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**DECLARATION OF PROTECTIVE COVENANTS**

**OF**

**BANEBERRY LAKE SUBDIVISION**

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STATE OF ALABAMA

COUNTY OF SHELBY

**DECLARATION OF PROTECTIVE COVENANTS  
OF  
BANEERRY LAKE SUBDIVISION**

**KNOW ALL MEN BY THESE PRESENTS, That:**

**WHEREAS, THE HARBERT-EQUITABLE JOINT VENTURE**, an Alabama general partnership (herein the "Developer"), is the owner of the real property described on Exhibit "A", annexed hereto and made a part hereof, which is developed or will be developed as single-family lots, including a lake (herein the "Property"); and

**WHEREAS**, Developer may desire to subject, from time to time, portions of the Property to this Declaration.

**NOW, THEREFORE, DEVELOPER** does hereby proclaim, publish and declare that any part of the Property which becomes subject to these Restrictions shall be held, conveyed, hypothecated or encumbered, rented, used, occupied and improved subject to this Declaration, which shall run with the land and shall be binding upon Developer and upon all parties having or acquiring any right, title or interest in any part of the Property which is subject to this Declaration. **THE RESTRICTIONS CONTAINED HEREIN SHALL NOT APPLY TO OR AFFECT ANY PROPERTY WHICH IS NOT SUBJECTED SPECIFICALLY BY WRITTEN INSTRUMENT TO THIS DECLARATION.**

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**ARTICLE I**

**MUTUALITY OF BENEFIT AND OBLIGATION**

The Restrictions set forth herein are made for the mutual and reciprocal benefit of each and every part of the Property and are intended to create mutual, equitable servitudes upon each such part of the Property and in favor of each and all such parts of the Property therein, to create reciprocal rights between the respective owners and future owners of such Property; and to create a privity of contract and estate between the grantees of said Property, their heirs, successors and assigns. All of the Property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all the terms and provisions of this Declaration, including, but not limited to, the lien provisions set forth in Article VI.

**ARTICLE II**  
**DEFINITIONS**

**SECTION 2.1 Association.** The Baneberry Lake Subdivision Association, Inc., its successors and assigns.

**2.2 Association Land.** Such real property (including the lake within the Property) conveyed to the Association, and all improvements located thereon, for so long as the Association or successor thereof may be the owner thereof.

**2.3 Board.** The Board of Directors of the Association.

**2.4 Charter.** The Articles of Incorporation of the Association.

**2.5 Declaration.** This Declaration of Protective Covenants of Baneberry Lake Subdivision which shall be recorded in the Probate Records of Shelby County, Alabama, as the same may from time to time be supplemented or amended in the manner described therein.

**2.6 Deed.** Any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any part of the Property subjected to these Restrictions.

**2.7 Lot.** A residential lot in the Property, platted of record.

**2.8 Member.** A person or other entity who is a record owner of a Lot.

**2.9 Member's Property.** All Lots in the Property which are platted of record.

**2.10 Owner.** The owner of a Lot.

**2.11 Property.** All of the real property described on Exhibit "A", together with any additional property submitted to this Declaration as provided herein.

**2.12 Resident.** Any person or persons occupying or leasing Member's Property.

**2.13 Restrictions.** The covenants, agreements, easements, charges and liens created or imposed by this Declaration.

**ARTICLE III**  
**CONSTRUE WITH RIVERCHASE COVENANTS**

This Declaration shall be read, construed and interpreted in a manner consistent with the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Residential), as recorded in Real 1620, Page 377, Jefferson County, and rerecorded in Real 348, Page 49, Jefferson County (Bessemer

Division) and in Book 14, Page 536, Shelby County, as amended by Amendment No. 1 recorded in Real 1374, Page 928, Jefferson County, and rerecorded in Real 348, Page 49, Jefferson County (Bessemer Division), and in Book 17, Page 550, Shelby County (said covenants, as amended, being referred to herein as the "Riverchase Covenants"); provided, however, that the following sections of the Riverchase Covenants shall be modified with respect to the Lots in Baneberry Lake Subdivision:

(a) Section 12.1.4 shall not be applicable with respect to the storage of small boats intended for use on the lake within the Property (i) on the rear of Lots within the Property, or (ii) on the lake within the Property.

(b) Section 13.1.3 shall be modified so as to provide that the referenced structures and boats intended for use on the lake within the Property may be installed, constructed and maintained on a Lot so long as not visible from the front of the Lot.

(c) Section 13.2 shall not be applicable to the use of boats on the lake within the Property.

