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FB: 0C-18137
COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
07/28/2011 14:54:59.00



2011063758

Prepared by, return to: Nathan S. Allen, 5820 Westown Parkway, West Des Moines, IA 50266; TEL: 515-267-2870

SITE DEVELOPMENT AGREEMENT

This Site Development Agreement (this “**Agreement**”) is made on this 29th day of July, 2011 (the “**Effective Date**”) by and between Gottsch Land Co., a Nebraska corporation (hereinafter referred to as “**Gottsch**”), and Hy-Vee, Inc., an Iowa corporation (hereinafter referred to as “**Hy-Vee**”).

RECITALS:

A. Gottsch is the owner of certain real property legally described as follows, to-wit:

Lots 1 and 2, Indian Creek Commercial Plaza Replat 1, being a replat of Lot 1 Indian Creek Commercial Plaza, a subdivision as platted and recorded in Douglas County, Nebraska (hereinafter, “**Lot 1**” and “**Lot 2**,” respectively);

Lot 8, in Indian Creek Commercial Plaza, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (“**Lot 8**”); and (0C-18137)

Lots 3, 4, 5, 6, 9, 10, and 11 in Indian Creek Commercial Plaza, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the “**Unoccupied Outlots**”); (0C-18137)

and

B. Hy-Vee and Gottsch have entered into an Option Agreement (the “**Option Agreement**”) dated July 6, 2010, whereunder Gottsch irrevocably granted to Hy-Vee an option to purchase Lot 1 (hereinafter sometimes referred to as the “**Hy-Vee Tract**”), and Lot 8, comprising approximately 10.36 acres in the aggregate, more or less, for the purposes of constructing a full-service Hy-Vee supermarket or grocery store thereon.

C. Gottsch will retain Lot 2 (hereinafter sometimes referred to as the “**Remainder Tract**”), and the Unoccupied Outlots.

D. Hy-Vee and Gottsch intend to develop the Hy-Vee Tract and the Remainder Tract as an integrated development, each with separate ownership as described above with the reciprocal use of certain facilities located on each of the parcels, namely the common drive to access both parcels.

E. The parties hereto agree to utilize compatible paving materials in the construction of the parking areas and drive lanes and agree to use the same light poles within the parking areas of each parcel.

F. Gottsch and Hy-Vee recognize that it is cost-efficient and in their mutual interest to cooperate in the development of their respective tracts.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. Definitions. Unless otherwise provided in this Agreement, all terms defined in the Option Agreement shall have the same meanings when used herein as when used in the Option Agreement.

Section 2. Site Plans. The preliminary site plan (“**Preliminary Site Plan**”) attached hereto as Exhibit A, illustrates the proposed improvements to be constructed in connection with the development of the Remainder Tract and Hy-Vee Tract which has been approved by Gottsch and Hy-Vee. Specifically, the Preliminary Site Plan includes, but is not limited to, (1) the location of the access points to the Remainder Tract and Hy-Vee Tract from Manderson Street, (2) the location of the service road to be constructed (as set forth in Section 3 below) that will run north from Manderson Street (the “**Service Road**”), (3) the grading plans (“**Grading Plans**”) for the Hy-Vee Tract and the Remainder Tract, (4) the legal description of the Hy-Vee Tract, (5) the legal description of the Remainder Tract, (6) the location and orientation of the building(s) to be constructed on the Hy-Vee Tract ; and (7) the location and size of all required landscape buffers. The final site plan (the “**Final Site Plan**”) shall be in substantially the same form as the Preliminary Site Plan and shall be approved in writing by Gottsch and Hy-Vee, in their reasonable discretion, prior to commencement of any development, grading or other work on the Hy-Vee Tract. Notwithstanding the foregoing, Gottsch reserves the right to, at its sole discretion, locate an access point from the Remainder Tract onto Manderson Street, and such additional access point need not be reflected on the Final Site Plan. The parties agree that, as of the date hereof, all necessary utilities are in the right-of-way immediately adjacent to the Hy-Vee Tract and Remainder Tract, and that each party shall, at its own cost and expense, provide for the location and installation of their own utilities during the construction of such party’s improvements on its respective property, and shall be responsible for developing and implementing a post-construction storm water management plan on its respective parcel in accordance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations established by any governing body having jurisdiction thereof.

Section 3. Construction of Service Road. The Service Road shall be constructed in the following manner, and in accordance with generally acceptable commercial standards and the Final Site Plan:

- (A) Location of Service Road. The Service Road shall be located along the eastern portion of the Hy-Vee Tract immediately adjacent to any landscape buffer area required by any applicable governmental authority, such that the landscape buffer area and the Service Road shall be exclusively located on the Hy-Vee Tract. Such location shall be visually depicted on the Preliminary Site Plan and on the Final Site Plan. Gottsch shall have the right to connect to the Service Road in such location(s) as Gottsch and Hy-Vee shall mutually agree upon from time to time. The parties agree to cooperate and coordinate the location of any traffic control devices such as stop signs at the access point(s) onto the Service Road to regulate the traffic circulation between the Hy-Vee Tract and the Remainder Tract. Notwithstanding the foregoing, to the extent the drive-way extends beyond the area designated as the Service Road on the Preliminary Site Plan attached hereto, it is acknowledged that that portion of such drive-way that is not included within the area designated as the Service Road shall not be construed by the parties to be included as any part of the Service Road. It is further acknowledged and agreed that Gottsch shall not have the right to connect to any portion of any such drive-way that is outside of the area designated as the Service Road without Hy-Vee's prior written consent, to be withheld in its sole discretion.
- (B) Construction of Service Road. The Service Road shall be constructed by Hy-Vee unless (1) Gottsch commences improvement of the Remainder Tract prior to the commencement of improvements to the Hy-Vee Tract; and (2) Gottsch determines, in its sole and absolute discretion, that it will utilize the Service Road in the construction of improvements on the Remainder Tract. If the above conditions are satisfied, Gottsch shall have the right to enter onto the Hy-Vee Tract for the purposes of constructing the Service Road in accordance with this Agreement. Prior to commencing construction of the Service Road, or any portion thereof, the constructing party shall furnish construction plans, together with a construction budget, to the non-constructing party for approval, provided, however, such approval by the non-constructing party shall be deemed a representation or warranty by the non-constructing party that the construction plans are in compliance with all applicable codes. After approval of the construction plans and the construction budget, the constructing party shall not amend the construction plans in any material respect without the approval of the non-constructing party. The non-constructing party shall not unreasonably withhold or delay its approval of any amendment to the constructions plans that contain deviations from or inconsistencies with the approved construction plans; provided, however, any such deviations from or inconsistencies with such construction plans shall not change the scope of the work contemplated by this Agreement or increase the liability of the non-constructing party by more than \$10,000, and shall be in compliance

with all applicable codes. The constructing party that elects to construct the Service Road shall be responsible for obtaining all permits and approvals required for the construction of the Service Road after the approval of the construction plans as contemplated herein, and shall be responsible for constructing the Service Road in accordance with the approved plans. Prior to commencing construction of the Service Road, the constructing party shall provide the non-constructing party with a copy of the bids for approval, which approval shall not be unreasonably withheld or delayed.

- (C) Construction Costs. The party that constructs the Service Road shall pay all initial costs and expenses associated with the design and construction of the Service Road. Notwithstanding the foregoing, in the event that Gottsch constructs the Service Road, Hy-Vee shall immediately reimburse Gottsch for its proportionate share of the costs and expenses related to such construction, which proportionate share shall be in the amount of the costs multiplied by the Hy-Vee Ratio (as defined in Subsection (D), below). In the event that Hy-Vee constructs the Service Road in accordance with Section (B), above, Gottsch shall immediately reimburse Hy-Vee for its proportionate share of the costs and expenses related to such design and construction, which proportionate share shall be in the amount of the costs multiplied by the Gottsch Ratio (as defined in Subsection (E), below). In the event that Hy-Vee has constructed the Service Road and Gottsch has reimbursed Hy-Vee for its proportionate share of the costs and expenses and Gottsch subsequently develops the Remainder Tract and does not access or utilize the Service Road, then Gottsch may notify Hy-Vee accordingly and Hy-Vee shall immediately reimburse Gottsch for its proportionate share of the Service Road paid by Gottsch. All requests for reimbursement shall be supported by reasonable documentation indicating the costs of designing and constructing the Service Road, which costs shall not include any so-called "soft-costs" such as overhead or carrying costs.
- (D) Paving Materials; Light Poles. The parties shall utilize compatible paving materials in the construction of the parking areas and drive lanes and agree to use the same light poles within the parking areas of each tract.
- (E) Hy-Vee Ratio. The "**Hy-Vee Ratio**" shall be equal to seventy six (76%) percent.
- (F) Gottsch Ratio. The "**Gottsch Ratio**" shall be equal to twenty four (24%) percent.

Section 4. Construction of Landscape Buffers. Each party shall be responsible for the construction of certain landscape buffers on their respective Tracts as required by the City of Omaha, Nebraska, the location and size of which are shown on the Preliminary Site Plan attached hereto. All costs and expenses associated with the construction of the landscape buffers shall be paid solely by each respective party. The plans related to the

construction of the landscape buffers shall be approved by Gottsch in its reasonable discretion prior to the commencement of construction.

Section 5. Grading of Property.

