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Dec. No. \_\_\_\_\_ Fee \$ 101<sup>00</sup> Pd. \_\_\_\_\_  
 WOODBURY COUNTY, IOWA-Filed for Record  
 10:25 AM Dec Day 17 Yr. 1997  
 By PATRICK F. GILLY Auditor & Recorder  
 Deputy

EASEMENTS WITH COVENANTS AND  
RESTRICTIONS AFFECTING LAND (ECR)

THIS AGREEMENT is made as of the 11<sup>th</sup> day of December, 1997, by and among Larry L. Book and James C. Johnson, Trustees of the Fred and Martha Family Trust dated December 31, 1987 (Developer) and Hy-Vee, Inc., an Iowa corporation, of 5820 Westown Parkway, West Des Moines, Iowa 50266 (Hy-Vee).

WITNESSETH:

WHEREAS, Developer is the owner of Tracts I and II as described on the attached Exhibit "A", by this reference made a part hereof; and

WHEREAS, Hy-Vee is the owner of Tract III as described on the attached Exhibit "A", by this reference made a part hereof; and

WHEREAS, Developer and Hy-Vee desire that Tracts I, II and III be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (sometimes hereinafter referred to as "the Shopping Center") and further desire that said tracts shall be subject to easements, covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Developer and Hy-Vee do hereby agree as follows:

1. Building/Common Areas

(a) Attached hereto and by this reference made a part hereof is Exhibit "A", which is a site plan showing location of buildings upon the individual lots described in Exhibit A. Building Areas are shown on said site plan. Developer or Hy-Vee shall be entitled to relocate any portion of: their respective buildings within the individual lots owned by them (except the proposed buildings on Lots 7, 8 and 9 which may be relocated only with the consent of both parties), but such buildings shall not exceed the parking ratios hereinafter referred to. Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas.

(b) "Common Areas" shall be all of the areas included in Tracts I, II and III, except those areas herein before referred to.

(c) Conversion to Common Areas: Those portions of the Building Areas on each tract, which are not from time to time used or cannot, under the terms of this Agreement, be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

(d) "Outlots" shall be those portions of the Shopping Center designated on Exhibit "A." as "Outlot".

2. Use. Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, service shops, offices, and retail stores. No auto dealer (new or used), manufacturing, distribution, wholesale or industrial use, theater, bowling alley, billiard parlor, night club, pornographic or "triple-x" video or book store, other place of recreation or amusement, or any business serving alcoholic beverages shall occupy space within the Shopping Center without the prior written consent of Hy-Vee. The parties recognize that said businesses may inconvenience their customers and adversely affect their business.

3. Competing Business. Developer covenants that as long as Hy-Vee, or any affiliate of Hy-Vee, is the user of Tract III either as owner or lessee, or operates a supermarket within two (2) miles of Tract III, then no space in or portion of Tracts I and II, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Developer, shall be leased or occupied by or conveyed to any other party for use as a retail or discount grocery supermarket or shoppers' club selling food items, retail or discount drugstore or pharmacy, or financial institution (which includes credit unions, thrifts, state or national banks, or branches thereof). In the event of a breach of this covenant, Hy-Vee shall have the right to terminate

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this Agreement and/or to seek any and all remedies afforded by either law or equity, including a temporary or permanent injunction.

#### 4. Buildings.

(a) Design and Construction. The Buildings Areas shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one tract onto another tract except as provided for in Subsection (d) below. The design and construction shall be of high quality. No building constructed on an Outlot shall be of more than one-story nor exceed twenty-five feet (25') in height above finished grade; no other building shall be of more than one-story nor exceed forty feet (40') in height above finished grade. No building shall have a metal exterior.

(b) Location. No building shall be constructed on Lots 7, 8 and 9 of Tracts II and III (as either immediate development or future expansion) except within the Building Areas shown on Exhibit "A". The front wall(s) of the building(s) on Tracts II and III shall be constructed in the location shown in Exhibit "A". No Outlot shall have more than one building constructed upon such Outlot.

(c) Fire Protection. Any building constructed in the Shopping Center shall be constructed and operated in such a manner which will preserve the sprinklered rate on the other buildings in the Shopping Center.

(d) Easements. In the event building wall footings encroach from one tract onto another, despite efforts to avoid that occurrence, the party onto whose tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

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(e) Building Maintenance. Following completion of any building, it shall be maintained in good condition and repair including (without limitation) exterior walls, signage, lighting, windows and doors, entryways and service areas.

