

307

AMENDMENT TO AGREEMENT

THIS AGREEMENT made and entered into this 20th day of December, 1991, by and among THE HARBERT-EQUITABLE JOINT VENTURE, an Alabama general partnership organized under Joint Venture Agreement dated January 30, 1974 and composed of Harbert Properties Corporation and The Equitable Life Assurance Society of the United States, a corporation (hereinafter referred to as "Venture"), BLUE CROSS AND BLUE SHIELD OF ALABAMA, a non-profit corporation organized under the laws of Alabama (hereinafter referred to as "Blue Cross"), BAXTER HEALTHCARE CORPORATION (hereinafter referred to as "Baxter") and BUD'S BEST COOKIES INC., an Alabama corporation organized under the laws of the State of Alabama (hereinafter referred to as "Purchaser"), its successors and assigns.

WITNESSETH:

WHEREAS, Venture and Blue Cross entered into that certain Agreement dated April 26, 1977 and recorded in Real Volume 1437, page 627 in the Probate Office of Jefferson County, Alabama and in Book 19, page 690 in the Probate Office of Shelby County, Alabama (the "Agreement"), specifying certain properties located within the area known as Riverchase as being "Commercial Properties" and imposing certain use restrictions on such properties; and

WHEREAS, Baxter is the owner of that certain parcel of real property located in Tract III as described in the Agreement, such parcel of real property being more particularly described on Exhibit A attached hereto (the "Property"); and

WHEREAS, Baxter desires to sell to Purchaser, and Purchaser is willing to purchase from Baxter, the Property, provided Venture and Baxter can obtain from Blue Cross an amendment to said Agreement modifying those uses set forth in Paragraph 1.3 of said Agreement which apply to property located in Tract III and as prescribed in Sections C-P and other applicable sections ~~Preferred Commercial District as set forth on page 20~~ of the Code of Zoning Regulation of Jefferson County, Alabama in effect on September 28, 1976 (the "Code"), said Code being attached to the Agreement as Exhibit "D", so that the Property may also be used for a bakery for cookies; and

WHEREAS, pursuant to Paragraph 1 of said Agreement, the real property located in those listed in Paragraph 1.3 Tract III shall not be reclassified to a designation other than ~~Preferred Commercial District~~ without the written consent of Blue Cross; and

WHEREAS, Blue Cross is willing to amend said Agreement to provide for, in addition to those uses prescribed in Sections C-P, ~~Preferred Commercial District as set forth on page 20~~ 9.R-T, 10.R-4, 14.R-7, and 21.I-2 of the Code, the further use of said Property for a bakery for cookies.

NOW, THEREFORE, for and in consideration of \$10.00 and other good and valuable consideration in hand paid to Blue Cross, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. Said Agreement is hereby amended by adding to Paragraph 1.3 of the Agreement at the end thereof the following new paragraph:

In addition to the uses described hereinabove, the property described on Exhibit "A" to this Amendment ("Property"), may also be used for a bakery for cookies subject to the following restrictions:

1. Purchaser agrees that all loading or unloading of trucks on the Property shall be in those areas designated in each building as truck loading areas which shall be at the rear of each building and the parking areas in the fronts of each building shall be restricted from truck loading or unloading except for moving in or out of a space and deliveries that can be made by hand truck or hand such as small parcels, letters, etc.

2. In the event Purchaser shall alter the design of the existing building on the Property, such alterations will possess aesthetic and environmental characteristics in keeping with the overall development plan in the area.

B. In the event Purchaser purchases said Property from Baxter, Purchaser shall have the right to sell, transfer or assign its right, title and interest in said Property at any time and from time to time subject to the terms and conditions of this agreement.

C. In the event Purchaser does not purchase said Property from Baxter, this agreement shall be null and void and of no further force and effect.

D. Except as hereinabove expressly modified and amended, said Agreement shall remain in full force and effect in accordance with its terms.

E. Purchaser joins herein to express its consent to this amendment.

F. Upon completion of the purchase by Purchaser, this agreement shall be filed in the Office of the Judge of Probate of Shelby County, Alabama.