- (A) Hy-Vee shall grade both the Hy-Vee Tract and Remainder Tract in substantial accordance with the final Grading Plans (as a part of the Final Site Plan). The Hy-Vee Tract and Remainder Tract shall, at Hy-Vee's sole cost and expense, be graded within +/- 0.3feet according to the Grading Plans. Unless mutually approved by the parties, any excess soil not utilized by Hy-Vee in furtherance of the grading of the Hy-Vee Tract and the Remainder Tract shall be hauled away by Hy-Vee at its sole cost and expense. Hy-Vee shall notify Gottsch in writing within five (5) days of the Remainder Tract having been improved to the level required by this Section 5. Gottsch shall have ten (10) days following such notification from Hy-Vee to satisfy itself that the Remainder Tract meets the requirements of this Section 5 or to notify Hy-Vee in writing of any non-compliance or deficiencies. Hy-Vee shall have ten (10) days following receipt of Gottsch's deficiency notification to bring the Remainder Tract in compliance with this Section 5.
- (B) In the event Gottsch develops the Remainder Tract first, then Gottsch shall grade both the Hy-Vee Tract and Remainder Tract in substantial accordance with the final Grading Plans (as a part of the Final Site Plan). Prior to the commencement of grading, Gottsch shall submit a copy of the bids for the same to Hy-Vee for its approval, which shall not be unreasonably withheld or delayed. The Hy-Vee Tract and Remainder Tract shall be graded within +/- 0.3 feet according to the Grading Plans. Unless mutually approved by the parties, any excess soil not utilized by Gottsch in furtherance of the grading of the Hy-Vee Tract and the Remainder Tract shall be hauled away by Gottsch. Gottsch shall notify Hy-Vee in writing within five (5) days of the Hy-Vee Tract having been improved to the level required by this Section 5. Hy-Vee shall have ten (10) days following such notification from Gottsch to satisfy itself that the Hy-Vee Tract meets the requirements of this Section 5 or to notify Gottsch in writing of any non-compliance or deficiencies. Gottsch shall have ten (10) days following receipt of Hy-Vee's deficiency notification to bring the Hy-Vee Tract in compliance with this Section 5. Upon completion of the grading in accordance with this Section 5(B), Gottsch shall submit an invoice to Hy-Vee for the reimbursement of all costs associated with grading the Hy-Vee Tract, including any and all costs associated with the removal of excess soil, as determined by the engineering firm responsible for overseeing the work. All requests for reimbursement shall be supported by reasonable documentation indicating the costs of grading the Hy-Vee Tract and such costs shall not include any so-called "soft-costs" such as

overhead or carrying costs, but may include the cost of preparing the Grading Plans.

- (C) Notwithstanding anything to the contrary contained in this Agreement, it is acknowledged by Hy-Vee and Gottsch that the party who actually grades the Hy-Vee Tract and the Remainder Tract shall have no obligation to perform any corrective or remedial action with regard to the soils on either tract, and that it shall be the obligation of the owner of the Hy-Vee Tract and the Gottsch Tract to complete any such soil-related corrective or remedial work during the construction of such party's respective improvements on its tract following the completion of the grading work described herein.

Section 6. Disclaimer of Liability. Neither Hy-Vee nor Gottsch, nor any of their respective members, partners, officers or employees, shall be liable to each other in any way for any damage, loss or prejudice suffered or claimed by the other party, except to the extent arising from the gross negligence or intentional misconduct thereof. Each party shall forever defend, indemnify and hold the other party and its members, partners, officers and employees, harmless from all damage, loss or liability (including reasonable attorneys' fees) suffered or claimed by the other party on account of (i) any defects in the approved Grading Plans; or (ii) the performance of any work completed under the approved Grading Plans, except to the extent caused by the intentional acts or gross negligence of the other party. Notwithstanding the foregoing, each party shall conduct itself in a commercially reasonable manner in the hiring and oversight of the contractor(s) hired to grade the Remainder Tract and Hy-Vee Tract and each party agrees to cause such contractor(s) to correct any material deviation from the Grading Plans. In the event that the contractor(s) hired to grade the Remainder Tract and Hy-Vee Tract fails to grade the Remainder Tract and/or Hy-Vee Tract in accordance with the Grading Plans, the party to this agreement who did not cause the grading work to be completed shall have the right to enforce the grading contract directly against the grading contractor, which enforcement right shall be set forth in such contract.

Section 7. Covenants and Restrictions.

- (A) Building Areas. No building improvement shall be constructed on any of Lots 3, 4, 5 or 6, as the same exist on or as of the date hereof, or as may be replatted or reconfigured from time-to-time, (i) in excess of twenty-five (25) feet in height, measured from the highest finished floor elevation, exclusive of architectural features, and (ii) in excess of two hundred twenty (220) linear feet in length. In addition, (i) with respect to Lots 3, 4, 5 and 6, as the same exist on or as of the date hereof, the maximum length of the aggregate of all buildings constructed on such lots shall be four hundred (400) linear feet, and (ii) no building improvement may be constructed which extends beyond the property line of any Unimproved Outlot.

- (B) Cart Corrals. Gottsch hereby represents and warrants to Hy-Vee that there is no restriction of record prohibiting outdoor cart corrals from being located in any portion of the parking areas on the Hy-Vee Tract.
- (C) Parking Areas. There shall be maintained at all times within the Hy-Vee Tract, the Remainder Tract, and each Unoccupied Outlot a sufficient number of vehicular parking spaces to meet the following requirements: (i) five (5) parking spaces for each one thousand (1,000) square feet of Floor Area (as defined herein) of retail space; (ii) in the event the Hy-Vee grocery store exceeds 80,000 square feet of Floor Area, the store will have the lesser of four (4) parking spaces for each one thousand (1,000) square feet of Floor Area or the minimum number of parking spaces required by the applicable governmental rules, regulations and/or ordinances; and (iii) for restaurant establishments, there shall be no less than ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area. Notwithstanding the foregoing, the parking requirements for each Parcel must, at a minimum, meet the requirements set forth in the City of Omaha Municipal Code for the applicable zoning classification. Each Party shall be responsible for compliance with any applicable governmental rules, regulations and/or ordinances relating to parking requirements for its respective Parcel. For the purposes of this Section 7, the term "Floor Area" shall mean the aggregate number of square feet of: (i) space contained on each floor within a building as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls provided, however, that the following areas shall not be included in such calculation: (a) any mezzanine or basement space, (b) space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located above ground floor, or (c) space used solely for building utilities or mechanical equipment; and (ii) space exclusively used for outdoor seating for customers of restaurants and/or other food service businesses.

