

744

Agreement For Underground Residential Distribution In Subdivisions

Alabama Power 

STATE OF ALABAMA )  
 )  
SHELBY COUNTY )

THIS AGREEMENT made and entered into this the 27<sup>th</sup> day of August, 19 86, by and between Alabama Power Company, a corporation (hereinafter referred to as "Company"), and The Harbert-Equitable Joint Venture, A Limited Partnership (hereinafter referred to as "Developer"), the Developer of Riverchase Country Club, 23rd Addition Subdivision; consisting of 33 lots.

WITNESSETH:

WHEREAS, Developer is the owner of the hereinafter described subdivision and is desirous of obtaining electric utility service by means of Company's underground distribution facilities for homes to be constructed on all lots to be developed within said subdivision; and

WHEREAS, the underground distribution system required to serve homes on all lots within said subdivision will include underground cables, surface transformers, underground service laterals and outdoor metering troughs; and

WHEREAS, Company is willing to provide electric service by means of an underground distribution system provided Developer complies with the terms and conditions hereinafter set forth; and

WHEREAS, Company has received and accepted: ( Check (A) or (B) whichever is applicable)

- ☐ A. Two copies of a plat approved by appropriate governmental authority subdividing Developer's real estate into lots and designating street names and a number for each lot, dedicated easement with layouts for all utilities, sewers and drainage, minimum building set-back dimensions, and proposed building lines, which said plat is recorded in

Map Book \_\_\_\_\_, Page \_\_\_\_\_, in the office of the Judge of Probate of \_\_\_\_\_ County, Alabama, a copy of which, as recorded, has been furnished Company to be retained in its files as an exhibit to this agreement;

- ☒ B. (To be utilized only when governmental requirements preclude the use of option A.) Two copies of a plat for which preliminary approval has been received from appropriate governmental authority for the subdivision of Developer's real estate into lots and designating block numbers, street names and a number for each lot, dedicated easements with layouts for all utilities, sewers and drainage, minimum building set-back dimensions, and proposed building lines, which said plat is attached hereto and for which the plat of said subdivision which is finally

approved and recorded in Map Book 10, Page 11 A & B, in the office of the Judge of Probate of Shelby County, Alabama, will be substituted therefor. The recorded plat will

be supplied subsequent to the date of this Agreement. In the event the subdivision plat recorded subsequent to the date hereof contains changes from the preliminary plat attached hereto which require changes in the electric system, the Developer shall pay for any increases in the cost of the required installation. Such payment shall be made within ten days after the effect of such change has been determined, or if no payment has been made by Developer, such payment shall be reflected in the notice to Developer that payment is due; and

WHEREAS, Developer has filed for record restrictive covenants requiring all lot owners to install electric service in accordance with the Underground Residential Distribution Program; and

WHEREAS, Developer's total installation payment under this agreement is equal to \$ 22,772.24, which said amount represents the Company's estimated cost of the underground distribution system in excess of the estimated cost of an overhead distribution system, both of said cost calculations being inclusive of individual lot service, and (Check if Applicable)

- ☐ Conduit from lot line to final grade elevation at the meter location, as determined by the Company  
☐ Conduit for primary and secondary cables, as determined by the Company.

(Customer or Developer shall furnish and install conduit, PVC schedule 40 or equal, from final grade elevation at the Company designated meter location to the Company furnished, Developer installed, meter socket.) This payment also includes anticipated estimated excess trenching cost to include rock removal and requirements to obtain suitable backfill from off site. The Developer shall be billed as a separate item for other costs incurred by the Company over and above the costs generally associated with trenching for underground residential distribution which is due principally to debris removal requirements, conduit requirements under street crossings due to inadequate written notice from the Developer as specified in paragraph five (5) below, trench depth requirements different from that generally employed by the Company, seeding and/or reseeding, sodding and/or resodding, or requirements for boring or additional equipment not generally employed by the Company for underground residential trenching.

NOW THEREFORE, in consideration of the premises and the mutual obligations hereinafter recited, it is hereby agreed between the parties as follows:

1. (FILL IN APPLICABLE PROVISION)

Developer will pay Company the total amount of the installation payment (\$ 22,772.24 ) within ten (10) days from the date of Company's written notice to Developer that said payment is due.

Developer has paid Company the total amount of the installation payment (\$ N/A ).

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Na Power RI, 1120722

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If the Developer has not paid to the Company the total amount of the installation payment, and if the Developer has not met the site preparation requirements as set forth herein, and home construction has not begun, and the Developer has not requested the Company to begin the construction of its facilities prior to the expiration of 180 days from the date of this Agreement, the Company will invoice the Developer for the total amount of the installation payment and the Developer shall pay the total amount of such invoice within 10 days thereafter, or the Company shall have the option to cancel this agreement. However, if the Developer has not met the site preparation requirements as set forth herein, and home construction has not begun, and the Developer has not requested the Company to begin construction of its facilities prior to the expiration of 360 days from the date of this Agreement, the Company shall have the option to cancel this agreement and refund to the Developer any monies collected. Failure to cancel this Agreement at the end of 360 days does not forfeit the Company's right to cancel at a future time.

