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Cook County Recorder 47.00



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PREPARED BY, RECORD  
AND RETURN TO:  
Mario Carballo, Esquire  
BURGER KING CORPORATION  
17777 Old Cutler Road  
Miami, Florida 33157

**DECLARATION OF COVENANTS, RESTRICTIONS AND  
EASEMENT AGREEMENT**

**KNOW ALL MEN BY THESE PRESENTS** that this Declaration of Covenants, Restrictions and Easement Agreement (the "Agreement") is made and entered into as of the 28th day of June, 2000, by and between **1471 N. WICKER PARK BLVD., LLC**, an Illinois limited liability company ("Developer"), whose address is 308 W. Erie, Suite 505, Chicago, Illinois 60610 and **BURGER KING CORPORATION**, a Florida corporation ("BKC"), whose address is 17777 Old Cutler Road, Miami, Florida 33157.

**PRELIMINARY STATEMENTS:**

- A. Developer is the owner of a certain parcel of real property legally described on Exhibit "A", attached hereto and made a part hereof (the "Adjacent Property") having acquired same from BKC contemporaneously herewith.
- B. BKC is the owner of a certain parcel of real property legally described on Exhibit "B", attached hereto and made a part hereof (the "BKC Parcel"), upon which is located Burger King® restaurant #1136.
- C. Developer and BKC are desirous of establishing certain easements in, to, over, under, across and through portions of the Adjacent Property for the benefit of the BKC Parcel and imposing certain covenants and restrictions in connection with Developer's development and use of the Adjacent Property, all as more particularly provided for herein.

**NOW, THEREFORE**, in consideration for the mutual covenants and agreements hereinafter set forth and the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration the sufficiency and receipt of which are hereby expressly acknowledged and confirmed, Developer hereby grants, covenants and agrees as follows:

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J.

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## 1. Grant of Easements.

1.1 Drive-Thru and Trash Enclosure Easement. Developer does hereby establish, create and grant a perpetual, non-exclusive easement in, to, over, under, across and through those portions of the Adjacent Property described as a 12' x 125' area across the northeast portion of Lots 36, 37, 38, 39 and 40 in Block 6 of in D.S. Lee's Addition to Chicago, as identified in the Site Plan attached hereto and made a part hereof as Exhibit "C" (the "Easement Area") as may, from time to time, be used for the construction, maintenance, repair and operation of a drive-thru service facility, trash and recycling enclosures for the Restaurant and other improvements for the use and benefit of BKC, its tenants, employees, agents, customers, guests, licensees, invitees, mortgagees, successors and assigns.

1.2 Access Easement. Developer does hereby establish, create and grant a perpetual, non-exclusive easement in, to, over, under, across and through the Easement Area as may, from time to time, be used for vehicular and pedestrian access to and from BKC's Parcel or to and from any public or private roadways, driveways, alleyways, walkways, streets or highways located adjacent to or near the vicinity of the Easement Area for the use and benefit of BKC, its tenants, employees, agents, customers, guests, licensees, invitees, mortgagees, successors and assigns, including, without limitation, for purposes of the drive-thru and operation and pickup of the trash enclosure.

## 1.3 Additional Rights and Easements.

1.3.1 Roadway, Street, etc. Any property within the Easement Area may, from time to time, be used as a roadway, street, driveway, entranceway or other accessways on the Easement Area for ingress and egress and passage of persons and motor vehicles on, over, across and through the Easement Area and to and from adjacent public streets, highways and alleyways, together with the right to eliminate such curbing and landscaping and replace same with paving as may reasonably be required to commit unobstructed traffic flow for both the drive thru operations and the trash enclosure. In this regard, Developer shall include, as part of the Easement Area, all curb cuts and driveway aprons necessary to provide vehicular and pedestrian access, ingress and egress between the Easement Area and Honore Street and between the Easement Area and the alleyway contiguous to the Easement Area. Developer reserves the right to provide access to and from the Adjacent Property through the Easement Area, provided that such access shall not impede or obstruct traffic flow or the operation of the trash enclosure.

