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IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

FORSYTH COUNTY GEORGIA
FILED IN THIS OFFICE

NOV 28 2005

Douglas Sorrells
CLERK SUPERIOR COURT

HIGH GABLES HOMEOWNERS ASSOCIATION, INC.,

Plaintiff,

v.

LARRY C. OLDHAM,

Defendant.

Civil Action File No. 05-CV-2005

VERIFIED ANSWER,
COUNTERCLAIM AND THIRD-PARTY COMPLAINT

COMES NOW Defendant Larry C. Oldham and shows the Court the following for his Answer, Counterclaim and Third-Party Complaint to the Verified Complaint for Money Damages and Injunctive Relief (the "Complaint") filed by Plaintiff High Gables Homeowners Association, Inc.:

OPENING OF DEFAULT

Simultaneously with the filing of this pleading, Defendant has paid the Clerk of the Superior Court of Forsyth County, Georgia the sum of $109.50 as the costs required to be paid to open the default as a matter of right within 45 days of the service of the Complaint.

FIRST DEFENSE

Plaintiff's claims are barred by estoppel.

SECOND DEFENSE

Plaintiff's claims are barred by laches.

THIRD DEFENSE

Plaintiff's claims are barred by waiver.

FOURTH DEFENSE

The Complaint seeks equitable relief without including a proper verification of same and accordingly should be stricken.

FIFTH DEFENSE

Defendant responds to the specifically enumerated paragraphs of the Complaint as follows:

1.

Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 1 of the Complaint and accordingly denies same.

2.

In response to Paragraph 2 of the Complaint, Defendant shows that the Declaration speaks for itself and he accordingly denies those allegations.

3.

Defendant is without knowledge or information sufficient to admit or deny the allegations contained in Paragraph 3 of the Complaint and accordingly denies same.

4.

Defendant admits the allegations of Paragraph 4 of the Complaint.

5.

Defendant admits the allegations of Paragraph 5 of the Complaint.

6.

Defendant admits the allegations of Paragraph 6 of the Complaint.

7.

In response to the allegations of Paragraph 7 of the Complaint, Defendant shows that the specified Article of the Declaration speaks for itself and he accordingly denies those allegations.

8.

Defendant admits that he has paid annual dues to Plaintiff. Defendant is without knowledge or information sufficient to admit or deny the remaining allegations contained in Paragraph 8 of the Complaint and accordingly denies same.

9.

In response to the allegations of Paragraph 9 of the Complaint, Defendant shows that the specified Article of the Declaration speaks for itself and he accordingly denies those allegations.

10.

In response to the allegations of Paragraph 10 of the Complaint, Defendant shows that the specified Article of the Declaration speaks for itself and he accordingly denies those allegations. Notwithstanding the foregoing, Defendant admits that the August 1, 2001 revision to the Standard Building and Design Specifications for High Gables (the "Building and Design Specifications") prescribes how the driveway is to be finished but denies that it specifies when the driveway must be poured and finished or whether, like some of the other covenants in the Declaration, same is required to be completed prior to occupancy of a home.

11.

Defendant denies the allegations of Paragraph 11 of the Complaint.

12.

In response to the allegations of Paragraph 12 of the Complaint, Defendant states that he has poured a concrete driveway and a concrete sidewalk along the frontage of his Lot and that same comply with the Building and Design Specifications. Defendant further states that he has partially installed landscaping along the frontage of his Lot. Defendant admits that as of the filing of this pleading, he has not yet completed the entrance landscaping or the installation of his mailbox and post, although he has requested clarification of his obligations regarding same from Plaintiff and its agents. Defendant denies the remaining allegations of Paragraph 12 of the Complaint.

13.

In response to the allegations of Paragraph 13 of the Complaint, Defendant admits that David Marchat sent him a letter dated June 20, 2005 and that the letter speaks for itself. Defendant denies the remaining allegations of Paragraph 13 of the Complaint.

14.

In response to the allegations of Paragraph 14 of the Complaint, Defendant admits that Heritage Property Management Services, Inc. sent him a certified letter dated August 15, 2005 and that the letter speaks for itself. Defendant denies the remaining allegations of Paragraph 14 of the Complaint.

15.

