BRUNSWICK CITY
COMMITTEE-OF-THE-WHOLE

Agenda
FEBRUARY 13, 2017
6:45 PM

1. Motion Items

   (a) Motion to authorize the City Manager to enter into agreement(s) with Huntington National Bank as a result of the merger of First Merit Bank and Huntington Bank

2. Review Legislation

   (a) **ORD. NO. 11-17 -** An ordinance establishing Chapter 862 of the Codified Ordinances of the City of Brunswick relative to Fair Housing - **1st Reading** (To be brought from Committee-of-the-Whole, *Administration/Ken Fisher*)

3. General Discussion

4. Executive Session

   (a) Motion to go into an Executive Session for the purpose to discuss the appointment, employment, dismissal, discipline, demotion or compensation of a public employee and the sale/purchase of property.

5. Adjournment

TREASURY MANAGEMENT SERVICES AGREEMENT

This Treasury Management Services Agreement (this "**Agreement**") is entered into by and between The Huntington National Bank ("**Bank**," "**we**," "**our**," or "**us**"), a national banking association with its main office located at Huntington Center, 41 South High Street, Columbus, Ohio 43287, and each Company as identified on the Authorization and Agreement for Treasury Management Services ("**Authorization**") and governs the treasury management services described in Parts II through XII below (each a "**Service**"; collectively, the "**Services**") to be provided by us. The terms "you" and "your" refer to each Company identified on the Authorization.

You may be required to sign additional agreements or complete other Implementation Documentation before certain Services will be made available to you. Unless otherwise expressly provided, to the extent any terms or provisions of this Agreement directly conflict with the terms or provisions of any such additional agreements or Implementation Documentation, the terms and provisions of those additional agreements or Implementation Documentation shall control with respect to the Services they cover. Unless otherwise expressly provided, to the extent any provisions of the General Terms and Conditions set forth in Part I directly conflict with any other Part, the provisions of such other Part shall control with respect to the Services described in that Part. You must maintain and designate checking/demand deposit accounts with us (each, an "**Account**"), which we will use for debiting or crediting with respect to all payments, debits, and deposits and related adjustments and charges. Except as otherwise provided, you must have collected and available funds on deposit in your Account(s) sufficient to cover your obligations under this Agreement.

PART I: GENERAL TERMS AND CONDITIONS

Section 1. Our Services. We will provide you with each of the Services that you choose to use on the Authorization and any addendum or amendment thereto, or any subsequent Authorization, subject to the terms and conditions of this Agreement. We may offer additional services to you, which additional services may be represented by separately executed agreements that may incorporate the terms and conditions of this Agreement. Our Agreement and Disclosure of Account Terms and Rules and Regulations governing your Accounts ("**Account Rules**") shall continue to apply. In the event of any direct conflict between this Agreement and the Account Rules, the terms of this Agreement shall govern. Capitalized terms used in this Agreement that are not defined in the text are defined in the Glossary in Part XIII.

Section 2. Fees; Funds Availability; Overdrafts. You agree to pay us the applicable fees and charges disclosed to you for use of the Services. We reserve the right to change any fees at any time. Any new fees will take effect with the next account analysis or statement period after we send notice to you that a change in fees has occurred, unless some other effective date is set forth in such notice. Unless other arrangements are made with us, including reduction in fees through account analysis and compensating balances as calculated by us, you agree that we are authorized to charge the fees and charges to any of your Account(s) when due. You shall be responsible for payment of all sales, use or excise, value added, utility or other similar taxes relating to your use of the Services. Deposits made using any of the Services are subject to our Funds Availability Schedule. With respect to any Service, we may, at our sole discretion, allow an overdraft to occur in your Account. Except as we agree or advise you otherwise in writing, you must repay us immediately, without demand, the amount of such overdraft plus any overdraft fees, charges or interest. In such cases, the fact that we previously allowed an overdraft to occur does not obligate us to do so in the future. For purposes of satisfying your payment obligations, we may consider any overdraft line of credit or other arrangement you have with us.

Section 3. Communication Methods; Online Services. You will select during the implementation process for any Service a means of communicating with us for use of that Service and for executing transactions in connection with such Service, including telephone, facsimile, email, and electronic transmission (a "**Communication Method**"). Information and instructions may be sent and received by you using such Communication Method. Certain Services may require you to use a Web Portal or may otherwise not have all Communication Methods available for their use. The terms of the agreements governing any Web Portal we provide are hereby incorporated. In the event of any direct conflict between this Agreement and agreements governing a Web Portal, the terms of the Web Portal agreement shall control. A Web Portal shall be deemed a Communication Method under this Agreement.

You are responsible for obtaining, installing, maintaining and operating all hardware, software, and internet access necessary and appropriate to access Services. You must obtain or have appropriate firewalls, anti-spyware software, anti-viral software, network security, and environmental security to prevent unauthorized access to Services through your facilities, networks, or equipment. You will be solely responsible for any loss, liability or damage relating to phishing, pharming or similar scams. You are responsible for obtaining and maintaining your communications link to Services and to ensure that your use of such communications link is in compliance with applicable requirements, including any requirements of telecommunications companies and authorities.

Section 4. Security Procedures; Your Responsibility. You agree to comply with all of our Security Procedures with respect to Services covered by this Agreement. Our Security Procedures are contained in this Agreement and in other written procedures we may provide to you, whether via a separate writing or via a Web Portal. Our Security Procedures may include the issuance of online login ids, passwords, or personal identification numbers ("**Passwords**"). You agree that your use of the Services constitutes your acceptance of the Security Procedures (including the use of Passwords) as commercially reasonable in the context of your business operations. You agree to give all of our Security Procedures the same level of confidentiality you would give to your own Security Procedures and ensure that Passwords are not used by or accessible to anyone other than those individuals to whom they were issued. Notwithstanding any Security Procedures that may from time to time be in effect for detecting errors in transactions undertaken pursuant to any of the Services, we shall have no duty to discover or report to you any such errors, and neither shall we be liable to you for the failure of such Security Procedures to detect such errors.

You agree you shall be liable for all use of the Services under this Agreement and any and all transactions made, authorized, or blocked when we receive required information or instructions to process a transaction through a Web Portal or other Communication Method using Passwords assigned to your employees, even if the person sending information or instructions (i) has exceeded his/her authority; (ii) does not have authority from you; (iii) has had his or her authority changed or revoked; or (iv) is not the same person as the employee whose Password is being used. If you permit any Affiliate or other Person to access one of our Services through any Communication Method or Password, we will not be responsible or liable for such Affiliate or Person's use or misuse of our Services or access to Accounts for which you did not authorize that Affiliate or Person to have access and you agree to be liable for any such use of the Services. We may and will treat all instructions and information received by us through this arrangement as provided by and for the benefit of you and subject to all our rights under this Agreement with respect to the pertinent Services.

Section 5. <u>Confidentiality of Passwords and Access Devices</u>. You acknowledge and agree that Passwords are strictly confidential and should only be disclosed to the Master User or Authorized Users (as defined in Part XIII) to whom they were assigned. You must instruct the Master User and all Authorized Users that they should not disclose their Passwords to anyone, including your other employees. You agree to establish and maintain procedures reasonably adapted to assure the confidentiality of the Passwords and to be solely responsible for the security of Passwords. We are not responsible or liable for any loss or damages in connection with transactions made using Services if supplied with required Passwords.

If you believe a Password for a Master User has become known by unauthorized persons (whether or not employed by you), then you must contact us immediately by telephone during a Business Day and we will, as soon as practical during such Business Day, remove the compromised information from the system, and issue new Passwords in accordance with our security requirements. You must also re-issue any Passwords for Authorized Users used to perform unauthorized transactions. If you believe a Password for an Authorized User has become known by unauthorized persons (whether or not employed by you), you must (i) immediately remove the compromised Password from access to the Services, (ii) issue a new Password to the Authorized User(s) whose Password was compromised, and (iii) immediately notify us of any unauthorized transactions. We reserve the right to change Passwords at any time upon prior notice.

Section 6. <u>Your Duty to Review and Inspect</u>. You are responsible for promptly reviewing and inspecting any and all invoices and Records (as defined in Part XIII). Except as otherwise provided in the description of a particular Service, you agree to notify us of any errors or discrepancies within thirty (30) days after the invoice or Records which contain such errors or discrepancies are received by you or otherwise made available to you (including through any Web Portal). If you fail to notify us of such error or discrepancy within thirty (30) days of the date on which such information or Records is received by you or otherwise made available to you by us (including through any Web Portal), then you shall be precluded from asserting such error or discrepancy against us. Notwithstanding the foregoing, we reserve the right to, in our sole discretion, adjust transaction records for good cause after the expiration of said thirty (30) day period.

Section 7. <u>Financial Review</u>. You shall, upon our request, promptly provide us with financial information and statements as we determine to be reasonably necessary or appropriate. Such information may include, but shall not be limited to, audited financial statements, including balance sheets, income statements, statements of retained earnings, and consolidated statements of changes in financial position, all in reasonable detail and stating in comparative form the respective figures for the corresponding date and period in the prior fiscal year and all prepared in accordance with GAAP consistently applied. Notwithstanding the foregoing, if you are a publicly traded entity, you shall, upon our request, provide or make available to us your most recent publicly available annual consolidated statements of financial condition in lieu of the aforementioned financial information.

Section 8. <u>Indemnification</u>. You will indemnify and hold us harmless from and against any and all Losses arising out of or related to any claims and demands made, asserted, or threatened by any person (whether an individual or other legal entity) that is not a party to this Agreement which may be incurred by us relating to or arising out of this Agreement; other than those arising out of our gross negligence or willful misconduct. In addition, if we become involved in legal action to defend or enforce this Agreement against you, you agree to pay our reasonable attorneys' fees and costs if we prevail in any such action, to the extent not prohibited by law. The preceding two sentences may not apply if you are a public funds customer (e.g. government or public university) and the governing state law prohibits indemnification by such entities.

You also agree to reimburse us for any and all fees, penalties, fines, costs or the like assessed against us by the National Automated Clearing House Association ("NACHA") for any violation of the ACH Rules, or by any Governmental Authority with jurisdiction over us, that is incurred by us due to actions we take under this Agreement as instructed by you.

Section 9. <u>Limitation of Liability</u>. Notwithstanding any provision of this Agreement providing to the contrary, our liability to you for failure to exercise ordinary care resulting in a delay in executing, improper execution of, or failure to execute a transaction shall be limited to actual damages sustained by you. Failure to exercise ordinary care shall not be inferred by reason of a loss of a Check, deposit, transaction, or Entry, or any other Item. We shall not be responsible for your acts or omissions, those of your Vendor (as defined in Section 21 of this Part), agent or employee, any other party providing services to you, or any other person or entity, including, without limitation, Fed Wire, SWIFT, Telex, any automated clearing house, or any other financial institution. We shall not be responsible for any Loss arising from or in connection with any inaccuracy, act or failure to act on your part or on the part of any person not within our reasonable control. We shall not be responsible for any charges imposed by any Vendor or other third party not retained by us as our Processor (as defined in Section 22 of this Part). Our liability hereunder for interest losses will be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank in Cleveland, Ohio and any such compensation shall be limited to the amount of interest lost for a period not exceeding thirty (30) days following your receipt of the confirmation advice, account statement or when we have otherwise made such information available to you (whichever comes first) less any interest actually earned on the funds. Except expressly provided in this Agreement, we shall not be required to act upon any notice or instruction received from you or any other person with respect to any matter.

IN NO EVENT WILL WE BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM OUR ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT OR LOST PROFITS WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

Section 10. <u>Disclaimer of Warranties</u>. EXCEPT AS PROVIDED IN ANY APPLICABLE SERVICE DESCRIPTION, WE MAKE NO REPRESENTATIONS, WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES OR EQUIPMENT USED IN CONNECTION WITH THE SERVICES TO BE PROVIDED BY US. NO DESCRIPTIONS OR SPECIFICATIONS, WHETHER OR NOT INCORPORATED INTO THIS AGREEMENT, NO PROVISION OF MARKETING OR SALES MATERIALS AND NO STATEMENT MADE BY ANY SALES REPRESENTATIVE IN CONNECTION WITH THE SERVICES SHALL CONSTITUTE REPRESENTATIONS AND WARRANTIES OF ANY KIND.

Section 11. <u>Events Beyond Our Control</u>. We will be excused from any delay, and will not be responsible or liable for any loss of information, errors or delays in transmission and/or processing of your transactions, damage, cost, loss, or liability, arising out of causes beyond our control, including, but not limited to, strike, lockout, war, lack of energy, riot, insurrection, fire, flood, unavoidable accident, acts of God, acts of nature or any cause which is attributable to a third party, governmental acts or regulations, legal constraint, computer malfunction including, but not limited to, computer viruses, equipment breakdown, electrical or mechanical failure, or the enactment, or the issuance or operation of any adverse governmental law, ruling, regulation, order or decree. We will not be responsible for any error, delay or loss of information caused by any other person or entity not a party to this Agreement. In the event of any errors or delays by us, we will only be responsible to use ordinary care to correct any such errors or resume transmissions of information required to be made by us as soon as reasonably possible.

Section 12. <u>Termination of Service</u>. Either of us may terminate this Agreement, or suspend or terminate any of the Services provided, at any time upon notice to the other party, effective thirty (30) days after such notice is received. In addition, the we may terminate this Agreement, or suspend or terminate any Service, immediately without notice (or immediately with notice if legally required), in the event (i) of fraud, suspected fraud, suspected illegal or suspicious activity, safety and soundness considerations, bankruptcy, receivership, merger, business necessity, regulatory compliance, administrative order, judicial order, or breach of this Agreement; (ii) in our good faith opinion your financial condition has become impaired or deteriorated; or (iii) your default on any agreement or instrument between you and us or our Affiliate, or from you in our favor or our Affiliate's favor, but we will use our best efforts to provide notice after termination if permitted by Applicable Law. The applicable Services will terminate automatically without notice in the event (a) your Account(s) associated with any of the Services is/are closed, (b) of termination of a Processor contract which is necessary for the performance of the Services, or (c) either we are prohibited by Applicable Law from performing the Services or you are prohibited by Applicable Law from receiving the Services. In the event of any termination, all fees incurred in connection with the affected Services on or before termination will become immediately due and payable. No termination by either of us shall relieve the other from responsibility as to any Check drawn, presented, or paid prior to termination of any Service or termination initiated but not executed prior to the effective date of termination. We shall have no obligation to provide any Service or execute any transaction or transfer that was not initiated or transmitted prior to the effective date of termination. If you fail to submit necessary documentation, provide necessary access to your business (if applicable), or undertake necessary training (if applicable) during the implementation process for a Service, the Service may be terminated or suspended without notice.

Section 13. <u>Severability</u>. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable as written, that provision will be interpreted so as to achieve, to the extent permitted by Applicable Law, the purposes intended by the original provision, and the remaining provisions of this Agreement will continue intact.

Section 14. <u>Governing Law; Venue; Waiver of Jury Trial</u>. Except with respect to the UCC, this Agreement is governed by the laws of the State which governs your Accounts according to the Account Rules, without regard to its conflicts of laws rules. You hereby submit to the exclusive jurisdiction of such State's state and federal courts, and waive any objection to venue and forum non-convenience with respect to actions brought in such courts. Each of you and us expressly and irrevocably waive our right to trial by jury in any matter arising out of or related to this Agreement or any Service.

Section 15. <u>Complete Agreement</u>. This Agreement, together with (i) the Account Rules, (ii) any Web Portal agreements, and (iii) any Implementation Documentation, constitute the entire agreement between you and us. Any representations, promises or conditions in connection therewith not set forth in the foregoing or in a writing signed by all affected parties will not be binding. In the event performance of the Services in accordance with the foregoing would result in a violation of any present or future statute, regulation or government policy to which we are subject, then the foregoing will be deemed amended to the extent necessary to comply with such statute, regulation or policy.

Section 16. Modification; No Waiver. We reserve the right to modify, at any time and in our sole discretion, without your consent, and without notice to you unless required by law, any of the terms and conditions set forth in this Agreement, and we may notify you of such changes in writing or by electronic means (including via a Web Portal). Except as otherwise provided in this Agreement or as otherwise stated in the notice (if sent), any modification by us will be effective when we send notice to you. You may modify this Agreement only with signed written consent from us. Except for changes made in accordance with this Section, no deviation, whether intentional or unintentional, shall constitute an amendment or modification of this Agreement**,** nor constitute a waiver by us of any rights in this Agreement. No delay or omission on our part in exercising any right hereunder shall operate as a waiver of such right or any other right.

