

EXHIBIT "D"

BY-LAWS

OF

EDGEWATER OWNERS ASSOCIATION. INC.

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By-LAWS
OF
EDGEWATER OWNERS ASSOCIATION. INC.

Article I
Name. Membership. and Definitions

Section 1. Name. The name of the Association shall be Edgewater Owners Association. Inc.. (hereinafter sometimes referred to as the "Association").

Section 2. Membership. Provisions regarding membership in the Association are fully set forth in the Declaration of Protective Covenants for Edgewater. (this Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"). the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration. unless the context shall prohibit.

Article II
Association: Meetings. Voting. Proxies, Quorum

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors, either in the Community or as convenient thereto as possible and practical.

Section 2. first Meeting and Annual Meetings. An annual or special meeting shall be held within one (1) year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association's fiscal year. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday). Any Member may attend an annual meeting.

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board or upon a petition signed by Owners holding at least twenty-five (25%) percent of the total Association vote entitled to vote thereon. The notice of any special meeting shall

state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice. Any Member may attend a special meeting.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to each Member a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Residence, he or she shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice so long as Article VI. Section 4 of the By-Laws is complied with. In addition to serving notice as provided above, or as an alternative thereto, the Board may serve notice of an annual or special meeting by publishing notice in a newspaper or newsletter circulated within the Community. The date of publication shall be the date that notice is served. Notices shall be served not less than ten (10) nor more than fifty (50) days before a meeting.

Section 5. Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in, writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a Majority of the Association vote present at the meeting, in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 7. Voting. The voting rights of the Members shall be as set forth in the Declaration and such voting rights are specifically incorporated herein. Due to the size of Edgewater, it is anticipated that few substantive votes will be conducted at meetings of the Association Members and that most votes will be by referendum with no further voting to be conducted at a meeting. Unless a vote on any question is required by law or is required by the Declaration or By-Laws to be taken at a meeting (in which case a meeting shall be called and proxies shall be sent to all Members entitled to vote on the issue(s) to be decided at the meeting). elections and other matters requiring a membership

vote shall be submitted on a ballot or ballots to the Members in referendum by mail or at polling places in Edgewater. Ballots shall be returned to the Secretary by the date specified on the ballot. The Board shall determine the method of voting, the form of all ballots, the wording of questions thereon and the deadline for return of ballots. It shall designate the number and location of polling places, if any. The Board may include on any ballot questions on which it seeks an advisory vote. Members may suggest questions for an advisory vote which shall be evaluated by the Board for consistency with the exercise of its duties and responsibilities. In any advisory vote, each such question on a ballot shall indicate that the vote is for advisory purposes only. Notice of referenda shall be given in the same manner as notice of meetings.

Section 8. Proxies. At all meetings of the Association, Members entitled to vote may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner of his or her Residence, upon receipt of notice by the Secretary of the death or judicially declared incompetence of an Owner, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 9, Quorum. The presence, in person or by proxy, of Members entitled to cast at least twenty-five (25%) percent of the votes of Members entitled to vote on the issue(s) before the meeting shall constitute a quorum at all meetings of the Association. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, so long as any action taken thereafter is approved by at least a Majority of the votes required to constitute a quorum. The quorum for a referendum shall be twenty-five (25%) percent of the votes of Members entitled to vote thereon, except that there shall be no quorum requirement for advisory votes.

Article III Board of Directors

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the Directors must reside in the Community and shall be Members or spouses of such Members: provided, however, no Person and his or her spouse may serve on the Board at the same time.

Section 2. Directors Appointed by Declarant. Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (a) the expiration of seven (7) years after the date of the recording of the Declaration: (b) three (3) months after the date on which one thousand and forty-three (1,043) Residences shall have come into existence: or (c) the surrender by Declarant in writing of the authority to appoint and remove Directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of property within the Community Vests in Declarant such authority to appoint and remove Directors and officers of the Association. The Directors selected by the Declarant need not be Owners or Occupants in the Community. The names of the initial Directors selected by the Declarant are set forth in the Articles of incorporation of the Association.

