

48-0-93

AN ORDINANCE

Authorizing the City Manager to Execute
a Revised Redevelopment Agreement
Between the City of Evanston,
Dayton Hudson Corporation,
American Stores Properties, Inc. and Best Buy Co., Inc.

WHEREAS, the City of Evanston has undertaken a program for the redevelopment of certain property within the City, pursuant to Illinois Revised Statutes, Chapter 24, Section 11-74.4-1 et sec., known as the "Tax Increment Allocation Redevelopment Act," (hereinafter referred to as the "Act"); and

WHEREAS, pursuant to the provisions of the Act, the City has enacted a series of ordinances adopting a Tax Increment Redevelopment Area Redevelopment Plan and Project and designating a Redevelopment Project Area containing approximately twenty three (23) acres of land (aid entire twenty-three (23) acres is hereinafter referred to as the Redevelopment Project Area"); and

WHEREAS, Dayton Hudson Corporation, a Minnesota corporation, American Stores Properties, Inc. a Delaware corporation and Best Buy Co., Inc., a Minnesota corporation (collectively referred to herein as the "Developer") are the developers of the Howard-Hartrey Shopping Center ("Center") located on the north side of Howard Street just east of McCormick Boulevard, and west of Hartrey Street in Evanston, Illinois; and

WHEREAS, the Developer has proposed a plan to redevelop land which falls within the Redevelopment Project Area, and the City has determined that said proposed plan is consistent with and complies with the City's Redevelopment Plan and Redevelopment Project for the Howard-Hartrey TIF District; and

WHEREAS, the City Council on September 21, 1992 authorized and directed the City Manager to enter into a Redevelopment Agreement concerning the redevelopment of the center property; and

WHEREAS, the City Council on January 26, 1993, authorized and directed the City Manager to enter into a Revised Redevelopment Agreement concerning the redevelopment of the center property; and

WHEREAS, neither the Redevelopment Agreement nor the revised Redevelopment Agreement have been executed by all the parties; and

WHEREAS, further negotiations have ensued between the parties concerning the terms and conditions of the revised Redevelopment Agreement; and

WHEREAS, certain changes to the revised Redevelopment Agreement previously approved by Council are determined to be in the vital and best interest of the City and the general health, safety and welfare of its citizens and in accordance with public purposes and the provisions of all applicable laws;

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

SECTION 1: That the City Manager be and is hereby authorized and directed to execute the revised redevelopment agreement marked as Exhibit A, attached hereto and incorporated herein by reference. The City Manager is authorized to execute said agreement only after its execution by each of the other parties to the agreement.

SECTION 2: That ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3: That this ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

Introduced: March 29, 1993

Adopted: March 29, 1993

Approved: March 29, 1993

Jean W. Barr
Mayor

ATTEST:

Kristen Davis
City Clerk

Approved as to form:

[Signature]
Corporation Counsel



REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT ("Agreement"), is made and entered into as of the ____ day of _____, 1993, by and between the City of Evanston, Illinois, a home rule unit of local government located in Cook County, Illinois (the "City"), and American Stores Properties Inc., a Delaware corporation ("Jewel"), Best Buy Co., Inc., a Minnesota corporation ("Best Buy"), and Dayton Hudson Corporation, a Minnesota corporation ("Dayton Hudson"). Jewel, Best Buy and Dayton Hudson are sometimes collectively referred to as "Developers".

RECITALS

A. Pursuant to the terms of a Redevelopment Plan entitled "Howard and Hartrey Redevelopment Plan and Project," dated March, 1992 approved and adopted by the City by Ordinance No. 8-0-92 on April 27, 1992 (hereinafter referred to as the "Redevelopment Plan"), the City designated a certain area within its municipal limits for redevelopment and revitalization with the development of a commercial shopping center. The site proposed for the redevelopment and revitalization (hereinafter referred to alternatively as the "Redevelopment Area" and the "Subject Property"), consists of approximately 23.65 acres, and is legally described on Exhibit 1 which is attached hereto and made a part hereof.

B. On April 27, 1992, the City adopted Ordinance No. 9-0-92 designating the Howard and Hartrey Redevelopment Project Area. Said area is legally described on Exhibit 1.

C. On April 27, 1992, the City adopted Ordinance No. 10-0-92 adopting Tax Increment financing pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (hereinafter referred to as the "Act").

D. The corporate authorities of the City, after due and careful consideration, have concluded that the development of the Subject Property as provided in this Agreement and in the Redevelopment Plan will further the growth of the City, facilitate the redevelopment of the Redevelopment Area, improve the environment of the City, increase the assessed valuation of the real estate situated within the City, increase the sales tax revenues realized by the City, foster increased economic activity within the City, enable the City to control the development of the Subject Property and otherwise be in the best interests of the City.

E. Dayton Hudson will acquire the Subject Property from Bell & Howell Company, a Delaware corporation ("Bell & Howell"). A portion of the Subject Property will be conveyed to Jewel ("Jewel Parcel"), a portion of the Subject Property will be conveyed to Best Buy ("Best Buy Parcel"), a portion of the Subject Property will be conveyed as tenants in common to Jewel, Best Buy and Dayton Hudson ("Joint Parcel") and the remaining portion of the Subject Property will be conveyed to Dayton Hudson ("Dayton Hudson Parcel"). Developers will construct or cause to be constructed on the Subject Property in accordance with the site plan, the landscaping plan, schematic elevations of Public Improvements (as described on Exhibit 5 hereto), construction materials and schematic sign specifications attached and made a

part hereof as Group Exhibit 2, a shopping center of not less than two hundred thirty-two thousand (232,000) square feet including a Target Greatland Store of approximately One Hundred Thirty Thousand (130,000) square feet, a Jewel food/drug supermarket of not less than sixty thousand (60,000) square feet and a Best Buy store of approximately thirty-six thousand (36,000) square feet excluding outlots (the "Project").

F. Provided that Jewel, Best Buy and Dayton Hudson are in compliance with the terms of this Agreement, as more fully set forth below, the City will issue and sell two series of 20-year general obligation bonds with the right to redeem at any time ("TIF Obligations") backed by the full faith and credit of the City. The interest on the Series I Bonds shall be exempt from federal income taxation. The interest on the Series II Bonds shall not be exempt from federal income taxation. The Series II Bonds shall be issued and sold in an amount no greater than can be sold utilizing \$311,000.00 to pay the annual debt service on said Series II bonds. The remainder of the Bonds issued and sold shall be series I Bonds. Provided that City's Bond Counsel and Bond Consultants have, prior to the execution of this Agreement, submitted their opinions as to the form and legality thereof, the proceeds from the sale of the TIF Obligations shall be used for contribution to the purchase of the Subject Property and for the purposes further specified in this Agreement.

The development of the Subject Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents and taxpayers.

NOW, THEREFORE, in consideration of the premises set forth above, and the mutual agreements hereinafter set forth below, it is hereby agreed by and between the parties hereto as follows:

1. INCORPORATION OF RECITALS

The representations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Article 1.

2. PROPERTY ACQUISITION AND CONVEYANCE

(a) Dayton Hudson has entered into a contract with Bell & Howell for the purchase of the Subject Property. Dayton Hudson agrees within seven (7) days of the execution of this Agreement to provide a copy of said contract to the City and further represents that to the best of its knowledge, said contract is valid and enforceable as between Dayton Hudson and Bell & Howell.

(b) Dayton Hudson and Jewel have entered into, or will enter into, a contract pursuant to which Dayton Hudson will convey, or cause to be conveyed, a portion of the Subject Property to American Stores Properties, Inc., a Delaware corporation ("Jewel Parcel"). Dayton Hudson and Jewel agree that within seven (7) days of the execution of said contract to provide a copy thereof to the City and represent that to the best of their knowledge, said contract upon its execution will be valid and enforceable as between them.

