

**CHANGE-OF-USE AGREEMENT**

Birmingham, Alabama November 19, 1991

This Agreement is made and entered into by and among The Harbert-Equitable Joint Venture, the Riverchase Architectural Committee, and Baxter's Healthcare Corporation.

**WITNESSETH:**

WHEREAS, The Harbert-Equitable Joint Venture, (the "Joint Venture") conveyed that Real Estate described in Exhibit "A" hereto (the "Property") to American Hospital Supply Corp. on November 25, 1980, by statutory warranty deed recorded in Book 330, Page 50 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 offices of the Judge of Probate of Shelby County, Alabama, and as amended by Amendment No. 2, recorded in Miscellaneous Book 19, Page 633, in the offices 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

WHEREAS, the Joint Venture subjected the Property to the Riverchase Business Covenants and the Joint Venture restricted the use of the Property to a office and warehouse with a density not to exceed 60 percent (60%), as described in subparagraph 5 and 6 of the Deed (the "Deed Restrictions"); and

WHEREAS, Baxter's Healthcare Corporation ("Baxter") has acquired all of the interest of American Hospital Supply in the Property, and is now the owner of said Property; and

WHEREAS, Baxter desires a change in use approved for the Property; and

WHEREAS, the Grantor of the Deed, the Joint Venture, or its successors or assigns, must approve a change in the Deed Restrictions; and

WHEREAS, in accordance with the Riverchase Business Covenants, the Riverchase Architectural Committee must approve a change in use 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 agree to the following:

1. Paragraph 6 of the aforesaid Deed recorded in Book 330, page 50, Shelby County, Alabama, is hereby deleted and the following is inserted in lieu thereof:  
  
"6. The Property shall be restricted to use as a bakery (for the purpose of making cookies) with a density not to exceed 60% as defined in the Riverchase Architectural Committee Development Criteria for Planned Industrial (PI) District dated October 24, 1990 unless a change in use is authorized pursuant to the Riverchase Business covenants, such restrictions to be effective for the same period of time as the Riverchase Business Covenants."
2. The continued use of the property as a bakery is subject to maintaining equipment described in Exhibit "A" in good working order and minimizing any aroma emanating

*Calhoun Title*

from the building.

3. Except as modified herein, all other provisions of the Deed shall remain in full force and effect.

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  
DATE January 31, 1974

WITNESS:

*Monty Beys*

BY: HARBERT PROPERTIES CORPORATION  
AS MANAGING VENTURER

By: *Barnett J. Earles*  
Its PRESIDENT

WITNESS:

*Jada Helge*

BY: RIVERCHASE ARCHITECTURAL  
COMMITTEE

By: *[Signature]*  
Its member

WITNESS:

*Robert H. Pease*

BY: BAXTER HEALTHCARE CORPORATION

By: *Daniel O. Wilder*  
Its Vice President,  
Corporate Alliances

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, DEBORAH A. HOPKINS, a Notary Public in and for said County, in said State hereby certify that BARNETT J. EARLES, whose name as PRESIDENT of Harbert Properties Corporation, a corporation, as General Partner of The Harbert-Equitable Joint Venture, under Joint Venture Agreement dated January 30, 1974, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, 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 official seal, this the 4TH day of DECEMBER, 1991.

*Deborah A. Hopkins*  
Notary Public

My Commission expires: 5/31/95

STATE OF Alabama )  
COUNTY OF Shelby )

I, Susan J. Reeves, 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 conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such member and with full authority, executed the same voluntarily for and as the act of said member of the Riverchase Architectural Committee.

Given under my hand and official seal, this the 5<sup>th</sup> day of December, 1991.

Susan J. Reeves  
Notary Public

My Commission expires:

MY COMMISSION EXPIRES JULY 18, 1994

STATE OF Illinois )  
COUNTY OF Lake )

I, Rachel G. Hinchelwood, a Notary Public in and for said County, in said State hereby certify that Daniel D. Wilda, whose name as Vice President, Corporate Alliances of Baxter Healthcare Corporation is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such official and with full authority, executed the same voluntarily for and as the act of said corporation as Vice President of Corporate Alliances. Given under my hand and official seal, this the 20<sup>th</sup> day of November, 1991.

