Recorded: 12/11/2020 at 3:20:29.0 PM
County Recording Fee: $37.00
Iowa E-Filing Fee: $3.69
Combined Fee: $40.69
Revenue Tax:
Delaware County, Iowa
Daneen Schindler RECORDER
BK: 2020 PG: 4584

Prepared by: Joseph E. Schmall of Bradley & Riley PC, P.O. Box 2804, Cedar Rapids, IA 52406-2804 (319) 363-0101

Return to: Credit Administration, Cedar Rapids Bank and Trust Company, 500 1st Avenue NE, Suite 100, Cedar Rapids, IA 52401
(Space above this line for recording purposes)

ASSIGNMENT OF LEASES AND RENTS

This Assignment of Leases and Rents ("Assignment") is made by and between BR DEVELOPMENT LLC, an Iowa limited liability company ("Landlord"), and CEDAR RAPIDS BANK AND TRUST COMPANY ("Bank") of Cedar Rapids, Iowa.

RECITALS

A. Landlord and Hy-Vee, Inc. ("Tenant") are parties to that certain Lease Agreement dated September 17, 2020 ("Lease") with respect to the real estate located at _____ W. Main Street, in Manchester, Delaware County, Iowa, and legally described in Exhibit "A" attached hereto (the "Premises").

B. Bank has agreed to provide loans to Landlord pursuant to certain loan documents, as hereafter defined, dated as of December 9, 2020 (the "Loans").

C. Landlord desires to presently assign its rights in, to and under the Lease and the Premises to Bank as additional collateral for Landlord's obligations to Bank under the Loans and all documents executed pursuant to the Loans (collectively, the "Loan Documents").

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree as follows:

1. As additional consideration for Landlord's obligations to Bank under the Loans and the Loan Documents, Landlord hereby unconditionally and irrevocably assigns to Bank all of its right, title and interest in, to and under the Lease, plus any and all modifications, extensions or renewals of the Lease, all subleases, licenses and subsequent leases to use the Premises, all guaranties and security for any of the foregoing and all proceeds therefrom (including, without limitation, any insurance proceeds, any security deposits, any condemnation proceeds, any rents or income, any late charges and any real or personal property tax rebates); and grants to Bank a security interest in all of Landlord's interests in the Lease, plus all modifications, renewals and extensions of the Lease, any subleases, licenses and

subsequent leases to use the Premises, all guaranties and security for any of the foregoing, and all proceeds therefrom (including without limitation, any insurance proceeds, any security deposits, any condemnation proceeds, any rents or income, any late charges and any real or personal property tax rebates), whether now existing or hereafter arising. All of the foregoing are hereinafter referred to as the "Lease Collateral."

2. This Agreement is intended to evidence a present, absolute and unconditional assignment of the Lease and presently gives Bank the right to collect rents and other income from the Lease Collateral, and apply such funds to Landlord's obligations to Bank without further action or consent. This assignment is intended to create a present transfer of an interest in the Lease and the Lease Collateral and may be recorded in the appropriate real estate records.

3. Notwithstanding the assignment described above, Landlord (and not Bank) remains obligated to perform all of the obligations and covenants set forth in the Lease; and agrees to fully and promptly perform all of Landlord's obligations under the Lease; and to comply with all applicable laws regarding the leasing, use and ownership of the Premises as may be in effect from time to time (including all municipal ordinances, building codes, zoning ordinances and the like). This Agreement will not operate to place responsibility on Bank for the control, care, operation, maintenance or repair of the Premises or the Lease Collateral, or to make Bank responsible or liable for any waste committed on the Premises by Landlord or any other person, for any dangerous or defective condition of the Premises, for any hazardous waste or substance that has been, is now, or may in the future be, present on the Premises or the Lease Collateral, or for any negligence in the management, upkeep, repair, replacement, maintenance or control of the Premises or the Lease Collateral. Nothing provided in this Agreement, nor any collection of rents by Bank or by a receiver will be construed to make Bank a "mortgagee-in-possession" of the Premises, so long as Bank has not elected in writing to take actual possession of the Premises.

