



MISC 2017028455



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
04/14/2017 16:48:25.00



2017028455

Prepared by and when recorded return to: Hy-Vee, Inc.; 5820 Westown Parkway, West Des Moines, IA 50266;
TEL: 515-267-2870

DECLARATION OF USE RESTRICTIONS

THIS DECLARATION effective the 13th day of April, 2017 (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.
 - b. "Benefited Parcel" means the following parcel(s) of real estate, to-wit:
See Exhibit "A"
 - c. "Burdened Party" means owner, from time-to-time of the Restricted Parcel.
 - d. "Restricted Parcel" means the following parcel(s) of real estate, to-wit:
See Exhibit "B".
- 3. Use Restrictions. During the term of this Declaration and for the benefit of the

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Benefited Party and the Benefited Parcel, the Restricted Parcel must not be used for any of the following, to-wit:

- a. a restaurant, unless approved in writing in advance by Hy-Vee, Inc., evidenced on Exhibit "B" attached hereto and incorporated herein by this reference, or by an amendment to this Declaration.
- b. 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) herein.

4. Term. Unless sooner terminated by the Benefited Party(ies) 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 in which the Restricted Parcel is located, without regard to conflicts of laws principles. 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. Any one or more Benefited Parties 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 Parties 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, Litigation Costs. In the event of an action by Benefited Party to enforce the terms of this Declaration, the non-prevailing party(ies) in such litigations shall reimburse the prevailing party(ies)'s litigation expenses, including reasonable attorneys' fees..


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.

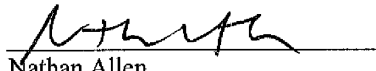
10. Severability. If any provision of this instrument is invalid, illegal or incapable of being enforced by any law or public policy, all other provisions of this declaration will remain in full force and effect.

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.

DECLARANT:

HY-VEE, INC.

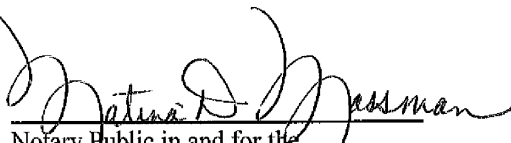
By: 
Jeffrey Markey
Its: Sr. Vice President

By: 
Nathan Allen
Its: Assistant Secretary

STATE OF IOWA, COUNTY OF POLK, ss:

On this 13th day of April, 2017, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Jeffrey Markey and Nathan Allen, to me personally known, who being by me duly sworn did say that they are the Sr. Vice President and Assistant 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 Nathan Allen 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

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

Lot 1, PACIFIC SPRINGS PLACE, a Subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

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

Lot Eight (8), PACIFIC SPRINGS PLACE, an addition to the City of Omaha, Douglas County,
Nebraska

**DECLARATION OF USE RESTRICTION - EXHIBIT "C"
PERMITTED RESTAURANTS**

None