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Prepared by and when recorded return to: Nate Allen; 5820 Westown Parkway, West Des Moines, IA 50266; TEL: 515-267-2870

DECLARATION OF USE RESTRICTION

THIS DECLARATION effective the 17th day of June, 2014 (the "Effective Date"), is made by the undersigned owner of the Restricted Parcel (hereinafter referred to as the "Declarant"); WITNESSETH:

RECITALS

- A. Declarant is the owner of the Restricted Parcel (defined below); and
- B. Declarant desires to place certain use restrictions on the Restricted Parcel for the benefit of the Benefited Party.

NOW, THEREFORE, THE DECLARANT HEREBY DECLARES AND IMPOSES THE FOLLOWING:

- 1. Recitals. The Recitals set forth above are incorporated by this reference.
- 2. Definitions.
 - a. "Benefited Party" means Hy-Vee, Inc., an Iowa corporation, and the owner of the Benefited Parcel, as legally described on Exhibit "B" attached hereto and incorporated herein. Hy-Vee, Inc. may add additional Benefited Parties at any time, without the consent of Burdened Party. Additions may be made by the execution and recordation of a Notice identifying the additional Benefited Party and thereby extend the benefits of this Declaration to such party(ies).
 - b. "Burdened Party" means owner, from time-to-time of the Restricted Parcel.
 - c. "Restricted Parcel" means the following parcel(s) of real estate, to-wit:
See Exhibit "A".

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3. Use Restrictions. During the term of this Declaration and for the benefit of the Benefited Party, the Restricted Parcel must not be used for any of the following, to-wit:

- a. the sale of (i) edible perishable products, including, but not limited to fruits, vegetables, meat and seafood; (ii) pre-packaged food and/or pre-packaged beverages, provided, however that the same may be sold on the Restricted Parcel so long as the sale of such products does not exceed one percent (1%) of the gross sales of such business; and/or (iii) alcoholic beverages for off premises consumption (for purposes of clarification of the foregoing only, and not in limitation, the restriction contained in this Section 3(a) is not intended to prohibit restaurant uses);
- b. retail or discount grocery, supermarket, or specialty food store (by way of example only, and not limitation: Dahl's, Fareway, Albertson's, Kroger, Safeway, Price Chopper, Aldi, Trader Joes, Whole Foods Market, Baker's, Bag 'N Save, No Frills Supermarkets, Wal-Mart Neighborhood Market);
- c. the sale of prescription and/or over-the-counter pharmaceuticals;
- d. retail store marketed as any form of "dollar store" (by way of example only, and not in limitation: Dollar General, Family Dollar, Dollar Tree);
- e. supercenter;
- f. wholesale or club store (by way of example only, and not in limitation: Costco, Sam's Club);
- g. convenience store or gas station;
- h. any supporting element (by way of example only, and not in limitation: parking lot, storm water detention facility, green-space) of any property not located within the Restricted Parcel that is used for any of the restricted uses set forth in Section 3(a) – (g) herein.

4. Term. Unless sooner terminated by the Benefited Party as provided herein, the use restrictions imposed against the Restricted Parcel will remain in full force and effect in perpetuity.

5. Termination. The Benefited Party(ies) may terminate any one or more of said use restrictions at any time prior to the expiration date, as set forth in herein, by the filing of a termination of use restriction with the office of the Recorder of the county in which the real estate is located.

6. Governing Law, Remedies. This Declaration will be governed by the laws of the State of Nebraska, without regard to conflicts of laws principles. The parties hereby agree that,

in the event of a breach, or threat of a breach, of this Declaration, then in addition to all remedies at law or in equity, Benefited Party will be entitled to injunctive relief. Benefited Party may enforce this Declaration against Burdened Party, its successors in interest, as well as any person or entity violating or attempting to violate any provision hereof. Any and all rights and/or remedies conferred to Benefited Party herein will not be deemed to be exclusive of any other remedy and each and every remedy will be cumulative in all respects.