4. Bank grants to Landlord a revocable license to collect, as agent of Bank and subject to this Agreement, all rents as the rents become due under the Lease and to enforce the Lease, so long as no default by Landlord exists under this Agreement or the Loan Documents. This revocable license will automatically terminate without further action by Bank if a default occurs hereunder or under the Loan Documents. Unless and until the license is revoked, Landlord will apply the rents (other than nonforfeited security deposits) to the payment of taxes, assessments, insurance premiums, utilities charges, and operation, repair, replacement and maintenance charges with respect to the Premises which are due and payable at the time of collection of the rents before using the rents for any other purpose.

5. If a default occurs under this Agreement or the Loan Documents, this Agreement will constitute a direction to and full authority to Tenant and all other tenants on the Premises to pay all rents and other amounts due Landlord exclusively to Bank without relying upon proof of the default. Landlord irrevocably authorizes Tenant and all other tenants on the Premises to rely upon and comply with any notice or demand by Bank for the payment to Bank of any rents and other amounts due or to become due. Landlord will have no claim and waives any claim against Tenant or any tenant for any rents and other amounts paid to Bank as provided in the demand or notice of Bank, and agrees to credit Tenant and each tenant with receipt of such payments against their obligations under the Lease.

6. Landlord knows of no other party who could claim an interest on or lien against the Lease, the Premises or the Lease Collateral (including any mortgages against the Premises); and Landlord waives any claims against Bank based on marshalling of assets or any other equitable principle regarding Bank's disposition of the Lease or the Lease Collateral. Furthermore, Landlord agrees not to pledge, mortgage or assign the Lease, the Premises, or the Lease Collateral (or any part thereof) to any other party, or permit the Premises and the Lease Collateral to be subject to any lien or claim for taxes (except for tax assessments being contested by appropriate proceedings in good faith and for which no final tax assessment or notice has yet been issued).

7. Landlord shall not modify, supplement, amend, or change the terms of the Lease without the prior written consent of Bank to the extent that such modification, supplement, amendment or change would materially affect Bank's security interest in the Lease or the Leased Premises.

8. To induce Bank to accept this Agreement, Landlord hereby represents and warrants to Bank as follows: The Lease constitutes the legal and valid obligations of Tenant and Landlord, and is fully enforceable against Tenant in accordance with its terms; there exists no event of default or other occurrence which (with the passage of time or the giving of notice or both) would constitute an event of default by Landlord or Tenant under the Lease; Landlord's execution of this Agreement has been duly authorized; the Lease is not subject to any defenses, counterclaims or setoffs of any kind in favor of any party, except those in favor of Tenant set forth in the Lease; the assignment of the Lease, the Premises and the Lease Collateral to Bank is free and clear of any liens, security interests, encumbrances or claims of any type created by, through or under Landlord (except for the interest of Tenant under the Lease); there are no other agreements with Tenant regarding the Lease or the Premises; Landlord will not discount any future accruing rents due under the Lease; Landlord will not approve assignments of the Lease or sublets of the Premises or substitutions of any Tenant, whether or not permitted by the Lease, without the prior written approval of Bank, which shall not be unreasonably withheld, conditioned, or delayed; Landlord will not request, approve, agree to or accept a subordination of the Lease to any mortgage, deed of trust, other encumbrance or any other lease, now or later affecting the Premises or any part of the Premises, or suffer or permit any of the Lease to convert to subleases without the prior written approval of Bank; Landlord will appear in and defend, at no cost to Bank, any action or proceeding with respect to the Lease, the Premises or Lease Collateral brought by any third party; if requested by Bank, Landlord will enforce the Lease and all remedies available to Landlord against Tenant if Tenant defaults as provided in the Lease; and Landlord will use its best efforts to promptly deliver to Bank, upon request, a signed estoppel certificate from Tenant and any subsequent tenant or sublessee of the Premises as Bank requires, certifying that the Lease is in full force and effect with no defaults on the part of any party as provided in the Lease, that no rental has been paid more than one month in advance and that such Tenant has no claim, counterclaim or offset against the full and timely performance of its obligations to Landlord under the Lease.

