

1465-

CHANGE-OF-USE AGREEMENT

Birmingham, Alabama February 6, 1989

This Agreement is made and entered into by and among The Harbert-Equitable Joint Venture, the Riverchase Architectural Committee, and Riverchase Properties.

WITNESSETH:

WHEREAS, The Harbert-Equitable Joint Venture, (the "Joint Venture") conveyed that the certain parcel of land containing 137.2509 acres, more or less, (the "Property") to Riverchase Properties on March 16, 1981 by statutory warranty deed recorded in Book 331 pages 757 to 760 in Shelby County, Alabama, (the "Deed"); and

WHEREAS, the Joint Venture filed a Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business); recorded in Miscellaneous Book 13, beginning at page 50, in the office of the Judge of Probate of Shelby County, Alabama, and in Real Volume 1236, beginning at page 881, in the office of the Judge of Probate of Jefferson County, Alabama; as amended by Amendment No. 1, recorded in Miscellaneous Book 15, beginning at page 189, in the office of the Judge of Probate of Shelby County, Alabama, (the Covenants and Amendment No. 1 shall hereinafter be referred to as the "Riverchase Business Covenants"); and

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WHEREAS, the Joint Venture subjected the Property to the Riverchase Business Covenants under which the Joint Venture restricted the use of the Property to a multi-family development and related uses with a density not to exceed twelve (12) units per acre as defined in the Riverchase Architectural Committee Development Criteria for Planned Multi-Family (PR-2) District of Riverchase, dated April 11, 1980 unless a change in use is authorized pursuant to the Riverchase Business Covenants, as stated in Subparagraph 6 of the Deed (hereinafter said land use restrictions to be referred as the "Deed Restrictions"); and

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WHEREAS, Riverchase Properties desires to have a change in use approved for a portion of the Property, said portion of the Property to be approximately 10.022 acres in size as more particularly defined by Exhibit "A" attached hereto (the 10.022 acre portion of the Property shall hereinafter be referred to as "Parcel II"); and

WHEREAS, the Joint Venture was the Grantor of the Deed; and

WHEREAS, in accordance with the Riverchase Business Covenants, the Riverchase Architectural Committee must approve a change in use of the Property or of any portion of the Property; and

WHEREAS, Riverchase Properties and the Joint Venture have signed a letter agreement dated January 9, 1989 outlining certain conditions and agreements concerning a change in use;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Joint Venture and the Riverchase Architectural Committee do hereby agree to the following:

1. The Deed Restrictions of subparagraph 6 of the Deed shall no longer apply to Parcel II, i.e. Parcel II shall no longer be restricted to use as a multi-family development and related uses. The Deed Restrictions shall continue to apply to all portions of the Property except Parcel II and any previously excepted parcel.

Joseph E. McKay
Box 1297

2. Parcel II shall be restricted to use as an office development, with a maximum building density of 12,500 square feet per acre unless a change in use is authorized pursuant to the Riverchase Business covenants; and
3. Parcel II shall be subject to the Riverchase Business Covenants and the Riverchase Architectural Committee Development Criteria for Planned Office (PO) District of Riverchase, dated April 11, 1980.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first set forth above.

THE HARBERT-EQUITABLE JOINT VENTURE
UNDER JOINT VENTURE AGREEMENT
DATED JANUARY 31, 1974

WITNESS:

Jada R. Helgen

BY: HARBERT INTERNATIONAL, INC.
AS MANAGING VENTURER

By:

Its

[Signature]
Exec. V.P.

WITNESS:

Jada R. Helgen

THE RIVERCHASE ARCHITECTURAL
COMMITTEE

By:

Its

[Signature]
Member

WITNESS:

[Signature]

RIVERCHASE PROPERTIES

BHN CORPORATION

By:

Its

[Signature]
President

WITNESS:

Patricia C. McCool

SOUTHWOOD PARK ESTATES

By:

Its

[Signature]
Vice President

EXHIBIT "A"

DESCRIPTION

Commence at the southeast corner of the northwest one-quarter of Section 30, Township 19 South, Range 2 West; thence run west along the south line of said quarter section line for a distance of 663.89 feet; thence turn an angle to the right of 87 degrees 34 minutes 15 seconds and run in a northerly direction for a distance of 487.38 feet; thence turn an angle to the right of 79 degrees 03 minutes 19 seconds to the tangent of the following described course said course being situated on a curve to the right having a central angle of 20 degrees 57 minutes 54 seconds and a radius of 870.32 feet; thence run along the arc of said curve in a northeasterly and southeasterly direction for a distance of 318.46 feet to the end of said curve; thence run along the tangent extended to said curve in a southeasterly direction for a distance of 217.60 feet; thence turn an angle to the left of 90 degrees and run in a northeasterly direction for a distance of 60.00 feet to the point of beginning; from the point of beginning thus obtained turn an angle to the right of 90 degrees and run in a southeasterly direction for a distance of 335.00 feet to the point of commencement of a curve to the left said curve having a central angle of 30 degrees 37 minutes 25 seconds and a radius of 287.37 feet; thence run along the arc of said curve in a southeasterly and northeasterly direction for a distance of 153.60 feet to the end of said curve; thence run along the tangent extended to said curve in a northeasterly direction for a distance of 97.98 feet to the point of commencement of a curve to the right said curve having a central angle of 42 degrees 27 minutes 09 seconds and a radius of 301.11 feet; thence run along the arc of said curve in a northeasterly and southeasterly direction for a distance of 223.10 feet to a point on the westerly right-of-way line of Riverchase Parkway East; thence turn an angle of 91 degrees 12 minutes 12 seconds from the tangent of last described course to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 18 degrees 23 minutes 05 seconds and a radius of 490.99 feet; thence run along the arc of said curve and the westerly right-of-way line of Riverchase Parkway East in a northeasterly direction for a distance of 157.55 feet to the end of said curve; thence run along the tangent extended to said curve and along the westerly right-of-way line of Riverchase Parkway East in a northeasterly direction for a distance of 162.98 feet to the point of commencement of a curve to the right, said curve having a central angle of 11 degrees 30 minutes and a radius of 678.63 feet; thence run in a northeasterly direction along the arc of said curve and the westerly right-of-way line of Riverchase Parkway East for a distance of 136.21 feet to the southeasterly corner of Lot 1 Riverchase Properties First Addition to Riverchase as recorded in Map Book 8, page 132 in the office of the Judge of Probate, Shelby County Alabama; thence turn an angle to the left of 74 degrees 49 minutes from the tangent of last described course and run in a northwesterly direction along the southwesterly line of said Lot 1 for a distance of 246.24 feet to the southwesterly corner of said Lot 1; thence turn an angle to the left of 64 degrees 11 minutes 12 seconds and run in a southwesterly direction for a distance of 59.72 feet; thence turn an angle to the right of 28 degrees 47 minutes 42 seconds and run in a southwesterly direction for a distance of 506.00 feet; thence turn an angle to the right of 51 degrees 22 minutes 30 seconds and run in a northwesterly direction for a distance of 128.00 feet; thence turn an angle to the left of 135 degrees 59 minutes 48 seconds and run in a southeasterly direction for a distance of 557.45 feet to the point of beginning. Said Parcel contains 436,576 square feet or 10.022398 acres.

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

89 APR 27 AM 9:30

RECORDING FEES

Recording Fee	\$ 7.50
Index Fee	2.00
TOTAL	9.50

Thomas A. Shandling
JUDGE OF PROBATE

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