

12-R-93

A RESOLUTION

Authorizing the City Manager to  
Enter Into the Reimbursement 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 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:

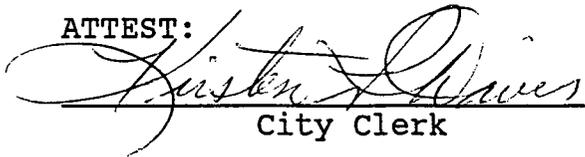
SECTION 1: That the City Manager is hereby

authorized and directed to execute the Reimbursement 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 appropriate representatives of the Bell and Howell Corporation.

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.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Adopted: January 23, 1993

## A G R E E M E N T

In the event the City of Chicago erects prior to December 1, 1996, a traffic barrier (hereinafter "wall") south of the center line of Howard Street, to impede access to and from the property to the North which will be developed pursuant to a redevelopment agreement with the City of Evanston, the City of Evanston will reimburse Bell & Howell one half of any liquidated damages paid by Bell & Howell to Dayton Hudson under the terms of the purchase/sale agreement with Dayton Hudson (marked as Exhibit A and incorporated herein by reference); such reimbursement shall not exceed two million dollars and shall be payable in equal annual installments over seven years. The first installment shall be payable 60 days after the City has received notice from Bell & Howell with a copy of receipt that Bell & Howell has made payment to Dayton Hudson and each subsequent payment shall be made on the succeeding anniversary of said payment.

Reimbursement shall be made only upon the occurrence of the following additional conditions.

1. The Dayton Hudson Corporation, pursuant to the terms of a redevelopment agreement with the City (marked as Exhibit B and incorporated herein by reference) opens the Target store described therein and the City shall have received a non-appealable decision on any lawsuit if filed that finally determines that the Wall may be built or if built, may remain and the City of Chicago erects prior to December 1, 1996, the "wall"

and (a) actual sales taxes paid by the Target store for the 12-month period commencing upon the opening or for any 12-month period subsequent to the erection of the wall, whichever is applicable, was 20% below Dayton Hudson's pro forma sales tax estimates as previously presented to the City on September 3, \_\_\_\_\_, 1992, or (b) the real estate property for retail use decreases in value at least 10% based on (i) the sale price in the Purchase/Sale Agreement between Dayton Hudson and Bell & Howell, adjusted for monthly changes in the Chicago, All Urban Consumers Price Index over January, 1992, and (ii) the average of two appraisals on the entire property (assuming the erection of the Wall) by licensed Illinois appraisers, one selected by Bell & Howell, the other selected by the City; provided however, if the two appraisals are more than 10% apart, the two appraisers shall select a third independent appraiser (or in the absence of the ability of the two appraisers to select a third appraiser, ~~the~~ third appraiser will be selected by judicial process) and the value determined by the third appraiser will be averaged with the value of any other appraisal which is within 10% and that average shall be the "real estate property value;" provided further, if none of the appraisals are within 10% of any other, the three appraisals will be averaged together and that average shall be the "real estate property value." OR

2. The Dayton Hudson Corporation does not open the Target store described in Exhibit B, the City of Evanston will pay Bell

& Howell the lesser of one-half of the amount payable by Bell & Howell to Dayton Hudson under its Purchase/Sale agreement and \$2.0 million; provided however, if the City undertakes legal action necessary and appropriate to enforce Dayton Hudson's obligations under the redevelopment agreement, (Exhibit B) and the final resolution of such enforcement results in a payment by Dayton Hudson or its representatives of a settlement or a non-appealable judicial decision, the City's obligation to reimburse Bell & Howell shall be limited to one half of said proceeds, after first deducting all legal costs and the City's interest expense on the bonds to be issued pursuant to the redevelopment agreement. In any event, such reimbursement shall not exceed the lesser of one half of the amount paid by Bell & Howell to Dayton Hudson or two million dollars. Such reimbursement shall be made 60 days after receipt by the City of the aforesaid payment from Dayton Hudson or its representative.

BELL & HOWELL COMPANY, a Delaware Corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF EVANSTON, ILLINOIS

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

and Seller may be directed by Purchaser to convey fee simple title to a portion of the Property to Purchaser and a portion of the Property, along with fee simple title to all improvements located on the entire Property, to HHLF, or related entity, by good, sufficient and recordable warranty deed subject only to the applicable Permitted Title Exceptions (as defined in the Agreement). In no event, however, shall execution and delivery of two deeds rather than one result in any additional cost or expense to Seller.

3. The Due Diligence Period (as defined in the Agreement) is extended to \_\_\_\_\_, 1993. Accordingly, the date "January 5, 1993" in Section 11.01 of the Agreement is hereby deleted and replaced with the date "\_\_\_\_\_ 1993".

4. The last sentence of Section 12.01 of the Agreement is hereby deleted in its entirety and the following is substituted therefor: "Such termination agreements shall provide for vacation of the Property no later than the date that is five (5) months following the date Purchaser deposits the additional \$4,000,000.00 pursuant to Section 12.04."

5. Section 12.02 of the Agreement is hereby deleted in its entirety and the following is substituted therefor: "If Seller fails to enter into such termination agreements with all of the Tenants on or before the date that is one (1) month following the date Purchaser deposits the additional \$4,000,000.00 pursuant to Section 12.04, Purchaser may, at its option, elect to terminate this Agreement by notice given to Seller at any time after said date, in which event the Deposit and all interest earned thereon shall forthwith be returned to Purchaser, and thereupon neither party shall have any further rights or obligations hereunder."

