

LEASE AGREEMENT
BY AND BETWEEN THE CITY OF FRANKLIN, TENNESSEE AND
FIRST BANK FOR 510 COLUMBIA AVENUE, FRANKLIN, TENNESSEE 37064
COF NO. 2012-0204

This Lease Agreement made as of _____, 2013 by and between the **CITY OF FRANKLIN, TENNESSEE** a municipal governmental entity of the State of Tennessee (hereinafter referred to as "City" or "Lessor"), and **FIRST BANK**, a Tennessee state banking corporation, (hereinafter referred to as "First Bank" or "Lessee").

WITNESSETH:

1. **LEASED PREMISES.** The Lessor leases to the Lessee the real property, building, parking areas and fixtures, excluding in all respects the lower level basement, located at 510 Columbia Avenue, Franklin, Tennessee 37064, as generally depicted on Exhibit A, which is attached hereto (hereinafter referred to as "Leased Premises"). Notwithstanding the fact that the basement is not contained within the Leased Premises, Lessee shall be responsible to maintain the HVAC system and mechanical systems related to the operation and use of the Leased Premises and Lessee shall be granted access to the basement for such purposes. The Leased Premises are leased to Lessee in its "AS IS" condition. The basement, which is not part of the Leased Premises, shall be used by Lessor for storage and shall not be leased by the Lessor to others except with the prior written consent of Lessee.

2. **TERM.** The Lessor leases to the Lessee the Leased Premises for the term of twenty (20) years from _____, 2013 to _____, 2033. At the expiration of the initial term, Lessee, at its election shall be entitled to extend the Lease for one ten (10) year term, provided that, Lessee makes such capital improvements to the Leased Premises as to cause the Leased Premises to be in substantially the same condition as the condition that exists immediately following the renovations made pursuant to Section _____ herein. At the expiration of the first extended term, the Lease may be extended for an additional ten (10) year term if such extension is mutually agreeable to both the Lessor and Lessee.

3. **RENT.** The annual rent for the Leased Premises shall be \$24,000.00, with no increase for the first five (5) years, payable in equal monthly installments, which rent payment shall commence once a building permit is issued in favor of Lessee for the contemplated renovations. After the first five (5) years, the rent shall increase in five (5) year increments based on the Core CPI for each preceding five (5) year period.

4. **EXISTING TENANTS.** The term "Existing Tenants" shall mean (a) Kathy A. Russell d/b/a Post Officer Contractor (hereinafter referred to as "U.S. Post Office Contractor"), and (b) The Heritage Foundation of Franklin and Williamson County, Tennessee (hereinafter referred to as "Heritage Foundation.") First bank shall offer to extend a sublease to the U.S. Post Office Contractor for the same term (including all renewal terms) as extended by Lessor to Lessee hereunder for the purpose of maintaining a U.S. Post Office within the Leased Premises, with no increase in rent over the amount currently paid. This sublease shall not be assigned unless the assignment is from the U.S. Post Office Contractor to the United States Postal Service or to any other contractor who operates a facility for the delivery and receipt of U.S. Mail in substantially the same manner as operated by the U.S. Post Office Contractor. Should Lessee not be successful in retaining the current U.S. Post Office Contractor as a sublessee, Lessee shall use all reasonable and best efforts to sublease to and maintain a Postal Service type tenant. Lessee shall offer to extent a sublease to the Heritage Foundation at no rental increase from the rent currently paid by the Heritage Foundation for the purpose of maintaining the general business offices of the Heritage Foundation. Alternatively, Lessee, at the elections of the Heritage Foundation, shall assist the Heritage Foundation in relocating to other space satisfactory to the Heritage Foundation.

5. **TRIPLE NET LEASE PROVISIONS.** The Lease shall be a “triple net lease.” Lessee shall be responsible for all maintenance, taxes, utilities, and insurance required in connection with the Leased Premises. Lessor shall be named an additional loss payee on all hazard insurance maintained by Lessee on the Leased Premises.

