

STATE OF ALABAMA
COUNTY OF JEFFERSON

724

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) REAL 512 PAGE 628

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(2500)

AGREEMENT

This Agreement made this 18th day of APRIL, 1983, by and between CHACE LAKE COUNTRY CLUB, INC., a corporation ("CHACE LAKE") and THE HARBERT-EQUITABLE JOINT VENTURE, an Alabama general partnership ("HEJV").

WHEREAS, CHACE LAKE purchased certain real property from Bill L. Harbert and Edwin M. Dixon, Trustees by Deed recorded in Real 714, beginning at Page 535, in the Probate Office of Jefferson County, Alabama (the "Country Club Deed"); and

WHEREAS, CHACE LAKE and Bill L. Harbert and Edwin M. Dixon, Trustees, executed a certain water rights agreement, as recorded in Real Volume 714, beginning at Page 464, in the Probate Office of Jefferson County, Alabama, being amended by instruments dated December 15, 1975 and May 26, 1981 (said agreement, as amended, being referred to herein as the "Water Rights Agreement"); and

WHEREAS, Bill L. Harbert and Edwin M. Dixon, Trustees granted an easement for ingress and egress to CHACE LAKE, such easement being recorded in Real 714, Page 458, Probate Office of Jefferson County, Alabama (the "Easement"); and

WHEREAS, HEJV is the successor in title to properties owned by Bill L. Harbert and Edwin M. Dixon, Trustees, adjacent to the property of CHACE LAKE; and

WHEREAS, CHACE LAKE and HEJV desire to make certain agreements concerning the restrictions in the Country Club Deed, the Water Rights Agreement, the Easement, and other matters as set forth herein.

NOW, THEREFORE, for and in consideration of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CHACE LAKE and HEJV agree as follows:

I. CHASE LAKE ENTRANCE DRIVE

1.1 HEJV shall construct, at its own expense, a new driveway for CHACE LAKE as more particularly shown on the map attached hereto as Exhibit A, said driveway to connect the CHACE LAKE property to U.S. Highway 31 in alignment with the center line of Data Drive. Additionally, at the

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intersection of the driveway and U.S. Highway 31, and subject to the approval of all necessary governmental agencies, HEJV agrees to: (i) furnish or cause to be furnished a traffic signal light(s) for for the CHACE LAKE driveway at the U. S. Highway 31 intersection; (ii) construct a deceleration lane from the southbound lane of U.S. Highway 31 into the CHACE LAKE driveway, all as more particularly shown on the map attached as Exhibit A; and (iii) construct a left turn lane in the northbound lane of U.S. Highway 31, as more particularly shown on the map attached hereto as Exhibit A.

1.2 With respect to the construction of the new CHACE LAKE driveway, the entrance will be divided with a landscaped median. HEJV shall provide a sign reading "CHACE LAKE COUNTRY CLUB" similar in quality and design to standard signage within Riverchase. Additionally, all adjacent landscaping and pavement to the new driveway damaged during the construction shall be cleaned-up, relandscaped and repaved. It is understood that the plans for design of the driveway, sign and landscaping shall be submitted to CHACE LAKE for its approval within forty-five (45) days after execution of this Agreement by both parties. HEJV shall commence construction on the new driveway within thirty (30) days after approval of the plans by CHACE LAKE and by all necessary governmental agencies, and shall diligently prosecute the work until completion in accordance with a construction schedule set forth in such plans.

1.3 Upon completion of the above work in accordance with plans approved by CHACE LAKE, the Easement, recorded in Real Volume 714, beginning at Page 458, in the Probate Office of Jefferson County, Alabama, shall terminate and be null and void. In the event that such an instrument should be required in order to perfect any title of HEJV, and after completion of the aforementioned work, CHACE LAKE agrees to execute an instrument in recordable form acknowledging that the Easement has been terminated.

1.4 The existing driveway connecting the CHACE LAKE property to U.S. Highway 31 shall be physically terminated and blocked upon completion of the work described in Sections 1.1 through 1.3 above, and the mutual boundary between CHACE LAKE's property and HEJV's property at such point shall be relandscaped at HEJV's expense in accordance with the plans referred to in Section 1.2 above.