The Riverchase Covenants, as modified herein, shall remain fully applicable to the Property as set forth therein. Owners of lots in the Property shall be members of both the Riverchase Residential Association, Inc., as described in the Riverchase Covenants, and the Baneberry Lake Subdivision Association, Inc., described herein. Lots within the Property shall be subject to the charges and liens described in both the Riverchase Covenants and in this Declaration. In the event of a conflict between the Riverchase Covenants, as modified herein, and the provisions of this Declaration, the terms of the Riverchase Covenants shall control.

#### ARTICLE IV

##### EASEMENT FOR LAKESIDE MAINTENANCE

In order to provide for a neat and orderly appearance of the lake within the Property, the Association shall have the right, through its agents, employees and contractors to enter upon the Lots and, within a ten foot (10') wide strip bordering the lake, to cut grass and weeds, rake leaves, and perform such other level or degree of lakeside maintenance as shall be determined by the Association. The amount of lakeside maintenance services to be provided by the Association, if any, shall be determined by the Board of the Association; provided that this Article IV shall not be construed as imposing any obligation on the Association to perform such services. The cost of any such lakeside maintenance shall be an expense of the Association, and shall be covered by the Annual Charges set forth in Article V hereof. No Member shall be entitled to any reduction of or credit on such Annual

Charges due to the Member or other person performing lakeside maintenance himself instead of having the lakeside maintenance performed by the Association.

## **ARTICLE V**

### **ASSESSMENT OF ANNUAL CHARGE**

**SECTION 5.1 Assessment.** For the purpose of providing funds for use as specified in Article VII hereof, the Association shall in each year, commencing with the year 1989, assess against each Lot, with respect to which over six months have elapsed since the original sale of such Lot by the Developer, a charge (which shall be uniform with respect to all Lots) equal to a specified number of dollars per Lot; provided, however, that until the Class A Members of the Association are entitled to elect a majority of the Board of Directors of the Association, the Annual Charge shall not exceed \$250.00 per year, as may be adjusted upward annually, commencing January 1, 1991, in an amount not to exceed ten percent (10%) of the maximum amount (of such \$250.00, as escalated) which could have been charged the preceding year. Each such Lot shall be charged with and subject to a lien for the amount of such separate assessment which shall be deemed the "Annual Charge" with respect to such Lot.

**5.2 Date of Commencement of Annual Charge.** As soon as may be practical in each year, the Association shall send a written bill to each Member stating the amount of the Annual Charge assessed against each such Lot. At the option of the Association, the Annual Charge may be billed in one installment, or may be billed in quarterly or monthly installments. Any installment not paid within thirty (30) days following the date of receipt of the bill shall be deemed delinquent and will bear interest at the rate of twelve percent (12%) per annum until paid.

**5.3 Effect of Nonpayment of Assessments; Remedies of Association.** If the Member shall fail to pay any installment of the Annual Charge within thirty (30) days following receipt of the bill referred to in Section 5.2 hereof, and within thirty (30) days after additional written notice that the Member is delinquent in his payment, in addition to the right to sue the Member for a personal judgment, the Association shall have the right to enforce the lien hereinafter imposed to the same extent, including a foreclosure sale and deficiency decree, and subject to the same procedures, as in the case of mortgages under applicable law, and the amount due by such Member shall include the Annual Charge, as well as the cost of such proceedings, including a

reasonable attorney's fee, and the aforesaid interest. In addition, the Association shall have the right to sell the property at public or private sale after giving notice to the Member (by registered mail or by publication in a newspaper of general circulation in the County where the Parcel is situated at least once a week for three successive weeks) prior to such sale.

5.4 **Certificate of Payment.** Upon written demand by a Member, the Association shall within a reasonable period of time issue and furnish to such Member a written certificate stating that all Annual Charges (including interest and costs, if any) have been paid with respect to any specified Lot as of the date of such certificate, or if all Annual Charges have not been paid, setting forth the amount of such Annual Charges (including interest and costs, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates which must be paid at the time that the request for such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any *bona fide* purchaser of, or lender on, the Lot in question.

## ARTICLE VI

### IMPOSITION OF CHARGE AND LIEN UPON PROPERTY

SECTION 6.1 **Creation of Lien for Assessments.** All Lots shall be subject to a continuing lien for assessments levied by the Association in accordance with the provisions of this Declaration. The Annual Charge together with interest thereon and the costs of collection thereof including reasonable attorney's fees as herein provided, shall be a charge on and shall be a continuing lien upon the Lot against which each such assessment or charge is made.

