

**HY-VEE
REDEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into as of the ____ day of _____ 2006, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as "City") and HY-VEE, INC. (Hy-Vee). Hy-Vee is sometimes hereinafter referred to as "Redeveloper".

RECITALS

WHEREAS, the City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska, and as part of that program the City has prepared and approved under Resolution A-83181 the 48th and O Street Redevelopment Plan (the "Redevelopment Plan") providing for redevelopment in the City of Lincoln in the vicinity of 48th and O Streets a copy of which, together with any and all amendments thereto, is on file in the Office of the City Clerk of the City (the "City Clerk");

WHEREAS, on April 15, 2005, Redeveloper, along with two other parties, submitted a Proposal for Redevelopment to the City ("Proposal"), in response to the City's Request for Proposals, Specification No. 05-049, with respect to the redevelopment of the real property generally located north of "O" Street between N. 48th Street and N. 52nd Street, Lincoln, Lancaster County, Nebraska, Specification No. 05-049;

WHEREAS, Hy-Vee is willing and able to redevelop a parcel of land located within the area described in the City's Request for Proposals, Specification No. 05-049. The redevelopment site would consist of a grocery store to be located north of "O" Street and east of N. 50th Street at 5000 O Street ("5000 O Street") and legally described on Exhibit "A", which is attached hereto and incorporated herein by this reference;

WHEREAS, the City and Redeveloper desire to enter into this agreement to implement the redevelopment of 5000 O Street and the New 50th Street (defined herein) as the "Project Site" for the purposes in accordance with the Redevelopment Plan; and

WHEREAS, the City and Redeveloper mutually agree that the redevelopment of the Project Site is in the vital and best interest of the City and is in furtherance of the health, safety and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

**ARTICLE I.
REDEVELOPER’S RESPONSIBILITIES**

Section 101. Redeveloper’s Responsibilities.

- A. 5000 O Street Purchase Agreement:** The Redeveloper has entered into a purchase agreement with Abram LLC to acquire 5000 O Street, with terms, conditions and contingencies acceptable to Redeveloper (“5000 O Street Purchase Agreement”). The 5000 O Street Purchase Agreement includes the real estate interest that is subject to the Notice and Petition for the Appointment of Appraisers and Condemnation of Lands that the City intends to acquire fee simple title for 50th Street and “O” Street right-of-ways and related permanent easements and temporary easement (collectively “Condemnation Interests”) as described in Case No. CI06-1849 before the County Judge of Lancaster County, Nebraska. The Redeveloper shall use its best efforts to close said 5000 O Street Purchase Agreement subject to the terms, conditions and contingences contained in the Purchase Agreement, as may be amended from time to time.
- B. Private Improvements:** The Redeveloper, at its expense, shall develop and rehabilitate 5000 O Street for use as a modern retail grocery store, including related retail activities, including an alcoholic beverages store, drive-through pharmacy and related interior improvements, containing approximately 78,000 square feet, more or less, and exterior improvements, including signage, parking, driving aisles and related exterior improvements (collectively “Private Improvements”) as generally shown on the attached Site Plan depicted in Exhibit “B” attached hereto and incorporated herein by this reference. The City shall not be responsible for any of the cost to construct the Private Improvements except as otherwise provided herein.
- C. New 50th Street Special Assessment District:** After Closing, the Redeveloper shall be responsible to pay the 5000 O Street special assessments except to the extent the same are funded with the obligation related to “pour over” tax increment funds in Section 601 C.

Section 102. Construction of Improvements. The Redeveloper, at its cost, shall construct the Private Improvements on 5000 O Street as described above in conformity with the Approved Plans (see section 304) and as generally depicted in Exhibit “C” attached hereto and incorporated herein by this reference (the “Exterior Site Elevations”).

Section 103. Time for Completion of Improvements. The development and construction of the Private Improvements (except for tenant finish within the buildings) shall be completed as shown in the Timeline (“Timeline”) as depicted on Exhibit “D”, which is attached hereto and incorporated herein by this reference.

Section 104. Progress Reports. The Redeveloper shall make reports in such detail and at such times as may be reasonably requested by the City as to the actual progress of the Redeveloper with respect to construction of the Private Improvements, but such reports shall not be required more frequently than every ninety (90) days.

Section 105. Redeveloper’s Certificate of Completion.

- A. Final Inspection.** Promptly after completion by Redeveloper of the Private Improvements on 5000 O Street, as specified above, in accordance with all provisions of the this Agreement, the City shall, upon request of such Redeveloper, cause a final inspection to be made of the Private Improvements required to be constructed by the Redeveloper. If the improvements have been completed in conformance with this Agreement, the City shall issue to Redeveloper a Certificate of Completion, the form of which is attached hereto as Exhibit “E” and incorporated herein by this reference. The issuance of the Redeveloper’s Certificate of Completion by the City shall be a conclusive determination of satisfaction of the agreements and covenants contained in this Agreement with respect to the obligations of the Redeveloper and its successors and assigns to construct the Private Improvements. As used herein, the term “completion” shall mean substantial completion of the required Private Improvements.
- B. Record Certificate.** The Redeveloper’s Certificate of Completion shall be recorded by the Redeveloper in the Office of the Register of Deeds for Lancaster County, Nebraska. If the City shall refuse or fail to issue a Redeveloper’s Certificate of Completion after a final inspection has been requested and performed, the City shall, within thirty (30) days provide the Redeveloper with a written statement indicating in what particulars the Redeveloper has failed to complete the Private Improvements in accordance with the provisions of this Agreement or is otherwise in default, and what measures or acts will be necessary, in the opinion of the City, for the Redeveloper to take or perform in order to obtain such certification.

Section 106. Evidence of Financial Ability of Redeveloper. The Redeveloper has provided to the City evidence of availability of finances necessary for purposes of carrying out the commitments of the Redeveloper in connection with this Agreement.

ARTICLE II CLOSING

Section 201. Contingencies.