Section 7. Cross Access Easement and Maintenance of Service Road. The parties agree that, in the event Gottsch connects the Remainder Tract to the Service Road, the terms of the Cross Access and Maintenance Agreement set forth in Exhibit B, attached hereto and incorporated herein by this reference, shall automatically apply to the Hy-Vee Tract and the Remainder Tract without any additional action by either party. In the event either (a) the Remainder Tract is not connected to the Service Road, or (b) following the installation of any such connection of the Remainder Tract to the Service Road, such connection is thereafter terminated or severed, then the Cross Access and Maintenance Agreement shall not be effective.

Section 8. Subdivision Cost Sharing. Costs and expenses related to the replat of Lot 1, Indian Creek Commercial Plaza, a subdivision as platted and recorded in Douglas County, Nebraska, shall be paid for one-half by Gottsch and one-half by Hy-Vee.

Section 9. Legal Parcels. The Hy-Vee Tract and Remainder Tract shall consist of legal parcels in full compliance with all applicable laws and in conformance with the Final Site Plan.

Section 10. Notice. All notices, demands and requests required or permitted to be given under this Agreement (collectively the “**Notices**”) must be in writing and must be delivered personally, or by telephone facsimile (provided that such Notice is confirmed by delivering an original copy of such Notice on the same day to a nationally recognized overnight courier for delivery to the addressee(s) on the next business day), by nationally recognized overnight courier, or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below. Notices shall be effective upon receipt if delivered personally or by telephone facsimile, or on the next business day if sent by overnight courier, or three (3) business days after deposit in the mail if mailed; provided notices delivered by telephone facsimile shall also be sent by overnight courier or United States certified mail, return receipt requested. The initial addresses of the parties shall be:

To Gottsch: Gottsch Land Co.
 Attn: Brett A. Gottsch
 20507 Nicholas Street
 Elkhorn, Nebraska 68022

Copy: Larry A. Jobeun
 Fullenkamp, Doyle & Jobeun
 11440 West Center Road, Suite C
 Omaha, Nebraska 68144
 Phone: (402) 334-0700

To Hy-Vee: Hy-Vee Inc.
 5820 Westown Parkway
 West Des Moines, IA 50266
 Attn: Legal Department
 515-267-2800

Copy: Hy-Vee Inc
 5820 Westown Parkway
 West Des Moines, IA 50266
 Attn: Real Estate Department
 515-267-2800

Upon at least ten (10) days’ prior written notice, each party shall have the right to change its address to any other address within the United States of America. Informal communications made between Hy-Vee and Gottsch during the completion of construction activities performed under this Agreement may be made by their respective project managers as designated from time to time.

Section 11. Assessments. Gottsch agrees that it shall not, without the prior written approval of Hy-Vee, permit any governmental or private assessments, liens or other charges to be levied against the Hy-Vee Tract or Remainder Tract in connection with any on or off-site improvements related to the development of the Hy-Vee Tract and grading of the Remainder Tract. Specifically, Hy-Vee agrees that it shall not permit any liens to be placed against the Remainder Tract in connection with the work done pursuant to the grading contract referred to above in Section 5 and Section 6 and, in the event any such lien is placed upon the Remainder Tract, Hy-Vee agrees to have the same removed within a commercially reasonable time frame at its sole cost and expense.

Section 12. Approval Rights. Except as otherwise provided herein, with respect to any matter as to which a party has specifically been granted an approval right under this Agreement, nothing contained in this Agreement shall limit the right of a party to exercise its business judgment, in its sole discretion, whether or not “objectively” reasonable under the circumstances, and any such decision shall not be deemed inconsistent with any covenant of good faith and fair dealing which may be implied by law to be part of this Agreement. The parties intend by this Agreement to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

Section 13. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed, either by the parties hereto or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture or other association between Gottsch and Hy-Vee.

Section 14. Costs and Attorney’s Fees. If either party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach of this Agreement), the prevailing party in such action shall be entitled to recovery of all costs and expenses of litigation, including reasonable attorneys’ fees.

Section 15. Exhibits Incorporated. Each exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

Section 16. Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one instrument.

Section 17. Successors and Assigns. This Agreement shall run with the land and shall be binding upon the parties hereto and their respective heirs, successors and assigns.

Section 18. No Waiver. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any such terms, covenants or

conditions. No waiver by any party or any default under this Agreement shall be effective or binding on such party unless made in writing by such party and no such waiver shall be implied from any omission by a party to take an action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this Agreement.

**SIGNATURE PAGE
FOR SITE DEVELOPMENT AGREEMENT
BETWEEN HY-VEE CORPORATION
AND GOTTSCH LAND CO.**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.

