

**CITY OF HAGERSTOWN, MARYLAND**

**AN ORDINANCE TO APPROVE THE  
PURCHASE OF A PORTION OF THE  
PROPERTY KNOWN AS  
32 NORTH POTOMAC STREET,  
HAGERSTOWN, MARYLAND**

**RECITALS**

WHEREAS, Manufacturers and Traders Trust Company., a New York Banking Organization, with principal offices at One M&T Plaza, Buffalo, New York 14203 (“M&T”), is the sole owner in fee simple of certain improved real property located in Hagerstown, Maryland known as 32 North Potomac Street (“the Property”); and

WHEREAS, the Mayor and Council believe that the acquisition of the Property, as set forth in the terms and conditions of this Contract of Sale would benefit the citizens; and

WHEREAS, the Mayor and Council wish to acquire the Property for the purpose of building a headquarters for its Finance Operations and Department of Community and Economic Development;

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to purchase the Property, and contingent upon the City’s right to conduct such environmental and physical studies of the Property as it sees fit during a Study Period, as set forth in the attached Contract of Sale;

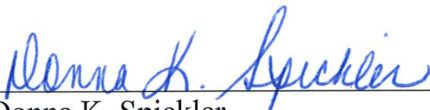
**NOW THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED** by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth verbatim.
2. That the purchase of the Property be and is hereby approved.
3. That the Mayor be and is hereby authorized to execute and deliver the Contract of Sale for the Property, a copy of which is attached hereto and incorporated herein by reference.
4. That City Staff be and are hereby authorized to execute and deliver any additional documentation and take any additional steps necessary to effectuate the purpose of this ordinance and satisfy the terms of the aforesaid Contract of Sale.

**BE IT FURTHER RESOLVED, ENACTED AND ORDAINED THAT** this ordinance shall become effective at the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST  
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE  
CITY OF HAGERSTOWN, MARYLAND

  
\_\_\_\_\_  
Donna K. Spickler,  
City Clerk

  
\_\_\_\_\_  
Emily N. Keller, Mayor

Date of Introduction: October 19, 2021  
Date of Passage: October 26, 2021  
Effective Date: November 26, 2021

PREPARED BY:  
SALVATORE & MORTON, LLC  
CITY ATTORNEYS



## CONTRACT OF SALE

THIS CONTRACT OF SALE ("this Contract") is between **MANUFACTURERS AND TRADERS TRUST COMPANY**, a New York banking corporation, with principal business offices located at One M&T Plaza, Buffalo, New York 14203, ATTN: Corporate Real Estate Department, 18<sup>th</sup> Floor ("Seller") and **CITY OF HAGERSTOWN**, a municipal corporation with its principal business offices located at 1 East Franklin Street, Hagerstown MD 21740 ("Buyer").

1. *The Property.* Seller sells to Buyer, and Buyer purchases from Seller, the real property located in Hagerstown, Washington County, Maryland, and known as **32 N. Potomac Street, Hagerstown, MD 21740**, and being more particularly described in Exhibit A, attached hereto and by this reference incorporated herein, together with all applicable improvements and all the rights and appurtenances thereto. The property described in Exhibit A (legal description to be prepared by Buyer at Buyer's expense by an updated title report and/or survey), together with its appurtenances and improvements, if any, is hereinafter called the "Property." The items set forth on Exhibit C, attached hereto and by this reference incorporated herein, ("Seller's Personalty") are expressly excluded from sale and shall be removed from the Property before Settlement. The above notwithstanding, any personal property remaining in the Property on the date of Settlement shall be deemed abandoned by Seller and shall remain in the Property at Settlement for Buyer's use/disposal at its discretion.

2. *Purchase Price* The purchase price for the Property is Eight Hundred Twenty-Five Thousand and 00/100 Dollars (\$825,000.00). Buyer shall pay the Purchase Price as follows:

(a) Upon the execution of this Contract, Buyer shall deliver to Seller the sum of Two Thousand and 00/100 Dollars (\$2,000.00) in cash, by means of cash or wire transfer (the "Deposit"). The Deposit shall be held by Seller in a non-interest bearing escrow account to secure the payment of the Purchase Price and the performance of Buyer under the terms of this Contract. The Deposit shall be applied at Closing to the payment of the Purchase Price.

(b) At Settlement, payment of the Purchase Price by Buyer to Seller, paid in cash, by means of wire transfer, less (i) the Deposit received by Seller, (ii) any credits permitted by this Contract, and (iii) any settlement adjustments provided by this Contract.

The Deposit shall be held in escrow by Seller in a non-interest bearing escrow account to secure the payment of the Purchase Price and the performance of Buyer under the terms of this Contract. The Deposit shall be applied at Settlement to the payment of the Purchase Price.

3. *Time and Place of Settlement.* Settlement with respect to the transaction described herein (the "Settlement") shall be held on or before thirty (30) days following completion of the last to occur of the Title Period as defined in Section 11, the Study Period as defined in Section 12.2, at a time and location as the parties may mutually determine. It shall be the responsibility of the Buyer to select the person responsible for closing this transaction, for the payment of fees to

that person, and for furnishing Form 1099-S to the Internal Revenue Service, if applicable. Buyer shall pay all fees to the title company and all wire fees to wire Settlement proceeds to the Seller shall be paid by the Buyer.

4. *Deed to Property.* At Settlement, upon payment of the unpaid purchase money, a deed for the Property shall be executed by Seller. Seller shall prepare the deed which shall contain a covenant of special warranty.

5. *Possession.*

5.1 Buyer shall be entitled to possession of the Property following disbursement of Purchase Price funds and delivery of the deed.

5.2 ATM Lease: The Seller's obligations to settle on the purchase of the Property in accordance with the terms of this Contract is contingent upon the execution of a lease agreement substantially in the form attached hereto as Exhibit "E" between Seller and Buyer for an ATM on the Property ("ATM Lease"). If for any reason Seller and Buyer are unable to execute the lease on or before the last day of the Study Period (defined below) inclusive of Buyer's right to the Extension Period (defined below), either party shall have the right to terminate this Contract by giving written notice of termination to the other. In the event that either party terminates this Contract pursuant to this Section 5, (i) this Contract shall be and become null and void, (ii) neither party shall have any further rights or obligations hereunder except as expressly stated to survive, and (iii) the Deposit shall be promptly disbursed in accordance with Section 2 hereof.

6. *Recordation and Transfer Taxes.* All recordation taxes and state and local transfer fees relating to the conveyance of the Property to Buyer shall be paid one-half each by the Seller and the Buyer. All recording fees shall be paid by Buyer.

7. *Real Estate Taxes.* Real estate taxes and similar public charges against the Property that are payable on an annual basis (including district, sanitary commission, or other benefit charges, assessments, liens, or encumbrances for sewer, water, drainage, or other public improvements completed or commenced on or prior to the date hereof or subsequent thereto) shall be adjusted between the parties as of 12:00 Midnight prior to the date of Settlement and assumed and paid thereafter by Buyer. Buyer shall be responsible for all utilities on and after the date of Settlement.

8. *Risk of Loss.* The Property shall be held at the risk of Seller until Settlement hereunder. If the Property is damaged prior to Settlement, and Seller, on or before the Settlement date, is unable to or unwilling to restore the Property to its condition immediately prior to the damage, Buyer may elect (i) to terminate this Contract or (ii) elect to take the Property in its then "as is" condition without reduction in the Purchase Price and Seller shall assign to Buyer at Settlement all of Seller's right, title and interest in and to all insurance proceeds in respect of damage to the Property (but excluding Seller's Personalty), less any amounts actually expended by Seller for expenses of repair or restoration. If the Buyer elects to terminate this Contract, the full amount of the Deposit shall be returned immediately to Buyer, whereupon Buyer and Seller shall be released, as to one another, of all obligations and liabilities under this Contract, other than those that shall expressly survive termination.

9. *Condemnation.* In the event of a partial taking of the Property by condemnation or other exercise of the right of eminent domain before the delivery of the deed hereunder, the parties shall nevertheless proceed to Settlement, and Seller shall assign to Buyer at Settlement all of Seller's right, title and interest in and to all awards made in respect of such taking of the Property (but excluding Seller's Personalty). In the event of a total taking of the Property by condemnation or other exercise of the right of eminent domain before the delivery of the deed hereunder, the Deposit shall be promptly repaid to Buyer, and upon the payment thereof to Buyer, this Contract shall terminate except with respect to those obligations that shall expressly survive.

10. *Real Estate Commission.* Each party warrants to the other that it has not used the services of a real estate broker or agent in connection with this transaction. Each party agrees to defend, indemnify, and hold the other party harmless for any claim for real estate commissions arising by reason of the indemnifying party's breach of this warranty. The provisions of this paragraph shall survive Settlement and the delivery of the deed to the Property or the termination of this Contract.