1.3.2 Utilities and Drainage. Any property located within the Easement Area and the Adjacent Property may also, from time to time, be used for the installation, maintenance, repair and replacement of (i) public utilities (including water, sewer, electric, gas and telephone); or (ii) facilities (including ditches) to accommodate the drainage of surface water run-off to or from the BKC Parcel or Easement Area. It being understood and agreed to by Developer that BKC shall have perpetual, non-exclusive easement rights to so use such utility lines, and for access thereto over the Adjacent Property, to install, maintain, repair and replace same (without undertaking any obligation to do so), provided that BKC shall not exercise such rights in a way that materially interferes with Developer's use of the Adjacent Property (and Developer, promptly upon request, shall from time to time grant specific easements confirmatory of the

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foregoing) and Developer, by executing this Agreement, specifically ratifies, approves of and consents to the foregoing.

1.3.3 Reconfiguration of Easement Area. BKC reserves the right at any time and, from time to time, without the need for obtaining consent or approval from the Developer, to change, rearrange, alter or modify the improvements on the Easement Area or build upon or otherwise reduce the size of the Easement Area in its sole discretion. In addition to the foregoing, BKC specifically reserves the right, without the need for obtaining consent or approval from Developer, to replace, alter or add to any existing improvements located on the Easement Area or to build any new improvements on the Easement Area as it may from time to time desire, so long as the additions or replacements are constructed wholly within the Easement Area and BKC Parcel, subject to applicable governmental requirements, matters of record and the provisions contained herein.

1.4 Construction of Dumpster Enclosure. As part of its obligations hereunder, Developer agrees that it shall, at its sole cost and expense, reconstruct the dumpster enclosure in accordance with BKC's specifications and dimensions, as generally reflected in the Site Plan attached as Exhibit "C" to this Agreement. At a minimum, the new dumpster enclosure shall be accessible from both the Easement Area and the alleyway. Developer also agrees to repave the entire Easement Area in conjunction with the reconfiguration of the dumpster enclosure. Developer covenants to complete the work described in this paragraph 1.4 as soon as practicable.

1.5 Binding on Successors. The easements granted hereby shall be for the benefit of, but not restricted solely to BKC, its successors and assigns, and the BKC Parcel, and BKC may grant the benefit of such easements to the tenants and other occupants of the BKC Parcel for the duration of such occupancy, and to the customers, employees, agents and business invitees thereof, but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public. Such easement areas are reserved for said use for the term of this Agreement.

2. Term. The rights to the Easement Area granted by Developer under this Agreement are perpetual and shall only terminate upon written election thereof by BKC, or its authorized successors and assigns, upon which time all rights of BKC herein to use the Easement Area shall revert back to Developer, its successors and assigns.

3. Maintenance and Repair. BKC shall at all times maintain, repair and, when necessary, replace the pavement, curbing, and landscape areas within the Easement Area.

4. No Barrier. Developer hereby covenants with BKC not to erect any barriers on the Easement Area which would have the effect of limiting or restricting the easement rights granted hereinabove or otherwise deny BKC access to the Easement Area which may prohibit or prevent BKC's exercise of the easements granted herein.

5. Liability Insurance. BKC shall maintain or cause to be maintained comprehensive general commercial liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or

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occupancy of the Easement Area by BKC except as herein provided and Developer shall be named as additional insured. Developer shall maintain or cause to be maintained comprehensive general commercial liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Easement Area by Developer or its successors or assigns except as herein provided and BKC shall be named as additional insured. Said insurance shall be carried by a reputable insurance company or companies qualified to do business in the State of Illinois. Notwithstanding the foregoing, BKC may "self insure" or provide for a deductible from said coverage related to the Easement Area, to the extent of one percent (1%) of the net worth of BKC in its last annual or fiscal year as certified by an independent certified public accountant and computed in accordance with generally accepted accounting principles consistently applied. Such insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations. Each party shall, upon written request from the other, furnish to the other party certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section and showing the other party named as additional insured or evidence of a self-insurance capacity as hereinabove provided, as the case may be. All such insurance shall include provisions denying to the insurer subrogation rights against the other parties to the extent such rights have been waived by the insured prior to the occurrence of damage or loss.