(c) Dayton Hudson and Best Buy have entered into, or will enter into, a contract pursuant to which Dayton Hudson will convey, or cause to be conveyed, a portion of the Subject Property to Best Buy Co., Inc., a Minnesota corporation ("Best

Buy Parcel"). Dayton Hudson and Best Buy agree that within seven (7) days of the execution of said contract to provide a copy thereof to the City and represent that to the best of their knowledge, said contract upon its execution will be valid and enforceable as between them.

(d) Developers agree to provide the City with an executed copy of any Operation and Easement Agreement ("OEA") entered into between them for the Subject Property prior to the disbursement of the remaining funds in the escrow account pursuant to paragraph 4(h)(3) of this Agreement.

3. DEVELOPMENT

(a) The Project shall be a shopping center of not less than two hundred thirty-two thousand (232,000) square feet. The portion of the Project on the Jewel Parcel shall have a Jewel food/drug supermarket of not less than sixty thousand (60,000) square feet and the portion of the Project on the Best Buy Parcel shall have a Best Buy store of approximately thirty-six thousand (36,000) square feet. That portion of the Project located on the Dayton Hudson Parcel shall be a Target Greatland Store containing approximately one hundred thirty thousand (130,000) square feet. The Project will substantially conform with the site plan, the landscaping plan, the schematic elevations of the Public Improvements (as described on Exhibit 5 hereto), construction materials for the Project and schematic sign specifications which are attached hereto as Group Exhibit 2, which are approved by the City Council by execution of this Agreement. Only those changes or amendments to the site plan which will effect major changes to the concept of the Project, as listed on Exhibit 3 attached

hereto, must be approved by City Council ordinance before the commencement of any construction. All other changes or amendments to the site plan, other than those listed on Exhibit 3, to the extent review is required by applicable City ordinances, will be reviewed by the City Manager or his or her designee.

The shopping center shall be constructed in a manner consistent with the general design objectives as shown in the site plan, the landscaping plan, schematic elevations of the Public Improvements (as described on Exhibit 5), construction materials for the Project and schematic sign specifications attached hereto as Group Exhibit 2, and the goals and objectives of the Redevelopment Plan and in compliance with all applicable City codes and ordinances. It is understood and acknowledged by the parties that Jewel shall be responsible for the construction of the Jewel food/drug supermarket and that construction of the supermarket shall commence not later than March 1, 1994. It is further understood and acknowledged by the Parties that Best Buy shall be responsible for the construction of the Best Buy store and that construction thereof shall commence not later than March 1, 1994. It is further understood and acknowledged by the parties that Dayton Hudson shall have responsibility for the construction of only the Target Greatland Store. Dayton Hudson, therefore, covenants that construction on the Target Greatland Store shall commence not later than March 1, 1994 and shall be completed not later than March 1, 1995. It is further understood and acknowledged by the parties that Jewel, Best Buy and Dayton Hudson shall be jointly responsible for construction of the remainder of the Project. Jewel, Best Buy and Dayton Hudson

therefore, covenant that demolition of the existing structure(s) on the Subject Property shall commence not later than September 1, 1993; that construction of the parking lot and Public Improvements as shown on Exhibit 5 shall commence not later than July 1, 1994 and that the Project and such Public Improvements shall be completed and landscaped not later than June 1, 1995. Other than the deposit by the City of the bond proceeds in escrow as provided in 4(h) of this Agreement, the costs of developing the Project and all improvements thereon shall be borne and paid for by the Developers.

(b) On or before June 1, 1993, Jewel, Best Buy and Dayton Hudson shall prepare, for their respective portions of the Project, basic concept drawings and related documents in reasonable detail including preliminary engineering plans in accordance with the site plan, the Redevelopment Plan and this Agreement and submit same to the City Manager for the City Manager's approval or disapproval. Such documents shall include but not be limited to information necessary to determine zoning and code compliance, preliminary engineering, landscaping and parking facilities of the Project.

(c) On or before August 1, 1993 Jewel, Best Buy and Dayton Hudson shall prepare and submit their respective construction drawings, final engineering plans and related documents (collectively called "Drawings") to the City Manager or his designee ("City Manager") for review and approval or disapproval in accordance with all applicable ordinances, codes and regulations. These Drawings in the aggregate shall include all site improvements, all parking facilities, on-site utilities,

off-site utilities, final landscaping and finished grading plans all in compliance with Group Exhibit 2, the Redevelopment Plan and this Agreement. The City Manager agrees, during the preparation of all Drawings, to meet with Jewel, Best Buy and Dayton Hudson to coordinate the preparation of their submissions to, and review of the Drawings by the City Manager. The City Manager shall communicate and consult informally with Jewel, Best Buy and Dayton Hudson as frequently as is necessary to insure that the formal submittal of each of their respective Drawings to the City Manager can receive prompt and speedy consideration.

(d) Any disapproval of the Drawings referred to herein shall state in writing the reasons for disapproval and the changes shall be consistent with sound engineering practices and the basic concept drawings previously approved by the City Manager. Such disapproval shall be delivered to Jewel, Best Buy or Dayton Hudson or any combination thereof, whichever is appropriate, within thirty (30) days from the date of submittal. Upon receipt from the City Manager of a disapproval of all or any portion of the Drawings, Jewel, Best Buy or Dayton Hudson, as the case may be, shall resubmit revisions of such disapproved Drawings to the City Manager as soon as reasonably possible after notice of disapproval. Any Drawings approved by the City Manager shall be considered in all respects to be in accordance with the site plan, the Redevelopment Plan and this Agreement.

(e) Before commencement of construction of their respective portions of the Project as described herein by Jewel, Best Buy or Dayton Hudson, Jewel, Best Buy and Dayton Hudson shall, at

their respective expense, secure or cause to be secured any and all permits, documents or plats which may be required by the City and any other governmental agencies having jurisdiction over such construction, development or work, or such portion of the work being performed, including, without limitation, any applications and permits, documents or plats which may be required to be obtained from any local, federal or state environmental protection agency, the Metropolitan Water Reclamation District of Greater Chicago, or from any other agency which may have or exercise any jurisdiction of any type whatsoever which may affect the Subject Property. The City shall provide all proper assistance to Jewel, Best Buy and Dayton Hudson in securing such permits and shall promptly issue all permits required to be issued by the City, and agrees to sign other permits, documents or plats which require execution by the City, provided such permits, documents or plats are in proper form and comply with all lawful requirements. The City shall approve any Plat of Subdivision for the Subject Property, or portions thereof, submitted by Dayton Hudson, Jewel or Best Buy which conforms to and is in accord with the site plan which is attached hereto as part of Group Exhibit 2. The City further agrees that, as to Jewel, Best Buy and Dayton Hudson, there shall be no unreasonable or discriminatory increases, or unreasonable or discriminatory changes in the method of calculation, of the respective building permit fees, sewer or water tap-on fees, inspection fees or any other fees or charges of the City as compared to such City fees or charges in effect.

(f) The City acknowledges that the Subject Property

(excluding the outlots) is presently zoned for the purpose contemplated under this Agreement. The parties also understand that there is presently pending before the City Council a proposed comprehensive amendment to the City's zoning ordinance which may, or may not, affect the zoning classification of the Subject Property (excluding outlots). The City recognizes, however, that Developers have substantially changed their position in reliance upon the existing zoning ordinance regarding development of the Subject Property (excluding the outlots).