II. WATER RIGHTS AGREEMENT

The Water Rights Agreement, as amended, shall be superceded by the Revised Water Rights Agreement, attached hereto as Exhibit B, which is executed simultaneously herewith.

III. CONVEYANCE OF LAND

HEJV agrees to convey to CHACE LAKE, by statutory warrant deed, Parcels I, II, III and IV as more particularly described on Exhibit C hereto. Such conveyance shall be subject to taxes for the current year (which shall be paid by HEJV), mineral and mining rights not owned by HEJV, any applicable zoning ordinances, and shall further be subject to all restrictions placed on the Grantee's property in the Country Club Deed, as such restrictions are modified herein. HEJV shall provide CHACE LAKE with an owner's policy of title insurance on such parcels in the maximum aggregate amount which will be issued for the the title insurance company's minimum premium. HEJV shall also provide CHACE LAKE with a perimeter survey and legal description of the above parcels.

HEJV agrees to act as agent for CHACE LAKE in requesting a rezoning of such parcels to the City of Hoover zoning equivalent of A-1 Agriculture. Such rezoning request shall be at HEJV's expense.

IV. LANDSCAPED AREA

HEJV hereby consents to CHACE LAKE's construction, at CHACE LAKE's expense, of a natural screen or buffer of appropriate plants (including pine trees, photinia, or similar plants) in the area adjacent to CHACE LAKE's number 6 tee designated as "Landscaped Area" on the map attached hereto as Exhibit D. HEJV shall survey and stake the common boundary at such location as more particularly shown on Exhibit D.

V. COUNTRY CLUB DEED

The restrictions contained in the Country Club Deed, recorded in Real 714, beginning at page 535, shall be modified as follows:

5.1 The first paragraph of Paragraph 1(c) of the Country Club Deed shall be modified so as to delete the existing wording and substitute in lieu thereof the following:

"That Grantee and its successors and assigns shall not oppose nor in any manner interfere with the zoning sought by Grantor for the adjoining lands retained by Grantor and Grantee will cooperate in any attempt to have such lands zoned or rezoned by Grantor for use as a residential area, including the right to build multidwelling apartments and condominiums, or for such other use as is specifically approved by Grantee herein, but in no event is the Grantee

required to expend any money in this endeavor. Grantee specifically approves and consents to the rezoning of the North Parcel shown on the map attached hereto as Exhibit E as a Planned Commercial (PC) District of Riverchase as approved under the City of Hoover Zoning Ordinance. Additionally, Grantee specifically consents and approves to the rezoning of the South Parcel shown on the map attached hereto as Exhibit E as a Planned Office (PO) District of Riverchase as approved under the City of Hoover Zoning Ordinance. Except for the rezoning of the North and South parcels as set forth above, Grantor agrees not to request future zoning of commercial or industrial uses for land presently owned by Grantor in the following described area:

Begin at the intersection of U.S. Highway 31 and Alabama State Highway 150, such point being the point of beginning of the area of land herein described; from such point of beginning proceed in a southeasterly direction along and parallel to U.S. Highway 31 to a point where U.S. Highway 31 intersects the Cahaba River, thence turn right and proceed in a westerly direction along and parallel to the center line of the Cahaba Riverbed to a point where Cahaba River intersects Old Montgomery Highway at Bains Bridge, thence turn right and proceed in a northerly direction along and parallel to the Old Montgomery Highway which meanders in a northerly and northeasterly direction to the point of intersection with Alabama State Highway 150, thence turn right and proceed in an easterly direction to the point of beginning. Provided that this area shall not be construed to include that land which lies across the Old Montgomery Highway from Chace Lake Country Club's present 16th Fairway."

5.2 Except as modified herein, all other terms and conditions of the restrictions set forth in the Country Club Deed shall remain in full force and effect.

