

403-214

FILED IN OFFICE
CLERK OF SUPERIOR COURT
CHEROKEE COUNTY, GA.

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Book 403 Page 15

PREAMBLE

W. T. Mobley, Jr. ("Declarant") has heretofore made that certain Reciprocal Deed of Declaration dated January 18, 1984, recorded in Deed Book 382, Page 15, Cherokee County, Georgia records (the "Declaration"). In developing the property subject to the Declaration, Declarant has granted certain easements and entered into certain leases as a consequence of which Declarant desires to restate the Declaration to reflect the state of facts existing as of the date hereof.

Accordingly, Declarant does hereby restate the Declaration as set forth herein below and the parties being signatories hereto, hereby acknowledge and agree that upon full and complete execution of this instrument, the original Declaration shall be null and void and of no further force or effect and shall be superceded hereby.

RECIPROCAL DEED OF DECLARATION

THIS DECLARATION made as of this 25th day of April, 1984 by W. T. MOBLEY, JR. ("Declarant") with INGLES MARKETS, INC., ("Ingles"), K-MART CORPORATION ("K-MART"), MCDONALD'S CORPORATION ("McDonald's") and TRUST COMPANY BANK ("Trust Company") joining for the purposes set forth herein.

WITNESSETH THAT:

WHEREAS, Declarant is the owner of certain real property located in Land Lots 1224 and 1225, 15th District, 2nd Section, Cherokee County, Georgia which is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Entire Premises") which is also shown on that certain site plan prepared by Robertson/Loia, Inc. attached hereto as Exhibit "B" and by this reference made a part hereof (the "Plot Plan"); and

WHEREAS, Declarant has leased to Ingles that portion of the Entire Premises designated on the Plot Plan as "Ingles Pad"; and Declarant and Ingles have improved that portion of the Entire Premises described in Exhibit "C" attached hereto and by this reference made a part hereof (the "Development Property"); and

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WHEREAS, Declarant has leased to K-Mart that portion of the Entire Premises so designated on the Plot Plan and is in the process of improving that portion of the Entire Premises described in Exhibit "D" attached hereto and by this reference made a part hereof (the "Phase II Property") in accordance with said lease; and

WHEREAS, the Development Property and the Phase II Property shall constitute an integrated shopping center as described as one parcel in Exhibit "E" attached hereto and by this reference made a part hereof (the "Shopping Center Property"); and

WHEREAS, that portion of the Entire Premises described in Exhibit "P" attached hereto and by this reference made a part hereof (the "Out Parcel Property") has or shall be leased by Declarant for general commercial uses; it being hereby acknowledged that McDonald's and Trust Company have leased the respective portions of the Out Parcel Property shown on the Plot Plan; and

WHEREAS, Declarant intends to convey or lease for general commercial uses those portions of the Entire Premises designated Pad #1 (which is included within the bounds of the Shopping Center Property) and Pad #2, both as shown on the Plot Plan; and

WHEREAS, Declarant desires to create and establish certain easements, restrictions and obligations pursuant to the general plan or scheme for the development of the Entire Premises;

NOW, THEREFORE, Declarant as Owner of the Entire Premises for itself, its legal representatives, successors and assigns, declares as follows:

1. Access and Parking Easements - Shopping Center Property. Declarant does hereby establish and create for the benefit of the Shopping Center Property including Pad #1 and does hereby give, grant and convey to each and every person, firm or corporation hereafter owning all or any portion of or any interest in the Shopping Center Property, for the benefit of such owner(s) and their lessees, successors, assigns, customers, employees and invitees, a nonexclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, as appropriate,

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for the purpose of ingress, egress and parking in, to, upon and over any and all of the parking areas, accessways and roadways of the Shopping Center Property including, without limitation, Roadways A, B and C as shown on the Plot Plan, as they shall be from time to time constituted all of which parking areas, accessways and roadways are hereinafter referred to as the "Shopping Center Property Common Areas" for so long as the Shopping Center Property or any portion thereof other than Pad #1 is utilized as a commercial shopping center. The Shopping Center Property Common Areas shall be kept in a clean and neat condition suitable for the uses for which they are intended at the expense of the owner(s) of the Shopping Center Property, or their lessees as applicable pursuant to the provisions of leases entered into by such owner(s).

The initial successor to Declarant in title or interest to Pad #1 shall construct the parking areas, accessways and roadways within Pad #1.

2. Out Parcel Property Easement.

A. Declarant does hereby establish and create for the benefit of the Out Parcel Property and does hereby give, grant and convey to each and every person, firm or corporation, hereinafter owning all or any portion of, or any interest in, the Out Parcel Property for the benefit of such owner(s) and their lessees, successors, assigns, customers, employees contractors and invitees, a non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, as appropriate, for the purpose of ingress and egress upon, over and across the roadway area labeled Roadway A on the Plot Plan. Subject to the fulfillment of the obligations set forth hereinafter, said easement shall be perpetual and shall run with the land for the benefit of the Out Parcel Property. In furtherance of the foregoing the owner(s) of the Entire Premises shall permit such curb cuts within the curbing installed on the westerly boundary of Roadway A as the owner(s) of the Out Parcel Property or any portion thereof may reasonably require subject to approval by the requisite governmental agencies or authorities.