GOTTSCH LAND CO., a Nebraska corporation

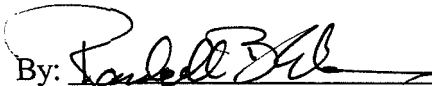
By: [Signature]
Name: Brett Gottsch
Title: President

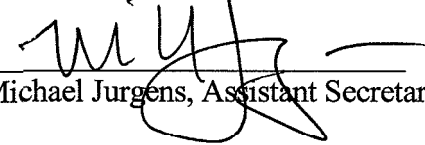
STATE OF NEBRASKA, COUNTY OF Douglas, ss:

On this 27 day of July, 2011, before me, the undersigned, a Notary Public in and for the State of Nebraska personally appeared Brett Gottsch and _____ to me personally known, who being by me duly sworn, did say that they are the President and ~~Secretary~~ respectively, of Gottsch Land Co, that the seal affixed hereto is the seal 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 President and N/A 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 Nebraska
GENERAL NOTARY - State of Nebraska
TAMMY L. ZVACEK
My Comm. Exp. Dec 14, 2012

HY-VEE, INC., an Iowa corporation

By: 
Randall B. Edeker, President

By: 
Michael Jurgens, Assistant Secretary

STATE OF IOWA, COUNTY OF POLK, ss:

On this 27th day of July, 2011, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Randall B. Edeker and Michael Jurgens, to me personally known, who being by me duly sworn did say that they are the President and Assistant Secretary, respectively, of Hy-Vee, Inc., that the seal affixed hereto is the seal 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 Randall B. Edeker and Michael Jurgens 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.