6. Casualty Insurance. BKC shall cause to be carried fire and extended coverage insurance on the improvements owned by BKC and located on the Easement Area in the amount of the replacement cost thereof and in amounts at least sufficient to avoid the effect of any co-insurance provisions of such policies, except if BKC is permitted to "self insure" pursuant to Section 5. Any such insurance shall otherwise conform to the provisions with respect to insurance contained in Section 5.

7. Title. Developer warrants that it has good title to the Easement Area and the right to grant the rights hereunder granted.

8. Eminent Domain. In the event the whole or any part of the Easement Area shall be taken by right of eminent domain or any similar authority of law (a "Taking"), the portion of the entire award allocated for the value of the land so taken shall belong to Developer or to Developer's mortgagees, as their interest may appear and the portion of the entire award allocated to improvements shall belong to BKC, and no other party shall have a right to claim any portion of such award by virtue of any interest created by this Agreement. Notwithstanding the foregoing, the loss of BKC's easement rights and loss profits incurred by BKC as a result of the Taking shall be the basis of BKC's damages is a separate claim is allowable under applicable law, or the basis of BKC's damages against the condemning authority if only one award is made. In the event of a partial Taking, BKC may restore the improvements and configuration of the drive-thru facility as nearly as possible to the condition existing prior to the Taking without contribution from Developer and any portion of any condemnation award necessary therefor shall be held in trust and applied for such purpose.

9. Covenants, Restrictions and Provisions. The following covenants, restrictions and provisions shall constitute covenants running with the title to the land, which are intended for the

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benefit of BKC, its successors and assigns, and shall be binding upon Developer, its successors and assigns. By executing this Agreement, Developer agrees to be bound by such covenants, restrictions and provisions:

9.1 Developer's Use of the Adjacent Property. Developer covenants and agrees that Developer shall use Developer's best efforts to avoid causing any damage to, or interference with, any improvements on the Easement Area and the BKC Parcel and to minimize any disruption or inconvenience to BKC or BKC's business. Developer further covenants and agrees that Developer, at Developer's sole cost and expense, to remove all debris and garbage located on the Easement Area on a daily basis during its development of the Adjacent Property. Developer acknowledges that a material consideration for BKC's willingness to enter into this Agreement and to effectuate the sale of the Adjacent Property is Developer's agreement to clean the Easement Area and the Adjacent Property daily during construction.

9.2 Qualifications. Any construction work on the Adjacent Property is hereby made subject to the following qualifications:

9.2.1 Prior to the commencement of any construction work on the Adjacent Property, the Developer covenants and agrees with BKC to use reasonable efforts to insure that such work will not damage, interrupt or interfere with any existing utility lines on the BKC Parcel or the Easement Area. Furthermore, Developer shall agree to repair immediately any damage to the BKC Parcel and/or the Easement Area and existing utilities thereon, or cease such interference with existing utility lines.

9.2.2 Developer shall not erect or place anything on the Easement Area which would unreasonably or materially inhibit the free flow of pedestrian or vehicular traffic to, on, or from the BKC Parcel or adjoining roads, alleys or rights-of-way. This restriction shall include, without limiting the generality of the foregoing, the elimination of curbcuts, accessways or other means of ingress or egress benefiting the Easement Area and/or the BKC Parcel.

9.2.3 Developer shall indemnify and hold BKC harmless from and against all costs, expenses and damages (including but not limited to BKC's attorneys fees) arising from any injury or damage to persons or property resulting from the entry by Developer, or any of its agents, employees, successors or assigns, onto the Easement Area, its installation, maintenance, use or operation of any equipment on the Easement Area, and other matters arising from the construction work performed on or about the Adjacent Property. BKC shall indemnify and hold harmless Developer from and against all costs, expenses and damages arising from any injury or damage to persons or property resulting from entry by BKC, or any of its agents, employees, successors or assigns, onto the Easement Area, or resulting from the installation, maintenance, use or operation of any equipment on the Easement Area.

9.3 Improvements. Developer represents that it shall use its best efforts not to erect or place on the Adjacent Property any building, fence, wall, structure, sign, equipment or other improvements of any nature which would unreasonably or materially obscure or impair the visibility of the existing signage situated on the Easement Area and on the BKC Parcel, upon which is located restaurant #1136.

