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COVENANTS, CONDITIONS  
AND RESTRICTIONS AGREEMENT

BETWEEN

McDONALD'S CORPORATION	DEPT-01 RECORDING	\$71.50
a Delaware corporation	T#5555 TRAN 5586 09/22/94 14:18:00	
	#8486 JJ *-94-828438	
	COOK COUNTY RECORDER	

AND

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,  
not personally, but solely as Trustee under  
Trust Agreement dated December 1, 1991, and  
known as Trust No. 114854-06

*117170/1941217 Cook Co. Ball*



THIS DOCUMENT PREPARED BY  
AND UPON RECORDING MAIL TO:

Patricia Baldwin Gregory  
Polsky & Riordan, Ltd.  
205 North Michigan  
Suite 3909  
Chicago, Illinois 60601

94828438



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*[Signature]*

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## COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT

THIS COVENANTS, CONDITIONS AND RESTRICTIONS AGREEMENT ("CCR") is made and entered into as of the 19<sup>th</sup> day of September 1994, between McDONALD'S CORPORATION, a Delaware corporation ("McD's"), and AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally, but solely as Trustee under Trust Agreement dated December 1, 1991, and known as Trust No. 114854-06 ("Developer").

### WITNESSETH:

**WHEREAS**, McD's is the owner of a certain tract of land (the "McD's Tract") legally described in Exhibit A attached hereto and containing the contemplated improvements identified on Exhibit C (the "Site Plan") attached hereto; and

**WHEREAS**, Developer is the owner of a certain tract of land (the "Developer Tract"), adjacent to the McD's Tract and legally described in Exhibit B attached hereto; and

**WHEREAS**, the McD's Tract and the Developer Tract comprise a portion of the shopping center located in Broadview, Illinois and commonly known as Broadview Village Square (the "Shopping Center"); and

**WHEREAS**, the signatories hereto intend to develop and operate their respective Tracts in conjunction with each other as integral parts of a retail shopping complex, and in order to effectuate the common use and operation thereof, they desire to enter into certain covenants and agreements as a part of a general plan.

**NOW, THEREFORE**, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the parties' understanding, it is agreed as follows:

### ARTICLE 1

#### DEFINITIONS

1.1 **Commence Construction**. "Commence Construction" or "Commencement of Construction" shall mean with respect to any building on the McD's Tract, the pouring of the foundation and the footings therefor, and with respect to any of the other Work, the actual beginning of the process of construction on the McD's Tract.

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1.2 **Completion of Construction.** "Completion of Construction" or "Complete Construction" shall mean the earlier of when (a) McD's opens for business to the public on the McD's Tract or (b) thirty (30) days after McD's has submitted to Developer a temporary or permanent certificate of occupancy, if any is required by those municipal or other governmental authorities having jurisdiction over the McD's Tract.

1.3 **Occupant.** "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a building in the Shopping Center under an ownership right or any lease, sublease, license, concession or other similar agreement.

1.4 **Operator.** "Operator" shall mean the Person who maintains and operates the common area of the Developer Tract. Hiffman Shaffer Associates, Inc., an Illinois corporation, is the initial Operator.

1.5 **Party.** "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns who become owners of any portion of their respective Tracts. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to its respective Tract which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party's liability for obligations shall terminate. A Party transferring all or any portion of its interest in its respective Tract shall give notice to all other Parties and the Operator of such transfer and shall include therein at least the following information:

- (i) the name and address of the new Party; and
- (ii) a copy of the legal description of the portion of its Tract transferred.

If a Tract is owned by more than one Person, the Person or Persons holding at least fifty-one percent 51% of the ownership interest in the Tract shall designate one of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this CCR only) be the transferee's agent.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Tract prior to receipt of the notice.

1.6 **Person.** "Person" shall mean any individual, partnership, firm, association, corporation, trust or any other form of business or government entity.

1.7 **Plans and Specifications.** "Plans and Specifications" shall have the meaning set forth in Section 3.1(A) hereof.

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1.8 **Tract.** "Tract" shall mean that portion of the Shopping Center owned by a Party.

1.9 **Unavoidable Delays.** "Unavoidable Delays" shall mean delays caused by the following reasons:

(A) Governmental ordinances or edicts but not including McD's's failure to obtain permits necessary to Commence Construction;

(B) Governmental rationing or allocation of materials;

(C) Adverse weather conditions; or

(D) Strikes, lock-outs, fires, acts of God, disasters, riots, delays in transportation, shortage of labor materials, or any other cause beyond the reasonable control of the party asserting such delays.

1.10 **Work.** "Work" shall have the meaning set forth in Section 3.1(A) hereof.

## ARTICLE 2

### COORDINATION WITH CENTER OEA

2.1 **Center OEA.** McD's and Developer agree that each intend that McD's become a Party to that certain Operation and Easement Agreement dated as of July 20, 1993 made by and between Developer and Dayton Hudson Corporation and recorded with the Cook County Recorder of Deeds, as Document Number 93703155, as amended from time to time (the "Center OEA") with respect to the McD's Tract. Developer shall take all actions described in Section 1.14 of the Center OEA with respect to McD's becoming a Party thereto.