6. Section 12.04 of the Agreement is hereby deleted in its entirety and the following is substituted therefor: "Within \_\_\_\_\_ ( ) days after expiration of the Due Diligence Period and provided Purchaser has not elected to terminate this Agreement, Purchaser shall place an additional \$4,000,000.00, in cash or irrevocable and unconditional letter or letters of credit in form and issued by a bank or banks reasonably acceptable to Seller, in the strict joint order escrow as provided in Section 14.01."

7. Section 12.05 of the Agreement is hereby deleted in its entirety and the following is substituted therefor: "In the event any of the Tenants fail to vacate the Property on or before the date that is five (5) months following the date Purchaser deposits the additional \$4,000,000.00 pursuant to Section 12.04 (the "Required Vacation Date"), Seller shall be deemed to be in default under this Agreement, in which event Purchaser shall have its remedies as described in Section 18.02, including, without limitation, the right to terminate this Agreement, in which event Seller shall reimburse Purchaser for all costs and expenses incurred by Purchaser in connection with this Agreement and the Property; provided, however, the Required Vacation Date shall be extended for up to two (2) weeks in the event Tenants fail to vacate the Property for causes beyond the reasonable control of Seller; provided further, however, if after said two (2) week extension for causes beyond Seller's reasonable control the Tenants continue to fail to vacate the Property for up to an additional two (2) weeks for causes beyond the reasonable

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and Seller may be directed by Purchaser to convey fee simple title to a portion of the Property to Purchaser and a portion of the Property, along with fee simple title to all improvements located on the entire Property, to HHLF, or related entity by good, sufficient and recordable warranty deed subject only to the applicable Permitted Title Exceptions (as defined in the Agreement). In no event, however, shall execution and delivery of two deeds rather than one result in any additional cost or expense to Seller.

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of construction of the Howard Street Wall and each subsequent payment shall be made on the succeeding anniversaries of said first payment. The foregoing covenant of Seller shall survive the closing of the transaction contemplated hereby. Notwithstanding the foregoing, Seller's obligation to pay Purchaser any installment of the \$4,000,000.00 liquidation damages shall be suspended during any period that construction of the Howard Street Wall is halted as a result of a temporary restraining order, injunction or other judicial order and if after the Howard Street Wall is constructed Seller, Purchaser, HHP or the City of Evanston is successful in causing the Howard Street Wall to be removed, then Seller's obligation to pay Purchaser any subsequent installments of the \$4,000,000.00 liquidated damages shall terminate. At after such removal of the Howard Street Wall, construction of another Howard Street Wall is commenced within said five (5) year period following the Closing Date, then Seller's obligation to pay any remaining balance of the \$4,000,000.00 liquidated damages shall be reinstated. At Notwithstanding any suspension or termination of Seller's obligation to pay said installments of liquidated damages, Purchaser shall in no event be required to refund any previously paid installments, it being acknowledged by Seller that said payments are non-refundable.

**30.03 Letter of Credit.** To secure payment of the liquidated damages provided for under Section 30.02, Seller shall deliver to Purchaser a Letter of Credit (as hereinafter defined) in accordance with this Section 30.03.

(a) If construction of the Howard Street Wall is commenced and consequently Seller is obligated to pay Purchaser liquidated damages under Section 30.02, simultaneously with payment of the first \$1,000,000.00 installment, Seller shall deliver to Purchaser a Letter of Credit in the amount of \$3,000,000.00 as security for the full and faithful performance by Seller of its obligations under Section 30.02.

(b) If required under subsection (a) above, Seller shall deliver to Purchaser an unconditional and irrevocable letter of credit ("Letter of Credit") in the amount of \$3,000,000.00, in form and issued by a bank reasonably satisfactory to Purchaser, as security for the full and faithful performance by Seller of its obligations under Section 30.02. The first such Letter of Credit shall expire no earlier than the first anniversary of the first \$1,000,000.00 payment under Section 30.02 and all subsequent replacement Letters of Credit shall expire no earlier than twelve (12) months from the expiry date of the then outstanding and expiring Letter of Credit. Seller shall deliver replacement Letters of Credit to Purchaser no later than thirty (30) days prior to the expiry date of the then outstanding and expiring Letter of Credit. Failure by Seller to deliver any replacement Letter of Credit as required above shall entitle Purchaser to draw under the outstanding Letter of Credit and to retain the entire proceeds thereof for application as the security for Seller's obligation under Section 30.02. Each Letter of Credit shall be for the benefit of Purchaser and its successors and assigns and shall entitle Purchaser or its successors or assigns to draw from time to time under the Letter of Credit in

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of construction of the Howard Street Wall and each subsequent payment to be made on the succeeding anniversaries of said first payment. The foregoing covenant of Seller shall survive the closing of the transaction contemplated hereby. Notwithstanding the foregoing, Seller's obligation to pay Purchaser any installment of the \$4,000,000.00 liquidation damages shall be suspended during any period that construction of the Howard Street Wall is halted as a result of a temporary restraining order, injunction or other judicial order and if after the Howard Street Wall is constructed Seller, Purchaser, HHI or the City of Evanston is successful in causing the Howard Street Wall to be removed, then Seller's obligation to pay Purchaser any subsequent installments of the \$4,000,000.00 liquidated damages shall terminate. After such removal of the Howard Street Wall, construction of another Howard Street Wall is commenced within said five (5) year period following the Closing Date, then Seller's obligation to pay any remaining balance of the \$4,000,000.00 liquidated damages shall be reinstated. Notwithstanding any suspension or termination of Seller's obligation to pay said installments of liquidated damages, Purchaser shall in no event be required to refund any previously paid installments, it being acknowledged by Seller that said payments are non-refundable.

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