11. *Title.* Within thirty (30) days from the Effective Date ("Examination Period"), Buyer shall obtain, at its expense, a title report covering the Property from a licensed title insurance company selected by Buyer. Title to the Property shall be free and clear of all liens, encumbrances and restrictions (collectively, "Encumbrances"), except for (a) real property taxes applicable to the period after the date of Settlement and (b) those matters which are specified on Exhibit B, attached hereto and made a part hereof ("Permitted Matters"). Such title shall be insurable at regular rates by a reputable title insurance company. Buyer shall examine the title to the Property, inspect the Property and take any other action the Buyer deems is necessary to determine the condition of title to the Property. Buyer shall provide Seller with a copy of the title commitment, survey and all exception documents referred to in the title commitment. Buyer shall provide Seller with written notification, within the Examination Period, of any objections to the title ("Buyer's Title Notice"). Seller, at its expense, shall have the option of curing any objection raised by Buyer's Title Notice. In the event Seller elects to cure any objection raised by Buyer's Title Notice, Seller shall notify Buyer within ten (10) days of its receipt of Buyer's Title Notice (the "Title Response Period"). In the event Seller is unable to cure Buyer's title objections within thirty (30) days from the date of Buyer's Title Notice ("Title Cure Period") (the Examination Period and Title Cure Period, if any, together the "Title Period"), or Seller elects not to cure the objections raised by Buyer's Title Notice, Buyer shall have the option either (i) of taking such title as the Seller can give without abatement of the price or (ii) terminating this Contract and being immediately repaid the Deposit, and in the latter event there shall be no further liability or obligation on either of the parties hereto, except as expressly stated to survive herein. Buyer shall make such election either (i) in the event Seller elects not to attempt to cure any objections raised by Buyer, within ten (10) days after the expiration of the Title Response Period, or (ii) in the event Seller elects to attempt to cure objections raised by Buyer's Title Notice, within ten (10) days after the expiration of the Title Cure Period. If Buyer does not notify Seller of any objections to the title within the Examination Period, Buyer shall waive its rights to object to title defects or the exceptions which are of record prior to the Effective Date. As used in this Contract, the phrase "of record," shall mean matters recorded and properly indexed in the land records in the County in which the Property is located as of the Effective Date.

Other than as anticipated herein, Seller shall not create or permit to be created any lien, easement or other encumbrance on the Property from the Effective Date. Buyer hereby expressly assumes the risk that restrictive covenants, zoning laws or other recorded documents may restrict or prohibit the use of the Property for the purpose(s) intended by the Buyer. The delivery of the deed by Seller and the acceptance thereof by Buyer shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations, if any, of Seller which are expressly stated in this Contract to survive Settlement.

Buyer hereby acknowledges that it shall not be entitled to, and does not and will not, rely on Seller or its agents as to (i) the quality, nature, adequacy or physical condition of the Property including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities or the electrical, mechanical, HVAC, plumbing, sewage or utility system, facilities or appliances at the Property, if any; (ii) the quality, nature, adequacy or physical condition of soils or the existence of ground water at the Property, (iii) the existence, quality, nature, adequacy or physical condition of the utilities serving the Property; (iv) the development potential of the Property for any particular purpose; (v) the zoning or other legal status of the Property; (vi) the Property or its operations' compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions or restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vii) the quality of any labor or material relating in any way to the Property; or (viii) the condition of title to the Property or the nature, status and extent of any right, encumbrance, license, reservations, covenant, condition, restriction or any other matter affecting title to the Property.

12. *"As-Is" Sale; Study Period.*

12.1. *General.* EXCEPT AS EXPRESSLY SET FORTH IN THIS CONTRACT, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY OR ANY PERSONAL PROPERTY THEREIN, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER ACKNOWLEDGES AND AGREES THAT UPON SETTLEMENT SELLER SHALL SELL AND CONVEY TO BUYER AND BUYER SHALL ACCEPT THE PROPERTY 'AS IS, WHERE IS, WITH ALL FAULTS', EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS CONTRACT. BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS CONTRACT. BUYER ALSO ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE PROPERTY IS BEING SOLD "AS-IS." SELLER AFFIRMS THAT IT HAS RESTORED THE DRIVE-UP WINDOW (INCLUDING BULLET-RESITANT GLASS) TO ITS ORIGINAL CONDITION AS OF THE DATE OF THIS AGREEMENT.

12.2. *Study Period.* BUYER SHALL HAVE A PERIOD FROM THE EFFECTIVE DATE OF THIS CONTRACT THROUGH THE DATE WHICH IS NINETY (90) DAYS THEREAFTER ("STUDY PERIOD") TO CONDUCT SUCH PHYSICAL AND ENVIRONMENTAL INVESTIGATIONS OF THE PROPERTY AS BUYER HAS DEEMED NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN SUCH REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER AS ARE EXPRESSLY SET FORTH IN THIS CONTRACT. IN ADDITION, BUYER SHALL USE BEST EFFORTS TO OBTAIN AN ORDINANCE, IN ACCORDANCE WITH THE TERMS OF ITS CHARTER, NECESSARY FOR IT TO PROCEED TO SETTLEMENT BY THE END OF THE STUDY PERIOD. BUYER SHALL HAVE THE RIGHT TO EXTEND THE STUDY PERIOD FOR ONE PERIOD OF THIRTY (30) DAYS ("EXTENSION PERIOD") FOR THE SOLE PURPOSE OF OBTAINING SUCH AN ORDINANCE BY NOTIFYING SELLER IN WRITING BY 5:00 P.M. ON THE LAST DAY OF THE STUDY PERIOD OF ITS INTENTION TO DO SO.

IF BUYER, IN ITS SOLE DISCRETION, DETERMINES THAT IT DOES NOT DESIRE TO ACQUIRE THE PROPERTY DUE TO THE CONDITION OF THE PROPERTY, BECAUSE IT HAS FAILED TO OBTAIN THE ORDINANCE, OR FOR ANY REASON, AND NOTIFIES SELLER IN WRITING BY 5:00 P.M. ON THE LAST DAY OF THE STUDY PERIOD (INCLUDING THE EXTENSION PERIOD, IF ANY) OF ITS ELECTION TO TERMINATE THIS CONTRACT, THE DEPOSIT SHALL BE RETURNED TO BUYER, THIS CONTRACT THEREUPON SHALL BECOME VOID AND THERE SHALL BE NO FURTHER OBLIGATION OR LIABILITY ON EITHER OF THE PARTIES HERETO EXCEPT AS EXPRESSLY PROVIDED HEREIN. IF BUYER FAILS TO NOTIFY SELLER IN WRITING BY 5:00 P.M. OF THE LAST DAY OF THE STUDY PERIOD (OR THE EXTENSION PERIOD AS THE CASE MAY BE) OF TERMINATION OF THIS CONTRACT, THEN BUYER SHALL BE DEEMED TO HAVE WAIVED ITS TERMINATION RIGHT AND THE PARTIES SHALL PROCEED TO SETTLEMENT.

UPON WRITTEN REQUEST OF SELLER, BUYER SHALL FURNISH TO SELLER ALL REPORTS AND ESTIMATES UNDERTAKEN BY BUYER IN CONNECTION WITH THE STUDY PERIOD, WHICH OBLIGATION SHALL SURVIVE TERMINATION BUT SHALL END THREE (3) YEARS FROM THE DATE OF SETTLEMENT. UPON SETTLEMENT, BUYER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, UPON SETTLEMENT, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SUCCESSORS AND ASSIGNS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF



ACTION (INCLUDING, BY WAY OF EXAMPLE ONLY, CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SUCCESSORS AND ASSIGNS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY AND AGREES, WITH RESPECT TO MATTERS ARISING FROM AND AFTER SETTLEMENT ONLY, TO DEFEND, INDEMNIFY, AND HOLD SELLER (AND SELLER'S OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS, SUCCESSORS, AND ASSIGNS) HARMLESS FROM ANY CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING, BY WAY OF EXAMPLE ONLY, CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. FOLLOWING THE STUDY PERIOD, EXCEPT AS OTHERWISE REQUIRED BY THIS CONTRACT, IN THE EVENT SETTLEMENT DOES NOT OCCUR, AS SELLER'S SOLE REMEDY, SELLER MAY RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AND NOT AS A PENALTY TO COMPENSATE SELLER FOR LOST OPPORTUNITIES AS A CONSEQUENCE OF ENTERING INTO THIS CONTRACT. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL THE DEPOSIT BE SUBJECT TO FORFEITURE TO SELLER IN THE EVENT OF A BUYER DEFAULT UNTIL AFTER THE EXPIRATION OF THE STUDY PERIOD. THIS SECTION SHALL SURVIVE SETTLEMENT.

13. *Right of Entry.* Upon the Effective Date, Seller hereby grants to Buyer, Buyer's engineers and other agents the right to enter upon the Property upon reasonable notice on or after the date of execution of this Contract to inspect the Property and to make such measurements, surveys, or non-invasive tests on the Property as Buyer may deem advisable. Buyer agrees to indemnify and hold harmless Seller from any claims, or liability, including, by way of example only, costs of defense and reasonable attorney fees, arising out of Buyer or the agents or invitees entering on the Property pursuant to this paragraph. Prior to any entry, Buyer shall provide Seller with evidence of public liability insurance with liability limits reasonably acceptable to Seller. In addition and prior to any entry, any contractor or third party hired to perform investigations or due diligence upon the Property shall provide Seller with evidence of general liability insurance including, but not limited to, coverage for products/completed operations, premises/operations, contractual and personal/advertising injury liabilities with commercially reasonable limits of coverage on a per occurrence basis for bodily injury and property damage, containing an endorsement insuring against damage to the Property and to or from underground utilities, and naming Seller as a named insured. Buyer further agrees to restore or have the Property restored to its condition on the date hereof after the completion of any measurements, surveys, or non-invasive tests conducted by the Buyer. This paragraph shall survive termination or Settlement.