6.2 **Personal Obligation of Members.** Each Member, by acceptance of a deed or other conveyance to a Lot, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay the Association the Annual Charges.

6.3 **Subordination of Lien to Mortgages.** The lien of any assessment or charge authorized herein with respect to any Lot is hereby made subordinate to the lien of any *bona fide* mortgage on such Lot if, but only if, all assessments and charges levied against such Lot falling due on or prior to the date such mortgage is recorded has been paid. The sale or transfer of any Lot pursuant to a mortgage foreclosure proceeding or a



proceeding in lieu of foreclosure or the sale or transfer of such Lot pursuant to a sale under power contained in a mortgage on such property shall extinguish the lien for assessments falling due prior to the date of such sale, transfer or foreclosure, but the Association shall have a lien on the proceeds of such sale senior to the equity or right of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Lot has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time when he is the owner of such property. The Association may at any time, either before or after the mortgaging of any Lot, waive, relinquish or quitclaim in whole or in part the right of the Association to assessments and other charges collectible by the Association with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

#### **ARTICLE VII**

##### **USE OF FUNDS**

**SECTION 7.1 Use of Funds.** The Association shall apply all funds received by it pursuant to these Restrictions, and from any other source, reasonably for the benefit of property owned by the Association and by Association Members and specifically to the following uses, unless other uses are approved by 51% of the votes of Members of the Association, and with the understanding that, at the Association's discretion, funds shall be applied to operations and maintenance before being applied to capital improvements: (i) repayment of principal and interest of any loans of the Association; (ii) the costs and expenses of the Association for the benefit of the Property, Owners and Residents by devoting the same to the acquisition, construction, reconstruction, conduct, alteration, enlargement, laying, renewal, replacement, repair, maintenance, operation and subsidizing of such of the following as the Board, in its discretion, may from time to time establish or provide: any or all projects, services, facilities, studies, programs, systems and properties relating to: the lake within Baneberry Lake Subdivision when owned by the Association (the "Lake"), including, but not limited to the dredging and chemical treatment of the Lake, and stocking of fish in the Lake; the maintenance, repair and replacement of the dam on the Lake; parks, recreational facilities or services; walkways, benches, street lights, curbing, gutters, sidewalks, landscaping; directional and informational signs; subdivision entrance features, walls and signs; and contracts, equipment and labor for general maintenance and clean-up.

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**7.2 Obligations of Association with Respect to Funds.** The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Charges or otherwise, and may carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Annual Charge in the succeeding year, but may carry forward from year to year such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of Association and the effectuation of its purposes. The Association does not assure that the services described in Section 7.1 will be provided and nothing herein shall obligate the Association or its Directors to undertake to provide such services. The Association shall provide to all Members of the Association an annual accounting of funds expended and balances remaining within one hundred twenty (120) days after the end of any calendar year, such accounting to be at the Association's expense.

**7.3 Authority of Association to Contract.** The Association shall be entitled to contract, subject to the last sentence of Section 7.4, with any corporation, firm or other entity for the performance of the various undertakings of the Association specified in Section 7.1, and such other undertakings as may be approved by 51% of the votes of the Members of the Association, and the performance by any such entity shall be deemed the performance of the Association hereunder.

**7.4 Authority of Association to Borrow Money.** The Association shall be entitled to borrow money for the uses specified in Section 7.1, or other uses if approved by 51% of the votes of the Members of the Association, up to an outstanding principal balance of \$10,000. Any borrowing over such amount shall require the approval of 51% of the votes of the Members of the Association. Further, the Association shall not incur outstanding contractual and debt obligations exceeding an aggregate of \$20,000 at any given point in time (not including any prospective or actual liability arising out of a lawsuit not based on unpaid accounts), without the approval of 51% of the votes of the Members of the Association.

**7.5 Authority of Association to make Capital Expenditures.** The Association shall be entitled to make capital expenditures for the uses specified in Section 7.1 or other uses as may be approved as provided therein, up to an amount not to exceed \$10,000.00, as limited by the last sentence in Section 7.4. Any capital expenditure in excess of \$10,000.00 shall require the approval of 51% of the Members of the Association.

**7.6 CPI Adjustments.** The dollar limitations in Sections 7.4 and 7.5 shall be increased effective January of each year (the "Adjustment Year"), beginning January, 1991, to reflect the percentage increase in the

Revised Consumer Price Index -- All Items and Major Group Figures for Urban Wage Earners and Clerical Workers (1967 = 100) (herein the "CPI") from the CPI for September, 1989 to the CPI for September of the year prior to the respective Adjustment Year.