2.2 **Conflict.** Except to the extent expressly modified by the terms of this CCR, the parties agree that the operation and development of the McD's Tract shall be governed by the Center OEA; provided, however, that to the extent this CCR imposes obligations which are more restrictive than those contained in the Center OEA, said provisions of this CCR shall control, and to the extent this CCR imposes obligations which are less restrictive than those contained in the Center OEA, said provisions of the Center OEA shall control. Any capitalized term not defined herein shall have the definition attributed to such term in the Center OEA.

2.3 **Maintenance.** McD's shall pay to Operator, without deduction, set-off or prior demand, as its contribution to costs and expenses for common utility lines and the repair, restoration, improvement and maintenance (including without limitation, paving, snow removal, striping, sweeping, lighting, utilities, traffic supervision, security personnel and landscaping) of the ring road and entrances to the Shopping Center, the annual sum of Three Thousand and No/100 Dollars (\$3,000.00) (the "Maintenance Charge"). The Maintenance Charge for the initial calendar year shall be due and payable on the date hereof and shall be prorated based on the number of days in the period of ownership. The Maintenance Charge for all subsequent calendar years shall be due and payable on or before the tenth (10th) day of each January thereafter, and will be increased at the

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end of each calendar year in the same proportion that the Consumer Price Index for Urban Wage Earners and Clerical Workers for metropolitan Chicago, Illinois as published by the Bureau of Labor Statistics of the U.S. Department of Labor (hereinafter referred to as the "CPI") as last reported prior to the end of the calendar year, has increased above the CPI as last reported in the month of December of the preceding calendar year. Each such increase shall be rounded to the nearest hundredth of a dollar, and the Maintenance Charge, as increased, shall be set forth in a notice delivered by Operator to McD's on or before the fifth (5th) day of January of each calendar year. McD's shall pay the Maintenance Charge, as increased, as hereinabove provided. If at any time the CPI shall be substantially revised or shall no longer be published, the Index published by the Bureau of Labor Statistics, or successor or similar agency then in existence, which shall be most nearly equivalent thereto shall be used, after making any adjustments necessary to achieve the maximum degree of comparability. Notwithstanding anything in this Section 2.3 to the contrary, the Maintenance Charge shall not increase during the second calendar year and thereafter the yearly increase in the Maintenance Charge shall be limited to three percent (3%) over the previous year's Maintenance Charge.

## ARTICLE 3

### CONSTRUCTION

#### 3.1 General Requirements.

(A) Developer and McD's acknowledge and agree that the Developer and other persons owning or occupying the Shopping Center, portions thereof or other property adjacent to or in close proximity to the Shopping Center from time to time have an interest in the manner in which all property within, adjacent to or in close proximity to the Shopping Center is developed. Accordingly, Developer shall have the right to review and approve any and all plans for the construction, reconstruction, replacement or modification of any building or other exterior improvements on the McD's Tract to confirm that such improvements will be in conformance with zoning requirements for both the Shopping Center and the McD's Tract and to ascertain that such improvements are compatible with and will not adversely affect other portions of the Shopping Center with respect to, without limitation, matters of signage, architectural compatibility, utilities, traffic circulation, parking, emergency access, landscaping and similar matters that could have an impact on other portions of the Shopping Center, provided that such approval by Developer shall not be deemed to be an assumption of responsibility by Developer for the accuracy, sufficiency or propriety of the Plans and Specifications (as such term is hereinafter defined) or a representation that the Plans and Specifications provide for construction of improvements that comply with applicable laws, rules, ordinances or regulations. No later than sixty (60) days prior to the Commencement of Construction (as hereinafter defined) on the McD's Tract or any portion thereof, and no later than sixty (60) days prior to the commencement of any reconstruction, replacement or modification of any building or other improvement located on the McD's Tract, including paving,

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grading, or installation of utilities, McD's shall deliver to Developer or Developer's designated representative four (4) copies of a preliminary design showing the placement of any and all buildings, parking access points and landscaping. No later than forty-five (45) days prior to the Commencement of Construction on the McD's Tract or any portion thereof, and no later than forty-five (45) days prior to the commencement of any reconstruction, replacement or modification of any building or other improvement located on the McD's Tract, McD's shall submit to Developer or Developer's designated representative four (4) complete sets of its schematic site plan or plans showing the following: (i) the location of any building; (ii) parking facilities and areas, and related improvements (including ingress and egress, curb cuts, traffic flow, signage, site lighting, curbs and parking ratio); (iii) the location and nature of decorative features, including landscaping, planters and benches; (iv) setback lines; (v) building height and building area; (vi) schematic architectural and engineering plans; (vii) grading and drainage plans; and (viii) outline floor plans of the building shell of any and all buildings to be constructed on the McD's Tract, showing principal exterior dimensions, exterior design concept, the exterior materials and the basic exterior painting, canopies, truck court shielding, rooftop screening, and any and all exterior building signs or other signs contemplated for location on the McD's Tract. All of the abovementioned plans are hereinafter referred to as the "Plans and Specifications" and those items specified or depicted in the Plans and Specifications shall be referred to in this CCR as the "Work".