VI. CONVEYANCE AND DEVELOPMENT OF NORTH AND SOUTH PARCELS

6.1 HEJV agrees that any conveyance by it of the North Parcel and the South Parcel as shown on Exhibit E hereto shall be made subject to the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business), as amended, and the Revised Water Rights Agreement.

6.2 HEJV agrees that the area of the South Parcel shown as "Green Belt Area" on the map attached hereto as Exhibit E will be planted with screen planting (pine trees and/or photinia or other similar plants) in conjunction with any development of said Parcel.

6.3 It is agreed that hay bale sieves or other typical control material shall be used during construction on the North Parcel and the South Parcel to control siltation from storm water runoff.

6.4 It is acknowledged by both parties hereto that provisions for storm water drainage must be reviewed and approved by local governmental authorities prior to beginning of any construction on the North Parcel or the South Parcel. With respect to such Parcels, HEJV agrees to provide in any

conveyance of such Parcels that storm water runoff will not be diverted from one watershed or drainage basin to another, and that storm water will be handled by the natural drainage patterns provided by/on such Parcels.

VII. EXISTING SEWER EASEMENTS

In connection with the use of any existing sanitary sewer easements across CHACE LAKE property, HEJV agrees to repair all damage caused by HEJV during construction of such sewer mains, except for trees which may have to be removed for construction of the sewer main.

VIII. ATTORNEY FEES

HEJV agrees to pay CHACE LAKE's attorneys fees in connection with the negotiation, review and approval of this Agreement, subject to a maximum payment by HEJV for such attorneys fees of \$500.00.

IX. PROVISIONS NOT SEVERABLE

The provisions of this Agreement are not severable. If the governmental approvals required in Article I hereof are not obtained by HEJV within ninety (90) days from the date of this Agreement, then this Agreement may be cancelled at the option of either party by the giving of written notice to the other of intent to cancel.

IN WITNESS WHEREOF, CHACE LAKE and HEJV have caused this Agreement to be duly executed effective on the date first set forth above.

CHACE LAKE COUNTRY CLUB, INC.

ATTEST:

By: John L. Faustell Its: Secretary By: John M. Reeder Jr. Its: PRESIDENT

THE HARBERT-EQUITABLE JOINT VENTURE

ATTEST:

BY: HARBERT INTERNATIONAL, INC.,
Its Managing Venturer

By: Ralph G. Linko Its: Project Manager By: W.H. Rossman Its: Vice President

STATE OF ALABAMA)
COUNTY OF Jefferson ,

I, Diane M. Shering, a Notary Public in and for said County in said State hereby certify that John M. Reeder Jr., whose name as President of Chace Lake Country Club, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing instrument, he, as such officer and with full

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authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 18TH day of April, 1983.

Diane M. Chering
Notary Public

My Commission expires: 1-24-87

STATE OF ALABAMA)

COUNTY OF Shelby)

I, Cynthia A. Aldridge, a Notary Public in and for said County in said State, hereby certify that W. N. Rossman, whose name as VICE PRESIDENT of Harbert International, Inc., a corporation, as Managing Venturer of The Harbert-Equitable Joint Venture, an Alabama general partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the aforesaid instrument, he, as such officer and with full authority, executed the same voluntarily for and the act of said corporation in its capacity as Managing Venturer of said partnership.

Given under my hand and official seal of office this 14TH day of April, 1983.

Cynthia A. Aldridge
Notary Public

My Commission expires: MY COMMISSION EXPIRES FEBRUARY 3, 1986

THIS INSTRUMENT PREPARED BY:
Randolph H. Lanier
Balch, Bingham, Baker, Hawthorne,
Williams & Ward
600 North 18th Street
Birmingham, Alabama 35203



REVISED WATER RIGHTS AGREEMENT

This Agreement between THE HARBERT-EQUITABLE JOINT VENTURE, an Alabama general partnership (as successors in interest to Bill L. Harbert and Edwin M. Dixon, Trustees under Declaration of Trust dated September 18, 1968) (herein called "HEJV"), and CHACE LAKE COUNTRY CLUB, INC. (herein called "CLCC").

