

STATE OF ALABAMA     )  
                               )  
 COUNTIES OF SHELBY    )  
     and JEFFERSON     )     AGREEMENT REGARDING WATER RIGHTS

THIS AGREEMENT made effective as of the 26th day of May, 1981, by and between Chace Lake Country Club, Inc., a corporation (herein "CHACE") and The Harbert-Equitable Joint Venture, an Alabama general partnership (herein "VENTURE").

WHEREAS, by instrument dated May 26, 1971, recorded in Real 714, beginning at page 464, in the Office of the Judge of Probate of Jefferson County, Alabama, Bill L. Harbert and Edwin M. Dixon, Trustees, being the predecessor in title to certain real property in Jefferson and Shelby Counties, Alabama, now owned by VENTURE, granted a non-exclusive right and easement to CHACE to pump water from Chace Lake with the understanding that the Grantor therein would not, during the five-year period immediately following the date of such instrument, take affirmative action to change the level of the lake or to otherwise destroy or drain said lake;

WHEREAS, by instrument dated December 15, 1975, entitled AGREEMENT REGARDING SEWER EASEMENTS AND WATER RIGHTS (herein sometimes "Instrument Dated December 15, 1975"), CHACE and VENTURE extended the time during which VENTURE would take no affirmative action to change the level of said Chace Lake, to drain it, except as provided therein, or to destroy it or to otherwise interfere with CHACE's right and easement to pump water from said lake until May 26, 1981; and

WHEREAS, the parties hereto now desire to extend the time during which VENTURE shall take no affirmative action to change the level of said lake, to drain it, except as provided therein, or to destroy it or to otherwise interfere with

BOOK 48 PAGE 695

*Chace Lake*  
*12.97*  
*12.97*

CHACE's right and easement to pump water from said lake until December 31, 1983, and to amend certain other agreements contained in said instrument dated December 15, 1975.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. Water Rights.

1.1 Time Extension: By instrument dated May 26, 1971, recorded in Real 714, beginning at page 464, in the Office of the Judge of Probate of Jefferson County, Alabama ("Water Rights Instrument"), VENTURE's predecessor in title, Bill L. Harbert and Edwin M. Dixon, Trustees, granted to CHACE the non-exclusive right to pump water from Chace Lake all upon the terms and conditions therein stated. Paragraph 1(c) of such Water Rights Instrument restricted the Grantor therein, during the five-year period immediately following the date of such instrument, from taking any affirmative action to change the level of said lake, to drain it, to destroy it, or otherwise interfere with Grantee's (CHACE's) right and easement to pump water from said lake. By instrument dated December 15, 1975, entitled AGREEMENT REGARDING SEWER EASEMENTS AND WATER RIGHTS, CHACE and VENTURE amended said Paragraph 1(c) of said Water Rights Instrument so as to extend the time in which VENTURE would take no affirmative action to change the level of said lake, to drain it, except as provided in Section 2.2 of said Instrument Dated December 15, 1975, to destroy it, or to otherwise interfere with CHACE's right and easement to pump water from said lake, until May 26, 1981. VENTURE and CHACE desire to and do hereby amend said Paragraph 1(c) of said Water Rights Instrument and Section 2.1 of said Instrument Dated December 15, 1975, so as to extend the time in which VENTURE shall take no affirmative action to change the level of said lake,

to drain it, except as provided below in Section 1.2, to destroy it, or to otherwise interfere with CHACE's right and easement to pump water from said lake, until December 31, 1983.

1.2 Right To Drain: Notwithstanding any provision herein or in the Water Rights Instrument or in said Instrument Dated December 15, 1975, to the contrary, it is agreed that during the period after the effective date of this Agreement and before December 31, 1983, that VENTURE shall have the right to drain Chace Lake on one occasion even though draining such lake may interfere with the right and easement of CHACE to pump water therefrom; provided, however, that said right to drain said lake during the times stated shall be subject to the conditions set forth in Section 1.2.1 hereof. CHACE agrees to cooperate with VENTURE in the draining of said lake during the drainage periods as set forth in Section 1.2.1 by not blocking or stopping the drainage channel, by allowing the water to flow out of said lake, and to otherwise reasonably cooperate with VENTURE in the draining of said lake during such drainage periods. Nothing expressed herein shall be considered as a limitation upon VENTURE after December 31, 1983.

1.2.1 Conditions: The lake may be drained by VENTURE on one occasion where necessary or appropriate, in the opinion of VENTURE, for the convenience of VENTURE in connection with construction work being conducted by VENTURE. Draining of such lake shall be accomplished at any time between November 15 and April 15. If necessary to prevent damage to property of CHACE, draining of such lake shall be conducted over a period of time of up to two (2) weeks. At the end of the permitted draining, that is not later than April 15, the drains shall be plugged so as to permit the lake to refill with water. VENTURE agrees to give CHACE fifteen (15) days written notice prior to draining said lake and, to extent reasonably consistent with construction schedules

of VENTURE, to cooperate in good faith with CHACE with a view of avoiding draining said lake at a time when the needs of CHACE to pump water therefrom are greatest.