(B) Within ten (10) business days after Developer's receipt of the Plans and Specifications as hereinabove provided, Developer shall notify McD's whether the Plans and Specifications are approved or disapproved. Disapproval of any part or portion of the Plans and Specifications shall be in writing and shall set forth the reason or reasons for such disapproval. Developer shall at all times act reasonably and in good faith in approving or disapproving the Plans and Specifications. McD's hereby acknowledges that other owners and occupants of portions of the Shopping Center may also be reviewing the Plans and Specifications and that their approval of the Plans and Specifications may be required. Should Developer fail to approve or disapprove the Plans and Specifications in writing within said ten (10) business day period, then Developer's approval shall be conclusively presumed to have been granted. Should Developer disapprove the Plans and Specifications, McD's may (i) revise the Plans and Specifications in a manner agreed to by the Developer and McD's, (ii) submit Plans and Specifications for a different design or (iii) subject to Developer's right to repurchase hereunder, choose not to build. If McD's elects to resubmit Plans and Specifications, it shall deliver four (4) completed copies of the revised Plans and Specifications to Developer, which revised Plans and Specifications shall be subject to all the provisions of this Section 3.1 and which shall be submitted to Developer in the manner herein provided. Developer shall respond within ten (10) business days after their receipt. Developer's approval of the Plans and Specifications shall be evidenced by its initialing one (1) copy thereof and returning same to McD's. Developer shall not arbitrarily or unreasonably withhold its approval of the Plans and Specifications or recommend changes which otherwise conform with the requirements hereof, nor shall Developer withhold approval of exterior remodeling or exterior reconstruction which does not either substantially enlarge or substantially change an existing structure. In no event shall

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Developer require McD's to utilize design standards superior to those used by Developer in the construction of its buildings on the Developer Tract.

(C) Without limitation of any other provision hereof, it is further understood that the McD's Tract shall be developed using similar building materials and compatible architectural concepts as are used in other buildings in the Shopping Center and that Developer shall retain architectural approval over the exterior appearance of the entire development of the McD's Tract. The sale of the McD's Tract, or any part thereof, shall in no way be deemed to preclude Developer from exercising its approval rights of Plans and Specifications prior to the commencement of any and all construction on the McD's Tract.

(D) Reference is made to that certain document prepared by Developer and known as "Peripheral Land Minimum Standards" and kept on file at the offices of Developer, a copy of which has been delivered to McD's. McD's agrees that any and all development on the McD's Tract shall be subject to the terms and conditions contained in the Peripheral Land Minimum Standards, which are hereby incorporated by reference. In the event of any inconsistencies between the terms of the Peripheral Land Minimum Standards and the Center OEA or any law (including the PUD), the terms of the Center OEA or such law, as appropriate, shall govern and prevail.

### 3.2 Construction by McD's.

Subject to Unavoidable Delays, McD's agrees to Commence Construction within nine (9) months following the recording hereof and Complete Construction on the McD's Tract and commence McD's intended business activities thereon no later than eighteen (18) months from the date of closing on McD's's acquisition of the McD's Tract from Developer. In the event of any Unavoidable Delays, the time to Commence and Complete Construction on the McD's Tract shall be extended by the period of such Unavoidable Delay. McD's's construction shall be done in a good and workmanlike manner, in substantial compliance with the Plans and Specifications and shall meet the requirements of all applicable laws and ordinances of all governmental bodies having jurisdiction over the McD's Tract. McD's will utilize compatible labor in the construction of the Work, and the construction will be done so as to minimize any interference with the operation of the Shopping Center and the other stores located in the Shopping Center. At least fifteen (15) days prior to the anticipated Completion of Construction, McD's shall provide notice to Developer of the anticipated date for Completion of Construction. Within seven (7) business days thereafter, Developer's project architect may inspect the Work and notify McD's that, in Developer's judgment, the Work is not substantially completed; provided, however, that so long as McD's owns and operates the McD's Tract as a McDonald's restaurant, Developer's architect shall not exercise its right to inspect the Work. If such notice is not given by Developer, the Work shall be deemed to be substantially complete. In the event that only a temporary certificate of occupancy is available at the time that McD's substantially completes the Work, McD's

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agrees to supply Developer with a permanent certificate of occupancy when the same is available.

### 3.3 Repurchase Option.

(A) In the event that construction is not commenced or completed on the McD's Tract within the period specified above, as extended due to Unavoidable Delays, Developer may, at its option, repurchase the McD's Tract at the purchase price, as such price is hereinafter determined.

(B) In the event Commencement of Construction has not occurred on the McD's Tract within the period specified in Section 3.2 above, the purchase price shall be equal to the sum of the purchase price paid by McD's to Developer for the McD's Tract plus all reasonable out-of-pocket costs expended by McD's in connection with the development of the McD's Tract as evidenced to Developer (the "Unimproved Purchase Price").