Section 17. Assignment; Parties. We may at any time assign or delegate our rights or duties under this Agreement. You may not assign your rights or obligations under this Agreement in any way without our prior written consent. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. No other person or entity is deemed to be a third party beneficiary of this Agreement or any of the Services.

Section 18. Notices. Except as otherwise provided in this Agreement, all notices concerning the administration of the terms of this Agreement between you and us that are sent by either you or us shall be in writing and, if to you, addressed to the primary mailing address as shown on our records at such time, and if to us, addressed to our Treasury Management Client Services office at such address as we specify in writing. Any such notice will be effective either on the date it is actually received by the receiving party or five (5) days after it is mailed by first class mail whichever is earlier; provided, however, that any notice sent by you terminating this Agreement or a Service shall be rendered ineffective if you use or avail yourself of any such terminated Service after the date of termination contained in any such notice.

Additionally, you and we each acknowledge and agree that certain notices and communications concerning the operation of Services may be provided by you or us to the other by telephone, fax or electronic means (including email) in accordance with the information provided by the receiving party as specifically set forth in this Agreement or in our Implementation Documentation. Any such notice or communication provided by fax or electronic means will be effective upon transmission thereof to the receiving party, and any such notice given by telephone will be effective upon the receiving party's receipt thereof. Unless specifically stated otherwise, each of you and us may rely on such notices or communications given by fax or electronic means as though they are originals. Notwithstanding any terms in this Part to the contrary, any addition, deletion or change to any Services requested by you must be submitted in a form acceptable to us, and no such requested addition, deletion or change will become operative or effective until we confirm to you that such addition, deletion or change has been implemented, which we agree to do within a reasonable period of time.

Section 19. Representations and Warranties. You warrant and represent that (a) you are duly organized, validly existing, and in good standing in the jurisdiction in which you are organized; (b) there are no provisions of any law, or any certificate of incorporation, certificate of organization, by-laws, operating agreement, partnership agreement, or any agreement of any kind, nature or description binding upon you which prohibits you from entering into or performing under this Agreement; (c) your execution and performance of this Agreement has been duly authorized; (d) the person(s) executing this Agreement on your behalf is authorized by you to do so; (e) this Agreement is a binding obligation of yours; (f) all Accounts accessible pursuant to the Services were established only for business purposes; and the transactions made with respect to those Accounts will only be for business purposes; and (g) you are authorized to accept for deposit any Checks deposited in your Account(s) or an Account of your Affiliate using any of the Services. You will be deemed to repeat all of the foregoing warranties and representations each time we perform Services under this Agreement. We will be entitled to rely on any written notice or other communication believed by us in good faith to be genuine and to have been signed or authorized by an authorized representative of yours.

Section 20. License, Copyright, Patents, Trademarks and Other Intellectual Property Rights. You acknowledge that any and all of the copyright, trademarks, trade names, patents and other intellectual property rights subsisting in or used in connection with the Services and any versions thereof, including all Implementation Documentation and instructions relating thereto, are and shall remain our sole property or that of our Processors. You shall not during or at any time after the expiration or termination of this Agreement in any way question or dispute our ownership thereof. In the event that new inventions, designs or processes evolve in performance of or as a result of the use of any of the Services, you acknowledge that the same shall be our property, unless otherwise agreed in writing by us. If applicable, we grant you a license to use the Web Portals in connection with the Services provided hereunder during the term of this Agreement.

Section 21. Vendor. Any third party servicer or vendor, including any value added networks ("**Vendor**") used by you in connection with any of the Services shall be deemed to be your agent, and you will be liable for (i) any Vendor's failure to comply with any Security Procedures or operating requirements relating to the Services hereunder, (ii) for all fees, costs and expenses owed to each Vendor for its services, and (iii) for any claims, damages, costs and expenses incurred as a result of any Vendor's failure to perform, or delay or error in performing, its services. This paragraph shall survive termination of this Agreement.

Section 22. Processor. You acknowledge and agree that we may arrange for some parts of the Services to be performed or provided by a third party service provider, vendor or processor (each a "**Processor**"). Our use of a Processor shall not relieve us of our obligations under this Agreement, and, we and any Processor shall only be responsible for the acts or failures to act by such Processor to the same extent we would incur responsibility therefore under this Agreement if we had so acted or failed to act. You agree not to bring a claim or any form of legal action against any Processor and agree to hold any such Processor harmless in connection with this Agreement and acknowledge that any such claims will be brought only against us.

Section 23. Survival. All warranties, indemnities, and confidentiality requirements will survive the performance and termination of this Agreement.

Section 24. Recording. We are authorized (but not obligated) to electronically record and retain telephone conversations between you (and your purported authorized representatives) and us.

Section 25. Headings. The headings used in this Agreement are for reference and convenience purposes only, and shall not in any way limit or affect the meaning or interpretation of any of the terms hereof.

Section 26. Acceptance. You may accept the terms and conditions of this Agreement by signing the Authorization for this Agreement. Delivery of an executed Authorization via facsimile transmission or other similar method of electronic transmission shall be effective as if it were delivery of a manually delivered, original, executed counterpart thereof. Additionally, your use of any Service shall be deemed an acceptance of all the terms and conditions in this Part I and the Part for that particular Service.

PART II: ACCOUNT RECONCILEMENT SERVICES

Section 1. Disbursement Reconcilement and Deposit Reconcilement Services. We will provide Deposit Reconcilement Services and/or Disbursement Reconcilement Services to you as set forth in this Part. The Services to be provided to you may consist of any or all of the following as selected by you on the Documentation:

For Deposit Reconcilement Services: deposit reconciliation, which includes a report of multiple locations depositing into a single Account.

For Disbursement Reconcilement Services:

A. Sorting of Checks into numerical order.

B. Partial reconciliation, which will include a list of Checks paid and items posted by us.

C. Full reconciliation that will include a list of both the paid Checks and the outstanding Checks still on file (information provided as to outstanding Checks is contingent upon information supplied by you).

D. Stale Date Control (Full reconciliation required).

E. Maximum Dollar Threshold.

Section 2. Check/Deposit Stock. In ordering Checks and/or deposit tickets, you agree to use the specifications provided by us. If for any reason your Checks or deposit ticket stock are substituted with blank stock or stock other than your stock, you hold us harmless from any Losses arising out of the use of such stock. We reserve the right to charge a reject rate or additional fees for any items rejected (i.e., Check quality causing manual intervention) over 2% of the items processed per month. Upon completion of a serial number digit sequence of Check stock, you will close the Account and open a new Account.

Section 3. Review of Information. If we hold account information while waiting for an issue file from you, the maximum period such information will be retained shall be three (3) months and thereafter we will no longer be able to provide such information. Issue file information received after a 30-day period from the end of the reconcilement date shall be assessed a fee for storage of the account information.

PART III: AUTOMATED CLEARING HOUSE ORIGINATION SERVICES

Section 1. ACH Origination. We will act as an Originating Depository Financial Institution with respect to Entries initiated by you pursuant to this Agreement and the ACH Rules. Unless otherwise defined in Part I or Part XIII, all capitalized terms in this Part shall have the meanings ascribed to them in the ACH Rules.

Section 2. Settlement Account. You must maintain an appropriate designated deposit account (the "**Settlement Account**") with us for settlement of ACH transactions. We may, without prior notice or demand, obtain payment of any amount due and payable (including both fees for services and transaction settlements) to us under this Part by debiting your Settlement Account, and shall credit the Settlement Account for any amount received by us for which we have previously received payment from you. You shall at all times maintain a balance of available funds in the Settlement Account sufficient to cover your settlement obligations. In the event there are not sufficient available funds in the Settlement Account to cover your obligations, you acknowledge that we may debit any other Accounts maintained by you with us or that we may set off against any amount we owe to you, in order to obtain payment of your obligations.

Section 3. Transmittal of Entries by You; Transaction Limits. You shall transmit Entries to us to the location(s) and in compliance with the formatting and other requirements set forth in the ACH Rules and as specified by us. You may transmit Entries using one of the Communication Methods as permitted by us from time to time, including, but not limited to, our Web Portals or direct transmission, as set forth in the Implementation Documentation. The total dollar amount of Entries transmitted by you to us on any one day or on consecutive days shall not exceed the transaction limits set by us from time to time.

Section 4. Processing, Transmittal and Settlement by Us. Except for On-Us Entries (defined further in this Section) or rejected Entries, we shall (i) process Entries received from you which conform with the instructions provided by us, (ii) transmit such Entries as an Originating Depository Financial Institution to the Federal Reserve Bank or any other ACH Operator, and (iii) settle for such Entries as provided in the ACH Rules. Funds transfers will be originated based on the Entries transmitted or otherwise communicated to us by you, or on your behalf using a Third Party Service Provider (a "**TPSP**") which shall be deemed your Vendor under this Agreement. Each such Entry shall be deemed a "Payment Order**.**" You agree that any Entries or Payment Orders originated by you will be solely for your own account and not for the benefit of a third party. You agree to be obligated and liable for any Payment Order submitted by a TPSP as if such Payment Order was submitted directly by you as permitted by the terms of this Part. The types of funds transfers that you wish to originate will be documented in our Implementation Documentation and must have our approval before you may use the ACH Services.

(a) General Requirements for Payment Orders.

(i) *Compliance with Laws.* You acknowledge and agree that each Payment Order, whether submitted by you or a TPSP, will comply with all Applicable Law. You further acknowledge and agree that we may limit or restrict the type of Entries that you may originate. The specific types of Entry limitations are set forth in the Implementation Documentation or other notice we have separately provided to you. Upon our request therefore, you will promptly furnish to us evidence of your compliance with Applicable Law relating to any Payment Order or resulting funds transfer.

(ii) *Compliance with Bank's Requirements; Accuracy of Information.* We may, from time to time, prescribe rules or requirements relating to the format of Payment Orders, cut-off times for delivery of Payment Orders for processing, and other administrative rules relating to funds transfers, Payment Orders and the Services governed by this Part. You agree to comply with such rules and requirements. We have no obligation to (a) process or act on any Payment Order that is not received in compliance with this Agreement or the Implementation Documentation or (b) correct, adjust or reverse any Payment Order received, resulting from non-compliance with the terms of this Agreement. You are solely responsible for the accuracy and completeness of all Payment Orders and for obtaining and documenting all authorizations and consents for any and all Payment Orders (and the related funds transfers) as required by Applicable Law, and for undertaking appropriate identity verification and other matters as may be required by Applicable Law. We are not responsible for detecting errors in any Payment Order and are entitled to rely on any Payment Order and other information in the form received from you. Any Payment Order received by us after the cut-off time established by us may be treated by us as being received on the next succeeding Business Day. In the event of a discrepancy between our records and your records with respect to any Payment Order, our records will be presumed to be correct.

(b) Security Procedures. Your use of the ACH service constitutes your acceptance of our Security Procedures as a commercially reasonable means of authenticating a Payment Order communicated to us by or on your behalf. You acknowledge that the Security Procedures are used to verify the authenticity of, and not to detect errors in, any Payment Order. Any Payment Order communicated by or on your behalf shall be effective as your Payment Order, and shall be enforceable against you, whether or not authorized and regardless of the actual identity of the signer, sender or transmitter thereof, if such Payment Order is received in accordance with the applicable Security Procedures, and if we accept such Payment Order in good faith. In addition, if any Payment Order was actually communicated or authorized by you or you otherwise benefited from such Payment Order (or resulting funds transfer), then you will be obligated to pay us the amount of the related funds transfer without regard to whether we complied with the Security Procedures. We may, in our discretion, use additional procedures to verify the authenticity of any Payment Order. You agree to implement any other reasonable authentication or Security Procedures established by us. You expressly agree that the funds transfers and Payment Orders communicated by a TPSP via direct connection with us or our ACH Operator shall be deemed in compliance with the Security Procedures and commercially reasonable.

(c) Compliance with Security Procedures. If you choose to communicate any Payment Order (including any cancellation thereof) to us in a manner that varies from the established Security Procedures, and if we accept such Payment Order in good faith, then you agree to be bound by such Payment Order, whether or not authorized, and you will be deemed to have refused the Security Procedures that we offer and recommend as "commercially reasonable," and be obligated to pay us the amount of such Payment Order (or resulting funds transfer). However, we have no obligation to accept any Payment Order that is not communicated in compliance with the established Security Procedures. We are not responsible for refusal to act upon any Payment Order received which does not comply with this Agreement, including where our reasonable efforts to verify the Payment Order in accordance with the Security Procedures have failed or where such action is delayed until verification can be obtained.

(d) Rejection of Payment Orders. We have the right to reject, and refuse to accept, any Payment Order for any reason, including your failure to maintain a sufficient balance of collected funds in an Account; *provided, however,* that in rejecting, or refusing to accept, any Payment Order, we shall act in good faith and use our reasonable business judgment. We will have no liability to you or any Affiliate based on such rejection or refusal of any Payment Order. If we determine that processing or honoring any Payment Order would cause the Settlement Account to be overdrawn, we may, but have no obligation to, execute the Payment Order and (i) create an overdraft in Settlement Account or (ii) transfer to the Settlement Account from another Account, funds sufficient to cover the deficiency in the Settlement Account. If we reject any Payment Order, we will notify you through a status report on one of our Web Portals or by other reasonable means within the time frames indicated in the Implementation Documentation, but we will have no liability to you based on our failure or delay in providing such notice. If any Payment Order is rejected by us or any funds transfer system as a result of incomplete information or a formatting or other similar error, it will be your responsibility to re-transmit a corrected Payment Order to us.

(e) Cancellation or Amendment of Payment Order. You have no right to cancel or amend any Payment Order after it has been received by us. However, to the extent permitted by Applicable Law, we will use reasonable efforts to act on your request to cancel any such Payment Order before we process it, but we will have no liability if such cancellation is not effected. To the extent permitted by Applicable Law, we will also use reasonable efforts to, upon your request, reverse an Entry after we have processed such Entry, but we will have no liability if such reversal is not effected.

(f) Transmittal and Settlement of On-Us Entries. We will transmit each Entry (other than an Entry where we, or at our option, our Affiliate, is also the Receiving Depository Financial Institution ("**RDFI**") (an ***"On-Us Entry"***)) that complies with this Agreement to the ACH network before the applicable deadlines if you timely deliver to us a complete and conforming Payment Order. We will settle for each such Entry in accordance with the Applicable Law and industry practice. In the case of an On-Us Entry, we will credit or debit, as appropriate, the account of the Receiver in the amount thereof on the effective date contained in the related Payment Order provided that the effective date is a Business Day. You hereby acknowledge that credit given by the RDFI to the Receiver for payment made via Entry is provisional until the RDFI receives final settlement for such Entry. You are hereby notified and agree that if the RDFI does not receive final settlement, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and you will not be considered to have paid the amount of the Entry to the Receiver.

(g) Inconsistency of Name and Account Number. We are not responsible for detecting errors in any Payment Order, including the identifying number of any intermediary bank or beneficiary's bank, even if that number does not correspond to the bank identified by name. You acknowledge and agree that funds transfers may be made on the basis of account number or other identifying number (including a bank transit routing number, SWIFT BIC or CHIPS UID Code). We and any receiving bank (including any beneficiary's bank and any intermediary bank) may rely on the account number or other identifying number of any bank (including a bank transit routing number, SWIFT BIC or CHIPS UID Code), person or bank account specified in the Payment Order even if such number identifies a bank, person or bank account different from the bank, person or bank account designated by name, and your obligation to pay the amount of the Payment Order (or resulting funds transfer) to us is not excused in those circumstances.