6. **LESSEE’S COVENANTS.** The Lessee agrees:

a) **Rent.** That Lessee will pay the said rent at the times and in the manner aforesaid.

b) **Late Fee.** That if any installment of rent is not paid on or before the tenth (10th) day of the month when due or any additional rent is not paid within thirty (30) days after billing is mailed by Lessor, there shall be a late fee and service charge assessed against Lessee, without waiver of any rights of Lessor to declare a default hereunder, equal to ten percent (10%) of such amount due which charge will be payable immediately by Lessee as further additional rent.

c) **Capital Improvements.** Lessee shall make the capital improvements to the Leased Premises described on the capital improvements schedule attached hereto as Exhibit B, expected to be in an aggregate amount of \$3,000,000.00. A list of all capital improvements to be made by Lessee shall be submitted to Lessor prior to the installation of any work, along with all material work plans. All improvements to the Leased Premises shall be done in a workmanlike manner and shall comply with all City regulations, codes and ordinances, including, without limitation, approval from the City’s Historic Zoning Commission, Board of Zoning Appeals, and Planning Commission, as applicable. Prior to the initiation of any work, Lessee shall obtain such permits as and when required by City codes. All improvements to the Leased Premises shall conform to the requirements imposed by the covenants contained in the Quitclaim Deed of record in Book 1014, page 818, Register’s Office for Williamson County, Tennessee and in the Special Warranty Deed of record in Book 4387, page 320, Register’s Office for Williamson County, Tennessee. All improvements shall also comply with the State Historic Preservation Office requirements. Lessor shall have the right to inspect the Leased Premises at any time, with reasonable notice the Lessee. All alterations, additions, repairs, replacements and improvements made to or upon the Leased Premises shall be deemed to be part of the Leased Premises and shall become the property of Lessor upon the expiration or termination of this Lease; provided, however, that trade fixtures, machinery, and equipment that are installed by Lessee and removable without materially injuring the Premises shall remain the property of Lessee.

d) **Governmental Compliance.** During the term of the Lease, Lessee shall maintain compliance with all laws and regulations applicable to its renovation, use, and occupancy of the Leased Premises. The Leased Premises shall be improved in such a manner as to comply with the American with Disabilities Act.

e) **Sustainable Practices.** Lessee agrees to use its best efforts to utilize sustainable practices for all improvements as provided by Lessor and to the extent practical considering both requirements of the State Historic Preservation Office and a reasonable cost/benefit analysis. Lessor and Lessee agree that the sustainable practices referenced herein shall be satisfied upon compliance by Lessee with those items listed on Exhibit C.

f) **Landscaping and Signage.** Lessee shall obtain approval from Lessor, as required by applicable ordinances, for all landscaping and signage. Lessee shall insure that all landscaping and signage compliments the community character of the area in which the Leased Premises are located.

Lessee shall maintain, to City standards, all of the Leased Premises, including, but not limited to, the parking area and all landscaped areas.

g) Waste. Lessee shall commit no waste at the Leased Premises. Lessee shall maintain the Leased Premises in good working order and repair. At the termination of the Lease, Lessee shall return the Leased Premises to the Lessor in as good a condition or better from the date Lessee receives a Certificate of Occupancy by the City, reasonable wear and tear excepted.

h) Payment of Utilities. Lessee shall pay for all utilities, the cost of which shall be borne by Lessee by direct payment to the provider thereof throughout the term of the Lease.

i) Permitted Use. Excluding such portion of the Leased Premises as will be occupied by the Existing Tenants, Lessee shall use the Leased Premises solely as a full-service commercial bank branch facility, with attendant services thereto.

j) Security. Lessee shall be responsible for all security and security systems applicable to the Leased Premises.

k) Not to Injure; That Lessee will not injure, overload, or deface or suffer to be injured, overloaded, or defaced the premises or any part thereof. Lessee shall allow no lien to be placed against the Leased Premises.

l) Liability Insurance. Without limiting its liability under this Lease Agreement, Lessee shall procure and maintain at its expense during the life of the Lease Agreement insurance of the types and in the minimum amounts stated as follows:

- (1) Commercial General Liability Coverage
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 Products-Completed Operations Aggregate
 - \$100,000 Damage to Rented Premises (each occurrence)
 - \$5,000 Medical Expense (any one person)

Certificate of Insurance shall include the City of Franklin as Additional Insured with the attachment of the Additional Insured Endorsement and must indicate that this coverage applies on a Per Location basis.

- (2) Workers Compensation
 - Statutory Limits

Certificate of Insurance shall include the City of Franklin as a Certificate Holder for proof of insurance coverage.

