law or equity by the Board of Directors, the Architectural Control Committee, Declarant, Other Builders and/or Owners:

(a) No vehicles of any description shall be parked on the streets of the Subdivision for more than six hours in any twenty-four (24) hour period, excepting Declarant and Other Builders and its tradespeople's vehicles utilized in connection with the sale and construction of residences therein.

(b) No satellite dish antennas, radio transmission or reception devices, nor television antennas of any sort shall be erected on the roof or in the yard of any residence except that digital satellite dishes or direct broadcast satellite dishes of 18" or less in diameter shall be permitted.

(c) All blinds, shutters, and/or window treatments visible from the street shall be of white or alabaster color.

(d) No basketball goals shall be erected so as to be visible from the street.

(e) No clothesline, nor any clothes drying device, shall be erected so as to be visible from the street or any other residence.

(f) All resident owned vehicles shall be parked in the garages or driveways of their respective residences for periods of time exceeding six hours. Inoperable vehicles or vehicles under repair shall be parked in the garage at all times during such period of repair or inoperativeness.

(g) No dilapidated or unsightly vehicles or machinery shall be parked or stored in such a manner as to be visible from the street or any other residence. The Board of Directors or the

Architectural Control Committees shall be the arbiter as to whether a vehicle or machinery is dilapidated or unsightly.

(h) No motor homes, campers, trailers, boats, motorcycles, or commercial vehicles shall be parked or stored in such a manner as to be visible from the street or any other residence.

(i) Paragraph (f) above notwithstanding, no vehicles, equipment, or materials shall be stored on any lot (except Declarant's or Other Builder's equipment and materials), whether covered or not, at a location which is visible from the street or any other residence.

(j) On any Lot, Common Area or the right of way which was dedicated per the Plat or by deed as incidental or necessary to the subdivision of the Land, no sign for any purpose whatsoever shall be erected or displayed such as on or within a vehicle, residence or other device, except a double-faced 3 square foot per side sign no more than 36 inches tall advertising a residence for sale or lease. Declarant's or Other Builders' signs are also excepted from the foregoing restriction.

(k) No fences shall be erected in the front lawns of any Lots.

(l) ALL FENCES MUST BE APPROVED BY THE BOARD OF DIRECTORS OR THE ARCHITECTURAL CONTROL COMMITTEE. All fences shall conform, without limitation, to the following requirements: (i) must be erected in rear yards only and no further forward than the rear corners of the house, and (ii) must be constructed of wood and no higher than six feet in height with the finished side facing externally. Once a fence is approved by the Board of Directors or the Architectural Control Committee, the installation of the fence shall be of a pleasing appearance. If any fence is erected on any Lot which has not been approved by the Board of Directors or the Architectural Control Committee, and it continues to exist after fifteen days written notice to the Owner or Other Builder of its non-compliance, then the Board of Directors or the Architectural Control Committee, their agents or assigns, are hereby granted an easement for the purpose of ingress, egress and removal of such fence. Such Owner or Other Builder shall indemnify and hold harmless the Association from all costs or damages whatsoever

incurred, suffered or occasioned in undertaking to enforce compliance with this Declaration and such costs shall constitute a charge on the Lot(s) and a continuing lien thereon until paid in full.

(m) Each Owner and Other Builder shall maintain his Lot and the improvements thereon in a neat, clean, and eye-pleasing condition which shall include the maintenance of the front lawn of his Lot. The Board of Directors or the Architectural Control Committee shall be the arbiter as to whether said maintenance is clean and eye pleasing. If, fifteen days after having served notice to any Owner or Other Builder of any deficiencies in this regard, any deficiency still exists, the Board of Directors or the Architectural Control Committee may correct said deficiency at its option. Such Owner or Other Builder shall then be liable for any costs and charges incurred as a result of such correction, and should such Owner or Other Builder then not make remuneration within such terms as are then set, the costs and charges will be the basis of a lien against such Owner's or Other Builder's Lot.

Section 3. Detention Pond Maintenance. Any and all detention ponds as shown per plat shall be maintained by the Association. The Association shall have an easement for ingress and egress on any Lot affected by a detention pond or any part thereof to the extent reasonably necessary to accomplish this purpose, as well as the right to remove or cause to be removed obstructions to said purpose and the right to require the cooperation of others, who have an interest therein, to not hinder those actions reasonably necessary to effect such purpose.