Section 5. Payment by You. You authorize us to debit your Settlement Account to initiate Entries based on the Payment Orders received by us, and you agree to pay to us the amount of each Entry no later than the date the Entry is processed by us as set forth in the Implementation Documentation, and you hereby authorize us to charge your Account for payment of each Entry, including, but not limited to, any reversed or returned debit Entry. You agree to be obligated and liable for any Payment Order submitted by a TPSP as if such Payment Order was submitted directly by you. We may in our sole discretion (i) refuse to originate any credit Entry or any batch of credit Entries for which adequate funds are not on deposit in your Settlement Account at the time the Entry is to be sent, even though such credit Entry may have already been received or accepted for processing, (ii) at any time without prior notice require you to pay the aggregate sum of the credit Entries in any batch or any credit Entries before you send such Entries to the ACH network, or before crediting a Receiver's account in the case of an On-Us Entry ("Prefunding", as further described in the Implementation Documentation). If we request that you Prefund a batch of credit Entries, and you fail to so pay for such Entries, then we are not obligated to process any of those Entries or send any Entries to the ACH network or debit or credit the account of a Receiver in the case of an On-Us Entry. If any Entry, including a reversed or returned debit Entry, creates an overdraft in the Settlement Account, then you agree to promptly pay us on demand and in immediately available funds, the amount of any such overdraft and any applicable overdraft fees. The foregoing payment obligations will survive termination of this Agreement and this Part.

Section 6. Notice of Returned Transfers. We will endeavor to notify you through one of our Web Portals or by other reasonable means within the time frames indicated in the Implementation Documentation of the receipt of a returned Entry, but we will have no liability to you based on the fact that such notice was not given at an earlier time. Provided that we have complied with the terms of this Agreement in connection with such an Entry, we will have no liability to you based on the return thereof.

Section 7. Data Retention; Audit. You shall retain data on file adequate to permit remaking of Entries for seven (7) days following the date of their transmittal to us as provided herein, and shall provide such data to us upon our request. Also upon our request, you agree to immediately provide copies of information maintained by you as required by Applicable Law. In addition, upon request and during reasonable business hours, you agree that we, our regulators, and our auditors shall have access to your records relating to your use of the ACH services as required herein, and by Applicable Law, to evaluate your compliance with Applicable Law. Failure to allow such access shall be deemed a material breach of this Agreement.

Section 8. Your Representations and Warranties. You represent, warrant and covenant that (i) any Payment Order submitted by you to us, or on your behalf by a TPSP, authorizes us to initiate Entries in accordance with the terms thereof;
(ii) all Payment Orders and resulting funds transfers, and the origination thereof, comply with this Agreement and all Applicable Law, and all authorizations therefor will be obtained and notifications provided by you before any Payment Order is communicated to us; (iii) any and all Payment Orders are and shall be accurate and complete; (iv) you will maintain all records relating to Transfers as required by Applicable Law; and (v) you shall originate Payment Orders only for your Accounts and not as agent or on behalf of any other third party, and you will notify us of your use of any TPSP or any other Vendor for the ACH services and you shall be responsible for the acts of any such Vendor as if they were your own. You shall be deemed to make on your own behalf, and on behalf of any TPSP, the same warranties to us with respect to Payment Orders and funds transfers as (A) we are deemed to make under the Applicable Law and the ACH Rules with respect thereto and (B) as you would make in connection with items endorsed and deposited to any of your Accounts under the UCC. Moreover, with respect to On-Us Entries, you shall be deemed to make the same warranties with respect thereto as we are deemed to make under Applicable Law with respect to Entries that do not constitute On-Us Entries. Each time a Payment Order is communicated or delivered by you or your TPSP to us, you reaffirm the representations and warranties set forth in this Section.

Section 9. Cross Border Entries. To the extent permitted by us, cross border Entries are transmitted by us in U.S. dollars and converted to the local currency for receipt in the foreign country at the exchange rate determined by our Processor on the date determined by our Processor, unless you have specifically agreed with the Receiver to send U.S. dollars and the Receiver has an account able to accept such currency. All risk of fluctuation in the applicable exchange rate is borne by you. In the event of a returned cross border Entry, consumer payments will be credited to you at the originated U.S. dollar amount; corporate payments will be credited to you at the exchange rate determined by our Processor at the time of return.

Section 10. Notification of Change. We shall notify you of all Notifications of Change received from the ACH operator relating to Entries previously transmitted by you via the method selected by you, and repair any Entries at such time, for which we will charge a fee. You agree to promptly reflect such changes in your own records, or pay the applicable fee we charge for such repair. The fee will apply each time we have to repair an Entry for you.

PART IV: AUTOMATED SWEEP SERVICES

Section 1. Automated Sweep Services. Pursuant to this Part, you may choose to establish Automated Funds Investment ("**AFI**") or Automated Credit Sweep ("**ACS**") services in connection with your Account(s). For AFI, you may designate multiple Accounts to have the service (hereafter, the "**AFI Account(s)**"). For ACS, you may designate only one Account for the service (hereafter, the "**ACSA**").

Section 2. Definitions. For purposes of this Part the terms below shall be defined as follows:

A. "**Available Balance**" means the book or ledger balance minus uncollected funds and hold items.

B. "**Daily Activity Report**" means the written daily confirmations of securities purchase transactions for the Repurchase Agreement option provided to you via our Web Portal or other agreed Communication Method.

C. "**Minimum Transfer Amount**" means an amount initially established by us that represents the minimum amount required before we will transfer funds to the ACSA from your line of credit, or from the ASCA to your line of credit. Before a transfer occurs to or from the ASCA, the Available Balance in your ASCA must vary from the Target Balance by at least the Minimum Transfer Amount. The Minimum Transfer Amount is subject to change at our discretion and we will notify you of such change.

D. "**Money Market Fund**" means any of the money market mutual funds as made available from time to time by us as part of the AFI services.

E. "**Sweep Amount**" means the Available Balance in your AFI Account in excess of the Target Balance, which is transferred from your AFI designated Account(s) to the Sweep Target Account. However, funds will only be transferred to Sweep Target Account if they meet the Variance Amount.

F. "**Sweep Target Account**" means the deposit or investment option to and from which funds are swept in connection with the AFI services pursuant to the procedures described in Section 3 of this Part.

G. "**Target Balance**" means an account balance which will be mutually established by you and us prior to any sweep transactions occurring and which represents the amount of money you elect to remain in the AFI Account after the Sweep Amount is transferred using the AFI services, or the money you elect to remain in the ACSA before or after transfers to or from your line of credit, as applicable. In no event will the Target Balance be less than a minimum amount we will establish from time to time by notifying you.

H. "**Variance Amount**" means an amount initially established by mutual agreement of you and us of the minimum transfer amount to and/or from the AFI Account(s). Before a transfer from a particular AFI Account occurs, the Available Balance in that AFI Account must exceed the Target Balance by the Variance Amount. The Variance Amount is subject to change at our discretion and can vary depending upon your sweep option and other factors. In no event will the Variance Amount be less than a minimum amount we will establish from time to time by notifying you.

Section 3. Automated Funds Investment Service. At the end of each Business Day, we will automatically transfer the Sweep Amount to or from your AFI Account(s) and your Sweep Target Account according to our procedures as described in this Section and the Implementation Documentation. You appoint us and we accept the appointment to act as agent for you for the purpose of depositing, withdrawing, transferring and investing funds as described in this Section.

A. Sweep Target Account Options. At the time you establish AFI services, you will choose from one of the Sweep Target Account options offered by us from time to time. You designate the Sweep Target Account option to which its funds are swept based upon your risk tolerance. You must designate only one Sweep Target Account option for the AFI Account(s). *If you invest Public Funds, you must determine which Sweep Target Account option is permissible under applicable state or federal law.*

1. *Repurchase Agreement (not FDIC insured)*

In the event that you select this option, this Agreement shall constitute a written repurchase agreement as required by law. Each Banking Day, we will automatically debit the Sweep Amount from your AFI Account and will transfer to you, as noted on our records, securities with a market value equal to or greater than the Sweep Amount. The securities are held in our account with a Federal Reserve Bank or such other financial institution as we determine, which may be us. The transfer of the securities to you shall be reflected in the Daily Activity Report. We will repurchase the securities from you on the next Banking Day. The repurchase price is the Sweep Amount plus the return provided by us as indicated on the Daily Activity Report. We do not retain any right to substitute securities.

We are acting solely as agent for you pursuant to this option in connection with the securities transfer and repurchase transactions described above. Such transactions are intended by both you and us to be sales and purchases. However, if any such transaction is determined to be a loan by you to us, we hereby pledge and grant to you, as security for the performance of our obligation to repay the loan, a security interest in the securities transferred to you. Such security interest shall automatically attach upon withdrawal of the Sweep Amount from your AFI Account(s) by us pursuant to this Agreement. In the event of a bank failure or default by us in repurchasing the securities, you have the right to direct us to sell the securities and apply the proceeds in satisfaction of our obligation to repurchase. If the value of the securities transferred to you is less than the repurchase price to be paid by us, you may be deemed an unsecured creditor of ours for such deficiency.

FUNDS HELD FOR INVESTMENTS MADE IN THE REPURCHASE AGREEMENT OPTION, AND THE SECURITIES TRANSFERRED TO YOU, ARE NOT A DEPOSIT OR OTHER OBLIGATION OF, OR GUARANTEED BY, THE HUNTINGTON NATIONAL BANK, OUR AFFILIATES OR ANY OTHER BANK, AND ARE NOT INSURED BY THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC) OR GUARANTEED IN ANY WAY BY THE U.S. GOVERNMENT OR ANY AGENCY THEREOF.

Our repurchase agreement collateral pool from which securities transferred to you are purchased consists of investment grade debt securities issued by private corporations and private label collateralized mortgage obligations. All securities will be rated by Standard and Poor, Moody's, or Fitch as A or higher. This collateral pool also includes single and/or multi-family mortgages, home equity loans, credit card receivables and other debt issuances which have been securitized and structured to create short, intermediate, and long term mortgage-backed and asset-backed securities. These securities generally have an expected weighted average life maturity of less than five (5) years.

The collateral pool for public funds customers consists solely of treasury notes and debt securities issued by the U.S. Treasury, and federally guaranteed or sponsored agencies such as FHLB, FNMA, FFCB, FHLMC or SLMA; however, we transfer securities from the collateral pool with a market value equal to or greater than 102% of any public funds Sweep Amount.

2. *FDIC Insured Money Market Account* (the "**Money Market Deposit Account**")

Please note that automated funds transfers between your AFI Account and the Money Market Deposit Account are subject to federal regulations which impose limits as set forth in the "Rules and Regulations for Business Checking Accounts and Business Money Market Accounts." Upon the sixth withdrawal from your Money Market Deposit Account, your entire balance will be transferred to your AFI Account for the remainder of that statement period. If this limit is exceeded, you or we have the right to adjust the Target Balance and the Variance Amount for your AFI Account in order to reduce the number of automated transfers, or you or we can terminate your AFI Service.

3. *Money Market Mutual Funds (not FDIC insured)*

If you select one of the Money Market Funds offered by us from time to time, there is no assurance that a fund will be able to maintain a stable net asset value of $1.00 per share. The rate of return is not guaranteed. We will endeavor to forward to you any proxies, financial statements or other literature received by us in connection with or relating to the shares held in the investment, but we shall be under no obligation to forward such proxies, financial statements or other literature. Your interest in the Money Market Funds may not be transferred, participated, assigned or hypothecated and any such transfer, participation, assignment, or hypothecation shall be of no force or effect.

You acknowledge that shares of the above Money Market Funds (i) are not insured by the FDIC; (ii) are not deposits or other obligations of ours and are not guaranteed by us; and (iii) are subject to investment risks, including possible loss of the principal invested. Our sole duty with respect to the Sweep Target Account and the agency relationship with you is to execute purchases and redemptions of shares in the Money Market Funds as you have ordered pursuant to this Agreement. We have not made, and will not make, any recommendations with respect to the nature or investment quality of the Money Market Funds or shares therein, and expressly disclaim any responsibility for your decision to invest in the fund, which decision you represent has been made and will be made without our participation or advice. No officer or representative of ours is or shall be authorized to provide any information to you about the funds other than by the delivery of a prospectus or other related material.

If we decide to terminate a Sweep Target Account option that you have chosen, then we will provide advance notice to you of such termination effective thirty (30) days after we send notice unless a shorter time period is required due to closing of an investment firm. During such thirty (30) day period, you must choose another available Sweep Target Account option or terminate the AFI service.

For the Money Market Funds and the FDIC Insured Money Market Account Options. If, after posting all credits and debits, the Available Balance in your AFI Account(s) is below the Target Balance by an amount equal to or greater than the Variance Amount and if there are sufficient funds in the Sweep Target Account, funds are swept back into the AFI Account from the Sweep Target Account to increase the AFI Account balance to the Target Balance.

B. Interest and Dividends.

(i) For the Repurchase Agreement Sweep Target Account Options. At the opening of the next Banking Day, the available balance in your AFI Account(s) will reflect the amounts in your Sweep Target Account so that the funds are immediately available to you for intra-day banking needs. Interest, or rate of return, is calculated on the Sweep Amount and is credited as a separate transaction to your AFI Account(s) at the end of the next Banking Day.

(ii) For FDIC Insured Money Market Account Sweep Target Account Option. The Money Market Deposit Account will earn interest as described in, and is otherwise subject to, the terms set forth in our "Rules and Regulations for Business Checking Accounts and Business Money Market Accounts." Interest is credited as a separate transaction to your Money Market Account monthly.

(iii) For Non-FDIC Insured Money Market Fund Options (Including those affiliated with The Huntington National Bank). All income earned on the investment will be termed "Dividends." Dividends shall be calculated at a rate determined by the fund, net of all service and transaction charges imposed by (i) the fund, (ii) its custodian and/or (iii) its transfer agent. Such Dividends shall also be calculated net of our fees pursuant to our current fee schedule which may be amended as set forth in Part I. Dividends are credited as a separate transaction monthly. We may also receive investment management and other administrative fees with respect to your shares of the money market funds from such funds, their distributors or investment advisers. These fees are set forth in the prospectuses of the money market funds.

C. Changing Investment Options. You may change your Sweep Target Account option only by completing and delivering to us the appropriate form approved by us, and you must notify us by contacting your account officer or Treasury Management representative. Changes in the Sweep Target Account option may require opening a new Sweep Target Account and closing the existing Sweep Target Account. In such case, you authorize us to deposit, withdraw or otherwise transfer money, or to purchase or sell securities, as required to accomplish the change to your Sweep Target Account.

D. End of Year Reporting Requirements. We are required to report to the Internal Revenue Service (IRS) interest or other income paid in connection with the Repurchase Agreement, taxable Money Market Funds, and FDIC Insured Money Market Accounts. We will provide you an IRS Form 1099 if you elect to sweep funds to any of the Sweep Target Account options described in the prior sentence any time during the tax year.

Section 4. Description and Terms of Automated Credit Sweep Services. In order to maintain your Target Balance in your ACSA, you authorize us to draw on your revolving line of credit ("**LOC**") from time to time and deposit such advances to your ACSA, and debit your ACSA from time to time to make payments on your LOC. ACS services are available only with lines of credit with maximums and minimums as established by us from time to time. Even if the principal amount of your LOC falls below any minimum principal amount we have so established, you may not lower your Target Balance below any minimum we have established.

After the end of each Business Day, we will post all credit and debit transactions to your ACSA, and we will calculate your Available Balance.

(i) If your Available Balance is above the Target Balance by an amount greater than or equal to the Minimum Transfer Amount, we will debit the amount by which such balance exceeds the Target Balance and apply such amount to repayment of your LOC in accordance with the promissory note and/or loan agreement executed by you.

(ii) If your Available Balance is less than the Target Balance by an amount that is greater than or equal to the Minimum Transfer Amount, you authorize us to draw on your LOC in the amount necessary to attain a balance equal to the Target Balance (up to the LOC maximum principal amount), and we will credit such advance to the ACSA.

(iii) If the Available Balance is above or below the Target Balance by an amount less than the Minimum Transfer Amount or if the Available Balance equals the Target Balance, no transfers to or from your LOC are made.

If you desire to use funds from multiple checking/demand deposit accounts for purposes of determining your Available Balance, you may do so only by using our Zero Balance Accounting service (described in Part XII). In such instance, the Concentration Account used in connection with that Service will be designated as the ACSA used to determine your Available Balance.

