

11-R-93

A RESOLUTION

Authorizing the City Manager to
Enter Into an Attorney Expense Sharing Agreement
Concerning the Possible Howard Street Barrier

WHEREAS, the City of Evanston has approved a Redevelopment Agreement with the Dayton Hudson Corporation, a Minnesota corporation, and the Howard Hartrey Limited Partnership Development Company for the redevelopment of the "Bell and Howell" property into a shopping center; and

WHEREAS, the shopping center property is located north of the boundary line between the City of Evanston and the City of Chicago; and

WHEREAS, the City of Chicago at the March 25, 1992 council meeting expressed consideration of the erection of a traffic barrier south of the center line of Howard Street from 100 feet east of Francisco Avenue to Kedzie Avenue, thereby affecting access to the shopping center.

WHEREAS, it is in the best interest of the City of Evanston that the development of the shopping center occur and that no Howard Street barrier be erected.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the Office of Corporation Counsel

shall undertake all appropriate legal action, including litigation, to prevent the erection of the Howard Street barrier.

SECTION 2: That the City Manager is hereby authorized and directed to execute the attorney fee allocation agreement which is in substantial conformity with the agreement marked as Exhibit A attached hereto and incorporated herein by reference. The City Manager is authorized to execute said agreement only after its execution by each of the other parties to the agreement.

SECTION 3: This Resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

Paul W. Barr
Mayor

ATTEST:
Hester A. Davis
City Clerk

Adopted: January 23, 1993

AGREEMENT

THIS AGREEMENT ("Agreement") is executed by and among DAYTON HUDSON CORPORATION, a Minnesota corporation ("Dayton Hudson"), NCC EVANSTON ASSOCIATES LIMITED PARTNERSHIP, a Michigan limited partnership ("NCC"), BELL & HOWELL COMPANY, a Delaware corporation ("Bell & Howell"), and the CITY OF EVANSTON, ILLINOIS, an Illinois home-rule unit and municipal corporation ("Evanston") (each of the foregoing entities being herein referred to as a "Party" and being collectively referred to as the "Parties"), as of the ____ day of _____, 19__.

W I T N E S E T H:

WHEREAS, Dayton Hudson and NCC contemplate the joint development of a shopping center on the north side of Howard Street west of Hartrey Avenue in Evanston, Illinois, upon property which is legally described on Exhibit A attached hereto (the "Shopping Center Property");

WHEREAS, the Shopping Center Property is currently owned by Bell & Howell; and

WHEREAS, the Shopping Center Property is located north of the boundary line between the City of Evanston and the City of Chicago; and

WHEREAS, pursuant to a certain ordinance proposed by Alderman Bernard Stone of the 50th Ward of the City of Chicago and enacted by the City of Chicago City Council at its March 25, 1992 meeting, consideration is being given toward the erection of a traffic barrier south of the center line of Howard Street from one hundred feet east of Francisco Avenue to Kedzie Avenue (a copy of the said ordinance is attached hereto as Exhibit B); and

WHEREAS, the Parties have determined that if the City of Chicago proceeds to erect a traffic barrier south of the center line of Howard Street (herein, a "Howard Street Barrier"), and if the Parties elect to institute litigation to prevent the erection of said traffic barrier, said Parties shall pay attorneys fees in connection therewith pursuant to the terms of this Agreement.

WHEREAS, it is in the best interests of the Parties and the public that the development of the Shopping Center Property occur and that no Howard Street Barrier be so erected; and

WHEREAS, the City Council of Evanston has instructed the Evanston City Attorney to take appropriate legal action, including litigation, to prevent the erection of a Howard Street Barrier; and

WHEREAS, the other Parties also desire to take appropriate legal action, including litigation, to prevent the erection of a Howard Street Barrier; and

WHEREAS, each of the Parties has determined that it would be in their mutual best interests to avoid excessive or duplicative legal fees in connection with any such legal action by agreeing to share the cost thereof.

NOW, THEREFORE, in consideration of the above premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. The above recitals are true and correct and are incorporated herein by this reference thereto.