14. *Representations and Warranties of Seller.* As of the date hereof and on the date of Settlement each of the statements in this paragraph shall be a true, accurate and full disclosure of all facts relevant to the matter contained therein and the enforceability of the statements as being true, accurate and full disclosure as of said dates, and shall survive Settlement and delivery and recording of the deed. The Seller hereby represents and warrants that:

(a) The persons executing this Contract on behalf of Seller are duly authorized to do so.

(b) Seller is duly organized and validly existing and has the requisite power and authority to enter into and carry out the terms of this Contract and no further approval of any board, court, or other body is necessary in order to permit Seller to consummate this Contract.

(c) To Seller's actual knowledge, Seller has not received notice of condemnation of all or any part of the Property or notices with respect to any outstanding violation of any zoning law, order, regulation, ordinance or requirement relating to the use or ownership of the Property.

(d) There are no other contracts of sale relating to the Property.

15. *Representations and Warranties of the Buyer.* As of the date hereof and on the date of Settlement each of the statements in this paragraph shall be a true, accurate and full disclosure of all facts relevant to the matter contained therein and the enforceability of the statements as being true, accurate and full disclosure as of said dates, and shall survive Settlement and delivery and recording of the deed. The Buyer hereby represents and warrants that:

(a) The persons executing this Contract on behalf of Buyer are duly authorized to do so.

(b) Buyer is duly organized and has the requisite power and authority to enter into and carry out the terms of this Contract and no further approval of any board, court, or other body is necessary in order to permit the Buyer to consummate this Contract.

16. *Buyer's Default.* Failure on the part of Buyer to comply with the terms, covenants, and conditions of this Contract, shall constitute a default and forfeiture of the Deposit and shall entitle the Seller to retain the Deposit paid by Buyer as Seller's sole remedy at law or in equity, all other remedies being waived. Notice of such default shall be given, in writing, by the Seller to the Buyer within ten (10) days after the default has occurred. In the event such notice of default is not given as provided in this section, Seller shall be deemed to have waived Seller's right to retain the Deposit and the Deposit shall be returned to the Buyer.

17. *Seller's Default.* Unless otherwise expressly provided herein, failure on the part of the Seller to comply with the terms, covenants, and conditions of this Contract shall constitute a default and shall entitle the Buyer as its sole remedies to either elect (i) to proceed to Settlement without any abatement of the Purchase Price, (ii) to be immediately repaid the Deposit paid by

Buyer to Seller, in which event there shall be no further liability or obligation on the part of either of the parties hereto, except as expressly stated to survive, and this Contract shall become null and void and of no further legal effect, or (iii) in the event of Seller's failure to proceed to Settlement and deliver the deed as provided in this Contract, to seek specific performance of such obligation of Seller. Notice of such default shall be given, in writing, by the Buyer to the Seller within ten (10) days after the default has occurred. In the event such notice of default is not given as provided in this Section, Buyer shall be deemed to have waived Buyer's right to terminate this Contract.

18. *Notices.* "Notice" means any notice, demand, request, or other communication or document to be provided hereunder to a party hereto (without implying any requirement that Seller/Buyer give any notice of default or of exercise of any of its rights or remedies). Each notice shall be in writing and shall be given to a party at its address set forth below or such other address as the party may hereafter specify for that purpose by notice to the other party. Each notice shall, for all purposes, be deemed given and received if given by certified mail, return receipt requested, postage prepaid, two (2) business days after it is posted with the United States Postal Service; or by a nationally recognized next day courier service:

Seller: Manufacturers and Traders Trust Company  
One M&T Plaza  
Buffalo, New York 14203  
Attn.: Corporate Real Estate, 18th Floor

Buyer: City of Hagerstown  
1 East Franklin Street  
  
Hagerstown MD 21740  
Attn.: Mr. Scott A. Nicewarner  
City Administrator

With a courtesy copy to: Jason Morton, City Attorney  
Salvatore & Morton, LLC  
82 West Washington Street, Suite 100  
Hagerstown, MD 21740

19. *Additional Consideration.* As a material consideration for Seller's entering into this Contract and based upon Buyer's representation that it does not intend on selling, leasing or otherwise disposing of the Property to a financial institution, credit union or other provider of financial services, or a person or entity otherwise affiliated with such an entity, in which event the Property would be of greater value to the Seller, Buyer agrees that if Buyer (i) enters into a contract between Settlement and the fifth anniversary of Settlement to sell the Property, (ii) enters into a lease conveying a leasehold interest in the Property between Settlement and the fifth anniversary of Settlement, or (iii) otherwise transfers possession and use of the Property between Settlement and the fifth anniversary of Settlement, and such other purchaser, lessee or other user is a financial institution, credit union or other provider of financial services, or otherwise affiliated with such an



entity, Buyer shall pay to Seller as premium on the Purchase Price the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00). Notwithstanding anything to the contrary contained herein, this obligation shall survive the Settlement and shall not be deemed to have been merged with the Settlement or the delivery of the deed.

20. *Financing Contingency.* This Contract is not conditioned or contingent in any manner upon the Buyer obtaining all or any portion of the Purchase Price by way of loan or financing of any kind. Buyer represents and warrants that it has sufficient funds to consummate this Contract.

21. *Leases.* Seller represents that the Property is not subject to any leases. The provisions of this paragraph shall survive Settlement and the delivery of the deed to the Property.

22. *Service Contracts.* All service contracts shall be terminated by Seller effective the date of Settlement. The provisions of this paragraph shall survive Settlement and the delivery of the deed to the Property.

23. *Sale of Other Real Estate.* This Contract is not conditioned or contingent in any manner upon the sale or settlement of any other real estate unless such contingency is also a part of this Contract.

24. *Documents.* Seller is not a "foreign person" as such term is defined in Section 1445 of the United States Internal Revenue Code of 1986, as amended. Seller agrees to deliver a standard Non-Foreign Person Affidavit at Settlement and (ii) an affidavit with respect to Section 10-912 of the Tax-General Article, Annotated Code of Maryland, regarding withholding on sales or transfers of real property in Maryland by nonresident individuals and nonresident entities. Seller agrees to deliver Seller's Affidavit and Gap Indemnity in the form attached hereto as Exhibit "D". Additionally, each party shall each execute a settlement statement, and provide to the Buyer's title company such evidence of authority for the transactions contemplated by this Contract, and the execution of documentation in connection therewith, as may reasonably be required.

25. *Joint and Several Liability.* If Buyer shall be one or more individuals, corporations or other entities, whether or not operating as a partnership or joint venture, then each such individual, corporation, entity, joint venturer or partner shall be deemed to be both jointly and severally liable for the Purchase Price and any other payments specified herein and for the satisfaction of all obligations of Buyer under this Contract.

26. *Assignment.* Buyer may not assign this Contract without the prior written consent of Seller, except that Buyer may, without the consent of Seller, assign the Contract to a controlled subsidiary or affiliate of Buyer or its principals set up for the sole purposed of holding fee title to the Property, provided the Buyer guarantees the performance of and causes the assignee to assume in writing all obligations of the assignor under this Contract. The rights and obligations of this Contract shall bind and benefit any successors or assigns of the parties.

27. *Like Kind Exchange.* The parties hereto represent that this Contract and the transaction contemplated is not in connection with a tax deferred exchange of like kind property

under Section 1031 of the Internal Revenue Code, as amended, or any other corresponding, substituted or applicable law

28. *Claims.* Seller shall indemnify and hold harmless Buyer from and against any and all third party claims resulting from or based on an event that occurred prior to Settlement that are covered under the casualty or liability insurance policies for the Property that were in effect prior to closing. In the event of any such third-party claim asserted against Buyer and Seller, Seller shall provide and pay for the cost of Buyer's defense (using counsel selected by Seller and reasonably acceptable to Buyer). The obligations of Seller under this Section shall survive Settlement for a period of three (3) years.

29. *Miscellaneous Provisions.*

29.1. *Effectiveness of Agreement* This Contract shall not be effective unless duly executed by the parties and until Seller receives the Deposit. The date upon which Seller has received both a fully-executed Contract and the Deposit shall be the "Effective Date."

29.2 *Entire Contract.* This Contract contains the final and entire Contract between the parties and neither they nor their agents shall be bound by any terms, conditions, or representations not herein written or specifically referred to herein. There are no customs, promises, terms, conditions or obligations referring to the subject matter or inducements leading to the execution hereof, other than those contained herein.

29.3. *Time of Essence.* Time is of the essence of this Contract.

29.4. *Binding Contract.* This Contract is binding on the parties and their personal representatives, successors, and assigns.

29.5. *Limited Liability.* The liability of Seller under this Contract is limited to Seller's interest in the Property, plus the amount of the Deposit. No other assets of Seller shall be subject to seizure or levy.

29.6. *Recording.* Except in accordance with Buyer's Charter and Code and in accordance State Law as to open meetings and public information requests, this Contract shall not be recorded in any office or place of public record. The above notwithstanding, this Contract shall not be recorded in the Land Records Office of the Washing County Clerk's Office.

29.7. *Legal Construction.* This Contract shall be interpreted and construed in accordance with the laws of the state of Maryland; excluding any such laws that might direct the application of the laws of another jurisdiction, provided that any controversy over the construction of this Contract shall be decided neutrally and without regard to events of authorship or negotiation. The parties agree to submit any and all disputes regarding this Contract to State Courts located in Washington County, Maryland.

29.8. *Amendments.* This Contract shall not be amended except in writing executed by all parties hereto.

