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2014099596

Subordination, Non-Disturbance and  
Attornment Agreement

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c o v

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

**SUBORDINATION (NONDISTURBANCE)  
AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT**, made this 20<sup>th</sup> day of November, 2014, by and between PINNACLE BANK, a Nebraska state banking corporation, having its principal place of business and post office address at 1401 N Street, Lincoln, NE 68508, hereinafter referred to as "Mortgagee", and Hy-Vee, Inc., an Iowa corporation, having its principal place of business and post office address as 5820 Westown Parkway, West Des Moines, Iowa 50266, hereinafter referred to as "Tenant",

**WITNESSETH:**

**WHEREAS**, the Mortgagee is the holder of the Promissory Note secured by a Deed of Trust, hereinafter collectively called the "Mortgage", to SGD-WESTRIDGE, LLC, a Nebraska limited liability company, as mortgagor, in favor of Mortgagee, encumbering mortgagor's property located at 747 N 132<sup>nd</sup> St., Omaha, Nebraska 68154, and legally described in Exhibit "A", hereunto attached; and

**WHEREAS**, the Tenant has executed and delivered a Substituted Lease Agreement, hereinafter referred to as the "Lease", covering said premises, which Lease is dated October 26, 2009; and

**WHEREAS**, the Mortgagee and the Tenant have requested of and granted to each other the agreements hereinafter stated and desire to evidence said agreements in writing;

**NOW, THEREFORE**, for good and valuable consideration paid by each to the other, the receipt and sufficiency of which is hereby acknowledged, the Mortgagee and the Tenant agree as follows:

1. **Subordination.** The Lease is hereby and shall at all times hereafter continue to be subject and subordinate in each and every respect to the lien of and security interests created by the mortgage and to any and all renewals, extensions, modifications, substitutions, or replacements thereof. Without limiting the generality of the foregoing, all of the Tenant's rights, including but not limited to any rights granted to the Tenant in the Lease with respect to any award in condemnation, shall be subject and subordinate in all respects to the rights of the Mortgagee under the Mortgage.

2. **Nondisturbance and Attornment.** So long as the Tenant is not in default under the Lease in the payment of rent or in the observance or performance of any of the other terms, covenants, or conditions contained herein or in the Lease and on the Tenant's part to be observed and performed,

(a) The Tenant's possession of the premises demised by the Lease and the Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, shall not be diminished or interfered with by the Mortgagee, and the Tenant's occupancy of said premises shall not be disturbed by the Mortgagee for any reason whatsoever during the term of this Lease or any such extensions or renewals thereof;

(b) The Mortgagee will not join the Tenant as a part defendant in any action or proceeding for the purpose of terminating the Tenant's interest and estate under the Lease because of any default under the Mortgage;

(c) In the event of foreclosure of the Mortgage, the mortgaged properties therein described shall be conveyed together with the Lease but subject to this Agreement, and the Tenant shall thereafter attorn to the purchaser of the mortgaged properties at the foreclosure sale, whether such purchaser be the Mortgagee or a third party, and the Tenant shall thereafter be obligated to such purchaser to perform all of Tenant's obligations under the Lease, and the Tenant shall have no right to terminate the Lease by reason of the foreclosure of the Mortgage, so long as the Tenant's peaceable and quiet use and possession of said premises shall not be disturbed by reason thereof. Such purchaser shall be bound to the Tenant under all of the terms, covenants, and conditions of the Lease, and the Tenant shall, from and after such purchaser's succession to the interest of the lessor under the Lease, have the same remedies against such purchaser for the breach of an agreement contained in the Lease that the Tenant might have had under the Lease against the lessor if such purchaser had not succeeded to the interest of the lessor; **PROVIDED, HOWEVER**, that such purchaser shall not be (i) liable for any act or omission of any prior lessor; or (ii) subject to any offsets or defenses which the Tenant might have had against any prior Lessor; or (iii) bound by any amendment or modification of the Lease made without the Mortgagee's prior written consent; but nothing herein contained shall be construed as a waiver of any rights which the Tenant may have against any prior lessor immediately prior to the event of foreclosure.