5. Common Areas.

(a) Grant of Easements. Each party, as grantor, hereby grants to the other party, as grantee, and to the agents, customers, invitees, licensees, tenants and employees of grantee, a nonexclusive easement over, through and around their respective tracts for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, and the use of facilities installed for the comfort and convenience of customers, invitees, licensees, tenants and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.

(b) Limitations on Use.

(i) Customers. Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on Tracts I, II and III. The foregoing notwithstanding, any business located on a designated Outlot shall use its best efforts to prevent its customers and invitees from parking anywhere in the Shopping Center other than on that Outlot.

(ii) Employees. Each party shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas designated on Exhibit "A" as "employee parking areas", if any. The parties hereto may from time to time mutually designate and approve 'employee parking areas' not shown on Exhibit "A".

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The foregoing notwithstanding, any business located on a designated Outlot shall prohibit its employees from parking anywhere in the Shopping Center other than on that Outlot.

(iii) General. Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted with the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.

(iv) Hy-Vee Tract Promotions. Any provision in this Agreement to the contrary notwithstanding, Hy-Vee, as long as it or any affiliate is the user of Tract III may use its part of the Common Area for temporary sales and promotional endeavors of the kind and nature customarily operated by Hy-Vee in its parking areas and which shall include (without limitation) gazebos; tradefairs; petting zoos; rummage or garage-type sale promotions; outdoor greenhouses for lawn and garden sales; seasonal fruit and vegetable, meat and similar sale promotions; and Hy-Vee or third-party prepared food sales and promotion.

6. Development, Maintenance, and Taxes.

(a) Development.

(i) Arrangement. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.

(ii) "Parking Area" Ratio. Each party hereto agrees that at all times there shall be independently maintained on each tract parking areas sufficient to accommodate not fewer than five (5) car spaces for each one thousand (1,000) square feet of Building Area on such tract, provided, however, said ratio shall be increased to ten (10) car spaces for each one thousand (1,000) square feet of Building Area for any part of Tract II which is used for a permitted restaurant (fast-food or sit-down). The foregoing notwithstanding, each tract must comply with municipal or county ordinance regulating parking and neither tract may "borrow" car spaces from the other tract to meet the requirements of any such regulation.

(iii) Development Timing. Concurrent with any building being constructed within the Building Areas of either tract by the owner of said tract (the "Developing Party"), the Common Areas of that tract shall be developed in accordance with Exhibit "A" at the expense of such Developing Party. In the event such construction by the Developing Party shall occur prior to the development of the other tract, the Developing Party shall have the right to grade, pave and use any portion of the Common Areas of the non-developing party's tract for access and construction of, but-not limited to, drainage structures and utility lines as is necessary to provide essential services to the Developing Party's tract. The Developing Party shall present an itemized statement of expenses incurred in the construction of said improvements to and upon the non-developing party's tract, and the non-developing party agrees to reimburse the Developing Party for such costs within thirty (30) days of receipt thereof.

(iv) Development Standards. The Common Areas of the Shopping Center are intended to be homogeneous. Accordingly, all exterior lighting including (without limitation) fixtures, intensity, direction and accent; configuration and size of parking spaces; and width or access drives shall be uniform throughout the Shopping Center. Developer and Hy-Vee shall confirm these standards and requirements in writing prior to any development.

(b) Maintenance.

(i) Standards. Following completion of the improvements on the Common Areas, each party hereto shall maintain the Common Areas on its respective tract in good condition and repair. This maintenance is to include, without limitation, the following:

(A) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;

(B) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition.

(C) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines.

(D) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(E) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;

(F) Maintaining, mowing, weeding, trimming and making such replacements of shrubs and other landscaping as is necessary; and

(G) Maintaining that part of the storm water drainage channel adjacent to its tract, subject to (ii) below.

(ii) Expenses. Each owner shall pay the maintenance expense of its tract provided, however, that in no event shall Hy-Vee be responsible for any expense incurred in maintaining the box culvert underneath the access drive through which the storm water drainage channel moves and as more particularly shown on the Site Plan, Exhibit "A". Developer covenants and agrees to hold the owner of Tract III harmless from any obligation to repair, maintain, replace or reconstruct said box culvert.

(c) Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

7. Signs. No sign shall be located on the Common Areas on Tracts I, II and III, except one pylon sign which shall be located on Tract III in such manner as shall be determined Hy-Vee. The design and size of the pylon sign designed and installed by Hy-Vee shall comply with local City Ordinances.