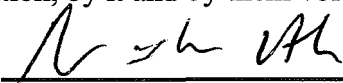

Notary Public in and for the
State of Iowa



EXHIBIT "A" TO SITE DEVELOPMENT AGREEMENT
A-2 PRELIMINARY GRADING PLAN

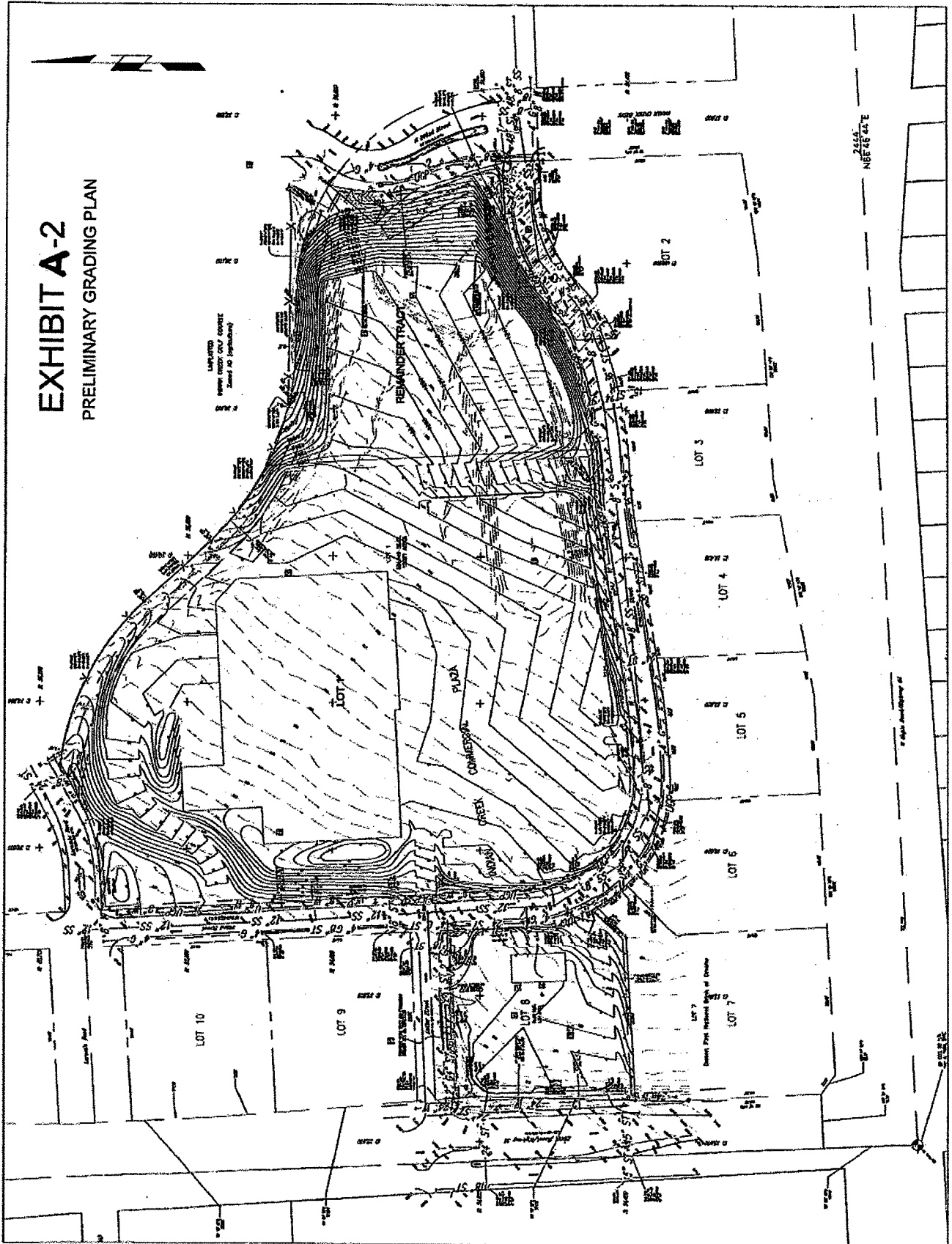


EXHIBIT "B" TO SITE DEVELOPMENT AGREEMENT

CROSS ACCESS AND MAINTENANCE AGREEMENT

THIS CROSS ACCESS AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into as of July 28, 2011, by and between Gottsch Land Co., a Nebraska corporation (hereinafter referred to as "Gottsch"), and Hy-Vee, Inc., an Iowa corporation (hereinafter referred to as "Hy-Vee"). Gottsch and Hy-Vee are sometimes referred to individually as a "Party" and collectively as the "Parties".

A. Gottsch is the owner of Lot 2, Indian Creek Commercial Plaza Replat 1, being a replat of Lot 1 Indian Creek Commercial Plaza, a subdivision as platted and recorded in Douglas County, Nebraska (the "Gottsch Parcel");

B. Hy-Vee is the owner of Lot 1, Indian Creek Commercial Plaza Replat 1, being a replat of Lot 1 Indian Creek Commercial Plaza, a subdivision as platted and recorded in Douglas County, Nebraska (the "Hy-Vee Parcel"). The Gottsch Parcel and the Hy-Vee Parcel are sometimes hereinafter referred to collectively as the "Property";

C. In the event Gottsch connects the Gottsch Parcel to the Service Road (as hereinafter defined), to facilitate ingress and egress from the Gottsch Parcel, Gottsch desires to obtain from Hy-Vee a nonexclusive permanent access easement, excluding parking, over and across the Hy-Vee Parcel as shown on the Site Plan attached hereto as Exhibit A; and

D. In the event Gottsch connects the Gottsch Parcel to the Service Road (as hereinafter defined), to facilitate ingress and egress from the Hy-Vee Parcel, Hy-Vee desires to obtain from Gottsch a nonexclusive permanent access easement, excluding parking, over and across the Gottsch Parcel as shown on the Site Plan.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby agree as follows:

1. DEFINITIONS

Each reference in this Agreement to any of the following terms shall mean:

- 1.1 *Easement Areas*. "Easement Areas" means those portions of the Gottsch Parcel and those portions of the Hy-Vee Parcel which are subject to easements as shown on the Site Plan.
- 1.2 *Permittees*. "Permittees" means Gottsch, Hy-Vee and Persons from time to time entitled to the use and occupancy of a portion of the Property under a lease, license or other valid interest, together with their respective officers, directors, members, managers, partners, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, and concessionaires insofar as their activities relate to the authorized use and occupancy of the Property.

- 1.3 *Person or Persons.* Individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals, or any other forms of business or legal entity.
- 1.4 *Service Road.* The roadway constructed along the eastern portion of the Hy-Vee Tract as shown on the Site Plan.
- 1.5 *Site Plan.* The Site Plan attached hereto as Exhibit A and incorporated herein by this reference. No change to the location of the Service Road materially affecting traffic flow, or ingress to and egress from the Property shall be made to the Site Plan without the written consent of the Parties.

2. GRANT OF ACCESS EASEMENTS

The easements granted herein shall not become effective unless and until Gottsch connects the Gottsch Parcel to the Service Road located on the Hy-Vee Parcel. In the event such connection is constructed, the easements granted herein shall immediately become effective without further action by the owner of either parcel.

- 2.1 Gottsch hereby grants to Hy-Vee and its invitees and Permittees for the benefit of the Hy-Vee Parcel, a non-exclusive permanent easement for vehicular ingress and egress over, across and through the driveway areas of the Gottsch Parcel as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Gottsch Parcel, as the same may from time to time be constructed and maintained for such use, to facilitate ingress to and egress from the Hy-Vee Parcel. This access easement shall not be construed to grant an easement for parking by invitees or Permittees (including but not limited to employees) of the business located within the Hy-Vee Parcel, on the Gottsch Parcel.
- 2.2 Hy-Vee hereby grants to Gottsch and its invitees and Permittees for the benefit of the Gottsch Parcel, a non-exclusive permanent easement for vehicular ingress and egress over, across and through the Service Road and driveway areas of the Hy-Vee Parcel as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Hy-Vee Parcel, as the same may from time to time be constructed and maintained for such use, to facilitate ingress to and egress from the Gottsch Parcel. This access easement shall not be construed to grant an easement for parking by invitees or Permittees (including but not limited to employees) of any business located within the Gottsch Parcel, on the Hy-Vee Parcel.

3. LOCATION OF BUSINESS ENTRANCES

Any and all building improvements within the Hy-Vee Parcel and the Gottsch Parcel shall be designed and constructed in such a manner that the primary customer entrance(s) of such building improvements shall face the main parking area located on the respective parcel upon which such building improvements are located.