B. The owner(s) of the Out Parcel Property as they shall be from time to time constituted, shall reimburse the owner(s) of the Shopping Center Property, as they shall from time to time be constituted for their pro rata share of the cost of maintaining Roadway A in good repair and in a neat and clean condition based on the ratio that the footage of the Out Parcel Property on Roadway A bears to the total footage of Roadway A. By way of example: If each side of Roadway A is 150 feet, there will be a total footage of 300 feet. Should a parcel in the Out Parcel Property bound Roadway A for 100 feet, the pro rata share of the owner(s) of that parcel will be 100 over 300 or 1/3. Failure of any owner(s) of the Out Parcel Property to make such payment shall entitle the owner(s) of the Shopping Center Property to exercise all of the rights and remedies set forth in Paragraph 17 hereof.

C. The Out Parcel Property shall be subject to the provisions of this Declaration only to the extent set forth herein and no rights shall be deemed to have been afforded the owner(s) of the Out Parcel Property except those set forth herein.

3. Pad #2 Easement

A. Declarant does further establish and create for the benefit of Pad #2 and does hereby give, grant and convey to each and every person, firm or corporation, hereinafter owning all or any portion of, or any interest in, Pad #2 for the benefit of such owner(s) and their lessees, successors, assigns, customers, employees contractors and invitees, a non-exclusive easement, license, right and privilege of passage and use, both pedestrian and vehicular, as appropriate, for the purpose of ingress and egress upon, over and across the roadway area labeled Roadway C on the Plot Plan for so long as Roadway C is used to serve the phase II Property. In furtherance of the foregoing the owner(s) of the Shopping Center Property shall permit a curb cut within the curbing installed on the southerly boundary of Roadway C as the owner(s) of Pad #2 or any portion thereof may reasonably require subject to approval by K-Mact which shall not be unreasonably

withheld, and by the requisite governmental agencies or authorities.

B. Part 12 shall be subject to the provisions of this Declaration only to the extent set forth herein and no rights shall be deemed to have been afforded the owner(s) of Part 12 except those set forth herein.

4. Utility Assessments. Declarant does further establish and create for the benefit of the respective owner(s) of any portion or portions of the Shopping Center Property, reciprocal and nonexclusive easements in perpetuity to install, maintain, repair and replace utility facilities, such as water, electric and telephone lines, storm sewer lines and pipes and sanitary sewers and lines, underground, on, through and across the Shopping Center Property within the portions thereof not designated as building areas on the plot plan, which locations may be specifically described by subsequent amendment to this Deed of Declaration executed by the owner(s) of the portion of the Shopping Center Property benefited by any such easement shall be responsible for the installation, upkeep, repair, maintenance and, if required, relocation of any such utility facility and in the exercise of any such easement shall promptly repair, restore and clear property burdened by any such easement to its previous condition and shall use every reasonable measure to minimize the disruption of business of the portion of the Shopping Center Property so burdened. The foregoing to the contrary notwithstanding, any easement established pursuant to this Paragraph 4 shall cease and be null and void if not utilized in the operation of utility lines, conduits or facilities for a period of four (4) consecutive years.

5. Beneficiaries of Assessments. The assessments, licenses, rights and privileges established, created and granted hereby shall be for the benefit of, and restricted solely to the owner(s) from time to time of title to or interest in portions of the Entire Premises, their customers, employees and invitees and the

lessees of such owner(s) now or hereafter occupying any portions of the Entire Premises for the duration of such tenancy and to the customers, employees and invitees of said lessees, but the same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public. Notwithstanding anything contained in any other provision hereof to the contrary, any easement or rights herein established and created shall terminate and be of no further force and effect upon the dedication to and acceptance by the appropriate governmental authority of such easements or the rights created hereby. Provided, however, that any dedication and acceptance of a portion of such easements or rights shall not effect the validity and effect of easements and rights not so dedicated and accepted; and, provided further, that any such dedication of Roadway A as shown on the plot plan shall be conditioned upon the prior written consent by the governmental authority accepting same to the continued use of all the existing curb cuts into Roadway A.

6. Rights to Close. Declarant for itself and for the then owner(s), of all or any part of the Entire Premises which is subject to any easement grant hereunder, reserves the right to close temporarily all or any portion of the parking facilities and easements to such extent, in the opinion of Declarant or the then owner(s) of the area so burdened or their lessees, necessary for repair or restoration; provided that any such temporary closing is undertaken in a manner designed to minimize the disruption of business of the portion of the Entire Premises burdened by such closing.

7. Condemnation. No grantee or beneficiary of any easement hereunder shall be entitled to any portion of any award or proceeds resulting from a taking or condemnation, or a conveyance in lieu of such taking or condemnation, of any portion of the Entire Premises burdened hereunder, except to the extent that such grantee or beneficiary shall own in fee such property so taken, condemned or conveyed or shall have been otherwise granted rights thereto by such fee owner.