- A. Closing Date.** The “Closing”, “Date of Closing” or “Closing Date” under this Agreement shall be simultaneous and concurrent with the Closing Date under the 5000 O Street Purchase Agreement.
- B. Contingencies.**
1. Joint Redeveloper and City Contingencies: It is understood and agreed that the Redeveloper and City shall not be obligated to proceed with Closing until the following conditions have been satisfied or waived by both the Redeveloper and City:
 - a. Redevelopment Agreement: City’s approval of this Agreement as provided by law and execution of this Agreement by the City and Redeveloper on or before July 11, 2006;
 - b. 5000 O Street Purchase Agreement: Redeveloper Closing on the 5000 O Street Purchase Agreement on or before six (6) months of the date of this Agreement. At the closing of this Agreement, the City will acquire from the Redeveloper the Condemnation Interests as described in Case No. C106-1849 before the County Judge of Lancaster County, Nebraska for the appraised fair market value;
 - c. Land Use Actions: City’s final rezoning to B-3 Commercial zoning district, replatting, and granting special permits for 5000 O Street within six (6) months of the date of this Agreement, with conditions and restrictions acceptable to the City and Redeveloper, to permit the operation of a store selling groceries and general merchandise, and liquor, wine and beer;
 - d. New 50th Street; New 50th Street Special Assessment District: City creation and approval of a special improvement district(s) for acquisition, paving and completing N. 50th Street between “O” Street and “R” Street on a 66’ right-of-way, including the acquisition of the necessary right-of-way and easements as provided by law, appurtenant storm sewer extension and improvements, city standard curb and gutter, pavement, turn lanes, sidewalks, ornamental street

lighting, water line, other utilities and street trees (collectively "New 50th Street") as provided by law and including all necessary permits and approvals for said infrastructure improvements or alterations of environmental features from any governmental entity having jurisdiction over said improvements and said Special Assessment District(s) (collectively "New 50th Street Special Assessment District"). The New 50th Street Special Assessment District shall include 5000 O Street and all other real estate similarly specially benefiting from said proposed New 50th Street improvements as determined by the City Council. The Special Assessment District shall be created and approved by the City within six (6) months of the date of this Agreement.

- e. Cross Access Easement: Final executed permanent cross access easement with the owners and tenant of BURLEIGHS SUB LOT A EX STREET & LOTS B & C EX SOUTH PART FOR STREET & S150' LOT H & S150' E36' LOT G & J G MILLERS SUB (S1/2 20-10-7) S200' W65' W1/2 LOT 31 EX STREET ("5150 O Street") and 5000 O Street on or before six (6) months of the date of this Agreement to utilize a single combined access to O Street for 5000 O Street and 5150 O Street, including removal of all the curbs along the west and north sides of 5150 O Street based upon the Approved Plans.
- f. Right-of-Way Acquisition: Final settlement and payment for the City's acquisition of right-of-way and related easements under the applicable CIP authority and in connection with the Condemnation filed under CI06-1849 (as may amended for O Street Widening Project and New 50th Street respectively) on or before six (6) months of the date of this Agreement.

Section 202. Inspection and Testing. The City shall, at the City's sole cost and expense (i) obtain and deliver to Redeveloper a Phase I Environmental Site Assessment using ASTM E1527-00 with respect to 5000 O Street as well as applicable Phase II sampling of 5000 O Street's soils and water for hazardous materials, waste and/or substances as defined by federal, state and local laws and regulations and determined appropriate by the consulting ESA engineer selected and hired by the City and acceptable to the Redeveloper based upon Redeveloper's intended uses (collectively "Inspection and Testing"). In the event any areas of concern at 5000 O Street reasonably require remediation including sampling or professional fees in excess of the estimated costs related to the same as set forth on the Uses and Sources of Funds, then the City and Redeveloper

agree that such event will be deemed to be a material change in the scope of the redevelopment project requiring a written amendment or termination under Section 705 of this Agreement. Redeveloper at its cost and expense has obtained the related permission to permit the City to complete the Inspection and Testing within the 5000 O Street Purchase Agreement. City shall be responsible for and hereby indemnify and agree to hold Redeveloper harmless from any damages, loss, or expense as a result of any damages arising out of Inspections and Testing undertaken by the City and City's agents, employees, representatives and contractors.

Section 203. Land Use Applications. Prior to Closing, the Parties shall cause 5000 O Street to be rezoned to B-3 Commercial zoning district, replatted and obtain the necessary special permits to accommodate the land uses planned for 5000 O Street in this Agreement. The application and administrative costs associated with the rezoning, subdivision and special permits shall be paid by the City. The cost of the professional engineering services necessary in order to accomplish the same shall be paid by the Redeveloper. Notwithstanding the above, Redeveloper shall not be relieved of the provisions contained in Chapter 14.29 of the Lincoln Municipal Code regarding the use of streets for private construction purposes.

Section 204. Closing Documents.

- A. **Deliveries at Closing by the City.** At Closing, City shall deliver to the Redeveloper the following:
 - 1. Final Governmental approvals of the rezoning to B-3 Commercial zoning district, replatting, and granting special permits for 5000 O Street, with conditions and restrictions acceptable to the City and Redeveloper, including an executed permanent cross access easement with the owner and tenant of the 5150 O Street Property to utilize a single combined access to O Street consistent with the Approved Plans and a special permit for the operation of a store selling groceries, general merchandise, liquor, wine and beer.
 - 2. Final governmental approvals of the lawful creation of New 50th Street Special Assessment District.

**ARTICLE III.
REPRESENTATIONS**

Section 301. Development of 5000 O Street. The Redeveloper represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of such 5000 O Street and not for speculation in land holding. Both parties are undertaking significant and financially backed obligations hereunder for mutual benefit and in furtherance of this agreement. Each party

acknowledges that failure to fulfill the duties and obligations herein in good faith will constitute an impairment of lawful obligations with respect to the other party hereto.

