

**GULF BREEZE CITY COUNCIL
REGULAR MEETING AGENDA**

DECEMBER 2, 2013
MONDAY, 6:30 P.M.
COUNCIL CHAMBERS

1. Roll Call
2. Invocation and Pledge of Allegiance
3. Approval of Minutes from November 18, 2013, Regular Meeting
Approval of Minutes from November 25, 2013, Special Meeting
4. **RESOLUTION 32-13: RESOLUTION APPROVING A PLAN OF FINANCE FOR LVI RD OSCEOLA, LLC, ISSUANCE OF UP TO \$35,000,000 IN CAPITAL TRUST AGENCY BONDS, AND AMENDMENT TO INTERLOCAL AGREEMENT AS REQUIRED**

RESOLUTION 33-13: RESOLUTION APPROVING A PLAN OF FINANCE FOR THE LEXINGTON/THE LEXINGTON HOUSE, ISSUANCE OF UP TO \$25,000,000 IN CAPITAL TRUST AGENCY BONDS, AND AMENDMENT TO INTERLOCAL AGREEMENT AS REQUIRED

RESOLUTION 34-13: RESOLUTION APPROVING A PLAN OF FINANCE FOR MAINSAIL HEALTH CARE GROUP II, LLC, ISSUANCE OF UP TO \$169,000,000 IN CAPITAL TRUST AGENCY BONDS, AND AMENDMENT TO INTERLOCAL AGREEMENT AS REQUIRED

RESOLUTION 35-13: RESOLUTION APPROVING A PLAN OF FINANCE FOR SENIOR CARE LIVING 1, ISSUANCE OF UP TO \$50,000,000 IN CAPITAL TRUST AGENCY BONDS, AND AMENDMENT TO INTERLOCAL AGREEMENT AS REQUIRED

RESOLUTION 36-13: RESOLUTION APPROVING A PLAN OF FINANCE FOR EQUINOX OF JACKSONVILLE, LLC, ISSUANCE OF UP TO \$48,000,000 IN CAPITAL TRUST AGENCY BONDS, AND AMENDMENT TO INTERLOCAL AGREEMENT AS REQUIRED

5. CONSENT AGENDA ITEMS:*

- A. Discussion and Action Regarding Application for Special Event from the Pensacola Sports Association for the Double Bridge Run (02/01/2014)
- B. Discussion and Action Regarding Application for Special Event from Gulf Breeze Chamber of Commerce for Holiday Parade (12/07/2013)
- C. Discussion and Action Regarding Change Order Request – Tiger Point Golf Club – Main Building
- D. Discussion and Action Regarding Pensacola Beach Natural Gas Service

***These are items considered routine in nature and will be considered by one motion. If any citizen wishes to voice an opinion on one of the items, you should advise the Council immediately.**

ACTION AGENDA ITEMS:

- A. Discussion and Action Regarding Appointment of Gary Michaels to Capital Trust Agency Board
 - B. Discussion and Action Regarding Authorization to Migrate Bank Accounts, Required Banking Resolutions, and Bank Agreements to BBVA Compass Bank
6. New Business
7. Open Forum
8. Adjournment

If any person decides to appeal any decisions made with respect to any matter considered at this meeting or public hearing, such person may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and any evidence upon which the appeal is to be based.

The public is invited to comment on matters before the City Council upon seeking and receiving the recognition from the Chair.

**MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA**

The 1,236th regular meeting of the Gulf Breeze City Council, Gulf Breeze, Florida, was held at the Gulf Breeze City Hall on Monday, November 18, 2013, at 6:30 p.m

Upon call of the roll the following Councilmembers were present: Councilwoman Cherry Fitch, Councilman Joseph Henderson, Councilman Landfair, Mayor Pro Tem Schluter, and Mayor Beverly Zimmern.

SPECIAL MEETING: PUBLIC HEARING REGARDING: Allowing Citizens Opportunity to Comment on the Application for Community Development Block Grant.

Kathy Baker with Jordan and Associates addressed the City Council regarding the Community Development Block Grant. She explained that the purpose of the Special Meeting was to allow the citizens an opportunity to comment about the Application. The Mayor opened the floor for comments and none were received.