Section 3. Veto. After the termination of the Declarant's right to appoint Directors and officers, the Declarant shall have a veto power over all actions of the Board, as is more fully provided in this Section. This power shall expire upon the expiration of Declarant's option unilaterally to subject additional property to the Declaration unless earlier surrendered in writing. This veto power shall, be exercisable only by Declarant, its successors, and assigns who specifically take this power in a recorded instrument. The veto shall be as follows:

No action authorized by the Board of Directors shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) Declarant shall have been given written notice of all meetings and proposed actions to be approved at meetings by, certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice shall comply with the provisions of these By-Laws regarding notice of regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at the meeting and (b) Declarant shall have been given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board or the Association. Declarant and its representatives or agents shall make its concerns, thoughts, and suggestions known to the Members of the Association and/or the Board. At such meeting, Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Board of Directors and to be taken by the Board. The veto may be exercised by Declarant, its representatives, or agents at the meeting held pursuant to the terms and provisions hereof. Any veto power shall not extend to the requiring of any

action or counterclaim on behalf of the Board.

Section 4. Number of Directors. The initial Board shall consist of five (5) members. The Board shall be increased to nine (9) members as provided in Section 6 of this Article.

Section 5. Nomination of Directors. Elected. Directors shall be nominated from the floor and may also be nominated by a nominating Committee, if such a committee is established by the Board. All candidates shall have reasonable opportunity to communicate their Qualifications to solicit votes.

Section 6. Election and Term of Office. Elected Directors shall be elected by referendum. Cumulative voting is not permitted. Those candidates receiving the largest number of votes shall be elected. In the case of a tie vote, the winner shall be determined by the flip of a coin. Notwithstanding any other provision contained herein:

(a) Not later than thirty (30) days after the time that one hundred (100) Residences have come into existence, one (1) of the five (5) Directors shall be elected by Owners of Residences (other than Declarant). The Director so elected shall not be subject to removal by Declarant acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such Director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Not later than thirty (30) days after the time that two hundred (200) Residences have come into existence, two (2) of the five (5) Directors shall be elected by Owners of Residences (other than Declarant). The Directors so elected shall not be subject to removal by Declarant acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Not later than thirty (30) days after the time that three hundred (300) Residences have come into existence. the Board shall, by resolution, increase its size to nine (9) members, and four (4) of the nine (9) Directors shall be elected by Owners of Residences (other than Declarant). The Directors so elected shall not be subject to removal by Declarant acting alone and shall be elected for a term of two (2) years or until the first annual meeting after the Declarant's right to appoint Directors terminates, whichever is shorter. If such Directors' terms expire prior to such annual meeting, successors shall be elected to serve like terms.

Referendums shall be held prior to the expiration of Declarants right to appoint Directors and officers for the purpose of electing successors to the Directors to be elected as provided in subsections (a), (b) and (c) above.

Fifteen (15) days prior to the first annual meeting the Association after the Declarant's right to appoint Directors and officers terminates and fifteen (15) days prior to each annual meeting thereafter. Directors shall be elected by referendum to take office at such annual meeting. All Owners of Residences eligible to vote shall have the right to vote on all Directors to be elected as provided in the Declaration.

The Declarant, in its sole discretion, may permit Owners of Residences to elect a larger number of Directors earlier than is required herein.

The initial terms of the first Board of Directors elected entirely by the Owners of Residences (other than Declarant) shall be fixed at the time of their election as they among themselves shall determine. The terms of four (4) directors shall be fixed at one (1) year and the terms of five (5) directors shall be fixed at two (2) years. At the expiration of the initial term of office of each respective member of the Board of Directors, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 7. Removal of Directors,. At any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board may be removed, with or without cause, by Owners holding a Majority of the total Association vote entitled to vote thereon and a successor may then and there be elected to fill the vacancy thus created. A Director whose removal has been proposed by the Members shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than three (3) calendar months may be removed by a Majority vote of the Directors at a meeting, a quorum being present. This Section shall not apply to Directors appointed by Declarant.

Section 8. Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a Director by vote of the Members, shall be filled by a vote of the Majority of the remaining Directors, even though less than a quorum, at any meeting of the Board of Directors. Each Person so selected shall serve the unexpired portion of the term.

B. Meetings.

Section 9. Organization Meetings. The first meeting of the members of the Board of Directors--following each referendum of the membership shall be held--immediately thereafter it such time and place as shall be fixed by. the Board.