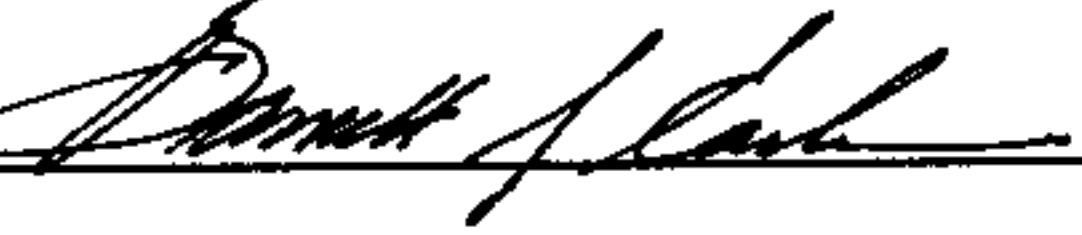
IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed under proper authority on the date first above set forth.

CORPORATION,


THE HARBERT-EQUITABLE JOINT VENTURE

By: HARBERT PROPERTIES

Its Managing General Partner

By 
Its PRESIDENT

By: THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES

By 
Its Investment Officer

BLUE CROSS AND BLUE SHIELD OF ALABAMA

By 
Its President

BOOK 381 PAGE 468

BAXTER HEALTHCARE CORPORATION

By Robert H. Pease
Its Director Corporate Real Estate

BUD'S BEST COOKIES INC.

By Bud Cason
Bud Cason
President

The Industrial Development Board of the City of Hoover (the "IDB") hereby joins in the execution of this Amendment by virtue of its status as the purchaser of the fee simple estate in the Property. The defined term "Purchaser" used in this Amendment shall include the IDB as well as Bud's Best Cookies, Inc.

THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF HOOVER

By: David T. Burton
Its: Vice-Chairman

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Barnett J. Carles, whose name as President of HARBERT PROPERTIES CORPORATION, a corporation, as Managing 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 the said 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 and seal, this 5th day of December, 1991.

[NOTARIAL SEAL]

Jada B. Hilgen
Notary Public
My Commission Expires: 12-4-92

STATE OF GEORGIA)
 :
FULTON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Mr. Robert E. Shown, 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, 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 said 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 The Harbert-Equitable Joint Venture.

GIVEN under my hand and seal, this 27th day of November, 1991.

[NOTARIAL SEAL]

Lisa Ann Howe
Notary Public

My Commission Expires: 12-1-92

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that E. Gene Thrasher, whose name as President of BLUE CROSS AND BLUE SHIELD OF ALABAMA, a non-profit 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 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 seal, this 15th day of November, 1991.

[NOTARIAL SEAL]

Kathy S. Crew
Notary Public

My Commission Expires: 9/27/93

STATE OF Illinois)
Jasper COUNTY)

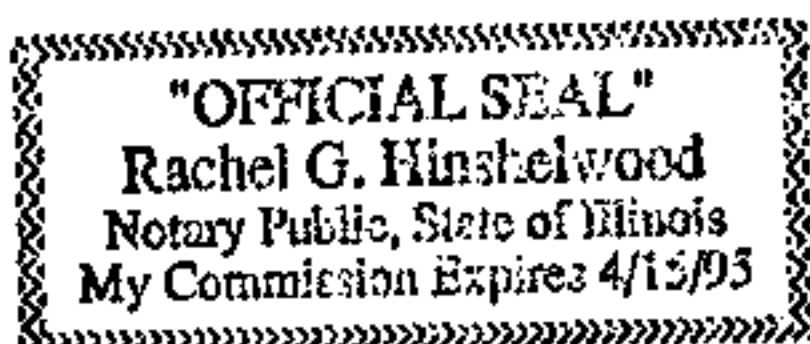
I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Robert H. Lewis Jr., whose name as President of BAXTER HEALTHCARE CORPORATION, a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the 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 seal, this 20th day of December, 1991.

[NOTARIAL SEAL]

Rachel G. Hinshelwood
Notary Public

My Commission Expires: 4/15/95



STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Bud Cason, whose name as President of BUD'S BEST COOKIES 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 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 seal, this 3rd day of January, 1991.

[NOTARIAL SEAL]

Kathleen J. Collins
Notary Public

My Commission Expires: 3/24/94

BOOK 381 PAGE 472

STATE OF ALABAMA

Jefferson
SHELBY COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that San T. Burton, whose name as ~~Chairman~~ Chairman of the Board of Directors of The Industrial Development Board of the City of Hoover, a public 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 this the 3rd day of January, 1992.