#### **ARTICLE VIII**

##### **RIGHTS OF ENJOYMENT IN ASSOCIATION LAND; RESTRICTIONS ON LAKE USE**

**SECTION 8.1 Association Land.** DEVELOPER may convey or cause to be conveyed to the Association, subsequent to the recordation of this Declaration, certain tracts of land within the Property, including the lake, for park and other recreational and related purposes. The conveyances may restrict the uses of the property being conveyed.

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**8.2 Easement of Enjoyment of Community.** Every Owner, by reason of such ownership, shall have a right and easement of enjoyment in and to Association Land, and such easement shall be appurtenant to and shall pass with every Lot upon transfer. All Residents who are not Members shall have a non-transferable privilege to use and enjoy Association Land for as long as they are Residents within the defined meaning of that term. All such rights, easements, and privileges, however, shall be subject to the right of the Association to adopt and promulgate reasonable rules and regulations pertaining to the use of Association Land which shall enhance the preservation of such facilities, the safety and convenience of the users thereof, or which, in the discretion of the Association, shall serve to promote the best interests of the Owners and Residents. The use of the Association Land, including the lake within the Property, shall be restricted to Members and Residents, and guests who are accompanied by a Member or Resident.

**8.3 Boats and Motors.** Only electric motors (with a horsepower rating not to exceed 5.0, or equivalent power rating) shall be allowed on boats, canoes and other watercraft on the lake within the Property or on other Association Land.

**8.4 Boat Docks.** All boat docks or other landings, decks or similar structures extending into the lake within the Property or on to other Association Land must be constructed in accordance with a uniform plan issued by the Riverchase Architectural Committee.

**8.5 Suspension of Rights.** The Association shall have the right to suspend the right of any Member (and the privilege of each Resident claiming through such Member) to use Association Land and to receive

services from the Association for any period during which the Annual Charge assessed under Article V hereof remains overdue and unpaid, or in connection with the enforcement of any rules or regulations relating to such facilities in accordance with the provisions of this Article VIII.

## **ARTICLE IX**

### **MEMBERSHIP AND VOTING RIGHTS**

**SECTION 9.1 General.** The structure of the Association is contained in its Charter and by-laws. The matters discussed in Sections 9.2 to 9.5 are summaries of some of the provisions of the Charter of the Association. The Charter and by-laws of the Association cover each of these matters, in addition to others, in greater detail, and should be consulted for a full explanation of the rights and obligations appurtenant to membership in the Association.

**9.2 All Lot Owner's Are Members of Association.** Every owner of a Lot constituting Member's Property shall, by virtue of such ownership, be a Member of the Association. Membership shall be appurtenant to, and may not be separated from the ownership of any property which is Member's Property.

**9.3 Classes of Membership.** The classes of membership are contained in the Charter and by-laws of the Association.

**(a)** Class A Members shall be all persons owning one or more Lots constituting Member's Property excepting those persons who are Class B Members. A Class B Member cannot be a Class A Member so long as it retains its Class B membership.

**(b)** Class B Members shall be The Harbert-Equitable Joint Venture, an Alabama General Partnership, and any successor in ownership to all or part of the Developer's interest in the Property.

The Class B membership shall terminate and the then Class B Members shall become Class A Members at such time as (a) all the then Class B Members so designate in a writing delivered to the Association or (b) on December 31, 1995, whichever shall first occur; provided, that notwithstanding the foregoing, the Class B membership shall not terminate so long as the Developer shall own any undeveloped Lot or parcel in the Property.

**9.4 Voting Rights; Class B Members.** Each Class B member shall have one vote for each Lot owned by such Member. Except on such matters as to which this Declaration, the Charter, or the By-Laws of

the Association specifically require the votes of the Class A Members, and until December 31, 1993, or such earlier time as the Class B membership shall terminate, as provided herein, the Class B Members shall be vested with the sole voting rights in the Association, and the Class A Membership shall have no voting rights.

**9.5 Voting Rights; Class A Members.** Subject to the provisions of Section 9.4, each Class A Member shall have one vote for each Lot owned by such Member. Until December 31, 1993, the Class A Members shall not elect any of the Directors of the Association. After December 31, 1993, and until December 31, 1995, Class A Members shall elect a minority of the Board. Thereafter, Class A Members shall elect a majority of the Board.

**9.6 Conflict.** In the event of a conflict between the terms of this Declaration and the Charter of the Association, the terms of the Charter shall control.