Rachel G. Hinchelwood  
Notary Public

My Commission expires: 4/15/95

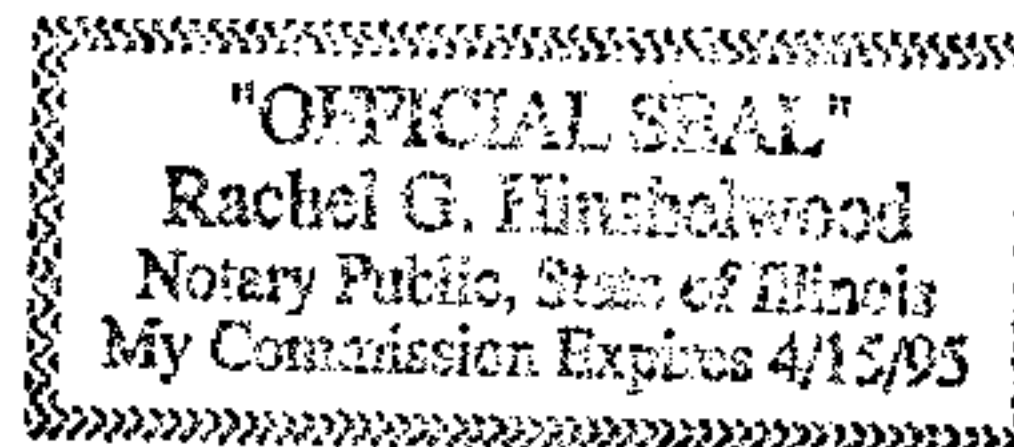






Exhibit "A"

APV Baker Inc.

Proposal No.	20987-3
Date	Sept. 27, 1991
Page No.	2 of 10

**PROPOSAL**

TO:  Cason Cookie Company 3308 East Briarcliff Road Birmingham, AL 35223	SHIP TO:  Same
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Gentlemen:  
APV Baker Inc., hereinafter called the Seller, proposes to furnish the equipment listed below to the addressee above, hereinafter called the Buyer.

Oven Equipment:      LINE<sup>1</sup>

- One (1) - 48" wide x 100' long Recirculating Heat Type Band Oven with two (2) horizontal baking zones. Each zone is equipped with a natural gas fired burner system and automatic solid state modulating temperature controls. Included with the oven are: two (2) combination cleanout/inspection doors, (one per baking zone), powered spiral brush band cleaner, control panel enclosure and electrical components, (Aluminum outer case.) with PLC for temperature control and first fault annunciator.
  
- One (1) - Factory prewiring of one (1) Electrical Control Enclosure. Includes forming and cooling enclosure conveyors.
  
- One (1) - Bake oven quality carbon steel Baking Band; .048" thick x 48" wide x 320' long.
  
- One (1) - 48" wide Band Oven Drive and Pneumatic Takeup Idler System with 20' long infeed extension,

Quote effective for 30 days from date of proposal.  
F. O. B. GRAND RAPIDS, MICHIGAN; SELLERS PLANT PAYABLE IN U.S. FUNDS

(Continued)

APV Baker Inc.

By Gerald L. Larrison  
Sales Representative

General Office:  
3200 Fruit Ridge, N.W.  
Grand Rapids, Michigan 49504



APV Baker Inc.

Proposal No.
20987-3
Date
Sept. 27, 1991
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## PROPOSAL

TO:

Cason Cookie Company  
3308 East Briarcliff Road  
Birmingham, AL 35223

SHIP TO:

Same

Gentlemen:

APV Baker Inc., hereinafter called the Seller, proposes to furnish the equipment listed below to the addressee above, hereinafter called the Buyer.

25' long discharge extension, and stationary take-off knife.

One (1) - 48" wide Adjustable Take-off Knife Attachment.

One (1) - 48" wide Adjustable Flat Wire Mesh Take-Off Conveyor.

Subtotal

### Cooling Conveyor:

One (1) - 48" wide x 90° Turn, Belt Type, includes control.

One (1) - 48" wide x 100' long Cotton Belt Cooling Conveyor, includes control.

One (1) - Belt and Mesh Tracker (one end only).

One (1) - 48" wide x 30' long Cotton Belt Cooling Conveyor including controls.

Subtotal

DELIVERY: 5-6 MONTHS

Quote effective for 30 days from date of proposal.

F. O. B. GRAND RAPIDS, MICHIGAN; SELLERS PLANT PAYABLE IN U.S. FUNDS

APV Baker Inc.

By

*Gerald L. Larson*  
Sales Representative

General Office:  
3200 Fruit Ridge, N.W.  
Grand Rapids, Michigan 49504

**APV**

APV Baker Inc.

Proposal No.

20987-3

Date

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## DESCRIPTION

### RECIRCULATING AIR OVEN

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**Heating System:** Single fan and burner per zone, top mounted. Combustion chamber of 10 gauge sheet steel. Burner output of 850,000 or 1,500,000 btu's/hour. "Maxon" combustion fan (part of burner). "New York Blower" recirculating and exhaust fans. All fans driven by "Reliance" standard efficiency T.E.F.C. motors. All gas piping trains designed to meet "Factory Mutual" and "NFPA" insurance specifications.

**Inner Case** 9'-6" welded sections of 16 gauge aluminized sheet steel with structural steel stiffeners. Cast iron skids on 5' centers for band, Herringbone grid for mesh. 42" belt height. 3" product clearance at "Curtains". Insulated with mineral wool packed at 5 lb/cu. ft. (12" thick).