Councilman Schluter made a motion to close the public hearing. Councilman Henderson seconded. The vote for approval was unanimous.

APPROVAL OF MINUTES:

Councilman Henderson moved for approval of the minutes for the regular meeting held on Monday, November 4, 2013. Councilwoman Fitch seconded. The vote for approval was unanimous.

CONSENT AGENDA ITEMS:

That the City Council approve the following Consent Agenda Items: A, B, C, D, E, and F:

A. SUBJECT: DISCUSSION AND ACTION REGARDING EAGLE SCOUT PROJECT – WILL MUSMANSKY

Reference: City Manager memo dated November 8, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE EAGLE SCOUT PROJECT PRESENTED BY WILL MUSMANSKY.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

B. SUBJECT: DISCUSSION AND ACTION REGARDING APPLICATION FOR SPECIAL EVENTS BY GULF BREEZE UNITED METHODIST CHURCH.

Reference: Interim Chief of Police memo dated November 7, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE METHODIST CHURCH HAYRIDE ON SUNDAY, DECEMBER 8, 2013.

C. SUBJECT: DISCUSSION AND ACTION REGARDING APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH NATIONAL PARK SERVICE AND POLICE DEPARTMENT FOR POLICING SERVICES WITHIN PARK AREAS.

Reference: Interim Chief of Police memo dated November 7, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL PARK SERVICE AND THE GULF BREEZE POLICE DEPARTMENT.

D. SUBJECT: DISCUSSION AND ACTION REGARDING APPOINTMENT TO BOARD OF ADJUSTMENT.

Reference: City Clerk memo dated November 7, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPOINT ALTERNATE BOB WILSON TO SERVE ON THE BOARD OF ADJUSTMENT AND SELECT TWO (2) ALTERNATES.

E. SUBJECT: DISCUSSION AND ACTION REGARDING COMMENTS ON THE FLORIDA ALABAMA 2040 DRAFT LONG RANGE TRANSPORTATION PLAN.

Reference: City Manager memo dated November 8, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE SUBMITTAL OF THE LIST OF TRANSPORTATION IMPROVEMENTS AS PREPARED BY VHB MILLERSELLEN TO BE INCLUDED IN THE FLORIDA ALABAMA 2040 LONG RANGE TRANSPORTATION PLAN.

MINUTES OF THE REGULAR MEETING OF THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA

F. SUBJECT: DISCUSSION AND ACTION REGARDING CONTRIBUTION TO SCHOLARSHIP FUND, PENSACOLA STATE COLLEGE, AND LANE GILCHRIST SCHOLARSHIP FUND.

Reference: City Manager memo dated November 8, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE EXPENDITURE OF \$5,000 OF CTA FUNDS TO BE CONTRIBUTED TO THE LANE GILCHRIST SCHOLARSHIP FUND AT PENSACOLA STATE COLLEGE.

Councilwoman Fitch moved for approval of Consent Agenda Items A, B, C, D, E, and F. Councilman Schluter seconded. The vote for approval was unanimous.

ACTION AGENDA ITEM: NONE

NEW BUSINESS:

City Manager advised the City Council that he and the Mayor had met with Representative Mike Hill regarding the red light camera program in response to a public records request from Representative Hill. The City Manager stated that he felt the meeting went well and that Representative Hill was going to review the data provided by the City.

No action was taken at this time.

OPEN FORUM:

Rodney Sutton, 102 Shoreline Drive, spoke in favor of the Community Development Block Grant.

Mayor acknowledged that Rob Williamson was in attendance and advised that he was running for Santa Rosa County Commissioner in the upcoming election.

ADJOURNMENT: Mayor Zimmern adjourned the meeting at 6:38 p.m.

Stephanie D. Lucas, City Clerk

Beverly H. Zimmern, Mayor

**MINUTES OF A SPECIAL MEETING BY THE
CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA**

A Special Meeting by the Gulf Breeze City Council, Gulf Breeze, Florida, was convened at the Gulf Breeze City Hall on Monday, November 25, 2013, at 6:30 p.m.

