

07R-8

DRAFT of

Hy-Vee

FIRST AMENDMENT TO  
HY-VEE REDEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO HY-VEE REDEVELOPMENT AGREEMENT ("Amendment") is made and entered into as of the \_\_\_ day of February, 2007, 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, on June 29, 2006, the City and Hy-Vee entered into the Hy-Vee Redevelopment Agreement ("Agreement"); and

WHEREAS, the City and Hy-Vee desire to amend the Agreement.

NOW THEREFORE, for and inconsideration 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:

1. Defined Terms. All capitalized terms not otherwise defined herein shall have the meaning ascribed to such term(s) in the Agreement.

2. Amendments to Article I Redeveloper's Responsibilities. The parties agree to amend Article I of the Agreement as follows:

A. Subparagraph C. of Section 101 is hereby deleted.

B. Exhibit "D" referred to in Section 103 is hereby deleted and replaced with Exhibit "D-1", which is attached hereto and incorporated herein by this reference.

3. Amendments to Article II Closing. The parties agree to amend Article II of the Agreement as follows:

A. Subparagraph d. of Section 201.B.1. is hereby deleted.

B. The language "on or before six (6) months of the date of this Agreement" contained in subparagraphs b., e. and f. of Section 201.B.1. is hereby deleted and replaced with the language "on or before February 15, 2007."

C. Subparagraph 2 of Section 204.A. is hereby deleted.

4. Amendments to Article VI City Improvements. The parties agree to amend Article VI of the Agreement as follows:

A. The second line of Subparagraph B. of Section 601 is hereby

amended to delete the reference to "50<sup>th</sup> Street."

B. Subparagraph C. of Section 601 is hereby amended and restated as follows:

C. **New 50<sup>th</sup> Street.** On or before December 15, 2007, the City shall complete, at its cost, "New 50<sup>th</sup> Street" between "O" Street and "R" Street. New 50<sup>th</sup> Street shall include the following: acquisition of 66' feet of right-of-way from the terminus of the existing 50<sup>th</sup> Street right-of-way north of "O" Street north to the terminus of the existing 50<sup>th</sup> Street right-of-way south of "R" Street; grading and pavement, including city standard curb and gutter, of 50<sup>th</sup> Street as a twenty-seven (27) feet wide roadway, from its terminus north of "O" Street north to its terminus south of "R" Street, as well as a transition between the existing and new pavement, appurtenant storm sewer extension and improvements; sidewalks and street trees along the east side of 50<sup>th</sup> Street from "O" Street to the terminus of the existing 50<sup>th</sup> Street south of "R" Street; water line, relocation of existing sanitary sewer line located on the 5000 "O" Street property, other utilities and ornamental street lights from "O" Street to "R" Street. The City is authorized to utilize any of its potential funding sources for the construction of New 50<sup>th</sup> Street. As consideration for the City's agreement to build New 50<sup>th</sup> Street, Developer and other property owners adjacent to New 50<sup>th</sup> Street have agreed to contribute cash and right-of-way (fee and easements) with an estimated value of \$600,000 to the City, as set forth in the Agreement attached hereto as Exhibit "H" and incorporated herein by this reference. In addition, the City is authorized to utilize condemnation, if necessary, to acquire the right-of-way and any temporary and permanent easements necessary to construct New 50<sup>th</sup> Street. At the Closing, the City will acquire from the Redeveloper the necessary real estate interests for the New 50<sup>th</sup> Street right-of-way, as well as right-of-way for future improvements to the existing 50<sup>th</sup> Street north of "O" Street, abutting 5000 O Street as shown on the Approved Plans for the appraised fair market value. 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, (i) reimburse the Redeveloper for Redeveloper's contribution to the City for costs associated with the construction of New 50th Street; and (ii) once Redeveloper's contribution has been reimbursed, reimburse the City for New 50<sup>th</sup> Street construction costs.

5. Full Force and Effect. Except as modified by this Amendment, each of the conditions, covenants, restrictions and reservations set forth in the Declaration shall continue and be binding upon the parties hereto and upon their successors and assigns and upon each of them and all parties and all persons claiming under them.

Executed by City this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:

CITY OF LINCOLN, NEBRASKA  
a Municipal Corporation

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Coleen J. Seng, Mayor

Executed by Redeveloper this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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 \_\_\_\_\_, 2007, 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 \_\_\_\_\_, 2007, 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

**EXHIBIT "D-1"**  
**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

February 15, 2007 Environmental Site Assessment Complete

February 15, 2007 Closing on 5000 O Street Parcel

February to April 2007 Site demolition

Spring 2007 Private Construction begins

December 15, 2007 City Improvements are completed

Spring 2008 Redevelopment Project Grand Opening

NORTH 50<sup>TH</sup> STREET AGREEMENT

THIS NORTH 50<sup>TH</sup> STREET AGREEMENT ("Agreement") is made and entered into as of the \_\_\_ day of February, 2007, by and between the CITY OF LINCOLN, NEBRASKA, a municipal corporation (hereinafter referred to as "City"), and HY-VEE, INC., an Iowa corporation ("Hy-Vee"), SUMMIT HOTEL PROPERTIES, LLC, a South Dakota limited liability company ("Hotel"), ENTERPRISE COMPANY, INC., a Nebraska corporation ("Enterprise"), DOANE COLLEGE, a Nebraska nonprofit corporation ("Doane"), and ARENA SKATE WORLD, INCORPORATED, a Nebraska corporation ("Arena Skate"). Hy-Vee, Hotel, Enterprise, Doane and Arena Skate are sometimes hereinafter referred to individually as "Adjacent Property Owner" and collectively as "Adjacent Property Owners".