The parties, therefore, agree that, notwithstanding any subsequent zoning reclassification of the Subject Property as a result of the comprehensive amendment now pending before the City Council, the Subject Property (excluding the outlots) may be developed, maintained and operated under the terms of the City of Evanston Zoning Ordinance of 1960, as amended, which is attached hereto and made a part hereof as Exhibit 6. Accordingly, the official map of the City adopted at the time the new Zoning Ordinance is enacted will designate the Subject Property as being governed by this Agreement.

Notwithstanding the foregoing, the City and Developers acknowledge and agree that, as to the outlots to be developed, proper application must be made under the then existing zoning ordinance for appropriate zoning, including special use permits if necessary.

Jewel, Best Buy and Dayton Hudson agree that outlots to be developed will be either paved or seeded until such time as they are developed in accordance with this Agreement.

Notwithstanding any provision contained herein to the

contrary, Jewel, Best Buy and Dayton Hudson shall comply with all City ordinances and regulations in any way concerning the erection, placement and maintenance of signs on their respective portions of the Subject Property.

(g) Developers acknowledge receipt of a memorandum from the City dated January 8, 1993, which sets forth certain additional requirements of the City in connection with development of the Project. In connection with the development of the Project, Developers covenant to satisfy the requirements set forth in said memorandum. A copy of said memorandum is attached hereto as Exhibit 7.

(h) Evanston agrees that it will abrogate any storm sewer easement rights referred to in correspondence from the City Engineer to Rudnick & Wolfe dated November 13, 1992 (which letter is attached hereto as Exhibit 8) provided the Developers provide engineering documents which are reasonably approved by Evanston that demonstrate that the rights abrogated will be replaced elsewhere in a dedicated easement on the Subject Property.

4. BONDS

(a) The parties acknowledge that the acquisition and development of the Subject Property as provided in the Redevelopment Plan and this Agreement can only occur with the use of proceeds from the sale of the TIF Obligations which shall be used for the acquisition of the Subject Property and other eligible TIF expenditures. The City and Developers agree that except for a breach of this Agreement by the City, the sole source for any City expense or cost in any way related to creation of the Redevelopment Area, the Redevelopment Plan and



Project, the sale of the TIF Obligations and this Agreement shall be the proceeds from the sale of the TIF Obligations more specifically described below.

(b) The TIF Obligations to be issued and sold pursuant to this Agreement shall be general obligation bonds ("GO-TIF Bonds"). The City will issue and sell two series of 20-year general obligation bonds with the right to redeem at any time backed by the full faith and credit of the City. The Series II bonds shall be issued and sold in an amount no greater than can be sold utilizing \$311,000.00 to pay the annual debt service on said Series II Bonds. The remainder of the Bonds issued and sold shall be Series I Bonds. The interest payable on the Series I Bonds shall be exempt from federal income taxation. The Series I Bonds shall be secured in order of priority as follows: (i) capitalized interest reserve withheld from the proceeds of the Bond issue; (ii) the incremental ad valorem real estate taxes arising from the levies upon taxable real property located within the Redevelopment Area ("Real Estate Tax Increments"); and (iii) the City's share of the amount of Retailers' Occupation Tax, Service Occupation Tax, Use Tax, Service Use Tax, Municipal Retailer's Occupation Tax, Municipal Service Occupation Tax and Municipal Use Tax, and any other similar sales and use tax revenues in addition to, or in lieu of, such taxes (collectively, "Sales Tax"), paid by retailers and servicemen on transactions located within the Redevelopment Area.

The interest payable on the Series II Bonds shall not be exempt from federal income taxation. The Series II Bonds shall be secured in order of priority as follows: (i) capitalized

interest reserve withheld from the proceeds of the Bond issue; (ii) Real Estate Tax Increment in the Incremental Taxes Fund (as hereinafter defined) not needed to pay annual debt service on the Series I Bonds; (iii) Sales Tax not needed to pay annual debt service on the Series I Bonds; (iv) Jewel's, Best Buy's and Dayton Hudson's guarantee to pay real estate taxes as provided in paragraph 13 of this Agreement; and (v) the Debt Service Reserve Account more fully described in paragraph 4(c) below. Any Sales Tax from the Redevelopment Area not needed to pay debt service on the Series I Bonds and the Series II Bonds shall be paid annually to the City to be used for any lawful municipal purpose.

(c) It is understood and agreed between the parties that a Debt Service Reserve Account shall be established for the purpose of guaranteeing the annual payment of debt service on the Series II Bonds. The Debt Service Reserve Account shall be funded by Developers depositing therein the sum of one hundred twenty thousand dollars (\$120,000.00) from the proceeds they are to receive from the sale of the TIF Obligations. It is acknowledged and agreed that Dayton Hudson's portion of said initial one hundred twenty thousand dollars (\$120,000.00) shall be fifty two percent (52%), Jewel's portion shall be thirty four percent (34%) and Best Buy's portion shall be fourteen percent (14%) The Debt Service Reserve Account shall be the last source of funds for the payment of the principal and interest on the Series II Bonds, and shall be used, if at all, only in accordance with the procedures set forth in this paragraph. During any year prior to the retirement or redemption of the Series II Bonds that the (i) capitalized interest, (ii) annual Real Estate Tax

Increment and any interest earned thereon not needed to pay annual debt service on the Series I Bonds and (iii) the annual Sales Tax not needed to pay annual debt service on the Series I Bonds and (iv) amounts paid by Developers pursuant to paragraph 13 of this Agreement are insufficient to pay the then owing principal and interest on the Series II Bonds, the Debt Service Reserve Account shall be used to pay such principal and interest.

In addition to the initial funding of the Debt Service Reserve Account by the Developers as described in this paragraph 4 (c), Developers agree to annually deposit in said account an amount not to exceed one hundred twenty thousand dollars (\$120,000.00) so as to assure that, at all times prior to the retirement or redemption of the Series II bonds, there exists in said account a minimum of one hundred twenty thousand dollars (\$120,000.00), including any interest earned by the Debt Service Reserve Account which shall be deposited therein. Any amount so deposited shall be allocated as follows: Dayton Hudson 52%; Jewel 34% and Best Buy 14%. During any calendar year prior to the retirement or redemption of the Series II Bonds that the funds in the Debt Service Reserve Account fall below one hundred twenty thousand Dollars (\$120,000.00), Developers shall replenish said account upon thirty (30) days written notice from City. Any amount so replenished shall be allocated as follows: Dayton Hudson 52%; Jewel 34% and Best Buy 14%. In such event, and if the City shall subsequently receive Real Estate Tax Increment and Sales Tax for the same calendar year it shall refund to the Developers the percentage above allocate, within thirty (30) days after all such funds are received for said year, a sum equal the

lesser of (i) the amount of Real Estate Tax Increment and sales tax subsequently received or (ii) the amount by which Developers replenished the Debt Service Reserve Account in said calendar year. Upon the retirement or redemption of the Series II Bonds, and provided that the City shall have first refunded to itself any moneys taken from the general fund to pay annual debt service on the Series I or Series II Bonds during their life, Developers shall be entitled to receive funds remaining in the Debt Service Reserve Account, including interest earned by the Debt Service Reserve Account in the following percentages: Dayton Hudson 52%; Jewel 34% and Best Buy 14%. After the redemption or retirement of both the Series I Bonds and the Series II Bonds, Developers shall also be entitled to receive, out of Real Estate Tax Increment, the initial \$120,000.00 deposit and all other funds deposited in the Debt Service Reserve Account by Developers in the percentages deposited during the term of the Series II Bonds. The City shall have exclusive control and shall direct the investment of said funds in accordance with Illinois State Law.