Section 302. Restrictions on Assignments of Rights or Obligations. The Redeveloper represents and agrees that prior to issuance of the Redeveloper's Certificate of Completion by the City, there shall be no sale or transfer by Redeveloper or assignment of rights or obligations under this Agreement to any party without the prior written approval of the City, other than mortgages and involuntary transfers by operation of law or by reason of death, insolvency, or in competency. The City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval, that:

- A. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper;
- B. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall, for itself and its successors and assigns, and for the benefit of the City, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all of the conditions and restrictions to which the Redeveloper is subject. No transfer of, or change with respect to ownership in the Redeveloper's interest in 5000 O Street or any interest therein, however consummated or occurring and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to 5000 O Street and the construction of the Private Improvements that would have occurred, had there been no such transfer or change;
- C. There shall be submitted to the City for review, not less than seven (7) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer; and if disapproved by the City, its disapproval shall be indicated to the Redeveloper in writing; and
- D. The Redeveloper and its transferees shall comply with such other reasonable conditions as the City may find desirable in order to achieve and safeguard the purposes of Proposal for Redevelopment; Provided, that in the absence of a specific written agreement by the City to the contrary, no such transfer or approval by the City shall be deemed to relieve the Redeveloper of any of its obligations with respect to the construction of the Private Improvements.

Nothing herein contained shall prohibit the Redeveloper from entering into any agreement to sell, or other agreement as to transfer of any interest, if such agreement can, by its terms only, become effective after the City's prior written approval or after the City has issued a Redeveloper's Certificate of Completion. The restrictions set forth in this Section 302 shall automatically terminate and no longer be binding on the Redeveloper upon the issuance of the Redeveloper's Certificate of Completion by the City.

Section 303. O Street Access. The City represents and agrees that, upon issuance of the Redeveloper's Certificate of Completion, 5000 O Street shall have O Street access at the locations as shown on the Approved Plans.

Section 304. Approved Plans; Changes in Approved Plans. The Mayor and Redeveloper shall be entitled to review and approve the final construction documents for the Private Improvements and City Improvements ("Approved Plans"). Neither the Redeveloper nor the City shall have unilateral authority to initiate material changes to the Approved Plans without the other party's approval. A party requesting a change shall submit any material changes in the Approved Plans to the other party for approval which approval shall not be unreasonably withheld. The requesting party shall be obligated to pay the additional design costs and fees incurred as a result of such changes.

Section 305. Use and Restrictions of 5000 O Street.

- A. It is intended that each of the restrictions set forth in this Section shall run with the land and shall bind every person having any fee or other interest in 5000 O Street and shall inure to the benefit of the parties hereto and their successors and permitted assigns. At Closing, the Redeveloper shall record permanent covenants against 5000 O Street with respect to the use restrictions set forth in this Section in the form attached hereto as Exhibit "G" attached hereto and incorporated herein by this reference.
- B. Redeveloper's intended use of 5000 O Street shall comply with the Redevelopment Plan and any applicable zoning and local ordinances.

Section 306. Permits and Approvals. Prior to Closing, Redeveloper agrees to secure all permits and licenses necessary for its intended use of 5000 O Street including, but not limited to, necessary building permits and inspections.

**ARTICLE IV.
MORTGAGE FINANCING; RIGHTS OR MORTGAGEES**

Section 401. Limitation Upon Encumbrance of 5000 O Street. Prior to issuance of the Redeveloper's Certificate of Completion by the City, neither the Redeveloper nor any successors in interest to the Redeveloper shall engage in any financing, except for

construction financing in connection with construction of the Private Improvements which lender(s) shall have prior liens upon 5000 O Street, or any other transaction creating any mortgage or any other encumbrance or lien upon 5000 O Street, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to 5000 O Street, except for the purposes of obtaining funds only to the extent necessary to construct and develop the Private Improvements on 5000 O Street, and to finance, operate, maintain and repair the Private Improvements. All such additional mortgages and other encumbrances or liens shall provide that they are subject to the terms and conditions of this Agreement, and shall be recorded in the appropriate public records in a timely manner following their execution.

The Redeveloper or any successors in interest shall notify the City in advance of any additional financing secured by mortgage or similar lien instrument that it proposes to enter into with respect to 5000 O Street, and shall promptly notify the City of any encumbrance or lien that has been created on or attached to 5000 O Street whether by voluntary act of any of the Redeveloper or otherwise.

Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to 5000 O Street and which is contested by Redeveloper, then Redeveloper may defend against such encumbrance or lien, provided that a sufficient bond, security or title insurance coverage insuring over such encumbrance or lien is posted with the City to permit the City to avoid foreclosure of such encumbrance or lien.

Section 402. Mortgagee Obligated to Construct. Prior to the issuance of a Redeveloper's Certificate of Completion and if the holder of any mortgage authorized by this Agreement obtains title to any of 5000 O Street as a result of foreclosure proceedings or action in lieu thereof, or if any other party obtains title to 5000 O Street from the holder of any mortgage authorized by this Agreement, and any other party who thereafter obtains title to any of 5000 O Street from the holder of any mortgage authorized by this Agreement, and any other party who thereafter obtains title to any of 5000 O Street from or through such holder or purchaser, each such holder or party shall be obligated by the provisions of this Agreement to construct or to complete the Private Improvements or to guarantee such construction and completion. Any such party shall be obligated to commence construction within three (3) months from the date of acquisition of title by said party and to complete construction in accordance with this Agreement within fifteen (15) months from the date of such acquisition.

Section 403. Copy of Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper of its obligations or covenants in this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last address of such holder as shown in the records of the City or as provided by such mortgagee.

Section 404. Mortgagee's Option to Cure Defaults. If thirty (30) days after notice or demand with respect to any breach of default as referred to in Section 403, such breach or default remains uncured, each such holder shall (and every mortgage instrument made prior to issuance by the City of the Redeveloper's Certificate of Completion for the applicable ownership shall so provide) have the right, at its option, to cure or remedy such breach or default within sixty (60) days after the notice or demand as referred to in Section 403, and to add the cost thereof to the mortgage debt and the lien of its mortgage. If the mortgage holder commences efforts to cure the default within such period and the default cannot, in the exercise of due diligence, be cured within such period, the holder shall have the right to diligently continue to cure the default.