**Base:** Structural steel channel, angles and tubing painted black. Band/Mesh return rollers on 10' centers.

**Outer Case:** Formed polished panels .062" thick, supported by framework of "Cor-Ten" structural steel.

**Combination Cleanout/ Inspection Door:** 18" x 24" door with "Pyrex" viewing glass and internal light. One per zone on control side of oven.

**Electrical:** Main control enclosure is a NEMA 12 mild steel painted (Bakery White) free standing unit, two to five doors (depending on oven size) with vent and fan.

Operator controls are mounted on main enclosure. Control voltage 120 vac. Master disconnect with circuit breaker. E-Stops - five (5) - one on main enclosure and one on each side of drive and idler.



**APV**

Exhibit "A"

APV Baker Inc.

Proposal No.

20975-3

Date

Sept. 27, 1991

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**PROPOSAL**

TO:

Cason Cookie Company  
3308 East Briarcliff Road  
Birmingham, AL 35223

SHIP TO:

Same

Gentlemen:

APV Baker Inc., hereinafter called the Seller, proposes to furnish the equipment listed below to the addressee above, hereinafter called the Buyer.

Three (3) - Trough Tubs - stainless steel construction  
with base channels for dump station.

Oven Equipment:                      LING # 2                      Subtotal

One (1) - 48" wide x 80' long Recirculating Heat Type  
Band Oven with two (2) horizontal baking  
zones. Each zone is equipped with a natural  
gas fired burner system and automatic solid  
state modulating temperature controls.  
Included with the oven are: two (2) combi-  
nation cleanout/inspection doors, (one per  
baking zone), powered spiral brush band  
cleaner, control panel enclosure and  
electrical components, (Aluminum outer  
case.) with PLC for temperture control and  
first fault annunciator system.

One (1) - Factory prewiring of one (1) Electrical  
Control Enclosure. Includes forming and  
cooling enclosure conveyors.

One (1) - Bake oven quality carbon steel Baking Band;  
.048" thick x 48" wide x 280' long -  
perforated.

Quote effective for 30 days from date of proposal.

F. O. B. GRAND RAPIDS, MICHIGAN; SELLERS PLANT PAYABLE IN U.S. FUNDS

(Continued)

APV Baker Inc.

By

*Gerald L. Linsen*

Sales Representative

General Office:  
3200 Fruit Ridge, N.W.  
Grand Rapids, Michigan 49504

Form - 1001



APV Baker Inc.

Proposal No.

20975-3

Date

Sept. 27, 1991

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## PROPOSAL

TO:

Cason Cookie Company  
3308 East Briarcliff Road  
Birmingham, AL 35223

SHIP TO:

Same

Gentlemen:

APV Baker Inc., hereinafter called the Seller, proposes to furnish the equipment listed below to the addressee above, hereinafter called the Buyer.

One (1) - 48" wide Band Oven Drive and Pneumatic Takeup Idler System with 20' long infeed extension, 25' long discharge extension, and stationary take-off knife.

One (1) - 48" wide Adjustable Take-off Knife Attachment

One (1) - 48" wide Adjustable Flat Wire Mesh Take-Off Conveyor.

Subtotal

Cooling Conveyor:

One (1) - 48" wide x 9' long Cooling Conveyor Mesh, prewired.

One (1) - 48" wide x 90° Turn Belt Type, prewired.

One (1) - 48" wide x 100' long Cotton Belt Cooling Conveyor, includes control rewiring.

One (1) - Belt and Mesh Tracker (one end only).

Quote effective for 30 days from date of proposal.

F. O. B. GRAND RAPIDS, MICHIGAN; SELLERS PLANT PAYABLE IN U.S. FUNDS

(Continued)

APV Baker Inc.

By

*Herald L. Larson*  
Sales Representative

General Office:  
3200 Fruit Ridge, N.W.  
Grand Rapids, Michigan 49504





APV Baker Inc.

Proposal No.

20975-3

Date

Sept. 27, 1991

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## PROPOSAL

TO:

Cason Cookie Company  
3308 East Briarcliff Road  
Birmingham, AL 35223

SHIP TO:

Same

Gentlemen:

APV Baker Inc., hereinafter called the Seller, proposes to furnish the equipment listed below to the addressee above, hereinafter called the Buyer.

Two (2) - 48" wide x 180<sup>0</sup> prewired Turn Belt Type.

One (1) - 48" wide x 25' long prewired Cotton Belt  
Cooling Conveyor.

Subtotal

DELIVERY: 5-6 MONTHS

Quote effective for 30 days from date of proposal.

F. O. B. GRAND RAPIDS, MICHIGAN; SELLERS PLANT PAYABLE IN U.S. FUNDS

APV Baker Inc.

By

*Herald L. L...*  
Sales Representative

General Office:  
3200 Fruit Ridge, N.W.  
Grand Rapids, Michigan 49504

Form - 1001

08/11/1992-16666  
INLET: 06  
SHELBY COUNTY JUDGE  
JUDGE E. E. GATE