Section 5. Important Notice about FDIC Insurance Coverage in Connection with your Automated Sweep Services

The Federal Deposit Insurance Corporation ("**FDIC**") is requiring all banks to provide certain disclosures to their customers regarding sweep features linked to deposit accounts in the event the bank fails and is taken over by the FDIC. The requirement to provide this disclosure is general for all banks, and is not related in any way to the current or expected condition of any bank.

If the FDIC takes over a bank, the FDIC has indicated that it will complete all internal transfers, but will attempt to block transfers from coming into our going outside of a bank.

Currently the applicable FDIC insurance limits for deposits with us are combined with other funds on deposit with us by you in accordance with the FDIC's aggregation rules ("Applicable FDIC Insurance Limits"). Funds in your checking account prior to being swept out are insured up to the Applicable FDIC Insurance Limits.

If the FDIC takes over the Bank, funds swept from your checking account to another loan or credit account you have with us are not FDIC insured, but the FDIC will recognize your claim for the reduction of the balance of such other loan or credit account you have with us by the amount of the swept funds.

If you have selected our AFI services, where funds in your checking account are periodically swept into one of the following options that you have selected:

- Into an FDIC-insured money market deposit account with us; or
- Into a non-FDIC-insured investment product.

If the FDIC takes over the bank, funds swept from your checking account to an <u>FDIC-insured money market deposit account</u> with us continue to be FDIC-insured up to the Applicable FDIC Insurance Limits. Funds in the FDIC-insured money market deposit account in excess of the Applicable FDIC Insurance Limits are treated by the FDIC as uninsured deposits.

If the FDIC takes over the Bank, funds swept from your checking account to a <u>non-FDIC-insured investment product</u> will be treated by the FDIC as follows:

- *Sweeps to a Mutual Fund*. Funds swept to a mutual fund are not FDIC-insured if the sweep is completed, but the FDIC will recognize your claim for the value of your ownership interest in the mutual fund. If the sweep is not completed, the FDIC will treat the funds as if they remain in your checking account. The funds in your checking account will be insured up to the Applicable FDIC Insurance Limits and funds in excess of the Applicable FDIC Insurance Limits will be treated by the FDIC as uninsured deposits.
- *Repurchase Agreement Sweep*. Funds swept to the Repurchase Agreement option are not FDIC-insured, but the FDIC will recognize your claim for the value of your interest in the securities. If the value of your interest in the securities is less than the amount of our repurchase obligation, the FDIC will treat such deficiency amount as a general unsecured obligation of ours. If the sweep is not completed, the FDIC will treat the funds as if they remain in your checking account. The funds in your checking account will be insured up to the Applicable FDIC Insurance Limits and funds in excess of the Applicable FDIC Insurance Limits will be treated by the FDIC as uninsured deposits.

PART V: BUSINESS SECURITY SUITE SERVICES

Our Business Security Suite services permit you to return Checks and Entries which do not match the Check issue data or Entry data provided by you in advance, among other services described in this Part.

Section 1. Check Positive Pay Services. Each Business Day, you shall provide us a report listing the Checks drawn on your Account(s) that day (hereinafter the "**Check Issue File**") using an agreed upon Communication Method and in the time frame specified by us. Each Check Issue File submitted shall accurately list all Checks drawn on the Account(s), by check number, dollar amount and any other criteria communicated by us to you, since the last Check Issue File was submitted. If you have signed up for the "Payee Matching" option, you must also provide payee name for all Checks listed in the Check Issue File. You agree that we may delay activation of or suspend services unless and until you provide test files to verify that the service is functioning as required and we notify you that the service is active.

Each Business Day, we will process Checks presented against the Account(s) through the check collection system in accordance with our normal procedures. In addition, we will compare the Checks presented against the Account(s) to the Check Issue File provided by you. We will pay each Check that matches a Check listed on the Check Issue File and charge the respective Account(s). We will create a list (hereinafter an "**Exception List**") of any Checks presented for payment against the Account(s) which do not match a listing on the Check Issue File (hereinafter "**Exception Checks**"). If you use our Payee Matching option and the payee name or a reasonable variation thereof does not match the Check Issue File, those checks will become Exception Checks and become part of the Exception List. The Exception List may also contain items that were originated by you as Checks, but were converted into an Entry. We will make the Exception List available to you through one of the Communication Methods now or hereafter made available by us as early as is reasonably practical on the next Business Day after the Checks are presented. On the same Business Day an Exception List is made available, you agree to review the Exception List and instruct us, prior to the cut-off time disclosed to you, which Exception Checks to pay and which Exception Checks to return unpaid. In the event that we experience system issues where an Exception List was created that includes all Checks attempting to clear your account, whether or not they appear on the Check Issue File, you will then be responsible to make a decision whether to pay or return each item by the cut-off time disclosed to you. We will not be liable for any items over $10,000 that you fail to decision by the cut-off time disclosed to you. If you decision a Check to be returned, you agree the return reason will be "Refer to Maker" or any other return reason we choose and that reason shall be relied upon by us in making the return**.**

If you do not instruct us by the cut-off time using an approved Communication Method on each day Exception Checks are presented, the following shall occur: (i) if you have selected the "Pay Default" option, then we will pay the Exception Checks and finalize the provisional debit against the Account(s); or (ii) if you have selected the "Return Default" option, then we will return the Exception Checks unpaid and reverse the provisional debit against the Account(s).

Regardless of any pay decision by you, or your election of the "Pay Default" option, we have no obligation to pay any Check for which there is a stop payment order or which would create an overdraft. Each Check we pay in accordance with the provisions of this Section shall be deemed properly payable, and you waive any right to assert that any such Check was not properly payable, including with respect to any Check which is a counterfeit, is altered, bears a forged or unauthorized signature, or was otherwise not validly issued.

A. Teller Positive Pay. Teller Positive Pay allows a teller in our branches to compare a Check that someone is attempting to cash with your Check Issue File, and, notwithstanding other provisions in this Agreement, refuse to cash the item if: (i) the Check presented is not listed in the Check Issue File, (ii) we do not receive a Check Issue File, (iii) the Check is stale-dated (using the time period elected by you for a Check to qualify as "stale dated" in the Implementation Documentation), (iv) the Check is above any maximum dollar limit set by you, (v) there is a stop payment placed on the Check, or (vi) the Check has been previously paid. An Exception List will not be provided to you in connection with Teller Positive Pay.

Please note that you must specifically elect to receive Teller Positive Pay. If you do not elect to turn on Teller Positive Pay or you subsequently turn off Teller Positive Pay, any Check presented at our branches to be cashed could be cashed despite the information in the Check Issue File or a default setting or instructions to return any check not listed in the Check Issue File. During the time in which you do not turn on or elect to turn off Teller Positive Pay, you assume all risk for any Checks cashed at our branches, even if not contained in a Check Issue File.

Section 2. Reverse Positive Pay. Reverse Positive Pay is useful in situations in which you wish to prevent fraud and misuse of an Account(s), but cannot efficiently send us a Check Issue File. With Reverse Positive Pay, we provide you with a list on each Business Day which provides images of or lists of Check(s) (by check number and dollar amount) presented to us for payment on your Account(s) (hereinafter an "**Exception List**"). This Exception List will be made available to you using an agreed upon Communication Method and in the time frame specified by us.

On the same Business Day an Exception List is made available to you, you agree to review the Exception List and instruct us, prior to the cut-off time disclosed to you, of your decision on each Check (*i.e.,* whether to return or pay the Check or pay the Check for a different amount). If you decision a Check to be returned, you agree the return reason will be "Refer to Maker" or any other return reason we choose and that reason shall be relied upon by us in making the return**.**

If you do not instruct us as to your decision for any individual Check, or the entire Exception List, by the cut-off time using the approved Communication Method on the day the Exception List is presented, we will pay those Check(s) in the Exception List as presented and finalize the provisional debit against the Account(s). In these instances, we will deem your failure to decision any Check as an express authorization by you that such Check be timely paid and charged to the Account(s), regardless of whether such Check is in fact properly payable, and such inaction by you shall constitute a waiver and release by you of any and all claims you may then or in the future have that such Check was not properly payable, including with respect to any Check which is counterfeit, is altered, bears a forged or unauthorized signature, or was not otherwise validly issued. However, we have no obligation to pay any Check for which there is a stop payment order or which would create an overdraft. If you elect our Reverse Positive Pay service, you acknowledge and agree that Checks presented to our tellers for cash or immediate credit which are issued, or allegedly issued, by you on your Account(s) will not appear in the Exception List and may be paid by us, and you agree such Checks are properly payable, and you shall not subsequently contest the validity thereof.

Section 3. ACH Positive Pay. ACH Positive Pay services allow you to provide us instructions to (i) block all Entries from posting to your designated Account(s) with us, or (ii) permit individual Entries to post to your designated Account(s) with us. If you sign up for ACH Positive Pay, unless otherwise instructed by you, we will block all Entries (whether credit or debit) that attempt to post to your Account(s). In order to permit individual Entries, you must provide us, in a timely manner, with all of the required information (as communicated by us), and if you do not provide us with all of the required information, we will continue to block such Entry. However, we will not comply with any instruction to block an Entry that represents the reversal of an Erroneous Entry. The term "Erroneous Entry" is defined for purposes of this Section as an Entry that (i) is a duplicate of an Entry previously initiated by the Originator or Originating Depository Financial Institution; (ii) orders payment to or from a person not intended to be credited or debited by the Originator; or (iii) orders payment in a dollar amount different than was intended by the Originator.

You are responsible for reviewing those Entries that are blocked or permitted as required for review of transactions under this Agreement. You may elect to receive notifications from us ("**Alerts**") regarding pending Entries via email or other Communication Method offered by us. Since Alerts will be sent over the internet, you may not receive Alerts in a timely manner due to internet traffic. In consideration of the two foregoing sentences, you should review transactions via the Web Portal and appropriately change any instructions in a timely manner if you so desire, otherwise current instructions where you have provided us all of the required information in a timely manner shall apply. Unless you sign up for Alerts, we assume no responsibility for advising you regarding pending Entries.

If you send us the required information to allow an Entry or change an Entry (an "Instruction") on a Business Day prior to our established cut-off time, and before the Settlement Date of that Entry, we will begin to process such Instruction on that Business Day. If you send us an Instruction after the established cut-off time on a Business Day, but before the Settlement Date of the Entry, we will begin to process such Instruction on the next Business Day. After the Business Day of the Settlement Date of an Entry, we will not follow any Instruction regarding such Entry. The "Settlement Date" is the date funds are exchanged between banks with respect to an Entry as reflected on the books of the Federal Reserve Bank.

Section 4. Check Block Services. Our Check Block service allows you to automatically return all Checks presented against your Account(s). You agree not to issue Checks in connection with the designated Account(s). We will return all Checks presented against such Accounts (each, an "**Exception Check**"). However, we will permit any electronic debit, which includes, but is not limited to, Entries (including checks converted to Entries), wire transfers, or other electronic debits, unless specifically blocked or returned pursuant to other services described in this Part.

Section 5. Limitation of Liability. In no event shall we be liable for any Losses relating to paying a Check that was not properly payable, wrongful dishonor of a Check, or our or your actions with respect to payment or return of any Check (under the UCC or otherwise), or our failure to honor any Entry, including return or rejection of any ACH Debit Entry, to the extent such payment or return was completed in accordance with the terms of this Part. You agree that we exercise ordinary care whenever we rightfully pay or return a Check, Exception Check, or Entry consistent with the terms of this Part or your instructions. You expressly agree that your failure to timely direct us to return any presented Checks in accordance with the terms hereof will constitute acceptance by you of such presented Checks and each such presented Check will be properly charged against the Account on which it is drawn and we shall have no liability in connection with such presented Checks.

PART VI: CASH DEPOSIT AND FULFILLMENT SERVICES

Section 1. Vault Services. Our Vault services allow you to hire a Vendor to (i) deliver coin, currency, and Checks to us for deposit to your Account ("**Deposit**") or (ii) to order currency or coins ("**Order**") from a vault owned or operated by us ("**Vault**") to be delivered to you by the Vendor. Orders and Deposits will be debited and credited to an existing Account. As used in this Part, "Vendor" means a certified armored carrier that is acceptable to us and meets our requirements for transporting coins, currency, and Checks between you and the Vault. In the event that your Vendor ceases to meet such requirements, we may suspend the Vault services until your Vendor meets such requirements.

In addition, you may place Deposits into a Safe on your premises, the contents of which will be delivered to our Vault by the Vendor. As used herein, a "Safe" is a safe that utilizes "smart safe" technology, which you must obtain from an approved third party or us, and which will remain our property located at your premises. Notwithstanding that the Safe is our property, you are responsible for any loss or theft of the Safe, and its contents, from your premises.

A. **Deposits.** The Vendor will pick up and deliver Deposits to the Vault. We may accept Deposits which have been prepared in accordance with our instructions from anyone who purports to be an agent of the Vendor or you. We are not liable for any loss of Deposits in connection with Vault services until they have been delivered to the Vault. We may refuse or not accept a Deposit for any reason at any time; provided, however, that in refusing any Deposit, we shall act in good faith and use our reasonable business judgment. Other than Deposits placed in a Safe, you will receive credit on the next Business Day after we receive, verify, and accept a Deposit at our Vault. For Deposits made via an envelope placed in the Safe you will receive credit on the Business Day we receive, verify, and accept the Deposit at our Vault. However, we will advance credit to you for U.S. denominated currency placed in a Safe on the Business Day you place such currency in the Safe, and such credit will become final once we receive, verify, and accept the Deposit at our Vault. All credits (including advance credits from the Safe) are subject to our verification. We may adjust your Account, whether higher or lower, in connection with reconcilement of Deposits made at the Vault. We may establish limits for the amount of coin and currency that can be placed in the Safe, and we will communicate those limits to you.

B. **Orders.** We may provide an Order to anyone who purports to be an agent of the Vendor or you. Your Account will be debited for the amount of the Order on the day the Order is packed for release to the Vendor. Orders placed for delivery on Saturday, Sunday, or Monday are debited from your Account on the previous Business Day. You must place VRU Orders by the time designated by us from time to time to receive next Business Day delivery. If you do not meet that deadline, we may not process the Order until the following Business Day. Orders exceeding $25,000 (or other amount set by us from time to time) will be debited from your Account on the Business Day such coin and currency is available for release from the Vault to your Vendor. We are not liable for any loss or delay in delivery of Orders and are not a guarantor of any delivery day or time. We may refuse to process an Order for any reason at any time; including, but not limited to insufficient funds in your Account.

C. **Representations and Warranties.** You represent and warrant to us that: (i) you are the payee or holder of any Checks deposited; (ii) any Checks deposited do not contain image replacement documents, as that term is defined in 12 U.S.C. § 5001 *et seq*. and corresponding regulations ("**IRDs**"); (iii) any Checks included are in such form that we can create electronic files or IRDs that conform to all standards prescribed by 12 U.S.C. § 5001 et seq. and corresponding regulations; (iv) the Deposit does not contain any fraudulent or counterfeit items; (v) no depository bank, drawee, drawer, or endorser will reject presentment or return any Check, or a copy or other paper or electronic version of any Check such that we, a bank, drawer, drawee, or endorser will be asked to make payment based on a check, draft, or other negotiable instrument that bank, drawee or endorser has already paid; and (vi) Checks are drawn on a financial institution in the United States and are payable in United States currency.

You agree not to deposit items via Vault services that are "ineligible items", as that term is defined by the Board of Governors of the Federal Reserve.

D. **Automatic Termination**. If you fail to use the Vault services for a period of thirteen (13) months, the Vault services will be automatically terminated.

Section 2. Additional Terms and Conditions Unique to SafeCash Manager. Other than as specifically altered in this Section, all provisions of Section 1 still apply to use of the SafeCash Manager service. If you elect to receive the SafeCash Manager service, you must complete or provide any documents, authorizations, or information we or our approved provider requests and needs for implementation of Services. You are responsible for connectivity to the internet for use of online reporting services provided by SafeCash Manager. You must provide a location to operate the Safe in compliance with its operations manual provided to you. You must allow the approved provider access as necessary to your premises for installation of Safe, and your premises must be prepared for Safe prior to its installation.