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9.4 Zoning. Developer shall agree to reimburse, indemnify and hold BKC harmless from any and all costs or expenses incurred by BKC as a result of any encroachments, non-conforming uses, or zoning/building violations which may result in the grant of the Easements contemplated herein.

9.5 Liens. Developer shall not permit any claim, lien or other encumbrance arising from the construction work or Developer's use of the Adjacent Property to accrue against or attach to the Easement Area for the interest of BKC in the Easement Area. Developer agrees to defend, indemnify and hold BKC harmless from all costs, damages, claims, liabilities, liens and expenses suffered or claimed against BKC, Developer or the Easement Area, directly or indirectly, based on or arising out of or resulting from the construction work.

9.6 Parties Who May Enforce. These restrictions shall be enforceable by all of the available legal and equitable means by the parties hereto, and their respective successors and assigns. Except as and to the extent expressly provided herein to the contrary, the sole and exclusive remedies of Developer, its successors or assigns hereunder shall be specific performance, injunctive relief or issuance of a restraining order; in no event shall BKC (including its successors or assigns) be liable for damages (including specifically, without limitation, no liability or consequential or punitive damages) to anyone for anything ensuing from, in connection with or in furtherance of this Agreement, should a suit be brought on contract, tort or other legal theory.

9.7 Remedies for Violation. A violation or breach of any restriction, covenant, condition, obligation, reservation, right, power or charge herein set forth shall give the parties hereto, in addition to all other remedies, the right to proceed at law or in equity to compel compliance with the terms of such violated or breached restriction, covenant, condition, obligation, reservation, right, power or charge, and to prevent the violation or breach thereof; and the expenses of such litigation (including attorneys' and paralegals' fees at all appellate levels, in connection with all proceedings (including any post judgment proceedings), and whether or not suit is instituted) shall be borne by the non-prevailing party, if either party prevails, and a lis pendens being filed by BKC in connection with any such proceeding (to remain in effect until the conclusion of such proceedings) as a matter of right and without the necessity of posting a bond or other security.

10. Default. In the event of a violation of any of the provisions contained in this Agreement, the non-defaulting owners and those claiming through or under them (including, without limitation, tenants or other occupants), shall have all rights and remedies provided for in this Agreement, at law and in equity and the prevailing party shall be entitled to the award of court costs and reasonable attorneys' and paralegals' fees at all tribunal levels and in connection with all proceedings, whether or not suit is instituted. In supplementation of the foregoing, injunctive relief shall specifically be available for breach or violation of, or default under, any provision contained in this Agreement, it being expressly acknowledged and agreed that damages would, at best, be difficult to ascertain and would be an inadequate remedy in any event.

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11. Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Adjacent Property shall at all times be subject and subordinate to the terms of this Agreement, except to the extent expressly otherwise provided herein, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale shall acquire title subject to all of the terms and provisions of this Agreement.

12. Covenant Running With Land. This Agreement and the restrictions, covenants, conditions, obligations, reservations, rights, powers and charges herein provided for shall, in addition to constituting the personal obligation of Developer (where the context requires or permits), constitute a servitude in and upon the Adjacent Property and every part thereof including, without limitation, the Easement Area, and shall run with the Adjacent Property and inure to the benefit of and be enforceable as described herein.

13. Binding Effect. Every agreement, covenant, restriction, promise, undertaking, condition, easement, right, privilege and option made, granted or assumed, as the case may be, by either party to this Agreement is made by such party personally and for the benefit of the other party.

14. Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Adjacent Property to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns and that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights of remedies under or by reason of this Agreement.

15. Notices. Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is mailed by registered or certified mail, return receipt requested, as the respective parties may from time to time designate by like notice, on the third business day following the date of such mailing:

If to BKC:                      Burger King Corporation  
   17777 Old Cutler Road  
   P. O. Box 020783, General Mail Facility  
   Miami, Florida 33102-0783  
   Attention: Assistant General Counsel, Real Estate

If to Developer:              1471 N. Wicker Park Blvd., LLC  
   308 W. Erie, Suite 505  
   Chicago, Illinois 60610  
   Attention: \_\_\_\_\_

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## 16. Miscellaneous.