Section 405. City's Option to Purchase 5000 O Street. In any case where the holder of any mortgage obtains title to 5000 O Street as a result of foreclosure proceedings or action in lieu thereof, prior to issuance by the City of the Redeveloper's Certificate of Completion, the City shall (and any additional mortgage instrument made after the date of this Agreement with respect to 5000 O Street prior to issuance by the City of the Redeveloper's Certificate of Completion for the applicable ownership shall so provide) be entitled, at its option, to a conveyance to it of 5000 O Street upon payment to such holder of an amount equal to the sum of:

- (1) The mortgage debt at the time of foreclosure or action in lieu thereof (less all the appropriate credits including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- (2) All expense with regard to foreclosure;
- (3) The net expense, if any, incurred by such holder in and as a direct result of its subsequent management and operation of 5000 O Street;
- (4) The depreciated cost of any improvement made by such holder;
- (5) An amount equal to the interest that would have accrued on the aggregate of such amounts had all such amounts become a part of the mortgage debt and such debt had continued in existence; and
- (6) All other reasonable holding costs actually incurred as to 5000 O Street.

The City's option shall remain in force for thirty (30) days after the date the holder of any mortgage obtains title to 5000 O Street and notifies the City, unless the City waives the option prior to the end of such 30-day period.

Section 406. Mortgage Rights Applicable to Other Forms of Encumbrance.

The rights and obligations of this Agreement relating to mortgages of 5000 O Street prior to issuance of the Redeveloper's Certificate of Completion shall apply to any other type of encumbrance on 5000 O Street, and any of the rights, obligations, and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance, all of which shall be duly recorded in a timely manner in the public records of Lancaster County, Nebraska.

Section 407. Termination of Provisions. The provisions of Article IV shall terminate upon issuance by the City to the Redeveloper, the Redeveloper's Certificate of Completion.

**ARTICLE V.
TAX AGREEMENT**

Section 501. Valuation of Property Within 5000 O Street. It is understood that the City intends to use the ad valorem tax provisions as set forth in Neb. Rev. Stat. § 18-2147 et seq. in accordance with the Redevelopment Plan. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and in Neb. Rev. Stat. §§ 18-2147 to 18-2150 (as amended), which will be attributable in part to the rehabilitation and redevelopment contemplated under this Agreement.

Section 502. Restriction on Transfer. Redeveloper will not, for a period of fifteen (15) years after the issuance by the City to the Redeveloper of the Redeveloper's Certificate of Completion, or so long as the tax increment indebtedness remains outstanding, whichever period of time is shorter (the "Tax Increment Period"), convey 5000 O Street to any entity which would result in the underlying real estate being exempt from ad valorem taxes levied by the State of Nebraska or any of its subsidiaries.

Section 503. Agreement to Pay Taxes. Redeveloper agrees to pay all real property taxes levied upon 5000 O Street prior to the times such taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency on the part of Redeveloper shall cease upon expiration of the Tax Increment Period, but the City in no way waives the statutory obligation of Redeveloper to continue to pay real estate taxes. Nothing herein shall be deemed an agreement by Redeveloper to waive its right to protest or contest the valuation of 5000 O Street and improvements for tax purposes.

Section 504. Assessment Valuation. The word "valuation" as used in this Article V shall mean the fair market value as that term appears on Lancaster County real estate tax statements. For purposes of this Article V references to 5000 O Street shall include all improvements thereto that are customarily included in valuation for real property tax purposes in Lancaster County, Nebraska. Nothing herein shall be deemed an agreement by Redeveloper not to protest valuation for tax purposes as of any assessment date on

which the construction of the City Improvements and Private Improvements relating to 5000 O Street are not fully completed or not to protest the allocation of Improvements between real property and personal property which is not appropriately made; or not to protest valuation for tax purposes as of any assessment date following the construction of the City Improvements and Private Improvements if such valuation exceeds \$6,500,000.

Section 505. Damage or Destruction of Redeveloper's Property. During the Tax Increment Period, Redeveloper agrees to keep the construction area and completed premises insured against loss or damage by fire, and such other risk, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the insurable value thereof based upon an estimate of insurable value but allowing for reasonable compliance with standard coinsurance clauses and standard deductibles. Any insurance carried or required to be carried by Redeveloper pursuant to this Section 505 may, at Redeveloper's option, be carried under an insurance policy(ies), self-insurance (as long as Redeveloper maintains a net worth in excess of \$100,000,000.00) or pursuant to a master policy of insurance or so-called blanket policy of insurance covering other property owned by Redeveloper or its corporate affiliates, or any combination thereof. In the event of any insured damage or destruction, Redeveloper agrees to restore its facility to its prior condition within fifteen (15) months from the date of the damage or destruction, and shall diligently pursue the same to completion.

Section 506. Condemnation. In the event that during the Tax Increment Period all or a substantial portion of 5000 O Street is condemned by a condemning authority other than the City, and such condemning authority or its successor in interest, would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the condemning authority an interest in such property equal to the amount of tax increment received by the City in the preceding year times the number of years remaining in the Tax Increment Period.

Section 507. Termination of Provisions. The provisions of Article V shall terminate upon the end of the Tax Increment Period.

Section 508. Successors and Assigns. The provisions of Article V shall be binding upon Redeveloper and its successors and assigns; provided, however, that the obligations of Redeveloper pursuant to this Agreement shall be binding upon Redeveloper and its successors and assigns only during their respective periods of ownership.