29.9. *Survival.* Except as specifically provided, the warranties, statements, representations, promises and covenants contained herein shall merge into the deed to be delivered by Seller at Settlement.

29.10. *Forbearance.* A waiver or forbearance by any party of any breach of any covenant or term of this Contract shall not be construed to be a waiver or forbearance of any succeeding breach of the same covenant.

29.11. *Severability.* If any term or provision of this Contract, or any application thereof, shall be held invalid or nonenforceable, the remaining terms and provisions of this Contract, or the application of such terms or provisions that have been held valid or enforceable, shall not be affected thereby.

29.12. *Captions.* The captions used herein are for the purpose of convenient reference only and are not intended to express the full meaning of the provisions they introduce.

29.13. *Attorney's Fees.* If either party shall bring an action or suit or proceeding (including any cross-complaint, counterclaim or third party suit) against the other party by reason of the breach or alleged breach of any covenant, term or obligation of this Contract, or otherwise arising out of this Contract, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including reasonable attorneys' fees and expenses. For purposes of this Contract, "Prevailing Party" shall be deemed the party that recovered a greater relief in the action on the Contract. Furthermore, where an action has been voluntarily dismissed or dismissed under a settlement agreement, then there shall be no prevailing party for purposes of this section.

29.14. *Business Days.* If the time for performance of any of the terms, conditions and provisions of this Contract shall fall on a Saturday, Sunday or bank holiday, then the time of such performance shall be extended to the next business day thereafter.

30. *Critical Areas. Notice to buyer concerning the Chesapeake and Atlantic coastal bays critical area. Buyer is advised that all or a portion of the property may be located in the "critical area" of the Chesapeake and Atlantic coastal bays, and that additional zoning, land use and resource protection regulations apply in this area. The "critical area" generally consists of all land and water areas within 1,000 feet beyond the landward boundaries of state or private wetlands, the Chesapeake Bay, the Atlantic coastal bays, and all of their tidal tributaries. The "critical area" also includes the waters and lands under the Chesapeake Bay, the Atlantic coastal bays, and all of their tidal tributaries to the head of tide. For information as to whether the property is located within the critical area, Buyer may contact the local department of planning and zoning, which maintains maps showing the extent of the critical area in the jurisdiction. Allegany, Carroll, Frederick, Garrett, Howard, Montgomery, and Washington Counties do not include land located in the critical area.*

31. WAIVER OF TRIAL BY JURY. BUYER AND SELLER DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, OR UNDER OR IN CONNECTION WITH THIS CONTRACT, THE DOCUMENTS DELIVERED BY BUYER AT SETTLEMENT OR SELLER AT SETTLEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ANY ACTIONS OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER WITH THIS CONTRACT OR THE PROPERTY (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS CONTRACT AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS CONTRACT WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER SHALL SURVIVE THE SETTLEMENT OR TERMINATION OF THIS CONTRACT.

[Signatures appear on next page]

IN WITNESS WHEREOF, each party is signing this Contract on the date corresponding with that party's signature.

ATTEST/WITNESS:

Lena Galante  
Lena Galante

ATTEST/WITNESS:

Donna Kay Spickler

SELLER:  
MANUFACTURERS AND TRADERS  
TRUST COMPANY

By: HL  
Howard Block, Vice President  
Date: 10/21/2021

BUYER:  
CITY OF HAGERSTOWN

By: Emily N. Keller  
Emily N. Keller  
Mayor  
Date: October 19, 2021

**IN WITNESS WHEREOF**, each party is signing this Contract on the date corresponding with that party's signature.

ATTEST/WITNESS:

SELLER:  
MANUFACTURERS AND TRADERS  
TRUST COMPANY

\_\_\_\_\_

By: \_\_\_\_\_  
Howard Block, Vice President  
Date:

ATTEST/WITNESS:

BUYER:  
CITY OF HAGERSTOWN

*Donna Kay Spuckler*  
\_\_\_\_\_

By: *Emily N. Keller*  
\_\_\_\_\_ Emily N. Keller  
Mayor  
Date: *October 19, 2021*

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

0-21-16

**EXHIBIT B**  
**PERMITTED MATTERS**

1. Building and use restrictions of record.
2. Vehicular or pedestrian easements of record affecting the Property and being contiguous to the front, rear or side lot lines.
3. Water, sewer, gas, electric, cable television, and telephone lines or easements therefor of record or as presently installed.
4. Prior grants, reservations or leases of coal, oil, gas, or other minerals as shown by instruments of record.
5. Easements apparent upon inspection of the Property.
6. Real estate taxes and assessments, and water and sewer rents, not yet due and payable. Real estate taxes and assessments, and water and sewer rents, shall be adjusted as of the date of Settlement (in accordance with Section 7 above.)
7. Encroachments of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Property over any street or highway or over any adjoining Property and encroachments of similar elements projecting from adjoining property over the Property.
8. The state of facts which an accurate survey would show.
9. Covenants, conditions and restrictions of record affecting the Property.
10. Easements and rights-of-way of record affecting the Property.



**EXHIBIT C**  
**EXCLUDED ITEMS**

- Safe Deposit boxes
- Telephone equipment (disconnected at the wall)
- Security equipment, provided that internal wiring shall remain
- Alarm equipment, provided that internal wiring shall remain)
- ATM
- Personal Computers
- Printers
- All branch equipment, including without limitation, teller machines, photocopier, fax, currency counters, check writer, adding machines, typewriters)
- Teller line, including without limitation, the back counter
- Under counter steel
- Furniture

**EXHIBIT D  
OWNER'S AFFIDAVIT**

PREMISES: 32 N. Potomac Street,  
Hagerstown, MD 21740

STATE OF NEW YORK  
COUNTY OF ERIE : ) SS

ON THE \_\_\_ day of \_\_\_\_\_ 2021, before me, the undersigned Officer, personally appeared the undersigned, who being duly sworn according to law and intending to be legally bound, depose(s) and say(s) that the following statements are true and correct to my actual knowledge and belief.

That the Grantor herein is the owner of Premises.

That the Grantor in this transaction is in actual possession of the entire premises, and there are no leases or agreements affecting the premises or any part thereof outstanding, other than those that are presently being assigned.

The Premises are not used for residential purposes

Access to the Premises (whether vehicular or pedestrian) to and from the public street has never been a subject of dispute or limited in any way

Grantor is entitled to sole possession of the Premises.

Within the preceding 18 months, Grantor has not attached any fixtures, commenced any construction, repairs alterations or improvements, ordered or contracted to for same in respect of the Premises, which have not been paid for in full and that there are no outstanding or disputed claims for any such work or item.

I have not received a notice of any violation of any covenant, conditions or restrictions of record affecting the Premises.

The present transaction is not made for the purposes of hindering, delaying or defrauding any creditors of the Grantor and does not constitute all or substantially all of the Grantor's assets.

Any water, sewer or other utility charges due and or accrued up to date of closing/settlement will be paid by the Grantor.

This affidavit is made for the purpose of inducing [INSERT TITLE COMPANY] or its duly authorized agent to hold settlement on the above premises, and to issue its title insurance policy, insuring the title thereto and to make disbursement of funds arising out of said transaction.

0-21-16

The Grantor hereby indemnifies and agrees to save harmless [INSERT TITLE COMPANY] and its agent, [INSERT, IF ANY], against any damages or expense, including attorney fees, sustained as a result of any of the foregoing matters not being true and accurate and further indemnifies [INSERT TITLE COMPANY] as to defects, liens, encumbrances, adverse claims or other matters, if any, created, by an act or omission of the Grantor, first appearing on the public records or attaching subsequent to the most recent effective date of the above-referenced Commitment but prior to the effective date of such title insurance policy or policies or other title evidence. [INSERT TITLE COMPANY] and its agent, [INSERT IF ANY] will present the Deed forthwith after settlement for recording to Washington County, Maryland.

0-21-16

**EXHIBIT E**  
**ATM LEASE AGREEMENT**

**THIS ATM LEASE AND AGREEMENT** ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"), by and between **CITY OF HAGERSTOWN**, a municipal corporation with its principal business offices located at 1 East Franklin Street, Hagerstown MD 21740 ("Landlord"), and **MANUFACTURERS AND TRADERS TRUST COMPANY**, a New York banking corporation, ("Tenant") (together, "Parties"), sets forth the terms and conditions upon which, among other things, Tenant will lease from Landlord designated space consisting of approximately 160 square feet in the location depicted on Exhibit "A" attached hereto and made a part hereof ("Premises") being a portion of the building ("Building") located property known as **32 N. Potomac Street, Hagerstown, MD 21740** ("Property"). As of the Effective Date Tenant has sold the Property which includes the Premises to Landlord pursuant to a certain Contract of Sale dated October 19, 2021. Tenant has installed and is operating a cash dispensing machines ("ATM") and attendant customer accommodations (the ATM and the attendant accommodations shall be referred to collectively as the "Facility") at the Premises. The Parties hereby make this Agreement to provide for the continued operation of the Facility contemporaneously with the closing of the Property under the Contract of Sale. **The Parties agree that the Facility shall be moved on or before December 31, 2023, from its present location in the Building to the location, consisting of 126 square feet, reflected on Exhibit "B" attached hereto and made a part hereof. Landlord shall pay the costs associated with constructing the space for the Facility in the location on Exhibit "B," and to the specifications set forth on Exhibit "B," except that Tenant shall pay the costs associated with installation of signage, alarm system to the Facility and moving and installation of the ATM in the Facility. Landlord shall install duct work to the room, and Tenant shall install any additional and/or special HVAC zoning and/or special temperature control equipment. Also, Landlord shall install electric service to the room, and Tenant shall connect the Facility to electric service. There shall be no separate meter for the Facility. Final architectural drawings for Exhibit "B" shall be agreed upon in writing by the parties prior to re-location of the Facility, and shall constitute an Addendum to this Agreement.**

In consideration of and subject to the promises, covenants and conditions set forth hereinafter, the Parties agree as follows:

1. Premises.

1.1. Landlord does hereby lease and let unto Tenant the Premises for the Facility, and Tenant does hereby take from Landlord for the Facility, the Premises. Tenant and its invitees shall also have a nonexclusive right during the Term of this Agreement to use the common areas of the Property but only in connection with Tenant's Facility, in common with others entitled to the use of the common areas. As used in this Agreement, the term "common areas" means, without limitation, the entryways, sidewalks, walkways, reasonably necessary for the use and operation of the Facility which are provided and designated from time to time by Landlord for the general non-exclusive use and convenience of Tenant and other tenants, occupants and customers of the Property. The use of the common areas shall be subject to all reasonable Rules and Regulations

as Landlord may from time to time promulgate provided they are uniformly applied to all tenants, occupants and customers of the Property.