- (3) Employers Liability
 - \$1,000,000 Bodily Injury Each Accident
 - \$1,000,000 Policy Limit Bodily Injury by Disease
 - \$1,000,000 Each Employee Bodily Injury by Disease

Certificate of Insurance shall include the City of Franklin as a Certificate Holder for proof of insurance coverage.

- (4) Umbrella or Excess Liability
\$1,000,000 Each Occurrence and \$1,000,000 Aggregate

Certificate of Insurance shall include the City of Franklin as a Certificate Holder for proof of insurance coverage.

- (5) Property
\$2,300,000 Building Coverage with Special Cause of Loss Form, including Earthquake, Flood, and Equipment Breakdown coverage

Certificate of Insurance shall include the City of Franklin as Loss Payee.

Lessee agrees to provide a Waiver of Subrogation on the General Liability, Umbrella, Workers Compensation, and Employers Liability provided by the lessee's insurance company within these policies. Lessee agrees to provide proof of a Builders Risk policy that will cover the physical improvements as well as General Liability with building owner City of Franklin also as an Additional Insured and proof of WC and Employers Liability coverage from the construction contractor. Lessee's insurance policy, if applicable, shall name the City of Franklin as an "Additional Insured with respects to the Lease only." Said insurance shall be written by a company(s) licensed to do business in the State of Tennessee and satisfactory to City of Franklin Risk Management. Prior to occupying a City owned, leased or rented space, a Certificate of Insurance evidencing the maintenance of said insurance shall be furnished to City of Franklin Risk Management and shall contain the following statement: "The insurance evidenced by this Certificate will not be canceled or altered except with written consent by and between the Insured and Additional Insured named within the insurance contract".

m) Personal Property Insurance. That it shall be Lessee's sole responsibility to insure and keep insured, at Lessee's expense, all personal property which is owned by Lessee, or any other authorized occupant of the leased premises, and which is placed or stored in the leased premises or elsewhere in the building of which they are a part.

n) Unlawful, Improper, or Offensive Use. That Lessee will not make or suffer any unlawful, improper, or offensive use of the premises, or any use or occupancy thereof contrary to any law of the State of Tennessee or any ordinance or regulation of the City of Franklin now or hereafter made, or which shall be injurious to any person or property, or which shall be liable to endanger or affect any insurance on the said building or to increase the premium thereof, nor shall Lessee make or suffer any sale of any intoxicated beverages.

o) Newsracks. No fixtures such as newsracks or other receptacles shall be placed outside the building; Lessee may place a reasonable number of newsracks or other receptacles in common areas provided such placement complies with applicable law and does not impede ingress or egress.

p) Assignment. That Lessee will not assign, sublet, or in any way part with the possession of the whole or any part of the premises without first obtaining the written consent of the Lessor, with the exception of the subleases with the Existing Tenants, provided, however, the consent of the Lessor shall not be required in the following circumstances: (1) Lessee mergers or consolidates with another financial

institution and such financial institution as surviving entity: (i) assumes all obligations of Lessee to the Lessor under the Lease, and (ii) agrees in writing to maintain full-service banking operations at the Leased Premises in substantially the same manner by Lessee, or (2) Lessee assigns its rights under the Lease to another financial institution that: (i) assumes all obligations of Lessee to Lessor under the Lease, and (ii) agrees in writing to maintain full-service banking operations at the Leased Premises in substantially the same manner as maintained by Lessee.

q) Permission of Lessor to Enter. That the Lessor at all reasonable times may enter to view the premises and to make repairs which the Lessor may see fit to make.

r) Environmental. Lessee shall comply with all applicable environmental laws and regulations in its renovations to and use of the Leased Premises.

s) Yield up Premises at Expiration of Term. That at the expiration of the said term Lessee will peaceably yield up to the Lessor the premises and all erections and additions made upon the same, in good repair in all respects, reasonable use and wear excepted, as the same now are or may be installed, attached or affixed by the Lessor.

t) Indemnification and Hold Harmless. Lessee shall indemnify and hold harmless Lessor, its officers, agents and employees from:

- 1) Any claims, damages or suits for loss of or damage to property, including loss of use thereof, or injuries, including death to persons and from all judgments recovered therefore and from all expense in defending said claims or suits, including court costs and attorney fees for injuries or damages arising, in part or in whole, from the negligent or intentional acts or omissions of Lessee, its officers, employees and/or agents, including its sub or independent contractors and patrons, in connection with this Lease Agreement.
- 2) Any claims, damages, penalties, costs and attorney fees arising from any failure of Lessor, its officers, employees and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- 3) Lessor will not indemnify, defend or hold harmless in any fashion the Lessee from any claims arising from any failure, regardless of any language in any attachment or other document that the Lessee may provide.
- 4) Any claims, damages, penalties, costs and attorneys fees arising from any action brought against the City of Franklin by any of Lessee's officers, employees and/or agents arising out of any injury incurred by such officer, employee and/or agent in the course of the performance of this contract, regardless of the cause of such injury.
- 5) Lessee shall pay Lessor any expenses incurred as a result of Lessee's failure to fulfill any obligation in a timely manner under this Lease Agreement.
- 6) Enforcement Expenses. In the event it becomes necessary for Lessor to employ an attorney to enforce collection of the rents agreed to be paid, or to enforce compliance with any of the covenants or agreements herein contained, Lessee shall be liable for reasonable attorney's fees, costs and expenses incurred by the Lessor.

u) Assent Not Waiver of Future Breach of Covenants. That no assent, express or implied, by the Lessor to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of the same covenant.

v) Maintenance of Records. The books, records and documents of Lessee, insofar as they relate to this Lease Agreement, shall be maintained for a period of three (3) full years from the date of expiration of this Lease Agreement and will be subject to audit, at any reasonable time and upon reasonable notice by Lessor or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.

w) Employment. Lessee shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

7. **LESSOR'S COVENANTS**. The Lessor agrees:

a) Covenant for Quiet Enjoyment. That the Lessee shall peaceably hold and enjoy the premises, subject to the terms of this Lease Agreement.

b) Payment of Taxes. That the Lessor will pay the general taxes, if any, which shall be assessed and levied upon the premises during the said term as they may fall due.

c) Obligation to Repair. That Lessor will keep the exterior building, mechanical, electrical and plumbing, in such repair as the same are at the commencement of the said term or may be put in during the continuance thereof, reasonable wear and tear only excepted.

d) Insurance. That Lessor shall insure, at the Lessor's sole expense the Leased Premises against the risk of fire and hazard.

e) Remedy of Failure to Maintain by Lessee. Lessor reserves the right, after notice, to remedy any delinquent maintenance responsibility of Lessee and to seek full reimbursement from Lessee. This in no way limits Lessor's rights to recover by other means or methods provided by law.

f) Construction of Improvements. Lessor shall permit Lessee to located a modular, non-permanent banking facility on the Leased Premises for use of customers of Lessee during construction of renovations and improvements to the Leased Premises.

8. **DEFAULT, INSOLVENCY, ETC. OF LESSEE**. If Lessee shall neglect or fail to perform and observe any of the covenants in this instrument, which on its part are to be performed and such default shall continue for a period of thirty (30) days after the mailing of a written notice, postage prepaid from the Lessor to the Lessee specifying such default, or the Lessee shall be declared bankrupt or insolvent according to law, or if any assignment shall be made of any of its property for the benefit of creditors, then, and in any of the said cases, the Lessor or those having their estate in said premises, lawfully may immediately or at any time thereafter, and while such neglect or default continues and without further notice or demand, enter into and upon the premises or any part thereof in the name of the whole and repossess the same as of their former estate and expel the said Lessee and those claiming under it, and remove their effects (forcibly if necessary) without being taken or deemed guilty of any manner of trespass and without prejudice to any remedies which might otherwise be used for arrears of rent, or preceding breach of covenant and, at the Lessor's election, the said term shall cease and be ended. Further, the Lease shall be immediately terminated in the event Lessee (while the tenant) has its banking operations closed by order of the FDIC or any state or federal banking agency having applicable jurisdiction over Lessee.

9. **TAKING BY EMINENT DOMAIN.** In the event the whole or a substantial part of the premises shall be taken by the City of Franklin, the State of Tennessee or other entity with the authority to exercise eminent domain for any public use by condemnation or agreement upon the threat of condemnation, then this Lease Agreement shall terminate from the time when possession of the whole or of the part so taken shall be required for such public use, and the rents, properly apportioned, shall be paid up to that time; and the Lessee shall not claim or be entitled to any part of the award to be made for damages for such taking for public use; and such taking shall not be deemed a breach of the Lessor's covenant for quiet enjoyment hereinbefore contained.