R E C I T A L S

WHEREAS, Bill L. Harbert and Edwin M. Dixon, Trustees (the "Grantor") conveyed to CLCC approximately 120 acres of land situated partly in Jefferson County and partly in Shelby County, Alabama. The agreement which resulted in the conveyance of said land provided, among other things, that in consideration of the payment to be made by CLCC to the Grantor, the Grantor would convey to Chace Lake a nonexclusive right and easement for a period of 50 years to pump water from Chace Lake, which lake adjoins and is situated to the north of said land, and an easement for ingress and egress; and

WHEREAS, the Grantor and CLCC subsequently executed a certain water rights agreement on May 26, 1971 which contained the rights and easements aforesaid, as recorded in Real Volume 714, beginning at Page 464, in the Probate Office of Jefferson County, Alabama, said agreement being amended by instruments dated December 15, 1975 and May 26, 1981 (collectively referred to herein as the "original water rights agreement"); and

WHEREAS, HEJV is the successor in interest to the land owned by the Grantor; and

WHEREAS, HEJV and CLCC desire to replace and supercede the original water rights agreement with this Revised Water Rights Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, each party paid to the other, it is agreed by HEJV and CLCC as follows:

I. Agreement Superceded.

The original water rights agreement is hereby replaced and superceded in all respects by this Revised Water Rights Agreement; provided, that those provisions of the aforesaid instrument dated December 15, 1975 not relating to the water rights agreement shall continue with full force and effect.

EXHIBIT 'B'

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II. Lake Rights.

HEJV hereby grants and conveys to CLCC the following:

A. A non-exclusive right and easement to pump water from the aforesaid Chace Lake for use of CLCC, such right and easement to be perpetual so long as the area known as "Chace Lake" is used for the retention of water (such period to include times when the land may be drained for maintenance of the dam or lakebed), and to be upon and subject to the following terms and conditions:

1. CLCC shall only pump water from Chace Lake so long as the level thereof does not drop below a point which is 409.60 feet above mean sea level as determined by the United States Coast and Geodetic Survey, such point corresponding to approximately 3 feet below the present spillway. In the event the water level of said lake drops below the aforesaid point, CLCC shall stop pumping and using water therefrom until such time as the level of said lake again rises to a point which is 409.60 above sea level as determined by the said United States Coast and Geodetic Survey.

2. Such right and easement may be exercised only by CLCC, and may not be transferred or assigned.

3. HEJV, its successors or assigns, shall take no affirmative action to change the level of said lake, to drain it, to destroy it, or to otherwise interfere with CLCC's non-exclusive right and easement to pump water from said lake; provided that the lake may be temporarily drained from time to time between the dates of November 15 and April 15 by HEJV, its successors or assigns to accommodate the installation and/or maintenance of sanitary sewer lines. If necessary to prevent damage to property of CLCC, 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. HEJV agrees to give CLCC fifteen (15) days written notice prior to draining said lake and, to the extent reasonably consistent with schedules of HEJV, to cooperate in good faith with CLCC with a view of avoiding draining said lake at a time when the needs of CLCC to pump water therefrom are the

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greatest. It is further provided that HEJV, its successors or assigns shall have the right to fill the two small sloughs on the lake and the north end of the lake, where an existing sanitary sewer line is exposed, all as more particularly shown on the map attached hereto as Exhibit A.

It is understood and agreed that any limitation upon the right of HEJV, its successors or assigns to take affirmative action to change the level of said lake, to drain it, to destroy it, or to otherwise interfere with CLCC'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.

4. CLCC shall keep the area presently utilized for its golf course maintenance facilities and which adjoins the aforesaid Chace Lake in a neat and orderly condition, consistent with the use being made of the area, and agrees not to interfere with HEJV's, or its successors' or assigns' peaceful enjoyment of their adjoining property. In the event CLCC fails to keep and observe this agreement, and such failure shall continue for 30 days after written notice thereof from HEJV, or its successors or assigns, then the right and easement to pump water from Chace Lake herein granted shall thereupon terminate.