1.2. Tenant has removed its personal property used in the operation of a branch banking office from the Building and the Premises, except for such personal property constituting the Facility. Notwithstanding such removal, Tenant will have access to the full Premises and continue to operate, access, and service the Facility.

1.3. Landlord shall not permit any bank or "non-bank" deployer of ATM, electronic, remote or similar banking facilities to install, operate or maintain an exterior-facing ATM on the Property during the Term of this Agreement and shall not assume or enter into any legally enforceable obligation providing any bank with the right to install, operate or maintain an ATM or other electronic, remote, or similar banking facility during the Term of this Agreement without Tenant's prior written consent, which may be withheld in Tenant's sole discretion. In the event of a breach of this covenant and written notice to Landlord of such breach and Landlord's failure to rectify such breach with fifteen (15) days after such written notice, then Tenant may continue to operate the Facility but all Rent obligations shall be suspended until such breach is rectified. For purposes of this Paragraph, "bank" means a banking organization, including without limitation, a commercial bank, trust company, savings bank, savings and loan association, credit union, or a bank holding company.

1.4. Tenant may temporarily close the Facility during any period in which reasonable access or electricity or data/voice communications services are interrupted.

1.5. The hours of operation of the ATM shall be at the sole and absolute subjective discretion of Tenant.

1.6. Landlord shall be permitted admittance to the Premises for purposes of exhibiting the Premises to prospective purchasers or tenants; provided that Landlord shall request such admittance in writing at least at least five (5) business days prior to the proposed showing date. Landlord shall be accompanied by a representative of Tenant during the showing. Notwithstanding such escort, all admittance to the Premises shall be at Landlord's sole risk and Landlord shall indemnify Tenant for any claims made for injury or property damage resulting from such admittance.

## 2. Term of Agreement; Rent.

2.1. The initial term of this Lease shall commence on the simultaneous occurrence of (i) the settlement of the Property under the Contract of Sale between Tenant as "Seller" and Landlord as "Buyer," and (ii) the full execution and delivery of this Lease by the parties hereto (the "Commencement Date") and terminating on the date that is the last day of the month in which the third anniversary of the Commencement Date occurs (the "Expiration Date"), unless sooner terminated as provided in this Lease.

2.2. Tenant shall have six (6) options to renew the term for two (2) years each option upon all the terms, covenants, and conditions set forth herein ("Renewed Term"), except that that Rent

shall increase 3% over the previous two (2) year period. The right to exercise such options shall be conditioned upon Tenant's giving Landlord written notice of its election to renew (the "Renewal Notice") not less than six (6) months prior to the expiration of the initial Term or Renewed Term as the case may be. After the exercise of a renewal option, all references to the Term of this Lease shall be deemed to mean the Term as extended pursuant to this Section.

2.3. Commencing on the Commencement Date, Tenant agrees to pay to Landlord monthly rent ("Rent") in the amount of Four Hundred Dollars (\$400.00), payable in advance on the first day of each month. If any Rent is not received by the fifteen (15th) day of the month, Tenant shall pay a five percent (5%) per annum interest charge against the unpaid balance from the date due to the date of payment. In the event of termination of this Agreement, Rent shall be prorated and all prepaid Rent shall be refunded to Tenant within fifteen (15) days of the date of termination. The preceding sentence shall survive termination of this Agreement.

3. Permits. During the Term of this Agreement, Tenant will have the ongoing duty to assure that all permits related to the Facility which are necessary for the jurisdiction in which the Facility is located (the "Permits"), if any, are kept current. Tenant will give Landlord timely notice of any requirements, federal, state or local, with which Landlord must comply pertaining to the operation of the Facility, and Tenant will bear or reimburse Landlord any costs attendant to such compliance. Landlord shall cooperate fully with Tenant in obtaining and maintaining the Permits at no out of pocket cost or expense to Landlord. In the event that any required Permits are withdrawn or denied, this Agreement shall automatically terminate, whereupon neither party shall have any further rights, duties, obligations or liabilities, except for those that expressly survive the termination of this Agreement.

4. Uses.

4.1. The Premises may be used solely for operation of the Facility. The ATM shall perform such services and the Facility shall be operated as determined by Tenant in its sole discretion. Nothing in this Lease shall in any way be interpreted to impose any obligation upon Landlord to provide any services to the Premises, including but not limited to cleaning, trash, or security.

4.2. Tenant shall have the right to contract with any electronic funds transaction processing network and to operate and promote the ATM as a part of such network, provided such agreement shall not affect the rights and obligations of the Parties under this Agreement.

5. Installation. Tenant shall continue to be responsible for all equipment costs for the ATM, signage, security equipment, and the environmental surround. Landlord agrees to accommodate Tenant's reasonable needs with respect to the Facility, including without limitation, granting permission to Tenant to install, at Tenant's risk and expense, additional security equipment outside the Premises at a location to be agreed upon by Landlord, which agreement shall not be unreasonably withheld, conditioned or delayed.

6. Maintenance.

6.1. Landlord will maintain and keep in good repair all structural components, including exterior walls, roof, and foundation of the Building, existing at the Property. Landlord will not use any areas adjacent to the Premises in any way that would block, impede or restrict reasonable Tenant or Customer (defined below) access to the Facility. In addition, Landlord at its sole cost and expense shall keep the outdoor common areas, including the area immediately adjacent to the Premises, lit in the manner in which they are lit as of the date hereof, shall maintain in good condition and repair the outdoor common areas, including, without limitation, landscaping, sidewalks, entrances and exits, and shall keep the outdoor common areas in a clean, safe, presentable and sanitary condition with adequate drainage and reasonably free of snow, ice and debris. In the event any space immediately adjacent to the Premises shall be leased or otherwise occupied, Landlord shall immediately notify Tenant of such occurrence so as to allow Tenant to be aware of the increased risk to the Facility.

6.1.1. A "Customer" is a person who has an account relationship with Tenant or any other financial institution that has entered into an arrangement which permits its customers to utilize the ATM and who has a transaction with Tenant or such other financial institution at the ATM. Such person commences to be a Customer when using the ATM and continues to be a Customer until the transaction is completed. Evidence that a person with an account relationship used or intended to use the ATM or a record by the ATM of a transaction by the person shall conclusively establish that the person is a Customer.

6.2. Landlord, at Landlord's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities now in force or which may hereafter be in force (collectively, the "Laws"), including, without limitation, the Americans With Disabilities Act, (i) which shall impose any duty upon Landlord or Tenant with respect to access to the Property (but excluding the Premises and the Facility which shall be the responsibility of the Tenant), (ii) which shall impose any duty upon Landlord with respect to any business conducted by Landlord at the Property, (iii) when the requirement for compliance applies to the Property or real estate generally, (iv) when the requirement for compliance involves a structural repair which is not caused by the use permitted Tenant hereunder, or (v) when the requirement applies to any portion of the Property that Landlord has agreed to maintain or maintains. Landlord covenants and agrees to indemnify and hold Tenant harmless from and against any expenses (including attorneys' fees), liability, losses, costs, damages or claims of whatever nature arising out of or in connection with Landlord's failure to comply with such Laws as provided hereinabove.

6.3. Tenant at Tenant's expense shall comply with all Laws that relate to the operation of the ATM and the occupancy of the Premises. Tenant will maintain all improvements installed by Tenant on the Premises and will provide complete service for the Facility, including, but not limited to, cleaning, maintenance (including, without limitation, software and hardware maintenance), repair, parts and labor, and security with the objective of keeping the Facility in good operating order and condition at all times but subject to reasonable periods for down-time and maintenance (collectively, the "Maintenance").