8. Structures Within the Shopping Center Property and

Use of Pad #1 and Phase II Property. No building or structure in excess of twenty-five (25) feet in height and one (1) story shall hereafter be erected, placed or located on any portion of the Shopping Center Property. There shall be no material deviation from the configuration of the buildings on the Development Property without the prior written approval by the owner(s) and lessee's of the Phase II Property, which approval shall not be unreasonably withheld. Any building constructed on Pad #1 or the Phase II Property shall be located within the building lines shown on the Plot Plan or as otherwise approved by the owner(s) of the Development Property. Development of and construction of Pad #1 shall be subject to prior written approval by the owner(s) of the Development Property, which approval shall not be unreasonably withheld so long as (a) the layout of such development is generally in accordance with the Plot Plan; (b) the layout does not obstruct access to the Shopping Center Common Areas shown on the Plot Plan and provides for a parking ratio of not less than eight (8.0) parking spaces for each one thousand (1,000) square feet of building area used for restaurant or entertainment purposes and five (5.0) parking spaces for any building used for other purposes regardless of any lesser parking requirements which may be permitted by the applicable governmental authorities; and (c) the architecture of any buildings is harmonious with the architecture of the buildings located on the Development Property. Any common driveway(s) shown on the Plot Plan which have not been previously installed by the owner(s) of the Development Property which are installed by the owner(s) of Pad #1 or the Phase II Property shall have a crushed rock base of not less than five (5) inches in depth and asphalt surface paving of not less than two (2) inches and shall consist of not less than one traffic lane in each direction of such width as will accommodate standard size American automobiles. The development, construction and use of Pad #1 or the Phase II Property, as applicable, shall be in compliance with all governmental laws,

regulations and ordinances and shall contain common areas as shown on the Plot Plan.

9. Use of Entire Premises. So long as Ingles shall operate a supermarket on any portion of the Ingles Pad and a drugstore is operated on any portion of the Ingles Pad, no portion of the Entire Premises other than the Ingles Pad shall be used as a supermarket or drugstore and no portion of the Entire Premises shall be used as a bowling alley, skating rink, amusement center, carnival, meeting hall, "disco" or other dance hall, sporting event or other sports facility or for any manufacturing operations as a factory; for any industrial usage; as a warehouse, processing or rendering plant; for any establishment selling cars (new or used), trailers, mobile homes; for the operation of a billiard parlor, flea market, massage parlor; for the sale or display of pornographic materials; or for any other purpose inconsistent with the use of the Entire Premises as a family-oriented retail shopping center. The foregoing shall in no event apply to or in any way restrict the use of the Phase II Property by K-Mart, as more particularly set forth in Memorandum of Lease between declarant and Ingles recorded in Deed Book 389, Page 540, Cherokee County, Georgia records.

10. General Conditions.

A. Parking. All parking spaces on the Entire Premises, less and except the Out Parcel Property and Pad #2, shall be subject to the easement for parking created hereby and no parking places may be reserved for exclusive use.

B. Drainage. The Entire Premises shall be subject to a drainage easement for the flow of surface waters as necessary for the use of the Entire Premises in accordance with the Plot Plan. Declarant hereby declares, creates and establishes for the benefit of the Shopping Center Property, the Out Parcel Property and Pad #2 a nonexclusive easement in perpetuity for the drainage of surface waters either by natural flow or through pipes or otherwise to detention or retention ponds constructed by declarant upon those portions of the Out Parcel Property and Development

Property described in Exhibits "G" and "G-1" attached hereto and by this reference made a part hereof. In no event shall those portions of the Out Parcel Property and Development Property described in Exhibits "G" and "G-1" be used for any purpose other than as a detention or retention facilities without the express written consent of all of the owner(s) of the Shopping Center, Property and the owners and lessees of all or any portion of the Out Parcel Property. The foregoing to the contrary notwithstanding, the easement granted for the benefit of the Out Parcel Property shall pertain solely to the detention or retention facilities described in Exhibit "G". The detention or retention facilities shall be maintained by the owner(s) of the Shopping Center Property and fifty (50%) percent of the cost of maintaining the facility located on the Out Parcel Property shall be reimbursed to the owner(s) of the Shopping Center Property by the owner(s) of the Out Parcel Property upon demand therefor. Each owner of all, or any portion, of the Out Parcel Property shall pay his pro rata share of the aforesaid reimbursement based upon the acreage owned as it relates to the total acreage of the Out Parcel Property, exclusive of the retention facility located thereon.

C. Construction. The owner(s) of the Shopping Center Property shall have an easement for construction, maintenance and repair activities upon portions of the Entire Premises owned by others provided that the beneficiary of such easement promptly repairs, restores and cleans the burdened property to its previous condition, uses every reasonable measure to minimize the disruption of business of the portion of the Entire Premises so burdened, and in no event blocks more than one curb at any one time during construction, maintenance, repair, restoration or cleaning.