## RECITALS

WHEREAS, the City agrees it is in the public interest to construct the remaining portion of North 50<sup>th</sup> Street between "O" Street and "R" Street to facilitate redevelopment of the surrounding area; and

WHEREAS, in consideration for the City's construction of the remaining portion of North 50<sup>th</sup> Street between "O" Street and "R" Street, the Adjacent Property Owners agree to contribute cash and Enterprise and Doane agree to contribute right-of-way to the City to offset a portion of the North 50<sup>th</sup> Street costs.

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:

1. City Construction of New 50<sup>th</sup> Street. On or before December 15, 2007, the City shall complete, at its cost, "New 50<sup>th</sup> Street" between "O" Street and "R" Street. New 50<sup>th</sup> Street shall include the following: acquisition of 66' feet of right-of-way from the terminus of the existing 50<sup>th</sup> Street right-of-way north of "O" Street north to the terminus of the existing 50<sup>th</sup> Street right-of-way south of "R" Street; grading and pavement, including city standard curb and gutter, of 50th Street as a twenty-seven (27) feet wide roadway from its terminus north of "O" Street north to its terminus south of "R" Street, as well as a transition between the existing and new pavement, appurtenant storm sewer extension and improvements; sidewalks and street trees along the east side of 50<sup>th</sup> Street from "O" Street to the terminus of the existing 50<sup>th</sup> Street south of "R" Street; water line, relocation of existing sanitary sewer line located on the 5000 "O" Street property, other utilities and ornamental street lights from "O" Street to "R" Street. The City is authorized to utilize any of its potential funding sources for the construction of New 50<sup>th</sup> Street. In addition, the City is authorized to utilize condemnation, if necessary, to acquire the right-of-way and any temporary and permanent easements necessary to construct New 50<sup>th</sup> Street.

2. Contribution of Adjacent Property Owners. As consideration for the City's agreement to build New 50<sup>th</sup> Street, the Adjacent Property Owners agree to contribute the following to the City:

A. Cash. The Adjacent Property Owners each agree to contribute the following amount in cash to the City upon completion of New 50<sup>th</sup> Street:

Hy-Vee	\$185,824
Hotel	\$185,824
Skate World	\$144,852
Doane	<u>\$ 50,000</u>
	\$566,500

Notwithstanding the foregoing, the City and Adjacent Property Owners acknowledge that prior to commencement of construction of New 50<sup>th</sup> Street, the City will be acquiring right-of-way necessary for the construction of New 50<sup>th</sup> Street from the Adjacent Property Owners. The City and Adjacent Property Owners agree that each individual Adjacent Property Owner's cash contribution, excluding the contribution from Doane, shall be offset with right-of-way proceeds it is entitled to receive from the City for New 50<sup>th</sup> Street right-of-way and easements.

B. Right-of-Way. Enterprise and Doane agree to dedicate to the City, at no cost, the right-of-way and easements (on the City's standard forms) necessary for the construction and operation of New 50<sup>th</sup> Street (estimated value of \$33,500) within fifteen (15) days from the date Enterprise and Doane are notified that the City has completed final plans for New 50<sup>th</sup> Street.

3. Contingency. This Agreement and the obligations of the parties hereunder are contingent upon the City and Hy-Vee closing under the Hy-Vee Redevelopment Agreement dated June 29, 2006 between Hy-Vee and the City, which was amended by the First Amendment to Hy-Vee Redevelopment Agreement dated as of this even date, on or before March 15, 2007.

4. Notice. A notice, demand, or other communication under this Agreement by any party to another shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the address listed below or at such other address as that party may from time to time designate in writing and forward to the other parties as provided in this Section:

Hy-Vee: Hy-Vee, Inc.  
5820 Westown Parkway  
West Des Moines, IA 50266  
Attention: President

Copy to: Vice President of Real Estate  
Hy-Vee, Inc.  
5820 Westown Parkway

West Des Moines, IA 50266

City: Mayor

City of Lincoln  
555 South 10<sup>th</sup> Street  
Lincoln, Nebraska 68508

Hotel:

Enterprise:

Doane:

Arena Skate:

5. Authority. All necessary action to duly approve the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been taken by each Adjacent Property Owner, and this Agreement will constitute a valid and binding agreement of each Adjacent Property Owner enforceable in accordance with its terms

6. Governing Law. All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors and assigns.

**“CITY”**

ATTEST:

CITY OF LINCOLN, NEBRASKA  
a Municipal Corporation

\_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
Coleen J. Seng, Mayor

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

**"ADJACENT PROPERTY OWNERS"**  
***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 \_\_\_\_\_, 2007, 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



ENTERPRISE COMPANY, INC., a  
Nebraska corporation

By: \_\_\_\_\_

Title:

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of  
February, 2007 by \_\_\_\_\_, \_\_\_\_\_ of Enterprise Company, Inc., a  
Nebraska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

DOANE COLLEGE, a Nebraska nonprofit corporation

By:  
Title:

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February, 2007 by \_\_\_\_\_, \_\_\_\_\_ of Doane College, a Nebraska nonprofit corporation, on behalf of the nonprofit corporation.

\_\_\_\_\_  
Notary Public

ARENA SKATE WORLD,  
INCORPORATED, a Nebraska corporation

By:  
Title:

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of February, 2007 by \_\_\_\_\_, \_\_\_\_\_ of Arena Skate World, Incorporated, a Nebraska corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public