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STATE OF ALABAMA)
 :
SHELBY COUNTY)

CHANGE-OF-USE AGREEMENT

THIS CHANGE-OF-USE AGREEMENT is made and entered into by and among **THE HARBERT-EQUITABLE JOINT VENTURE** (the "Joint Venture"), the **RIVERCHASE ARCHITECTURAL COMMITTEE**, and **H & V PROPERTIES, LLC** (the "Purchaser").

WITNESSETH:

WHEREAS, the Joint Venture conveyed to Parkway Partners that certain parcel of land in Shelby County, Alabama (the "Property") more particularly described in that certain statutory warranty deed recorded in Book 90, Page 785 in the office of the Judge of Probate of Shelby County, Alabama (the "Deed"); and

WHEREAS, the Joint Venture filed a Declaration of Protective Covenants, Agreement, Easements, Charges and Liens for Riverchase (Business), recorded in Miscellaneous Book 13, Page 50 in the Office of the Judge of Probate of Shelby County, Alabama, as amended by Amendment No. 1 recorded in Miscellaneous Book 15, Page 189, as further amended by Amendment No. 2 recorded in Miscellaneous Book 19, Page 633 in the Office of the Judge of Probate of Shelby County, Alabama (herein called the "Riverchase Business Covenants"); and

WHEREAS, in the Deed the Joint Venture subjected the Property to the Riverchase Business Covenants and the Joint Venture restricted the use of the Property to a multi-story hotel/restaurant or a multi-story office development; and

WHEREAS, the Purchaser is acquiring a portion of the Property to be known as Lot 2-A ("Lot 2-A") according to Resurvey No. 1 of Hunter & Associates Addition to Riverchase as recorded in Map Book 27, Page 141, in the Office of the Judge of Probate of Shelby County, Alabama; and

WHEREAS, the Purchaser has requested a change in use for Lot 2-A to a single-story restaurant; and

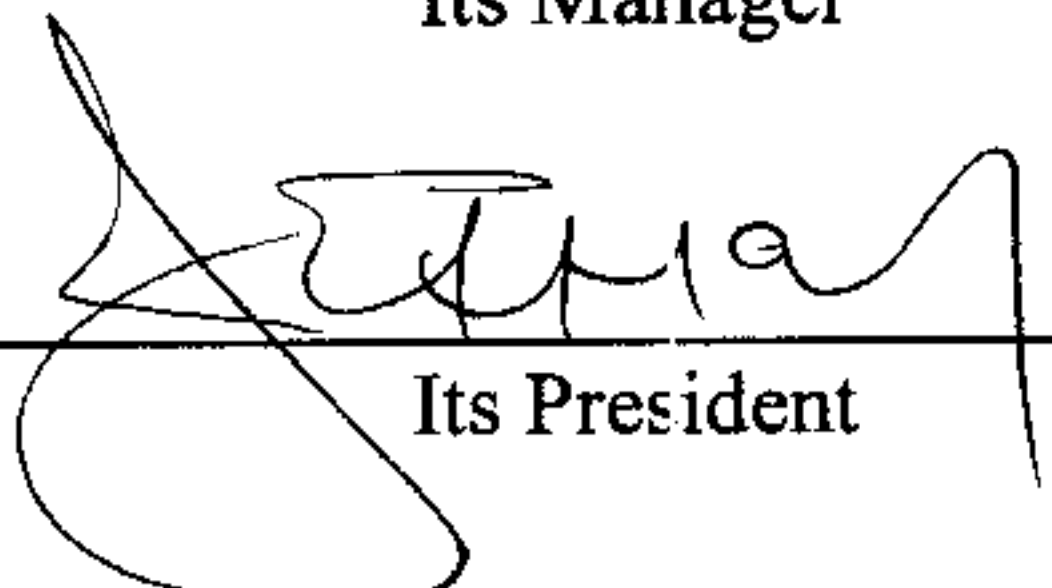
WHEREAS, in accordance with the Riverchase Business Covenants, the Riverchase Architectural Committee must approve a change in use of the Property or any portion of the Property.

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 authorize and consent to a change in use for Lot 2-A to a single-story restaurant.

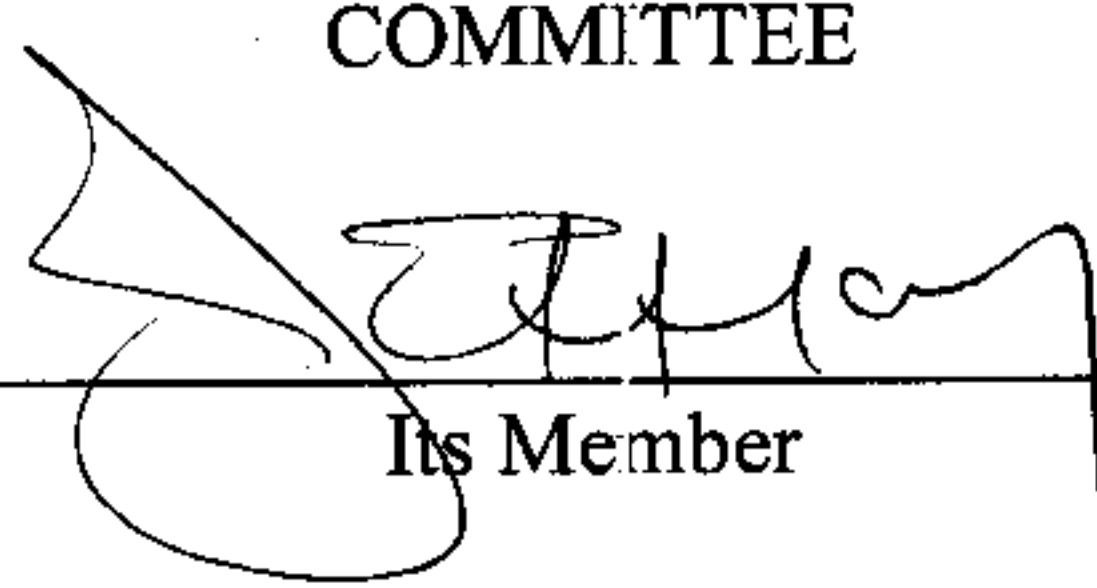
7th IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
day of February, 2001.