6.4. Tenant will provide Landlord with the telephone number of its network control for use in the event of emergency.

6.5. The cost of reasonable HVAC for the Facility will be borne by Landlord. In the event of an interruption or delay in electric or any other utility service, Landlord shall use reasonable efforts to restore or have restored such service, but Landlord shall not be liable for any interruption or delay in electric or any other utility service for any reason unless caused by the gross negligence or willful misconduct of Landlord or its agents. **Tenant shall pay Fifty and 00/100 (\$50.00) per month to reimburse Landlord for the cost of electricity consumed by the Facility.**

6.6. The cost of maintaining the monthly voice/data service will be borne by Tenant.

6.7. Tenant shall provide at its own expense cash replenishment for the ATM.

7. Replacement/Taxes. The ATM and other fixtures and equipment at the Facility will remain the property of Tenant. Tenant may replace the ATM at any time at its sole cost and expense with new or alternative models (the "Replacement") after Landlord's approval of any required alterations to the Premises to effect such Replacement, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant will pay all personal property taxes or similar assessments directly relating to the Facility, or reimburse Landlord therefor; provided, however, that the foregoing shall not include any federal or state income or franchise taxes based upon income, net worth or capital of Landlord or any business privilege taxes levied upon the fees paid to Landlord under this Agreement. Landlord will pay, when or before they are due, any real estate taxes or similar assessments attributable to the Premises.

8. Right to Subcontract. Tenant may undertake Replacement, Maintenance and Removal (as defined in Paragraph 11) itself or may subcontract all or any part thereof. Tenant and its subcontractors shall at all times be independent contractors, and it is not the intent of Tenant or Landlord to create any type of employment, agency, partnership or joint venture relationship. Landlord shall permit Tenant's employees, agents, and contractors to have access to the Facility to perform the Maintenance.

9. Removal. Within fifteen (15) days after the Termination Date or any other termination of this Lease by either party, Tenant shall commence, at its sole effort and expense, removal of the ATM from the Premises and shall restore the exposed area of the exterior/interior of the Premises created by the removal of the ATM with materials that are consistent with the material (and color) of the surrounding exterior/interior of the Premises on the Termination Date, and based on specifications provided to Landlord for review and approval, which review and approval shall not be unreasonably withheld, conditioned or delayed (the "Removal"). The Removal will include obtaining all necessary permits, taking the ATM and surrounds from the Premises, removing all security equipment and communications equipment, and leaving the Premises in broom clean condition, normal wear and tear and casualty excepted. Once the Removal has begun, it shall be finally completed within ten (10) days thereafter.

10. Indemnity and Insurance.



10.1. Tenant hereby agrees to defend and hold Landlord harmless from and to indemnify Landlord for any and all losses, claims, damages (but excluding any and all consequential and incidental damages), liabilities or expenses (including reasonable attorneys' fees) to third parties of any nature or kind in connection with loss of life, bodily injury or property damage arising directly from the operation or use of the Premises as well as the Facility including the Installation, Replacement, Maintenance, Removal or operation of the Premises as well as the Facility to the extent not caused by the negligence or willful misconduct of Landlord, its employees, agents, or contractors.

10.2. Tenant shall purchase and maintain insurance with the following minimum coverages: commercial general liability written on an occurrence basis with minimum limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and with limits of not less than Two Million Dollars (\$2,000,000.00) in the aggregate. The insurance required above shall include contractual liability coverage and shall also have umbrella coverage in a minimum amount of Three Million Dollars (\$3,000,000.00). Certificates of insurance evidencing Landlord as an additional insured shall be furnished annually upon request to Landlord. The insurance coverage will be provided by insurance carriers licensed in the State of Maryland. Notwithstanding anything contained herein to the contrary, Tenant shall have the right to self-insure with respect to the provisions of this paragraph provided Tenant's certified net worth remains in excess of Fifty Million Dollars (\$50,000,000.00).

10.3. Landlord indemnifies and agrees to defend and hold Tenant and its officers, directors, shareholders, agents, employees and affiliates harmless from any and all losses, claims, damages (but excluding any and all consequential and incidental damages), liabilities or expenses (including reasonable attorneys' fees) to third parties of any kind or nature in connection with loss of life, bodily injury or property damage arising from operation of the Property to the extent not caused by the negligence or willful misconduct of Tenant, its agents, contractors or employees.

10.4. Landlord shall purchase and maintain such insurance as will protect it from the claims that may arise out of or result from the foregoing paragraph and its obligations under this Agreement. Such insurance shall include the following minimum coverage: commercial general liability written on an occurrence basis with minimum limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and with limits of not less than Two Million Dollars (\$2,000,000.00) in the aggregate. Insurance coverage will be provided by insurance carriers licensed in the State of Maryland.

10.5. The insurance required hereby may be maintained by means of a policy or policies of blanket insurance.

10.6. Notwithstanding anything to the contrary herein contained, Landlord and Tenant do mutually each release and discharge the other of and from all suits, claims, and demands whatsoever, whether in contract or in tort, for loss or damage to the property of the other, even if caused by or occurring through or as a result of any negligent act or omission of the party released hereby or its contractors, agents, or employees, provided such property damage or loss

is caused by any risk covered by policies of Commercial Property Insurance with industry standard Special Form or equivalent carried or required hereunder to be carried by the Parties. Each party shall carry such policies of Commercial Property Insurance with industry standard Special Form or equivalent which shall contain a waiver of subrogation consistent with this paragraph.

11. Signage. Landlord hereby acknowledges that Tenant's ability to use the existing exterior sign box already located on the west/street side of the Property is deemed approved. Any change in the size and/or placement of any sign on the exterior of the Premises or on the Property advertising the Facility shall be with Landlord's written consent and at Tenant's expense and must comply with all applicable laws. Landlord expressly reserves the right to install additional signage on the Property which otherwise complies with all applicable laws. The existing monument sign shall be utilized exclusively by Landlord. Tenant shall remove any and all of its signage at the Termination Date or upon any other termination of this Lease Agreement by either party.

12. Promotions. Any promotions, advertising or publicity developed by Tenant in connection with the Facility shall be the property of, and belong exclusively to, Tenant. Neither Tenant nor Landlord shall use the other's names, trade names, trademarks, service marks, logos, or other identifying items without the prior written consent of the other party; provided, that Tenant is not required to obtain Landlord's approval of Tenant's use the address of the Facility as a location reference in its marketing and/or promotional materials.

13. Default.

13.1. In the event Tenant shall default in the performance of any of the terms or provisions of this Agreement, Landlord shall promptly so notify Tenant in writing. If Tenant shall fail to cure such default within ten (10) days after receipt of such notice in the case of a monetary default, or within twenty (20) days after receipt of such notice in the case of a non-monetary default, or if the non-monetary default is of such character as to require more than twenty (20) days to cure and Tenant shall fail to commence to do so within twenty (20) days after receipt of such notice and thereafter diligently proceed to cure such default and such additional time does not expose Landlord to civil or criminal fines or other liability, then in either such event, in addition to any other remedy which may be available at law or in equity to Landlord, (i) Landlord may cure such default, and any reasonable expense incurred in connection therewith shall be paid by Tenant promptly upon demand, or (ii) Landlord may cancel and terminate this Agreement or (iii) Landlord may proceed by appropriate court action to enforce Tenant's performance hereunder, or to recover from Tenant any or all damages or expenses (excluding consequential, punitive, special or incidental damages) which Landlord shall have sustained by reason of Tenant's default in such performance or on account of Landlord's enforcement of its remedies hereunder. Notwithstanding anything contained herein to the contrary, Landlord shall have no property interest in, or lien or right of distraint upon the contents of the ATM or any other fixtures or equipment in the Facility used for holding or processing cash or other personal property.

13.2. In the event Landlord shall default in the performance of any of the terms or provisions of this Agreement, Tenant shall promptly so notify Landlord in writing. If Landlord shall fail to

cure such default within twenty (20) days after receipt of such notice, or if any non-monetary default is of such character as to require more than twenty (20) days to cure and Landlord shall fail to commence to do so within twenty (20) days after receipt of such notice and thereafter diligently proceed to cure such default and such additional time does not expose Tenant to civil or criminal fines or other liability, then, in either such event, in addition to any other remedy which may be available at law or in equity to Tenant, a) Tenant may cure such default, excepting any default concerning an environmental matter outside the Premises, and any expense incurred in connection therewith shall be paid by Landlord promptly upon demand, or b) Tenant may cancel and terminate this Agreement, or c) Tenant may proceed by appropriate court action to enforce Landlord's performance hereunder, or to recover from Landlord any or all damages or expenses (excluding consequential, punitive, special or incidental damages) which Tenant shall have sustained by reason of Landlord's default in such performance or on account of Tenant's enforcement of its remedies hereunder. Nothing contained in this Section shall abrogate Landlord's right to terminate this Agreement as provided herein.

14. Eminent Domain. If the whole or any part of the Premises shall be taken under the power of eminent domain or sold to the condemning authority under threat of the exercise of eminent domain, but the use of the Facility is not disturbed thereby, then this Agreement shall continue with respect to the remaining portion of the Premises. If the portion of the Premises so taken or sold is, in the reasonable opinion of Tenant, such as to substantially impair the usefulness of the Premises for the purposes for which the same are hereby leased, then this Agreement shall terminate as of the date when Tenant is required to yield possession. The compensation awarded for such taking, or the sale proceeds, both as to Landlord's reversionary interest and Tenant's interest under this Agreement, shall belong to and be the property of Landlord. Nothing herein contained shall be deemed to prevent Tenant from receiving any award in any condemnation proceeding for trade fixtures installed by Tenant, the unamortized value of any Installation paid for by Tenant, or for moving components of the Facility owned by Tenant.