ARTICLE VI. CITY IMPROVEMENTS

Section 601. City Improvements. As part of the redevelopment project, City, at its expense, will design, contract, implement, and pay for the following City Improvements:

- A. Site Preparation.** The City will carry out demolition and removal of all buildings, foundation, parking lots and improvements; demolition and removal of the existing curb along the common west and north property line side of the 5150 O Street; construct, add, extend and/or relocate all existing utility services on or abutting the lot line of 5000 O Street, including the relocation or release of any utility easements located under the proposed Private Improvements, in a manner and with capacity consistent with the intended use as set forth in the Approved Plans; and fill and compact soils below grade level areas and rough grading ($\pm .2$ of a foot) as shown on the Approved Plans of 5000 O Street (collectively "Site Preparation"). The City will complete Site Preparation within three (3) months of the date of Closing.
- B. Sidewalks.** To the extent tax increment funds are available, the City will construct public sidewalks along "O" Street, 50th Street, 52nd Street, abutting 5000 O Street within twelve (12) months after the date of Closing.
- C. New 50th Street Special Assessment District.** At the Closing, the City will acquire from the Redeveloper the necessary real estate interests for the New 50th Street right-of-way abutting 5000 O Street as shown on the Approved Plans for the appraised fair market value. The City will construct and implement the New 50th Street pursuant to the New 50th Street Special Assessment District within six (6) months after the date of Closing. The City, at its expense, shall pay for and not assess acquisition cost for the said right-of-way abutting 5000 O Street and any oversized stormwater improvements that are not normally and customarily specially assessed by the City of Lincoln. It is understood and agreed that the City shall and hereby is obligated in any year after substantial completion of the redevelopment project on 5000 O Street and for each and every succeeding year thereafter during the Tax Increment Period, to the extent allowed by law, and then only to the extent funds are lawfully available from the Tax Increment Provision related to 5000 O Street and not otherwise obligated in this Agreement for debt service or otherwise, reimburse the Redeveloper for the Redeveloper's Actual Expenses for special assessments levied on 5000 O Street arising out of the Special Assessment District(s) for New 50th Street.
- D. 52nd Street Stormwater Improvements.** The City will design, acquire, construct and implement an open drainage way generally along the north edge of 5000 O Street from 52nd Street to the drainage way located near the northwest corner of 5000 O Street (collectively "52nd Street Stormwater Improvements"). The 52nd Street Stormwater Improvements will be implemented in general accordance with the HDR preliminary design plans for the 52nd Street Improvements. At the Closing, the City will acquire from the Redeveloper the necessary real estate interests for the 52nd Street Stormwater Improvements as shown on the Approved Plans for the

appraised fair market value. The City will complete the 52nd Street Stormwater Improvements within six (6) months after the date of Closing.

- E. **50th & O Street Public Space.** The City will acquire the southwest corner of 5000 O Street as a future enhanced streetscape public space for the northeast corner of 50th & O Street as shown on the Approved Plans (“50th Street & O Street Public Space”). At the Closing, the City will acquire from the Redeveloper the 50th & O Street Public Space for the appraised fair market value. The Redeveloper agrees to install irrigated turf to the 50th & O Street Public Space and maintain the irrigated turf. The City will explore the possibility to (i) expand the 50th Street & O Street Public Space to include the northwest corner of 50th & O Street and (ii) provide future enhanced streetscape and amenities to the 50th Street & O Street Public Space. In the event the City desires to provide further enhanced streetscape and amenities to the 50th Street & O Street Public Space, then the parties will use their best efforts to define the maintenance, repair and replacement responsibilities of the enhanced 50th & O Street Public Space at that time.

Section 602. Contractor; Bond and Insurance. The City shall select a general contractor or contractors to construct or install the City Improvements described in Section 601 above in accordance with its competitive bidding procedures. Any such general contractor shall be required to provide a performance and payment bond in the amount of the contract, or otherwise enter into a guarantee of payment and performance as may be acceptable to the City. Any such contractor for the City Improvements shall be required to obtain and keep in force at all times until completion of construction policies of insurance, including coverage for contractor’s general liability, including Standard Blasting or Explosion coverage, Standard Collapse coverage, Standard Underground coverage, completed operations, and automobile liability in the minimum amounts required by the City’s standard specifications for all city contracts.

Section 603. Salvage Rights. Prior to demolition of the improvements on the 5000 O Street for purposes of implementing the City Improvements and Private Improvements, Redeveloper shall have the option to salvage and remove, at Redeveloper’s expense, any on site materials and improvements on 5000 O Street prior to the scheduled demolition.

Section 604. Implementation Schedule. The City Improvements are time critical to the implementation of the Project and Private Improvements. Both parties shall use their best efforts to coordinate, plan and implement the phasing, access and completion for the same within the Project Timeline.

Section 605. Maintenance and Repairs. Redeveloper will be responsible for all costs in regards to the maintenance, repairs and replacement of the Private Improvements and any City Improvements required by law to be maintained by the abutting property

owner. The City or other responsible governmental entity shall be responsible for all other costs in regards to maintenance, repairs and replacement of any other City Improvements.

Section 606. City Right of Entry. After the Closing, the Redeveloper shall permit the representatives of the City to enter 5000 O Street at any and all reasonable times, as the City may deem necessary for the purposes of this Agreement, including but not limited to work and inspection of all work being performed in connection with the construction of the Private Improvements and City Improvements. City shall be responsible for and hereby indemnify and agrees to hold Redeveloper and Redeveloper's agents, contractors and employees harmless from any damages, loss, or expense as a result of any damages arising out of entry or use of 5000 O Street by City's and City's agents, employees, representatives and contractors under this section, which is not as a result of Redeveloper's or its agent's, contractors and employee's negligence or willful misconduct. The rights of entry granted under this section shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion.

ARTICLE VII. REMEDIES

Section 701. In General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions by the City, the Redeveloper, or any successors or assigns to such parties, such party (or successor or assigns) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event, such default or breach shall be cured within thirty (30) days after receipt of such notice, except that if such default or breach cannot, in the exercise of reasonable diligence, be cured within such 30-day period, then the defaulting party within such period shall commence efforts to cure such default and shall diligently continue to cure the same. In case such action is not cured as provided above, the aggrieved party may institute such proceedings as may be necessary or desirable in its option to cure and remedy such default or breach including, but not limited to, proceedings to seek recovery for damages or to compel specific performance by the party in default or breach of its obligation. Any curing of any default or breach by a mortgagee of Redeveloper shall be deemed to be a curing by Redeveloper.