The following Councilmen were present: Mayor Pro Tem J. B. Schluter, David Landfair, Joseph Henderson, Cherry Fitch and Mayor Beverly Zimmern.

A. SUBJECT: DISCUSSION AND ACTION REGARDING ADOPTION OF RESOLUTION NO. 43-13, AUTHORIZING BUDGET ADJUSTMENTS TO FISCAL YEAR 2013.

Reference: Assistant City Manager memo dated November 22, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE AT THE CITY COUNCIL SPECIAL MEETING ON MONDAY, NOVEMBER 25, 2013, THE YEAR END ADJUSTMENT RESOLUTION NO. 43-13.

Councilman Schluter moved for approval. Councilman Henderson seconded. The vote for approval was unanimous.

ADJOURNMENT:

The Mayor adjourned the Special Meeting at 6:34 p.m.

Stephanie D. Lucas, City Clerk

BEVERLY H. ZIMMERN, Mayor

RESOLUTION 32-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, APPROVING A PLAN OF FINANCE FOR THE COSTS OF THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, INSTALLATION AND EQUIPPING OF A SENIOR LIVING FACILITY LOCATED IN THE STATE OF FLORIDA; APPROVING THE ISSUANCE OF APPROXIMATELY \$35,000,000 CAPITAL TRUST AGENCY REVENUE BONDS FOR THE PURPOSE OF FINANCING A LOAN PROGRAM TO ASSIST IN FINANCING SUCH FACILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida, has heretofore adopted Resolution No. 14-99 dated as of July 19, 1999 (the "Original Resolution"), and entered into an Interlocal Agreement between the City and the Town of Century, Florida, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 44 (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a legal entity and a public agency of the State of Florida, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 of the City, as amended, and its Articles of Incorporation, as amended and other applicable provisions of law (collectively, the "Act"), to enable public, private and not-for-profit organizations to obtain public assistance in financing or refinancing certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, pursuant to the Act and in accordance with the provisions of the Original Resolution, the Agency did on October 30, 2013, take official action by adopting its preliminary resolution (the "Agency Resolution") indicating its intent to authorize the financing of the hereinafter described project, and the issuance from time to time of revenue bonds (the "Bonds") by the Agency for a loan program for the purpose, among other things, of acquiring, constructing, developing, installing and equipping an approximately 120-unit senior living facility to be known as "Osceola Senior Living Facility," to be located at Lots 1, 2, 3 and 4, Osceola Corporate Center Replat Twenty, PB 21, PGS 135-137, Kissimmee, Osceola County, Florida 34741 (the "Senior Living Facility") as described in the attached Schedule "I"; and

WHEREAS, the City has been advised that the Agency desires to issue the Bonds in an aggregate principal amount of approximately \$35,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), to finance the Senior Living Facility on behalf of LVI RD Osceola, LLC, a Florida limited liability company, or one or more of its affiliates, whose principal place of business is 9681 Gladiolus Drive, Suite 211, Fort Myers, Florida 33908 (as applicable, the "Borrower") to fund a program herein described (the "Plan of Finance"); and

WHEREAS, the proposed Senior Living Facility is appropriate to the needs and circumstances of the community in which it is located and will serve a public purpose by (i) providing gainful employment and making a significant contribution to the economic growth of the local community, (ii) promoting commerce within the State of Florida, (iii) providing safe, decent and accessible living facilities for the senior living community, and (iv) advancing the economic prosperity and the general welfare of the State of Florida and its people; and

WHEREAS, in order to improve health care, it is necessary and in the public interest to facilitate the financing of the Senior Living Facility and to facilitate and encourage the planning and development of such Senior Living Facility without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable; and

WHEREAS, the public purposes to be achieved by such Senior Living Facility and the financing or refinancing thereof in compliance with the criteria and requirements of Chapter 159, Part II, Florida Statutes, as amended, implement the governmental purposes under the Florida Constitution of providing for the health, safety, and welfare of the people of the State of Florida; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires public approval of certain revenue bonds by an applicable elected representative or governmental unit on behalf of which such bonds are to be issued, following a public hearing; and