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Hy-Vee shall construct the pylon sign, connect the electrical service and provide pylon maintenance during the lifetime of the sign. Developer shall have no responsibility for such sign.

8. Indemnification Insurance.

(a) Indemnification. Each party hereby indemnifies and saves the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own tract, except if caused by the act or negligence of the other party hereto.

(b) Insurance.

(i) Each party shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$1,000,000.00 for injury or death of a single person, and to the limit of not less than \$1,000,000.00 for any one occurrence, and to the limit of not less than \$250,000.00 for property damage. Each party shall provide the other party with certificate of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without ten ( 10) days prior written notice to the other party.

(ii) Notwithstanding anything to the contrary contained in this Paragraph 8, so long as the net worth of Hy-Vee shall exceed Fifty Million Dollars (\$50,000,000.00), and so long as Hy-Vee is owner or lessee of Tract III Hy-Vee shall have the right to retain the financial risk for any claim.

9. Eminent Domain.

(a) Owner's Right to Award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's tract or giving the public or any government any rights in said tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Area located on Tracts I, II or III, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.

(b) Collateral Claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

(c) Tenant's Claim. Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

(d) Restoration of Common Areas. The owner of any portion of the Common Areas so condemned shall

promptly repair and restore the remaining portion of the Common Areas within its respective tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. Rights and Obligations of Lenders. If by virtue of any right or obligation set forth herein a lien shall be placed upon the tract of either party hereto, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such tract. Except as set forth in the preceding sentence, however, any holder of a first lien on Tracts I, II, & III and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. Expansion of Shopping Center. The parties agree that in the event the Shopping Center is expanded by ownership, control of the parties or agreement with a third party, all of the provisions of this Agreement shall apply to the expanded area including (without limitation) restrictions on use, parking ratios and maintenance requirements.

12. Release for Liability. Any person acquiring fee or leasehold title to Tracts I or II or any expansion of the Shopping Center pursuant to Paragraph 11. or any portion thereof, shall be bound by this Agreement only as to the tract or portion of the tract acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such tract or portion of the tract, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said tracts running with the land.

13. Breach. In the event of breach or threatened breach of this Agreement, only all record owners of Tracts, I & II as a group, or all record owners of Tract III as a group, or so long as it or any affiliate has an interest as owner or lessee

of Tracts I & II or Hy-Vee so long as it or any affiliate has an interest as owner or lessee of Tract III shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

14. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

15. Document Execution, Modification and Cancellation. It is understood and agreed that until this document is fully executed by both Hy-Vee and Developer there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of Developer, as long as it or its affiliate has any interest as either owner or lessee of Tracts I & II and Hy-Vee, as long as it or its affiliate has any interest as either owner or lessee of Tract III.

16. Non-merger. So long as Hy-Vee or its affiliate is owner or lessee of Tract III even though the underlying fee is owned by one person or entity, this Agreement shall not be subject to the doctrine of merger.

17. Duration. Unless otherwise canceled or terminated, this Agreement and all the easements, covenants, rights, restrictions, and provisions in this Agreement create an equitable servitude upon the respective tracts, constitute covenants running with the land, shall bind every person or entity having any fee, leasehold, or other interest in or encumbrance on any portion of either property at any time, and shall continue in full force and effect perpetually.

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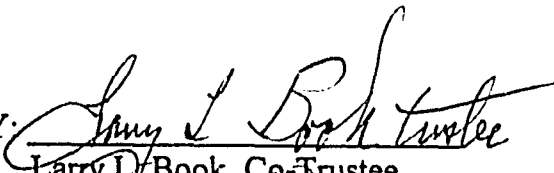
18. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

**FRED AND MARTHA FAMILY TRUST  
DATED DECEMBER 31, 1987**

BY:

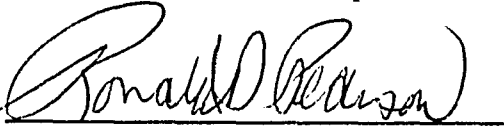
  
Larry L. Book, Co-Trustee

BY:

  
James C. Johnson, Co-Trustee

**HY-VEE, INC., an Iowa corporation**

By:

  
Ronald D. Pearson, President

ATTEST:

By:

  
James D. Meyer, Asst. Secretary

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STATE OF IOWA     }  
                               }} ss.  
 POLK COUNTY       }

On this 11<sup>th</sup> day of December, 1997, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Ronald D. Pearson and James D. Meyer to me personally known, who being by me duly sworn did say that they are the President and Assistant Secretary of Hy-Vee, Inc., that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Ronald D. Pearson and James D. Meyer as such officers acknowledge the execution of said instrument to be the voluntary act and deed of said corporation by it and by them voluntarily executed.