1.3 Other Agreements: The parties further agree with respect to said Water Rights Instrument and said Instrument Dated December 15, 1975, as follows:

(a) It is understood and agreed that any limitation upon the right of VENTURE to take affirmative action to change the level of said lake, to drain it, to destroy it, or to otherwise interfere with Grantee's (CHACE's) right and easement to pump water from said lake shall not apply to any action required by a governmental authority having authority to require such action.

(b) It is agreed that VENTURE, at all times, has the right to fill the areas of the lake which are outlined and marked in red on Exhibit "B" attached to said Instrument Dated December 15, 1975.

(c) Paragraph 2.3(c) of said Instrument Dated December 15, 1975 is hereby amended to read as follows:

(d) In the event VENTURE desires to retain its right after December 31, 1983 to take affirmative action to change the level of said lake, to drain it, to destroy it, or to otherwise interfere with Grantee's (CHACE's) right and easement to pump water from said lake, then VENTURE shall:

(i) Notify CHACE on or prior to December 31, 1983 of VENTURE's decision to retain such rights described in Section 1.3(c) above, Section 2.3(c) of said Instrument Dated December 15, 1975, and in Paragraph 1(c) of the Water Rights Instrument; and

(ii) Deed, on or prior to December 31, 1983, to CHACE by statutory warranty deed the property outlined and marked in blue on Exhibit "B" attached to said Instrument Dated December 15, 1975.

In the event VENTURE retains such rights with respect to said lake, VENTURE agrees to give CHACE at least six (6) months' written notice prior to taking such affirmative action set forth in Section 1.3(c).

(e) In the event VENTURE does not take the actions set forth in Section 1.3(c)(i) and Section 1.3(c)(ii) above, within the time provided therein, that is, on or prior to December 31, 1983, then in such event VENTURE shall forfeit its right to take affirmative action to change the level of said lake, to drain it, to destroy it, or to otherwise interfere with CHACE's right and easement to pump water from said lake.

1.4 Other Provisions: All of the provisions of said Water Rights Instrument and said Instrument Dated December 15, 1975 not specifically amended by this Agreement shall remain in full force and effect and unaffected by this Agreement.

2. Captions: The captions to sections hereof are for convenience only and shall not be considered in construing the intent of the parties.

3. Applicable Law: This Agreement shall be construed under the laws of the State of Alabama.

4. Parties: This Agreement shall apply to the successors and assigns of the parties hereto.

5. Entire Agreement: This instrument contains the entire Agreement between the parties, and there are no representations, understandings or agreements, oral or written, which are not included herein. This Agreement cannot be changed except by duly authorized representatives of both parties in writing.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement on the date indicated below.

ATTEST:

CHACE LAKE COUNTRY CLUB, INC.

Its: \_\_\_\_\_

By \_\_\_\_\_  
Its: \_\_\_\_\_

Date Executed: \_\_\_\_\_

5.26.81

THE HARBERT-EQUITABLE JOINT  
VENTURE

ATTEST:

Roger L. Miller  
Its: Roger L. Miller

By: Harbert Construction  
Corporation, Managing  
Partner

By: W.H. Rossmann  
Its: Vice President

Date Executed: 5/26/81

STATE OF ALABAMA )

COUNTY OF Jefferson

I, SUZANNE NAID, a Notary Public  
in and for said County, in said State, hereby certify that  
CHARLES WALDROP, whose name as PRESIDENT  
of The Chace Lake Country Club, Inc., a corporation, is  
signed to the foregoing conveyance, and who is known to me,  
acknowledged before me on this day that, being informed of  
the contents of the conveyance, he, as such officer and  
with full authority, executed the same voluntarily for and  
as the act of said corporation.

Given under my hand and official seal, this the  
26 day of May, 1981.

NOTARY PUBLIC  
NOTALMENT WAS FILED

1983 FEB 14 AM 8:40

Suzanne Naid  
Notary Public

My Commission Expires: 2-16-82

Thomas A. Lawrence  
JUDGE OF PROBATE  
Rec. 9:00  
10:00

STATE OF ALABAMA )

COUNTY OF Shelby

I, Judith R. Sargent, a Notary Public  
in and for said County, in said State, hereby certify that  
W.H. Rossmann, whose name as Vice President  
of Harbert Construction Corporation, a corporation, as General  
and Managing Partner of The Harbert-Equitable Joint Venture,  
under Joint Venture Agreement dated January 30, 1974, is  
signed to the foregoing conveyance, and who is known to me,  
acknowledged before me on this day that, being informed of  
the contents of the conveyance, he, as such officer and with  
full authority, executed the same voluntarily for and as  
the act of said corporation as General and Managing Partner  
of The Harbert-Equitable Joint Venture.

Given under my hand and official seal, this 26<sup>th</sup>  
day of May, 1981.

Judith R. Sargent  
Notary Public

My Commission Expires:

My Commission Expires November 12, 1984