Defendant denies the allegations of Paragraph 15 of the Complaint.

16.

Defendant denies the allegations of Paragraph 16 of the Complaint.

17.

Defendant denies the allegations of Paragraph 17 of the Complaint.

18.

Defendant denies the allegations of Paragraph 18 of the Complaint.

19.

Defendant denies the allegations of Paragraph 19 of the Complaint.

20.

Defendant denies the allegations of Paragraph 20 of the Complaint.

21.

Defendant denies the allegations of Paragraph 21 of the Complaint.

22.

Defendant denies the allegations of Paragraph 22 of the Complaint.

23.

Defendant denies all remaining allegations not otherwise admitted herein.

WHEREFORE, having fully answered the Complaint, Defendant requests that:

(a) this Court inquire into and sustain his defenses and enter judgment in favor of him and against Plaintiff;

(b) the Court dismiss the Complaint in its entirety and deny all relief sought therein;

(c) Plaintiff take nothing;

(d) Plaintiff bear all costs of the Action; and

(e) the Court grant such other and further relief to Defendant as the Court deems just and proper.

COUNTERCLAIM AND THIRD PARTY CLAIM

COMES NOW Defendant Larry C. Oldham and shows the Court the following for his Counterclaim against Plaintiff and his Third Party Claim against individual members of Plaintiff and others who are identified through discovery:

1.

Plaintiff has submitted to the jurisdiction and venue of this Court by virtue of filing its Complaint herein.

2.

The individual members of Plaintiff and others who are identified through discovery are joint tortfeasors and subject to the jurisdiction and venue of this Court pursuant to Article 6, Section 2, Paragraph IV of the Constitution of the State of Georgia and O.C.G.A. § 9-10-31.

3.

Defendant began construction of his current residence at 4250 High Gables East by clearing his Lot in March of 2004.

4.

In conjunction with the construction process, Defendant sought and received the approval of Plaintiff's ACC.

5.

Defendant's residence is located on over 2 acres lying above one of the neighborhood's stormwater detention ponds and it required significant site work prior to occupancy.

6.

The finished floor elevation of Defendant's home is roughly 20 to 30 feet below the finished floor elevation of the three homes located directly above it on Night Sky Lane, and the site work Defendant performed included rerouting and piping stormwater that used to drain through the Lot through 4 or 5 ditches and an existing storm drain, installing a catch basin, and also installing two lengthy retaining walls.

7.

In connection with the site work, Defendant created a drainage ditch above his residence through which all of the stormwater runoff from the three properties on Night Sky Lane is routed around his residence and either into the catch basin or to an old road bed that lies between his property and the detention pond below his Lot.

8.

Defendant extended his construction loan and closed on his residence as soon as he could obtain a certificate of occupancy to keep from losing a favorable long-term rate, which was set to expire at the end of May.

9.

Installing a finished driveway was not required for the issuance of a certificate of occupancy for the residence.

10.

Defendant made the decision to move into the residence and pave the driveway within a couple of weeks of doing so.

11.

Defendant was confident that he had resolved the site issues with the drainage ditch he installed above his residence and had arranged with his concrete contractor, Michael Hill, to pour the driveway about 10 days after he moved in.

12.

Defendant and his family moved into their residence over Memorial Day weekend and the paving of the driveway was to take place the second week of June.

13.

Unfortunately, June was a particularly rainy month, and it rained every day the week that the initial paving was to take place.

14.

Defendant spoke to Bobby Lawson of the High Gables ACC the first Saturday in June and, in response to his inquiry, explained (i) he was planning on paving the driveway at his first opportunity and certainly by the end of June, and (ii) that since the driveway was going to be both long and costly, he planned to make sure that he had resolved all outstanding site issues before he did so.

15.

At the time Defendant talked to Mr. Lawson, there was no reason for him to believe he would not have the driveway poured within the next few weeks in June.

16.

Sometime before mid-June, there was a torrential downpour and Defendant noticed water pouring over both ends of the retaining wall above the residence which indicated further sitework would be necessary to address the issues.

17.

Defendant contacted Peachtree Post & Box, Inc. on June 17, 2005 regarding installation of a mailbox. Peachtree Post told Defendant they would not install the mailbox before the driveway and sidewalks were poured.