A. **Trial Period; Termination of SafeCash Manager.** You may use and pay for SafeCash Manager without further obligation for a 30-day period ("**Trial Period**") from the earlier of execution of the Authorization or your first use of SafeCash Manager. If you fail to provide written notice of termination to us prior to the expiration of the Trial Period, you will automatically be obligated for a service term (and payment for such term) of 60 months ("**Initial Service Term**"). After expiration of the Initial Service Term, your obligation for SafeCash Manager services shall renew automatically each month ("**Successive Service Term**") until you or we terminate it. If you choose to terminate SafeCash Manager prior to expiration of the Initial Service Term, or we terminate SafeCash Manager for cause during the Initial Service Term, you are obligated to pay us the amount of the any fixed monthly fees times the number of months left of the Initial Service Term for each Safe. If we choose to terminate SafeCash Manager without cause prior to expiration of Initial Service Term, you are only obligated to pay for fees associated with SafeCash Manager incurred prior to and during the month of termination. Each time you obtain a Safe from us, or our approved Provider, the Initial Service Term shall commence for that Safe. After termination of SafeCash Manager, all Safe(s) must be returned to us or our Provider.

B. **Equipment Warranty and Maintenance.** We will pass through warranties regarding the Safe received from our approved provider. The approved provider warrants that the equipment will be free from defects in material and workmanship and will substantially conform to the approved provider's published specifications for twelve (12) months (the "**Warranty Period**") after shipment to you. The approved provider will repair or replace, at its option and expense, items of equipment that do not meet this warranty provided you report the problem to approved provider, or us, during the Warranty Period. The approved provider may fulfill warranty obligations at an approved provider designated site or depot. If you return the equipment to the approved provider site for warranty repair, shipping will be at your expense and risk. The approved provider will return the equipment at approved provider expense and risk if the equipment was defective. Replaced items under a warranty event become the approved provider's property. This warranty does not extend to damage caused by normal wear and tear, accident, misuse, disaster, improper supplies or alterations, attachments, parts, or repairs not provided or authorized by the approved provider, and is not in lieu of a maintenance agreement.

Section 3. Limitation on Liability. In addition to the limitations on liability set forth in Part I of this Agreement, you agree that, absent a breach of the standard of care set forth in this Agreement, our verification of the amount of any Deposit made using the services in this Part shall be binding and conclusive upon you, absent manifest error by us, and our liability for any discrepancies or shortages in the amount of any Deposit verified by us shall be limited to the amount of such discrepancy or shortage. Further, we shall have no liability for any discrepancy or shortage in the amount of an Order and the amount of cash received by you from any such Order, it being understood that it is the duty of your Vendor to review and approve the amount of any Order prepared for you prior to such Order leaving our Vault. You agree to fully cooperate in the investigation of any alleged loss or discrepancy.

PART VII: CONTROLLED DISBURSEMENT SERVICES

Section 1. Description and Terms of Disbursement Services. We will identify each controlled disbursement account designated by you (each, a "**CDA**") by providing you a specified Controlled Disbursement Routing Number ("**CDRN**"), which you must use on all Checks issued from the CDAs. You must order checks for each CDA by using the MICR line specification sheet provided by us in connection with each CDA and depicting the CDRN. You shall not use such line specification sheet in connection with ordering Checks for any other Account(s) with us that you have not designated as a CDA. You agree to destroy all unused Checks used in conjunction with a CDA before you designated such Account as a CDA. If you or we terminate Controlled Disbursement services, you agree to immediately stop using and destroy any Checks with the CDRN. You must re-purchase Checks without the CDRN if you continue to use the Account without Controlled Disbursement services. If you continue to use the CDRN on Checks after termination of Controlled Disbursement services for more than one hundred twenty (120) days, we will close your Account and return all Checks attempting to clear the closed Account.

Each Business Day, we will ascertain the amounts payable on all Checks drawn on your CDAs and presented to us for payment and report such information to your (the "**Report**") on that Business Day. We will make the Report available to you via Communication Method that we may, at our sole discretion, change from time to time. The Report will not include the amount of any Checks presented to us for payment which have been either rejected by our check processing equipment or by Federal Reserve check processing equipment. The Report may, but will not be required to, include electronic payment transactions.

Each Business Day you must access the Report via an agreed Communication Method and determine the total dollar amount required to pay all Checks presented for payment (the "**Presentment Amount**") for each CDA and fund each CDA with the Presentment Amount each Business Day with immediately available funds in accordance with our Funds Availability Policy. You will designate one method to fund all CDAs with the Presentment Amount as set forth on the Implementation Documentation by the applicable cut-off time.

Section 2. Overdrafts and Charges. If you fail to fund the CDA with the Presentment Amount for any reason whatsoever, and each CDA individually does not contain enough collected funds to cover the Presentment Amount, we will deem the CDA in an overdraft position ("**Overdrawn**"). At such time, we may charge the CDA any applicable overdraft or non-sufficient funds fees, whether or not we pay or dishonor any or all Checks. We reserve the right to dishonor and return any and all Checks drawn on a CDA (i) if the CDA is Overdrawn, or (ii) that, if cleared, will make the CDA Overdrawn.

PART VIII: ELECTRONIC DEPOSIT SERVICES

Section 1. Remote Deposit Capture and Image Cash Letter. We allow you to scan your Checks with equipment and software that we provide to you ("**Remote Deposit Capture**" or "**RDC**"), or that you own ("**Image Cash Letter**" or "**ICL**"), in order to create image files that you will send to us and that we may accept for deposit into your Account(s). You will access RDC and ICL and make deposits through an approved Communication Method in accordance with our Security Procedures. Deposits will be sent to us in the form of an electronic file containing images of Checks ("**Electronic File**").

A. Electronic Files or IRDs. You will create for deposit an Electronic File where you are the payee or the holder of the Checks. We may create Image Replacement Documents from such Electronic File. The terms "Substitute Check" and "Image Replacement Document" ("IRD") may be used interchangeably and have the same meaning as defined by 12 U.S.C. § 5001 *et seq*. and corresponding regulations. We may refuse to process or return IRDs or the Electronic File for any reason at any time before accepting such IRDs or Electronic Files for deposit; provided, however, that in returning, or refusing to process, any deposit, we shall act in good faith and use our reasonable business judgment. Your deposits are deemed made when we accept IRDs or Electronic Files for deposit. We in our discretion may notify you that we will or will not accept IRDs or Electronic Files for deposit. Until we accept the Electronic File or IRDs, any information contained in the Electronic Files or IRDs belongs to and is your sole responsibility. Any information from Checks or items contained in the software belongs to and is your sole responsibility. Any physical Check in your possession or your agent's belongs to and is your sole responsibility.

When you make deposits via RDC or ICL with Electronic Files, you represent to us and agree that:

(i) you are the payee or holder of the Checks;

(ii) the Electronic Files contain exact images of the front and back of the Checks which you seek to deposit;

(iii) the Electronic Files enable us to create IRDs that meet the definition of "Substitute Check" and conform to all standards prescribed by 12 U.S.C. § 5001 et seq. and corresponding regulations;

(iv) you will keep all Checks (either originals or images of the same) which you have deposited for the length of time required by your applicable state record retention laws and in a manner and in a place that you usually keep significant legal documents;

(v) the Electronic Files do not contain any fraudulent items;

(vi) no depository bank, drawee, drawer, or endorser will receive presentment or return of an IRD, the original Check, or a copy or other paper or electronic version of an IRD or original Check such that we, a bank, drawer, drawee, or endorser will be asked to make payment based on a Check that bank, drawee or endorser has already paid;

(vii) we are able to create IRDs from Electronic Files in such a manner that subsequent endorsements will not render previous endorsements illegible; and

(viii) Checks are drawn on a financial institution in the United States and are payable in United States currency.

(ix) you have procedures that require your employees using RDC or ICL to mark, frank, or otherwise indicate on the physical Check that it has been scanned for electronic deposit, and such marking or franking does not interfere with the MICR line, payee, date, amount (formal and informal), signature, or endorsement on the Check.

We reserve the right, in our sole discretion, not to accept deposits for any reason; provided, however, that in refusing to accept any deposit, we shall act in good faith and use our reasonable business judgment. You agree not to deposit via RDC or ICL "ineligible items," as that term is used by the Board of Governors of the Federal Reserve.

B. Availability of RDC and ICL. You must initiate deposits before the applicable cut-off time (of which we will notify you) on a Business Day in order for us to process such deposits on that Business Day. If you initiate deposits after the applicable cut-off time on a Business Day, we will begin to process such deposits on the next Business Day. Processing of deposits by us does not mean that we have accepted deposits. The scanner(s) used in connection with RDC should be attached to the same stations throughout the use of the RDC service.

C. Storage and Disposal. You must limit who is permitted to access the history of deposits sent to us via RDC or ICL. You must keep records of the Checks for the length of time required by your applicable state record retention laws. If you choose to destroy any Check or image of the same, you must shred the document; provided that, you must keep original Checks for a minimum of ninety (90) days before destruction. Until you destroy any Check or image of the same, you must, at a minimum, keep such document in a secure locked area or in a password protected environment. If you create an image of the Check, you must create a read-only image that cannot be copied or reproduced.

D. Audit. In order to ensure that you are in compliance with the terms of this Part and Applicable Law, we may conduct periodic onsite visits during reasonable business hours and upon at least twenty-four (24) hours advance notice. Further, you agree to cooperate with us and provide to us any documents or information we request, including, but not limited to, your files, records, and Checks (or images of the same if the originals have been destroyed). You agree to institute reasonable internal controls at our request. Failure to comply with this section shall be a material breach of this Agreement.

E. Reserve Account. If, upon our review of your Account activity, we determine that abuse or unauthorized activity is or may be occurring with respect to deposits, we may require that you maintain a reserve account ("**Reserve Account**") with a minimum balance equal to the previous month's total deposits or an amount as otherwise requested by us, subject to quarterly adjustment on the first day of each quarter. You grant to us a security interest in, and lien on, the funds in the Reserve Account, to secure the prompt and full payment of all your obligations to us under this Part. We will make withdrawals from the Reserve Account for reimbursement in connection with returned deposited items (including those which are the subject of UCC warranty claims). The Reserve Account will be under our sole dominion and control, and you will have no right of withdrawal of any of the funds in the Reserve Account, notwithstanding any Account Rules for that account. After you or we terminate this Agreement or the RDC and ICL services, we will turn over remaining funds in the Reserve Account to you no later than one hundred eighty (180) days after such termination. In the event that the balance in the Reserve Account goes below the required amount for any reason, you shall immediately send us sufficient funds to bring the Reserve Account balance up to the minimum required level and we shall be permitted to debit another Account of yours to fulfill such request.

F. Maintenance of Scanner and Supplies. You must maintain the scanner on loan to you for use with RDC in good working order at all times. You are responsible for all maintenance costs, which may include, but is not limited to: cleaning kits, ink replacement cartridges, power cord and/or USB cord replacement.

G. Termination of Service. In addition to the requirements upon termination as set forth in Part I, upon any termination of the RDC service, you must return to us any equipment (including any manuals or service records) on loan from us in connection with the such service to such location as we may designate, in a condition satisfactory to us. If you return the equipment other than in person, you must maintain insurance for the full replacement value of the equipment during shipment.

Section 2. <u>E-Lockbox</u>: You may obtain E-Lockbox services where you elect and authorize us to receive an electronic file from a bill payment service provider (your "**BPSP**") that we will process for you for credit to your Account. We will provide to you certain remittance information that we receive in connection with such credits using an approved Communication Method.

You will provide us with any information that we request for this service and you hereby authorize us to contact your BPSP and direct that electronic payments made to you be sent to us for further credit to your Account. You acknowledge and agree that payments made by Check to you will *not* be covered by this Section, and you will continue to receive such payments directly from your BPSP. We will credit your Account on the Business Day following receipt of the electronic file from your BPSP, and we will report information received regarding such credits from your BPSP using an agreed Communication Method. Information that we provide in connection with credits will be at our discretion. You authorize us to debit your Account in the event your BPSP issues such debit against your Account.

You recognize that credits and any associated information is provided by your BPSP and agree that we are not responsible or liable for mistakes or errors in connection with credits or associated information received by us and processed according to the terms of this Agreement. Remittance information and credits are informational only and you may not rely on such information and credits. You must rely only on your account statement for your Account balance and other information.

PART IX: INFORMATION REPORTING SERVICES

Section 1. Description of Services. Our Information Reporting services make certain account, transaction, and related information available to help you control and manage your Accounts. The information may include information from the Services used by you and transactions on your Account(s), including the Records produced using one of the Services. Information Reporting can be provided through any one or more of the Communication Methods permitted by us from time to time and subscribed to by you.

Section 2. Electronic Data Interchange. We will on your behalf, receive or send information and data electronically with respect to an Account which is accompanied by payments transmitted or received through the National Automated Clearing House Association, other electronic payment networks, and other processing systems using an established Communication Method as may be set forth on the Implementation Documentation ("**EDI**"). In providing the services described herein, we are acting only to facilitate information flow and not as the originating bank or acting as the ODFI (as defined in the ACH Rules). We shall have no liability if payments are not made or funded pursuant to such information. We will, however, increase or decrease, as applicable, the balance of the Account on the designated settlement date.

You shall at your own expense provide and maintain the equipment, software and services necessary to effectively and reliably test, transmit and receive all EDI information received or sent by us since the most recent transmission or receipt of information ("**Documents**"). If you utilize one of our Web Portals to receive/view Documents, we will provide you with the appropriate specifications in order to facilitate your compliance with this paragraph. You will be deemed to have satisfied the requirements of this paragraph if you contract with a Value Added Network ("**VAN**") acceptable to us, which provides and maintains such equipment, software and services.

Where applicable, Documents will be transmitted to you or received by us either directly or through the VAN designated by you. Transmission to your designated VAN shall constitute transmission to you hereunder. You may modify your election to use, not use, or change a VAN upon thirty (30) days prior written notice to us. You will be responsible for all costs of any VAN with which you contract. You shall be liable and agree to indemnify and hold us harmless for any claim, action, suit or liability arising out of any act or omission of your VAN. The preceding sentence may not apply if you are a public funds customer (e.g. government or public university) and the governing state law prohibits indemnification by such entities.

We shall electronically transmit to you on each Business Day, the information received even if Documents contain no information that particular day. Documents with respect to the origination side of EDI will only be sent when scheduled with you as set forth in the Implementation Documentation. The Implementation Documentation will also include the reporting methodology agreed to between you and us.

Upon receipt by you of any Documents, you shall promptly and properly transmit a functional acknowledgement in return, unless you have chosen to waive the need for acknowledgement. The acknowledgement (or waiver thereof) shall constitute conclusive evidence Documents have been properly received. If any Document is received in an unintelligible or garbled form, you shall promptly notify us in a reasonable manner and upon receipt of such notice, we shall re-transmit such Document. In the absence of such notice, we shall have no further obligation with respect to the transmission of such Document.

Section 3. Multibank Reporting. In connection with the Multibank Reporting Service, we will collect certain information with respect to Accounts (and/or, via a Processor, accounts maintained with other financial institutions), transactions involving Accounts, or accounts maintained by others for whom you have been properly authorized to access such account information, and we will make such information available to you to be viewed electronically, all as more specifically described in the Implementation Documentation. Alternatively, we may send, via a Processor, certain information with respect to Accounts, transactions involving Accounts, or accounts maintained by others with us for whom you have been properly authorized to access such account information, so that such information may be made available to you via other financial institutions with whom you bank, all as more specifically described in the Implementation Documentation.

Section 4. Visual Archive. We will provide you with a CD that contains some or all of your Records in connection with and as applicable to the use of and transactions on an Account or specific Services that you designate. As used in this Section, "Records" means images of periodic statements, paid checks, deposited checks, deposit slips, debit or credit memos, corrections, adjustments, or any document or image that is processed through item processing. The CD provided to you may or may not be encrypted as selected by you in the Documentation. We recommend that you select the option to have such CDs encrypted.

If Records are provided to you on a CD and you determine Records on the CD are distorted, illegible or the like, then you, within fifteen (15) days of receipt of the CD, must notify us. If in connection with your notification, we determine that Records are distorted, illegible, or the like, then we will send (i) a copy of the Record in question via facsimile or (ii) another CD that contains the Record in question without the distortion or the like via U.S. postal mail, without charge. If you request a copy of a Record for reasons other than poor image quality, we will send a copy of the Record in question via facsimile, with charge. We will not be responsible or liable for any loss or damage suffered by you due to your inability to produce Records.