(d) Dayton Hudson shall, no later than April 15, 1993, notify the City that it has paid or caused to be paid into escrow for the benefit of Bell & Howell and Dayton Hudson, as provided in, and required by the purchase contract by and between Bell & Howell and Dayton Hudson as additional earnest money for the purchase of the Subject Property, the sum of four million dollars (\$4,000,000.00). Dayton Hudson shall have two hundred forty (240) days from the date it so notifies the City to close on said acquisition. The City shall have thirty (30) days from the date demolition of the existing Bell & Howell building is completed to

issue the GO-TIF Bonds and sell the same at two sales after the closing on the Subject Property has taken place. In the event (1) Dayton Hudson does not notify the City of its deposit of earnest money as described herein, or (2) either Jewel, Best Buy or Dayton Hudson is not in compliance with the provisions of paragraph 4(e) below, the City shall have the right to not issue the GO-TIF Bonds in which event the provisions of this paragraph 4(d) shall be renegotiated.

(e) It is understood and agreed between the parties that the City shall take all steps necessary to sell the GO-TIF Bonds pursuant to the terms of this Agreement provided Jewel, Best Buy and Dayton Hudson are in complete compliance with all of the provisions of paragraphs 4(d) and 4(e) of this Agreement, and provided the City receives all of the following: (1) a copy of the executed contract between Dayton Hudson and Bell & Howell for the purchase of the Subject Property; (2) a copy of the executed contract between Dayton Hudson and Jewel for the sale of the Jewel Parcel; (3) A copy of the executed contract between Dayton Hudson and Best Buy for the Best Buy Parcel; (4) Appropriate corporate resolutions from Jewel, Best Buy and Dayton Hudson, enabling Jewel, Best Buy and Dayton Hudson to complete their respective portions of the Project by their respective completion dates; (5) any and all building permits required by the City for each of the respective developments, provided that the City is in compliance with paragraph 3(d) and 3(e) of this Agreement; and (6) satisfactory evidence that closings have occurred and the Developers own the Subject Property.

(f) All funds to secure the TIF Obligations except those

deposited in the Debt Service Reserve Account shall be promptly deposited, from time to time, in the Special Tax Allocation Fund for the Redevelopment Area created pursuant to the Act and the ordinances adopted by the City relating to the Redevelopment Area (the "Incremental Taxes Fund"). Individual accounts may be created and maintained within the Incremental Taxes Fund for: (1) the Real Estate Tax Increments; (2) the Sales Tax from the Redevelopment Area. Dayton Hudson shall provide the City with their State of Illinois Department of Revenue form ST-1 for their Target Greatland Store located on the Dayton Hudson Parcel, as same is required to be prepared, either monthly or quarterly. Jewel shall provide the City with State of Illinois Department of Revenue form ST-1 for their food/drug supermarket on the Jewel Parcel as same is required to be submitted either monthly or quarterly. Best Buy shall provide the City with the State of Illinois Department of Revenue form ST-1 for their Best Buy store on the Best Buy Parcel as same is required to be submitted either monthly or quarterly. The City pledges that it will promptly deposit the entirety of such revenues (including any funds or revenues used from the Debt Service Reserve Account), into the Incremental Taxes Fund. Because the Incremental Taxes Fund is a special fund, the aforesaid deposits into or out of the Incremental Taxes Fund shall not be subject to the appropriation process of the corporate authorities and the amounts deposited therein shall be disbursed in accordance with this Agreement, the TIF Obligations and the GO-TIF Bonds indenture or bond ordinance without further action of the corporate authorities. In addition, to the fullest extent lawful, the City agrees that: (1) it will not, without the

consent of Jewel, Best Buy and Dayton Hudson, revoke or amend the ordinances adopted by the City relating to the Redevelopment Area; (2) it will not pledge or apply the Incremental Taxes Fund to any other purpose or payment of any other obligation of the City, provided, however, that any Sales Tax from the Redevelopment Area not needed to pay debt service on the GO-TIF Bonds for such year shall be annually withdrawn by the City to be used for any lawful municipal purpose; (3) it will not commingle the Incremental Taxes Fund with the City's other monies; (4) it will not take any action or omit to take any action that will affect the continued existence of the Incremental Taxes Fund or the availability of the Incremental Taxes Fund to pay the TIF Obligations; (5) it will take all actions and submit all documents in a timely manner in order to receive all Real Estate Tax Increment and Sales Tax; and (6) it will direct the investment of said Real Estate Tax Increment and Sales Tax in accordance with Illinois State Law. The parties also agree that they will take all actions necessary to ensure that the interest payable on the Series I Bonds is and remains exempt from taxation under the Internal Revenue Code of 1986, as amended, and all related regulations of the Department of the Treasury.

(g) The City shall be entitled to any interest earned on the Sales Tax. Said interest shall not be used to pay debt service on the Series I or Series II Bonds.

(h) It is agreed that, if the Developers are in compliance with this Agreement, the sum of seven million three hundred ninety thousand dollars (\$7,390,000.00) from the proceeds of the

sales of the GO-TIF Bonds shall be paid by the City into a joint escrow established by the parties with Chicago Title and Trust Company for the purpose of disbursing the proceeds of the sales of the GO-TIF Bonds from time to time, in accordance with the terms of this Agreement. The City agrees that it will deposit into said escrow the sum of \$7,390,000.00, said sum representing only a portion of eligible Project costs, which are more fully described in Exhibit 4 hereto.

Disbursement of the funds so deposited in said escrow shall be made in the following manner:

- (1) The sum of one hundred twenty thousand dollars (\$120,000.00) shall be immediately used to fund the Debt Service Reserve Account.
- (2) The sum of two million three hundred eighty thousand dollars (\$2,380,000.00) shall be disbursed from said escrow upon receipt of evidence that the Subject Property has been properly subdivided and that permanent index numbers for each parcel have been assigned or properly applied for and upon the later of (i) completion of the demolition of the existing Bell & Howell building or (ii) sale of the Go-TIF Bonds which will occur no later than thirty (30) days after the completion of said demolition, as follows:
 - (a) One million two hundred thirty seven thousand six hundred dollars (\$1,237,600.00) to Dayton Hudson.
 - (b) Eight hundred nine thousand two hundred dollars (\$809,200.00) to Jewel.
 - (c) Three hundred thirty three thousand two hundred dollars (\$333,200.00) to Best Buy.
- (3) The remainder of said funds shall be disbursed from said escrow upon the City's receipt of the OEA between the Developers and upon the completion of all public improvements with the exception of landscaping, in the following manner:
 - (a) 52% of said remaining funds to Dayton Hudson upon submittal of an architect's statement that its portion of the project is substantially complete and the Target Greatland Store has opened for the conduct of business.

- (b) 34% of said remaining funds to Jewel upon submittal of an architect's statement that its portion of the project is substantially complete and the food/drug supermarket has opened for the conduct of business.
- (c) 14% of said remaining funds to Best Buy upon submittal of an architect's statement that its portion of the project is substantially complete and the Best Buy store has opened for the conduct of business.