Section 10. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a Majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

Section 11. Special Meetings. Special meetings of the Board shall be held when requested by the President. Vice President or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a Person at the Director's home or office who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery. telephone. or telegraph company must be received at least forty-eight (48) hours before the time set for the meeting.

Section 12. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of . the Directors not present signs a written waiver of notice, a consent to holding the meeting. or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 13. Quorum of Board of Directors. At all meetings of the Board, a Majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action

taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 14. Compensation. No Director shall receive any compensation from the Association for acting as such unless approved by a Majority of the total Association vote entitled to vote thereon. Directors may be reimbursed for their actual out-of-pocket expenses necessarily incurred in connection with their services as Directors.

Section 15. Open Meetings. All meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 16. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 17. Action Without A Formal Meeting: Conference Call Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors. A member or members of the Board may participate in a meeting of the Board by means of conference telephone or similar communications equipment, by means of which all Persons participating in the meeting can hear each other. Such participation shall constitute presence in person at such meeting.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles of Incorporation, or these By-Laws directed to be done and exercised exclusively by the Members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, in way of explanation,

but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Residence Owner to the Association Expenses:

(b) making assessments to defray the Association Expenses and other assessments authorized by the Declaration. establishing the means and methods of collecting such assessments, and establishing the period of payment for assessments:

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association as determined by the Board. including maintenance or provision of services which are generally provided by a municipality. such as maintenance of grassed areas along dedicated rights-of-way, maintenance of street lights, and garbage pick-up:

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

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association:

(f) making and amending use restrictions, rules and regulations, and design guidelines:

(g) opening of bank accounts on behalf of the Association and designating the signatories required:

(h) enforcing by legal means the provisions of the Declaration, these By-Laws, and the use restrictions, rules and regulations, and design guidelines adopted by it. and bringing any proceedings which may be instituted on behalf of or against the Owners or occupants concerning the Association:

(i) obtaining and carrying. insurance against casualties and liabilities, as provided in the Declaration, and paying' the premium cost thereof:

(j) providing services to all areas that the Association is obligated to provide services for

(k) paying the cost of all services, if any, rendered., to the Association or its Members Which are not chargeable to Owners of Residences:

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

(m) depositing Association funds into interest bearing accounts:

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

To the extent permitted by law, the Board shall have the power to delegate its functions to designees of the Board such as, without limitation, a management agent, committees established by the Board and employees and independent contractors of the Association.

Section 19. Management Agent. The Board may employ for the Association a management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Declarant or an affiliate of the Declarant may be employed as management agent. The term of any management agreement shall not exceed three (3) years and shall be subject to termination by either party, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 20. Borrowing. The Board shall have the power to borrow money for the purpose of repair or restoration of the Common Property and facilities without the approval of the Members of the Association: provided, however, the Board shall obtain membership approval in the same manner as for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities. and the total amount of such borrowing exceeds or would exceed Fifty Thousand (\$50,000.00) Dollars outstanding debt at any one time.

Section 21. Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Demand. Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying:

- (i) the alleged violation;
- (ii) the action required to abate the violation;
- (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further

violation of the same rule may result in the imposition of a fine, if the violation is not continuing. The Board or its designee may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property.

(b) Notice. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice, impose a fine. The notice shall state:

- (i) the nature of the alleged violation:
- (ii) that the alleged violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine:
- (iii) that any statements, evidence, and witnesses may be produced by the alleged violator at the hearing; and
- (iv) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(c) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the alleged violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a Written statement of the results of the hearing.

Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board. Other officers may be members of the Board or Members of the Association.

Section 2. Election. Term of Office. And Vacancies. The officers of the Association shall be elected annually by the Board at the organizational meeting of the Board. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term. Officers shall serve until their successors have been elected.

Section 3. Removal. Any officer may be removed by the Board whenever, in its judgment, the best interests of the Association will be served thereby.-

Section 4. Resident. The President, shall be the chief executive officer of the Association and shall preside at all meetings of the Association and the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Alabama Nonprofit Corporation Act.

Section 5. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Alabama law.

Section 7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping or causing to be kept full and accurate financial records and books of account showing all receipts and disbursements, for preparing or causing to be prepared all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board.

Section 8. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the 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.

Article V Committees

Section 1. General. In addition to the committees established in the Declaration, committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board. If

available, the Board shall obtain liability insurance covering the members of each committee and the Association for the activities of such committees.