2. It is hereby agreed that in the event that the City of Chicago commences the erection of a Howard Street Barrier, or the Commissioner of the Chicago Department of Transportation determines or announces that a Howard Street Barrier should or will be constructed, or the Chicago City Council passes an ordinance directing or requiring the erection of a Howard Street Barrier, then Evanston shall designate and retain an attorney or attorneys to represent the Parties in contesting the erection or proposed erection of the Howard Street Barrier, Evanston's designation of said attorney or attorneys shall be subject to the reasonable approval of the other Parties. The Parties covenant and agree that each Party shall be responsible for twenty-five percent (25%) of any and all attorneys' fees and expenses which may be so incurred in connection with litigation and/or other legal actions necessary to so contest the erection or proposed erection of a Howard Street Barrier.

3. The attorney or attorneys retained by Evanston under the provisions of Paragraph 2 of this Agreement shall be required to submit detailed monthly statements to each of the Parties, describing the legal services rendered on a daily basis, the hours spent by each attorney on a daily basis, the hourly rates of the attorneys, and a description of each expense incurred. Each of the other Parties shall pay to Evanston 25% of the amount of each such statement within thirty days of receipt of said statement. In the event that any of the Parties contests, in good faith, the amount of any of the said fees or expenses, then Evanston shall withhold payment of the amount so contested from the attorney or attorneys until agreement regarding the correct and appropriate amount is reached with said attorney or attorneys. If the said fees and expenses are reduced, the amount of said reduction will be credited to the Parties on future payments.

4. If all of the Parties so agree, then the attorney or attorneys retained under Paragraph 2 of this Agreement may be discharged at any time. If all of the Parties agree, the said

discharged attorney or attorneys may be replaced by an attorney or attorneys selected by Evanston, which replacement attorney or attorneys shall be subject to the reasonable approval of the other Parties.

5. Prior to incurring any attorneys' fees and expenses which are to be shared by the Parties pursuant to this Agreement, Evanston shall furnish the other Parties with an estimated budget of such fees and expenses, which budget shall be subject to the prior written approval of Dayton Hudson, Bell & Howell and NCC. In the event that either Dayton Hudson, Bell & Howell or NCC do not approve of such budget, then each of the Parties shall use their best efforts to obtain an agreed upon budget, and unless and until such budget is agreed upon, Evanston shall not retain an attorney or attorneys in accordance with Paragraph 2 of this Agreement. If the attorneys' fees and expenses so incurred or to be incurred exceed the amounts shown on the approved budget, payment thereof shall be made only upon the agreement of all of the Parties hereto. No party may unreasonably refuse to agree to pay reasonable attorney fees that exceed the approved budget.

6. Any compromise or settlement with the City of Chicago regarding the erection or proposed erection of a Howard Street Barrier must be agreed to by each of the Parties.

7. At any time, any of the Parties may retain, at its own expense, an attorney or attorneys to represent its individual interests with respect to the erection of proposed erection of a Howard Street Barrier, but such Party's obligation to pay attorneys' fees and expenses under this Agreement shall not be affected thereby.

8. The agreements set forth herein shall inure to the benefit of, and be binding upon, the Parties and their respective successors, assigns, heirs, executors, and estates, and shall survive for a period of twenty-one (21) years from and after the date Dayton Hudson and NCC acquire the Shopping Center Property. The obligations and responsibilities of the respective parties may not be delegated to any other person or entity without the express written consent of each of the other Parties hereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

DAYTON HUDSON CORPORATION, a
Minnesota corporation

By: _____
Its: _____

NCC EVANSTON ASSOCIATES LIMITED
PARTNERSHIP, a Michigan limited
partnership

By: NCC EVANSTON INC., a Michigan
corporation, general partner

By: _____
Its: _____

BELL & HOWELL COMPANY, a Delaware
corporation

By: _____
Its: _____

CITY OF EVANSTON, ILLINOIS

By: _____
Its: _____

The undersigned, in their individual capacities, hereby join in the execution of this Agreement for the purpose of being jointly and severally responsible, each as a primary obligator, for all of the obligations and liabilities of NCC Evanston Associates Limited Partnership set forth in this Agreement.

By: _____
Kenneth Raznick

By: _____
Robert Sosnick

By: _____
David Hermelin