Section 702. Other Rights and Remedies; No Waiver by Delay. The parties hereto shall have the right to institute such actions or proceedings as they may deem desirable for effectuating the purposes of this Agreement. Any delay in instituting or prosecuting any action or proceeding or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights to deprive a party of or limit such rights in any way.

Section 703. Delay in Performance For Causes Beyond Control of Party. For the purpose of any provisions of this Agreement, the City and Redeveloper or their successors or assigns, shall not be considered in breach or default of their obligations in the event of delay in the performance of such obligations due to causes beyond their

reasonable control and without their fault, including acts of God, acts of the public enemy, act of the federal or state government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes (financial incapacity of the Redeveloper, contractors or subcontractors excepted); it being the purpose and intent of this section that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of the improvements shall be extended for the period of delay, provided that in order to obtain the benefit of the provisions of this section, the party seeking the benefit shall, within thirty (30) days after the beginning of any such delay, notify the other party thereof, in writing, and of the cause(s) thereof.

Section 704. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by either party of any one or more such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if such waiver is in writing and only to the extent as so specified in writing.

Section 705. Change in Scope, Termination of Redevelopment Project. City and Redeveloper agree that any material change in the scope of the redevelopment project for any reason shall require mutual written agreement considering the established Uses and Sources of Funds and Timeline for the redevelopment project in this Agreement and, if applicable, the costs incurred by the respective parties to date. Such written amendments to the Uses and Sources of Funds may be made by the Mayor on behalf of the City and may include transfers of real property between the parties as appropriate to offset costs incurred subject to approval where required by law. It is understood and agreed that any delay related to critical path items in the Time Line is presumed to be a material change in the scope of the redevelopment project regardless of fault.

In the event that any material monetary shortfall can not be satisfied from available City funds as provided in the Uses and Sources of Funds, then the City shall have the option to pay said costs from other lawful City funds and the parties agree to use their best efforts to enter into written agreement to remedy such material monetary shortfall. In the event the City elects not to use other lawful City funds or such funds are not available, then Redeveloper shall have the option to pay said costs from Redeveloper's funds and the parties agree to use their best efforts to enter into written agreement to remedy such material monetary shortfall. In the event the Redeveloper elects not to use other lawful Redeveloper funds or such funds are not available, then both parties shall have the option to terminate this Agreement by delivering written notice to the other, in which event, this Agreement shall be terminated.

In the event of any other material change that is not a material monetary shortfall, then the parties agree to use their best efforts to enter into written agreement to remedy such material change. Such written amendments for a material change that is not a

material shortfall may be made by the Mayor on behalf of the City. In the event such a written amendment can not be entered into after the parties have used their best efforts for thirty days, then each party shall have the option to terminate this Agreement by delivering written notice to the City, in which event, this Agreement shall be terminated.

ARTICLE VIII. MISCELLANEOUS

Section 801. Conflicts of Interest; City Representatives Not Individually Liable. No officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement. No official or employee of the City shall be personally liable to Redeveloper, any successors in interest or transferees of Redeveloper, or any other party or person, in consequence of any default or breach by the City or for any amount which may become due to Redeveloper, its successors or transferees, or on any obligations under the terms of this Agreement.

Section 802. Persons Authorized to Issue Approvals. For purposes of this Agreement and the approvals and disapprovals required hereunder, the Redeveloper shall be entitled to rely on the written approval or disapproval of the City Council, the Mayor, or the Director of the Department of Urban Development or its successor as constituting the approval or disapproval required by any one or more of the City, the Mayor, or the Director of the Department of Urban Development or its successor hereunder. Until City receives further written notice from Redeveloper, City shall be entitled to rely on the written approval of the President or Vice President of Real Estate of Hy-Vee, Inc. as constituting the approval or disapproval of Redeveloper.

Section 803. Equal Employment Opportunity. Redeveloper, for itself and its successors, assigns and transferees, agrees that during the construction and operation of the Private Improvements provided for in this Agreement, Redeveloper will not discriminate against any employee or applicant for employment for the Proposal for Redevelopment because of race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Redeveloper will take affirmative action to ensure that applicants for the redevelopment project are employed, and that employees are treated during employment without regard to their race, religion, sex, color, national origin, ancestry, disability, marital status, or receipt of public assistance. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Section 804. Notices and Demands. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, in the case of Redeveloper, to Hy-Vee, Inc., 5820 Westown Parkway, West Des Moines, IA 50266, Attention President, with a copy to Senior Vice President of

Real Estate/Engineer of Hy-Vee, Inc., 5820 Westown Parkway, West Des Moines, IA 50266; and, in the case of the City, to the Mayor, 555 South 10th Street, Lincoln, Nebraska 68508, or at such other address with respect to either party as that party may from time to time designate in writing and forward to the other as provided in this Section.

Section 805. Approval Not Unreasonably Withheld and Timely Approval. Whenever approval or consent of either party is required hereunder, such consent shall not be unreasonably withheld or delayed. Except as may be specifically otherwise stated, any approval/disapproval required in this Agreement shall be issued within fourteen (14) days after receipt by the party issuing such approval/disapproval of all necessary information from the party requesting such approval. The party issuing such approval/disapproval shall promptly advise the requesting party as to whether all necessary information has been received. If any party to this Agreement submits any item to another party to this Agreement for approval pursuant to this Agreement, and the approving party fails to issue written approval or disapproval within the time period specified for such approval or disapproval, then such failure shall constitute approval of such item.

Section 806. Termination of Provisions; Binding. The provisions and covenants of this Agreement shall terminate upon issuance by the City of the Redeveloper's Certificate of Completion contemplated herein, except as otherwise set forth herein. This Agreement shall run with 5000 O Street and shall inure to and bind the undersigned parties, successors and assigns.

Section 807. Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of index and reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 808. Mutual Cooperation. The parties agree to mutually cooperate in constructing the various improvements each is to construct in the Project Site so as to coordinate all timing to the extent reasonable, and further to facilitate opening of each facility at the earliest possible time. All components of both the City and Private Improvements are time critical to the project and both parties shall use their best efforts to coordinate, plan and implement the phasing, access and completion for the same within the project Timeline depicted on Exhibit "D."