4. NO WALLS, FENCES OR BARRIERS

No walls, fences or barriers of any sort or kind shall be constructed or erected on the Property which shall prevent or impair the access and movement of invitees and Permittees, including, without limitation, pedestrians and vehicular traffic between the Gottsch Parcel and the Hy-Vee Parcel; provided, however, curb stops and other reasonable traffic controls, including, without limitation, directional barriers and stop signs, as may be necessary to guide and control the orderly flow of traffic consistent with the Site Plan, may be installed by a Party on its respective parcel to the extent such controls do not materially adversely affect the other parcel or Party. Notwithstanding the foregoing, a Party may install temporary traffic controls on its respective parcel in the event of any emergency condition.

5. MAINTENANCE

The Parties agree to maintain the Property as follows:

- 5.1 Gottsch and Hy-Vee shall each maintain, repair, restripe, resurface and replace, when necessary, all paved surfaces on its respective parcel 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 or superior in quality, use and durability.
- 5.2 Gottsch and Hy-Vee shall each remove all papers, debris, filth and refuse and thoroughly sweep its respective parcel to the extent reasonably necessary to keep the area in a clean and orderly condition.
- 5.3 With respect to the Service Road, Hy-Vee shall be responsible for seventy six (76%) percent and Gottsch shall be responsible for twenty four (24%) percent of the costs and expenses of maintaining, repairing and reconstructing, if necessary, the Service Road. Maintenance shall include snow and ice removal.

6. INDEMNITY

- 6.1 Gottsch shall indemnify, defend, protect and hold Hy-Vee and its officers, director, shareholders, members, managers, partners, employees, attorneys, and agents harmless for, from and against any and all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and court costs and reasonable attorneys' fees and court costs on appeal) arising out of or related to injury to or death of any person or damage to or destruction of any property occurring on the Gottsch Parcel or arising out of or resulting from any activities of Gottsch and its invitees and Permittees, unless caused by the negligent or willful act or omission of Hy-Vee.
- 6.2 Hy-Vee shall indemnify, defend, protect and hold Gottsch and its officers, director, shareholders, members, managers, partners, employees, attorneys, and agents harmless for, from and against any and all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and court costs and reasonable attorneys' fees and court costs on appeal) arising out of or related to injury to or death of any person or damage to or destruction of any property occurring on the Hy-Vee Parcel

or arising out of or resulting from any activities of Hy-Vee and its invitees and Permittees, unless caused by the negligent or willful act or omission of Gottsch.

- 6.3 If either Party shall, without fault, be made a party to any litigation commenced by or against the other, or if either Party shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, then the indemnifying Party shall defend the indemnified Party using attorneys reasonably satisfactory to the indemnified Party and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. The indemnified Party shall have the right to engage its own attorneys in connection with any of the provisions of this Section 5 or any of the provisions of this Agreement, including, but not limited to, any defense of or intervention by the indemnified Party, notwithstanding any contrary provisions of the laws or court decisions of the State of Nebraska.

7. TRAFFIC

7.1 No Party shall do anything which would materially change the pattern of traffic flow for the Property from that shown on the Site Plan. No Party shall make material changes to the Easement Areas on its parcel without the approval of the other Party, except that each Party hereby reserves the right, from time to time, without obtaining the consent or approval of any other Party, to make at its own expense any minor change, modification or alteration in its portion of the Easement Areas, provided that:

- (a) the accessibility of such Easement Areas for pedestrian and vehicular traffic (as it relates to the remainder of the Property) is not unreasonably restricted or hindered and all vehicular traffic lanes shall remain generally as shown on the Site Plan;
- (b) no governmental rule, ordinance, or regulation shall be violated as a result of such action, and such action shall not result in any other Party being in violation of any governmental rule, ordinance or regulation;
- (c) no change shall be made in the access points between Easement Areas and the public streets; provided, however, that additional access points may be created with the approval of the other Parties, such approval not to be unreasonably withheld; and
- (d) at least thirty (30) days prior to making any such change, modifications, or alteration, the Party desiring to do such work shall deliver to each other Party copies of the plans therefore.

7.2 Notwithstanding anything contained herein to the contrary, any change to the access points or the major driveways from that which is shown on the Site Plan must be approved by each of the Parties.

8. COVENANTS RUN WITH THE LAND

The easements granted herein by Gottsch shall be a burden on the Gottsch Parcel, shall be appurtenant to and for the benefit of the Hy-Vee Parcel and shall run with the land. The easements

granted herein by Hy-Vee shall be a burden on the Hy-Vee Parcel, shall be appurtenant to and for the benefit of the Gottsch Parcel and shall run with the land.