D. Common Areas. The Shopping Center Property Common Areas shall not be fenced, blocked, used for storage or sale or used in other ways that would impair the free flow of pedestrian or vehicular traffic in accordance with the provisions hereof. No kiosks, trailers or other similar structures or

vehicles shall be permitted within said Common Areas. All dumpsters or trash receptacles located on Pad #1 and the Out Parcel Property shall be properly screened from the view of the Development Property, the Phase II Property, (or Pad #1 if on the Out Parcel Property) and the other tracts of the Out Parcel Property in a manner acceptable to the owner(s) thereof.

F. SIGNS. Any signs to be erected on or within the Phase II Property shall be in general conformance with signs within the Development Property and no signs shall be erected on or within Pad #1 unless they shall have been first approved by the owner(s) of the Development Property and shall conform to the general sign layout of the development and shall be erected in conformity with the Cherokee County sign code. No roof top signs, flashing signs or signs containing exposed tubing or lighting elements shall be installed within Pad #1, Pad #2 or the Out Parcel Property.

11. INSURANCE. The owner(s) of each of the Development Property, the Phase II Property and Pad #1 shall carry and maintain comprehensive public liability insurance covering injury to persons and property on their respective properties in the amount of not less than One Million and No/100 (\$1,000,000.00) Dollars with respect to bodily injury or death to persons not less than One Hundred Thousand (\$100,000.00) Dollars with respect to any instance of property damage; provided, however, should the Development Property, the Phase II Property and Pad #1, have a common owner, the aggregate amount of such insurance required shall be Two Million and No/100 (\$2,000,000.00) Dollars; Each owner shall, upon request, furnish a certificate of insurance evidencing such insurance to the other owner(s). The owner(s) of each of the Development Property, the Phase II Property and Pad #1 shall defend, indemnify and hold the other owner(s) harmless against any claim for bodily injury, death or property damage occasioned by accident or other occurrence upon, or because of any condition existing upon its property. Each owner, to the extent such owner is able to do so, shall waive on behalf of their

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respective insurance carriers, all rights of subrogation which said insurance carrier may have against any other owner.

12. Taxes. The owner(s) of each of the Development Property, the Phase II Property and Pad #1 shall timely pay all real estate taxes and assessments levied on their respective parcels.

13. Landscaping. The owner(s) of each of the Development Property, the Phase II Property and Pad #1 shall prior to development thereof grass such areas and maintain same in a neat and slightly status. Following development such owner(s) shall install grass, shrubs and other plants and greenery in the landscaped areas thereof as shown on the plot plan at the sole cost and expense of each respective owner and shall maintain said landscaping in a first class condition (i.e., properly weeded, fertilized, trimmed, mowed, dead vegetation removed and replaced) at each of such owner's sole cost and expense.

14. Distinction. If any of the buildings or improvements located within the Entire Premises, or any portion thereof is damaged or destroyed by fire or other casualty, the owner(s) thereof shall either (1) repair such damage and restore or replace said improvements subject to the restrictions set forth herein or (11) restore, repair or rebuild the affected common areas, raise any buildings or such part thereof as has been so damaged or destroyed and clear the affected areas of all debris and seed same with grass. Such restoration shall be commenced as soon as practicable after the occurrence resulting in any such damage or destruction and shall be diligently pursued to completion.

15. Termination of Easement. In the event that Pad #1 ceases to be used for the same type purpose as those for which the buildings thereon were initially constructed for any reason other than casualty, repair, alterations or the like for a period of one (1) year or more, the owner(s) of the Development Property and the Phase II Property may terminate any easement rights with respect to the Development Property and the Phase II Property granted

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hereby as same applies to the property on which such activities have so ceased, provided that the Development Property is then being used as a commercial shopping center. In such event, the owner(s) of the Development Property and the Phase II Property shall notify the owner(s) of the affected property not less than thirty (30) days prior to terminating such easement(s), and the easements granted for the benefit of the affected property, on, over and across the Development Property and the Phase II Property shall terminate at the end of such period by the filing for record, of a statement of termination by the owner(s) of the Development Property in the office of the Clerk of the Superior Court of Cherokee County, Georgia.

16. APPROVAL. In the event any request for written approval required hereunder is not either given or denied by the owner(s) of the Development Property or the Phase II Property, its successors and assigns within thirty (30) days of receipt of written request therefor, said request shall be deemed to have been granted.