Section 5. Limitation on Information Reporting Services. You understand that the information available to you in connection with any of the Information Reporting Services is updated periodically and therefore, at any point in time may not reflect the most up to date information in our records, as more fully described in the Implementation Documentation. You acknowledge and agree that the service does not include any recommendation, guaranty, representation or warranty whatsoever. We shall not be responsible for errors in, or delays regarding, information provided to us by other financial institutions or other non-Bank sources.

PART X: LOCKBOX SERVICES

Section 1. General Lockbox. With Lockbox services, you will direct your customers to send their remittances addressed to you but bearing a "Lockbox Address," assigned by us which is associated with a caller box or Post Office Box (P.O. Box) from the United States Postal Service, or other mechanism that we deem acceptable for processing remittances, and such caller box, P.O. Box, or other mechanism becomes your "Lockbox Address." For purposes of this Part only: "Records" are images of the fronts of Checks, the front and back of remittances, correspondence, and/or envelopes; "Source Documents" are the original Check, remittances, correspondence, or envelopes; and "Work Processing Date" is the day on which we post the lockbox receipts to your Account.

We will collect on each Business Day mail sent to your Lockbox Address, open such mail, and process the enclosed remittances for deposit to the Account you designate (the "**Lockbox Account**") in accordance with our current processing procedures and/or your special instructions provided to and agreed upon by us in writing. Checks will be inspected as payable to those names given by you to us or reasonable variations of such accepted by us in the Implementation Documentation ("**Acceptable Payees**"). You represent and warrant that you are, or your Affiliate is, the proper payee of each such Check. If your Affiliate is the proper payee, you also warrant that such Affiliate has authorized checks payable to it to be credited to your Lockbox Account. Deposited Checks will be forwarded for collection through normal banking channels. You hereby irrevocably make and appoint us as your true and lawful attorney-in-fact to endorse your name (or an Acceptable Payee name) on all checks with the endorsement "Credit to the account of the within named payee" or words similar effect on checks received in the Lockbox.

If we process a Check not signed by the maker as instructed in the Implementation Documentation, and the Check is paid, but the account owner does not authorize payment, you agree to indemnify us, the drawee bank (which may also be us), and any intervening collecting bank for any liability or expense incurred by us or such other bank due to the payment and collection of the Check.

We do not isolate Checks which bear restrictive endorsements such as "Paid in Full," or words of similar import, and we assume no liability should such a Check be deposited, processed and paid. You hereby agree that we shall have no obligation to discover such legends or endorsements or to determine whether any deposit of remittances is in accordance with the terms and conditions of any contract between the remitter and you.

If you so choose, the following documentation ("**Documentation**") will be sent to you: (i) a listing of checks deposited for the Banking Day's lockbox credits, (ii) actual Source Documents (other than the original Check) or a CD-ROM or Image Transmission containing Records, (iii) any Checks not accepted for deposit due to wrong payee, obvious alteration, restrictive endorsement, and the like, and/or (iv) any Checks that do not meet your processing instructions. We will send the Documentation to the address given by you to us. If you have Lockbox services and you instruct us to do so, we will destroy Source Documents after the Work Processing Date as follows: five (5) days for Retail Lockbox and fourteen (14) days for Wholesale Lockbox. In that event, we will not be responsible or liable for any loss or damage suffered by you due to your inability to produce Records or Source Documents.

If Checks are returned for any reason, we shall charge your Lockbox Account, or if there are insufficient funds in the Lockbox Account, then any other Account held by you, or handle as otherwise agreed between you and us. A visual record will be made of all deposited checks as part of our ordinary check processing procedures. The record created by our ordinary check processing procedure shall be retained in accordance with Applicable Law

Section 2. Web Exceptions. With Lockbox Services you may elect to use Web Exceptions, which allows you to provide us with instructions as to which Source Documents not to process or effect collection ("Non-conforming Items"). We will provide Records of such Non-conforming Items using a Communication Method and you will have three Business Days after we provide such Records to direct us via approved Communication Method as to processing of the Non-conforming Items. If you do not notify us after those three Business Days, we will not process the Non-conforming Items and we will mail the Source Documents of Non-conforming Items to you. Regardless of whether or not you direct us to process or not process a Non-conforming item, after the three Business Days, the Records concerning those Non-conforming Items will no longer be available electronically. We may terminate the Web Exceptions feature at any time with notice to you.

Section 3. Lockbox Online Viewing. You may view, through your designated Authorized User (the "**System Administrator**"), your Account information and Records via our Web Portal or via Image Transmission as elected by you in the Implementation Documentation. Images are available for viewing for up to seven (7) years from the Work Processing Date. We will assign a unique access code, password and/or other security procedures to your System Administrator to administer the Lockbox Online Viewing services. We will also be listed as an Authorized User for you. Notwithstanding any terms in this Agreement to the contrary, the Lockbox Online Viewing services will terminate immediately if you delete or remove us as an Authorized User.

With Lockbox, you have the option to receive Records via a CD or Image Transmission. If you desire to receive CD or Image Transmission, you may elect to have us destroy the Source Documents in lieu of returning Source Documents to you. Account balances listed on the our Web Portals or through Image Transmission for Visual Lockbox have not been processed through the normal banking channels, and as such are not an accurate reflection of your Lockbox Account balance.

PART XI: WIRE TRANSFER SERVICES

Section 1. <u>Wire Transfers and Authorization to Charge Account</u>. You may provide us wire transfer instructions (each a "**Payment Order**") to execute wire transfers from Accounts you designate. You are deemed to make a wire transfer request when we receive your Payment Order using a Communication Method permitted and agreed upon by you and us in the Implementation Documentation, and in compliance with the Security Procedures. Payment Orders must be received by us on a Business Day prior to our established cut-off time to be executed on that Business Day. If you make a wire transfer request after our cut-off time or on a non-Business Day, we may process such wire transfer request on the following Business Day. We may place a maximum dollar limit for any single wire transfer. Upon receipt of your Payment Order and execution of the wire transfer, you authorize us to debit your Account in the amount of the wire transfer request and any applicable fees. We will promptly send you a confirmation of each executed wire transfer request.

Section 2. <u>Use of Security Procedures and Terms of Payment Orders</u>.

(a) <u>Security Procedures</u>. The Implementation Documentation includes a description of the Security Procedures offered by us that apply to wire transfers and Payment Orders. Your use of the Wire Transfer services constitutes your acceptance of those Security Procedures as commercially reasonable and as a means of authenticating a Payment Order communicated to us by or on your behalf. You acknowledge that the Security Procedures are used to verify the authenticity of, and not to detect errors in, any Payment Order. Any Payment Order communicated by or on your behalf shall be effective as your Payment Order, and shall be enforceable against you, whether or not authorized and regardless of the actual identity of the signer, sender or transmitter thereof, if such Payment Order is received in accordance with the applicable Security Procedures, and if we accept such Payment Order in good faith. In addition, if any Payment Order was actually communicated or authorized by you or you otherwise benefited from such Payment Order (or resulting funds transfer), then you will be obligated to pay us the amount of the related funds transfers without regard to whether we complied with the Security Procedures. We may, in our discretion, use additional procedures to verify the authenticity of any Payment Order. You agree to implement any other reasonable authentication or Security Procedures established by us. Failure to do so shall be a material breach of this Agreement.

(b) <u>Compliance with Security Procedures</u>. If you choose to communicate any Payment Order (including any cancellation thereof) to us in a manner that varies from the Security Procedures, and if we accept such Payment Order in good faith, then you agree to be bound by such Payment Order, whether or not authorized, and you will be deemed to have refused the Security Procedures that we offer and recommend as "commercially reasonable," and you will be obligated to pay us the amount of such wire transfer. However, we have no obligation to accept any Payment Order that is not communicated in compliance with the Security Procedures. We are not responsible for refusal to act upon any Payment Order received which does not comply with this Agreement, including where our reasonable efforts to verify the Payment Order in accordance with the Security Procedures has failed or where such action is delayed until verification can be obtained.

(c) <u>Rejection of Payment Orders</u>. We have the right to reject, and refuse to accept, any Payment Order for any reason, including your failure to maintain a sufficient balance of collected funds in an Account or that such Payment Order fails to comply with Applicable Law; provided, however, that in rejecting, or refusing to accept, any funds transfer request or Payment Order, we shall act in good faith and use our reasonable business judgment. We will have no liability to you based on such rejection or refusal of any Payment Order. If we determine that processing or honoring any Payment Order would cause the designated Account to be overdrawn, we may, but have no obligation to, execute the Payment Order and (i) create an overdraft in such Account or (ii) transfer to the designated Account from another of your Accounts, funds sufficient to cover the deficiency in the designated Account. If an Overdraft is created in an Account in order to complete a wire transfer, you agree to immediately repay us, and you agree and authorize us to debit any of your Accounts with us in the amount equal to the overdraft and applicable fees. If we reject any Payment Order, we will notify you through a status report on one of our electronic information reporting systems or by other reasonable means within the time frames indicated in the Implementation Documentation, but we will have no liability to you based on our failure or delay in providing such notice. If any Payment Order is rejected by us or any funds transfer system as a result of incomplete information or a formatting or other similar error, it will be your responsibility to re-transmit correct Payment Order to us.

(d) <u>Cancellation or Amendment of Payment Order</u>. You have no right to cancel or amend any Payment Order after we have received it. However, to the extent permitted by Applicable Law, we will use our reasonable efforts to act on your request to cancel any such Payment Order before we process it, but we will have no liability if such cancellation is not effected.

(e) <u>Inconsistency of Name and Account Number</u>. We are not responsible for detecting errors in any Payment Order, including in the identifying number of any intermediary bank or beneficiary's bank, even if that number does not correspond to the bank identified by name. You acknowledge and agree that wire transfers may be made on the basis of account number or other identifying number (including a bank transit routing number, SWIFT BIC or CHIPS UID Code). We and any receiving bank (including any beneficiary's bank and any intermediary bank) may rely on the account number or other identifying number of any bank (including a bank transit routing number, SWIFT BIC or CHIPS UID Code), person or bank account specified in the

Payment Order even if such number identifies a bank, person or bank account different from the bank, person or bank account designated by name, and your obligation to pay the amount of Payment Order (or resulting funds transfer) to us is not excused in those circumstances.

Section 3. Use of Third Parties; Transfers in Foreign Currency.

(a) Intermediary Banks. You shall specify routing instructions for wire transfers in any Payment Order communicated to us. If no such specification is made, you hereby instruct us to send wire transfers through such correspondent(s) as deemed appropriate by us in our sole discretion after consulting standard bank references as to correspondent relationships. In executing any wire transfers, we shall use whatever funds transfer system, communications system, and intermediary designated by you, except where we in good faith conclude that the use of such funds transfer system, communication system, or intermediary is not feasible or would involve undue delay, in which case we shall use such of the funds transfer systems and communications systems in which we participate, and such intermediaries, agents or sub-agents as we determine to be appropriate in connection with any such wire transfers. To the fullest extent permitted by law, (i) any such funds transfer system, communications system, or intermediary, agent or sub-agent shall not be a Processor, and shall be deemed to be your agent, and we shall not be liable for any errors, negligence, suspension or default of any of them or for any failure to identify the beneficiary or any mispayment by any of them, and (ii) we shall not be liable for any errors, mutilations, delay, misdelivery or failure of delivery in the transmission of any wire transfers in connection with such transaction or for any suspension of any means of transmission or for any imposition of any censorship, exchange control or other restriction, all such risk being borne by you.

(b) Transfers in Foreign Currency. Any request for the wire transfer of funds in a currency other than U.S. Dollars shall require you to first validly purchase such foreign currency from us or we shall purchase such amount from our affiliate or correspondent bank. Unless otherwise agreed between you and us, the value of any such wire transfer shall be reported to you in the U.S. Dollar equivalent of the amount of foreign currency transferred. Any loss of exchange arising from a subsequent cancellation of such wire transfer request, or because of a rejection of delivery for any reason, shall be charged to your Account. You agree that if we utilize the services of other banks for the purpose of giving effect to any request or order for the wire transfer of funds in foreign currency, then we do so for your account and at your risk.

PART XII: ZERO BALANCE ACCOUNTING SERVICES

Section 1. Zero Balance Accounting Services. We will set up and provide Zero Balance Accounting services. At your request, we will establish, or designate your existing Accounts, as Zero Balance Accounts ("**ZBAs**") that end each day with a zero balance. Under the Zero Balance Accounting service, ZBAs are linked to a separate account to which all deposits from one or multiple ZBAs are automatically swept each Business Day, and from which any ZBA may be funded (the "**Concentration Account**"). At the end of each Business Day, we will post all deposits, checks, and other debits and credits with respect to each ZBA or Concentration Account, after which we will automatically adjust the balances in each ZBA to zero by moving the funds, whether collected or uncollected, into or out of each ZBA, and simultaneously debiting or crediting the applicable Concentration Account. Your ZBAs will be processed in order of Account number (lowest to highest) unless otherwise agreed to by you and us in writing. A daily status report summarizing activity in each ZBA and Concentration Account will be available using an approved Communication Method.

We will provide these services to you and your designated Affiliates, if applicable, in accordance with this Part for all Accounts that you and your Affiliates designate. You and your Affiliates will designate the Account names and corresponding Account numbers with us to become ZBAs and Concentration Accounts. You and your Affiliates authorize us to pay checks and other debit items that are properly payable (in accordance with Applicable Law and our policies and procedures) against a ZBA or Concentration Account from available funds in the respective ZBA, the respective Concentration Account, or available funds transferred from a ZBA or Concentration Account to the other. You and your Affiliates authorize us to transfer funds to and/or from the designated ZBAs and Concentration Accounts as contemplated by this Part. You and your Affiliates acknowledge that separate identification of the funds in the ZBAs and Concentration Account(s) is your responsibility and that of your Affiliates.

Section 2. Representations and Warranties. Each of you and your Affiliates, as applicable, hereby represents and warrants to us that (a) you are the owners of the respective ZBAs and Concentration Accounts you designate; (b) you and your Affiliates are affiliated by common ownership as reflected on the organizational chart attached to the Authorization; (c) you and your Affiliates have full power and authority to execute and deliver this Agreement and carry out the transactions contemplated herein; (d) the execution, delivery and performance of this Agreement does not and will not violate any provision of law or any regulation applicable to you or your Affiliates; (e) all accounts designated as ZBAs and Concentration Accounts are owned by you and/or your Affiliates, as appropriate, and that none of such accounts are owned by another entity; (f) separate identification of funds in the ZBAs and Concentration Accounts will be maintained by you and your Affiliates; (g) before signing the Authorization, you and your Affiliates have reviewed the books, records and other documents and information in the possession of any of you and your Affiliates or any other person or entity with respect to the Concentration Account(s) and any or all of the ZBAs, or so much thereof as was necessary to make the warranty that separate identification of funds is maintained, and (h) the ownership of all entities executing the Authorization and/or using the Zero Balance Accounting service is owned as indicated on the organizational chart provided to us.

Further, you and your Affiliates represent, warrant and covenant with us that they will deliver written notice, in reasonable detail to us, immediately upon receiving knowledge of any event which would cause either you or any of your Affiliates to cease to exist or file any bankruptcy or insolvency proceedings, in which case we may, in our discretion, at any time after receiving knowledge of such an event, remove you or such Affiliate from the ZBA configuration and transfer to the affected ZBA all collected and uncollected funds currently in the Concentration Account(s) which are identified by you or your Affiliate as belonging to you or such Affiliate. You and your Affiliates agree that if ownership of any one of the ZBAs or Concentration Accounts were to be transferred to an entity other than an affiliate company which is a party to this Agreement, regardless of how closely related, you and your Affiliates will immediately unlink from the ZBA/Concentration Account relationship such account(s) and we shall have no liability for your or your Affiliates' failure to do so. If you or any Affiliate is removed from the ZBA configuration, it is your and your Affiliates' responsibility to determine which funds belong to you and which belong to your Affiliates. We are not required to make any such determination.