2. Company will own install and maintain a single-phase, underground electric distribution system, including surface mounted transformers, surface mounted enclosures which may contain electrical equipment such as sectionalizing devices, capacitors, regulators, etc., and underground cables and the 120/240-volt single-phase service lateral to the meter socket or service entrance for each residence in the said subdivision.

3. Developer agrees to grant Company right-of-way for the construction, operation, maintenance and removal of its facilities together with the right to ingress and egress to and from such facilities and the right to keep clear any obstruction that might injure or endanger said facilities.

4. The Developer shall notify each lot owner (a) that there shall be no plants, shrubs, fences, walls, or other obstructions in front of or within three (3) feet of the sides or rear of any pad-mounted equipment that will obstruct the operation or replacement of the equipment and that the Company shall not be liable for any damages or destruction of any shrubs, trees, flowers, grass or other plants caused by the Company's equipment or employees or the equipment or employees of any contractor or subcontractor in the construction, operation, maintenance or removal of the Company's facilities; (b) to obtain the meter location from the Company prior to the beginning of the installation of the service entrance facilities and associated internal wiring; (c) of their responsibility for installing the Company provided meter socket to Company specifications and providing and installing 2" for 200 amp or 3" for 400 amp schedule 40 PVC or equivalent galvanized conduit from the meter socket to two (2) feet below finished grade.

5. The Developer shall give the appropriate Company District Superintendent a minimum of sixty days written notice prior to the commencement of the installation of any paving, streets, curbs, sidewalks, etc. After the expiration of 30 days from the date hereof, this prior notice is reduced from 60 to 30 days. The Developer, prior to the Company's construction of the underground distribution system, shall make the easement in which the underground equipment or conductors are to be located accessible to the Company's equipment, remove all obstructions and grade to within four (4) inches of the final grade elevation. Streets, lot lines and easements shall be clearly marked by the Developer before Company's underground facilities are installed. All costs incurred by the Company due to improper or inadequate site preparation as stated above shall be billed to the Developer as a separate item.

6. Modification to the underground system after initial installation shall be at the expense of the one requesting or causing the modification.

7. Company, its successors and assigns, will retain title to the underground distribution system, including the underground service lateral and outdoor metering trough serving each said residence, and said underground distribution system provided by Company will not in any way be considered a fixture or fixtures and thereby a part of said real estate but will remain personal property belonging to Company, its successors and assigns, and will be subject to maintenance and removal by Company, its successors and assigns, in accordance with the applicable Rules and Regulations approved by the Alabama Public Service Commission.

8. The covenants set forth in paragraph three (3) and paragraph seven (7) above touch and concern and benefit the land and shall run with the land and shall be binding on Company and Developer, their respective heirs, executors, administrators, successors, and assigns.

9. Any written notice to the Company, except as noted in Paragraph one (1) and five (5) above, shall be addressed to

Alabama Power Company, Division Manager-Marketing 15 South 20th Street, Birmingham , Alabama 35233

Any written notice to Developer provided for herein shall be addressed to Mr. Donn Johnston, Assistant Manager,

The Harbert Equitable Joint Venture, P. O. Box 1297, Birmingham, AL 35201

IN WITNESS WHEREOF, each of the parties hereto have executed this agreement on the day and year first above written.

ATTEST/WITNESS:

ALABAMA POWER COMPANY

ALABAMA POWER COMPANY

BY D. J. Brooks  
(Vice President)

THE HARBERT-EQUITABLE JOINT VENTURE  
Under Joint Venture Agreement Dated January 30, 1974  
BY HARBERT INTERNATIONAL, INC.  
AS MANAGING VENTURER

BY [Signature]  
ITS: Executive Vice President

ATTEST  
[Signature]

STATE OF ALABAMA )  
Jefferson COUNTY )

I, Keith C. Bray, a Notary Public in and for said County, in said State, hereby certify that  
S. H. Booker, whose name as Vice President  
of Alabama Power Company, a corporation, is signed to the foregoing agreement, and who is known to me, acknowledged before me on this date  
that, being informed of the contents of the agreement, he, as such officer and with full authority, executed the same voluntarily for and as the act of  
the corporation.

Given under my hand and official seal, this the 8th day of September, 1986

Keith C. Bray  
Notary Public

STATE OF ALABAMA )  
Shelby COUNTY )

I, Jada Rene Hilger, a Notary Public in and for said County, in said State, hereby certify that  
Edwin M. Dixon, whose name as Executive Vice President  
of Harbert International, Inc., a corporation, is signed to the foregoing agreement,  
and who is known to me, acknowledged before me on this date that, being informed of the contents of the agreement, he, as such officer and with  
full authority, executed the same voluntarily for and as the act of the corporation.

Given under my hand and official seal, this the 27th day of August, 1986

Jada Rene Hilger  
Notary Public

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1986 SEP 10 PM 2:47

RECORDING FEES

Recording Fee \$ 750

Index Fee 100

TOTAL \$ 850

STATE OF ALABAMA )  
JUDGE )  
COUNTY )

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that  
\_\_\_\_\_, whose name(s) \_\_\_\_\_ signed to the foregoing agreement, and who  
\_\_\_\_\_ known to me, acknowledged before me on this date that, being informed of the contents of the agreement, \_\_\_\_\_  
executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Notary Public