## **ARTICLE X**

### **SUBMISSION OF ADDITIONAL REAL PROPERTY**

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**DEVELOPER** may at any time during the pendency of this Declaration add any additional real property, now or hereafter acquired by Developer, to the Property which is covered by this Declaration. Additional real property may be submitted to the provisions of this Declaration by an instrument executed by **DEVELOPER**, its successors or assigns in the manner required for the execution of deeds. Such instrument shall: (i) refer to this Declaration stating the book or books of the records of Shelby County, Alabama, and the page numbers where this Declaration is recorded; (ii) contain a statement that such real property is subjected to the provisions of this Declaration; (iii) contain an exact description of such additional real property; and (iv) such other or different covenants, conditions and restrictions as **DEVELOPER** shall, in its discretion, specify to regulate and control the use, occupancy and improvement of such additional real property.

Upon the recording of such instrument in the appropriate Probate Office of Shelby County, Alabama, such additional real property shall be deemed part of the Property and the owner or owners of any Lots on said additional real property shall thereupon be members of the Association.

## **ARTICLE XI**

### **GENERAL**

**SECTION 11.1 Grantee's Acceptance.** The grantee of any Lot subject to the coverage of these Restrictions, by acceptance of the deed or other instrument conveying an interest in or title to, or the execution of a contract for the purchase thereof, shall accept such deed or other contract upon and subject to each and all of these Restrictions herein contained.

**11.2 Indemnity For Damages.** Each and every Lot Owner and future Lot Owner, in accepting a deed or contract for any Lot subject to these Restrictions, agrees to indemnify the Association for any damage caused by such Owner, or the contractor, agent, or employees of such Owner, to roads, streets, gutters, or walkways, including all surfacing thereon, or to water, drainage or storm sewer lines or sanitary sewer lines, or to parks and improvements thereon, benches, and street lights, owned by the Association, or for which the Association has responsibility, at the time of such damage.

**11.3 Severability.** Every one of the provisions and restrictions is hereby declared to be independent of, and severable from the rest of the provisions and restrictions and of and from every other one of the provisions and restrictions and of and from every combination of the provisions and restriction in this Declaration shall in no way affect any of the other provisions or restrictions which shall remain in full force and effect.

**11.4 Captions.** The captions preceding the various sections, paragraphs and subparagraphs of these Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the restrictions. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

**11.5 Effect of Violation on Mortgage Lien.** No violation of any of these Restrictions shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property, provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to these Restrictions as fully as any other Owner of any portion of the Property.

**11.6 No Reverter.** No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

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**11.7 Duration and Amendment.** The Restrictions contained in this Declaration shall run with and bind the Property, shall inure to the benefit of and shall be enforceable by the Association and the Owner of any Lot or other parcel included in the Property, their respective legal representatives, heirs, successors and assigns until the 31st day of December in the year 2009, after which time said Restrictions shall be automatically extended for successive periods of ten years. This Declaration may not be amended in any respect except by the execution of an instrument signed by not less than 67% of the Lot Owners, which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument. After December 31, 2009, this Declaration may be amended and/or terminated in its entirety by an instrument signed by not less than 55% of the Lot Owners which instrument shall be filed for recording among the Land Records of Shelby County, Alabama, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

**11.8 Enforcement.** In the event of a violation or breach of any of these Restrictions or any amendments thereto by any Lot Owner, or employee, agent, or lessee of such Owner, or by any Resident, then the Owner(s) of Lot(s), the Association, or the Developer, their heirs, successors and assigns, or any party to whose benefit these Restrictions inure shall have the right to proceed at law or in equity to compel compliance with the terms and conditions hereof, to prevent the violation or breach of said Restrictions, to sue for and recover damages or other dues, or take all such courses of action at the same time, or such other legal remedy it may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth herein shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision hereof, but any person or entity entitled to enforce any provision hereof shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing a Restriction or enjoining the violation of a Restriction against an Owner may be awarded a reasonable attorney's fee against such Owner

**11.9 Certificate of Violation.** In addition to any other rights or remedies available to the Association hereunder or at law or equity, the Association shall have the right to file in the Records of Shelby County,

Alabama, a Certificate or Notice of Violation of these Restrictions (which violation shall include, without limitation, nonpayment of the Annual Charges and/or failure to comply with architectural guidelines) upon failure of a Lot Owner to correct a violation of these Restrictions within thirty (30) days after written notice of the violation has been given by the Association to the Lot Owner.