(i) The City shall be entitled to any interest earned on the funds in said escrow and shall have the right to direct the investment of said funds, and shall do so in accordance with Illinois State law. After the first disbursement of funds, the City shall earn and retain the interest on the escrow funds until the issuance of full building permits for the Jewel food/drug supermarket and the Best Buy store and building permits for the public improvements as shown on Exhibit 5; at such time the Developers shall earn interest on two million eight hundred ninety thousand dollars (52% of such interest to Dayton Hudson, 34% to Jewel and 14% to Best Buy) of the escrow funds. The City shall earn and retain interest on the remainder until the City, has received, as to the Jewel and Best Buy portions; 1) the OEA between the Developers; and 2) an architect's statement that the roof and the exterior walls of the Jewel and Best Buy portions of the project are erect; as to the Dayton Hudson portion; 1) the OEA between the Developers; and 2) an architect's statement that the roof and the exterior walls of the Dayton Hudson portion of the project are erect. Upon such receipt, all interest earned on the remainder of funds in said escrow shall be retained for the Developers (52% of such interest to Dayton Hudson; 34% thereof to

Jewel and 14% thereof to Best Buy) until such time as said remainder of funds are disbursed to the Developers pursuant to paragraph 4 (h)(3) above.

(j) The City hereby designates the City Finance Director as its representative to coordinate the authorization of disbursement of funds from the escrow and the Incremental Taxes Fund. The City further agrees to use GO-TIF Bond Proceeds to pay administrative, legal and bond issuance costs constituting Redevelopment Project Costs (as defined in the Act) and as are listed in Exhibit 4 to this Agreement.

(k) Dayton Hudson shall dedicate to the City the real property on which the new Hartrey Avenue is to be constructed and Developers shall pay for the cost of constructing the improvements described in Exhibit 5 which is attached hereto and made a part hereof ("Public Improvements"). Each Developer shall dedicate to the City a portion of its frontage on Howard Street as required. In any event, it is understood and agreed between the parties that the City shall not have any obligation to contribute any funds to the construction of the Project beyond the \$7,390,000.00 from proceeds of the sale of the GO-TIF Bonds, which are to be deposited in the escrow.

(l) The City agrees to provide Developers with copies of the proposed bond ordinance and preliminary official statement prior to the adoption of the bond ordinance. In addition, the City agrees that it will not refund any of the GO-TIF Bonds described herein in any manner that would change the obligations of Developers under this Agreement.

5. RIGHT TO DEVELOPMENT

The City agrees that during the term of this Agreement, that Jewel, Best Buy and Dayton Hudson shall have the sole and exclusive right to develop their respective portions of the Project in accordance with the provisions of this Agreement.

6. TRANSFERS PRIOR TO CERTIFICATE OF OCCUPANCY

Mortgages, deeds of trust, sales and leases-back, ground leases or any other form of financing conveyance required for any method of financing are permitted before issuance of a certificate of occupancy for the Project improvements for the purpose of securing loans or funds to be used for financing the acquisition of the Subject Property or any portion thereof, the construction of the improvements on the Subject Property, and any other expenditures necessary and appropriate to the complete the Project under this Agreement.

Jewel, Best Buy and Dayton Hudson, respectively, shall notify the City in advance of any mortgage, deed of trust, sale and lease-back or other form of conveyance for financing if either proposes to enter into the same before issuance of a certificate of occupancy for their respective Project improvements. The words "mortgage" and "deed of trust" as used herein include all other appropriate modes of financing real estate acquisition, construction, and land development, and the words "sale and lease-back" shall include sales and subleases-back. Any such lease, transfer, sale or conveyance for financing shall not relieve either Jewel, Best Buy or Dayton Hudson from any of their respective obligations or responsibilities hereunder unless the City specifically, and in

writing, releases either Jewel, Best Buy or Dayton Hudson, respectively, from any such obligation or responsibility. Any such subsequent owner shall take subject to and be bound by the terms and conditions of this Agreement. Except for the outlots and except as provided in this paragraph, neither Jewel, Best Buy nor Dayton Hudson shall, prior to the issuance of a certificate of occupancy for their respective Project improvements, sell, transfer, convey, assign or lease their respective portions of the Subject Property or any part hereof, without compliance with paragraph 19 of this Agreement provided, however, nothing herein shall preclude execution of easements, leases for occupancy by lessees of any part of the Subject Property, or collateral assignments and/or mortgages of the Developers' rights respecting the Project and/or the Subject Property to lenders financing the Project or their respective portions thereof. After certificates of occupancy for the Project have been issued, the requirements of this paragraph 6 shall no longer apply.

7. NOTICES

All notices herein required shall be in writing and shall be served on the parties, either personally or mailed by certified or registered mail, return receipt requested as follows:

If to the City: City of Evanston
2100 Ridge Road
Evanston, Illinois 60201-2796
Attn: City Manager

With a Copy to: Burke and Ryan
33 North Dearborn (402)
Chicago, IL 60602

If to Jewel: American Stores Properties Inc.
8725 W. Higgins Road

Chicago, Illinois 60631
Attn: Jewel Food Stores
Real Estate Division

If to Best Buy:

Best Buy Co., Inc.
4400 W. 78th Street
Bloomington, Minnesota 55435
Attn: Pat Matre, Vice President

With a Copy to:

Robins, Kaplon, Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, Minnesota 55402
Attn: Steven A. Schumeister

If to Dayton Hudson:

Target Stores Division of
Dayton Hudson Corporation
33 South Sixth Street
P.O. Box 1392
Minneapolis, Minnesota 55440
Attn: Property Administration

With a Copy to:

Gregory Hummel
Rudnick and Wolfe
203 N. LaSalle Street (1800)
Chicago, IL 60601

8. PROGRESS REPORTS

Upon request, from time to time by the City or by Jewel, Best Buy or Dayton Hudson, the party to whom such request is directed agrees to make brief monthly progress reports informing the other party of all matters and of all studies made by the reporting party relating to the development of the Subject Property as well as meeting the requirements of minority and women participation as set forth in applicable law.

9. BROKERS COMMISSION

Developers agree to indemnify, defend and hold harmless the City, its officers and employees from any and all claims for any real estate broker commissions or fees as a consequence of the execution of this Agreement, Dayton Hudson's purchase of the

Subject Property or subsequent sale of portions thereof to Jewel and Best Buy. The City hereby represents that it has not engaged any brokers in connection with the transactions contemplated in this Agreement.

10. MEMORANDUM

Neither party shall record this Agreement, but each party agrees to execute and to deliver to the other party when this Agreement is executed and delivered, multiple copies of a memorandum in a form acceptable to their respective counsel. Any party, at its sole expense, may record the memorandum in the offices of the Recorder of Deeds of Cook County, Illinois.

11. LEGAL CONFORMITY

The parties shall carry out the construction of the Project in conformity with all applicable laws and ordinances, including all applicable federal and state standards. The laws of the State of Illinois shall govern the interpretation and enforcement of this Agreement.

12. PERMITTED DELAYS

Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes or lack of transportation. An extension of time for any such cause shall be for the period of the delay, which period shall commence to run from the time of the commencement of the cause, provided that written notice by the party claiming such extension is sent to the other party not more than twenty (20) days after the commencement of the cause or

not more than twenty (20) days after the party claiming such extension could have first reasonably recognized the commencement of the cause, whichever is later.

13. PAYMENT OF REAL ESTATES TAXES

(a) The parties acknowledge that certain assumptions have been made relative to the future assessed valuation of the Subject Property when the Subject Property is improved pursuant to this Agreement. The parties further acknowledge that attaining and maintaining said assessed valuation will have a material effect on the revenue available to pay the TIF Obligations.