Section 809. Integrated Contract; Severance of Provisions; Governing Law. It is intended by the parties that this Agreement and the incorporated, attached and referenced documents shall be an integrated contract, but that invalidation of any of its provisions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect unless such court action shall materially change the intent of this Agreement. This Agreement shall be construed and governed by the laws of the State of Nebraska.

Section 810. Impact Fees. The City acknowledges that based on the credits available in the redevelopment area (Specification No. 05-049) and projected impact fees,

the total amount due from Redeveloper under the Impact Fee Ordinance (Ordinance 18113) based on the projected new use under this Agreement will be zero (\$0).

Section 811. Definitions.

- A. For the purpose of this Agreement, the term "holder" in reference to a mortgage shall be deemed to include any insurer or guarantor of any obligation or conditions secured by such mortgage or similar type of encumbrance who succeeds to or becomes subrogated to the rights of the mortgagee.
- B. The term "mortgage" shall include a deed of trust or other instrument creating an encumbrance or lien as security for a loan.

Executed by City this _____ day of _____, 2006.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a Municipal Corporation

City Clerk

Coleen J. Seng, Mayor

Executed by Redeveloper this _____ day of _____, 2006.

REDEVELOPER
HY-VEE, INC., an Iowa corporation

By _____
Richard N. Jurgens, President

By _____
Stephen Meyer, Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

Notary Public

(Seal)

STATE OF IOWA)
) ss.
POLK COUNTY)

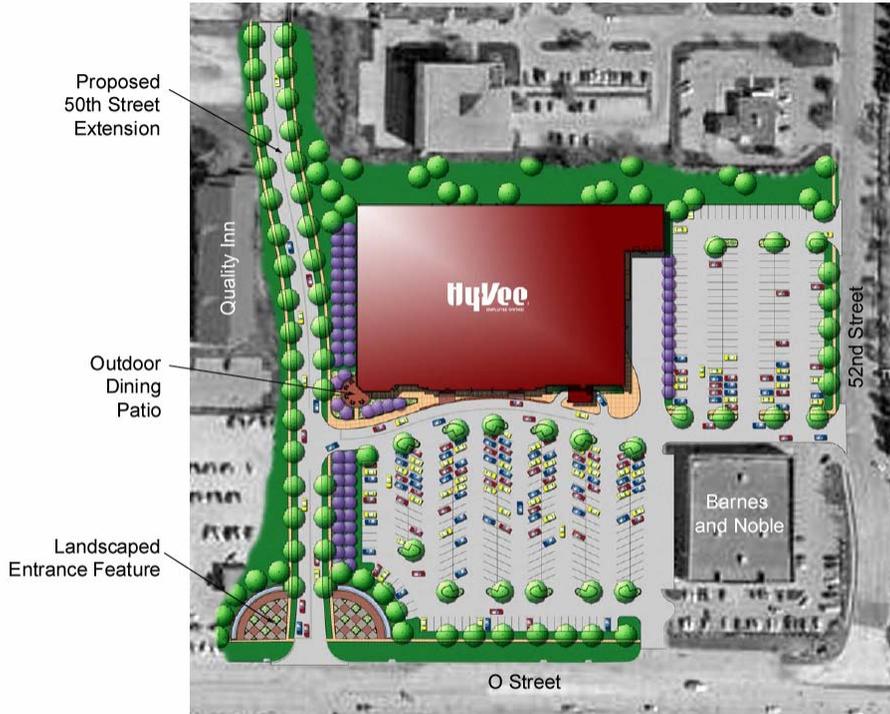
On this ___ day of _____, 20___, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Richard N. Jurgens and Stephen Meyer, to me personally known, who being by me duly sworn did say that they are the President and Secretary, respectively, of Hy-Vee, Inc.; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Richard N. Jurgens and Stephen Meyer 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

(Seal)

EXHIBIT "A"
Project Site

Project Site
(i) 5000 O Street and (ii) New 50th Street



Conceptual Plan: 50th and O Street Redevelopment
June 15, 2006



LEGAL DESCRIPTION

1. 5000 O Street:

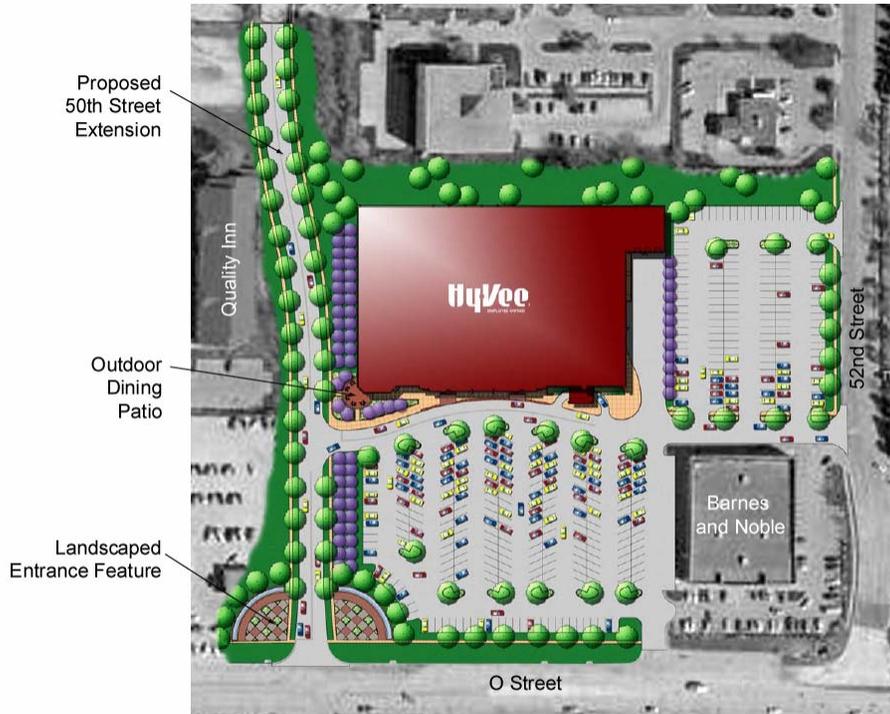
A parcel of land commonly known as 5000 O ST, and consisting of three tracts described as Parcel 1, 3 and 4 on the Boundary Line Survey prepared by Mike Kauss & Associates, Inc., dated 8-26-99 ("1999 Survey") which is incorporated herein by this reference.