18.

Defendant received the letter from Plaintiff's then President, David Marchat, which is attached to the Complaint as Exhibit F.

19.

Defendant found the letter unnecessary, especially in light of his conversation with Mr. Lawson. Defendant got another copy of the same letter from Mr. Marchat dated June 29 delivered to his office address.

20.

To this day, Defendant has not met Dave Marchat and does not know who he is.

21.

Defendant heard from various neighbors that his unpaved driveway was becoming the talk of the neighborhood. Defendant was aware that the Plaintiff had entered into litigation before against another homeowner (albeit with a different Board of Directors) and that most of the residents in the

neighborhood had agreed to pay a special assessment to cover the litigation expenses. Accordingly, Defendant figured it was only a matter of time before the same thing happened to him, and he also believed that any formal contact he initiated with Plaintiff would only lead to an unnecessary escalation of the matter.

22.

Defendant was hopeful he would be able to finish the work before it became too big of an issue and Defendant still does not understand why same has led to this Action.

23.

Defendant borrowed a loader during the last couple of weeks of July from his friend that cleared his homesite and he thereafter worked almost every weekend to resolve the site issues.

24.

Prior to getting the loader, Defendant's suspicions regarding the litigious nature of his neighbors was confirmed by an anonymous letter he received in the second week of July, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference. After receiving the letters from Mr. Marchat and the anonymous letter, Defendant decided it would be best if he got the work done and that any explanations he could give to persons who obviously did not care would be counterproductive.

25.

In early August, someone in the neighborhood called Forsyth County erosion control in an attempt to cause Defendant trouble, even though there were no erosion control issues indicated by the driveway.

26.

By mid-August, Defendant had fixed the drainage ditch (or so he thought) and had installed an additional 5 pallets of bermuda sod. Around that same time, Defendant received a telephone call from Mr. Marchat and the conversation was about Defendant's driveway. Defendant told him that Defendant wanted the driveway done more than Plaintiff did and that he and his sons were tired of dragging their trash can through the gravel to the street. The end result of Defendant's conversation with Mr. Marchat was that he wanted Defendant to give him a date when the driveway would be completed and Defendant told him he would do it as soon as he could but that he could not commit to a particular date.

27.

Defendant explained to Mr. Marchat that he was nearly finished with the unanticipated sitework and that he now might have to wait some for Mr. Hill. The same day Defendant installed the sod, there was a torrential downpour which indicated Defendant still needed to do some more work on the drainage ditch before having Mr. Hill come to pave the driveway. Defendant did so over the next two weekends and fixed the problem for good.

28.

Shortly thereafter, Defendant received a letter notifying him of Plaintiff's intention to assess a fine against him and he decided it best to finish the work and talk about the fines later.

29.

Early in September, Defendant met with his gravel supplier regarding whether he needed a load of surge stone or "rip rap" to place in the drainage ditch leading to the catch basin. The weight of such

a load on a driveway would more than likely crack it, so if Defendant needed it, he wanted it before he paved the driveway.

30.

During the construction project, Defendant spread 9 or 10 truckloads of gravel on the driveway and other than not being paved, the driveway was in good shape the entire time Defendant had been living in the house up until the time it was paved.

31.

After the meeting with the gravel supplier, Defendant let Mr. Hill know he was ready for him. Mr. Hill told Defendant he would be out to finish the driveway in the next couple of weeks (which would have been the middle to end of September).

32.

Shortly thereafter, Defendant spoke to a friend in the neighborhood who indicated things might soon get out of hand, and after that discussion, Defendant called Plaintiff's new President, Bob Clark, to explain where things were with respect to finishing the driveway. In that conversation, Mr. Clark told Defendant that it would have been nice if Defendant had explained these things in writing to the Board earlier–to which Defendant replied he had done so verbally–and that everything should be fine if Defendant got someone out to the Lot in the next few days putting up form boards for the driveway. Defendant indicated that he knew Plaintiff was attempting to fine him and that he had told these same things to Messrs. Lawson and Marchat and indicated that while he expected Mr. Hill to be out soon, he could not control when he got here. The conversation ended with Mr. Clark telling Defendant he would be hearing from the Plaintiff's attorney, Mr. Pontrelli.