WHEREAS, (i) notice of such public hearing was given in the form required by the Code by publication at least fourteen (14) days prior to such public hearing in the *Pensacola News Journal* on November 18, 2013 and (ii) the Bonds and the Plan of Finance have been submitted to such public hearing held on behalf of the City Council of the City on December 2, 2013; and

WHEREAS, the City Manager has conducted the public hearing on behalf of the City Council and provided reasonable opportunity for all interested persons to express their views, both orally and in writing, and diligently and conscientiously considered all comments and concerns expressed by such individuals, if any; and

WHEREAS, the City Council desires to approve the Bonds and the issuance and sale thereof pursuant to the Plan of Finance and to grant all approvals required or contemplated by Section 147(f) of the Code, to express its approval of the action taken by the Agency and its officials pursuant to the Agency Resolution, and to grant all other approvals required by the Enabling Agreement, as amended, and the Original Resolution in connection with the issuance and sale of the Bonds.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

SECTION 1. PUBLIC HEARING NOTICE AND REPORT APPROVED.

The City Council hereby approves the form of and the manner of publication of the Notice of Public Hearing (the "Notice") published on November 18, 2013 in the *Pensacola News Journal*, a newspaper of general circulation in the jurisdiction of the City. The City Council hereby approves the report of the public hearing conducted by the City Manager, a copy of which is attached as Exhibit "A" hereto. Such Notice and other means and methods utilized by the City to give notice of purpose, time and date of the public hearing provided reasonable notice sufficient to inform residents of the City of the proposed Bonds.

SECTION 2. BONDS AND PLAN OF FINANCE APPROVED.

For purposes of the Act, the City hereby approves the Plan of Finance described herein, and the issuance of the Bonds described in the Notice. The Agency and its officers, employees, agents and attorneys are hereby authorized from time to time to take all action, to execute and deliver such authorizations, approvals, certificates and documents, and to enter into, on behalf of the Agency, all interlocal agreements, repurchase agreements, bond credit or insurance agreements, reimbursement agreements, and other agreements, approvals or instruments deemed necessary or convenient to effect, implement, maintain and continue the Plan of Finance, the financing or refinancing of the Senior Living Facility through the issuance from time to time of the Bonds and the purposes for which the Bonds are to be issued. No obligation of the Agency under any such agreement shall constitute an obligation of the City except to the extent the same may be expressly approved by the City. The Bonds shall be limited and special obligations of the Agency, and shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of the City.

SECTION 3. AMENDMENT NO. 45 TO THE ENABLING AGREEMENT RATIFIED.

Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of Amendment No. 45 to the Enabling Agreement (the "Amendment") to effect the approvals set forth in Section 1 and Section 2 hereof. Such Amendment shall be in substantially the form attached hereto as Exhibit "B," and the Mayor is authorized to execute and deliver the same on behalf of the City Council, with such changes not inconsistent herewith as the Mayor shall approve, her execution thereof to conclusively establish such approval.

SECTION 4. TEFRA APPROVAL.

After diligent and conscientious consideration of the views expressed by the persons appearing at the public hearing, the City Council hereby approves the Agency's Plan of Finance, and the issuance by the Agency of approximately \$35,000,000 aggregate principal amount of revenue bonds for all purposes under Section 147(f) of the Code, for all purposes of the Enabling Agreement, as amended, and for all purposes of the Original Resolution.

SECTION 5. REPEALING CLAUSE.

All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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SECTION 6. EFFECTIVE DATE.

This resolution shall take effect immediately upon its adoption this 2nd day of December, 2013.

