

FILED SARPY CO. NE.  
INSTRUMENT NUMBER

**2017-14630**

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*Lloyd J. Dowling*

REGISTER OF DEEDS



COUNTER_JS
VERIFY_JS
FEES \$ 34.00
CHG_SFILE
SUBMITTED_TITLECORE NATIONAL, LLC

Prepared by and when recorded return to: Libby Ream; 5820 Westown Parkway, West Des Moines, IA 50266;  
TEL: 515-267-2800

### DECLARATION OF USE RESTRICTION

THIS DECLARATION effective the 7<sup>th</sup> day of ~~May~~<sup>June</sup>, 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 (i) Hy-Vee, Inc., an Iowa corporation, and (ii) so long as Hy-Vee, Inc. is the owner of, or a tenant upon, any portion of the Benefited Parcel, 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 Benefited Party and the Benefited Parcel, the Restricted Parcel must not be used for any of

the following, to-wit:

- a. pharmacy and/or drug store;
- b. the sale of prescription and/or over-the-counter pharmaceuticals;
- c. 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) – (b) 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 for a period of five (5) years following the Effective Date.

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

8. 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.

9. 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:**

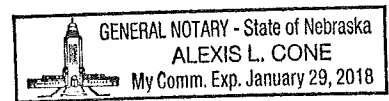
PHARMACY HOLDINGS, L.L.C.

By: Jeff Hamik  
Name: JM  
Its: Partner

STATE OF NEBRASKA, COUNTY OF DOUGLAS, ss:

This instrument was acknowledged before me this <sup>June</sup>~~May~~ 7, 2017, by Jeffrey M Hamik as Partner of Pharmacy Holdings, L.L.C., a Nebraska limited liability company.

Alexis L Cone  
Notary Public



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

LOT 1, PACIFIC SPRINGS PLACE ADDITION, AS SURVEYED, PLATTED AND  
RECORDED IN DOUGLAS COUNTY, NEBRASKA.

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

LOT 1, HARRISON WOODS REPLAT FOUR, A SUBDIVISION, AS SURVEYED,  
PLATTED AND RECORDED IN SARPY COUNTY, NEBRASKA