(C) In the event Commencement of Construction has occurred on the McD's Tract within the period specified in Section 3.2 above, the purchase price shall be the fair market value of the McD's Tract, including any improvements thereon, (collectively, the "Property") as determined by McD's and Developer by mutual agreement. If McD's and Developer are unable to agree on the fair market value within thirty (30) days, then Developer shall deliver to McD's, not later than sixty (60) days thereafter, an appraisal of the fair market value of the McD's Tract (the "First Appraisal"). The term "fair market value" shall mean the value for the McD's Tract which an unrelated third party would pay assuming that the McD's Tract is sold in an "as-is" condition free of all liens and encumbrances. The purchase price for the Property shall hereinafter be referred to as the "Improved Purchase Price."

(D) If the foregoing appraisal is acceptable to McD's, the fair market value set forth therein shall be deemed to be the "fair market value" of the Property for purposes of this CCR. If the foregoing appraisal is not acceptable to McD's, McD's shall obtain an appraisal (the "Second Appraisal") on the same terms and conditions and deliver same to Developer within sixty (60) days following receipt of the appraisal obtained by the Developer. If the fair market value of the Property set forth in the Second Appraisal is more than 90% and less than 110% of the fair market value of the Property as determined by the First Appraisal, then the fair market value, for purposes of this CCR, shall be one half of the total of the values set forth in the First Appraisal and the Second Appraisal.

(E) If the fair market value of the Property determined in the Second Appraisal is less than 90% or more than 110% of the Appraisal, then the appraisers who prepared the First Appraisal and Second Appraisal shall select a third appraiser who shall prepare an appraisal (the "Third Appraisal") on the same terms and conditions set forth above, and the fair market value of the Property, for the purposes of this CCR, shall be one half

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of the total of the two closest values set forth in the three appraisals, which value shall be final and binding upon the parties.

(F) For purposes of the foregoing, the term "appraisal" shall mean an appraisal prepared by an M.A.I. appraiser unrelated to Developer or McD's who is familiar with shopping centers in the Chicago, Illinois metropolitan area. Each party shall bear the cost of the appraiser which it selects, and the cost of the third appraisal shall be paid equally by the parties.

(G) In the event that Developer elects to repurchase the McD's Tract as herein above provided, McD's agrees to convey good and marketable title to the McD's Tract, with title in the same condition as when the McD's Tract was conveyed by Developer to McD's, other than non-monetary encumbrances granted by McD's in the ordinary course of the development of the McD's Tract, free and clear of any and all liens and encumbrances, provided that, if McD's is unable to obtain the release of any lien of an ascertainable monetary amount (including through the payment of a portion of the sales proceeds at closing), Developer may elect to take title subject to such encumbrances recorded against the McD's Tract, and such repurchase price shall be reduced by deducting the amount of any and all liens and encumbrances recorded against the McD's Tract not otherwise released or endorsed over. The foregoing shall not be deemed to require Developer to take title subject to liens and encumbrances should Developer elect to exercise its option to repurchase the McD's Tract free and clear of any and all encumbrances nor shall Developer be required to become personally obligated for such liens and encumbrances.

3.4 **Signage.** Without limiting any other provision hereof or in the Center OEA, Developer acknowledges that pursuant to the Center OEA, McD's is entitled to erect an identification sign on each of the exterior walls of the building it occupies. Without limitation of any other provision hereof or in the Center OEA, the following restrictions are agreed to by McD's:

- (i) No pylon sign shall be permitted on the McD's Tract; and
- (ii) No sign shall be permitted upon the McD's Tract unless such sign has been first approved by Developer as part of the approved Plans and Specifications, or otherwise approved by Developer, provided, however, McD shall not be required to obtain the Developer's approval so long as McD's signage complies with the signage depicted in McD's plans and specifications previously delivered to and approved by Developer.

## ARTICLE 4

### TAX INCREMENT FINANCING



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4.1 Tax Increment Financing. McD's acknowledges that Developer and the Village of Broadview, Illinois (the "Village"), have entered into a Redevelopment Agreement (the "Redevelopment Agreement") with respect to a TIF Redevelopment Project Area (as defined in the Redevelopment Agreement) and that the McD's Tract is located within said Redevelopment Project Area and is therefore subject to the provisions of the Redevelopment Agreement. McD's acknowledges that after exhausting all of its rights to appeal and contest Cook County Assessor's original proposed assessed value for the McD's Tract, the real estate tax bill for the McD's Tract is reasonably anticipated to be not less than \$4.50 per square foot of building area (the "Base Taxes"). McD's accordingly agrees to pay the Base Taxes as they become due and owing. The Redevelopment Agreement also provides that all users of the property within the Redevelopment Project Area shall authorize the release of sales tax information to the Village for the businesses located in the Redevelopment Project Area. Accordingly, each user of the McD's Tract agrees to authorize the Village to obtain the release of such information for its business located on the McD's Tract but such information shall be released on an aggregate basis for all businesses located in the Redevelopment Project Area, the authorization shall be in the form of Exhibit D attached hereto.