Martina D. Anderson  
 Notary Public in and for the State of Iowa.

STATE OF IOWA     }  
                               }} ss.  
 COUNTY OF WOODBURY }

On this day 19<sup>th</sup> of September, 1997, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Larry L. Book, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.



Dianna D. Wheeler  
 Notary Public in and for the State of Iowa.

STATE OF IOWA     }  
                               }} ss.  
 COUNTY OF WOODBURY }

On this 19<sup>th</sup> day of September, 1997, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared James C. Johnson, to me known to be the identical person named in and who executed the foregoing instrument, and acknowledged that the person, as the fiduciary, executed the instrument as the voluntary act and deed of the person and of the fiduciary.



Dianna D. Wheeler  
 Notary Public in and for the State of Iowa.

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LIENHOLDERS CONSENT AND SUBORDINATION

The undersigned \_\_\_\_\_  
a \_\_\_\_\_, holder of a superior mortgage lien  
executed and delivered by \_\_\_\_\_  
against all or a part of the real estate described in the  
Easement with Covenants and Restrictions Affecting Land  
(ECR) to which this consent and subordination is attached  
and for and in consideration of the benefits to it and its  
security contained in said ECR, hereby agrees with and  
consents to the creation of this ECR and specifically  
subordinates any interest it may have in and to any part of  
said real estate to said ECR, including (without  
limitation) the lien of its mortgage dated \_\_\_\_\_  
and filed of record in the offices of the Recorder, \_\_\_\_\_  
County, \_\_\_\_\_.

\_\_\_\_\_  
BY \_\_\_\_\_  
\_\_\_\_\_

Its \_\_\_\_\_

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STATE OF IOWA                    }  
                                  }} ss.  
COUNTY OF \_\_\_\_\_}

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, before me, the undersigned, a Notary Public in and for the state of \_\_\_\_\_, personally appeared, to me personally known, who, being by me duly sworn, did say that his/she is the \_\_\_\_\_, of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said \_\_\_\_\_ as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him/her voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_



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TENANT'S CONSENT AND SUBORDINATION

The undersigned \_\_\_\_\_,  
a \_\_\_\_\_, as tenant of all or a part of the real  
estate described in the Easement with Covenants and  
Restrictions Affecting Land (ECR) to which this consent  
and subordination is attached and for and in  
consideration of the benefits to it and its tenancy  
contained in said ECR, hereby agrees with and consents to  
the creation of this ECR and specifically subordinates  
any interest it may have in and to any part of said real  
estate to said ECR, including (without limitation) its  
lease dated \_\_\_\_\_, and filed of record  
\_\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_,  
in the offices of the Recorder, \_\_\_\_\_ County,  
State of \_\_\_\_\_.

