

NOTICE OF MERGER AND ESTOPPEL

THIS NOTICE OF MERGER AND ESTOPPEL is executed as of the 24 day of MARCH, 2011, by City of Orlando, Florida ("Landlord") for the benefit of M&I Marshall & Ilsley Bank ("Tenant") and Harris National Association ("Harris").

WITNESSETH

WHEREAS, Landlord and Tenant are parties to a lease agreement identified on Exhibit A attached hereto ("Lease") for certain premises identified on Exhibit A, as more particularly described in the Lease ("Premises");

WHEREAS, subject to regulatory and shareholder approval, Harris and Tenant intend to consummate a merger on or before July 31, 2011, pursuant to which Tenant will be merged with and into Harris;

WHEREAS, Harris is a national bank headquartered in Chicago, Illinois, with assets of approximately \$50 billion;

WHEREAS, as a result of the merger, Harris will continue as the surviving corporation and therefore will hold all right, title and interest of the Tenant under the Lease and will be bound to perform all obligations of Tenant under the Lease; and

WHEREAS, Tenant and Harris hereby notify Landlord of the proposed merger transaction and request Landlord to make the estoppel statements as set forth below for the benefit of M&I and Harris.

NOW THEREFORE, in consideration of the terms and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby affirms the following:

1. The Lease is in full force and effect and has not been modified, supplemented or amended in any way except as set forth on Exhibit A. There are no oral agreements or understandings between Landlord and Tenant (or their respective predecessors-in-interest if applicable) with respect to the Lease or any obligations of any party thereunder.
2. The statements contained herein may be relied upon by Harris as the successor-in-interest to Tenant pursuant to the above-referenced merger.
- ~~3. Landlord agrees to keep this Notice and Estoppel and the proposed merger transaction confidential and shall not disclose (in whole or in part), use or transmit any information concerning same until such time as Landlord receives notice that the merger transaction has closed.~~

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned has executed this Notice and Estoppel as of the day and year first above written.

Landlord:

City of Orlando, Florida

By: Laurel Davis  
Name: LAUREL DAVIS  
Title: REAL ESTATE MANAGER

**Exhibit A**

Lease: Lease dated 2/23/05 originally entered into between City of Orlando, Florida, as Landlord, and M&I Marshall & Ilsley Bank, as Tenant, as amended and extended 8/29/10

Premises: 5,419 sq. ft. in building located at 129 E. Gore Street, Orlando, FL



## LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this 29<sup>th</sup> day of AUGUST, 2010, by and between the **City of Orlando, Florida**, a municipal corporation organized and existing under the laws of the State of Florida ("Landlord"), and **M&I Marshall & Ilsley Bank**, a Wisconsin banking corporation ("Tenant").

### RECITALS

A. Tenant is the tenant by an assignment under a previously existing lease with Landlord dated February 23, 2005, and amended August 16, 2005, between Landlord and United Heritage Bank, a Florida banking corporation (collectively, "Old Lease") for that certain property located at 129 East Gore Street in the City of Orlando, Orange County, Florida, as further described on **Exhibit "A"** attached hereto.

B. The Old Lease is about to expire and the parties desire to enter into this long-term lease ("Lease") for the same premises as was encumbered by the Old Lease, on the terms and conditions set out herein. Upon execution of this Lease, the Old Lease shall automatically terminate.

NOW THEREFORE in consideration of the mutual promises and covenants contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party to the other, Landlord and Tenant hereby agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated into and made a part of this Lease as if fully set forth herein.

2. **Premises.** Landlord does hereby rent, demise, and lease into Tenant and Tenant does hereby lease from Landlord that certain premises situate in Orange County, Florida, as specifically described in **Exhibit "A"** attached hereto and made a part hereof, together with all buildings, improvements, and other appurtenances thereto including, without limitation, the improvements, appurtenances, and property contained thereon and therein;

And together with all such easements in or over adjoining or adjacent lands of Landlord as shall be reasonably required for the maintenance, operation, and repair of sewer, water, gas, power, telephone, other utility lines, and storm drainage to serve the Premises and for ingress to, and egress from, abutting highways. The Premises also includes approximately twenty-one (21) parking spaces. (All of the foregoing are herein referred to collectively as the "Premises.") Tenant shall have exclusive use of the parking spaces during its regular business hours and non-exclusive use of the parking spaces during its non-business hours. Visitors to the Beardall Senior Center located adjacent to the Premises may utilize the parking spaces during such non-business hours. Tenant and Landlord shall mutually work in good faith to determine a schedule of non-business hours during which Tenant will be using parking spaces or during which events will be taking place at the Beardall Senior Center.



### 3. Term of Lease

A. Initial Term. Tenant shall have and hold the Premises for an original term of five (5) years commencing on AUGUST 29, 2010 ("Commencement Date") and ending on AUGUST 28, 2015 ("Termination Date"), unless terminated sooner pursuant to an express provision hereof.

B. Renewal Options. Tenant shall have the option of renewing this Lease for two (2) additional periods of five (5) years each, upon the same terms and conditions as are set forth herein. Each such option shall automatically be deemed to have been exercised by Tenant without notice in writing or otherwise unless Tenant shall notify Landlord in writing at least sixty (60) days prior to the end of the preceding term or renewal term, as the case may be that Tenant does not elect to renew for the next succeeding renewal term. Upon failure of Tenant to give such notice prior to such sixty-(60) day period, the word "Term," as used in this Lease, shall be deemed to include such renewal term or terms.

C. Lease Expiration. Upon expiration or termination of this Lease, all rights and interests of Tenant (and all persons whomsoever claiming by, under or through Tenant) in and to the Premises and any improvements thereon constructed during the term shall wholly cease and title to the Premises, including but not limited to all permanent improvements and additions constructed on the Premises by Tenant, shall vest in Landlord without further act or conveyance, and without liability to provide compensation to Tenant or to anyone whatsoever for such improvements or additions, and shall be free and discharged from all and every lien, encumbrance, claim and charge of any character created or attempted to be created by Tenant at any time other than pursuant to the specific terms of this Lease. This provision shall not relieve Tenant from liability for having left the Premises or the improvements with encumbered title.

D. Early Termination at Landlord's Convenience. Landlord may terminate this Lease for its convenience upon one hundred fifty (150) days advance written notice to Tenant. In the event of such a termination by Landlord, each party shall be liable for performance of the obligations set forth herein only through the date of termination pursuant to this provision. Should that occur the date of termination shall for all purposes of this Lease be treated as if it were the last day of the term of the Lease after the exercise of all options to renew the Lease as provided herein. No Lease termination under this Section 3.D shall be effective prior to the date which is ten (10) days after the expiration of the notice period required under federal law for the notices which Tenant must give to its customers prior to the closing of its business on the Premises. In the event that Landlord should terminate this Lease for convenience during the initial five (5) year term of this Lease, Landlord shall reimburse Tenant in the amount equal to one half of the cost of any tenant improvements or renovations it should make to the Premises during the first two (2) years of the initial term of the Lease, amortized on a straight-line basis over a five (5) year period starting on the Commencement Date. The total cost that Landlord shall be responsible for reimbursing to Tenant shall not exceed One Hundred Thousand and No/100 Dollars (\$100,000.00). In any event the reimbursement amount Landlord shall be responsible for shall be one half of the total cost of Tenant's improvements or one half of the maximum amount stated in this section, whichever is less, amortized as provided herein.