THE HARBERT-EQUITABLE JOINT VENTURE

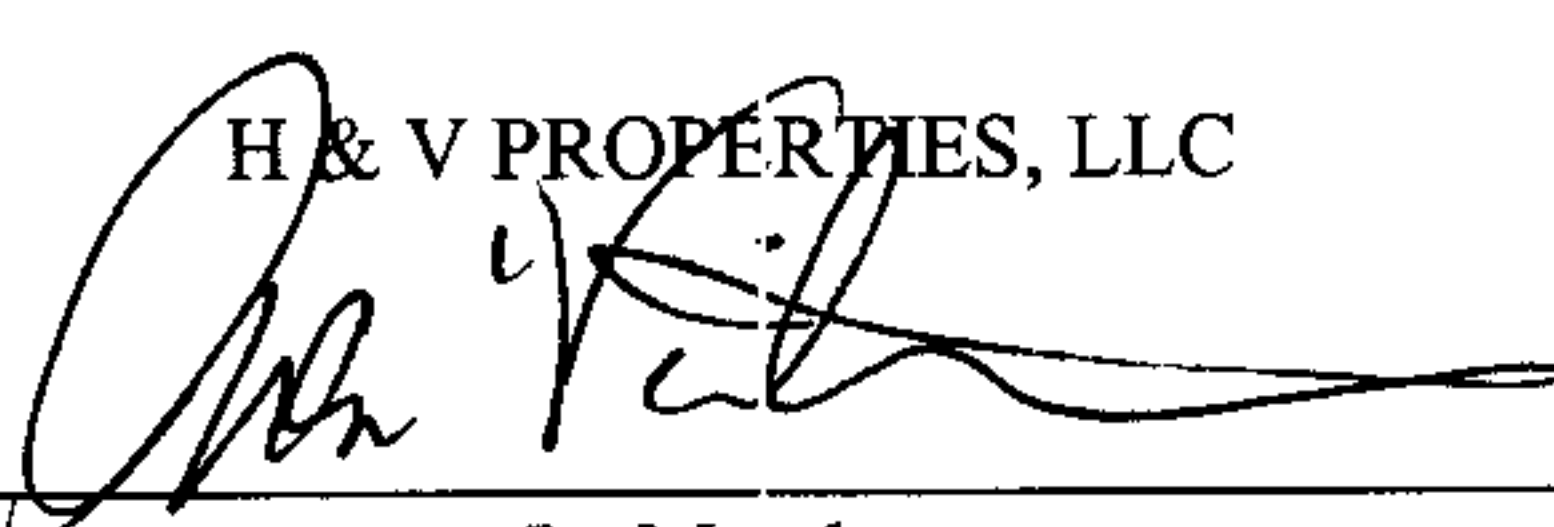
By: McKay Management Corporation
Its Manager

By: 
Its President

RIVERCHASE ARCHITECTURAL
COMMITTEE

By: 
Its Member

H & V PROPERTIES, LLC

By: 
Its Member

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Joseph E. McKay, whose name as President of McKAY MANAGEMENT CORPORATION, as Manager of THE HARBERT-EQUITABLE JOINT VENTURE, 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 2nd day of February, 2001.

Jada Renee Hilgen
Notary Public

[NOTARIAL SEAL]

My commission expires: 11-8-2003

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Joseph E. McKay, whose name as Member of the RIVERCHASE ARCHITECTURAL COMMITTEE, 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 chairman and with full authority, executed the same voluntarily for and as the act of said committee.

Given under my hand and official seal this 15th day of February, 2001.

Linda Anne Murphy Black
Notary Public

[NOTARIAL SEAL]

My commission expires: 3/10/2004

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Owen Vickers, whose name as a Member of H & V PROPERTIES, LLC, an Alabama limited liability company, 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 Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 13th day of February, 2001.

Meade Whitaker, Jr.
Notary Public

[NOTARIAL SEAL]

My commission expires: 3/26/03

Prepared by:

Meade Whitaker, Jr.
2001 Park Place, Suite 1400
Birmingham, Alabama 35203

Inst # 2001-05277

02/14/2001-05277
03:11 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
004 MMB 23.00