5. HEJV, its successors or assigns, shall have the undisputed right to widen the dam of Chace Lake as long as said widened dam lies entirely on land owned by HEJV, or its successors or assigns, and does not fill the portion of the pond lying on CLCC's land. HEJV, its successors or assigns shall have the further right to build a new road or widen the present road in the vicinity of Chace Lake so long as the new road is constructed on HEJV's, or its successors' or assigns' land.

B. An easement for underground water lines, together with necessary surface pumping equipment and appurtenances, for the purpose of pumping water from Chace Lake to the property of CLCC, said easement being twenty (20) feet in width and generally located as shown on Exhibit A hereto.

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CLCC 1000000000

C. An easement and right to maintain, at CLCC's expense, the Chace Lake dam. CLCC agrees to repair, at its expense, any damage caused to the paved road crossing said dam during any maintenance or repair work on said dam by CLCC, its agents or contractors. Additionally, prior to commencing any such repair or maintenance work CLCC agrees to provide HEJV with an effective policy of comprehensive liability insurance, naming HEJV, its successors or assigns, as additional insureds, in a combined single limit of at least \$1,000,000, insuring against any injury or death to persons, or damage to property, caused by or related to any repair or maintenance work performed on said dam by CLCC, or its agents or contractors.

III. Ingress - Egress.

HEJV hereby grants and conveys to CLCC a permanent and non-exclusive easement for vehicular and pedestrian ingress and egress upon, over and across that part of HEJV's property on which the roadway across the dam which contains Chace Lake is located, such easement to extend from the point where the present roadway across the dam connects on the East with the roadway on the property of CLCC to the point where the dam roadway connects on the West with the roadway which serves CLCC's present maintenance building, HEJV, its successors or assigns, may relocate or widen this road as stated in Section I.A.5 hereof so long as CLCC is still provided access as aforesaid.

IV. Agreement Binding. HEJV agrees that its property adjacent to and touching said Chace Lake shall be subject to the agreements, restrictions and easements contained herein, which shall run with the land.

IN WITNESS WHEREOF, HEJV and CLCC have caused this instrument to be executed effective the 18th day of APRIL, 1983.

WITNESS:

John L. Loustall
Secretary

CHACE LAKE COUNTRY CLUB, INC.

By: John M. Keenan Jr.
Its PRESIDENT

THE HARBERT-EQUITABLE JOINT VENTURE

By: Harbert International, Inc.,
its Managing General Partner

WITNESS:

Ralph L. Lamber
Project Manager

By: W. H. Foxman
Its Vice President

STATE OF ALABAMA)

COUNTY OF Jefferson)

I, Diane M. Obering, a Notary Public in and for said County, in said State, hereby certify that John M. Buder, whose name as President of Chace Lake Country Club, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, 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 18th day of April, 1983.

Diane M. Obering
Notary Public

My Commission expires: 1-24-87

STATE OF Alabama)

COUNTY OF Shelby)

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

Given under my hand this the 14th day of April, 1983.