## ARTICLE 5

### USE

5.1 Prohibited Uses. Without limiting any other provision hereof or in the Center OEA, the following uses shall not be allowed on the McD's Tract:

- (i) A pet or pet supply store;
- (ii) A full line sporting goods store;
- (iii) A home improvement or hardware store;
- (iv) A supermarket or grocery store;
- (v) A bakery or delicatessen except as an incidental use to a restaurant;
- (vi) A store selling fresh, frozen, cooked, smoked or prepared meat, fish, poultry or produce for off-premises consumption;
- (vii) A store selling beer, wine or other alcoholic beverages for off-premises consumption;
- (viii) the sale of automobile parts or service;
- (ix) the operation of a deep discount drug store or any other business which does more than ten percent (10%) of its volume in cosmetics and fragrances; or
- (x) A restaurant whose principal business is the sale of pizza for on-site and off-site consumption.

Developer and McD's acknowledge that the foregoing restrictions are for the benefit of various Occupants. The restrictions in (iv), (v), (vi) and (vii) shall not apply to the McD's Tract so long as it is used as a restaurant. Developer and McD's agree that if at any time in the future any or all of the restrictions are no longer in full force and effect

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and McD's desires to use the McD's Tract for any of said purposes, McD's shall be required to obtain Developer's prior written consent but only during the six (6) month period commencing with the lapsing of said use. Thereafter, McD's may use the McD's Tract for the lapsed use provided that during the six month period noted above, Developer did not grant an exclusive for said lapsed use to any third party.

## ARTICLE 6

### VACANT BUILDINGS

6.1 **Repurchase.** In the event the Occupant of the McD's Tract ceases to operate its business thereon for a period of nine (9) consecutive months, Developer shall have the right to repurchase the McD's Tract at the Improved Purchase Price as determined in accordance with Section 3.3 hereof unless at the end of any nine (9) month period, the McD's Tract shall be the subject of a binding contract of sale or a lease to a party unrelated to the owner thereof, in which case such nine (9) month period shall be extended during the pendency of such contract or for the period prior to occupancy in the case of a lease, but in no event longer than an additional 4 months. Such right shall continue for forty-five (45) days after the expiration of said nine (9) month vacancy period. Developer's failing to notify McD's in writing of its desire to exercise such repurchase right shall be deemed a waiver of such right; provided, however, that in the event the McD's Tract remains vacant, Developer shall again have such right during the last forty-five days of each nine (9) month period thereafter.

## ARTICLE 7

### MISCELLANEOUS

#### 7.1 Default.

(A) The occurrence of any one or more of the following events shall constitute a material default and breach of this CCR by the non performing Party (the "Defaulting Party"):

- (i) The failure to make any payment required to be made hereunder within thirty (30) days of the due date, or
- (ii) The failure to observe or perform any of the covenants, conditions or obligations of this CCR, other than as described in (i) above, within thirty (30) days (or such other shorter period as may otherwise be expressly provided for herein) after the issuance of a notice by another Party (the "Non-Defaulting Party") specifying the nature of the default claimed.

(B) With respect to any default under Section (A)(ii) above, any Non-Defaulting Party shall have the right, but not the obligation, to cure such default by the payment of

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money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event that any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

(C) Costs and expenses accruing and/or assessed pursuant to Section 7.1 (B) above shall constitute a lien against the Defaulting Party's Tract. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of Deeds of the County of the State in which the Shopping Center is located by the Party making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Party;
- (iii) An identification of the owner or reputed owner of the Tract or interest therein against which the lien is claimed;
- (iv) A description of the Tract against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
- (vi) A statement that the lien is claimed pursuant to the provisions of this CCR, reciting the date of recordation and the recorded document number hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 7.4 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any manner allowed by law, including, without limitation, a suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

(D) No waiver by any Party of any default under this CCR shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express

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waiver. One or more written waivers or any default under any provision of this CCR shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this CCR.

(E) Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto or any other Person violating or attempting to violate or defaulting upon any of the provisions contained in this CCR, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another of any of the terms, covenants or conditions of this CCR, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this CCR or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

## 7.2 Interest.

Any time a Party or Operator shall not pay any sum payable hereunder to another within thirty (30) days of the due date, such delinquent Party or Operator shall thereafter pay interest on such amount to and including the date such payment is received by the Person entitled thereto, at the lesser of:

- (i) The highest rate permitted by law to be paid on such type of obligation by the Person obligated to make such payment or the Person to whom such payment is due, whichever is less; or
- (ii) Three percent (3%) per annum in excess of the prime rate from time to time publicly announced by First National Bank of Chicago or its successor.

## 7.3 Estoppel Certificate.

Each Party and Operator agrees that upon the written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or Operator, such party will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

- (i) whether it knows of any default under this CCR by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (ii) whether this CCR has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and
- (iii) whether this CCR is in full force and effect.



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Such statement shall act as a waiver of any claim by the Person furnishing it to the addressee thereof to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrance or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. Notwithstanding anything to the contrary, the issuance of an estoppel certificate shall in no event subject the Person furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Person to disclose correct and/or relevant information.