4. Use.

A. Intended Use. Tenant shall have the right to use and occupy the Premises for the operation of a commercial banking facility ("Intended Use") (including one or more drive-thru lanes) with ancillary office use, as well as any related services provided by Tenant or its subsidiaries and affiliates, including placement and operation of one or more ATM machines, along with any other banking, loan, deposit and supporting services. Notwithstanding the foregoing, the Intended Use shall be limited to the extent necessary so that in no event will any improvements be made to engage in that use, which would reduce the number of parking spaces on the Premises. No other activity shall be engaged in on the Premises, without the advance written approval of Landlord's Real Estate Manager, which may be withheld for any or no reason.

B. Insurance Restrictions. Tenant shall not use the Premises for any purpose that will invalidate any policy of insurance, or increase any premium to be paid, now or hereafter written on any improvements located on the Premises.

C. Waste. Without limitation of the foregoing, Tenant shall not: (a) use the Premises for any illegal purpose, nor for any purpose inimical to the health, safety and welfare of the public, or (b) commit, or suffer to be committed, any waste in or on the Premises, nor shall it create or permit any nuisance in or on the Premises.

5. Rent.

A. Base Rent. Tenant hereby covenants and agrees to pay to Landlord as Base Rent for the Premises the sum of One Hundred Thirty-five Thousand Four Hundred Seventy-five and No/100 Dollars (\$135,475.00) for each full year payable in equal monthly installments of Eleven Thousand Two Hundred Eighty-nine and 58/100 Dollars (\$11,289.58) on the first day of each calendar month during the Term of this Lease, payable in advance at the address of Landlord set forth in Section 24 hereof, unless Landlord shall hereafter otherwise designate in accordance with the notice provisions set forth in Section 24. If the term shall commence upon a day other than the first day of a calendar month, Tenant shall pay on the Commencement Date a portion of the monthly rental, prorated on a daily basis for the period preceding the first full calendar month of the Term. The annual rental amount shall increase five percent (5%) per year to become effective on the first day of the month following each anniversary of the Commencement Date, unless the anniversary of the Commencement Date falls on the first day of a month, in which case the rental increase shall occur on the anniversary of the Commencement Date. All rental payments shall be mailed or delivered so as to be received by the Real Estate Manager on the due date at the address of City Hall, 4<sup>th</sup> Floor, 400 S. Orange Avenue, Orlando, FL 32801.

B. Additional Rent. Unless otherwise expressly provided, all monetary obligations of Tenant to Landlord under this Lease, of any type or nature, other than Base Rent, shall be denominated as additional rent ("Additional Rent"). Except as otherwise provided, all Additional Rent payments are due and payable ten (10) days after delivery of an invoice.

C. Florida State Sales Tax. Tenant shall be responsible for the payment of



any applicable sales and use taxes (or any excise taxes imposed in lieu thereof) which may now or hereafter be levied by the State of Florida or any other governmental unit on all payments due under this Lease that may be classified as rent by such taxing authorities. Tenant shall pay such taxes to Landlord at the same time that rent payments or other payments classified as rent are made by Tenant to Landlord. The current State of Florida Sales Tax in Orange County, Florida is 6.5%.

D. Late Payments. If any payment of Rent is not received by Landlord within ten (10) days after it is due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the late payment ("Late Charge"); provided, if Tenant demonstrates to Landlord that, through no fault of Tenant, such payment was not received as the result of a technical error associated with an ACH payment, Tenant shall not be assessed such late charge, so long as Tenant promptly ensures the applicable Rent payment is delivered to Landlord. In addition to the Late Charge, should any payment of Rent not be received by Landlord within ten (10) days of its due date, interest on such unpaid Rent shall immediately thereafter begin accruing at the rate of twelve percent (12%) per annum until paid. The parties agree and intend to comply with the applicable usury law, and notwithstanding anything contained herein, the effective rate of interest to be paid on any past due Rent (including all costs, charges and fees which are characterized as interest under applicable law) shall not exceed the maximum contract rate of interest permitted under applicable law, as it exists from time to time. Landlord agrees not to knowingly collect or charge interest (whether denominated as fees, interest or other charges) which will render the interest rate hereunder usurious, and if any payment of interest or fees by Tenant to Landlord would render the interest charge for late Rent usurious, Tenant agrees to give Landlord written notice of such fact with or in advance of such payment. If Landlord should receive any payment which constitutes interest under applicable law in excess of the maximum lawful contract rate permitted under applicable law (whether denominated as interest, fees or other charges), the amount received in excess of the maximum lawful rate shall automatically be applied to reduce the Rent next coming due, regardless of how such sum is characterized or recorded by the parties.

E. Returned Check Fee. If any check for Rent or other sums due hereunder received by Landlord is returned by a financial institution for insufficient funds, in addition to any other right or remedy available to Landlord as a result of such default, Tenant shall pay Landlord a returned check fee in the maximum amount allowed by Florida law to reimburse Landlord for the costs and expenses associated with such returned check. The current amount allowed is Forty Dollars (\$40.00).

F. General. The term "Rent" when used in this Lease shall include Base Rent and Additional Rent. All Rent shall be paid to Landlord without demand, setoff, or deduction whatsoever, except as specifically provided in this Lease, at Landlord's Notice Address determined pursuant to Section 24 hereof, or at such other place as Landlord shall designate in writing to Tenant. Tenant's obligations to pay Rent are covenants independent of Landlord's obligations under this Lease.

6. Utilities. At its sole cost and expense, Tenant shall cause to be furnished and shall pay for all water, gas, light, power, sanitation (sewerage or otherwise), stormwater utility fees, garbage pick-up and disposal, telephone and other utilities or services required for Tenant's use of the Premises.



## 7. Taxes

A. Payment and Indemnification. Tenant covenants and agrees, during its use and/or occupancy of the Premises, to pay or cause to be paid, to the public officer charged with collection thereof and before any of the same shall become delinquent and shall indemnify, protect, save and hold harmless Landlord from the payment of (a) any and all taxes, assessments, license fees, excises, imposts, fees and charges of every sort, nature and kind, hereinafter collectively referred to as "impositions", which during Tenant's use and/or occupancy of the Premises, may be assessed, levied, charged or imposed against or with respect to the Premises, including, but not limited to, the building, fixtures, equipment and personal property, if any there be, located therein or thereon; and (b) any impositions assessed, levied, charged or imposed on or with respect to the conduct of Tenant's business in or on the Premises. Bills for any impositions shall be sent directly to Tenant at the address provided in Section 24 of this Lease, and Landlord shall, promptly upon receipt of a bill for any impositions, or notice of assessment, or notice of increase, or other change therein, forward a copy of the same to Tenant. Notwithstanding any of the foregoing, any impositions, if permitted by the applicable assessing authority, shall be payable by Tenant in installments, and Tenant shall only be responsible for payment of such installments becoming due and payable during the term of this Lease.