Section 4. Lawn Maintenance. The Board of Directors or the Architectural Control Committee or their representatives, including, but not limited to a landscaping company or individual chosen by them, shall have the right to take actions necessary or convenient to accomplish the mowing of the front lawns of all Lots of Owners and Other Builders in the Subdivision which are not properly maintained by the Owner or the Builder of the Lot and to maintain the Entrance Areas of the Subdivision. This right shall include, without limitation, the right of ingress and egress on the Lot of the Owner or Other Builder to the extent reasonably necessary to accomplish this purpose, the right to remove or cause to be removed

obstructions to said purpose and the right to require the cooperation of others, who have an interest therein, to not hinder those actions reasonably necessary to effect such purpose.

Section 5. Release. Each Owner, Member, and Other Builder, his descendants, ancestors, dependents, heirs, executors, and assigns, hereby fully releases, discharges, and holds harmless the Association and Declarant, their agents, officers, directors, stockholders, members, employees, representatives, successors, and assigns, from any and all rights, claims, actions, causes of action, damages, losses, or injuries of whatever form or kind, the Owner and Other Builder, his descendants, ancestors, dependents, heirs, executors, and assigns has or may hereafter have against the Association and Declarant, their agents, officers, directors, stockholders, members, employees, representatives, successors, and assigns arising from the right of the Association to correct any deficiency, remove any fence, maintain the detention ponds and facilities, or mow the front lawn of any Owner's and Other Builder's Lot as set forth in this Article V. Each Owner and Other Builder, his descendants, ancestors, dependents, heirs, executors, and assigns hereby assumes full responsibility for any injuries, damages, losses or liability which he may hereafter incur from the above specified right of the Association.

The right of the Association to correct any deficiency, remove any fence or mow the front lawn of an Owner's and Other Builder's Lot shall in no way effect the responsibility of an Owner and Other Builder to maintain his front lawn and remainder of his Lot in accordance with the provisions of Article V, Section 2, Subsections (j), (k), and (m) and other provisions of this Declaration and related documents.

Section 6. Fines. In addition to any other rights of enforcement of the provisions of this Declaration including, but not limited to, the Architectural Control provisions of Article V, Section 1, the rules set forth and which are promulgated in accordance with Article V, Section 2, and the duty to cooperate in the mowing of front lawns in accordance with Article V, Section 2 and Section 3, the Board of Directors or the Architectural Control Committee shall have the right to assess fines for and violations of said provisions not to exceed \$25.00 per day per violation for each day, or part of a day the violation remains uncured. The Board of Directors or the Architectural Control Committee shall provide written

notice to the violator, which notice shall specify the date of the beginning of the violation and the fact that the specified fine shall be assessed retroactive to the beginning of the violation until cured unless adequate explanation for the violation, in the sole discretion of the Board of Directors or the Architectural Control Committee, shall be given by the violator. In the event that a fine under this Section is imposed then it shall be immediately due and payable and shall constitute a lien on the property, which may be filed and foreclosed, and shall bear interest at 12 percent (12%) per annum until paid. The lien of the fine provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment fine. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the fine of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot Owner from liability for any assessments thereafter becoming due or from the fine thereof. Mortgagees are not required to collect assessments or fines. Failure to pay assessments does not constitute a default under the insured mortgage.

ARTICLE VI

INSURANCE

Section 1. Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures of the Common Area, if any, insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried.

Premiums for the property for which the insurance was carried by the Association are included in the annual assessments made by the Association.

Section 2. Replacement or Repair of Property. In the event of damage to or part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Reconstruction Assessment against all Lots to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other annual assessments made against such Lot.

Section 3. Annual Review of Policies. The Board of Directors shall review the Association's insurance policies, if any, annually for adequacy of coverage as compared to the capital value of Amenities which may be damaged or destroyed.

ARTICLE VII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Member, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Member to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter, except as provided in this Declaration.

Section 2. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such a manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or any property shall be prohibited or held invalid, such prohibition or invalidity shall not effect any other provision or the application of any provision which can be given effect without the invalid revision or application, and to this end, the provisions of this Declaration are declared to be severable.

Section 3. Amendment. The easements, covenants, conditions, and restrictions of this Declaration shall run with and bind the Land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each unless terminated by an instrument signed by seventy-five percent (75%) of each Class of Members. This Declaration may be amended during the first twenty (20) year period and thereafter by an instrument signed by not less than seventy-five percent (75%) of the members of Class A and seventy-five percent (75%) of the members of Class B Memberships. Declarant may amend the easements, covenants, conditions and restrictions of this Declaration without the consent of the Members of Class A within two (2) years of the date of this instrument provided that the Federal Housing Administration ("FHA") and the Veterans Administration ("VA") does not determine such amendment to be noncompliant with the requirements extant by FHA and VA for approving subdivisions for the issuance of FHA mortgage insurance or VA loan guarantees. Any amendment must be recorded.