## 7.4 Notices.

All notices, demands and requests (collectively the "notice") required or permitted to be given under this CCR must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then current address of the Party intended, or (iii) rejected at the then current address of the Party intended, provided such notice was sent prepaid. The initial addresses of the Parties shall be:

McD's:	McDonald's Corporation McDonald's Plaza Oakbrook, IL 60521 Attn: Director, Development Team/ Legal
Department	
with a copy to:	McDonald's Corporation Chicago South 601 Oakmont Lane Westmont, IL 60559 Attn: Real Estate Manager
Developer:	c/o Hiffman Shaffer Associates, Inc. 180 North Wacker Drive Suite 500 Chicago, Illinois 60606-1612 Attn: Property Manager
with a copy to:	Richard Hulina and E. Thomas Collins, Jr.
Operator:	As from time to time designated.

Upon at least ten (10) days' prior written notice, each Person shall have the right to change its address to any other address within the United States of America.

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7.5 **Approval Rights.** Unless otherwise herein provided, whenever a consent or approval (the "approval") is required, such approval shall not be unreasonably withheld or delayed. Unless provision is made for a specific time period, each response to a request for an approval shall be given by the Person to whom directed within thirty (30) days of receipt. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval. Each disapproval shall be in writing and the reasons shall be clearly stated.

7.6 **Binding Effect.** The terms of this CCR shall constitute covenants running with the land and shall inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder. Subject to the provisions of Section 2.2 hereof, this CCR is not intended to, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

7.7 **Construction and Interpretation.** Whenever required by the context of this CCR, (i) the singular shall include the plural and vice versa, and the masculine shall include the feminine and neuter genders and vice versa; and (ii) use of the words "including", "such as", or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as "without limitation", or "but not limited to", are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, terms or matter.

7.8 **Counterparts and Signature Pages.** This CCR may be executed in several counterparts, each of which shall be deemed an original. The signatures to this CCR may be executed and notarized on separate pages and when attached to this CCR shall constitute one complete document.

7.9 **Negation of Partnership.** None of the terms or provisions of this CCR shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

7.10 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

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7.11 **Excuse**. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this CCR.

7.12 **Severability**. Invalidation of any of the provisions contained in this CCR, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

7.13 **Amendments**. This CCR may be amended by, and only by, a written agreement signed by all of the then current Parties and shall be effective only when recorded in the county and state where the Shopping Center is located. No consent to the amendment of this CCR shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof.

7.14 **Captions and Capitalized Terms**. The captions preceding the text of each article and section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this CCR. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this CCR.

7.15 **Mitigation of Damages**. In all situations arising out of this CCR, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party hereto shall take all reasonable measures to effectuate the provisions of this CCR.

7.16 **CCR Shall Continue Notwithstanding Breach**. It is expressly agreed that no breach of this CCR shall (i) entitle any Party to cancel, rescind or otherwise terminate this CCR, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

7.17 **Time**. Time is of the essence of this CCR. If any date set forth for the performance of any obligation hereunder or for the delivery of any notice, approval, document or agreement required hereunder should be on a Saturday, Sunday or legal

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holiday, the compliance with such obligation or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday.

7.18 No Waiver. The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

## ARTICLE 8

### TERM

8.1 Term of this CCR. This CCR shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2043. Upon termination of this CCR, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this CCR, shall terminate and have no further force or effect; provided, however, that the termination of this CCR shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this CCR prior to the date of such termination.

## ARTICLE 9

### TRUSTEE EXCULPATION

9.1 Trustee Exculpation. This CCR is executed by American National Bank and Trust Company of Chicago, not personally but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this CCR). It is expressly understood and agreed by and between the Parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings, warranties and agreements herein made on the part of the Trustee while in form purporting to be the representations, covenants, undertakings, warranties and agreements of said Trustee are nevertheless made and intended not as personal representations, covenants, undertakings, warranties and agreements by the Trustee or for the purpose or with the intention of binding Trustee personally but are made and intended for the purpose of binding only the trust property, and this CCR is executed and delivered by said Trustee not in its own right, but solely in the exercise of the power conferred upon it as said Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trustee on account of this CCR or on account of any representations, covenants, undertakings, warranties or agreements of said Trustee in this CCR contained either express or implied, all such personal liability, if any, being expressly waived and released.



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IN WITNESS WHEREOF, the Parties have caused this CCR to be executed by their duly authorized representatives effective as of the day and year first above written.

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,  
as Trustee as aforesaid

McDONALD'S CORPORATION

By: [Signature]  
Name: JOHANSEN  
Title: 2ND VP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:  
By: [Signature]  
Name: Gregory S. Kasprzyk  
Title: (BEST COPY)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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IN WITNESS WHEREOF, the Parties have caused this CCR to be executed by their duly authorized representatives effective as of the day and year first above written.

AMERICAN NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO,  
as Trustee as aforesaid

McDONALD'S CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Michael J. Bis  
Name: Michael J. Bis  
Title: Assistant Vice President

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Jeffery Kane  
Name: Jeffery Kane  
Title: Staff Director

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State of Illinois )  
County of Cook ) ss.:

I, Larry Pachter, a Notary Public, in and for said County, in the State aforesaid, do hereby certify that Melissa S. Hipnick, the Senior V.P. of Hiffman Shaffer Associates, Inc., an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20<sup>th</sup> day of September, 1994.