Section 2. Covenants Committee. The Board may establish a Covenants Committee to advise the Board regarding violations of the Declaration, By-Laws, rules and regulations. use restrictions and design guidelines. This Committee shall also advise the Board regarding sanctions to be imposed for such violations.

Section 3. Architectural Review Committee. The Board shall establish an architectural Review Committee to carry out the functions provided for such committee in the Declaration.

Section 4. Citizens Advisory Committees. The Board may establish Citizens Advisory Committees to advise the Board and other committees.

Article IV Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Alabama law the Articles of Incorporation. the Declaration, these By-Laws; or a ruling made by the Person presiding over the proceeding.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Alabama law. the Articles of Incorporation, the Declaration, and these By-Laws; then the provisions of Alabama law, the Declaration. the Articles of Incorporation. and the By-Laws (in that order)

Section 4. Notices. Unless otherwise specified in the Declaration or By-Laws, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid:

- (a) if to a Member, at the address which the Member has designated in writing and filed With the Secretary or, if no such address has been designated, at the last known address of the Member: or
- (b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in

writing to the Members.

If there are multiple Owners of a single piece of property, notice to one (1) shall be deemed notice to all. Multiple Owners may designate one (1) Owner as the Person entitled to receive notice of Association matters by so notifying the Association in writing.

Section 5. Amendment. The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment to these By-Laws.

EXHIBIT "E"
DECLARATION OF EASEMENTS AND COVENANTS TO SHARE COSTS

THIS DECLARATION is executed this _____ day of _____ 19__.
by BONNER DEVELOPMENT & CONSTRUCTION COMPANY, INC. ("Declarant").

Backaround Statement

Declarant is the owner of all that property which is subject to that certain Declaration of Protective Covenants for Edgewater recorded simultaneously herewith in the Madison County, Alabama land records. (such declaration is referred to herein as the "Residential Declaration" and such property, together with the property that may from time to time be subjected to the Residential Declaration, is herein referred to as the "Residential Property"). All that property which is described in Exhibit "E-1" attached hereto and incorporated herein by this reference may from time to time be subjected to this Declaration by Declarant as provided below and such property as is subjected to this Declaration is herein referred to as the "Commercial Property". Declarant desires to provide for certain maintenance as is more fully described herein and for an equitable allocation of the costs of such maintenance between the Edgewater Owners Association. Inc. ("Association") and the owners of the Commercial Property ("Commercial Owners"). Declarant also desires to provide an easement for access by the Association over and through the Commercial Property to the extent necessary to perform its maintenance responsibilities hereunder.

NOW, THEREFORE, Declarant hereby declares that all of the Residential Property and all of the Commercial Property (hereinafter collectively referred to as the "Properties") shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions contained herein, which shall run with the title to the Properties and shall bind all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of each owner of any part thereof.

Article I Easement

Subject to the provisions of this Declaration. Declarant does hereby grant and convey to the Association, its directors, employees, agents and designees. a non-exclusive easement appurtenant to the Residential Property over the Commercial Property and Lady Ann Lake (such lake is depicted on the development plan for Edgewater which has been submitted to the applicable governmental authority and is hereinafter referred to as "Lake") for the purpose of maintaining, repairing and replacing the Lake in accordance with this Declaration.

THE CONTINUED EXISTENCE OF THIS EASEMENT IS EXPRESSLY MADE SUBJECT TO THE CONDITIONS AND RESTRICTIONS CONTAINED HEREIN WHICH SHALL CONSTITUTE COVENANTS RUNNING WITH THE TITLE TO, AND BOTH BENEFITING AND BURDENING, THE RESIDENTIAL AND COMMERCIAL PROPERTY.

Article II Maintenance and Repair

Section 1. Maintenance Responsibility. The Association shall maintain, repair, preserve, replace, protect, and operate the Lake in accordance with the standards established in the Residential Declaration. All such maintenance responsibility shall be performed in accordance with the Community-Wide Standard as defined in the Residential Declaration. The Association shall also insure against claims for bodily injury and property damage occurring on or about the Lake in accordance with the standards for insurance established in the Residential Declaration.

Section 2. Remedy Upon Failure to Maintain. Every Commercial Owner shall have the right to bring suit at law or in equity to enforce the obligations of the Association under this Declaration.