(b) Accordingly, in each year during the life of the Series II Bonds, Dayton Hudson covenants to pay the real estate taxes for the Dayton Hudson Parcel. In like manner Jewel covenants to pay the real estate taxes for the Jewel Parcel. In like manner, Best Buy covenants to pay the real estate taxes for the Best Buy Parcel. Developers covenant to pay the real estate taxes for the outlots and shops parcel (Dayton Hudson 52%, Jewel 34% and Best Buy 14%) until such time as outlots are transferred to entities unaffiliated with Developers. In the event that the annual real estate taxes for the Subject Property (excluding the outlots) are ever less than \$1,000,000.00, while the Series II Bonds are outstanding, then (a) Dayton Hudson agrees to pay the City an amount equal to fifty two percent (52%) of the difference between \$1,000,000.00 and the actual real estate tax bills for such year up to a maximum amount of \$99,320.00 (b) Jewel agrees to pay the City an amount equal to thirty four percent (34%) of the difference between \$1,000,000.00 and the actual amount of the

real estate tax bills for such year up to a maximum of \$64,940.00 and (c) Best Buy agrees to pay the City an amount equal to fourteen percent (14%) of the difference between \$1,000,000.00 and the actual real estate tax bills for such year up to a maximum amount of \$26,740.00. Said payments shall be made at the time of the payment of the second installment of the real estate taxes. The City shall use such funds to pay principal and interest on the Series II Bonds and deposit such funds into a separate tax guarantee account. Notwithstanding anything herein contained to the contrary, neither Dayton Hudson, Jewel nor Best Buy shall be obligated to make the payments required in this Subparagraph 13(b) unless the capitalized interest reserve, the amounts in the Incremental Taxes Fund and the amount in the Debt Service Reserve Account are insufficient to pay the debt service on the Series II Bonds for such years. In the event that the amount of any such insufficiency is less than \$191,000.00, then Dayton Hudson, Jewel and Best Buy shall only be obligated to pay the amount of any such insufficiency in the ratios of fifty-two percent (52%) of said insufficiency by Dayton Hudson, thirty-four percent (34%) of said insufficiency by Jewel and fourteen percent (14%) of such insufficiency by Best Buy.

(c) The parties agree that the restriction contained herein is a covenant running with the land and a memorandum thereof shall be recorded with the Cook County Recorder of Deeds. This restriction shall be binding upon Jewel, Best Buy, Dayton Hudson and their successors, assigns or transferees other than outlots transferred to entities unaffiliated with Developers from and after the date hereof; provided, however that said covenant shall

be null and void if and when the Series II Bonds have been fully redeemed or paid (other than by a refunding), without the necessity of recording a release thereof, which shall be noted in the recorded memorandum. The City will issue a release from said covenant at such time, which release shall be recorded. Jewel, Best Buy and Dayton Hudson agree that any sale, conveyance or transfer of title to all or any portion of the Subject Property from and after the date hereof shall be made subject to such covenant and restriction other than outlots transferred to entities unaffiliated with Developers.

(d) Jewel, Best Buy and Dayton Hudson further agree, that to the extent they are obligated to pay any portion of the real estate tax bills for their respective portions of the Subject Property, they shall pay such taxes promptly before the date of delinquency of such tax bills.

(e) If the State of Illinois should eliminate or reduce the amount of money received by the City as its share of Sales Tax as defined in paragraph 4(b) of this Agreement the City shall enact or adopt an ordinance under its Home Rule Powers providing for a replacement tax in the amount so eliminated or reduced by the State of Illinois. Said ordinance shall contain the same terms as to the amount and manner of receipt of said moneys as were so eliminated.

14. MORTGAGE HOLDERS

(a) Whenever the City shall deliver any notice or demand to Jewel, Best Buy and/or Dayton Hudson with respect to any alleged breach or default by Jewel, Best Buy or Dayton Hudson hereunder, the City shall at the same time deliver to each holder of record

of any mortgage, deed of trust or other security interest and the lessor under a lease-back or grantee under any other conveyance for financing a copy of such notice or demand, provided the City has been advised of the name and address of any such holder. Each such holder or other entity shall (insofar as the rights of the City are concerned) have the right at its option within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy any such default and to add the cost thereof to the security interest debt and the lien of its security interest or to the obligations of the lessee under the lease-back or of the grantor under any other conveyance for financing; provided, however, in the event of a default by Jewel, Best Buy or Dayton Hudson hereunder which is not curable by such holder or other entity (e.g., insolvency or bankruptcy of Jewel, Best Buy or Dayton Hudson), such holder or other entity shall be deemed to have cured such noncurable defaults by its execution of the assumption agreement contemplated in the later portions of this paragraph.

(b) The holder of any mortgage, deed of trust or other security interest and the lessor under a lease-back or grantee under any other conveyance for financing referred to in paragraph 6 of this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion, notwithstanding the assignment of this Agreement to such party by Jewel, Best Buy or Dayton Hudson. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Subject Property to any uses, or to construct any improvements thereon,

other than those uses or improvements provided for or authorized by this Agreement, any such unauthorized use or improvements being expressly prohibited. Nothing contained in this Agreement shall be deemed to permit or authorize any holder or other entity to undertake or continue the construction or completion of the improvements (beyond the extent necessary to conserve or protect the improvement or construction already made) without first having expressly assumed the obligations of Jewel, Best Buy or Dayton Hudson (with respect to the portion of the Subject Property on which the holder or other entity has an interest) to the City by written agreement satisfactory to the City. The holder or other entity in this event must agree to complete, in the manner provided in this Agreement, the improvements to which the lien or title of such holder or other entity relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Such holder and its successors in interest shall only be deemed to have assumed the obligations of Jewel, Best Buy or Dayton Hudson for as long as they have an interest in the Subject Property, and the sole remedy for breach of this assumption agreement will be limited to the equity interest of such holder or successor in its respective portion of the Subject Property. No such assumption agreement will relieve Jewel, Best Buy or Dayton Hudson of any of their obligations under this Agreement. Any such holder or other entity properly completing such improvements shall be entitled, upon written request made to the City, to a certificate of occupancy from the City with respect to such improvements. Nothing in this paragraph 14 shall

be deemed to grant to any such holder or other entity referred to in this paragraph any rights or powers beyond those granted under their underlying agreement with Jewel, Best Buy or Dayton Hudson.

(c) In the event of a default or breach by Jewel, Best Buy or Dayton Hudson or any entity permitted to acquire title hereunder, in the construction or completion of construction of the improvements contemplated hereunder, which is also a default under any mortgage, deed or trust, other security instrument or lease-back or obligations to the grantee under any other conveyance for financing with respect to the Subject Property or a portion thereof, prior to the issuance of the certificate of occupancy for the Project and the holder, lessor or grantee, as the case may be, has not exercised its option to complete their respective portion of the Project, the City may cure the default or cause the same to be cured prior to completion of any foreclosure as a result of such default or termination of the lease or other interest retained or granted back as a result of such default. In such event, the City or its nominee shall be entitled to reimbursement from Jewel, Best Buy and/or Dayton Hudson respectively of all reasonable costs and expenses incurred by the City in curing the default, of such party, including reasonable attorneys' fees. The City shall also be entitled to a lien upon the respective portion of the Subject Property to the extent of such reasonable costs and expenses including reasonable attorneys' fees. Any such lien shall be subject to mortgages, deeds of trust or other security instruments and the interest of a lessor under any lease-back and grantees under other

conveyances for financing executed for the sole purpose of obtaining funds to purchase and develop the Subject Property, construct the improvements, finance such costs and to pay all costs reasonably related to Jewel, Best Buy and Dayton Hudson's obtaining and performing this Agreement.

15. CERTIFICATES OF OCCUPANCY

Certificates of occupancy shall be issued in accordance with the City code, upon written request of Jewel, Best Buy and/or Dayton Hudson or other permittee.