Cynthia A. Aldridge
Notary Public

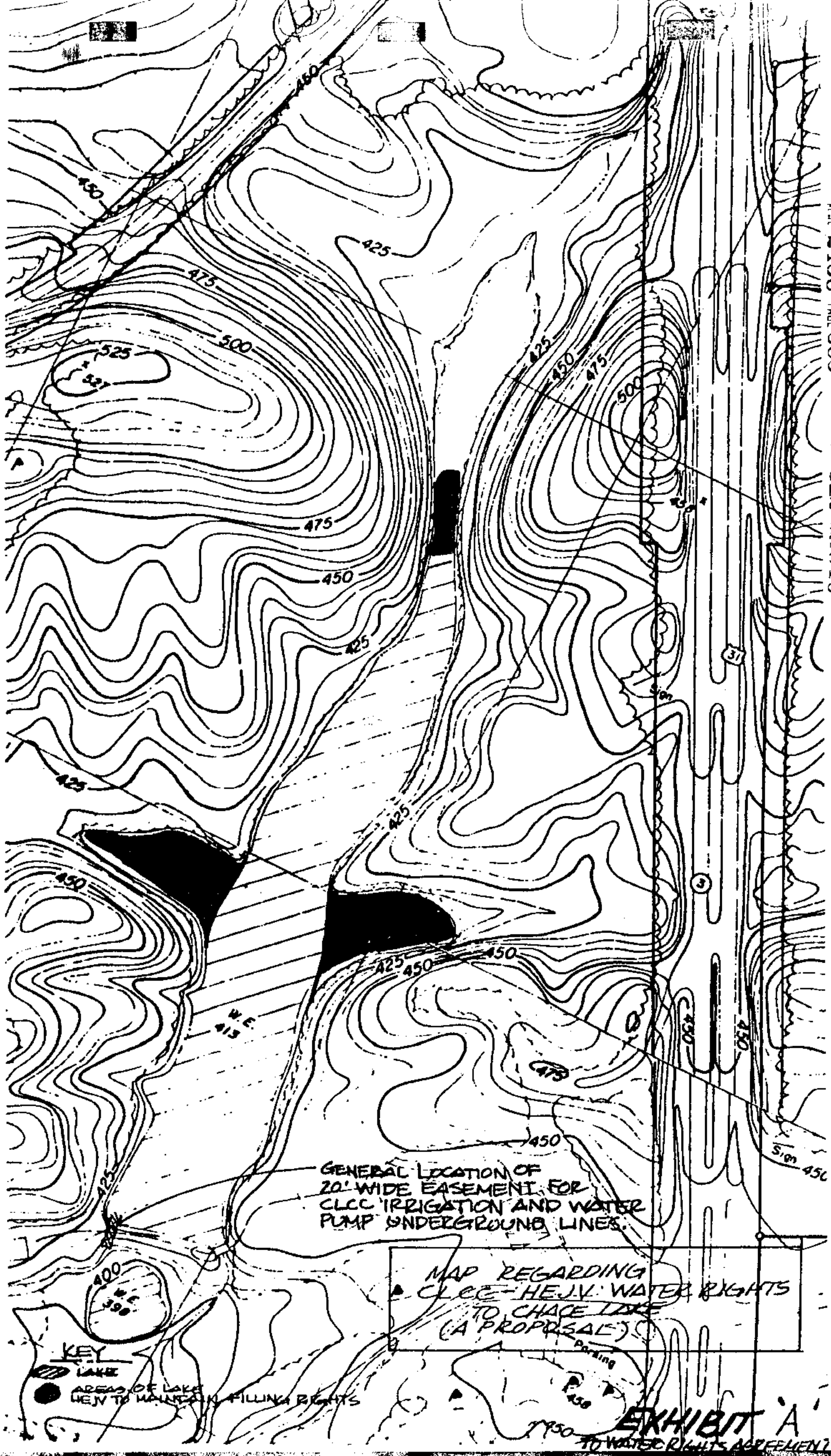
My Commission expires: MY COMMISSION EXPIRES FEBRUARY 3, 1986

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THIS INSTRUMENT PREPARED BY:
Randolph H. Lanier
Balch, Bingham, Baker, Hawthorne,
Williams & Ward
600 North 18th Street
Birmingham, Alabama 35203