33.

In early October, Linda Ebert of Plaintiff came by Defendant's house and spoke to Defendant's wife, letting her know that Defendant needed to do something within the next 10 days or it looked like Plaintiff was going to take further action against him.

34.

Defendant got in touch with Mr. Hill to ask him when he would be out to pave the driveway. At that time, Mr. Hill indicated he would be out either that Friday (October 7th) or the following Monday. When it rained that Friday, Defendant knew there would be some further delay in Mr. Hill's showing up to pave the driveway.

35.

On October 12, Defendant was served with the Complaint.

36.

After being served with the Complaint, Defendant received a copy of a letter circulated by Plaintiff to all of the homeowners in the neighborhood, a true and correct copy of which is attached hereto and Exhibit B and incorporated herein by this reference.

37.

On November 1, 2005, Mr. Hill indicated to Defendant that he was ready to meet with him on the Lot to discuss the installation and paving of the driveway.

38.

Defendant completed the paving of his driveway on Monday, November 7, 2005. Defendant has plans to finish the entrance landscaping and mailbox installation within the next few weeks.

39.

On November 8, 2005, Defendant learned from his 10 year old son that Plaintiff had circulated a petition among his neighbors seeking authorization to sue Defendant.

40.

On November 8, 2005, Defendant learned from Mr. Hill's helpers that someone had called the Forsyth County Sheriff's Department and had an officer run them off from finishing the driveway the previous night before they had completed the job to their satisfaction.

41.

On November 8, 2005, Defendant contacted Peachtree Post to install his mailbox.

42.

On November 10, 2005, Defendant received by Federal Express a letter from Plaintiff's property manager directing him that the only vendor who was approved by Plaintiff and that could be used in the neighborhood was Peachtree Post.

43.

On November 10, 2005, Defendant contacted Peachtree Post to cancel his order and thereafter made arrangements with another vendor regarding the mailbox.

44.

Defendant requested further guidance from Plaintiff regarding the design specifications for his mailbox and entrance landscaping by letters dated November 14, 2005 and November 15, 2005, true and correct copies of which are attached hereto as Exhibit C and incorporated herein by this reference.

45.

By letters dated November 25, 2005, the Plaintiff provided Defendant with inadequate responses to his requests. True and correct copies of those responses are attached hereto as Exhibit D and incorporated herein by this reference.

46.

Based upon the responses from Plaintiff and Plaintiff's approval of Defendant's plans at the time he began construction of his residence, Defendant will proceed with the installation of his mailbox and entrance landscaping without seeking any additional approvals or direction from Plaintiff.

47.

There are numerous violations of covenants contained in the Declaration within the neighborhood and Plaintiff has decided which ones to enforce selectively and in an arbitrary and capricious manner, and as such, the Declaration should be declared null and void.

48.

Defendant has constructed a quality four-sided brick home in a nice neighborhood on a challenging Lot and has completed all improvements to that Lot in a first-class manner and within a reasonable amount of time given all of the circumstances which Defendant confronted.

49.

Any time that Defendant received inquiries from his neighbors regarding the status of the completion of the driveway, he explained that he intended to complete it as soon as he resolved the outstanding site issues.

50.

Defendant does not believe that the officers of Plaintiff and other members of the neighborhood with whom Messrs. Lawson, Marchat, Clark and/or members of Plaintiff's Board have communicated have been given an accurate version of the facts.

51.

Other than in two brief conversations over the telephone, Defendant has never met Dave Marchat or Bob Clark. Defendant does not know the current members of Plaintiff's Board. Defendant has never talked to Plaintiff's counsel.

52.

Defendant is a duly licensed attorney in good standing with the State Bar of Georgia. Accordingly, Defendant deals with acrimony for a living and would like nothing more in his own neighborhood than to be spared unnecessary litigation.

53.

It was absolutely unnecessary for Plaintiff to file suit against Defendant. Doing so neither hastened or delayed the time-frame within which Defendant completed (or will complete) his driveway and other improvements.

54.

Defendant acted reasonably under the circumstances and the same as any of his neighbors would have done if confronted with the same issues.

55.

All conditions precedent to the liability of Plaintiff to Defendant are satisfied.