B. Contest. Nothing herein shall obligate or require the payment of any imposition by Tenant, unless such obligation or requirement is provided by law. Tenant may contest the validity, legality or amount of any imposition in the manner provided by law after posting of security with (and acceptable to) Landlord in an amount equal to the amount of the imposition claimed to be due. Within ten (10) days after the payment by Tenant of any imposition, Tenant shall furnish Landlord with a copy of a receipt evidencing such payment.

8. Assignment and Subletting. Tenant shall not transfer or assign (whether by instrument or operation of law or, if applicable, by withdrawal, sale, gift or exchange) this Lease or any right or privilege of Tenant hereunder without the prior written consent of Landlord, which consent may not be unreasonably withheld, so long as the actual use of the new tenant does not differ from the Intended Use authorized under this Lease. Tenant shall not sublet the Premises or any building built thereon or part thereof, or any right or privilege appurtenant thereto, neither permit nor suffer any party other than Tenant to use or occupy the Premises or any portion thereof without the prior written consent of Landlord, which consent may not be unreasonably withheld. Any transfer, assignment or subletting without the prior written consent of Landlord shall be void *ab initio* and shall at the option of Landlord terminate this Lease. If Landlord does not respond to a request for its consent under this Section 8 within fourteen (14) days of receipt thereof, Landlord shall be deemed to have granted its consent to the requested assignment, sublease or transfer. Landlord's consent to a transfer, assignment to subletting, or to any use or occupancy by a party other than Tenant, shall not invalidate or constitute a waiver of this provision, and each subsequent transfer, assignment and subletting, and each subsequent use and occupancy by a party other than Tenant shall likewise be made only with the prior written consent of Landlord. Notwithstanding anything herein to the contrary, Tenant shall be permitted to assign this Lease or sublet all or a portion of the Premises to any entity that (i) controls, is controlled by or under common control with Tenant, (ii) is the surviving entity of a merger, stock sale or other corporate combination with or into Tenant or corporate reorganization, or (iii) acquires all or substantially all of the assets and liabilities of Tenant, all upon prior notice to



Landlord and verification by Landlord that the assignment will be made to an entity which meets the conditions as provided in this sentence.

**9. Insurance Requirements.** Tenant shall, at its own expense, procure and maintain throughout the term of this Agreement, the types and amounts of insurance conforming to the minimum requirements set forth herein. The insurers providing the coverages required herein must be either (1) authorized by a subsisting certificate of authority issued by the Department of Financial Services of the State of Florida or (2) an eligible surplus lines insurer under Florida Statutes. All insurance policies shall be primary and issued by companies with a Financial Rating of "A" or better and a Financial Size Category of "Class V" or higher according to the most current edition of Best's Insurance Reports. Tenant shall not begin any activity or work or be open for business under this Agreement until the required insurance is in force and evidence of insurance acceptable to Landlord has been provided to, and approved by, Landlord.

A. Compliance. As evidence of compliance with the insurance required herein, Tenant shall furnish Landlord with a fully completed satisfactory Certificate of Insurance evidencing all coverages required herein, signed by an authorized representative of the insurer(s) verifying inclusion of Landlord and Landlord's members, elected and appointed officials, officers and employees as Additional Insureds in the Commercial General Liability coverage.

Until such insurance is no longer required by this Agreement, Tenant shall provide Landlord with renewal or replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of any insurance coverage required under this Lease.

B. Property Insurance. Property Insurance, including fire and extended coverage, insuring against damage caused by fire, vandalism, wind, and water, for the replacement cost of the building and improvements located on the Premises.

C. Workers' Compensation Insurance. Workers' Compensation/Employers' Liability - Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy as filed for use in Florida by the National Council on Compensation Insurance. In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employer's Liability Act and any other applicable Federal or State law. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"
Part Two:	
\$500,000	(Each Accident)
\$500,000	(Disease-Policy Limit)
\$500,000	(Disease-Each Employee)

D. Commercial General Liability Insurance. Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida. The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Sexual molestation

Landlord and Landlord's members, elected and appointed officials, officers and employees shall be included as an "Additional Insured" on a certification of insurance. The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

General Aggregate	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Damage to Premises Rented to You	\$100,000
Medical Expense (any one person)	\$Nil

Notwithstanding the foregoing, Landlord shall be responsible for insurance coverage related to use of the parking spaces on the Premises by any visitors of the Beardall Senior Center as described in Section 2 of this Lease.

E. Automobile Liability. Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01), including coverage for liability contractually assumed, and shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

Each Occurrence Bodily Injury and Property Damage Liability Combined	\$1,000,000
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F. Subrogation. Landlord and Tenant each expressly, knowingly, and voluntarily waive and release any claims that each may have against the other or the other's officials, officers, employees, agents, or contractors who shall have executed a waiver similar to this one for damage to its properties and loss of business as a result of the acts or omissions of the other party or the other party's officials, officers, employees, agents, or contractors (specifically including the negligence of either party or its officials, officers, employees, agents, or contractors and the intentional misconduct of the officials, officers, employees, agents, or contractors of either party), to the extent any such claims are covered (without regard to losses not compensated as a result of such things as coinsurance adjustments or deductibles) by the property insurance described in this Lease, or other property insurance that either party may carry at the time of an occurrence. Landlord and Tenant shall each obtain and keep in full force and effect at all times thereafter a waiver of subrogation from its insurers concerning the property insurance maintained by it for the Premises. This section shall not apply to claims for personal injury or wrongful death.

G. Coverage Adjustments. Should Tenant elect to renew this Lease, Landlord and Tenant shall meet on the business day closest to every fifth (5<sup>th</sup>) anniversary of the Lease Commencement Date to revise the amounts of insurance coverage set forth under this



Section. The parties agree that any revision to the amounts of coverage set forth in this Section shall reflect the standard and customary insurance coverage for a facility similar in size and operation to the building on the Premises.

H. General Conditions. The insurance provided by Tenant shall apply on a primary basis. Any insurance, or self-insurance, maintained by Landlord shall be excess of, and shall not contribute with, the insurance provided by Tenant.

Tenant shall pay on behalf of Landlord or Landlord's members, officials, officers and employees any deductible or self insured retention applicable to a claim against Landlord or Landlord's elected and appointed officials, officers, employees and agents, except when caused by the sole negligence of Landlord or sole negligence of Landlord's elected or appointed officials, officers, employees or agents. Tenant shall be solely responsible for the risk of loss to and maintaining insurance for any and all real property, equipment or personal property belonging Tenant.

Compliance with these insurance requirements shall not limit the liability of Tenant. Any remedy provided to Landlord by the insurance provided by Tenant shall be in addition to and not in lieu of any other remedy (including, but not limited to, as an indemnitee of Tenant) available to Landlord under this Agreement or otherwise.

If Tenant shall fail to comply with these insurance requirements, Landlord shall have the right, but not the obligation, in addition to all other rights and remedies available to Landlord at law, in equity, and under this Agreement, to procure, at Tenant's sole cost and expense, the insurance required by this Agreement.

Neither approval nor failure to disapprove insurance furnished by Tenant shall relieve Tenant from responsibility to provide insurance as required by this Agreement.