16. NO DISCRIMINATION-CONSTRUCTION

Developers for themselves and their successors and assigns agree that in the construction of the improvements on the Subject Property provided for in this Agreement:

(a) Developers shall not, with respect to their respective portions of the Project, discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or sexual orientation. Developers shall, with respect to their respective portions of the Project, take affirmative action to require that applicants are employed and that employees are treated during employment, without regard to race, creed, color, religion, sex, national origin, disability or sexual orientation. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising, solicitations or advertisements of employees; layoff or termination; rates of pay or other forms of compensation, and selection for training, including apprenticeship. Developers agree to post in conspicuous places, in and on their respective portions of the

Subject Property available to employees and applicants for employment, notices which may be provided by the City setting forth the provisions of this nondiscrimination clause.

(b) Notwithstanding the foregoing provisions, Jewel, Best Buy and Dayton Hudson shall be entitled to employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

(c) In addition to the foregoing covenants, as more fully provided in Paragraph 17(b) below, in the construction of the improvements on the Subject Property provided for in this Agreement, Developers shall use their best efforts to secure participation by MBEs (as defined in Paragraph 17(b) below), with a goal of 25% of the aggregate dollar volume of all such construction to be let to MBEs. Such best efforts shall include, without limitation, utilizing their best efforts to secure participation by a joint venture between an MBE and a non-MBE entity in at least one portion of construction of the improvements on the Subject Property, which MBE joint venture participation shall be included as MBE participation in determining whether the 25% participation goal has been satisfied. In the event that notwithstanding such best efforts, said goal of 25% MBE participation is not met, which shall be determined at the time of the final disbursement of proceeds under Paragraph 4(h) above, then the City shall retain from the final disbursement of such proceeds a fund equal to \$50,000 to be utilized by the City to create a job training program. Said \$50,000 shall be divided proportionately between the Developers (i.e. \$26,000.00 from proceeds otherwise payable to Dayton

Hudson, \$17,000.00 from proceeds otherwise payable to Jewel and \$7,000.00 from proceeds otherwise payable to Best Buy).

17. NO DISCRIMINATION-USE

(a) Developers agree, with respect to their respective portions of the Project, to comply with all applicable law prohibiting discrimination against, or segregation of, any person, or group of persons, on accounts of sex, race, color, creed, national origin, disability or sexual orientation in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of their respective portions of the Subject Property. In addition, Developers themselves, or any person claiming under or through them, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of any portion of the Subject Property.

(b) Dayton Hudson, Jewel and Best Buy shall each exercise their best efforts to secure minority business enterprises the greatest possible participation in all construction and service contracts for their respective portions of the Project. A minority business enterprise ("MBE") shall mean any entity which is owned or controlled by one or more minorities (including, without limitation, women), who, to the extent feasible, reside in Evanston, and which is, to the extent feasible, a small business concern within Section 3 of the Small Business Act. Jewel, Best Buy and Dayton Hudson shall be responsible for utilizing their best efforts to secure participation by MBEs in their respective portions of the Project with the goal that 25%

of the aggregate dollar volume of all construction and service contracts be let to MBEs with respect to the Project. Jewel Best Buy and Dayton Hudson shall each exercise their best efforts to identify appropriate MBEs and, where necessary, shall assist such MBEs in qualifying to secure construction or service work in their respective portions of the Project.

18. REMEDIES-LIABILITY

(a) In addition to any other rights or remedies, any party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement, any at law or in equity, including, but not limited to the equitable remedy of an action for specific performance. In the event any party shall institute legal action because of a breach of any provision or obligation contained in this Agreement, and a breach shall be established by a final, non-appealable judgment against a party, the prevailing party shall be entitled to recover all damages, costs and expenses, including reasonable attorneys' fees incurred therefor.

(b) Notwithstanding any other provision to the contrary contained in this Agreement, (i) Jewel shall only be responsible for the obligations of Jewel under this Agreement, and shall not be liable, severally or otherwise, for any obligations of Best Buy or Dayton Hudson under this Agreement; (ii) Dayton Hudson shall only be responsible for the obligations of Dayton Hudson under this Agreement, and shall not be liable, severally or otherwise, for any obligations of Jewel or Best Buy under this Agreement; and (iii) Best Buy shall only be responsible for the

obligations of Best Buy and shall not be liable severally or otherwise for the obligation of Jewel or Dayton Hudson under this Agreement.

A default by Jewel of any of its obligations under this Agreement shall not be a default of Best Buy or Dayton Hudson under this Agreement. A default by Dayton Hudson under any of its obligations under this Agreement shall not be a default of Jewel or Best Buy under this Agreement. A default by Best Buy under any of its obligations under this agreement shall not be a default by Dayton Hudson or Jewel under this Agreement. The foregoing recital of individual responsibility shall also apply to any provisions which referred to Jewel, Best Buy and Dayton Hudson collectively as Developers.

(c) The rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other parties.

(d) Subject to the extensions of time set forth in paragraph 12, failure or delay by any party to perform any term or provision of this Agreement shall constitute a default under this Agreement. The party who so fails or delays must, upon receipt of written notice of the existence of such default, immediately commence to cure, correct or remedy with due diligence. The party claiming such default shall give written notice of the alleged default to the party alleged to be in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not

constitute a waiver of any default, nor shall it change the time of default. Except as required to protect against further damages, and except as otherwise expressly provided in this Agreement, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, said thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the defaulting party diligently proceeds therewith; if such default is cured within such extended period, the default shall not be deemed to constitute a breach of this Agreement. A default not cured as provided above shall constitute a breach of this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach of any rights or remedies it may have as a result of such default or breach.

(e) Each of the following acts or omissions of Jewel, Best Buy or Dayton Hudson shall constitute a breach or default only on the part of that party responsible for that act or omission:

1. Jewel, Best Buy or Dayton Hudson transfers, or suffers any involuntary transfer of its respective portion of the Subject Property, or any part thereof, in violation of this Agreement (it is understood and agreed that the conveyance of portions of the Subject Property from Dayton Hudson to Jewel and Best Buy pursuant to paragraph 2(b) and (c) of this Agreement or the

conveyance of the Joint Parcel or portions thereof shall not constitute a default under this Agreement);

2. the filing or execution or occurrence of: a petition filed by Jewel, Best Buy or Dayton Hudson, respectively, seeking any debtor relief; the making of an assignment for the benefit of creditors by Jewel, Best Buy or Dayton Hudson, respectively, or their execution of any instrument for the purpose of effecting a composition of creditors; or if Jewel, Best Buy or Dayton Hudson, respectively, is adjudicated as bankrupt.

19. ASSIGNMENT

During the term of the GO-TIF Bonds, any transfer of all or any interest in either the Dayton Hudson Parcel or the Jewel Parcel or the Best Buy Parcel, any improvements on either parcel, and this Agreement (including the beneficial interest under a land trust that takes title to either or both parcels, but excluding the outlots) is only permitted upon the prior written approval of the City which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that nothing herein shall preclude execution of easements or leases for occupancy by lessees of any part of the Subject Property or collateral assignments and/or mortgages of the Developers' rights respecting the Project and/or the Subject Property to lenders financing the Project or their respective portions thereof. As a minimum, the City shall be entitled to reasonably require the following regarding any transfer:

a. Any proposed transferee of Jewel, Best Buy or Dayton Hudson respectively shall have the experience and financial

responsibility necessary to fulfill the obligations undertaken by Jewel, Best Buy or Dayton Hudson respectively in this Agreement and provide adequate Real Estate Tax Increment and/or Sales Tax for the City to pay the debt service on all the GO-TIF Bonds.

b. Any such proposed transferees shall have expressly assumed the obligations of Jewel, Best Buy or Dayton Hudson respectively hereunder in writing.

c. All instruments and legal documents involved and affecting any such transfer from Jewel, Best Buy or Dayton Hudson, respectively, to any transferee shall be submitted to the City for review. Upon compliance with the requirements contained in this Paragraph 19, Jewel, Best Buy or Dayton Hudson respectively shall be relieved from all further liability under this Agreement. In the absence of specific written agreement by the City, no transfer shall be deemed to relieve Jewel, Best Buy and/or Dayton Hudson or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Project from any of their obligations with respect thereto as to the interest transferred. Notwithstanding any other provision in this Agreement, Jewel, Best Buy or Dayton Hudson respectively may without prior City approval transfer all or any portion of its respective portion of the Subject Property or this Agreement to a limited partnership or any other entity in which Jewel, Best Buy or Dayton Hudson respectively maintains control and ownership of more than 50% of said interest.