17. Breach and Remedies. This Declaration shall create privity of contract and/or estate with and among all the owners of fee title to or leasehold estate in all or any part of the Entire Premises, the holder of any mortgage on the Entire Premises, or any portion thereof, their heirs, executors, administrators, successors or assigns (hereinafter the "Beneficiaries" singularly, "Beneficiary"). In the event of a breach or default, or attempted or threatened breach or default, by any Beneficiary (hereinafter referred to as the "Defaulting Party") of any of the terms, covenants and conditions hereof, which shall not have been cured within thirty (30) days following written notice from any one or more of the Beneficiaries who are not in breach or any of the terms, covenants and conditions of this Declaration (hereinafter referred to as the "Non-Defaulting Party" or "Parties") such Non-Defaulting Party or Parties shall be entitled to (a) full and adequate relief by injunction and/or all such other available

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legal and equitable remedies from the consequence of such breach or default and (b) the right to cure any breach or default hereunder. Any deed, lease, assignment, conveyance or contract made in violation of this Declaration shall be void ab initio. All costs and expenses of any such suit or proceedings and all costs of curing such breach and default shall be assessed against the Defaulting Party and shall constitute a lien against the real estate or the interest therein wrongfully deeded, leased, used, maintained, assigned, conveyed or contracted until paid, effective upon recording notice thereof in the Public Records of Cherokee County, Georgia, provided that any such lien shall be subordinate to any sale/leaseback financing and any mortgage or deed of trust covering any portion of the Entire Premises and any purchaser at any foreclosure or trustee's sale (as well as any grantee of deed in lieu of foreclosure or trustee's sale) under any such sale/leaseback, mortgage or deed of trust shall take title free from any such existing lien but otherwise subject to the provisions hereof. The remedies of any one or all of the Non-Defaulting Parties shall be cumulative as to each and as to all others permitted at law or equity. Notice of any breach or default under this Declaration as contemplated by this Paragraph 17 shall be given (i) in accordance with the provisions of this Declaration governing notices (ii) to the Defaulting Party (iii) by any one or more of the Non-Defaulting Parties (iv) with copies of any such notice to be provided to all of the other Non-Defaulting Parties not otherwise originating or providing notice of such breach or default.

18. Amendments. The provisions of this Declaration may be abrogated, modified, rescinded or amended in whole or in part only with the consent of all of (i) the then owner(s) of the Entire Premises; (ii) each and every Lessor (in a sale/leaseback) and mortgagee or beneficiary under any mortgage or deed of trust covering all or any part of the Entire Premises; and (iii) Inghis, (iv) K-Mart, (v) McDonald's and (vi) Trust Company for so long as their respective leases shall remain in full force and effect; by

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declaration in writing, executed and acknowledged by all said parties duly recorded in the Public Records of Cherokee County, Georgia, but this Declaration may not otherwise be abrogated, modified, rescinded or amended, in whole or in part, except as specifically provided in Paragraph 15 hereof.

19. Governing Law. This Declaration shall be construed in accordance with the laws of the State of Georgia. If any part or provision of this Declaration is held by a court to be invalid or illegal, the validity of the remaining parts and provisions shall not be affected, and they shall remain in full force and effect and binding upon the parties hereto.

20. Notices. Any and all notices, elections, demands, requests and responses thereto permitted or required to be given under this Declaration shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested, to such address within the continental United States as any owner or mortgagee may designate by notice specifically designated as a notice of address or notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any such notice, election demand or request must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response, if given to Declarant, shall be addressed as follows:

M. T. Mobley, Jr.
Suite 100
6400 Powers Ferry Road
Atlanta, Georgia 30329

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and, if given to Ingles, shall be addressed as follows:

Ingles Markets, Incorporated
P. O. Box 6676
Asheville, North Carolina 28816

and, if given to K-Mart, shall be addressed as follows:

K-Mart Corporation
3100 West Big Beaver Road
Troy, Michigan 48064

and, if given to McDonald's, shall be addressed as follows:

McDonald's Corporation
Attens Real Estate Legal Department
McDonald's Plaza
Carrbrook, Illinois 60921

and, if given to Trust Company, shall be addressed as follows:

Trust Company Bank
c/o Mr. Phillip Glendonist
Room 125-A First Floor Annex
58 Exchange Building
Atlanta, Georgia 30303

and, if given to the holder of the first mortgage on the Shopping Center property:

The First National Bank of Atlanta
100 Peachtree Street, N.E.
Suite 314 First Atlanta Tower
2 Peachtree Street
Atlanta, Georgia 30383

21. Assent & Consent. Ingles, K-Mart, McDonald's and Trust Company join in the execution of this Declaration for the purpose of evidencing their assent to the terms and provisions hereof and subordinating their interests in the Entire Premises to the terms and provisions of this Declaration.

22. Successors and Assigns. The terms, covenants, conditions and warranties herein shall inure to the benefit of and shall be binding upon the Declarant and the respective executors, administrators, legal representatives, successors and assigns of Declarant.

23. Duration. Subject to the provisions of Paragraph 15 hereof, the easements contained in Paragraphs 1, 2, 3, 4, 10(A), 10(B), and 10(C) hereof shall be perpetual. The restrictions and covenants contained in Paragraphs 8, 9, 10(D), 10(E), 11, 12 and 14 hereof shall be for a term of twenty (20) years from the date hereof, and may be renewed at the expiration of said twenty (20) year term by the recording of a notice executed in recordable form

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By all of the then owner(s) of the Entire Premises, which notice shall specifically refer to this Declaration.
24. Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals through their duly authorized officers and principals as of the day and year first above written.