Certificates of Insurance must be completed as follows:

1. Certificate Holder

City of Orlando, Florida  
Attn: Real Estate Manager  
400 S. Orange Avenue  
Orlando, FL 32801

2. Additional Insured for General Liability

City of Orlando, Florida and its members, elected or appointed officials, officers and employees

**10. Indemnification and Hold Harmless.**

A. Tenant hereby agrees to indemnify, defend and hold harmless without limit Landlord, and its elected and appointed officials, officers, agents and employees, from and against any and all liability, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and cost of actions, including reasonable attorney's fees for trial and on

appeal, of any kind and nature arising from, growing out of, or in any way connected with the operation of the bank, any renovation of the building, installation of any improvements by Tenant or at the expense of Tenant, or any breach by Tenant in the performance of Tenant's obligations under this Lease, caused by any act or omission of Tenant, its agents, servants, employees or anyone for whom Tenant may be liable, except (a) to the extent arising out of the sole negligence or willful misconduct of Landlord, or any of Landlord's agents, servants or employees and/or (b) to the extent caused by use of the Premises by visitors of the Beardall Senior Center.

As a material condition of this Lease, indemnity and defense of Landlord shall include indemnity and defense for all claims made alleging negligence or any other basis of liability against Landlord in any way connected with the activities of Tenant, without regard to allegations made or not made against Tenant.

## **11. Default**

A. Tenant Events of Default. The occurrence of one or more of the following by Tenant shall constitute a material event of default in this Agreement:

- (1) Failure to pay any Base Rent within ten (10) days after Tenant's receipt of notice from Landlord of such failure to pay; provided, Landlord shall not be required to give such notice more than once during any twelve (12)-month period. In all other cases after Landlord has already given such notice once during a twelve (12)-month period, Tenant's failure to pay any Base Rent within ten (10) days of its due date shall constitute an event of default hereunder;
- (2) Failure to pay any Additional Rent, within ten (10) days after written notice that it is due;
- (3) Failure to perform any other covenant contained herein on its part to be observed, for thirty (30) days after receipt of written notice from Landlord to Tenant of such breach; provided, however, that if the nature of Tenant's noncompliance is such that more than thirty (30) days are reasonably required for its cure, Tenant shall not be deemed to be in default if Tenant immediately after receipt of notice commences such cure and thereafter diligently pursues such cure to completion, so long as the cure is completed within ninety (90) days after transmittal of the notice of default;
- (4) Failure to maintain the insurance required in this Agreement continuously and uninterrupted throughout the term and any renewal term. Any lapse of insurance coverage shall authorize Landlord immediately and without notice to terminate this Agreement;
- (5) Becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (except, in the case of petition filed against Tenant and the same is dismissed within sixty (60) days); (ii) having a trustee or receiver appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this



Agreement, where possession is not restored to Tenant within sixty (60) days; or (iii) suffering an attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of its interest in this Agreement, where such seizure is not discharged within sixty (60) days.

B. Default Remedies against Tenant. Upon the occurrence of an event of default as described in Section 11.A, above, provided Tenant does not cure said default within the period of time allowed for cure as set forth above, if any, Landlord shall have the option to do and perform any one or more of the following in addition to, and not in limitation of, any other remedy or right permitted it by law or by this Lease:

(i) Terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord; notwithstanding the foregoing, no lease termination under this Section 11.B shall be effective until the date which is ten (10) days after the expiration of the notice period required under Federal law for the notices which Tenant must give to its customers prior to the closing of its business on the Premises; and/or

(ii) Declare the entire amount of Rent (including Additional Rent) calculated on the rate to be paid by Tenant in accordance with the terms of this Lease, and other sums which would become due and payable during the remainder of the Lease Term to be due and payable immediately, reduced to its current value, in which event, Tenant agrees to pay the same at once, together with all Rent (including Additional Rent) then due, at Landlord's address as provided herein; provided, however, that such payment shall not constitute a penalty or forfeiture or liquidated damages, but shall merely constitute payment in advance of the Rent for the remainder of the Lease Term. Upon making such payment, Tenant shall receive from Landlord all rents received by Landlord from other tenants on account of the Premises during the Lease Term, provided that the monies to which Tenant shall so become entitled shall in no event exceed the entire amount actually paid by Tenant to Landlord pursuant to the preceding sentence, less all costs, expenses and reasonable attorneys' fees of Landlord incurred in connection with the termination of this Lease, eviction of Tenant and reletting of the Premises. Notwithstanding the foregoing, if the default for which a remedy is sought is for any reason other than the failure to pay Rent in a timely manner and should Tenant continue to pay the Rent (including Additional Rent) as it comes due, Tenant shall not be required to prepay the Rent as provided herein, but should Tenant fail to pay any Rent on a timely basis after such default, Tenant shall prepay the Rent as required in this section. The acceptance of such payment by Landlord shall not constitute a waiver of any failure of Tenant thereafter occurring to comply with any term, provision, condition or covenant of this Lease; and/or

(iii) Without terminating the Lease, enter the Premises as the agent of Tenant, upon entry of an order of court appointing Landlord as receiver, to which Tenant hereby irrevocably consents, should Landlord in good faith allege there is a default in performance of the Lease, which Tenant has not cured during any grace period otherwise provided in this Lease, without being liable to prosecution of any claim for damages therefor, and relet the Premises as the agent of Tenant without advertisement and by private negotiations and for any term Landlord deems proper, and receive the rent therefor, and Tenant shall pay Landlord any deficiency that may arise by reason of such reletting on demand, but Tenant shall not be entitled to any surplus



so arising. Tenant shall reimburse Landlord for all costs of reletting the Premises including but not limited to advertising expenses and commissions; and/or

(iv) As agent of Tenant, do whatever Tenant is obligated to do by the provisions of this Lease and may enter the Premises in order to accomplish this purpose. Tenant agrees to reimburse Landlord immediately upon demand for any expenses which Landlord may incur in thus effecting compliance with this Lease on behalf of Tenant, and Tenant further agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by the negligence of Landlord or otherwise.

(v) Pursuit by Landlord of any of the foregoing remedies shall not preclude the pursuit of general or special damages incurred, or of any of the other remedies herein provided or any other remedies provided by law.

(vi) No act or thing done by Landlord or Landlord's agents during the Lease Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept a surrender of the Premises shall be valid unless the same be made in writing and executed by Landlord. Neither the mention in this Lease of any particular remedy, nor the exercise by Landlord of any particular remedy hereunder, at law or in equity, shall preclude Landlord from any other remedy Landlord might have under this Lease, at law or in equity. Any waiver of or redress for any violation of any covenant or condition contained in this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant in this Lease shall not be deemed a waiver of such breach. Landlord may elect to accept less than the full amount then due from Tenant hereunder; however, no payment by Tenant or receipt by Landlord of such lesser amount shall be deemed to be other than on payment on account, and no restrictive endorsement or statement on any check or payment shall be deemed to alter the express provisions of this Lease, nor constitute an accord and satisfaction. Landlord may accept less than the full amount then due from Tenant without prejudice to Landlord's right to recover the balance of the full amount then due, or to pursue any other remedies then available to Landlord under this Lease or applicable law. In all events, including but not limited to Landlord's acceptance of a partial payment from Tenant, any payment accepted by Landlord from Tenant shall be applied first to retire the oldest receivables due from Tenant hereunder, then to any current rental or other payment then due hereunder, and the balance, if any, will be applied to any rental or other payment which will become due from Tenant hereunder. In the event of any default by Tenant under the terms and provisions of this Lease, Landlord, in addition to but not in lieu of or in limitation of, any other right or remedy provided to Landlord under the terms of this Lease or otherwise, shall have the right to be immediately repaid by Tenant the amount of all sums expended by Landlord and not repaid by Tenant in connection with preparing or improving the Premises to Tenant's specifications and any and all costs and expenses incurred in renovating or altering space to make it suitable for reletting.