Section 3. Guaranty by You. If applicable, to induce us to provide the Zero Balance Accounting service to your Affiliates, you absolutely, irrevocably and unconditionally guaranty to us the full and prompt performance and payment when due (by acceleration or otherwise), of all obligations, agreements, covenants, liabilities, expenses, representations and warranties of any of your Affiliates to us, whether now existing or hereafter arising, under or in connection with this Part and the Zero Balance Accounting service (collectively, the "**Obligations**"). This is a continuing guaranty and shall remain in full force and effect and be binding upon you and your successors and permitted assigns, if any. This guaranty shall continue to be effective if at any time payment or performance of the Obligations of you or any of your Affiliates, or any part thereof, is, upon the insolvency, bankruptcy or reorganization of such Affiliate or otherwise pursuant to Applicable Law, rescinded or reduced in amount or must otherwise be restored or returned by us, all as though such payment or performance had not been made. Your obligations hereunder are those of a primary obligor, and not merely a surety, and are independent of the Obligations. You unconditionally waive any right to require us to (a) proceed against any of your Affiliates or any other obligor in respect of the Obligations, provided we have first given notice of default to you and your Affiliate and the Affiliate has failed to cure such default within two (2) days of the date of such notice; (b) proceed against or exhaust any security held directly or indirectly on account of the Obligations; or (c) pursue any other remedy in our powers whatsoever. You hereby waive (i) notice of acceptance of this guaranty; (ii) presentment and demand for payment of any of the Obligations; (iii) protest and notice of dishonor or default to you or to any other party with respect to any of the Obligations; and (iv) all other notices to which you might otherwise be entitled. You agree to pay all reasonable attorneys' fees and charges, the reasonable allocated cost of internal legal services, and all other reasonable costs and expenses which may be incurred by us in the enforcement of this guaranty.

Section 4. Removal or Addition to ZBA or Concentration Accounts. You and each of your Affiliates agree to advise us promptly of any consolidation, merger, sale or conveyance of you or any Affiliate or any principal part of your assets, or the sale or conveyance of any controlling interest in you or such Affiliate to the extent you or such Affiliate is no longer affiliated with you and the remaining Affiliates (either by common ownership or control), and upon any such occurrence, we shall have the right to terminate this Part and the Zero Balance Accounting service with respect to such Affiliate immediately. In addition, you may, on behalf of all Affiliates, add additional affiliate companies to the Zero Balance Accounting service via an amendment, in form and substance acceptable to us, and to otherwise act for and on behalf of you and each Affiliate signing the Authorization, or subsequently added by amendment as provided herein. If a new affiliate company being added is newly created, you will update your organizational chart and provide such updated chart to us.

PART XIII: GLOSSARY OF TERMS

Unless otherwise specifically defined in another Part of this Agreement, the following terms shall have the definitions below:

(a) "***ACH Rules***" means the rules and regulations of NACHA and those of any regional clearinghouse in effect from time to time used by us to settle ACH transfers.

(b) "***Affiliate(s)***" means any company owned by or under common control as you or us as applicable in the context of this Agreement.

(c) "***Applicable Law***" means all applicable federal and state laws, rules and regulations, and regulatory guidance (to the extent such guidance is enforced by Governmental Authority) as in effect from time to time governing or relating to this Agreement or the Services, including, without limitation, the ACH Rules and the rules of any funds transfer system, and guidance issued by the Federal Financial Institutions Examination Council and similar advising bodies.

(d) "***Authorized User***" means your employee(s) or other person(s) that the Master User has authorized to be able to access and use the Services.

(e) "***Business Day***" means every day Monday through Friday from 8:00 a.m. to 4:45 p.m. in Columbus, Ohio, but excluding federal holidays**.**

(f) "***Check***" means checks, drafts, money orders, and other instruments or items for the payment of money that may be handled as cash items by Federal Reserve Banks.

(g) "***Effective Entry Date***" means the date specified, in accordance with the ACH Rules, on the Entry by the Originator (as defined in the ACH Rules) on which the Originator intends the Entry to be settled.

(h) "***Entry***" or "***Entries***" means an order or request appropriately sent through the ACH network (i) for the transfer of money to the deposit account of a person (a "Credit Entry") or (ii) for the withdrawal of money from the deposit account of a person (a "Debit Entry"). For purposes of the Services, the term "Entries" is the plural of the term "Entry."

(i) "***Funds transfer***" shall have the meaning ascribed to it in Article 4A of the Uniform Commercial Code.

(j) ***"Governmental Authority"*** means the Office of the Comptroller of the Currency, the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of Foreign Assets Control of the U.S. Treasury Department, and the Consumer Financial Protection Bureau.

(k) "***Implementation Documentation***" means all materials that explain or facilitate the use of a Service, including, without limitation, set-up forms, user booklets, operational manuals, Security Procedures, instruction and training materials, and information provided by us relating to the Services, but shall expressly exclude any marketing, sales or other promotional material in any form or delivery method.

(l) "***Losses***" means any and all claims, actions, demands, losses, damages, judgments, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) and all costs of settlement of claims.

(m) "***Master User***" means the administrator that you have designated in accordance with our Security Procedures for controlling access to the Services.

(n) "***Payment Order***" shall have the meaning ascribed to it in Article 4A of the Uniform Commercial Code.

(o) ***"Person***" means an individual, corporation, limited liability company, partnership (general or limited), business trust, or any other form of business entity.

(p) ***"Records"*** means, with respect to the Services, the hard copy or images retained in connection with the Services, and may include, but not be limited to reports, receipts, confirmations, notices, statements, adjustments, charges, entries, checks, deposit slips, debit or credit memos, invoices, or other documents submitted with a deposit or remittance, corrections, adjustments, transactions, or any document processed as part of a Service and retained by us.

(q) ***"Retail Lockbox"*** is a Lockbox that processes payments of consumers made to businesses. Generally, the Retail Lockbox receives a high volume of payments than Wholesale Lockbox. Remittance coupons must have a machine readable optical character recognition (OCR) line.

(r) ***"Security Procedures"*** means Passwords, call back protocols, tokens, keys, test keys, security devices, and other systems and procedures we disclose to you to enable you to use the Services and for us to verify the origin of instructions and communications to us.

(s) "***UCC***" means the Uniform Commercial Code, as enacted in the State of Ohio.

(t) "***Web Portal***" means any internet or web-based application accessed via the internet and/or the programs and data provided by us for use on a computer in connection with one or more particular Services.

(u) ***"Wholesale Lockbox"*** is a Lockbox that processes payments which are from one business to another. Generally, there is a lower volume of payments than Retail Lockbox.

AMENDMENT
TREASURY MANAGEMENT SERVICES AGREEMENT

THIS AMENDMENT TO THE TREASURY MANAGEMENT SERVICES AGREEMENT (the "Amendment") is entered into this ______ day of _______________ 2017, by and between The Huntington National Bank (hereafter "Huntington") and The City of Brunswick, Ohio (hereafter "Brunswick")

WHEREAS, Huntington provides services as more fully described in the Treasury Management Services Agreement (the "Agreement");

WHEREAS, Brunswick desires to obtain the Services with certain modifications as described herein; and,

WHEREAS, Huntington agrees to provide the Services to Brunswick as modified herein.

NOW THEREFORE, for consideration the receipt and sufficiency of which is hereby acknowledged, Huntington and Brunswick agree as follows:

1. Part I, Section 2, shall be deleted in its entirety and replaced with the following:

"**Section 2. Fees; Funds Availability; Overdrafts.** You agree to pay us the applicable fees and charges disclosed to you for use of the Services. We reserve the right to change any fees at any time. Any new fees will take effect with the next account analysis or statement period after we send written notice to you that a change in fees has occurred, unless some other effective date is set forth in such notice. Unless other arrangements are made with us, including reduction in fees through account analysis and compensating balances as calculated by us, you agree that we are authorized to charge the fees and charges to any of your Account(s) when due. You shall be responsible for payment of all sales, use or excise, value added, utility or other similar taxes relating to your use of the Services. Deposits made using any of the Services are subject to our Funds Availability Schedule. With respect to any Service, we may, at our sole discretion, allow an overdraft to occur in your Account. Except as we agree or advise you otherwise in writing, you must repay us immediately, without demand, the amount of such overdraft plus any overdraft fees, charges or interest. In such cases, the fact that we previously allowed an overdraft to occur does not obligate us to do so in the future. For purposes of satisfying your payment obligations, we may consider any overdraft line of credit or other arrangement you have with us."

2. Part I, Section 6, shall be deleted in its entirety and replaced with the following:

"**Section 6. Your Duty to Review and Inspect.** You are responsible for promptly reviewing and inspecting any and all invoices and Records (as defined in Part XIII). Except as otherwise provided in the description of a particular Service, you agree to notify us of any errors or discrepancies within forty-five (45) days after the invoice or Records which contain such errors or discrepancies are received by you or otherwise made available to you (including through any Web Portal). If you fail to notify us of such error or discrepancy within forty-five (45) days of the date on which such information or Records is received by you or otherwise made available to you by us (including through any Web Portal), then you shall be precluded from asserting such error or discrepancy against us. Notwithstanding the foregoing, we reserve the right to, in our sole discretion, adjust transaction records for good cause after the expiration of said forty-five (45) day period.

3. Part I, Section 19, shall be deleted in its entirety and replaced with the following:

"**Section 19. Representations and Warranties.** You warrant and represent that (a) you are duly organized, validly existing, and in good standing in the jurisdiction in which you are organized; (b) there are no provisions of any law, or any certificate of incorporation, certificate of organization, by-laws, operating agreement, partnership agreement, or any agreement of any kind, nature or description binding upon you which prohibits you from entering into or performing under this Agreement; (c) your execution and performance of this Agreement has been duly authorized; (d) the person(s) executing this Agreement on your behalf is authorized by you to do so; (e) this Agreement is a binding obligation of yours; (f) all Accounts accessible pursuant to the Services were established only for business purposes; and the transactions made with respect to those Accounts will only be for business purposes; (g) you are authorized to accept for deposit any Checks deposited in your Account(s) or an Account of your Affiliate using any of the Services; and (h) you are a tax exempt entity. You will be deemed to repeat all of the foregoing warranties and representations each time we perform Services under this Agreement. We will be entitled to rely on any written notice or other communication believed by us in good faith to be genuine and to have been signed or authorized by an authorized representative of yours."

Huntington and Brunswick acknowledge and agree that the Agreement, except as modified by this Amendment, will remain in full force and effect, and said Agreement, as amended, is hereby ratified and confirmed.

Huntington and Brunswick, by and through their respective duly authorized representatives have executed this Amendment on this _____ day of ________________, 2017.

THE HUNTINGTON NATIONAL BANK	CITY OF BRUNSWICK
By: __________________________	By:__________________________
Its: __________________________	Its: __________________________

THE CITY OF BRUNSWICK

PROPOSED LEGISLATION

DATE:	02/13/2017
TO:	Vice Mayor Patricia Hanek and Members of City Council
FROM:	Carl S. DeForest, Acting City Manager
COPY:	Mayor Ron Falconi
LEGISLATION:	**ORD. NO. 11-17 -** An ordinance establishing Chapter 862 of the Codified Ordinances of the City of Brunswick relative to Fair Housing - **1st Reading** (To be brought from Committee-of-the-Whole, *Administration/Ken Fisher*)
BACKGROUND:	To provide within constitutional limitations fair housing within the City of Brunswick, to assure that all persons have full and equal opportunity to consider all available housing for themselves and their families within the City without being discriminated against on the basis of race, color, religion, sex sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income, and to promote a stable, racially integrated community.
PURPOSE AND EXPLANATION:	This ordinance will establish Chapter 862 of the Codified Ordinances of the City of Brunswick relative to Fair Housing.
IMPLEMENTATION SCHEDULE:	Adopt after three readings.
FINANCIAL INFORMATION:	
FINANCIAL SUMMARY:	
RECOMMENDED ACTION:	

One Reading	No
Two Readings	No
Three Readings	Yes
Emergency	No
Suspension of Rules	No

If emergency or suspension of the rules, why the request?
Recommended first reading on February 13, 2017 for three readings.

ADDITIONAL INFORMATION:

CITY OF BRUNSWICK, OHIO
ORDINANCE NO. 11-17

BY: Committee-of-the-Whole

AN ORDINANCE ESTABLISHING CHAPTER 862 OF THE CODIFIDED ORDINANCES OF THE CITY OF BRUNSWICK RELATIVE TO FAIR HOUSING.

WHEREAS: THIS COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1. That Chapter 862 of the Codified Ordinances of the City of Brunswick is hereby established to read as follows:

862.01 PURPOSE.

It is hereby declared to be the purpose of this Chapter to provide, within constitutional limitations, for fair housing throughout the City, to assure that all persons have full and equal opportunity to consider all available housing for themselves and their families within the City without being discriminated against on the basis of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income, and to promote a stable, racially integrated community.

862.02 DEFINITIONS.

Words and phrases used in this Chapter shall have the meanings given herein unless the context clearly indicates otherwise:

(a) "Commission" means the Fair Housing Review Commission.

(b) "Discriminate" or "discrimination" means to separate or segregate persons in a particular manner solely or in part because of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income; provided that "discriminate" or "discrimination" shall not include special outreach efforts conducted by or under the authority of units of local government (including agencies, departments and commissions thereof) or non-profit fair housing corporations or agencies to ensure that persons of minority groups are fully informed of, and have access to, available dwelling opportunities in areas of present or prospective majority group concentration, or to ensure that persons of majority groups are fully informed of and have access to available dwelling opportunities in areas of present or prospective minority group concentration.

(c) "Covered multi-family dwellings" means building consisting of four or more units if such buildings have one or more elevations, and ground floor units in other buildings consisting of four or more units.

(d) "Dwelling" means a building or structure, or part thereof, used or designed to be used for residential purposes.

(e) "Familial status" means one or more individuals (who have not attained the age of 18 years) being domiciled with (1) a parent or another person having legal custody of such individual or individuals; or (2) the designee of such parent or other person having such custody; and shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(f) "Disability" means, with respect to a person: (1) a physical or mental impairment which substantially limits one or more of such person's major life activities; (2) a record of having such impairment; or (3) being regarded as having such impairment, but such term does not include current, illegal use of or addiction to a controlled substance as defined in 21 U.S.C. Section 802.

(g) "Housing for older persons" means housing: (1) provided under any state or federal program that the Secretary of HUD determines is specifically designed and operated to assist elderly persons (as defined in the state or federal program); or (2) intended for persons 62 years of age or older; or (3) intended and operated for occupancy by at least one person 55 years or older per unit. The determination as to whether housing qualifies as housing for older persons under this division shall be consistent with regulations promulgated by the Secretary of HUD, providing at least the following factors: (1) the existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and (2) that at least 80% of the units are occupied by at least one person 55 years of age or older per unit; and (3) the procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(h) "Lending institution" means any bank, savings and loan association, insurance company, or other organization or person regularly engaged in the business of lending money, guaranteeing loans for profit, or otherwise providing financial assistance or insurance in connection with the purchase, sale or rental of dwellings.

(i) "Person" means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers or fiduciaries.

(j) "Property" means the real property upon which a dwelling is located.

(k) "Purchase" means to acquire a dwelling by payment or promise of payment of money or its equivalent.

(l) "Real estate agent" means a real estate broker or salesman, or a limited real estate broker or salesman, as defined in Ohio R.C. 4735.01.

(m) "Rent" or "rental" means to lease, sublease, assign or otherwise grant or obtain the right to occupy a dwelling not owned by the occupant in return for consideration, or a contract or operation to do any of the foregoing.

(n) "Sale" or "sell" means to convey, exchange, transfer or assign legal or equitable title to, or beneficial interest in, a dwelling in return for consideration, or a contract or option to do any of the foregoing.

(o) "Solicit" or "solicitation" means any conduct by a real estate agent, or an employee or agent thereof, intended to induce the owner of a dwelling within the City to sell, rent, or list the same for sale or rental.

(p) "Unlawful discriminatory practice" means any act prohibited by Section 862.04 of this Chapter.

(q) "Association with a protected class" means people associated with or residing with a person in a protected class.

862.03 EXEMPTIONS.

The provisions of this Chapter shall not:

(a) Prohibit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin. Nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose, from limiting rental or occupancy of such lodgings to its members or from giving preference to its members, provided such club does not discriminate in its membership policies on the basis of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income.

