

Doc. No. 5843
WOODBURY COUNTY, IOWA
Filed for Record

SEP - 5 2003

Time 2:30 AM Fee \$ 21.00 Pd
PATRICK F. GILL, Auditor & Recorder
By C. Murphy Designee

Preparer Information Em Cody M. McCullough 614 Pierce Street Sioux City, IA 51107 712-277-4561
Individual's Name Street Address City Phone
Crary, Huff, Inkster, Sheehan, Ringgenberg, Hartnett, Storm & Jensen, P.C. ISBA # 02554

SPACE ABOVE THIS LINE FOR RECORDER

FIRST AMENDMENT TO EASEMENT WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR")

This First Amendment to Easement with Covenants and Restrictions Affecting Land (hereinafter "First Amendment") is made and entered into this 0th day of September, 2003, by and between **Gordon Plaza, L.L.C.**, an Iowa limited liability company (hereinafter "Gordon Plaza") and **Hy-Vee, Inc.**, an Iowa corporation (hereinafter "Hy-Vee").

RECITALS:

WHEREAS, Larry L. Book and James C. Johnson, Trustees of the Fred and Martha Family Trust dated December 31, 1987 and Hy-Vee entered into an Easements With Covenants and Restrictions Affecting Land on December 11, 1997, which was filed of record with the Woodbury County Auditor and Recorder's Office on December 17, 1997 in Roll 389, Image 1192 (hereinafter "ECR");

WHEREAS, attached hereto as Exhibit "A" and incorporated herein by this reference is a drawing showing Tracts I, II and III, which have the following legal descriptions:

- Tract I: Lots 1, 2, 3, and 4, Gordon Plaza Addition, Sioux City, Woodbury County, Iowa.
- Tract II: 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: 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.

WHEREAS, Tracts I and II were transferred to Gordon Plaza under a Special Warranty Deed dated May 21, 2003 and filed for record with the Woodbury County Auditor and Recorder's Office on July 3, 2003 in Roll 600, Image 1608;

WHEREAS, Hy-Vee is the owner of Tract III;

WHEREAS, Hy-Vee and Gordon Plaza desire to amend the ECR to allow Hy-Vee to construct a free standing gas and convenience store on Tract I in the location shown on Exhibit "A"; and

WHEREAS, Hy-Vee and Gordon Plaza desire to amend the ECR to allow the sale of alcoholic beverages without the consent of Hy-Vee on ~~the~~ parcels within Tracts I and II as shown on Exhibit "A"; *but subject to volume limitations certain set forth herein*

NOW THEREFORE, for and in consideration of the premises contained herein, the sufficiency of which is hereby acknowledged, the undersigned parties do hereby further agree as follows:

1. Notwithstanding anything in the ECR to the contrary, Hy-Vee may construct a free standing gas and convenience store in the location shown on Exhibit "A". The construction and

operation of said gas and convenience store shall be in accordance with and subject to all local, state and federal laws. Hy-Vee and Trust hereby extinguish all easement rights granted in the ECR over the property to be used as a gas and convenience store as shown on Exhibit "A".

2. Notwithstanding anything in the ECR to the contrary, any business or establishment located on Parcels 1, 2, 3, 4 and 6, all located within Tracts I and II as shown on Exhibit "A", may serve alcoholic beverages without the consent of Hy-Vee, provided any business or establishment serving alcoholic beverages does not derive in excess of fifty (50%) of its income from the sale of alcoholic beverages.

3. That in all respects, except as amended by this First Amendment, the ECR is hereby ratified, confirmed and approved by the parties.

Executed by the undersigned parties this 2nd day of SEPTEMBER, 2003

GORDON PLAZA, L.L.C.

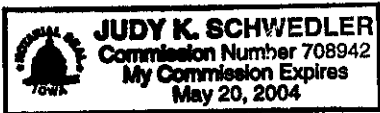
By: [Signature]
James C. Johnson, Manager

HY-VEE, INC., an Iowa corporation

By: [Signature]
Printed Name: Dennis A. Auserhusas
Title: Vice Pres. Real Estate / Engineering

STATE OF IOWA, COUNTY OF WOODBURY

This instrument was acknowledged before me on the 2nd day of September, 2003, by James C. Johnson as Manager of Gordon Plaza, L.L.C.