Section 4. Annexation. Additional residential property and Common Area may be annexed to the Property with the consent of two-thirds (2/3) of each class of Members. Additional land and Common Area may be annexed by the Declarant without the consent of the Members of Class A within two (2) years of the date of this instrument provided that the Federal Housing Administration ("FHA") and the Veterans Administration ("VA") determine that the annexation is in accord with the requirements extant by FHA and VA for approving subdivisions for the issuance of FHA mortgage insurance or VA loan guarantees.

Section 5. FHA/VA Approval. So long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA: Annexation of additional property, dedication of additional Common Area, and amendment of this Declaration of Easements, Covenants, Conditions and Restrictions. Additionally, should the FHA or VA require any amendment to this Declaration, the Articles of Incorporation or the Bylaws, prior to or after initial approval of same, the Declarant is authorized to

make such amendment(s) conforming said document(s) to the requirements of the FHA or the VA without consent of the Members of the Association.

Section 6. Indemnity. The Association shall have the right to retain legal counsel and to indemnify, defend, and hold harmless its directors, officers, agents and employees for actions arising out of their acts on behalf of the Association, except for intentional torts committed by them, either before or after such acts are committed by them.

Section 7. Attorney Fees. The prevailing party in any dispute under this Declaration or in the enforcement of the obligations and covenants hereunder shall be entitled to the award of reasonable attorney fees and litigation expenses in addition to other damages.

Section 8. Notices. It shall be the responsibility of each Member of the Association to notify the Secretary of the Association in writing of his name, current address, and telephone number for use in entering and maintaining his name in the membership rolls of the Association. The Association shall not be held responsible however for any unintentional failure to properly list the names, addresses, and telephone numbers of its Members.

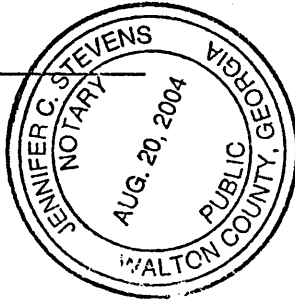
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 23rd day of May, 2001.

Sworn to and subscribed before me
This 23rd day of May, 2001.

[Signature]
Witness

[Signature]
Notary Public

My Commission Expires: _____



A:\Chritsoncmms.dec.doc

SUNNY HILL PARTNERS, LLC

BY: MONTERAY PROPERTIES II, INC.
Manager

By: [Signature]
C. L. Flake, Jr., President

(CORPORATE SEAL)

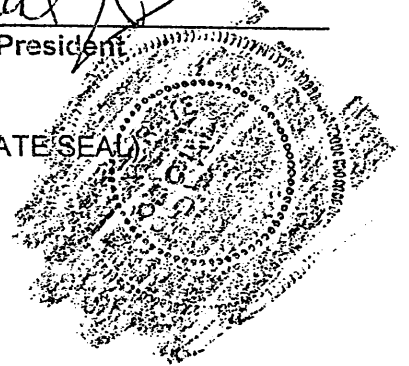


EXHIBIT "A"

TRACT ONE:

All that tract or parcel of land lying and being in Land Lots 93, 94 and 102 of the 7th District of Gwinnett County, Georgia, being shown as Tract One on that plat of survey for Sunny Hill Partners, LLC, by P.J. Krieger Engineers & Surveyors, Inc. P.J. Krieger, GRLS No. 2299, dated September 15, 1999, being 17.3720 acres, and being more particularly described as follows:

BEGINNING at an iron pin placed on the westerly right of way of Sunny Hill Road (80-foot right of way), said iron pin being 526.59 feet along the right of way of Sunny Hill Road from its intersection with the northeasterly right of way of Old Peachtree Road (80-foot right of way), run thence north 62 degrees 33 minutes 10 seconds west a distance of 754.72 feet to a one-inch pipe found; run thence north 20 degrees 13 minutes 50 seconds west a distance of 209.96 feet to a one-half-inch pipe found on the line dividing Land Lots 93 and 103; run thence along said line dividing Land Lots 93 and 103 north 61 degrees 29 minutes 31 seconds east a distance of 64.26 feet to a one-half-inch pipe found at the common corner of Land Lots 93, 94, 102 and 103; run thence along the line dividing Land Lots 102 and 103 the following courses and distances: north 29 degrees 48 minutes 20 seconds west 467.07 feet to a #4 rebar found; north 29 degrees 50 minutes 02 seconds west 159.65 feet to a one-half-inch pipe found; north 29 degrees 48 minutes 53 seconds west 412.19 feet to a one-half-inch pipe found; north 29 degrees 50 minutes 10 seconds west 159.82 feet to a one-half-inch pipe found; north 29 degrees 37 minutes 30 seconds west 168.91 feet to a steering gear found; thence leave said land lot line and run thence south 61 degrees 35 minutes 48 seconds east a distance of 1133.71 feet to a one-inch pipe found; run thence south 18 degrees 25 minutes 32 seconds west a distance of 420.03 feet to a one-inch pipe found in a pick head; run thence south 62 degrees 58 minutes 16 seconds east a distance of 452.74 feet to an iron pin placed on the westerly right of way of Sunny Hill Road; run thence along the westerly right of way of Sunny Hill Road the following courses and distances: 187.02 feet along the arc of a curve having a radius of 1058.10 feet and being subtended by a chord bearing south 04 degrees 22 minutes 16 seconds east a chord distance of 186.78 feet; south 09 degrees 26 minutes 05 seconds east 42.74 feet; south 10 degrees 27 minutes 35 seconds east 237.02 feet; and south 11 degrees 58 minutes 43 seconds east 160.94 feet to the POINT OF BEGINNING.

EXHIBIT "A"
(Continued)

TRACT TWO:

All that tract or parcel of land lying and being in Land Lot 102 of the 7th District of Gwinnett County, Georgia, being shown as Tract Two on that plat of survey for Sunny Hill Partners, LLC, by P.J. Krieger Engineers & Surveyors, Inc. P.J. Krieger, GRLS No. 2299, dated September 15, 1999, being 45.3810 acres, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at the common land lot corner of Land Lots 93, 94, 102 and 103 and run thence along the line dividing Land Lots 102 and 103 the following courses and distances: north 29 degrees 48 minutes 20 seconds west 467.07 feet to a #4 rebar found; north 29 degrees 50 minutes 02 seconds west 159.65 feet to a one-half-inch pipe found; north 29 degrees 48 minutes 53 seconds west 412.19 feet to a one-half-inch pipe found; north 29 degrees 50 minutes 10 seconds west 159.82 feet to a one-half-inch pipe found; north 29 degrees 37 minutes 30 seconds west 168.91 feet to a steering gear found and the TRUE POINT OF BEGINNING; run thence north 29 degrees 22 minutes 35 seconds a distance of 188.21 feet to a steering gear found; thence leave said common land lot line and run thence north 33 degrees 20 minutes 27 seconds east a distance of 363.80 feet to a one-inch pipe found; run thence north 24 degrees 55 minutes 11 seconds east 305.70 feet to a one-inch pipe found; run thence north 26 degrees 31 minutes 37 seconds east a distance of 171.39 feet to a 24-inch poplar; run thence north 25 degrees 14 minutes 49 seconds east a distance of 240.17 feet to a steering gear found; run thence south 52 degrees 08 minutes 26 seconds east a distance of 191.02 feet to a one-inch pipe found; run thence south 70 degrees 03 minutes 32 seconds east a distance of 441.63 feet to a steering gear found; run thence north 79 degrees 55 minutes 17 seconds east a distance of 447.00 feet to a railroad iron found; run thence south 29 degrees 41 minutes 03 seconds east a distance of 679.15 feet to a #4 rebar found on the westerly right of way of Sunny Hill Road; run thence along the westerly right of way of Sunny Hill Road the following courses and distances: south 39 degrees 11 minutes 04 seconds west 97.33 feet; 216.23 feet along the arc of a curve having a radius of 582.04 feet and being subtended by a chord bearing south 28 degrees 32 minutes 29 seconds west a chord distance of 214.99 feet to a point; south 17 degrees 53 minutes 54 seconds west 259.09 feet to a point; south 17 degrees 20 minutes 03 seconds west 539.14 feet to a point; south 15 degrees 53 minutes 09 seconds west 38.25 feet to a #4 rebar found; thence leave the westerly right of way of Sunny Hill Road and run north 61 degrees 35 minutes 39 seconds west a distance of 392.94 feet to a one-inch pipe found; run thence north 61 degrees 35 minutes 48 seconds west a distance of 1133.71 feet to a steering gear found and the TRUE POINT OF BEGINNING.