2. New 50th Street Right-of-Way

A parcel of land to be known as New 50th Street, and consisting of the 66 feet wide right-of-way to be determined by the New 50th Street design engineer and approved by the City of Lincoln which will connect the existing N. 50th Street right-of-way north of "O" Street and the existing N. 50th Street right-of-way south of "R" Street.

EXHIBIT "B"

SITE PLAN



Conceptual Plan: 50th and O Street Redevelopment
June 15, 2006



Exhibit "C"
Exterior Site Elevations



EXHIBIT “D”

TIMELINE

August 2004 Blight and Substandard Designation

April 15, 2005 Response to RFP Specification No. 05-049

May 2005 Redeveloper of Record selected under Nebraska Community Development Law including Hy-Vee, Inc. for 5000 O Street parcel – Negotiations begin

June 19, 2006 Introduction of Hy-Vee Redevelopment Agreement before City Council

June 26, 2006 Public Hearing and Action on Redevelopment Agreement

September 5, 2006 Environmental Site Assessment Complete

October 17, 2006 New 50th Street Special Assessment District Approved

December 15, 2006 Closing on 5000 O Street Parcel

January to March 2007 Site demolition

Spring 2007 Private Construction begins

June, 2007 City Improvements are completed

Spring 2008 Redevelopment Project Grand Opening

ACCEPTED by the City of Lincoln, Nebraska, this _____ day of _____,
_____.

ATTEST:

CITY OF LINCOLN, NEBRASKA
a Municipal Corporation

City Clerk

Coleen J. Seng, Mayor

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, _____, by _____, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

(Seal)

Notary Public

EXHIBIT "F"
SOURCE & USE OF FUNDS

Redevelopment Project:
48th and O North Side
5/30/06

USE		SOURCE						
Description	Total Costs	Developer	TIF	Pour Over TIF	Land Acquisition Funds	Street Construction Funds	City Storm-water	Total Sources
Property Acquisition and Construction (A)	\$16,457,129	\$15,771,079			\$119,775		\$566,275	\$16,457,129
Site Prep, Demo, Grading	\$885,000	\$313,179	\$546,821			\$25,000		\$885,000
Public Improvements, Storm Water	\$448,354						\$448,354	\$448,354
N. 50th Street Connector (B)	\$205,200			\$205,200				\$205,200
50th & O Street Public Space (C)	\$152,450				\$152,450			\$152,450
Environmental Testing and Clean Up								\$0
Total Development Costs	\$18,148,133	\$16,084,258	\$546,821	\$205,200	\$272,225	\$25,000	\$1,014,629	\$18,148,133

Notes:

(A) Assumes acquisition of ROW for New 50th Street and 52nd Street Stormwater Improvements abutting 5000 O Street; excludes acquisition of Case No. CI06-1849

(B) 5000 O Street portion only; excludes New 50th Street ROW acquisition costs

(C) Land acquisition and minimal landscaping

EXHIBIT "G"

**DECLARATION OF
USE RESTRICTIONS**

THIS DECLARATION OF USE RESTRICTIONS ("Restrictions") is made as of this ____ day of _____, 200__, by HY-VEE, INC., an Iowa corporation ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property legally described on Exhibit "A", which is attached hereto and incorporated herein by this reference ("Property"); and

WHEREAS, Declarant desires to subject the Property to the covenants and restrictions hereinafter set forth; and

NOW, THEREFORE, Declarant declares that the Property, and any additions thereto that may hereafter be made, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants and restrictions hereinafter set forth.

ARTICLE I

GENERAL PROVISIONS

1.1 Establishment of Restrictions. It is intended that each of the restrictions set forth in this Declaration shall run with the land and shall bind every person having any fee or other interest in the Property and shall inure to the benefit of the City.

1.2 Prohibited Uses. Unless otherwise approved in writing by the City of Lincoln in advance, no portion of the Property shall be used, directly or indirectly, for the operation of:

1. any outdoor off-premise advertising specifically including billboards, signboards and related structures and appurtenances, except temporary signs advertising such lot is for sale or lease by the owner thereof;
2. a gas station or convenience store with or without gasoline pumps;
3. any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the premises) or any such business that has an

unreasonable pattern of unlawful disturbances or liquor law violations; provided that, this limitation shall not apply to that portion of the Private Improvements that contains a self-contained area (with its own exterior door opening) that is used for the retail sale of alcoholic beverages so long as said self-contained area of the Private Improvements also has an interior opening between the self-contained area and the balance of the building;

4. any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of unlawful disturbances or tobacco law violations;
5. any business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, movie, picture, exhibition, performance, demonstration, film, video, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service;
6. any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service station, salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business; provided nothing herein shall be construed to prohibit dry cleaning pickup facility;
7. any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutuel wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law;
8. any business whose predominant operation is warehousing or storage of goods, materials or merchandise; or
9. any business involving a residential use, sale or display of weapons, self service laundry, industrial manufacturing, off-site outdoor advertising on the premises, cell tower, radio telecommunication or

other communication tower, illegal activities, or sale of any illegal goods or products.

IN WITNESS WHEREOF, the undersigned have executed this Declaration as of the date first written above.

HY-VEE, INC., an Iowa corporation

By _____
Richard N. Jurgens, President

By _____
Stephen Meyer, Secretary

STATE OF IOWA)
) ss.
POLK COUNTY)

On this __ day of _____, 20__, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Richard N. Jurgens and Stephen Meyer, to me personally known, who being by me duly sworn did say that they are the President and Secretary, respectively, 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 Richard N. Jurgens and Stephen Meyer 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.

(Seal)

Notary Public in and for the State of Iowa