[Signature]
Notary Public

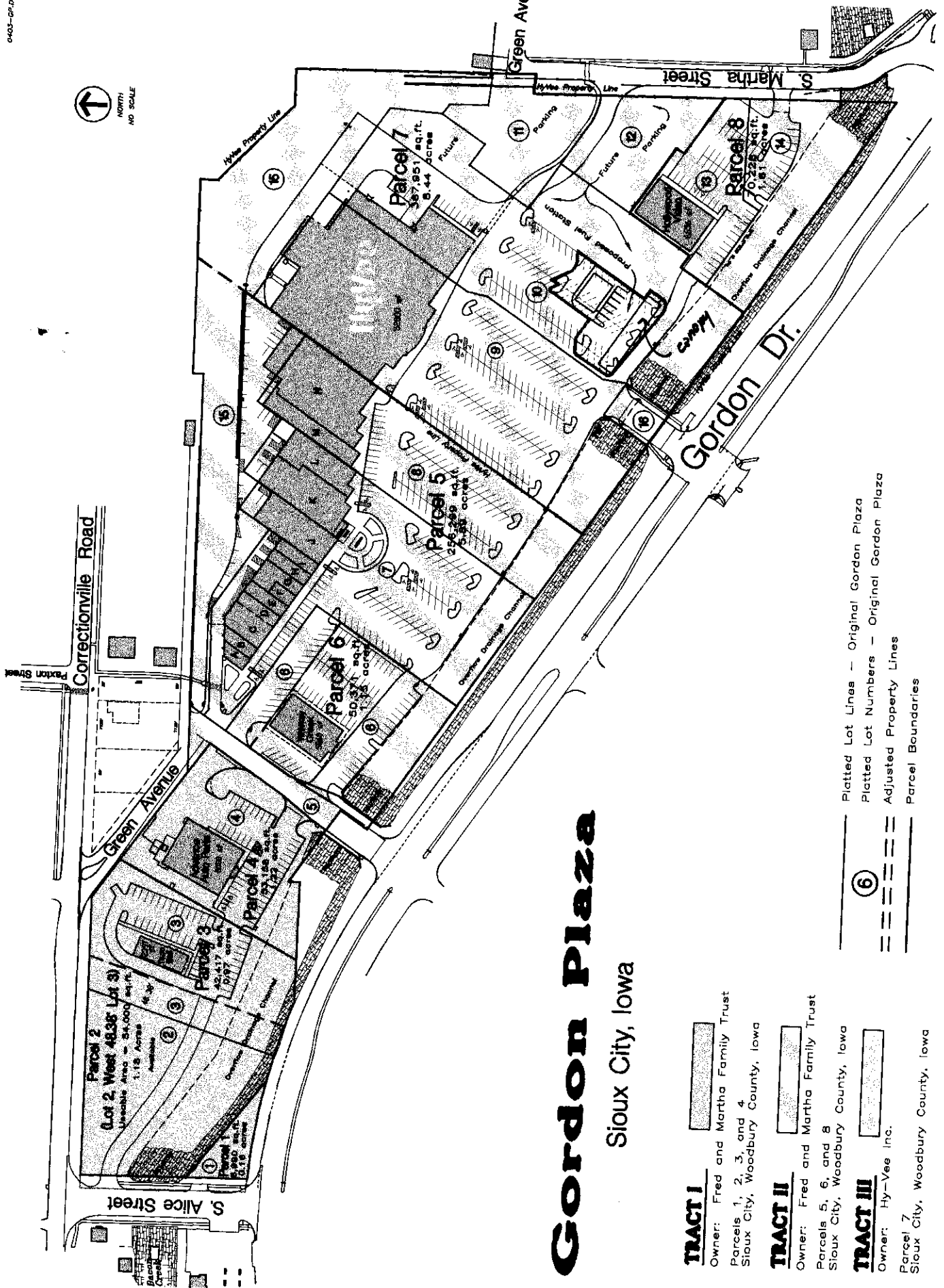
STATE OF IOWA, Polk COUNTY, ss:

This instrument was acknowledged before me on the 29th day of August, 2003 by Dennis A. Auserhusas Vice President of Hy-Vee, Inc., an Iowa corporation.



[Signature]
Notary Public

0403-CP.DWG



Gordon Plaza

Sioux City, Iowa

TRACT I

Owner: Fred and Martha Family Trust
 Parcels 1, 2, 3, and 4
 Sioux City, Woodbury County, Iowa

TRACT II

Owner: Fred and Martha Family Trust
 Parcels 5, 6, and 8
 Sioux City, Woodbury County, Iowa

TRACT III

Owner: Hy-Vee Inc.

Parcel 7
 Sioux City, Woodbury County, Iowa

Platted Lot Lines - Original Gordon Plaza
 Platted Lot Numbers - Original Gordon Plaza
 Adjusted Property Lines
 Parcel Boundaries

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