(b) Require any person selling or renting property to modify such property in any way at his or her expense, provided that such person does not refuse to permit reasonable modifications by a disabled person, necessary for that person to fully enjoy the premises in which he or she resides, when such modifications are made at the expense of the disabled person, which permission may be conditioned on that person's promise to restore the premises to the condition in which it previously existed before granting permission for such modification, nor shall this chapter be construed to relieve any disabled person of any obligation generally imposed on all persons regardless of disability in a written lease, rental agreement, or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations, of the lease, agreement, or contract, so long as such distinctions are not based on the disability itself, or on the landlord's refusal to make reasonable modification in the lease, agreement or contract conditions for the purpose of denying a disabled person equal opportunity to the use and enjoyment of the premises.

(c) Prohibit restricting the sale or rental of a dwelling on the basis of disability when such a dwelling is authorized, approved, financed, or subsidized in whole or in part for the benefit of persons of a disability by a unit of state, local, or federal government, so long as such restrictions do not discriminate against otherwise qualified disabled persons.

(d) Require that a dwelling be made available to a person with a disability whose tenancy would constitute a direct threat to the health and safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

(e) Prohibit the applicability of any reasonable local, state or federal restrictions regarding maximum number of occupants permitted to occupy a dwelling.

(f) With regard to familial status, apply to dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program, or to housing for older persons, provided that HUD has determined that such program or housing is exempt, which determination shall be conclusive.

(g) Prohibit a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income.

(h) Prohibit conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in 21 U.S.C. Section 802.

862.04 PROHIBITED ACTS.

It is hereby declared to be a discriminatory housing practice and unlawful for any person to:

(a) Refuse to sell, transfer, assign, rent, lease, sublease, finance, negotiate or otherwise deny or make unavailable a dwelling to any person because of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income of any present or prospective owner, occupant, or user of such dwelling;

(b) Represent to any person, because of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income, that a dwelling is not available for sale, rental, or inspection when in fact it is available;

(c) Refuse to lend money or to provide other financial assistance, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of a dwelling or otherwise withhold financing of a dwelling from any person because of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income of any present or dwelling, provided such person lends money as one of the principal aspects or incident to his or her principal business and not only as a part of the purchase price of an owner-occupied residence he or she is selling not merely casually or occasionally to a relative or friend;

(d) Discriminate against any person in the terms or conditions of selling, transferring, assigning, brokering, renting, leasing, or subleasing any dwelling or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any dwelling, including the sale of fire, extended coverage or homeowners insurance, because of the race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income of any present or prospective owner, occupant, or user of such dwelling, or because of the racial composition of the neighborhood in which the dwelling is located;

(e) Discriminate against any person in the terms or conditions of any loan of money, purchase of loans, or in providing other financial assistance, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair or maintenance of a dwelling because of the race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income of any present or prospective owner, occupant, or user of such dwelling, or because of the racial composition of the neighborhood in which the dwelling is located;

(f) Refuse to consider without prejudice the purpose of extending mortgage credit to a married couple or either member thereof;

(g) Print, publish, or circulate any statement or advertisement, or make any verbal statement, relating to the sale, transfer, assignment, rental, lease, sublease, or acquisition of any dwelling or the loan of money, whether or not secured by mortgage or otherwise, for the acquisition, construction, rehabilitation, repair, or maintenance of a dwelling which indicates any preference, limitation, specification, or discrimination based upon race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income, or an intention to make any such preference, limitation, specification, ordiscrimination;

(h) Include in any transfer, rental, or lease of a dwelling any restrictive covenant based on race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income, or honor or exercise, or attempt to honor or exercise, any such restrictive covenant, provided that the prior inclusion of such a restrictive covenant in the chain of title shall not be deemed a violation of this provision;

(i) Induce or solicit or attempt to induce or solicit a dwelling listing, sale, or transaction by representing that a change has occurred or may occur with respect to racial, religious, sexual or ethnic composition of the block, neighborhood, or area in which the dwelling is located, or induced or solicited or attempt to induce or solicit such sale or listing by representing that the presence or anticipated presence of persons of any race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income, in the area will or may have results such as the following:

    (1) The lowering of property values;
    (2) A change in the racial, religious, sexual, or ethnic composition of the block, neighborhood, or area in which the dwelling is located;
    (3) An increase in criminalor antisocial behavior in the area;
    (4) A decline in the quality of the schools serving the area.

(j) Deny any person access to or membership or participation in any multiple-listing service, real estate agents' association, or other service, association, or facility relating to the business of selling or renting housing accommodations, or to discriminate against any person in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income;

(k) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed or having aided or encouraged any person in the exercise or enjoyment of, any right granted or protected by this Section;

(l) Discourage or attempt to discourage the purchase by a prospective purchaser of a dwelling, by representing that any block, neighborhood, or area has undergone or might undergo a change with respect to the religious, racial, sexual, familial status or ethnic composition of the block, neighborhood, or area;

(m) Discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income, in appraising the value of any dwelling in connection with the sale, brokering, or rental of such dwelling;

(n) Refuse to permit, at the expense of a disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, no modification need be permitted unless the renter first agrees to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted unless previously negotiated with the landlord;

(o) Refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling;

(p) Construct covered multi-family dwellings that do not provide for accessibility and usability for physically disabled persons in compliance with applicable state or federal law, whichever is controlling;

(q) Discriminate in any manner against any other person because that person has opposed any unlawful practice defined in this Chapter, or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing as provided pursuant to this Chapter.

(r) Aid, abet, incite, compel, or coerce the doing of any act declared by this Chapter to be an unlawfully discriminatory practice, or to obstruct or prevent any person from complying with the provisions of this Chapter, or any order issued pursuant thereto, or to attempt directly or indirectly to commit any act declared by this Chapter to be an unlawful discriminatorypractice.

862.05 POSTING OF NOTICES.

All real estate agents and all persons who operate or manage a dwelling with more than four dwelling units shall post in a conspicuous location in those areas in their places of business located within the City where prospective purchasers, sellers or renters normally make inquiries, and where the terms of a sale or rental are normally negotiated, a notice which contains the following language, printed on a light-colored background, in not less than 14 point type:

> "It is a violation of the Brunswick Fair Housing Law, in connection with any housing activity, to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, age, ancestry, disability, familial status, national origin, military status, association with a protected class or source of income.
>
> For more information, contact: (330) 558-6830"

862.06 FAIR HOUSING REVIEW COMMISSION.

(a) There is hereby created a Fair Housing Review Commission which shall consist of three citizen members appointed by the Mayor and confirmed by City Council to serve for a term of three years at no salary with the Chairman to be elected by the members of the Commission. Commission members can be appointed to serve no more than three consecutive terms.

(b) The Fair Housing Review Commission shall be a fact finding Commission to advise the Mayor, City Manager and Council of their findings for appropriate action.

862.07 ADMINISTRATION.

The City Manager shall appoint the Law Director to work with the Commission in processing complaints on behalf of the Commission.

862.08 COMPLAINTS.

An person may allege that violation of Section 862.04 has occurred, or that a violation will occur and cause injury, by filing with the Fair Housing Review Commission, within one year of the alleged violation, a written complaint setting forth his or her grievance. The complaint shall state, on a printed form made available by the Commission, the name and address of the complainant, then name and address of the person(s) alleged to have committed a violation of Section 820.04 and the particular facts thereof, and such other information as may be required by the Commission. A complaint may be amended at any time. Upon the filing of a complaint, the Law Director shall acknowledge receipt of the complaint, serving notice thereof to the complainant, which notice shall also contain information as to the time limits and choice of forum provided in this Chapter.

862.09 NOTICE.

Within 15 calendar days after a complaint has been received by the Commission, the Law Director shall serve, or cause to be served, in person, or be certified mail, a copy of the complaint on the person (hereinafter referred to as the "respondent") alleged to have violated Section 862.04 of this Chapter. Along with the service of the complaint, the Law Director shall advise the respondent in writing of his or her procedural rights and obligations pursuant to this Chapter. The respondent may file with the Commission an answer to the complaint.

862.10 INVESTIGATION.

Within 30 calendar days after a complaint has been received by the Commission, the Law Director shall conduct an investigation of the complaint and shall determine either that:

(a) There are reasonable grounds to believe that a violation that Section 862.04 of this Chapter has occurred, in which case the Law Director shall then initiate the conciliation process as detailed in Section 862.11 of this Chapter; or
(b) There are reasonable grounds to believe that a violation of Section 862.04 of this Chapter has not occurred, in which case the Law Director shall hen dismiss the complaint by preparing a written notice of dismissal, including the reasons therefor, and notify the parties of the dismissal within 5 calendar days by service a copy of the notice of dismissal by certified mail on the parties. A copy of the notice shall also be filed with the Commission. The notice of dismissal shall advise the complainant of his or her right of appeal under this section. Within 14 calendar days after receipt of the notice of dismissal, the complainant may appeal by filing a written request with the Commission for a review of the complaint. By a majority vote, the Commission may overrule the dismissal and refer the complaint to the Law Director for conciliation pursuant to Section 862.11 of this Chapter.
(c) The Law Director shall complete the investigation within 100 calendar days after receipt of the complaint, unless impracticable, in which case the Law Director shall inform the complainant and respondent in writing of the reasons why the investigation can not be completed within the time prescribed.

862.11 CONCILIATION.

If the Law Director has made a determination pursuant to Section 862.10 of this Chapter that there are reasonable grounds to believe a violation of Section 862.04 of this Chapter has occurred, or at such other time after a complaint has been filed, as appropriate, the Law Director shall:

(a) Notify the complainant and respondent of the time, place and date of the conciliation conference at least 10 calendar days prior thereto, and both parties shall appear at the conciliation conference in person or by attorney; and
(b) Attempt to resolve the complaint by methods of conference, conciliation, mediation and persuasion with all interested parties and such representatives as

the parties may choose to assist them. Conciliation conferences shall be informal and confidential. The terms of conciliation agreed to by the parties shall be reduced to writing and incorporated into a consent agreement to be executed by all parties, subject to review and approval by the Fair Housing Review Commission. The terms of the conciliation agreement shall be a public record. If the complaint has not been resolved by conciliation within 60 calendar days after the date of the scheduled conciliation conference, the law Director shall refer the complaint to the Fair Housing Review Commission for an adjudicative hearing.

862.12 INJUNCTIVE RELIEF.

At any time after the filing of a complaint, the Law Director may petition the appropriate court for temporary or preliminary injunctive relief pending final determination of the proceedings under this Chapter, or as otherwise necessary to carry out the purposes of this Chapter, including an order or decree restraining the respondent from doing or causing any act which would render ineffectual any order or action by the Fair Housing Review Commission.

862.13 HEARINGS.

Within 30 calendar days after the complaint is referred to the Fair Housing Review Commission, the Commission shall, upon due and reasonable notice to all parties, conduct a hearing on the complaint. Parties to the hearing shall be the complainant and the respondent, and such other persons as the Commission may deem appropriate, including the Law Director. The hearing shall be open to the public. At least 7 calendar days prior to the hearing, the Commission shall serve upon the respondent a statement of charges and a summons requiring the attendance of named persons and the production of relevant documents and records. The parties may apply to the Commission to have subpoenas issued in the Commission's name. Failure to comply with a summons or subpoena shall constitute a violation of this Chapter. The parties may file such statements with the Commission as they deem necessary. No fewer that two of the same members of the Commission must be present at all times during a hearing. The parties may appear before the Commission in person or by duly authorized representative and may be represented by legal counsel. The parties shall have the right to present witnesses and cross-examine witnesses, and all testimony and evidence shall be given under oath or by affirmation, administered by the Chairman of the Commission, and all proceedings shall be recorded in writing and/or audio to be considered as part of the record of proceedings.

862.14 HEARING DECISIONS.

Where hearings have been held before the Commission, only those members of the Commission who have attended all hearings on the complaint shall participate in the determination of the complaint. Within 15 calendar days after the conclusion of the hearing, the Commission shall render a decision in the form of a written order, which shall include findings of fact, a statement of whether the respondent has violated Section 862.04 of this Chapter, and such remedial actions as the Commission may order pursuant to Section 862.16 of this Chapter. The order shall be served upon the parties by certified mail within 15 calendar days of the decision. The order shall be available for public inspection and a copy shall be provided to any person in accordance with the applicable public record laws.

862.15 REMEDIAL ACTIONS.

(a) If the Commission finds that the respondent has not violated Section 862.04 of this Chapter, its order under Section 862.14 of this Chapter shall dismiss the complaint. If the Commission finds the complaint to be frivolous or vindictive, then the costs of the proceedings may be assessed against the complainant.

(b) If the Commission finds that the respondent has violated Section 862.04 of this Chapter, its order under Section 861.14 of this Chapter shall provide for the taking of such remedial action(s) as it deems appropriate, which may include, but need not be limited to, the following:

  (1) Directing the respondent to cease and desist from violations of Section 862.04 of this Chapter and take such affirmative steps as necessary to effectuate the purposes of this Chapter.

  (2) Recommending to the Law Director an appropriate court action for the enforcement of Section 862.04 of this Chapter and for such other and further relief as the court may deem appropriate, including, but not limited to, injunctive relief, compensatory damages, punitive damages and/or attorneys' fees and costs for award to the complainant; such court action shall be required in the event the respondent does not voluntarily comply with the remedial actions ordered by the Commission.

  (3) Recommending to the Law Director the proceedings for violation of federal and/or state law and/or regulations.

  (4) Recommending to the Law Director proceedings with any contracting agency in the case of any violation of Section 862.04 of this Chapter by respondent in the course of performing under a contract or sub-contract with the state of any political subdivision or agency thereof, or with the United States of America or any agency or instrumentality thereof, for the purpose of causing a termination of such contract or any portion thereof, or obtaining other relief.

  (5) Recommending to the Law Director proceedings with the State of Ohio where applicable, to revoke, suspend or refuse to renew the license of any person found to have violated any provision of Section 862.04 of this Chapter.

  (6) Directing the respondent to reimburse the complainant for his or her actual and reasonable expenses incurred and to be incurred as a result of each violation found, including, but not limited to, expenses for moving and temporary storage of household furnishings, additional expenses in connection with the purchase or rental of a dwelling for alternative accommodations, and reasonable attorneys' fees and costs.

  (7) Recommending compensatory damages, as appropriate, or recommending and award of compensatory damages against the respondent in any court proceedings.

  (8) Assessing civil penalties,as appropriate and permitted by applicable law.

(9) Directing the respondent to comply with such other and further relief as the Commission may deem appropriate for enforcement of this Chapter.

(c) The Fair Housing Review Commission shall make a final administrative disposition of the complaint within 1 year after the complaint has been filed, unless it is impracticable to do so, in which case the complainant and the respondent shall be notified in writing of the reasons why disposition of the complaint can not be made within the time prescribed.

(d) Nothing herein shall be construed to prevent the City from initiating appropriate court action on behalf of the complainant in order to enforce the provisions of this Chapter. In addition, upon a finding by the Law Director that there are reasonable grounds to believe that a violation of Section 862.04 of this Chapter has occurred, as provided in Section 862.10 of this Chapter, either the complainant or the respondent, in lieu of participating in the administrative hearing process before the Fair Housing Review Commission, or at any time during said administrative process, may elect to have the case heard in a civil action. Upon notification thereof , the Commission shall recommend to the City that it initiate a civil action in a court of law on behalf of the complainant.

(e) The complainant and the respondent shall have the right to appeal an adverse final determination by the Commission to the Medina County Court of Common Pleas pursuant to Ohio R.C. Chapter 2506 or in such other forum or court of competent jurisdiction as provided by law.

862.16 JUDICIAL RELIEF.

The City, or the complainant or any person actually aggrieved by a violation of any provision of this Chapter may, at any time within 1 year of the date of the alleged violation, and in lieu of proceeding with the administrative process set forth in this Chapter, apply to any court of competent jurisdiction for appropriate relief.

862.17 ADDITIONAL REMEDIES.

This Chapter shall not prevent the City or any person from exercising any right or seeking any remedy to which that person might otherwise be entitled or from filing any complaint with any other agency or court of law or equity.

SECTION 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

SECTION 3. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 1st Reading_________________________

2nd Reading________________________

3rd Reading________________________

ADOPTED: _________________ AYES ___________ NAYS ___________

ATTEST: _______________________
Clerk of Council
Barb Ortiz