Article III Obligation To Share Costs

Section 1. Responsibility for Assessments. Each Commercial Owner shall pay to the Association an annual assessment to cover a portion of the costs, including insurance, incurred by the Association in performing its obligations under Article II of this Declaration. The obligation to pay this assessment shall be mandatory, whether or not the Commercial Owner agrees with or is satisfied with the manner and extent of performance by the Association, a Commercial Owner's sole remedy being that provided in Article II, Section 2 above: provided, however, no improvements have been constructed on the Commercial Property as of the date hereof, and each Commercial Owner's obligation to share costs pursuant to this Declaration shall not commence until such time as improvements are constructed

on some portion of the Commercial Property and a certificate of occupancy is issued by the appropriate governmental authority with respect thereto.

Section 2. Computation of Assessments. On an annual basis, the Association shall determine an estimated budget for performing its maintenance obligations under this Declaration during the upcoming year, including an appropriate amount to be placed in a reserve fund for capital repairs and replacements. Such budget shall be adjusted to reflect any excess or deficiency in the budget assessed for the immediately preceding year, as compared to actual expenses for that period. Fifteen (15%) percent of the annual budget, as adjusted (hereinafter "Commercial Basis"), shall be used as the basis for computing the annual assessment obligation of each Commercial Owner. Each Commercial Owner's assessment obligation shall be determined by the following formula:

$$\frac{\text{Total Acreage of Commercial Property Owned By Commercial Owner on October 1}}{45.6} \times \text{Commercial Basis (Dollars)} = \text{Assessment}$$

Section 3. Payment of Assessments. Within thirty (30) days of receipt of notice of an annual assessment, each Commercial Owner shall pay to the Association the entire amount assessed. Any assessment delinquent for a period of more than thirty (30) days shall incur a late charge in such amount as the Association may from time to time determine to be reasonable. If the assessment is not paid when due, a lien, as herein provided, shall attach to the property of such Commercial Owner and, in addition, the lien shall include the late charge, interest (not to exceed the maximum lawful rate) on the principal amount due and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may institute suit to collect such amounts and to foreclose its lien. The lien provided for in this article shall be in favor of the Association and shall be for the benefit of all its members. The Association, acting through its Board of Directors and on behalf of its members, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property.

All payments shall be applied first to costs and attorney's fees, then to interest and then to delinquent assessments. The initial annual assessment to be levied against each Commercial Owner shall be reduced pro rata based upon the number of months remaining in the fiscal year adopted by the Association after the month in which the first certificate of occupancy is issued on any portion of the Commercial Property.

Article IV
General

Section 1. Notice. Any notice provided for in this Declaration shall be served personally or shall be mailed by registered or certified mail to the president or secretary of the Association, or to the Commercial Owner. All such notices shall, for all purposes, be deemed delivered (a) upon personal delivery to the president or secretary of the Association, or to the Commercial Owner: or (b) on the third (3rd) day after mailing when mailed by registered or certified mail, postage prepaid, and properly addressed.

Section 2. Recordkeeping. The Association shall maintain or cause to be maintained full and accurate books of account with respect to its management, maintenance, and operation of the properties described in Article II.. Such books and records and financial statements related thereto shall be available for inspection and copying by any Commercial Owner, upon request, during normal business hours or under other reasonable circumstances. Copying charges shall be paid by the person requesting the copies. Within a reasonable time after the end of each fiscal year, the records, including all supporting materials (e.g., check copies, invoices, etc.). for the year ended, shall be made available to the Commercial Owners. If any Commercial Owner desires to have the records audited, it may do so at its own expense, and the Association shall cooperate with the party performing the audit. If the amount of actual expenses for the preceding year is disputed after audit, such owner and the Association shall cause a second audit to be performed by another mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by the Association by more than fifteen (15%) percent of the amount asserted, then the Association shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by the Association by less than five (5%) percent of the amount asserted, then the Commercial Owner shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by the Commercial Owner and the Association.