15. Casualty. If the Property or Premises shall be damaged by fire, the elements, unavoidable accident or other insurable casualty, and provided neither party terminates the Agreement, Landlord shall promptly, at its own expense, cause such damage to be repaired, but in no event shall Landlord be responsible for damage to or repair of the ATM or any other improvements installed by Tenant. If the Facility is not thereby rendered unusable, in Tenant's reasonable judgment, Rent shall not be abated. If by reason of such occurrence the Facility is rendered unusable, any payment of Rent by Tenant shall be wholly abated until the Premises are restored to a condition which is reasonably satisfactory to Tenant.

16. Governing Law and Severability. This Agreement shall be construed under the laws of the State of Maryland without regard to conflict of laws principles. It is agreed that if any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, all of which other provisions shall remain in full force and effect; and if any provision is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

17. WAIVER OF TRIAL BY JURY. TENANT AND LANDLORD HEREBY MUTUALLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. THE PARTIE AGREE TO SUBMIT ANY AND ALL LITIGATION RELATING TO THIS LEASE AGREEMENT TO STATE COURTS LOCATED IN WASHINGTON COUNTY, MARYLAND.

18. Assignment. This Agreement may not be assigned by Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Tenant may assign this Agreement without Landlord's consent to a corporation wholly owned by Tenant, or in which Tenant owns a majority of the stock entitled to vote, or which is wholly owned by a corporation which owns a majority of the stock of Tenant entitled to vote, or which is a successor in interest to Tenant pursuant to a merger or corporate reorganization or which purchases substantial assets of Tenant. Following such an assignment (other than by merger), Tenant will remain responsible for performance of all obligations on its part under this Agreement. Landlord may not assign this Agreement without the Tenant's written consent, which shall not be unreasonably withheld.

19. Notice. Any notice given under this Agreement shall be in writing. Each notice shall, for all purposes, be deemed given and received (i) if given by certified mail, return receipt requested, postage prepaid, two (2) business days after it is posted with the United States Postal Service, (ii) if given by nationally recognized overnight courier service, delivery charges prepaid, on the day it is delivered, as evidenced by the delivery receipt, or (iii) upon refusal of delivery. Such notice shall be sent to the respective party at the address designated below or to any other address that the respective party may designate by notice delivered pursuant hereto:

IF TO LANDLORD: 1 East Franklin Street  
Hagerstown MD 21740  
Attn: Mr. Scott A. Nicewarner, City Administrator

WITH A COPY TO: Jason Morton  
Salvatore & Morton, LLC  
82 West Washington Street, Suite 100  
Hagerstown, MD 21740

IF TO TENANT: Manufacturers and Traders Trust Company  
One M&T Plaza  
Buffalo, New York 14203  
Attention: Corporate Real Estate, 18<sup>th</sup> Floor

WITH A COPY TO: Manufacturers and Traders Trust Company  
1800 Washington Boulevard  
Baltimore, MD 21230  
Attention: Network Planning/ATM Product

20. Survival. The provisions of Sections 9, 10, 23, 26 and 27 shall survive the termination or expiration of this Agreement.

21. Merger. This Agreement supersedes any prior written or oral negotiations or understandings, and any such negotiations or understandings are merged herein.

22. Representations.

22.1. Landlord warrants and represents to Tenant that the execution and delivery of this Agreement and the performance of the provisions hereof have been duly authorized by all necessary entity action on its part, and this Agreement has been duly and validly executed and delivered by it and constitutes a valid and legally binding agreement enforceable against it in accordance with its terms; and, neither the execution and delivery of this Agreement nor the performance of the provisions hereof is or will constitute a violation of any contract, lease, sublease or other agreement or relationship to which it is a party or by which it is bound or to which the Property is subject. Landlord hereby agrees to indemnify and hold harmless Tenant against any losses, damages, liabilities or expenses of any nature or kind directly or indirectly arising from a breach of this representation, including, but not limited to, any suits, claims, and/or actions having such a violation as their basis.

22.2. Tenant warrants and represents to Landlord that the execution and delivery of this Agreement and the performance of the provisions hereof have been duly authorized by all necessary corporate action on its part, and this Agreement has been duly and validly executed and delivered by it and constitutes a valid and legally binding agreement enforceable against it in accordance with its terms; and, neither the execution and delivery of this Agreement nor the performance of the provisions hereof, is or will constitute a violation of any contract, lease or other agreement or other relationship to which it is a party or by which it is bound. Tenant hereby agrees to indemnify and hold harmless Landlord against any losses, damages, liabilities or expenses of any nature or kind directly or indirectly arising from a breach of this representation, including, but not limited to, any suits, claims, and/or actions having such a violation as their basis.

22.3 Pursuant to United States Presidential Executive Order 13224 ("Executive Order") and related regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury, U.S. persons and entities are prohibited from transacting business with persons or entities who, from time to time, are determined to have committed, or to pose a risk of committing or supporting terrorist acts, narcotics trafficking, money laundering and related crimes. Those persons and entities are identified on a list of Specially Designated Nationals and Blocked Persons (the "List"), published and regulated by OFAC. The names, including aliases, of those persons or entities on the List ("Blocked Person") are updated frequently. In addition, OFAC enforces other Executive Orders which, from time to time, impose restrictions on transactions with, or involving certain countries.

22.3.1. Landlord represents and warrants to Tenant that neither it, nor, to its knowledge, any of its respective officers, directors, or council members is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States

Treasury Department as a terrorist, a Blocked Person, or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by OFAC and that it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

22.3.2. Tenant represents and warrants to Landlord that neither it, nor, to its knowledge, any of its respective officers, directors, partners, or any person or entity that directly or indirectly controls it or has an ownership interest in it of ten percent (10%) or more, is acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, a Blocked Person, or other banned or blocked person, group, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by OFAC and that it is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of any such person, group, entity, or nation.

23. Environmental Matters. Landlord covenants that the Property will be operated in compliance with all applicable federal, state and local laws, ordinances and regulations (collectively, "Laws") relating to environmental pollutants or hazardous, toxic or similar substances (hereinafter "Pollutants"); and that any generation, handling, transportation, storage, treatment or disposal of Pollutants occurring on the Property will be in compliance with all applicable Law. During the Term, Tenant covenants that the Premises and the Facility will be operated in compliance with all applicable environmental Laws. Tenant shall not generate, handle, transport, store, treat or dispose of Pollutants on the Property except in such limited quantities as are necessary for the permitted use of the Premises and in compliance with all applicable Law. In the event any Pollutants are determined to be located on, in, or affecting the Property, or if the Property is determined to be subject to any past, existing, pending or threatened investigation by any governmental authority under any Law, Landlord shall notify Tenant in writing immediately. Should Landlord be required to contact any governmental or quasi-governmental authorities concerning the Property, Landlord shall so advise Tenant and Tenant shall have the right to be present during any such contacts.

24. Quiet Enjoyment. Tenant, upon payment of Rent, shall and may peacefully and quietly have, hold and enjoy the Premises for the Term without trouble or hindrance.

25. Waiver. The waiver at any time by Landlord or Tenant of any particular provision of this Agreement shall extend to the particular case only, and for the particular time and in the particular manner specified, and such waiver shall not be constructed or understood as waiving any further or other rights of any character whatsoever.

26. Confidentiality. Except in accordance with Buyer's Charter and Code and in accordance State Law as to open meetings and public information requests, this Contract shall not be recorded in any office or place of public record.

27. No Brokers. Landlord and Tenant represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Facility or this



transaction and each agrees to indemnify the other against and hold the other harmless from any claims by any party with whom the indemnifying party has consulted or negotiated with regard to the Facility or this transaction.

28. Headings. Headings used in this Agreement are for convenience and reference only and shall not be deemed to limit, define, construe or interpret any provision contained herein.

29. The submission of this Lease by Tenant to Landlord for examination does not constitute a reservation of or option for the Premises. This Lease will become effective only upon execution thereof by both parties and delivery thereof to Tenant.

30. If any term or provision of this Lease, or any portion thereof, and the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provisions of this Lease shall be valid and enforceable to the fullest extent permitted by law.

31. Whenever in this Lease a period of time is calculated or stated as a number of days, it shall be construed to mean calendar days, and the day of the act, event or default from which the designated period of time begins to run shall not be included; provided, however, that when any period of time would end on a Saturday, Sunday or legal holiday, such period shall be deemed to end on the next day following which is not a Saturday, Sunday or legal holiday.

32. This Lease may be executed in one or more counterparts by original signatures, and/or signatures transmitted via facsimile or portable document file. The transmission of a signed counterpart of this Lease by facsimile or by portable document file shall have the same force and effect as delivery of an original signed counterpart of this Lease and shall constitute valid and effective delivery for all purposes.

[end of text – signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered on or as of the date first above written.

WITNESS/ATTEST:

*Donna H. Spickler*  
City Clerk

CITY OF HAGERSTOWN

By: *Emily N. Keller*  
Emily N. Keller  
Mayor

WITNESS/ATTEST:

*Lena Galante*  
Lena Galante

MANUFACTURERS AND TRADERS  
TRUST COMPANY

By: *Howard Block*  
Name: Howard Block  
Title: Vice President



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered on or as of the date first above written.