COUNT I

BREACH OF FIDUCIARY DUTY

56.

The allegations of Paragraphs 1 through 55 of this Counterclaim and Third Party Claim are hereby realleged as if set forth fully herein.

57.

Plaintiff and its individual board members have an obligation to do what is best for the members of Plaintiff as a whole, which obligation includes handling disputes of the sort set forth in this Action in a reasonable fashion and not wasting Plaintiff's resources.

58.

Plaintiff through its officers and representatives and their communications with Defendant handled this matter in a rude and unprofessional manner that is not befitting a first class homeowners association.

59.

The driveway that Defendant was using prior to completion of same obviously was intended to be temporary and the circumstances surrounding same was explained by Defendant on at least three occasions to various officers of Plaintiff.

60.

Defendant communicated with Messrs. Lawson, Marchat and Clark regarding the driveway issues and assumed that those communications made it back to Plaintiff's Board.

61.

If Plaintiff wanted different answers or more thorough explanations, it should have let Defendant know same.

62.

At a minimum, Plaintiff's Board should have requested a face-to-face meeting with Defendant.

63.

It is clear now that when Defendant's communications were not what Plaintiff's officers wanted to hear, Plaintiff responded by filing suit.

64.

While Plaintiff may have been receiving complaints from a vocal minority of the neighbors, none of those complaints were made known to Defendant, and it certainly would have been better for Plaintiff to request a meeting with Defendant before undertaking the drastic remedy and unnecessary expense of filing this Action. Plaintiff had already indicated its intention to fine Defendant for his alleged non-compliance and same should have been sufficient to protect Plaintiff's interests.

65.

As a result of the improper actions of Plaintiff, its members (including Defendant) have suffered harm in an amount to be determined a trial.

66.

All of the acts of Plaintiff complained of in this Count are in bad faith, constitute stubborn litigiousness, or have caused Defendant unnecessary trouble and expense, thereby authorizing

Defendant to recover his expenses of litigation, including reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

COUNT II

DEFAMATION

67.

The allegations of Paragraphs 1 through 66 of this Counterclaim and Third Party Claim are hereby realleged as if set forth fully herein.

68.

The statements contained on the October 19, 2005 letter from Plaintiff to each member of Plaintiff contains false and misleading statements that are slanted in such a way as to justify Plaintiff's filing of this Action and to make Defendant appear litigious and unreasonable.

69.

The false and misleading statements contained in the October 19, 2005 letter, include, without limitation, the following intentional misrepresentations: (i) "[t]he Board of Directors tried diligently to find resolution with the Owner through conversations and written letters without remedy..."; (ii) "[y]our Board of Directors gave the Owner every opportunity to bring his home in compliance..."; and (iii) "[d]espite his verbal promises to do so, no work has been done...."

70.

At the time Plaintiff made the foregoing misrepresentations, Defendant had been involved in three different conversations with Plaintiff's officers and had been doing substantial work on his Lot so as to allow him to complete the work.

71.

On information and belief, Defendant states that Plaintiff and individual officers of Plaintiff have made other defamatory statements about Defendant which will be proven at trial.

72.

On information and belief, Defendant states that Plaintiff and/or one or more members of Plaintiff's Board have made untrue or misleading statements about him that have a tendency to injure him in his profession, which is the practice of law.

73.

The statements made by Plaintiff and/or its individual officers are false and were made with ill will towards Defendant and his family.

74.

All of the acts of Plaintiff complained of in this Count are in bad faith, constitute stubborn litigiousness, or have caused Defendant unnecessary trouble and expense, thereby authorizing Defendant to recover his expenses of litigation, including reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

COUNT III

DECLARATORY RELIEF

75.

The allegations of Paragraphs 1 through 74 of this Counterclaim and Third Party Claim are hereby realleged as if set forth fully herein.

76.

While the Building and Design specifications set forth the requirements for a driveway, mailbox and entrance landscaping, they do not impose any time requirement on the completion of same. As such, the requirements as applied to Defendant are unreasonable and vague and not capable of being enforced by Plaintiff in the manner attempted in this Action.

77.

Defendant has previously received an approval of his construction from Plaintiff. Defendant has sought additional guidance from Plaintiff regarding the mailbox and landscaping requirements and received a response which provides Defendant with no additional guidance.