Patricia H. Henry
Notary Public

[NOTARIAL SEAL]

My commission expires: My Commission Expires October 28, 1992

EXHIBIT A

A tract of land situated in the NE 1/4 of the SE 1/4, Section 19, and the NW 1/4 of the SW 1/4, Section 20, all in Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

From the NE corner of said NE 1/4 of the SE 1/4, run in a southerly direction along the east line of said 1/4-1/4 section for a distance of 436.37 feet to the point of beginning; thence turn an angle to the right of 126 degrees 40 minutes 55 seconds and run in a northwesterly direction for a distance of 62.42 feet; thence turn an angle to the left of 57 degrees 59 minutes 05 seconds and run in a southwesterly direction for a distance of 42.46 feet; thence turn an angle to the right of 4 degrees 20 minutes 41 seconds and run in a southwesterly direction for a distance of 52.10 feet; thence turn an angle to the left of 6 degrees 46 minutes 41 seconds and run in a southwesterly direction for a distance of 165.35 feet; thence turn an angle to the right of 19 degrees 38 minutes and run in a westerly direction for a distance of 194.85 feet; thence turn an angle to the left of 14 degrees 32 minutes 45 seconds and run in a southwesterly direction for a distance of 131.13 feet; thence turn an angle to the left of 20 degrees 13 minutes and run in a southwesterly direction for a distance of 134.15 feet; thence turn an angle to the left of 73 degrees 01 minutes and run in a southeasterly direction for a distance of 25.76 feet; thence turn an angle to the right of 90 degrees and run in a southwesterly direction for a distance of 53.00 feet to a point on the curved east right-of-way line of Parkway Office Circle, said curved right-of-way having the following characteristics: Radius of 370.00 feet, a central angle of 7 degrees 40 minutes 54 seconds and being concave in a southwesterly direction, thence turn an angle to the left and run along the arc of said curve for a distance of 49.60 feet (chord measures 49.57 feet and chord line is obtained by turning a left interior angle of 99 degrees 10 minutes 48 seconds) to the end of said curve, thence turn an angle to the right and run along a line tangent to end of said curve which is also said east right-of-way line and run in a southwesterly direction for a distance of 161.86 feet to a point of curve, said curve being concave in a northeasterly direction and having a radius of 400.00 feet and a central angle of 22 degrees 26 minutes; thence turn an angle to the left and run along the arc of said curve (which is also the east right-of-way line of said road) for a distance of 136.61 feet to the end of said curve; thence turn an angle to the left and run along a line tangent to the end of said curve for a distance of 77.85 feet; thence turn an angle to the left of 68 degrees 25 minutes 35 seconds and run in a northeasterly direction for a distance of 957.73 feet to a point on the west right-of-way line of Interstate Highway #65; thence turn an angle of 74 degrees 45 minutes 55 seconds to the left and run along said west right-of-way line for a distance of 97.04 feet; thence turn an angle to the right of 9 degrees 59 minutes 25 seconds and run in a northeasterly direction for a distance of 184.41 feet along said west right-of-way line; thence turn an angle to the left of 19 degrees 51 minutes 03 seconds and run in a northwesterly direction along said west right-of-way line for a distance of 247.00 feet; thence turn an angle to the left of 97 degrees 09 minutes 02 seconds and run in a southwesterly direction for a distance of 154.84 feet; thence turn an angle to the left of 29 degrees 49 minutes 50 seconds and run in a southwesterly direction for a distance of 66.34 feet; thence turn an angle to the right of 37 degrees 31 minutes 55 seconds and run in a westerly direction for a distance of 100.00 feet; thence turn an angle to the right of 51 degrees 15 minutes 55 seconds and run in a northwesterly direction for a distance of 87.52 feet to the point of beginning. Situated in Shelby County, Alabama.

BOOK 381 PAGE 474

W48501.1

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

92 JAN -7 AM 9:00

JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax	\$	
3. Recording Fee	\$	25.00
4. Indexing Fee	\$	2.00
5. No Tax Fee	\$	
6. Certified Fee	\$	1.00
Total	\$	30.00