WITNESS/ATTEST:

*Donna H. Spickler*  
City Clerk

CITY OF HAGERSTOWN

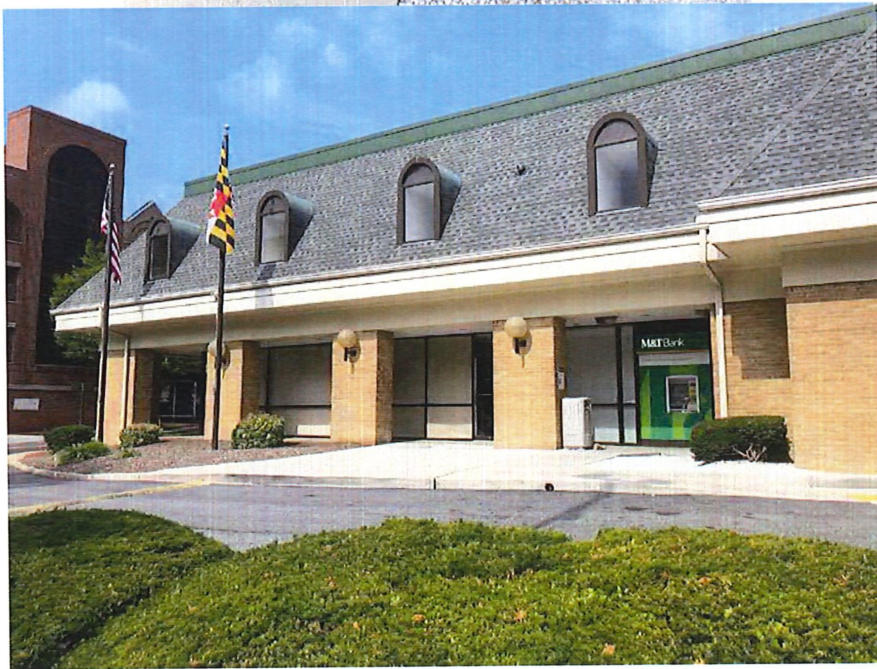
By: *Emily N. Keller*  
Emily N. Keller  
Mayor

WITNESS/ATTEST:

MANUFACTURERS AND TRADERS  
TRUST COMPANY

By: \_\_\_\_\_  
Name: Howard Block  
Title: Vice President

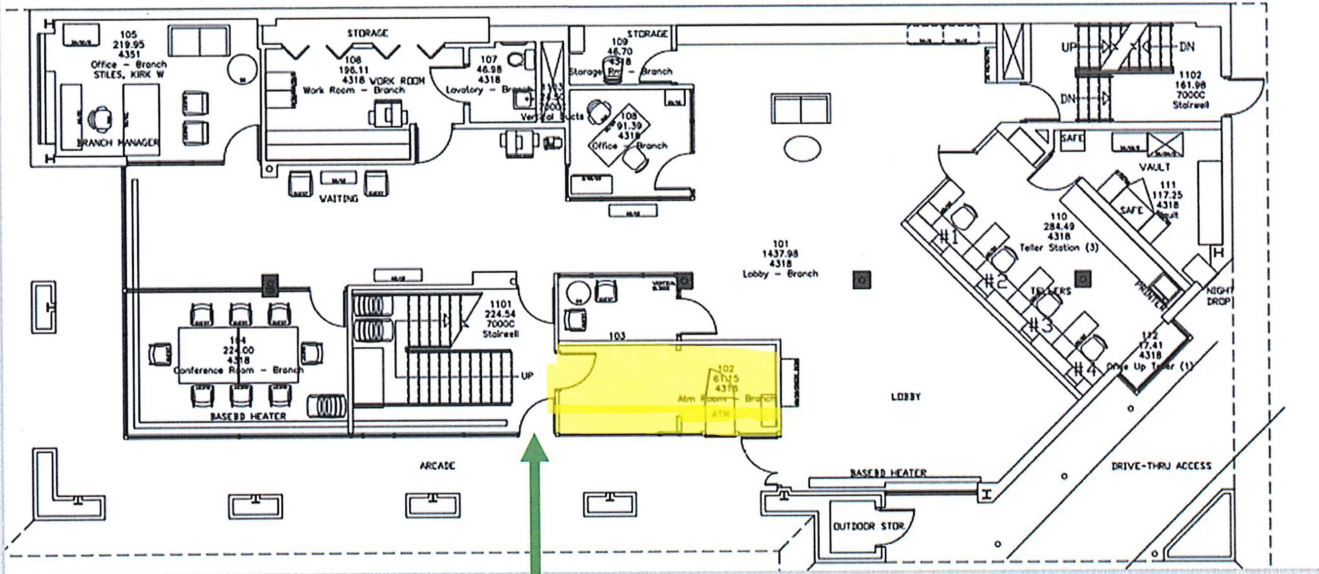
Exhibit A



0-21-16

ATM Room for leave behind M&T Bank ATM

SITE VISIT: 7/2010 dk



M&T to access door to service ATM

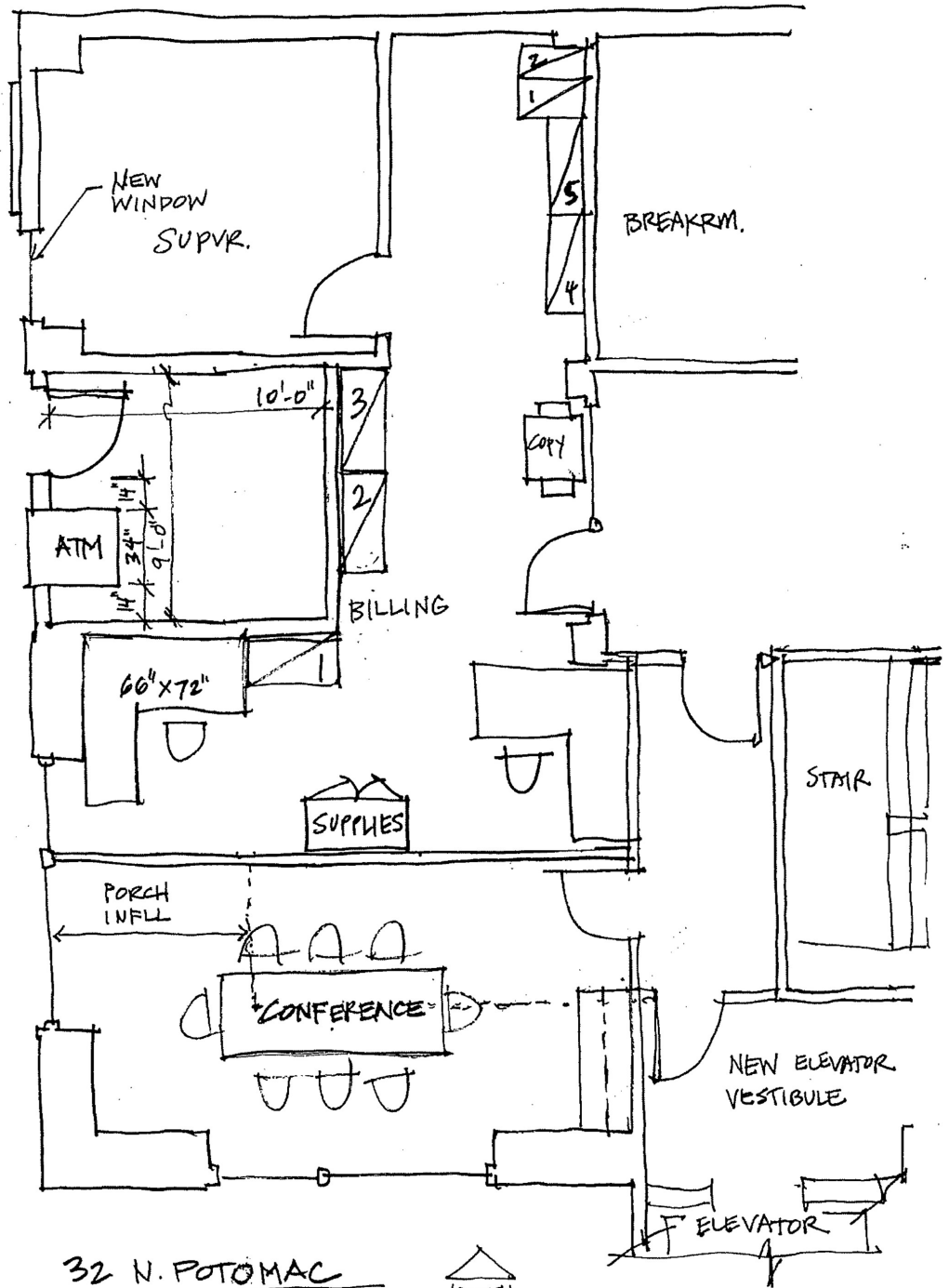
## Exhibit B

### M & T Bank ATM Room Buildout Requirements

- 10'x10' room, or site-specific comparable per attached drawings
- Minimum 5/8" drywall, metal studs
- Walls/studs to deck and insulated
- Must maintain 70 degrees at all times
- 60 AMP breaker pull station with three (3) 20 AMP duplex receptacles
- Lighting - Two (2) 2x4 or four (4) 2x2 fixtures
- Solid wood or metal door; MTB will supply door hardware
- Acoustical ceiling
- Separate entrance for servicing
- Must meet ADA requirements
- Must pass ATM Lighting requirements; lighting survey will need to be done MTB contractor to determine
- HVAC

0-21-16

POTOMAC STREET



32 N. POTOMAC  
 9.24.21      1/4" = 1'-0" ±







0-21-14



32 N. POTOMAC ST.

  
**M&T Bank**  
Walk-Up ATM



**M&T Bank**  
Understanding what's important.



  
Community  
& Economic  
Development

0-21-16