78.

Plaintiff purports to assess a fine against Defendant equal to $25.00 per day for his alleged violation of covenants specified in the Declaration and while Defendant has not yet been notified that he has lost his use of the amenities, Plaintiff has threatened same. While Defendant denies any liability with respect to such fine or loss of the amenities, the fine should be tolled until such time as the matters set forth herein are finally determined and this Court needs to make some ruling regarding the use of the amenities while this Action is pending.

79.

Plaintiff routinely elects to enforce or not enforce covenants set forth in the Declaration upon bases which have no more basis in law or fact that its attempted enforcement of this alleged violation against Defendant and as such, Plaintiff is not entitled to enforce any of the covenants in the Declaration.

80.

Defendant is in doubt and uncertain as to his right and obligations with respect to the foregoing and a ruling by the Court declaring Defendants respective rights and obligations is necessary and appropriate.

81.

All of the acts of Plaintiff complained of in this Count are in bad faith, constitute stubborn litigiousness, or have caused Defendant unnecessary trouble and expense, thereby authorizing Defendant to recover his expenses of litigation, including reasonable attorney's fees, pursuant to O.C.G.A. § 13-6-11.

82.

Defendant reserves the right to add Third Party Defendants-in-Counterclaim once he has completed discovery in this matter.

WHEREFORE, Defendant requests that judgment be entered in his favor granting him the following relief:

(a) A judgment against Plaintiff in an amount to be proven at trial as a result of Plaintiff's breach of its fiduciary duties to Defendant as a member of Plaintiff;

(b) A judgment against Plaintiff and any Third Parties added to this Action in an amount to be proven at trial as a result of their defamation of Defendant;

(c) That it enter a declaratory judgment granting Defendant the relief requested herein;

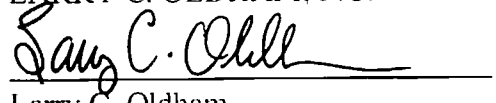
(d) That it cast all costs of this Action against Plaintiff;

(e) That Defendant recover from Plaintiff his attorney's fees and expenses of litigation; and

(f) That it provide Defendant with such other and further relief as it deems equitable, just and proper.

Submitted as of November 28, 2005.

LARRY C. OLDHAM, P.C.



Larry C. Oldham
Georgia State Bar No. 551455
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IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

HIGH GABLES HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. LARRY C. OLDHAM, Defendant.	Civil Action File No. 05-CV-2005

VERIFICATION

COMES NOW Defendant Larry C. Oldham and states under oath that allegations contained in Defendant's Answer, Counterclaim and Third Party Complaint filed in the above-styled Action are true and correct.

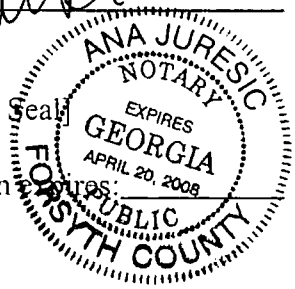
SO SWORN as of November 28, 2005.

Sworn to and subscribed in the presence of the undersigned:

Larry C. Oldham (SEAL)
Larry C. Oldham

Notary Public

[Notary Seal]



My commission expires:

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IN THE SUPERIOR COURT OF FORSYTH COUNTY

STATE OF GEORGIA

HIGH GABLES HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. LARRY C. OLDHAM, Defendant.	Civil Action File No. 05-CV-2005

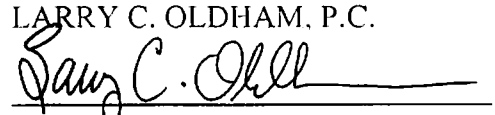
CERTIFICATE OF SERVICE

I hereby certify that I have delivered a true and correct copy of the within and foregoing **Verified Answer, Counterclaim and Third Party Complaint** to opposing counsel of record by depositing same in the United States Mail with adequate postage thereon and addressed as follows:

Paul Jay Pontrelli, Esq.
Stites & Harbinson, PLLC
303 Peachtree Street, N.E.
2800 SunTrust Plaza
Atlanta, Georgia 30339

So certified as of November 28, 2005.

LARRY C. OLDHAM, P.C.



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