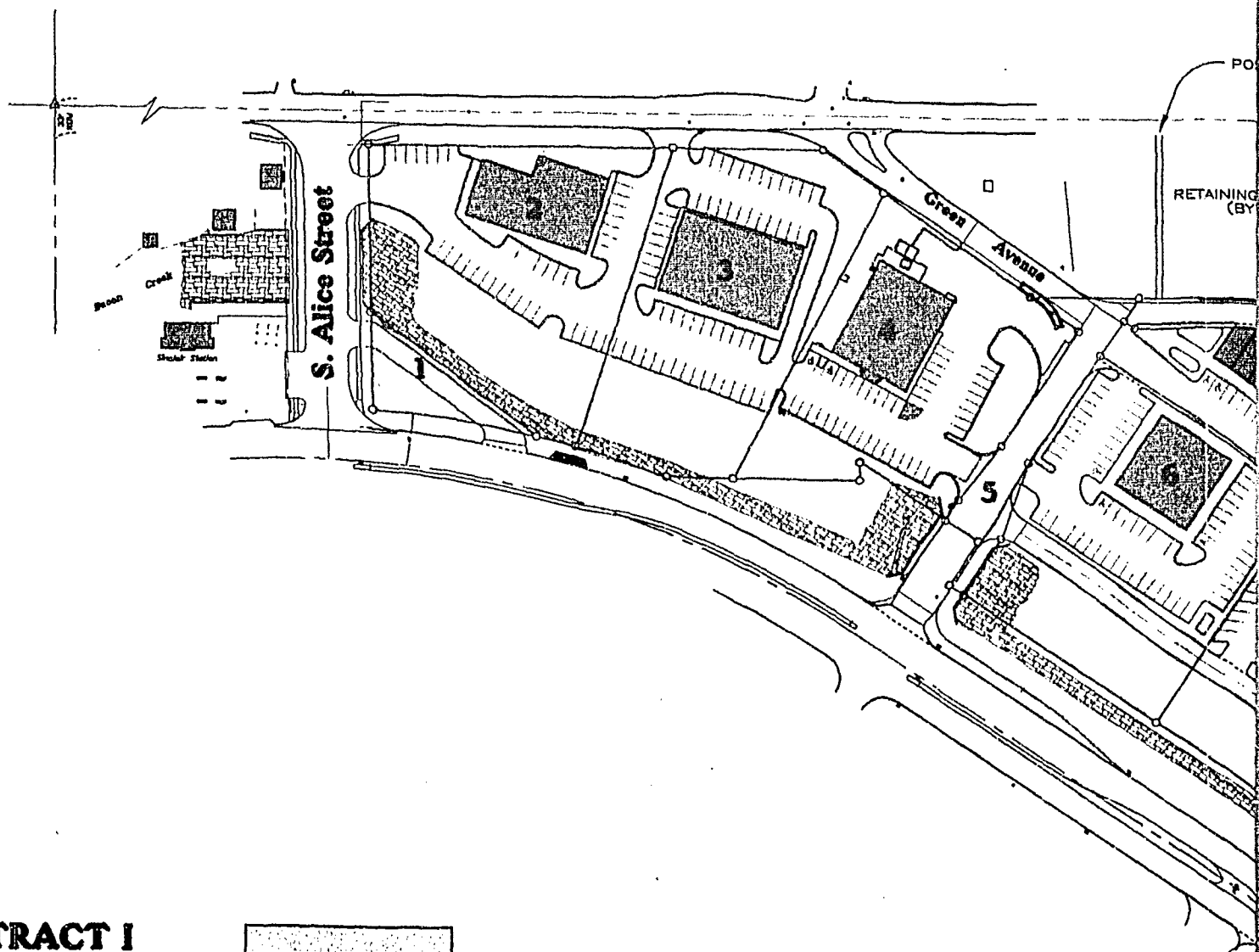
\_\_\_\_\_  
BY \_\_\_\_\_\_\_\_\_\_  
Its \_\_\_\_\_

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STATE OF IOWA                    }  
                                      }} ss.  
COUNTY OF \_\_\_\_\_}

On this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_\_\_, before me, the undersigned, a Notary Public in and for the state of \_\_\_\_\_, personally appeared, to me personally known, who, being by me duly sworn, did say that his/she is the \_\_\_\_\_, of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and that the said \_\_\_\_\_ as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him/her voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the  
State of \_\_\_\_\_

**Gordon Plaza****TRACT I**

Owner: Fred and Martha Family Trust

Lots 1, 2, 3, and 4, Gordon Plaza Addition,  
Sioux City, Woodbury County, Iowa

**TRACT II**

Owner: Fred and Martha Family Trust

Lots 5, 6, 7, 8, 13, 14, and the Westerly portion  
of Lot 15 lying West of the West line of Lot 9  
extended to the North and East, Gordon Plaza Addition,  
Sioux City, Woodbury County, Iowa

**TRACT III**

Owner: Hy-Vee Inc.

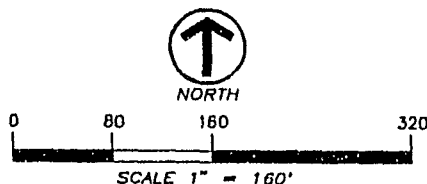
Lots 9, 10, 11, 12, 16, and that portion of lot 15 lying  
East of the West line of Lot 9 extended to the Northeast, all  
in Gordon Plaza Addition, Sioux City, Woodbury County, Iowa

Lots 1, 2, 3,  
Owner: Fred

IT A

# za Addition

ROLL 389 IMAGE 1211



POSSIBLE TRAIL ROUTE

**Correctionville Road**

RAINING WALL SYSTEM  
(BY SELLER)

TOE OF SLOPE

RETAINING WALL SYSTEM  
(BY SELLER)

**Green Avenue**

SAFE  
SCHOOL ROUTE

**Gordon Drive**

**Martha Street**

Structures located on Lot 13 will  
have main entrance oriented either to  
the south or to the east.

3, 4, 13, & 14 - Outlots  
red and Martha Family Trust