Jewel, Best Buy and/or Dayton Hudson respectively shall in any event notify the City of any transfer of any interest in its

portion of the Subject Property (including the beneficial interest under any land trust).

20. INSURANCE

While any GO-TIF Bonds are outstanding, Jewel, Best Buy and Dayton Hudson shall carry and maintain, and the successor owners of their respective portions of the Subject Property, shall carry and maintain property insurance covering their respective portions of the Subject Property with a responsible insurance company or companies, against physical loss or damage, including fire and extended coverage, vandalism, malicious mischief, collapse, boiler and sprinkler leakage, with such exceptions as are ordinarily required by insurers of structures or facilities of similar type, in an amount not less than one hundred percent (100%) of the replacement value thereof, and, Jewel, Best Buy and Dayton Hudson, their agents, representatives, successors, assigns and transferees agree that the proceeds from such insurance shall be used and shall be applied for the purpose of repair, replacement or reconstruction of the damaged or destroyed portion of the respective portion of the Subject Property. In addition, Jewel, Best Buy and Dayton Hudson, while any GO-TIF Bonds are outstanding, shall carry and maintain, and their successors shall carry and maintain policies of insurance covering any and all losses by death, injuries, losses, damages, suits, liability, judgments, costs and expenses of any type including costs of defense (including by not limited to reasonable attorneys fees). Dayton Hudson shall indemnify and hold harmless the City, its agents, officers and employees

against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses of any type including costs of defense (including but not limited to reasonable attorney's fees), to the extent arising out of the condition of the Dayton Hudson Parcel, including, but not limited to the presence of any hazardous waste or other environmental condition thereof, or out of the negligence or reckless or willful misconduct of Dayton Hudson, its general contractor or its or their employees and agents, (but excluding in all cases, those arising out of the negligence of the City, its officer, agents, employees and contractors.) Jewel shall indemnify and hold harmless the City, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses of any type including costs of defense (including, but not limited to reasonable attorney's fees), to the extent arising out of the condition of the Jewel Parcel, including, but not limited to, the presence of any hazardous waste or other environmental condition thereof, or out of the negligence or reckless or willful misconduct of Jewel, its general contractor or its or their employees and agents, but excluding in all cases those arising out of the negligence of the City, its officers, agents, employees and contractors. Best Buy shall indemnify and hold harmless the City, its agents, officers and employees against all injuries, deaths, losses, damages, claims suite, liabilities, judgments, costs and expenses of any type including costs of defense (including, but not limited to reasonable attorney's fees), to the extent arising out of the

condition of the Best Buy Parcel, including but not limited to, the presence of any hazardous waste or other environmental condition thereof, or out of the negligence or reckless or willful misconduct of Best Buy, its general contractor or its or their employees and agents, but excluding in all cases those arising out of the negligence of the City, its officers, agents, employees and contractors. The parties further agree that the City shall retain the right to purchase, at its cost business interruption insurance on Jewel, Best Buy and Dayton Hudson in an amount not less than \$1,000,000.00, the total premium of which may be paid out of bond proceeds, provided, however, that any such payment shall not reduce the \$7,390,000.00 payment to the Developers as provided in this Agreement. The City may use future Real Estate Tax Increment not needed to pay annual debt service to pay such premiums. The City further retains the right to designate itself as beneficiary of any such insurance policy.

21. AMENDMENT

This Agreement, and any exhibits attached hereto, may be amended only by the mutual consent of the parties with the adoption of an ordinance or resolution of the City approving said amendment, as provided by law, and by the execution of the amendment by the parties or their successors in interest. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

22. DUPLICATE ORIGINALS

This Agreement is executed in six (6) duplicate originals, each of which is deemed to be an original.

23. TIME

Time is of the essence of this Agreement.

24. CERTIFICATE OF COMPLETION

Promptly after completion of the construction of the Target store, the Jewel food/drug supermarket and the Best Buy store, respectively, in accordance with this Agreement, the City shall furnish Jewel, Best Buy and Dayton Hudson, respectively, with an appropriate instrument so certifying. The certification by the City shall be conclusive determination of satisfaction and termination of only the covenants in this Agreement with respect to the obligations of Jewel, Best Buy and/or Dayton Hudson respectively and their successors and assigns to construct their respective portion of the Project. The certification shall be in such form as will enable it to be recorded. Upon written request by Jewel, Best Buy and/or Dayton Hudson for a certificate of completion, the City shall within thirty (30) days after receipt of the same provide Jewel; Best Buy and/or Dayton Hudson either with a certificate of completion or a written statement indicating in adequate detail, how Jewel, Best Buy and/or Dayton Hudson have failed to complete the construction in conformity with the Redevelopment Plan or this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for Jewel, Best Buy and/or Dayton Hudson to take or perform in order to obtain the certification. If the

City requires additional measures or acts of Jewel, Best Buy and/or Dayton Hudson to assure compliance, Jewel, Best Buy and/or Dayton Hudson shall resubmit a written request for a certificate of completion upon compliance with the City's response.

25. The parties acknowledge the existence of (i) a purchase Sale Agreement between Dayton Hudson and Jewel, (ii) a Purchase Sale Agreement between Dayton Hudson and Best Buy, (iii) an Operation and Easement Agreement between Dayton Hudson, Jewel and Best Buy and (iv) a Consultant's Agreement between Dayton Hudson, Jewel, Best Buy and Tanquay-Burke-Stratton. The parties further agree that should the terms of any of those agreements conflict with the terms and condition of this Redevelopment Agreement, the terms and conditions of this Redevelopment Agreement shall control.

IN WITNESS WHEREOF this Agreement has been duly authorized and approved by the City Council of the City of Evanston, Cook County, Illinois, and duly authorized, approved and executed by American Stores Properties Inc., Best Buy Co., Inc., and Dayton Hudson Corporation as of the date and year first above set forth.

CITY:

CITY OF EVANSTON, an Illinois home rule municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

American Stores Properties Inc.

By: _____
Its: _____

Attest: _____

Best Buy Co., Inc.

By: _____
Its: _____

DAYTON HUDSON:

DAYTON HUDSON CORPORATION, a
Minnesota corporation

By: _____
Its: _____

Attest: _____

EXHIBITS

1. Legal Description (1)
2. (Group) Site Plan, Landscaping Plan, Schematic Elevations of the Public Improvements (as described in Exhibit 5 hereto) (including construction materials to be used) and Schematic Sign Plan. (2,T)
3. Changes/Amendments Requiring City Council Approval (5)
4. Redevelopment Project Costs (18)
5. Public Improvements (5)
6. City of Evanston Zoning Ordinance of 1960, as amended. (9)
7. City of Evanston Memorandum dated January 8, 1993 concerning additional requirements for the Project.
8. Correspondence from City Engineer to Rudnick and Wolfe dated November 13, 1992 regarding storm sewer easements.