Section 3. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable govern-mental statute, rule or regulation or judicial determination which shall be in conflict therewith: (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any portion of the Properties subject to this Declaration: or - (d) ,if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on any portion of the Properties

subject to this Declaration: provided, however, any such amendment shall not adversely affect the title to any property unless the owner thereof shall consent thereto in writing. Further, so long as the declarant of the Residential Declaration has an option unilaterally to subject additional property to that instrument as provided in that instrument. Declarant may unilaterally amend this Declaration-for any other purpose: provided, however, any such amendment shall not materially and adversely affect the substantive rights of any owner or occupant of any portion of the Properties, nor shall it adversely affect title to the property of any such owner without the consent of the affected owner or occupant.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a majority of the directors of the Association and a majority of the Commercial Owners and, so long as the declarant of the Residential Declaration has an option unilaterally to subject additional property to the Residential Declaration as provided in that instrument. the consent of the Declarant. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Section 4. Unilateral Annexation By Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof. Declarant shall have the unilateral right, privilege, and option from time to time at any time until seven (7) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "E-1" to the provisions of this Declaration by filing for record an amendment with respect to the property being annexed. This Declaration shall not preclude the annexation of property that, at the time that this Declaration is recorded, is not owned by Declarant. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of then owners of any portion of the Properties are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any real property annexed by Declarant.

The rights-reserved unto Declarant to subject additional land to this Declaration shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration. If such additional land is not subjected to this Declaration. Declarants reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 5. Duration. Should any provision of Alabama law now or hereafter limit the period during which covenants restricting land to certain uses may run,

the provisions of this Declaration shall run with and bind the land and shall be and remain in effect for the maximum period allowed by such law after the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years or any lesser period allowed by such law, unless such extension is disapproved by at least a majority of the directors of the Association and a majority of the Commercial Owners, and, so long as the declarant of the Residential Declaration has an option unilaterally to subject additional property to that instrument as provided in that instrument, the consent of Declarant. Every purchaser or grantee of any interest in any real property subject to the Residential Declaration or this Declaration, by acceptance of a deed or other conveyance therefor, agrees that such provisions of this Declaration may be extended and renewed as provided in this Section. Notwithstanding the above, in the event that all or any portion of the Commercial Property is subjected to the Residential Declaration, the provisions of this Declaration shall cease to apply to the property so subjected, and such property shall thereafter be governed by the provisions of the Residential Declaration.

Section 6. Binding Effect. This Declaration shall be binding upon and shall inure to the benefit of every owner of any portion of the Properties, his heirs, successors, successors-in-title and assigns.

Section 7. Interpretation. This Declaration shall be governed by and construed under the laws of the State of Alabama.

Section 8. Compliance With Governmental Authority. Every owner, of any portion of the Properties agrees to comply with all laws, ordinances, statutes, rules and regulations of any governmental authority relating to the use, condition, or maintenance of the property described in Article II, and in the event that any expense is required to affect such compliance, such expense shall be considered a general maintenance expense for which the cost shall be shared on the same basis as provided in Article III.

Section 9. Waiver. No failure of the Association or a Commercial Owner to exercise any power given the Association or the Commercial Owners hereunder or to insist upon strict compliance by the other with its obligations hereunder and no custom or practice at variance with the terms hereof shall constitute a waiver of the right to demand exact compliance with the terms hereof.

Section 10. Preparer. This Declaration was prepared by Richard A. Bacon, Hyatt & Rhoads, P.C., 2400 Marquis One Tower, 245 Peachtree Center Avenue, N.E., Atlanta, Georgia 30303.

Section 11. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 12. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

Section 13. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration 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 14. Captions. The captions of each Article and Section hereof, as of the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

The undersigned has executed this Declaration as of the date first above written.

BONNER DEVELOPMENT & CONSTRUCTION
COMPANY, INC.

WAYNE BONNER, President

Attest: _____

_____ Secretary

STATE OF _____

COUNTY OF _____

I, _____ a notary public in and for said county in said state, hereby certify that Wayne Bonner whose name as President, and _____, whose name as Secretary, of Bonner Development & Construction Company, Inc., a corporation, are signed to the foregoing instrument. and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority. executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this _____ day 19__

NOTARY PUBLIC

Exhibit "E-1"

Property Which Can Be Unilaterally Submitted
as "Commercial"

ARTICLES OF INCORPORATION
OF
EDGEWATER OWNERS ASSOCIATION, INC.

Article 1. Name. The name of the corporation is Edgewater Owners Association. Inc. (hereinafter the "Corporation").

Article 2. Duration. The Corporation shall have perpetual duration.