(vii) In any event, when exercising any remedies under this Section 11.B, Landlord shall mitigate its damages.



(viii) Notwithstanding anything herein to the contrary, no termination or eviction under this Section 11.B shall be effective prior to the date which is ten (10) days after the expiration of the notice period required under federal law for the notices which Tenant must give to its customers prior to the closing of its business on the Premises.

(ix) Notwithstanding anything herein to the contrary, any exercise of remedies by Landlord under this Section 11.B shall be subject to any state and/or federal banking regulations governing the Tenant and Tenant's operation at the Premises.

C. Landlord Events of Default. It shall be an event of default by Landlord should Landlord fail to perform any covenant contained herein on its part to be observed, for fifteen (15) days after receipt of written notice from Tenant of such breach; provided, however, that if the nature of Landlord's noncompliance is such that more than fifteen (15) days are reasonably required for its cure, Landlord shall not be deemed to be in default if Landlord commenced such cure immediately and thereafter diligently pursues such cure to completion within forty-five (45) days after transmittal of the notice of default.

D. Default Remedies against Landlord. In the event Landlord fails to cure a default within any applicable time period, without further notice Tenant may elect to (i) terminate this Agreement and vacate the Premises, which shall be completed in the same manner as if the term of this Agreement had expired on the date of Tenant's notice of termination provided to Landlord, with the same rights of reimbursement for improvements made within the first five (5) years of the initial term of this Lease as described in Section 3.D. hereof; or (ii) after written demand and failure of Landlord to perform Landlord's maintenance obligations within thirty (30) days of receipt of such demand, thereafter Tenant may perform Landlord's maintenance obligations under this Lease for and on behalf of Landlord, the reasonable cost of which shall be first approved by Landlord, which may thereafter be offset against Rent or any other charges which may be due or become due thereafter (provided, in an event of emergency, Tenant shall immediately, after notice to Landlord and Landlord's failure to perform, perform Landlord's maintenance obligation, without waiting for the expiration of the above-referenced thirty (30)-day period); or (iii) sue to enforce specific performance of Landlord's obligations hereunder. No other remedies shall be available against Landlord. No failure by Tenant to insist upon the strict performance of any covenant, agreement, term or condition of this Lease on the part of Landlord to be performed, or to exercise any permitted right or remedy consequent upon a default therein, and no acceptance of Landlord's performance or payment of amounts due (by virtue of application against Rent payments) after such default, shall constitute a waiver by Tenant of such default or of such covenant, agreement, term or condition, or any right or remedy of Tenant with respect thereto.

## **12. Alterations, Additions, Improvements, and Fixtures**

A. Consent of Landlord. Tenant may not make any exterior or structural alterations to the Premises without Landlord's prior written consent, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the consent authorized herein shall only pertain to the Landlord in its capacity as owner of the Premises and not in its capacity as a regulatory body. Notwithstanding any other provision of this Lease, Tenant acknowledges that it must still comply with all regulatory requirements of the City in the uniform enforcement of all relevant zoning, building codes and other applicable rules and regulations with regard to the



Premises and the use thereof.

B. Property of Landlord. All alterations, additions, or improvements made by Tenant will become Landlord's property when this Lease terminates, but Tenant must promptly remove, if Landlord so elects, all personal property placed in or on the Premises by Tenant, and Tenant must repair any damage caused by the removal.

C. Trade Fixtures & Furniture. Tenant has the right at all times to erect or install furniture and fixtures, as long as Tenant complies with all applicable governmental laws, ordinances, and regulations. Tenant may remove such items when this Lease terminates, if Tenant is not in default at that time and the fixtures can be removed without structural damage to the Premises. Before this Lease terminates, Tenant must repair any damage caused by removing any fixtures. Any furniture or fixtures not removed by Tenant when this Lease terminates are considered abandoned by Tenant and automatically become Landlord's property, at Landlord's election.

D. Improvements. Tenant shall not construct any exterior or structural improvements or additions to the Premises without the prior written consent of Landlord, which consent shall not be unreasonably withheld. In the event Tenant desires to construct any exterior or structural improvements or additions to the Premises, Tenant may improve the Premises only in accordance with plans and specifications approved in advance by Landlord ("Improvements"), which approval shall not be unreasonably withheld. Such Improvements shall also include any fixtures necessary for the operation of the bank that are capable of being removed from the Premises without permanent damage to the Premises. Tenant shall be solely responsible for the payment of all design and construction costs, including permit and impact fees, associated with any Improvements. Upon completion of any Improvements, Tenant shall furnish Landlord with two (2) sets of As-Built Drawings of the Improvements. Should any changes in the Improvements have the effect of reducing the square footage of the Premises, there shall not be a reduction in the Rent as a result thereof.

E. Plans and Specifications. In the event Tenant desires to construct any Improvements, Tenant shall submit two (2) sets of plans and specifications of any proposed Improvements to Landlord's Real Estate Manager. Landlord shall have twenty business (20) days from its receipt of the plans and specifications to either approve, deny or request changes to the plans, and its failure to do so within such time period shall constitute its approval of the plans. Landlord's review (and approval or denial) of plans and specifications pursuant to this section, is based upon its ownership of the Premises and this Lease, and not upon Landlord's functioning as a governmental or regulatory body. In addition to any of the requirements of the Lease, Tenant shall submit all required documents, drawings, plans, specifications, etc., to, and obtain all required license(s), permit(s), and approval(s), from, the appropriate governmental or regulatory authority having jurisdiction hereof, including, but not limited to the City of Orlando acting in its governmental or regulatory capacity, which are necessary for the construction and operation of the bank on the Premises.

**13. Applications and Permits.** Landlord shall, upon request by Tenant, join in and consent to any and all applications, petitions, and requests made to governmental, public and



environmental agencies for zoning, rezoning, building permits, curb cuts, and other approvals, including, but not limited to, public works and similar agreements required to be signed by Landlord, provided only that Tenant shall save Landlord harmless from all costs in connection therewith.

**14. Damage or Destruction of Premises.** If the Premises or any portion thereof is destroyed or damaged so as to materially hinder effective use of the Premises for the Intended Use, as reasonably determined by Tenant, Tenant may elect to either (1) repair or reconstruct the Premises, applying any insurance proceeds thereto, or (2) terminate this Lease by giving thirty (30) days written notice to Landlord, in which event Tenant shall direct its insurer to pay over to Landlord the full amount which should be paid under the insurance Tenant is required to maintain under this Lease, for losses to the Premises, if any.

In the event that Tenant elects to terminate the Lease, it shall promptly remove its personal property, furniture and equipment from the Premises. Regardless of whether the damage or destruction is caused in whole or part by Tenant, its officers, employees, invitees or anyone for whom it may be liable, if Tenant chooses not to repair or reconstruct the bank, then Landlord, as a named insured, shall retain any insurance proceeds payable as a result of such damage or destruction under policies required by Section 9 of this Lease. Tenant shall be entitled to the reimbursement of any prepaid Rent on a monthly pro-rata basis.

