

BK: 2016 PG: 483
Recorded: 2/26/2016 at 11:21:03.0 AM
Fee Amount: \$37.00
Revenue Tax:
LISA SMITH RECORDER
Madison County, Iowa

Prepared by, when recorded return to: Nathan Allen, 5820 Westown Parkway, West Des Moines, IA 50266
(515)267-2800

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

THIS AGREEMENT, made and entered into as of the 26th day of February, 2016, by and between METABANK, whose address is 4900 S. Western Ave., P.O. Box 520, Sioux Falls, SD 57108 (hereinafter referred to as the "Lender"), HY-VEE, INC., an Iowa corporation, whose address is 5820 Westown Parkway, West Des Moines, IA 50266 (hereinafter referred to as the "Tenant"), and HURD & DAUGHTER, LLC, an Iowa limited liability company, whose address is 2000 Fuller Road, West Des Moines, Iowa 50265 (hereinafter referred to as the "Landlord");

WITNESSETH:

WHEREAS, Lender is the holder of a mortgage loan (hereinafter referred to as the "Loan") to Landlord, which Loan is secured by, inter alia, a Commercial Mortgage and Security Agreement executed by Landlord to and in favor of Lender (hereinafter referred to as the "Mortgage"), encumbering Landlord's property located at 923 John Wayne Drive North, Winterset, Madison County, Iowa (also known as 923 N. 1st St., Winterset, Madison County, Iowa), and legally described in Exhibit "A" attached hereto (hereinafter referred to as the "Mortgaged Premises"); and

WHEREAS, Landlord has leased all of the Mortgaged Premises (hereinafter referred to as the "Premises") to Tenant by Lease Agreement dated as of February 26, 2016 (hereinafter referred to as the "Lease"); and

WHEREAS, Lender, in connection with the Loan, requires that the Lease and all of the rights of Tenant thereunder be subordinated to the Mortgage and all of the rights of Lender thereunder; and

WHEREAS, Tenant desires to receive certain assurances that its possession of the Premises will not be disturbed in such event, and Lender is willing to grant certain assurances upon the terms and conditions hereinafter set forth;

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants herein contained and intending to be legally bound, hereby agree as follows:

1. The Lease and all of the rights of Tenant thereunder shall be and are hereby declared to be and at all times hereafter shall be and remain subject and subordinate in all respects to the Mortgage and all of the rights of Lender thereunder. Notwithstanding such subordination, Lender hereby agrees that the Lease shall not terminate in the event of a foreclosure of the Mortgage. Tenant agrees to attorn to and to recognize Lender (as mortgagee in possession or otherwise), or the purchaser at such foreclosure sale, as Tenant's landlord for the balance of the term of the Lease, in accordance with the terms and provisions thereof, but subject, nevertheless, to the provisions of this Agreement, which Agreement shall be controlling in the event of any conflict.

2. Lender hereby agrees with Tenant that, so long as Tenant and/or its permitted successors and assigns comply with all of the terms, provisions, agreements, covenants and obligations set forth in the Lease, Tenant's possession of the Premises under the Lease shall not be disturbed or interfered with by Lender and Lender shall not join Tenant as a party defendant in any action or proceeding (a) alleging any default by Landlord on its obligations to lender, or (b) foreclosing the Mortgage unless such joinder is necessary to foreclose the Mortgage and then only for such purpose and not for the purpose of terminating the Lease.

3. Tenant hereby agrees that Lender shall not be: (a) liable in damages for any act or omission of Landlord under the Lease occurring prior to the date of said foreclosure sale provided that Lender shall be obligated to comply with the obligations of landlord under the Lease from and after the date of said foreclosure sale; (b) bound by any rents or additional charges which Tenant may have paid to Landlord for more than the current month; or (c) unless previously approved in writing by Lender, provided that Tenant has received notice of the name and address of Lender prior to the date of signing any such modification, bound by any modification of the Lease executed during the period that the Mortgage is in existence if such modification reduces fixed minimum rental charges, materially increases the obligations of landlord under the lease or reduces the length of the initial term.

4. Tenant hereby agrees that any entity or person which at any time hereafter becomes the landlord under the Lease, including, without limitation, Lender or the purchaser at a foreclosure sale, shall be liable only for the performance of the obligations of the Landlord under the Lease which arise and accrue during the period of such entity's or person's ownership of the Premises.

5. In the event of default by Landlord under the Lease or an occurrence that (a) is capable of being reduced to a fixed dollar amount, (b) that would give rise to an offset against rents or additional charges or a claim against Landlord under the Lease, then Tenant is hereby authorized to use its best efforts to set off such defaults against rents or additional charges currently due Landlord and will give Lender notice of such defaults or occurrences at the address of Lender as set forth above and to the extent any such rents or additional charges currently due Landlord are insufficient to fully cure any such defaults or occurrences, Tenant will give Lender such time as is reasonably required to fully cure any such default or rectify any such occurrence, provided Lender uses reasonable diligence to correct the same.