Signed, sealed and delivered in my presence of:

[Signature] (SEAL)
M. I. ROBERTS, JR.
INGLES MARKETS, INCORPORATED

Signed, sealed and delivered in the presence of:

[Signature] (SEAL)
Secretary
MCDONALD'S CORPORATION

Signed, sealed and delivered in the presence of:

[Signature] (SEAL)
By: _____ (SEAL)
Attest: _____ (SEAL)
Notary Public (CORPORATE SEAL)

Signed, sealed and delivered in the presence of:

[Signature] (SEAL)
By: _____ (SEAL)
Attest: _____ (SEAL)
Trust Company Bank (CORPORATE SEAL)

Signed, sealed and delivered in the presence of:

[Signature] (SEAL)
By: _____ (SEAL)
Attest: _____ (SEAL)
Notary Public

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by all of the then owner(s) of the Entire Premises, which notice shall specifically refer to this Declaration.

24. Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals through their duly authorized officers and principals as of the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]
Notary Public
My Commission Expires Jan. 27, 1988

Signed, sealed and delivered in the presence of:

[Signature]
Notary Public
My Commission Expires Jan. 27, 1988

[Signature]
Notary Public
My Commission Expires Jan. 27, 1988

[Signature] (SEAL)
M. T. MOBLEY, JR.

INGLES MARKETS, INCORPORATED

By: *[Signature]* (SEAL)
Secretary

Attest: *[Signature]* (SEAL)
Secretary

McDONALD'S CORPORATION

By: *[Signature]* (SEAL)

Attest: *[Signature]* (SEAL)
Director of Legal Services

K-Mart Corporation

By: _____ (SEAL)

Attest: _____ (SEAL)
(CORPORATE SEAL)

TRUST COMPANY BANK

By: _____ (SEAL)

Notary Public

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by all of the then owner(s) of the Entire Premises, which notice shall specifically refer to this Declaration.

24. Counterparts. This Declaration may be executed in one or more counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals through their duly authorized officers and principals as of the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]
Notary Public
My Commission Expires Jan. 27, 1988

Signed, sealed and delivered in the presence of:

[Signature]
Notary Public
My Commission Expires Jan. 27, 1988

[Signature]
Notary Public
My Commission Expires Jan. 27, 1988

[Signature] (SEAL)
M. T. MOBLEY, JR.

INGLES MARKETS, INCORPORATED

By: *[Signature]* (SEAL)
Secretary

Attest: *[Signature]* (SEAL)
Secretary

McDONALD'S CORPORATION

By: _____ (SEAL)

Attest: _____ (SEAL)
(CORPORATE SEAL)

K-Mart Corporation

By: _____ (SEAL)

Attest: _____ (SEAL)
(CORPORATE SEAL)

TRUST COMPANY BANK

By: *[Signature]* (SEAL)

Notary Public

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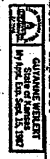
CONSENT TO RECTIFICATIONAL DEED OF DECLARATION

The undersigned, PIZZA HUT OF AMERICA, INC., does hereby acknowledge and consent to the terms and provisions of the within restated Rectificational Deed of Declaration made by W. T. Hobbley, Jr., dated April 25, 1984, involving certain property lying and being in Land Lots 1224 and 1225, 15th District, 2nd Section, Cherokee County, Georgia.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be signed and sealed by its duly authorized officers this 30th day of May, 1984.

PIZZA HUT OF AMERICA, INC.

Signed, sealed and delivered in the presence of: *Walter B. Anderson*
UNOFFICIAL WITNESSES
Richard J. Hobbley
Richard J. Hobbley



BY: *Raymond M. Baker*
Raymond M. Baker, Secretary
(CORPORATE SEAL)



403 - 2333

EXHIBIT "A"
ENTIRE PREMISES

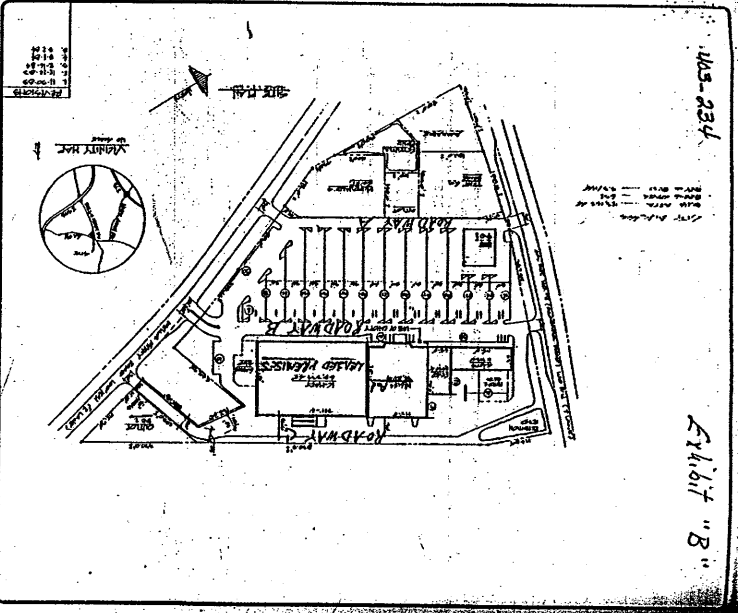
ALL THAT TRACT OR PARCEL of land lying and being in Land Lots 1224 and 1225 of the 15th District, 2nd Section, Cherokee County, Georgia, and being more particularly described as follows:
BEGINNING at an iron pin located on the southerly right-of-way of Georgia Highway No. 92 (also known as Alabama Road) (100 foot right-of-way) at a point where said southerly right-of-way line intersects with the line dividing Land Lot 1189, 21st District, and Land Lot 1224, 15th District, said lower of the following courses, southerly along said right-of-way line the following courses and distances:

- South 81° 22' 00" East a distance of 55.80 feet to a point;
- South 80° 13' 00" East a distance of 141.40 feet to a point;
- South 78° 32' 00" East a distance of 258.50 feet to a point;
- South 71° 55' 57" East a distance of 547.49 feet to an iron pin;

thence leave said right-of-way line and run south 13° 10' 47" West a distance of 174.05 feet to an iron pin; thence south 29° 51' 32" West a distance of 160.50 feet to an iron pin located on the Northeasterly right-of-way line of Balls Ferry Road (100 foot right-of-way); thence along said right-of-way North 17° 45' 13" West a distance of 172.90 feet to a point; thence continuing along said right-of-way North 16° 16' 31" West a distance of North 70° 02' 00" East a distance of 138.92 feet to an iron pin; thence North 04° 32' 42" East a distance of 138.92 feet to an iron pin; thence South 70° 03' 44" West a distance of 249.93 feet to an iron pin located on the Northeasterly right-of-way of Balls Ferry Road; thence along said right-of-way North 19° 57' 17" West a distance of 275.66 feet to a point; thence continuing along said right-of-way North 24° 28' 11" West a distance of 333.38 feet to an iron pin; thence North 11° 11" West a distance of 1189.21 feet to an iron pin and Land Lot 1224, 15th District, said County; thence along said dividing line North 00° 35' 05" East a distance of 477.43 feet to an iron pin located on the southerly right-of-way of Georgia Highway No. 92 and the pole of beginning; containing 16.48 acres; as shown by Survey for W. T. Hobbley and Associates, National Bank of Atlanta, Project No. 92, dated and first recorded in the Public Records of Cherokee County, Georgia, and dated March 25, 1983, last revised April 5, 1984.

403-234

Exhibit "B"



Scale: 1" = 100' (Horizontal)
 1" = 40' (Vertical)
 Date: 1/15/84
 Title: Survey for Development Property
 Prepared by: Robertson / Loia P.C.
 Checked by: [Name]
 Drawn by: [Name]

Robertson / Loia P.C.
 Architects & Engineers
 Atlanta, Georgia

EXHIBIT "C"
DEVELOPMENT PROPERTY

ALL THAT TRACT OR PARCEL of land lying and being in Land Lot 1224 of the 15th District, 2nd Section, Cherokee County, Georgia, and being more particularly described as follows:

To find the point of beginning, commence at an iron pin located on the southerly right-of-way of Georgia Highway 92 (also known as Alabama Road) (100 foot right-of-way) at a point where said southerly right-of-way intersects with the line dividing Land Lot 1189, 21st District and Land Lot 1224, 15th District, said County; thence along said right-of-way South 81° 11' 00" East, a distance of 35.80 feet to a point; thence a distance of 141.40 feet to a point; thence containing along said right-of-way South 78° 32' 00" East, a distance of 186.40 feet to a point and the POINT OF BEGINNING; thence along the southerly right-of-way of Georgia Highway 92 South 78° 32' 00" East, a distance of 62.10 feet to a point; thence containing along said right-of-way South 71° 15' 37" East, a distance of 149.48 feet to an iron pin; thence a distance of 174.89 feet to an iron pin; thence South 29° 51' 32" West, a distance of 342.27 feet to a point; thence North 29° 08' 28" West, a distance of 386.27 feet to a point; thence North 29° 51' 32" East, a distance of 131.25 feet to a point; thence North 60° 08' 28" East, a distance of 168.66 feet to a point on the southerly right-of-way of Georgia Highway 92 and the Point of Beginning, as shown by Survey for W. T. Hobley and First National Bank of Atlanta prepared by Jerry Thacker & Associates, dated March 25, 1983, last revised April 5, 1984.