Except to the extent as may be provided above, Landlord shall have no obligation to reconstruct damage to the Premises that materially hinders effective use of the Premises as a bank. If Tenant exercises its option to repair or reconstruct the Premises, it shall do so in a manner that restores the Premises to its structural integrity and capacity prior to such damage or destruction; provided, that in no event, shall Tenant be required to spend in excess of the insurance proceeds received by Tenant for the repair and reconstruction of the Premises, so long as Tenant fulfills all of its insurance obligations to the strict extent required under this Lease. Upon such repair or reconstruction of the Premises by Tenant, Tenant shall be entitled to an abatement of the Rent due during the reconstruction period not to exceed one hundred eighty (180) calendar days. In the event of such repair or reconstruction, Landlord shall retain title to the Premises as repaired or reconstructed.

**15. Eminent Domain; Interruption to Possession.** In the event all or substantially all of the Premises is taken by eminent domain, this Lease shall automatically terminate as of the date title to the Premises vests in the condemning authority, subject to any extension necessary to comply with the notice period required under federal law for the notices which Tenant must give to its customers prior to the closing of its business on the Premises. Tenant shall not be entitled to any portion of the award paid for the taking and Landlord shall receive the full amount of such award. Tenant hereby expressly waives any right or claim to any portion thereof and all damages, whether awarded as compensation for diminution in value of the improvements or Premises, shall belong to Landlord. Landlord will inform Tenant of the commencement of any eminent domain proceedings by any governmental authority.

In the event that less than substantially all of the Premises is taken, should Landlord elect to use any of the eminent domain proceeds to repair the Premises, this Lease shall continue in



effect, so long as Tenant can continue to use the Premises for the Intended Use substantially in the same manner as prior to the taking.

Should the Lease continue in effect, the parties shall agree to an appropriate reduction in the Base Rent, failing which the new Base Rent shall be determined by a commercial MAI appraiser selected by the parties. In the event the parties cannot agree on the appraiser, each shall select an appraiser to determine the Base Rent. In the event they cannot agree, the appraisers shall select a third appraiser who shall determine the Base Rent taking into consideration the other appraisals already completed, in addition to any other work which the third appraiser deems to be necessary. Each party shall pay for its own appraiser and share equally in the cost of the third.

Should the conditions exist which allow for termination under any of the foregoing circumstances, either party may terminate the Lease by written notice delivered to the other no later than ninety (90) days after title to any part of the Premises transfers to the condemning authority; otherwise, this Lease shall continue in full force and effect for the remainder of the term. Until termination, all terms and conditions of the Lease shall remain in full force and effect, without adjustment.

Nothing herein shall prohibit Tenant from making any separate claim for moving expenses, for loss of business or for trade fixtures and removal of equipment installed by Tenant.

**16. Maintenance and Repairs.** Except for the roof, Tenant shall be solely responsible for the repair and maintenance of the Premises and all improvements location thereon, including but not limited to grounds, parking lot, landscaping, interior and exterior of the building, exterior walls, roof, foundation, plumbing, heating, ventilation and air conditioning systems, electrical systems, fire alarm system, doors, windows, plate glass, lighting, fixtures and carpet. Tenant shall maintain the Premises and such items in a good, safe and sanitary condition throughout the term of the Lease, normal wear and tear excepted. Tenant shall replace the HVAC system only with a brand and model as Landlord approves in its reasonable discretion. Landlord acknowledges that certain significant repairs and replacements to the Premises (the useful life of which may extend beyond the term of the Lease) which would otherwise be Tenant's responsibility hereunder may arise during the last two (2) years of the term. Landlord acknowledges and agrees that, except for any conditions which might adversely affect safety or health. Tenant shall not be liable for deferring any significant (as determined in Landlord's reasonable discretion) repairs or replacements during the last two (2) years of the term, which would have a useful life extending beyond termination of this Lease.

Tenant shall establish and perform preventative routine maintenance programs on the building systems in accordance with manufacturers' recommendations. In addition, Tenant shall install and maintain fire extinguishers, sprinkler systems and other fire protection devices as may be required from time to time by any agency having jurisdiction of such matters, or the insurance underwriter(s) insuring the building.

Landlord shall be responsible for the maintenance and repair of the roof. In the event that the roof should develop any leaks during the term, Landlord, in its absolute discretion, shall make the determination of the method by which any leakage issues will be remedied, whether by



repair, patch or replacement, so long as all roof leaks are timely addressed as and when any leaks may occur.

**17. Inspections.** Upon twenty-four (24) hours prior notice, the Premises may be inspected at any time and from time to time by an authorized representative of Landlord or its designee, or by any other agency having responsibility for inspections of such operations. Should Landlord determine that Tenant is not fulfilling its responsibilities under the Lease, Landlord shall provide written notice of the particulars required to bring Tenant into full compliance with the Lease; however, Landlord's failure to inspect and provide such notice shall not excuse Tenant's obligations to otherwise comply with all terms and conditions of the Lease. Tenant shall take such actions as necessary to come into compliance with the Lease within thirty (30) days of its receipt of the written deficiencies.

**18. Signage.** Tenant has installed two (2) signs on the façade of the building, which have been approved by Landlord. All signage is subject to the sign regulations of Landlord and the Downtown Development Board (DDB) (if applicable). Since the Premises is public property owned by Landlord, political campaign signs are prohibited on the Premises pursuant to Section 64.252 of the Land Development Code. Landlord shall be responsible for any signage related to use of parking spaces by visitors to the Beardall Senior Center, subject to approval by Tenant, which approval will not be unreasonably withheld or delayed.

**19. Security Deposit.** Prior to or contemporaneously with the execution of this Lease, Tenant has deposited with Landlord the total sum of Eleven Thousand Two Hundred Eighty-nine and 58/100 Dollars (\$11,289.58), consisting of Eight Thousand One Hundred Twenty-Eight and 50/100 Dollars (\$8,128.50) deposited by Tenant and held by Landlord as the security deposit under the Old Lease, and an additional Three Thousand One Hundred Sixty-One and 08/100 Dollars (\$3,161.08) deposited by Tenant upon execution of this Lease, receipt of which is hereby acknowledged by Landlord, as security for the performance by Tenant of all obligations on the part of Tenant under this Lease, including the failure to pay Rent and for the cost of any trash removal, cleaning, repair or correction of damage in excess of normal wear and tear.

Landlord shall have the right from time to time without prejudice to any other remedy Landlord may have on account thereof to apply such deposit, or any part thereof, to Landlord's damages arising from any default on the part of Tenant. Should the entire security deposit, or any portion thereof, be applied by Landlord in accordance with the provisions hereof, Tenant shall forthwith upon demand pay to Landlord an amount sufficient to restore the security deposit to the required amount specified herein. Landlord shall have the same rights and remedies for nonpayment by Tenant of any amounts due on account of the security deposit, as Landlord has hereunder for the failure of Tenant to pay Rent.