3. **General.**

(a) The Tenant will not, without the prior written consent of the Mortgagee, pay to any lessor any rental under the Lease (except security deposits) more than thirty (30) days in advance of its due date; and

(b) To the extent that the Lease shall entitle the Tenant to notice of any mortgage, this Agreement shall constitute such notice to the Tenant with respect to the Mortgage.

4. **Miscellaneous.**

(a) 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 and assigns; and

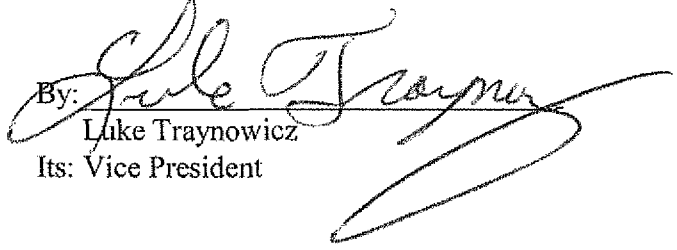
(b) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have hereunto caused this Agreement to be duly executed as of the day and year first above written.

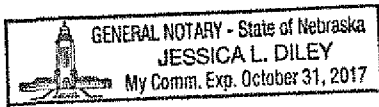
MORTGAGEE:

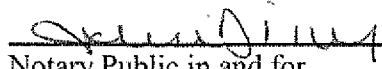
PINNACLE BANK

By:   
Luke Traynowicz  
Its: Vice President

STATE OF NEBRASKA    )  
  ) ss.  
LANCASTER COUNTY    )

On this 18 day of December, 2014, before me, the undersigned, a Notary Public in and for the state of Iowa, personally appeared Luke Traynowicz, to me personally known, who being by me duly sworn did say that he is the Vice President of Pinnacle Bank, a Nebraska state banking corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and that the said Luke Traynowicz as such officer acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

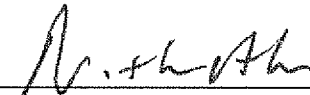


  
Notary Public in and for  
the State of Nebraska

TENANT:

HY-VEE, INC.

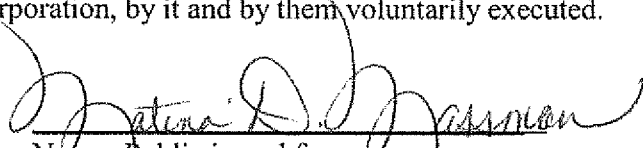
By:   
Jeffrey Markey, Vice President

By:   
Nathan Allen, Assist. Secretary

STATE OF IOWA    )  
                                  ) ss.  
POLK COUNTY     )

On this 26<sup>th</sup> day of November, 2014, 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 Vice President and Assistant Secretary, respectively, of Hy-Vee, Inc., an Iowa corporation; that said instrument 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**

Lot 1, in KVI - 132<sup>nd</sup> Street Plaza, an Addition to the City of Omaha, Douglas County, Nebraska

AND

A tract of land being part of Lot 2, as originally surveyed and platted, of the KVI - 132<sup>nd</sup> Street Plaza, a subdivision located in the Southwest Quarter (SW ¼) of Section 18, Township 15 North, Range 12 East of the 6<sup>th</sup> P.M., Douglas County Nebraska. Said tract of land being more particularly described as follows: Beginning at the Southeast corner of said Lot 2 and said point also being the Southeast corner of the subdivision; thence N76°53'01"W (Platted Bearing) along the Southerly line of the subdivision a distance of 74.23 feet to a point; thence N0°06'18"W a distance of 247.76 feet to a point; thence N43°26'07"W a distance of 11.49 feet to a point; thence N0°00'22"E a distance of 233.41 feet to a point; thence S89°58'09"W a distance of 226.08 feet to a point; thence N00°01'53"W a distance of 49.29 feet to a point of curvature; thence Northeast along a curve to the right, said curve having a radius of 50.00 feet, a long chord of 38.27 feet bearing N22°28'07"E, an arc length of 39.27 feet to a point of tangency; thence N44°58'07"E a distance of 63.53 feet to a point of curvature; thence Northerly along a curve to the left, said curve having a radius of 80.00 feet, a long chord of 43.97 feet bearing N29°01'15"E, an arc distance of 44.54 feet to a point; thence N89°58'09"E a distance of 228.23 feet to the Northeast corner of said Lot 2; thence S0°12'00"W a distance of 674.42 feet to the Point of Beginning.