7. Liquidated Damages. It is acknowledged by the parties that the damages which would be suffered by the Benefited Party for any breach of this Declaration would be difficult to calculate, and therefore, the parties acknowledge and agree that, for each day that any portion of the Restricted Parcel is determined to be in violation of this Declaration, Burdened Party will pay to Benefited Party the greater of (a) thirty percent (30%) of the gross sales generated on the Restricted Parcel, or (b) Two Thousand Dollars and NO/100 (\$2,000.00) per day, as a reasonable measure of the damages likely to be suffered by Benefited Party, and not as a penalty.

8. Attorneys' Fees, Costs. In the event of an action by Benefited Party to enforce the terms of this Declaration, the party(ies) found to be in violation of this Declaration must reimburse Benefited Party for all reasonable costs and expenses related thereto, including but not limited to, each of the following, to-wit: (a) reasonable attorneys' fees and costs incurred in the event one or more attorneys are employed to enforce this Declaration, whether by suit or otherwise; (b) the costs of any suit and court costs incurred by reason thereof; (c) the cost(s) of filing any notices in the Office of the Register of Deeds; (d) interest on all damages at the lesser of (i) 14% per annum, or (ii) the highest rate allowed by law, beginning upon the entry of any judgment; and (e) any other costs that the Benefited Party may incur resulting from such breach.

9. Restrictions Run with Land. The use restrictions imposed by this instrument constitute covenants running with the land and, as such, will be binding upon the owners from time-to-time of the Restricted Parcel and their respective heirs, successors and assigns.

10. Severability. If any provision of this instrument is invalid, illegal or incapable of being enforced by any law or public policy, all other provisions of this declaration will remain in full force and effect.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Use Restriction to be executed on or as of the day and year first above written.

HY-VEE, INC.

By: [Signature]
Jeffrey Markey, Vice President

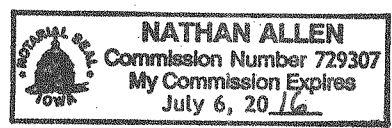
By: [Signature]
Stephen Meyer, Secretary

DECLARANT

STATE OF IOWA, COUNTY OF POLK, ss

On this 17th day of June, 2014, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Jeffrey Markey and Stephen Meyer, to me personally known, who being by me duly sworn did say that they are the Vice President and Secretary, respectively, of Hy-Vee, Inc., an Iowa corporation, that the instrument to which this is attached was signed on behalf of said corporation by authority of its Board of Directors; and that the said Jeffrey Markey and Stephen Meyer as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

[Signature]
Notary Public in and for the
State of Iowa



DECLARATION OF USE RESTRICTION - EXHIBIT "A"
LEGAL DESCRIPTION OF RESTRICTED PARCEL

A tract of land being a portion of Lot 20, in OAK VIEW, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska, together with part of vacated 140th Street, all more particularly described as follows:

Commencing at the most Southwesterly corner of said Lot 20; thence along the Southerly line of said Lot 20, South 54°29'08" East (platted bearing), 696.71 feet, to the Point of Beginning; thence North 35°30'52" East, 300.00 feet; thence North 54°29'08" West, 51.24 feet; thence North 35°30'52" East, 241.89 feet; thence North 00°00'00" West, 39.74 feet, to the Southerly line of Oak View Drive, said point also being on the Northerly line of said Lot 20; thence along said Northerly line, South 90°00'00" East, 376.54 feet, to the beginning of a curve to the left; thence along said curve, having a radius of 360.00 feet, and a chord bearing North 87°19'59" East, 33.50 feet, an arc distance of 33.51 feet; thence South 00°00'00" East, 200.54 feet; thence South 35°30'52" West, 650.45 feet, to the Southerly line of said Lot 20; thence along said Southerly line, North 54°29'08" West, 375.00 feet, to the Point of Beginning.

DECLARATION OF USE RESTRICTION - EXHIBIT "B"
LEGAL DESCRIPTION OF BENEFITED PARCEL

Lot 1, Stony Brook Place Replat 3, a subdivision in Douglas County Nebraska

65-37155