Provided Tenant is not then in default, Landlord shall have thirty (30) calendar days to return the deposit, or so much thereof as shall not have been previously applied in accordance with the terms of this section, on the expiration or earlier termination of the term of this Lease and performance by Tenant of all of the obligations of Tenant to be performed hereunder, including, without limitation, the surrender of possession of the Premises hereof and the payment of all amounts to be paid by Tenant. However, if the determination of any amount to be paid by



Tenant to Landlord, or if Tenant's pro rata share of real estate taxes as set forth in Section 7 hereof, or the like, is not made at the expiration or earlier termination of the Lease, Landlord may retain such portion of the security deposit as Landlord believes in the exercise of Landlord's good faith judgment is an appropriate reserve against such future liability of Tenant and return only the balance of such deposit pending the final determination and payment of all such amounts by Tenant to Landlord.

While Landlord holds such deposit, Landlord shall have no obligation to pay interest thereon, unless required to do so by applicable law and shall have the right to commingle the deposit with Landlord's other funds. If Landlord conveys Landlord's interest under this Lease, the deposit, or any part thereof not previously applied, may be turned over by Landlord to Landlord's grantee, and if so turned over, Tenant agrees to look solely to such grantee for proper application of the deposit in accordance with the terms of this Section and the return thereof in accordance herewith.

**20. Title; Quiet Enjoyment.** Landlord represents and warrants that Landlord is well seized of good and marketable fee simple title to the Premises subject to no liens or encumbrances except for those, if any, specifically referred to in this Lease and that Landlord has full right and authority, to enter into this Lease. Landlord covenants and agrees that Tenant shall and may peacefully and quietly hold and enjoy the Premises throughout the term hereof without hindrance by Landlord or any other person claiming by, through or under Landlord.

**21. Holding Over.** Tenant shall not use or remain in possession of the Premises after the termination of this Lease. Any holding over or continued use and/or occupancy of the Premises by Lessee after the expiration or any termination of the term of this Lease, without consent from Landlord, shall not constitute a tenancy-at-will in Tenant, but Tenant shall be a tenant-at-sufferance, at which time Landlord may demand Tenant pay two (2) times the Rent for the period Tenant remains in possession after expiration of the Term or any renewal thereof, prorated on a daily basis.

**22. Surrender of Premises.** Upon termination of this Agreement, Tenant shall return all keys and surrender possession of the Premises in neat and clean condition and in good order, condition and repair, in the same condition it was in on the Commencement Date of the Old Lease, reasonable wear and tear excepted.

**23. Hazardous Substances.**

A. Premises Prohibition. Tenant shall not bring, deposit, or allow to be brought or deposited, in or upon the Premises any pollutant or harmful substance, except for substances ordinarily used in the care and maintenance of the Premises and in compliance with all other applicable provisions of this Lease.

B. Tenant Covenants. Subject to the foregoing, Tenant covenants that it will not use the Premises for any of the following: (A) any generation, treatment, recycling, storage or disposal of any Hazardous Substances (as hereinafter defined); (B) any underground storage tank, surface impoundment, lagoon or other containment facility for the temporary or permanent storage, treatment or disposal of Hazardous Substances; (C) any landfill or solid waste disposal



area; and (D) release of Hazardous Substances from the Premises to the environment in forms or quantity requiring remedial action under environmental laws. In addition, Tenant covenants that it will not allow any violations of environmental laws on the Premises, regardless of cause. Tenant's obligation under this Lease in no way extends to any environmental condition of the Premises existing prior to the Commencement Date of this Lease (the parties hereby acknowledging that the provisions of the Old Lease shall control with respect to environmental conditions of the Premises existing prior to the Commencement Date of this Lease and that Tenant's liability under the Old Lease for environmental conditions shall continue in the same manner and to the same extent as if the Old Lease had been extended to expire on the same date as this Lease). For purposes hereof, "Hazardous Substances" shall mean any hazardous, toxic or radioactive substance, material, matter or waste which is or becomes regulated by any environmental regulation promulgated by applicable law, and shall include asbestos, petroleum products and the terms "Hazardous Substance" and "Hazardous Waste" as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") as amended, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act ("RCA"), as amended, 42 U.S.C. §6901 et seq., and all environmental protection statutes of the state and municipality in which the Premises are located.

**24. Notices.** All notices, requests, demands, and other communications required or given hereunder shall be in writing and shall be deemed given if personally delivered or sent by certified mail, return receipt requested, to the following addresses:

If to the CITY, to:	Real Estate Manager City of Orlando 4 <sup>th</sup> Floor, 400 S. Orange Avenue Orlando, Florida 32801
with a copy to:	City Attorney City of Orlando 400 S. Orange Avenue Orlando, Florida 32801
If to Tenant, to:	Corporate Real Estate Department M & I Marshall & Ilsley Bank 770 N. Water Street Milwaukee, Wisconsin 53202
with a copy to:	Godfrey & Kahn, S.C. Attn: Jennifer L. Vallier 780 N. Water Street Milwaukee, Wisconsin 53202

**25. Radon.** Radon is a naturally occurring radioactive gas that, when accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county public health unit.

## 26. General Conditions.

A. Time is of the Essence. The parties agree that time is of the essence in the fulfillment of all obligations described in this Agreement.

B. Estoppel Certificates. At any time and from time to time, either party shall, upon twenty (20) days' prior written request to the other, deliver to the requesting party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if modified, in effect as modified and setting forth the modifications and the dates thereof), the dates to which Base Rent and other charges have been paid hereunder, and stating whether or not, to the knowledge of the party requesting such certificate, the requesting party is in default in performance of any covenant, agreement, or condition in this Lease and, if so, specifying each such default and whether there are any counterclaims.

C. Relationship of the Parties. The relationship between the parties hereto is solely that of Landlord and Tenant and nothing contained herein shall constitute or be construed as establishing any other relationship, including, without limitation, the relationship of principal and agent, employer and employee or parties engaged in a partnership or joint venture. Without limiting the foregoing, it is specifically understood that neither party is the agent of the other and neither is in any way empowered to bind the other or to use the name of the other in connection with the maintenance or operation of the Premises, except as otherwise specifically provided herein

D. Waiver. Failure on the part of Landlord or Tenant to complain of any act or failure to act on the part of the other shall never be a waiver of any respective rights hereunder; however, the foregoing shall not apply to provisions of this Lease, where a right of a party is dependent upon notice to be given within a specified period. Further, no waiver at any time of any of the provisions hereof by Landlord or Tenant shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. No payment by Tenant or acceptance by Landlord, of a lesser amount than shall be due from Tenant to Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant.

E. No Liens. Tenant will not suffer or through its actions or by anyone under its control or supervision, cause to be filed upon the Premises any lien or encumbrance of any kind. In the event any lien is filed, Tenant shall cause such lien to be discharged within ten (10) days after written notice to do so from Landlord.

F. Discrimination Not Permitted. In its occupancy and use of the Premises, Tenant shall not discriminate against any person on the basis of race, color, national origin, age, disability or other protected class as may be provided by law from time to time. This covenant may be enforced by termination of the Lease, injunction, and any other remedy available at law to Landlord.