16.1 Invalidity. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16.2 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

16.3 Headings. The Section headings in this Agreement are for convenience only, shall in no way define or limit the scope of content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

16.4 No Partnership. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other.

16.5 Binding Agreement. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

16.6 Modification. This Agreement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by all the parties to the Agreement or their successors or assigns; this Agreement shall not be otherwise amended, modified or terminated during the term hereof.

16.7 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.

16.8 Attorneys' Fees. The prevailing party in a suit to enforce the terms of this Agreement shall be entitled to reimbursement from the losing party of all costs associated with such suit, including without limitation, reasonable attorneys' fees and paralegal fees through appellate proceedings.

16.9 Developer. The term "Developer" as used herein shall be defined to include, in each and every instance, its successors and assigns.

[Developer and Grantee Signatures are on the Next Page]




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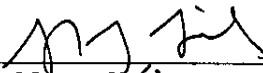
IN WITNESS WHEREOF, the parties hereto have caused this Declaration of Covenants, Restrictions and Easement Agreement to be executed as of the date first above written.


WITNESSES

DEVELOPER:

1471 N. WICKER PARK BLVD., LLC

  
Print Name: AARON SPIVACK

By:   
Print Name: Steven S. Livaditis  
Title: Manager

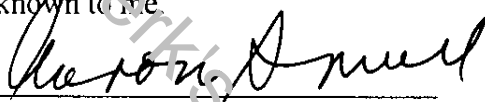
  
Print Name: PETER LIVADITIS

Attest: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ILLINOIS  
COUNTY OF COOK

The foregoing instrument was acknowledged before me this 28 day of June, 2000, by Steven Livaditis and \_\_\_\_\_, as Manager and \_\_\_\_\_ of 1471 N. WICKER PARK BLVD., LLC, an Illinois limited liability company, on behalf of said company, and are personally known to me.

(SEAL)

  
Notary Public  
Name: AARON SPIVACK  
My Commission Expires: \_\_\_\_\_



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GRANTEE:

**BURGER KING CORPORATION**

Linda W. Dallas  
Print Name: Linda D. Dallas

By: Tony Morales  
Print Name: Tony Morales  
Associate General Counsel

Lourdes Perez  
Print Name: LOURDES PEREZ

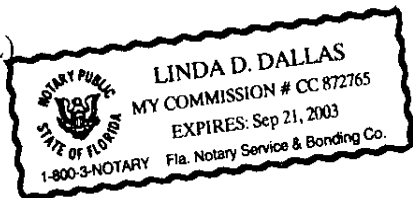
Attest: Mario Carballo  
Mario Carballo  
Assistant Secretary

(SEAL)

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 26<sup>th</sup> day of June, 2000, by Tony Morales and Mario Carballo, as Associate General Counsel and Assistant Secretary of **BURGER KING CORPORATION**, a Florida corporation, on behalf of said corporation, and are personally known to me.

(SEAL)



Linda W. Dallas  
Notary Public  
Name: Linda D. Dallas  
My Commission Expires:

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## EXHIBIT "A"

### ADJACENT PROPERTY

Lots 36, 37, 38, 39 and 40 in Block 6, in D.S. LEE'S ADDITION TO CHICAGO, being a subdivision of part of the East ½ of the Northwest ¼ and the West ½ of the Northeast ¼ being identified with Lots 6, 7 and 15 of the Assessor's Division of the West ½ of the Northeast ¼ of Section 6, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

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1471 N. Wicker Park  
Chicago

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## EXHIBIT "B"

### BKC PARCEL

Lots 1, 2, and 3 in Block 6 in DAVID S. LEE'S ADDITION TO CHICAGO (except the Southwesterly 25.5 feet of said lots taken by the Metropolitan West Side Elevated Railroad Company for railroad purposes) in Section 6, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

Property of Cook County Clerk's Office

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## EXHIBIT "C"

### EASEMENT AREA

The 12' x 125' area across the northeast portion of Lots 36, 37, 38 39 and 40 in Block 6 of D.S. LEE'S ADDITION TO CHICAGO being a subdivision of part of the East ½ of the Northwest ¼ and the West ½ of the Northeast ¼ being identified with Lots 6, 7 and 15 of the Assessor's Division of the West ½ of the Northeast ¼ of Section 6, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