9. MISCELLANEOUS PROVISIONS

- 9.1 No Waiver. The failure of either Party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said Party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same.
- 9.2 Remedies Cumulative. In addition to the remedies set forth in this Agreement, each Party shall be entitled to enforce this Agreement and shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to either Party hereto shall exclude any other remedy herein or by law provided, but each shall be cumulative.
- 9.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.
- 9.4 Injunctive Relief. In the event of any violation or threatened violation by a Party hereto, the other Party shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right to an injunction shall be in addition to all other remedies set forth in this Agreement or provided by law.
- 9.5 Modification and Termination. This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of each of the Parties hereto, and then only by written instrument duly executed and acknowledged by each such party and recorded with the Douglas County Register of Deeds.
- 9.6 Notice.
- (a) All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of Sarpy County. All notices to Gottsch and Hy-Vee shall be sent to the personal and address set forth below:

Gottsch: Gottsch Land Co.
Attn: Brett A. Gottsch
20507 Nicholas Street
Elkhorn, Nebraska 68022

Hy-Vee: Hy-Vee Inc.
5820 Westown Parkway
Attn. Real Estate Department
515-267-2800

With Copy to: Hy-Vee Inc.
5820 Westown Parkway
Attn. Legal Department
515-267-2800

The Person and address to which notices are to be given may be changed at any time by any party upon written notice to other parties. All notices given pursuant to this Agreement shall be deemed given upon receipt.

- (b) For the purpose of this Agreement, the term “receipt” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt; (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to this Section; or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery; (B) the date of the postmark on the return receipt; or (C) the date of receipt of notice of refusal or notice of non-delivery by the sending party.
- 9.7 Attorneys’ Fees. In the event either Party hereto initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys’ fees (including its reasonable costs and attorneys’ fees on appeal).
- 9.8 Severability. If any term or provisions of this Agreement or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to Persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
- 9.9 Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any other similar relationship between the Parties. Each Party shall be considered a separate party and no party shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.
- 9.10 Estoppel Certificate. Each of the parties to this Agreement shall at any time and from time to time, as promptly as reasonably possible after receiving a request from any other party to this Agreement, deliver to such requesting party and its designee a statement in writing certifying

to the best knowledge of the delivering party whether a default exists under this Agreement on the part of the requesting party (and, if so, specifying the default).

- 9.11 Third Party Beneficiary Rights. This Agreement is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any Person not a party hereto unless otherwise expressly provided herein.
- 9.12 Captions and Headings. The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.
- 9.13 Interpretation. Whenever the context requires in construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word “including” shall be construed inclusively, and not in limitation, whether or not the words “without limitation” or “but not limited to” (or words of similar importance) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
- 9.14 Limitation on Liability. Except as specifically provided below, there shall be no corporate or personal liability of Persons who constitute either party hereof hereunder, including but not limited to officers, directors, members, managers, partners, employees or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Agreement. In the event of a default of either Party hereunder, the Party seeking recovery from the defaulting Party shall look solely to the interests of the defaulting Party in its respective Parcel for the satisfaction of each and every remedy of the non-defaulting party, provided, however, the foregoing shall not in any way impair, limit or prejudice the right of either Party hereto to pursue equitable relief in connection with this Agreement, including a proceeding for a temporary restraining order, preliminary injunction, permanent injunction or specific performance.
- 9.15 Lienholder Protection. This Agreement, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Party and its respective parcel, shall be superior and senior to any lien placed upon such Parcel, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the line of any mortgage or deed of trust made in good faith and for value, but all the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Agreement shall be binding upon effective against any Person (including, but not limited to, any mortgagee or beneficiary under a deed of trust) who acquires title to such parcel or any portion thereof by foreclosure, trustee’s sale, deed in lieu of foreclosure, or otherwise.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

GOTTSCHLAND CO., a Nebraska corporation

By: [Signature]
Name: Brett Gottsch
Title: President

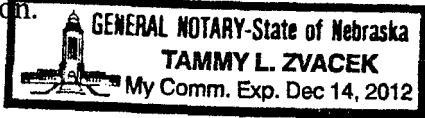
HY-VEE, INC., an Iowa corporation

By: _____
Name: Randell B. Edeker, President

By: _____
Name: Stephen Meyer, Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

This instrument was acknowledged before me this 27th day of July, 2011, by Brett Gottsch, known to me to be the President of Gottsch Land Co., a Nebraska corporation.



[Signature]
Notary Public

STATE OF IOWA)
) ss.
COUNTY OF POLK)

This instrument was acknowledged before me this _____ day of _____, 2011, by Randall B. Edeker and Stephen Meyer, known to me to be the President and Secretary, respectively, of Hy-Vee Inc., an Iowa corporation.

Notary Public

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

GOTTSCH LAND CO., a Nebraska corporation

By: _____
Name: _____
Title: _____

HY-VEE, INC., an Iowa corporation

By: *Randell B. Edeker*
Name: Randell B. Edeker, President

By: *Michael Jurgens*
Name: Michael Jurgens, Assistant Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

This instrument was acknowledged before me this ____ day of _____, 2011, by _____, known to me to be the _____ of Gottsch Land Co., a Nebraska corporation.

Notary Public

STATE OF IOWA)
) ss.
COUNTY OF POLK)

This instrument was acknowledged before me this 27th day of July, 2011, by Randall B. Edeker and Michael Jurgens, known to me to be the President and Assistant Secretary, respectively, of Hy-Vee Inc., an Iowa corporation.

Nathan Allen
Notary Public



EXHIBIT "A" TO CROSS ACCESS AND MAINTENANCE AGREEMENT
SITE PLAN