9. In the event of a default by Landlord under the Loan Documents or under this Agreement, all amounts otherwise payable to Landlord pertaining to the Lease, the Premises or Lease Collateral shall be solely payable to Bank; and any amounts received by Landlord pertaining to the Lease, the Premises or the Lease Collateral shall be held in trust by Landlord for the sole benefit of Bank, and shall be promptly delivered by Landlord to Bank in original form (and with such endorsements as Bank may request). Bank shall be entitled to exercise and enjoy all of the rights, remedies and powers granted to Landlord under the Lease in Bank's own name or in Landlord's name without notice to or the consent of Landlord; all at Landlord's expense. Bank may have a receiver appointed immediately without notice

to Landlord, to take possession of the Premises and the Lease Collateral and to collect, retain and apply the residue of the rents, after deducting all charges and expenses of collection, to Landlord's obligations under the Loan Documents under the direction of the court appointing the receiver. Landlord consents to the appointment of the particular person Bank designates as receiver. Bank and its receiver may cancel, assign or alter any existing Lease to the extent provided for therein or at law; and Bank and its receiver will have the authority, as the attorney-in-fact of Landlord, such authority being coupled with an irrevocable interest, to sign the name of Landlord and to bind Landlord on all papers and documents with respect to the operation, leasing, repair, replacement and maintenance of the Premises and the Lease Collateral. All of the foregoing rights and remedies of Bank set forth herein are cumulative.

10. Landlord shall promptly reimburse Bank for all costs and expenses (including reasonable attorneys' fees) incurred by Bank in exercising any of its rights or remedies hereunder, and in protecting or exercising Bank's and/or Landlord's rights under the Lease or regarding the Premises and the Lease Collateral. All amounts payable by Landlord hereunder shall bear interest at the Default Rate or the highest rate permitted by law (whichever is lower) from its due date until paid without any formal demand for payment by Bank. Landlord further agrees to indemnify and hold Bank harmless from any and all claims, liabilities, costs, expenses, fines or penalties (including reasonable attorneys' fees) assessed against Bank or incurred by Bank as regards the Lease, the Premises, the Lease Collateral or any third party, except where caused solely by Bank's willful misconduct or violation of law.

11. This Agreement inures to the benefit of, and is binding upon, the successors, assigns and transferees of the parties hereto (whether by operation of law or by agreement). All rights of Bank under this Agreement may be assigned, pledged, mortgaged or transferred by Bank to any third party upon written notice to Landlord, subject to Tenant's right of quiet enjoyment under the Lease (absent a default by Tenant thereunder). No delay on the part of Bank in exercising any right, power or remedy hereunder shall operate as a waiver thereof; and no single or partial exercise of any right, power or remedy hereunder shall preclude any further exercise thereof (or the exercise of any right, power or remedy). Landlord agrees to execute and deliver to Bank such other documents as Bank may deem necessary to evidence and/or protect Bank's rights, remedies and interest(s) in and under the Lease and this Agreement.

12. This Agreement constitutes the entire agreement of the parties, and its terms may not be waived or modified in any manner without the consent of all parties hereto. This Agreement shall be binding on the undersigned and their assigns and successors, however arising; and inures to the benefit of Bank and its assigns or successors. This Agreement may be executed in one or more counterparts, each of which may be deemed an original, and all of which together shall constitute one and the same instrument. If any provision of this Agreement or the application thereof to any person is held invalid or unenforceable for any reason, the other provisions of this Agreement and their application shall be unaffected thereby and shall remain in full force and effect.

Dated as of December 9, 2020.

BR Development LLC

By: _____
Brian Ridge, Manager

CEDAR RAPIDS BANK AND TRUST COMPANY

By: _____
Sue Lowder, Vice President

STATE OF IOWA)
) ss:
COUNTY OF LINN)

The above instrument was signed before me on this 9th day of December, 2020, by Brian Ridge as the Manager of BR Development LLC, an Iowa limited liability company.



Notary Public in and for said State

STATE OF IOWA)
) ss.
COUNTY OF LINN)

The above instrument was signed before me on this 9th day of December, 2020, by Sue Lowder as the Vice President of CEDAR RAPIDS BANK AND TRUST COMPANY.



Notary Public in and for the State of Iowa

EXHIBIT "A"

Lot One (1) of Karusco South 2nd Subdivision, Subdivision of Lot A of Karusco South Subdivision of Part of the E 1/2 NE 1/4 of Section 31 and Part of the NW 1/4 of Section 32, all in T89N, R5W of the Fifth P.M., City of Manchester, Delaware County, Iowa, according to plat recorded in Book 2010, Page 1751