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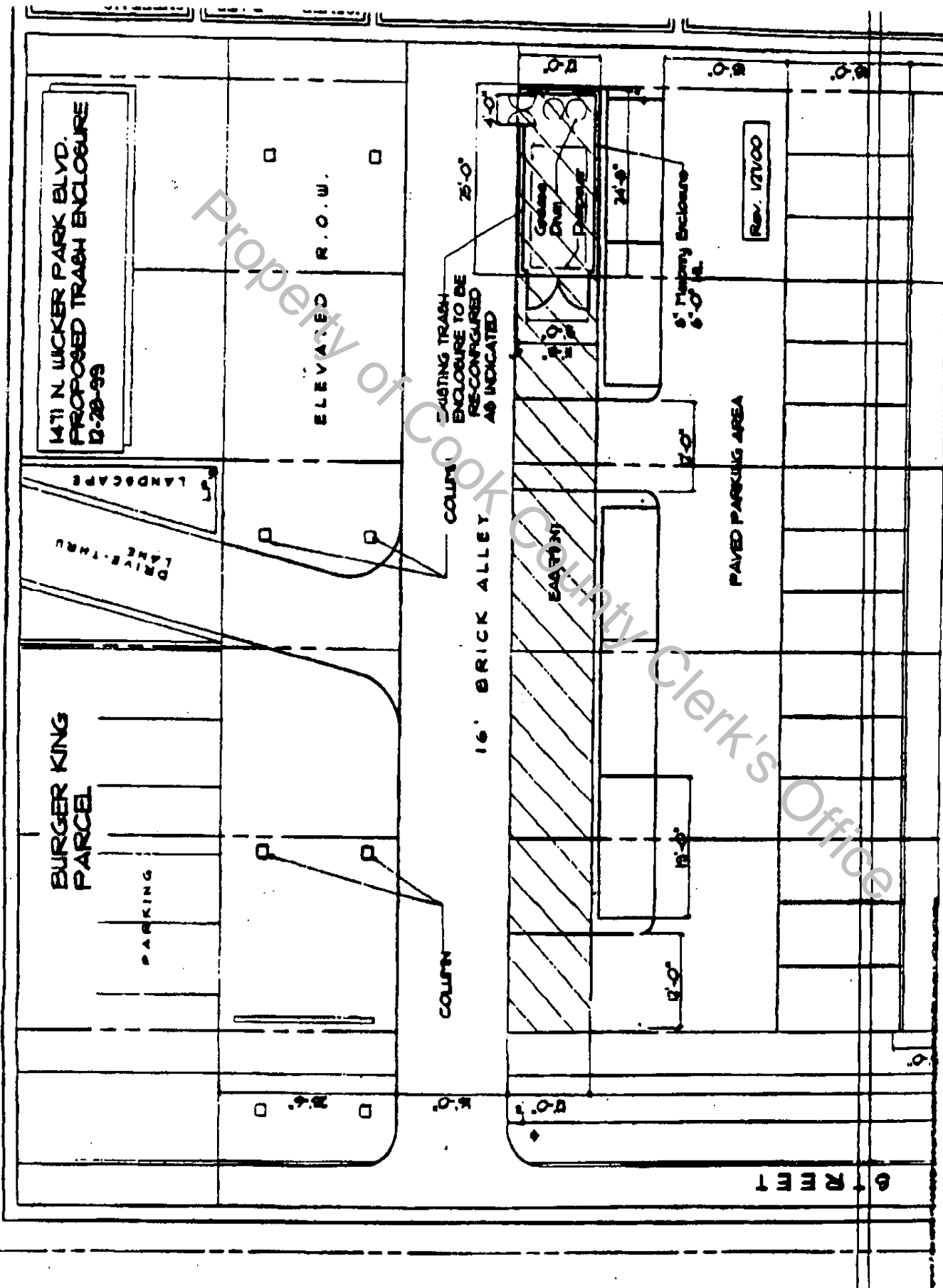
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1471 N. Wicker Park

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## EXHIBIT "C"

### EASEMENT AREA



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