Article 3. Applicable Statute. The Corporation is organized pursuant to the provisions of the Alabama Nonprofit Corporation Act.

Article 4. Purposes and Powers. The Corporation does not contemplate pecuniary gain or profit, direct or indirect. to its members.

(a) In way of explanation and not of limitation. the purposes for which it is formed are:

- (i) to be and constitute the association to which reference is made in the Declaration of Protective Covenants for Edgewater (hereinafter the "Declaration"). establishing a plan of development recorded or to be recorded in the land records of Madison County. Alabama. to perform all obligations and duties of such association, and to exercise all rights and powers of such association, as specified therein. in the By-Laws of Edgewater Owners Association. Inc. (hereinafter the "By-Laws"), and as provided by law; and
- (ii) to provide an entity for the furtherance of the interests of the owners of property subject to the Declaration (such property is hereinafter referred to as the "Development").

(b) In furtherance of its purposes. the Corporation shall have the following powers, which, unless indicated otherwise by the Declaration or By-Laws, may be exercised by the board of directors of the Corporation:

- (i) all of the powers conferred upon nonprofit corporations by common law and the statutes of the state of Alabama in effect from time to time;
- (ii) all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By-Laws, or the Declaration, including, without limitation, the following:
 - (1) to fix and to collect assessments or other charges to be levied;
 - (2) to manage, control, operate, maintain. repair, and improve property subjected to the Declaration or any other property for which the Corporation by rule, regulation, declaration, or contract has a right or duty to provide such services;

- (3) to enforce covenants, conditions, or restrictions affecting any property to the extent that the Corporation may be authorized to do so under any declaration or By-Laws; to engage in activities which will actively foster, promote, and advance the common interests of all owners of property within the Development:
- (4) to buy or otherwise acquire, sell, or otherwise dispose of, mortgage, or otherwise encumber, exchange, lease, hold, use, operate, and otherwise deal in and with real, personal, and mixed property of all kinds and any right or interest therein for any purpose of the Corporation;
- (5) to borrow money for any purpose as may be limited in the By-Laws;
- (6) to enter into, make, perform, or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Corporation, with or in association with any other association, corporation, or other entity or agency, public or private:
- (7) to act as agent, trustee, or other representative of other corporations, firms, or individuals, and as such to advance the business or ownership interests in such corporations, firms, or individuals;
- (8) to adopt, alter, and amend or repeal such By-Laws as may be necessary or desirable for the proper management of the affairs of the Corporation; provided, however, such By-Laws may not be inconsistent with or contrary to any provisions of the Declaration; and
- (9) to provide any and all supplemental municipal services as may be necessary or proper.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article 4 are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provision of this Article 4.

Article 5. Membership.. The Corporation shall be a membership corporation without certificates or shares of stock. Each member of the Corporation shall be entitled to vote as provided in the Declaration and By-Laws.

Article 6. Board of Directors. The business and affairs of the Corporation shall be conducted, managed, and controlled by a board of directors. The number of directors shall be as provided in the By-Laws. The initial board of directors shall consist of five (5) members. The names and addresses of the initial board of directors are as follows:

The method of election and term of office, removal and filling of vacancies shall be as set forth in the By-Laws. The board of directors may delegate such

operating authority to such companies, individuals, or committees as it. in its discretion. may determine.

Article 7. Dissolution. The Corporation may be dissolved only as provided in the Declaration, By-Laws. and by the laws of the state of Alabama.

Article B. Amendments. These Articles may be amended as provided by the Alabama Nonprofit Corporation Act. provided that no amendment shall be in conflict with the Declaration, and provided further that no amendment shall be effective to impair or dilute any rights of members that are governed by such Declaration.

Article 9. Incorporator. The name and address of the incorporator is as follows:

Richard A. Bacon
2400 Marquis One Tower
245 Peachtree Center Avenue. N.E. Atlanta, Georgia 30303
(404) 659-6600

Article 10. Registered Agent and Office. The initial registered office of the Corporation is 6767 Madison Pike. Suite 195. Huntsville, Alabama. 35806. and the initial registered agent at such address is Wayne Bonner.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation.

RICHARD A. BACON

2400 Marquis One Tower
245 Peachtree Center Avenue. N.E. Atlanta, Georgia 30303
(404) 659-6600