11.10 Interpretation by Association. The Association shall have the right to construe and interpret the provisions of this Declaration, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all persons or property benefited or bound by the provisions hereof.

11.11 No Waiver. The failure of any party entitled to enforce any of these Restrictions herein contained shall in no event be considered a waiver of the right to do so thereafter, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent thereto; provided, however, that approval of plans pursuant to Article III shall be binding on any and all parties as a conclusive determination that such plans are in conformity with these Restrictions.

IN WITNESS WHEREOF, this Declaration of Protective Covenants of Baneberry Lake Subdivision has been executed by The Harbert-Equitable Joint Venture, an Alabama general partnership, effective the 19<sup>th</sup> day of July, 1989.

ATTEST:

By: Georgette H. Hooten

Its:

ATTEST:

By: Ernestine H. Hooten

Its:

THE HARBERT-EQUITABLE JOINT VENTURE,  
an Alabama General Partnership

By: THE EQUITABLE LIFE ASSURANCE SOCIETY  
OF THE UNITED STATES,  
Its General Partner

By: Robert E. Hooten

Its: Robert E. Hooten  
Investment Co.

By: HARBERT LAND CORPORATION,  
Its General Partner

By: John Hooten

Its:



STATE OF Georgia  
COUNTY OF Fulton

I, Jessie L. Medley, a notary public in and for said county in said state, hereby certify that Robert E. Thraum, whose name as Investment Officer of The Equitable Life Assurance Society of the United States, a corporation, as general partner 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, as general partner of said partnership.

Given under my hand and official seal this 16th day of July, 1989.

Jessie L. Medley  
Notary Public

Notary Public, DeKalb County, Georgia  
My Commission Expires July 21, 1991

[ Notarial Seal ]

My Commission Expires: July 21, 1991

STATE OF ALABAMA

COUNTY OF SHELBY

I, Cada Rene Hilgner, a notary public in and for said county in said state, hereby certify that James C. Ren, whose name as Vice President of Harbert Land Corporation, a corporation, as general partner 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 such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, as general partner of said partnership.

Given under my hand and official seal this 19th day of July, 1989.

Cada Rene Hilgner  
Notary Public

My Commission Expires: 10-8-89

[ Notarial Seal ]

THIS INSTRUMENT PREPARED BY:  
Randolph H. Lanier  
Balch & Bingham  
Post Office Box 306  
Birmingham, Alabama 35201

EXHIBIT "A"

BANEERRY LAKE SUBDIVISION PROPERTY

PARCEL 1

NE 1/4 of SE 1/4 of Section 35, Township 19 South, Range 3 West,  
Shelby County Alabama

BOOK 246 PAGE 906

89 JUL 19 PM 2:16

JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$4500
Index Fee	300
TOTAL	4800

PARCEL 2

Part of the S 1/2 of NE 1/4 of Section 35, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows: From the Southwest corner of said SW 1/4 of NE 1/4 of Section 35, run in a Northerly direction along the West line of said SW 1/4 of NE 1/4 for a distance of 720.0 feet to an existing iron pin, being the point of beginning; thence turn an angle to the right of 180 degrees and run in a Southerly direction for a distance of 720.0 feet to an existing iron pin, being the Southwest corner of said 1/4-1/4 Section; thence turn an angle to the left of 89 degrees 21 minutes 43 seconds and run in an Easterly direction along the South line of said SW 1/4 of NE 1/4 for a distance of 1,322.14 feet to an existing iron pin; thence turn an angle to the right of 00 degrees 08 minutes 24 seconds and run in an Easterly direction along the South line of SE 1/4 of NE 1/4 of said Section 35 for a distance of 1,322.98 feet to an existing iron pin; thence turn an angle to the left of 90 degrees 46 minutes and run in a Northerly direction along the East line of said SE 1/4 of NE 1/4 for a distance of 1,076.48 feet to an existing iron pin, being the Southeast corner of Lot 10, Chase Park Estates, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 11, Page 39; thence turn an angle to the left of 89 degrees 23 minutes and run in a Westerly direction along the South line of said Chase Park Estates Subdivision for a distance of 1,976.96 feet to the Southwest corner of Lot 4 of said Chase Park Estates; thence turn an angle to the right of 89 degrees 21 minutes 01 second and run in a Northerly direction along the West line of said Lot 4 for a distance of 61.41 feet to an existing iron pin; thence turn an angle to the left of 121 degrees 18 minutes 48 seconds and run in a South-westerly direction for a distance of 782.38 feet, more or less, to the point of beginning.