BY-LAWS

OF

CHARLESTON COMMONS HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME AND LOCATION. The name of the corporation is Charleston Commons Homeowners Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located at 2860 Buford Highway, Building E, Suite B, Duluth, Gwinnett County, Georgia 30096 but meetings of members and directors may be held at such places within the State of Georgia, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Charleston Commons Homeowners Association, Inc., its successors and assigns.

Section 2. "Board of Directors" or "Board" shall mean and refer to the Association's board of directors as provided for in the Association's Articles of Incorporation and By-Laws.

Section 3. "Common Area" shall mean and refer to all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners.

Section 4. "Declarant" shall mean and refer to SUNNY HILL PARTNERS, LLC, their successors and assigns.

Section 5. "Declaration" shall mean and refer to the Declaration of Easements, Covenants, and Conditions and Restrictions of Charleston Commons Subdivision applicable to the property and recorded in the office of Gwinnett County Superior Court Deed Records.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Property with the exception of the Common Area and delineated public streets.

Section 7. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

Section 8. "Builder" shall mean and refer to any individual or entity which acquires one or more Lots for the purpose of constructing improvements.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any improved Lot which is a part of the Property, and on which property there exists a completed home which is or has ever been occupied as a residence, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and excluding those Lots owned by the Declarant and Builders.

Section 10. "Property" shall mean and refer to that certain real property described in the Declaration, and such additional property thereto as may hereafter be brought within the jurisdiction of the Association in accordance with the Declaration.

Section 11. "Subdivision" shall mean and refer to all or any portion of the Property which has been recorded as such per plat in the office of the Superior Court of Gwinnett County.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. The Declarant, every Owner and every Builder shall be Members of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

Section 2. The Association shall have two classes of voting Membership:

Class A. Class A Members shall be all Owners and Builders, and Class A Members shall be entitled to one vote for each Lot owned. When more than one person and/or entity holds an interest in any Lot all such persons and/or other entity shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant or assigns and shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership on the happening of either of the following events, whichever occurs earlier:

(a) when 75% of the lots are deeded to homeowners,

or

(b) 6/1/04 (the reasonable estimated time to market 75% of the

Lots).

ARTICLE IV

MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of the organizational meeting of the Association and each subsequent regular annual meeting of the Members shall be held on a designated date and time each year thereafter, as selected by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President of the Association or by the Board of Directors or upon written request of one-fourth (1/4) of all members entitled to vote of either Class A or Class B.

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 72 hours prior to such meeting denoting the time, date and place of the meeting.

Section 4. Quorum. The presence of the Members entitled to cast, or of proxies entitled to cast, 40% of all the votes of each class of membership shall constitute a quorum at a meeting for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If the required quorum is not present, a "subsequent" meeting may be called subject to the

same notice requirement, and the required quorum shall then be one half of the required quorum at the preceding meeting. No "subsequent" meeting shall be held more than 60 days after the first set meeting.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

ARTICLE V

BOARD OF DIRECTOR: SELECTION: TERM OF OFFICE

Section 1. Number. The affairs of this Association shall be managed by a Board of Directors, consisting of three persons, who need not be Members of the Association.

Section 2. Term of Office. The initial directors of the Association shall be C. L. Flake, Jr., L. E. Deavours and Larry W. Kendall, Sr. who shall serve until the Members elect otherwise. Directors shall be elected biennially by the Members and shall serve for a term of two years. Such elections shall take place at the Annual Meeting of Members in the applicable year.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the remaining members of the Board. In the event of death, resignation or removal of a director, his successor shall be selected by majority vote of members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. Directors shall not be compensated for service as a director other than actual expenses incurred in performing a director's duties or, to the extent approved by the Board, for professional work done for the Association as an independent contractor. The Board may so approve even though such work is related or coincident with the director's duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written or oral

approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

ARTICLE VI

NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nominations for election to the Board of Directors shall be made from the floor at the annual meeting. Such nominations may be made from among the Members or non-members.

Section 2. Election. Election to the Board of Directors may be by secret written ballot or voice vote. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

ARTICLE VII

MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Meetings of the Board of Directors shall be held at such place and hour as may be determined by the Board, without notice to Members.