G. Entire Agreement. This Lease constitutes the entire agreement between the parties. This Lease supersedes all prior negotiations, discussions, statements and agreements between Landlord and Tenant with respect to the Premises and Tenant's use and occupancy thereof. No member, officer, employee or agent of Landlord or Tenant has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Lease. No modification of or amendment to this Lease shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both Landlord and Tenant and incorporated in and by reference made a part hereof.

H. Severability. If any provision of this Lease, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, then any remaining portion of such provision and all other provisions of this Lease shall survive and be applied, and any invalid or unenforceable portion shall be construed or reformed to preserve as much of the original words, terms, purpose and intent as shall be permitted by law.

I. Counterparts. This Lease may be executed in counterparts, but each of which shall be deemed an original of equal dignity with the others and which are deemed one and the same instrument as the other.

J. Self-Help. Landlord has the right to pay such sums or to do any act which may be necessary or appropriate by reason of the failure or neglect of Tenant to perform any of the provisions of this Agreement, and Tenant agrees to pay Landlord upon demand all such sums, with interest at the highest rate allowed by law from the date payment is made by Landlord.

K. Interpretation. Should any provision of this Lease require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

L. Venue and Applicable State Law. This Agreement and all terms hereunder shall be construed consistent with the laws of the State of Florida. Any dispute resulting in litigation hereunder shall be resolved in court proceedings instituted in the courts of Orange County, Florida and in no other jurisdiction.

M. No Third Party Beneficiary. Nothing in this Lease, whether express or implied, is intended to confer upon any party other than the parties hereto and their respective successors and assigns, any right or interest whatsoever. No party other than the parties hereto is entitled to rely in any way upon the warranties, representations, obligations indemnities or limitations of liability whatsoever in this Lease.

N. Rights Cumulative. All rights, powers and privileges conferred by this Lease upon Landlord and Tenant shall be cumulative of, but not restricted to, those given by law.



O. Tenant Authority. As to Tenant, the undersigned hereby warrants and certifies that he/she is authorized to enter into this Agreement and to execute same on behalf of Tenant as the act of Tenant.

P. Section Headings. The brief headings or title preceding each section herein is merely for purposes of section identification, convenience and ease of reference, and shall be completely disregarded in the construction of this Lease.

Q. Binding Effect. Each of the terms and conditions of this Lease shall apply, extend to, be binding upon, and inure to the benefit or detriment of the parties hereto, to the successors and assigns of Landlord, and to the extent that Landlord has consented to a transfer or assignment of this Lease (if such consent is required) to the successors and assigns of Tenant, and to any leasehold mortgagee and its successors and assigns. Subject to the foregoing, whenever a reference to the parties hereto is made, such reference shall be deemed to include the successors and assigns of said party, the same as if in each case expressed.

R. Broker. Landlord represents and warrants to Tenant that Landlord has not engaged any brokers, finders or similar agents to whom a commission is owed for the transactions contemplated in this Lease. To the extent that any party claims to be owed a commission from the transactions contemplated hereunder on behalf of Landlord, Landlord shall be responsible for paying any such commission. Tenant represents and warrants to Landlord that Tenant has not engaged any brokers, finders or similar agents to whom a commission is owed for the transactions contemplated in this Lease. To the extent that any party claims to be owed a commission from the transactions contemplated hereunder on behalf of Tenant, Tenant shall be responsible for paying any such commission.

S. Jury Waiver; Counterclaims. Landlord and Tenant waive trial by jury in any action, proceeding, or counterclaim involving any matter whatsoever arising out of or in any way connected with this Lease. Tenant further waives the right to interpose any permissive counterclaim of any nature in any action to obtain possession of the Premises.

T. Recordation. Tenant shall not record this Lease or any memorandum, "short form", or other notice of this Lease without the prior written consent of Landlord.

U. Landlord's Sovereign Immunity. Notwithstanding anything to the contrary otherwise contained in this Agreement, Landlord's limits of liability shall be the limiting amounts set forth in Section 768.28, *Florida Statutes*, and nothing shall be construed to extend the liabilities of Landlord beyond that provided in Section 768.28, *Florida Statutes*. Nothing herein is intended to serve as a waiver of sovereign immunity by Landlord.

In Witness Whereof the parties have executed this Agreement on the date set forth as indicated.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES OF  
PARTIES APPEAR ON FOLLOWING PAGES.)**



CITY OF ORLANDO, FLORIDA

By: 

Print Name: Antonio L. Ortiz

Mayor/Pro Tem

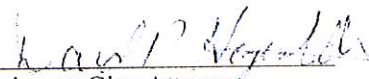
Attest:



Alana C. Brenner,  
City Clerk

APPROVED AS TO FORM AND LEGALITY  
for the use and reliance of the  
City of Orlando, Florida, only.

October 4, 2010.

  
Assistant City Attorney

M & I MARSHALL & ILSLEY BANK, a  
Wisconsin banking corporation

By: William O. Zedler  
Name: William O. Zedler  
Title: SVP.

Witnesses:  
(1) Sign: Steven Hedera  
Print Name: STEVEN J. HEDERA

(2) Sign: Jerry J. Fautzer  
Print Name: JERRY J. FAUTZER

STATE OF FLORIDA  
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 29 day of September, 2010, by William Zedler, the Senior VP of M & I Marshall and Ilsley Bank, a Wisconsin banking corporation, on behalf of the corporation. He/she is personally known to me or has produced a valid Driver's License as identification.

Jeani Myleniwo  
Notary Public:  
Commission Expires: 9-2-12  
(SEAL)



## **EXHIBIT A**

### **Leased Premises**

**Lots 4 and 5 and the South 25.00 feet of Lot 6 (LESS: Portion taken for State Road 527 right-of-way) and that part of Lot 3, beginning at the Southeast Corner of said Lot 3 and run Northerly along East line of Lot 3 a distance of 125.00 feet to the Northeast corner of said Lot 3; thence Westerly along North line of Lot 3 a distance of 13.50 feet; thence South 4 degrees 21 minutes 34 seconds East 120.30 feet along a line 50.00 feet Easterly of the centerline of Sate Road 527 to a point 5.00 feet North of the South line of said Lot 3; thence Southeasterly to the point of Beginning; all of O. T. WALLACE SUBDIVISION, according to the Plat thereof, as recorded in Plat Book J, Page 14, Public Records of Orange County, Florida; AND**

**From the Southeast corner of Lot 5, O. T. WALLACE SUBDIVISION, according to the Plat thereof, as recorded in Plat Book J, Page 14, Public Records of Orange County, Florida, run thence North 00 degrees 30 minutes 00 seconds West 5.00 feet to the Point of Beginning; run thence North 89 degrees 37 minutes 50 seconds East 30.00 feet; run thence North 00 degrees 30 minutes 00 seconds West 145.00 feet; run thence South 89 degrees 37 minutes 50 seconds West 30.00 feet; run thence South 00 degrees 30 minutes 00 seconds East 145.00 feet to the Point of Beginning; all lying and situate in the O. T. WALLACE SUBDIVISION, according to the Plat thereof, as recorded in Plat Book J, Page 14, Public Records of Orange County, Florida, the same formerly constituting a portion of Woodruff Street which was vacated, closed and abandoned pursuant to City of Orlando Ordinance adopted August 15, 1956, and recorded August 3, 1977 in Official Record Book 2804, Page 1793, Public Records of Orange County, Florida.**