6. In the event Landlord and Tenant request Lender's approval for any modification of the Lease which requires Lender's consent pursuant to this Agreement, or pursuant to the Mortgage or any other loan document between Landlord and Lender, Lender agrees that any such approval shall not be unreasonably withheld, conditioned or delayed.

7. This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the parties hereto, or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their successors and assigns.

8. Any notice which any party hereto may desire to may be required to give to any other party shall be in writing and the mailing thereof by certified mail, or equivalent to the addresses as set forth above, or to such other places any party hereto may by notice in writing designate shall constitute service of notice hereunder.

9. This Agreement shall be construed in accordance with the laws of the state in which the Premises is located.

10. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute but one Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have set their hands the date and year first above written.

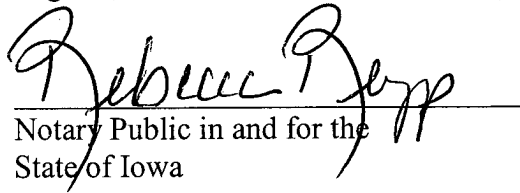
LANDLORD:

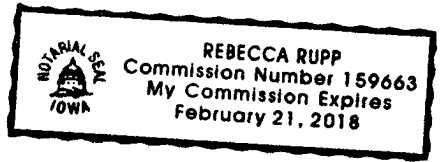
HURD & DAUGHTER, LLC, an Iowa limited liability company

By: 
Richard W. Hurd, Manager

STATE OF IOWA)
)ss
COUNTY OF POLK)

This instrument was acknowledged before me on this 23 day of Feb, 2016, by Richard W. Hurd, the Manager of Hurd & Daughter, LLC, an Iowa limited liability company.


Notary Public in and for the
State of Iowa



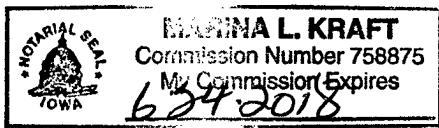
LENDER:

METABANK

By: *[Signature]*
Name: STEVEN PATTERSON
Title: MARK PRES.

STATE OF IOWA, COUNTY OF POLK, ss

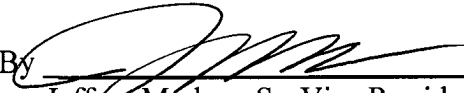
On this 23 day of FEBRUARY, 2016, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared STEVEN PATTERSON, to me personally known, who being by me duly sworn did say that he/she is the MARKET PRESIDENT of MetaBank, that the instrument to which this is attached was signed on behalf of said corporation by authority of its Board of Directors; and that the said STEVEN PATTERSON as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him/her voluntarily executed.



[Signature]
Notary Public in and for the
State of Iowa

TENANT:

HY-VEE, INC.

By 
Jeffrey Markey, Sr. Vice President

By 
Nathan Allen, Assistant Secretary

STATE OF IOWA, COUNTY OF POLK, ss

On this 22nd day of February, 2016, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Jeffrey Markey and Nathan Allen, to me personally known, who being by me duly sworn did say that they are the Sr. Vice President, and Assistant Secretary, respectively, of Hy-Vee, Inc., an Iowa corporation, that the instrument to which this is attached was signed on behalf of said corporation by authority of its Board of Directors; and that the said Jeffrey Markey and Nathan Allen as such officers acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.



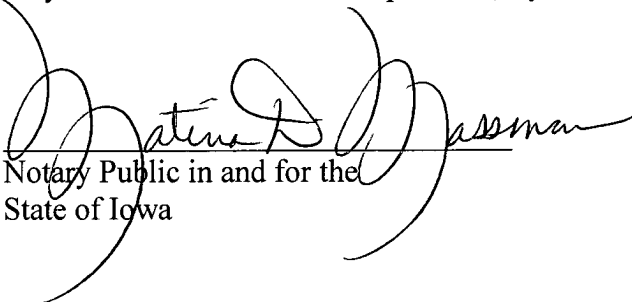

Notary Public in and for the
State of Iowa

EXHIBIT "A"
LEGAL DESCRIPTION OF PREMISES

Lots One (1) and Two (2) of Gold Buffet Subdivision of the City of Winterset, Madison County, Iowa, including Parcel "A" located in said Lot One (1) as shown in Plat of Survey filed in Book 2, Page 199 on February 9, 1994 in the Office of the Recorder of Madison County, Iowa; EXCEPT the North 15 feet of said Lot Two (2); AND Parcel "E" located in the Northwest Fractional Quarter (1/4) of the Northwest Quarter (1/4) of Section Thirty-one (31), Township Seventy-six (76) North, Range Twenty-seven (27) West of the 5th P.M., City of Winterset, Madison County, Iowa, as shown in Plat of Survey filed in Book 2, Page 343 on February 26, 1998 in the Office of the Recorder of Madison County, Iowa; AND Parcel "P" located in the Northwest Quarter (1/4) of the Northwest Quarter (1/4) of said Section Thirty-one (31), as shown in Plat of Survey filed in Book 2016, Page 359 on February 8, 2016.