[Signature]  
Notary Public

My Commission Expires:

.....  
"OFFICIAL SEAL"  
LARRY PACHTER  
NOTARY PUBLIC, STATE OF ILLINOIS  
My Commission Expires Nov. 18, 1995  
.....

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State of Illinois )  
County of Cook ) ss.:

I, Larry Pachter, a Notary Public in and for the County and State aforesaid, do hereby certify that P. Johansen, the 2nd Vice President and Gregory S. Kuszpryk, the ASST Secretary of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers of said association, appeared before me in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts and as the free and voluntary act of said association for the uses and purposes therein set forth.

Given under my hand and notarial seal this 20<sup>th</sup> day of September, 1994.

[Signature]  
Notary Public

My Commission Expires:



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## JOINDER

The undersigned, Hiffman Shaffer Associates, Inc., as the initial Operator under the Covenants, Conditions and Restrictions Agreement ("CCR") to which this Joinder is attached, hereby joins in the execution of the CCR for the purpose of obligating itself to the obligations and undertakings of the Operator as set forth in the CCR.

HIFFMAN SHAFFER ASSOCIATES, INC.

By: [Signature]  
Name: Melissa S. Lipowitz  
Title: SAC V.P.

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## ACKNOWLEDGMENT - McDONALD'S

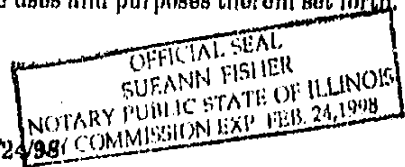
STATE OF ILLINOIS )  
 ) SS:  
COUNTY OF DUPAGE )

I, Sueann Fisher, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that Michael J. Sise, Assistant Vice President of McDonald's Corporation, a Delaware corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Assistant Vice President appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act as such Assistant Vice President and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 16thth day of September, 1994.

Sueann Fisher  
Notary Public

My commission expires 02/24/98



## ACKNOWLEDGMENT - INDIVIDUAL

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ who (is)(are) personally known to me to be the same person(s) whose name(s) (is)(are) subscribed to the foregoing instrument appeared before me this day in person and acknowledged that (he)(she)(they) signed, sealed and delivered the said instrument as (his)(her)(their) free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

## ACKNOWLEDGMENT - CORPORATE

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the county and state aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, President and \_\_\_\_\_, Secretary of \_\_\_\_\_, a(n) \_\_\_\_\_ corporation, who is personally known to me to be the person whose name is subscribed to the foregoing instrument as such President, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act as such President and Secretary respectively and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_

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## EXHIBIT A

### MCDONALD'S LEGAL DESCRIPTION

THE NORTH 164.58 FEET OF LOT 4 IN BROADVIEW VILLAGE SQUARE BEING A SUBDIVISION OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN ACCORDING TO THE PLAT THEREOF RECORDED MARCH 8, 1994 AS DOCUMENT 94-212972 FURTHER DESCRIBED BY COMMENCING AT THE CENTER OF SAID SECTION 22; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, 444.36 FEET TO A POINT ON THE EXTENSION OF THE NORTH LINE OF SAID LOT 4; THENCE SOUTH 89 DEGREES 54 MINUTES 16 SECONDS EAST ALONG SAID EXTENSION, 60.00 FEET TO THE NORTHWEST CORNER OF LOT 4 FOR THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 89 DEGREES 54 MINUTES 16 SECONDS EAST ALONG THE NORTH LINE OF LOT 4, 362.63 FEET; THENCE SOUTH 29 DEGREES 21 MINUTES 26 SECONDS WEST, 60.42 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG A TANGENTIAL CURVE CONCAVE TO THE EAST HAVING A RADIUS OF 500.00 FEET, AN ARC DISTANCE OF 121.23 FEET (THE LONG CHORD BEARING SOUTH 22 DEGREES 24 MINUTES 41 SECONDS WEST, 120.94 FEET) TO THE SOUTH LINE OF THE NORTH 164.58 FEET OF LOT 4; THENCE NORTH 89 DEGREES 54 MINUTES 16 SECONDS WEST ALONG SAID SOUTH LINE, 287.91 FEET TO THE WEST LINE OF LOT 4, SAID LINE BEING 60.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF SAID SOUTHEAST QUARTER; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID WEST LINE OF LOT 4, 164.58 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

ALL EASEMENTS BENEFITING THE FOREGOING PROPERTY AS SET FORTH IN THE OPERATION AND EASEMENT AGREEMENT DATED JULY 20, 1993 AND RECORDED SEPTEMBER 2, 1993 AS DOCUMENT 93703155 OVER AND ACROSS LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 AND 12 IN BROADVIEW VILLAGE SQUARE AFORESAID.

TOGETHER WITH ALL EASEMENTS, RIGHTS AND APPURTENANCES, ALL BUILDINGS AND IMPROVEMENTS, IF ANY, NOW LOCATED ON SAID PROPERTY, AND ALL OF THE GRANTOR'S RIGHTS, TITLE AND INTEREST IN ALL PUBLIC WAYS ADJOINING SAID PROPERTY.

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## Exhibit B

Lots 2, 3, 4 (excepting the North 164.58 feet thereof), 5, 8, 9, 19, 11 and 12 of Broadview Village Square Plat of Subdivision recorded on March 8, 1994 as Document Number R94-212972 in the Recorder's Office of Cook County, Illinois.