Section 2. Special Meetings. A special meeting of the Board of Directors shall be held when called by the President of the Association, or by any director, or by 10% of votes of either class of membership in the Association after not less than three (3) days notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VIII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Area and facilities, and the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and the right to use the recreational facilities of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of published rules and regulations;

(c) exercise all power or authority not otherwise reserved to the Members and, without limitation, approve and cause the payment of the Association's expenses with regard to its formation and operation thereafter;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, lawyer, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the right of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of either class of Members who are entitled to vote;

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least fifteen (15) days in advance of each annual assessment period;

(2) provide notice of each assessment to every Owner subject thereto in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after the due date or to bring an action at law against an Owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained, or improved, and taxes paid therefore;

(h) cause the mowing of front lawns as provided in the Declaration;

(i) cause the entrance of the Subdivision to be maintained;

(j) otherwise carry out the purposes of the Association.

ARTICLE IX

OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Officers. The officers of this Association shall be a President and Vice President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create. Officers need not be Members of the Association.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors after the first annual meeting and then following each second annual meeting of the members, by majority vote of the members of the Board. The initial officers of the Association shall be: President: Larry W. Kendall, Sr.; Vice President: L. E. Deavours; Vice President: R. U. Justice; Treasurer: Kenneth C. Bray; Secretary: Kenneth C. Bray. The officers shall serve until they shall resign or be replaced.

Section 3. Term. After the initial annual meeting, the officers of this Association shall be elected bi-annually by the Board and each shall hold office for two years unless he shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of President, Vice President, Secretary, and Treasurer may be held by the same person except no person shall be both President and Secretary.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and may sign all checks and promissory notes.

Vice President

(b) The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board and may sign all checks and other written instruments, including Promissory Notes.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board, including signing all checks.

Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members, and may sign all checks.

ARTICLE X

COMMITTEES

The Directors, by majority vote, may appoint an Architectural Control Committee composed of at least one member of the Board, as provided in the Declaration. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purpose.

ARTICLE XI

BOOKS AND RECORDS

The books, records, and papers of the Association shall at all times, upon reasonable notice, be subject to inspection by any Member. The Articles of Incorporation, the Declaration and the By-Laws of the Association shall be available for reasonable inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XII

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association annual or special assessments or fines (collectively the "Charge"). Such Charge shall be secured by a continuing lien upon the Lot(s) against which the Charge is made. Any Charge which is not paid when due shall be delinquent. If the Charge is not paid within thirty (30) days after the due date, the Charge shall bear interest from the due date at the rate of 12 percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot(s), and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of the Charge. No Owner may waive or otherwise escape liability for the Charge provided for herein by nonuse of the Common Area or abandonment of a Lot. The assessments levied by the associations shall be used exclusively to promote the recreation, health, safety, and

welfare of the residents of the Subdivision and for the improvement and maintenance of the Common Area, and the payment of taxes and hazard and liability insurance premiums on property owned by the Association and for other purposes of the Association.

ARTICLE XIII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: Charleston Commons Homeowners Association, Inc.

ARTICLE XIV

AMENDMENTS

Section 1. These By-Laws may be amended at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

ARTICLE XV

DISSOLUTION

The Corporation may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of voting members and the approval of the Gwinnett County Board of Commissioners. Upon dissolution of the Corporation, other than incident to a merger or consolidation, the assets of the Corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Corporation was created. In the event that such dedication is

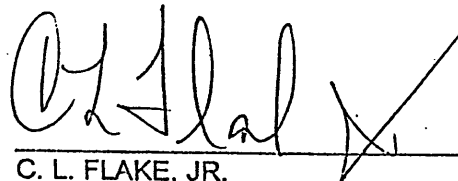
refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE XVI


MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

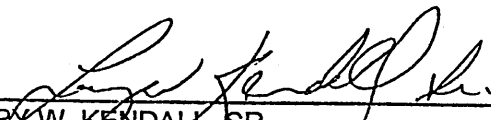
IN WITNESS WHEREOF, we, being all of the directors of the Association, have hereunto set our hand this 14 day of May, 2001.



C. L. FLAKE, JR.



L. E. DEAVOURS



LARRY W. KENDALL, SR.

COPY

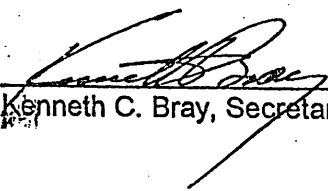
CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of the Association, a Georgia Corporation,
and

THAT the foregoing By-Laws constitute the original By-Laws of said Association, as duly
adopted at a meeting of the Board of Directors thereof, held on the 14 day of May, 2001.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said
Association this 14 day of May, 2001.



Kenneth C. Bray, Secretary