403-235

EXHIBIT "B"
OUR PARCEL PROPERTY

ALL THAT TRACT OR PARCELS of land lying and being in Land Lot 1224 of the 15th District, 2nd Section, Cherokee County, Georgia and being more particularly described as follows:

BEGINNING at an iron pin located on the southerly right-of-way of Georgia Highway 92, (also known as Alabama Road) (100 Foot right-of-way) to a point where said southerly right-of-way intersects with the line dividing Land Lot 1189, 21st District and Land Lot 1224, 15th District, said County; thence along the southerly right-of-way of Georgia Highway 92, South 81° 22' 00" East, a distance of 57.00 feet to a point; thence continuing along said right-of-way-South 60° 11' 00" East, a distance of 78.00 feet to a point; thence continuing along said right-of-way-South 29° 51' 32" West a distance of 107.29 feet to a point; thence along the arc of a curve by the chord bearing of 21.29 feet (said arc being subtended by a chord bearing of 63° 31' 06" West a distance of 116.61 feet) to a point on the Northwesterly right-of-way of Bell's Ferry Road (100 Foot right-of-way); thence along said right-of-way North 24° 26' 54" West, a distance of 153.36 feet to an iron pin located on the line dividing Districts 15 and 21, Storeland County; thence leave said point on an iron pin on the South 13° 05' East, a distance of 477.43 feet to an iron pin in the corner of the property of Georgia W. Highway 92 and the Point of Beginning as shown by Survey of W. Mobley and First National Bank of Atlanta, prepared by Terry Thacker & Associates, dated March 25, 1983, last revised April 5, 1984.

EXHIBIT "C"

ALL THAT TRACT OR PARCELS of land lying and being in Land Lot 1231 of the 15th District, 2nd Section, Cherokee County, Georgia, and being more particularly described as follows:

Find the Point of Beginning, commence at an iron pin located on the southerly right-of-way of Georgia Highway 92 where said Alabama Road (100 Foot right-of-way) intersects with the line dividing Land Lot 1224, 15th District, said County; thence along the southerly right-of-way and running South 00° 13' 05" West, a distance of 200.00 feet to a point and the POINT OF BEGINNING; thence South 00° 35' 05" West, a distance of 190.32 feet to a point; thence North 29° 21' 08" East, a distance of 135.67 feet to a point; thence North 29° 21' 08" East, a distance of 65.94 feet to a point; thence North 89° 24' 55" West, a distance of 71.72 feet to a point; thence North 89° 24' 55" West, a distance of 71.72 feet to a point and the Point of Beginning, as shown by Survey of W. Mobley and First National Bank of Atlanta, prepared by Terry Thacker & Associates, dated March 25, 1983, last revised April 5, 1984.

403-240

EXHIBIT "G-1"

ALL THAT TRACT OR PARCELS of land lying and being in land lot 1224 of the 15th District, 2nd Section, 1st Range, 1st Meridian, Georgia, and being more particularly described as follows: BEGINNING at an iron pin located in the southerly right-of-way of Georgia Highway #92, (also known as Alabama Road) (100 feet right-of-way), said iron pin being 1,003.19 feet southerly from an iron pin located at the intersection of said right-of-way of Georgia Highway #92 and the right-of-way of Georgia Highway #92, measured along the southerly right-of-way of Georgia Highway #92, thence leaving said right-of-way and running South 19° 10' 47" West, a distance of 174.35 feet to an iron pin; thence South 23° 51' 32" West, a distance of 118.46 feet to a point; thence North 05° 23' 04" East, a distance of 229.78 feet to a point on said right-of-way South 71° 55' 57" East, a distance of 92.39 feet to a point and the Point of Beginning, as shown by survey for W. T. Mobley and First National Bank of Atlanta, prepared by Jerry Thacker & Associates, dated March 25, 1983, last revised April 5, 1984.

ANNETTE FLEMING
Clerk Superior Court of Cherokee County

Rec. 6-11-84

CANCELLATION AND TERMINATION

THIS CANCELLATION AND TERMINATION, made as of the 6th day of June, 1984 by THE FIRST NATIONAL BANK OF ATLANTA, a national banking association chartered pursuant to the laws of the United States of America (hereinafter referred to as "Banker") for the benefit of WILLIAM T. HERRICK, JR., a Georgia resident (hereinafter referred to as "Borrower");

W I T N E S S E T H

WITNESSES, pursuant to that certain Construction Loan Agreement, dated as of January 17, 1984, entered into between Lender and Borrower, Lender has provided to Borrower a construction loan (hereinafter referred to as the "Construction Loan") in the amount of \$500,000.00; and WITNESSES, to evidence the Construction Loan, Borrower did execute and deliver to Lender that certain Real Estate Note, dated as of January 17, 1984, in the principal face amount of \$500,000.00 (hereinafter referred to as the "Note"); and WITNESSES, to secure and to evidence further the Construction Loan, Borrower has executed and delivered to Lender a deed to secure debt and security agreement, an assignment of leases and rents, and certain additional documents, all as more specifically described below; and WITNESSES, Lender has advanced to Borrower a new construction loan, a portion of the proceeds of which have been used to repay the Construction Loan and to satisfy the debt evidenced by the Note; and WITNESSES, Borrower has requested that Lender cancel and terminate the documents heretofore described evidencing and securing the Note, and Lender has agreed to cancel and terminate said documents;

WITNESSES, therefore, for and in consideration of the sum of ONE HUND NO/100 DOLLARS (\$1.00) to Lender in hand paid by Borrower at the time of the execution hereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender hereby cancels and terminates each of the following documents:

ANNETTE FLEMING, CLERK
JUN 12 1984
9 48
CLERK OF SUPERIOR COURT
CHEROKEE COUNTY, GA.
FILED IN OFFICE