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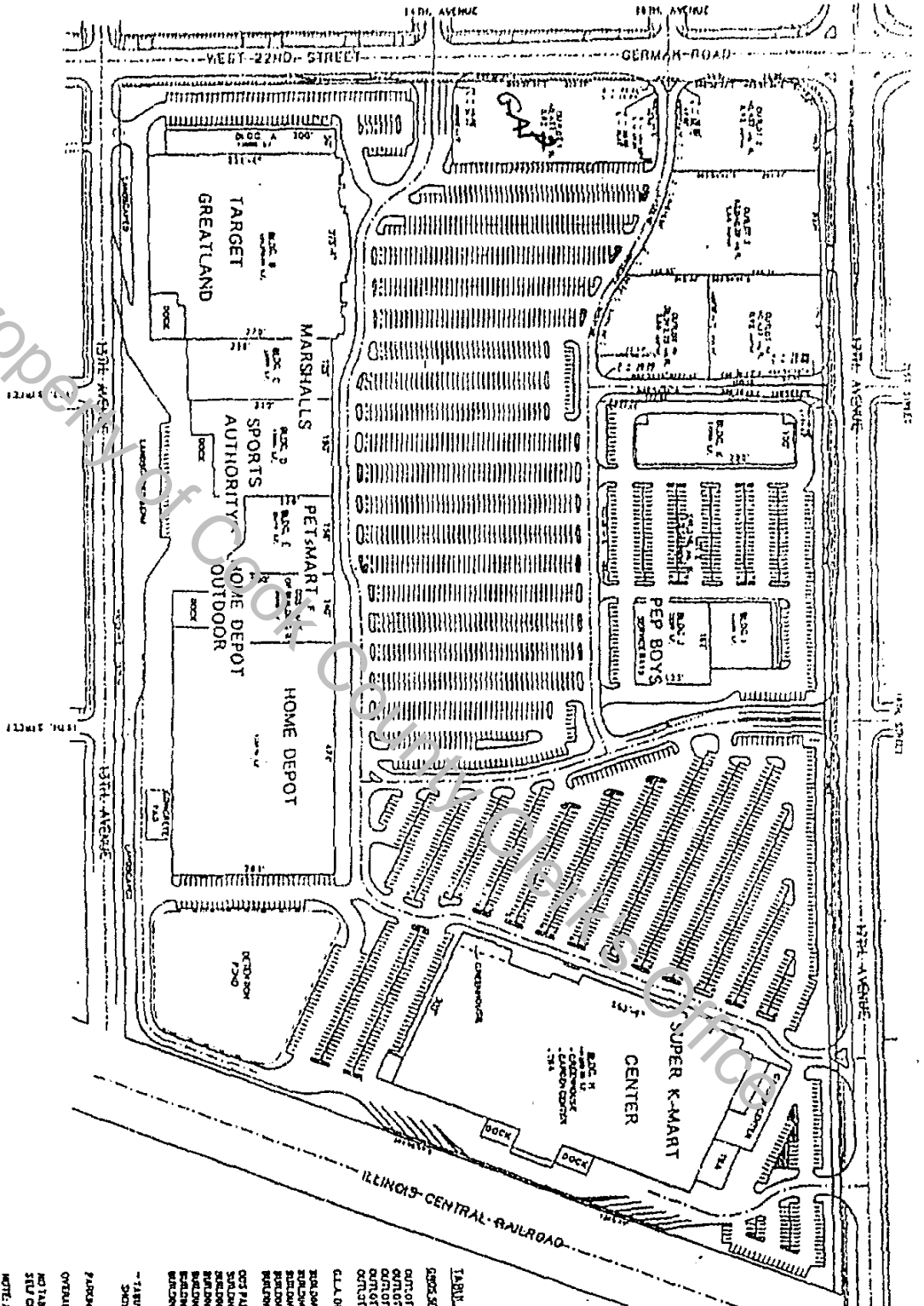
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11/11/11

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Exhibit C



**SITE PLAN**

SCALE: 1" = 20'

**GRAPHIC SCALE**

0 10 20 30

Prepared by: HSA ARCHITECTS, AIA

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**HSA**

ARCHITECTS

1111 1111 1111 1111

**BROADVIEW VILLAGE SQUARE**

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**LEASING PLAN**

L-5/10/93

**TABLE A-1000**

**GROUP LABEL BUILDINGS**

GROUP LABEL	BUILDING	AREA (SQ. FT.)	TYPE
1	OUTLET	4,627	SOFT.
2	OUTLET	4,627	SOFT.
3	OUTLET	4,627	SOFT.
4	OUTLET	4,627	SOFT.
5	OUTLET	4,627	SOFT.
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97	OUTLET	4,627	SOFT.
98	OUTLET	4,627	SOFT.
99	OUTLET	4,627	SOFT.
100	OUTLET	4,627	SOFT.

NOTE: ALL BUILDINGS, BUILDINGS AND CONDITIONS ARE SUBJECT TO REVISION AND CHANGE.

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