Rec. 2400
Ind. 100
2500
3 PAGES OF MAP
FOLLOWS

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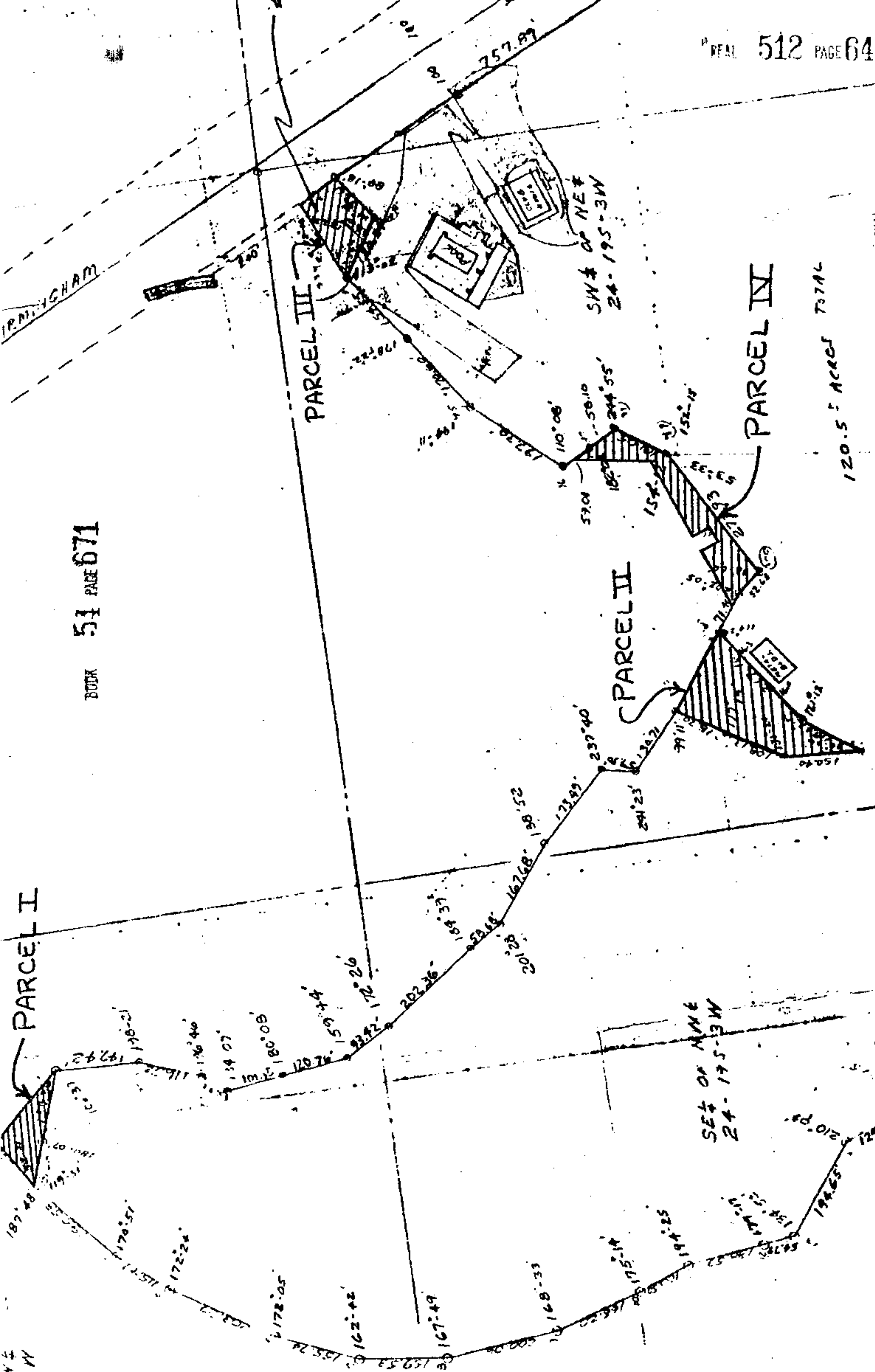


EXHIBIT 'C'

120.55 ACRES TOTAL

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TRACT C-3
MULTI-FAMILY
CONDOMINIUM

22.8 AC.

JEFFERSON COUNTY
SHELBY COUNTY

CHACE LAKE COUNTRY CLUB

LANDSCAPED AREA:
CHACE LAKE MAY PLANT
NATURAL SCREEN IN AREA
SHOWN WITHIN FIVE (5') FEET
OF HEJV PROPERTY LINE

EXHIBIT 'D'

EXHIBIT 'E'

GREEN BELT
AREA

SOUTH
PARCEL

NORTH
PARCEL