10. **SURRENDER OF PREMISES.** At the expiration of the term of this Lease, Lessee shall peaceably yield up to Lessor the Premises and all erections and additions made thereto except as hereinbefore provided, in good repair in all respects, reasonable use, wear and tear and damage by fire or other casualty or by condemnation excepted.

11. **HOLDING OVER.** Should Lessee hold over the term hereby created with the consent of Lessor, Lessee shall become a Lessee from month to month at the monthly rental then payable hereunder and otherwise upon the covenants and conditions in this Lease contained, and shall continue to be such Lessee until thirty (30) days after either party serves upon the other notice of intention to terminate such monthly tenancy.

12. **COVENANT AND AGREEMENTS.** All of the covenants, agreements and conditions of this Lease shall accrue to the benefit of and be binding upon the respective parties hereto and their successors and assigns as if they were in every case named and express.

13. **CHOICE OF LAW.** This Lease Agreement shall be governed by the laws of the State of Tennessee.

14. **NOTICES.** Any notice provided pursuant to this Lease, if specified to be in writing, will be in writing and will be deemed given: (a) if by hand delivery, then upon receipt thereof; (b) if mailed, then three (3) days after deposit in the mail where sender is located, postage prepaid, certified mail return receipt requested; (c) if by next day delivery service, then upon such delivery; or (d) if by facsimile transmission or electronic mail, then upon confirmation of receipt. All notices will be addressed to the parties at the addresses set forth below (or such other address as either party may in the future specify in writing to the other):

Lessor:

Eric Stuckey, City Administrator
City of Franklin
109 3rd Ave. South
P.O. Box 305
Franklin, TN 37065-0305

Lessee:

With a Copy to:

Shauna R. Billingsley, City Attorney
109 3rd Avenue South
Franklin, TN 37065

15. **SEVERABILITY**. Should any provision of this Lease Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Lease Agreement.

16. **ENTIRE AGREEMENT**. This Lease Agreement and its attachments contain the entire agreement between the parties, and no statement, promises, or inducements made by either party or agent of either party that is not contained in this Lease Agreement shall be valid or binding; and this Lease Agreement may not be enlarged, modified or altered except in writing signed by the parties and attached hereto.

17. **VENUE**. In the event that any term of this Lease Agreement or its attachments become subject to litigation, the venue for such action will be in Williamson County, Tennessee.

18. **WAIVER**. No waiver of any provision of this Lease Agreement shall be valid unless in writing and signed by the parties against whom charged.

19. **LIMITATION OF LIABILITY**. Notwithstanding any provision hereinto the contrary, Lessee shall look solely to the equity of Lessor in and to the premises in the event of a breach or default by Lessor pursuant to the provisions of this Lease, and lessee agrees that the liability of Lessor under this Lease shall not exceed the value of such equity of Lessor in the premises. No other properties or assets of Lessor shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) arising out of, or in connection with this Lease Agreement.

20. **PARTNERSHIP-JOINT VENTURE**. Nothing herein shall in any way be construed or intended to create a partnership or joint venture between the parties or to create the relationship of principal and agent between or among any of the parties. None of the parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No party shall become liable for any representation, act or omission of any other party contrary to the terms of this paragraph.

21. **EFFECTIVE DATE**. This Lease Agreement shall not be binding upon the parties until it has been signed first by the Lessee and then by the authorized representatives of the City of Franklin and has been filed in the office of the Mayor. When it has been so signed and filed, this Lease Agreement shall be effective as of the date first written above.

IN WITNESS WHEREOF, the parties hereto have hereunto caused their names to be signed to multiple copies of this Lease Agreement as of the day and date last written below in Acknowledgements, all copies constituting, however, but one Lease Agreement.

Lessor:

Lessee:

CITY OF FRANKLIN, TENNESSEE

FIRST BANK

Dr, Ken Moore
Mayor

Attest:

Eric Stuckey,
City Administrator

Approved as to Form:

By: _____
Shauna R. Billingsley
City Attorney

Julian Bibb
Counsel for First Bank

DRAFT