**GULF BREEZE, FLORIDA
CITY COUNCIL**

(SEAL)

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer, City Clerk

EXHIBIT "A"
REPORT OF CITY MANAGER

[Follows]

A-1

EXHIBIT "B"

**FORM OF AMENDMENT NO. 45
OF THE ENABLING AGREEMENT**

AMENDMENT NO. 45 TO INTERLOCAL AGREEMENT

This **AMENDMENT NO. 45 TO INTERLOCAL AGREEMENT** (this "Amendment No. 45") is made and entered into as of the 2nd day of December, 2013, by and among the **CITY OF GULF BREEZE, FLORIDA**, a municipal corporation of the State of Florida ("Gulf Breeze") and the **TOWN OF CENTURY, FLORIDA**, a municipal corporation of the State of Florida ("Century"). Gulf Breeze and Century may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Parties hereto have by Interlocal Agreement, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 44 (collectively, the "Enabling Agreement"), heretofore provided for the creation of the Capital Trust Agency (the "Agency"), to enable public, private and not-for-profit organizations to obtain public assistance in financing certain projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, LVI RD Osceola, LLC, a Florida limited liability company, or one or more of its affiliates (as applicable, the "Borrower"), has represented to the Agency that, acting for itself or through its affiliates, it plans to develop, own, and operate a senior living facility in Kissimmee, Florida; and

WHEREAS, on October 30, 2013, the Agency approved a request by the Borrower that the Agency issue its revenue bonds in a principal amount of approximately \$35,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), in one or more series from time to time (collectively, the "Bonds") and loan the net proceeds thereof to the Borrower, for the purpose, among other things, of financing the acquisition, construction, development, installation and equipping of an approximately 120-unit senior living facility to be known as Osceola Senior Living Facility and to be located in Kissimmee, Osceola County, Florida 34741 (the "Senior Living Facility"), as described in the attached Schedule "I"; and

WHEREAS, the Agency will issue its Bonds on a case-by-case basis after review by the Agency, to provide financing and refinancing from time to time for individual projects or groups of projects, or eligible financing programs, based upon the credit pledged therefor from one or more of the projects, the Borrower, a sponsor, a credit enhancement facility, if any, or from the revenues of any such programs; and

WHEREAS, Section 7 of the Enabling Agreement requires that as a condition precedent to the Agency issuing the Bonds, the Agency must obtain the prior written approval, evidenced by resolution, from the governing bodies of Century and Gulf Breeze approving such issuance

and approving an amendment to the Enabling Agreement specifically authorizing such issuance. Such approval evidenced by appropriate resolutions has been obtained, authorizing the execution and delivery of this Amendment No. 45 to the Enabling Agreement with respect to the financing herein described; and

WHEREAS, the Parties desire to amend the Enabling Agreement to permit and authorize the Agency to issue the Bonds herein described and loan the proceeds to the Borrower in order to provide financing for the Senior Living Facility.

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. ENABLING AGREEMENT AMENDED FOR PROJECT.

This Amendment No. 45 is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds and to finance projects of the type and character of the Senior Living Facility.

SECTION 2. BONDS, PROGRAM, PLAN OF FINANCE APPROVED.

The Parties do hereby approve and authorize the Bonds, and the issuance of such Bonds from time to time, in one or more series, in an aggregate principal amount of approximately \$35,000,000 (the exact amount to be determined by an appropriate official of the Agency to be sufficient to enable the financing or refinancing of the Senior Living Facility). Each installment or issue of such Bonds shall be designated by series, in such manner as the Agency shall determine, so as to separately identify each such installment or issue. The Agency and its officers, employees, agents and attorneys are hereby authorized to enter into, on behalf of the Agency, from time to time, interlocal agreements, cash management agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, escrow agreements, reimbursement agreements, security documents and other agreements, approvals or instruments deemed necessary or convenient to effect or implement the financing or refinancing of the Senior Living Facility through the issuance of the Bonds, and the purposes and programs for which the Bonds are to be issued and to conform to the purposes stated in the Articles of Incorporation of the Agency to the authorizations herein contained. No obligation of the Agency under any such agreement or instrument shall constitute an obligation of Century or Gulf Breeze. The Bonds shall be limited and special obligations of the Agency, payable from the revenues or receipts of such programs or projects, payments made by the Borrower, a sponsor, or other sources relating to the purpose for which they are issued, all in the indentures for the Bonds. The Bonds shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of Century or Gulf Breeze.

SECTION 3. ADMINISTRATIVE FEES AND EXPENSES FOR THE TOWN OF CENTURY.

Upon the issuance of each series or installment of Bonds, Century shall be paid by either the Agency or Gulf Breeze, solely from amounts received from the Borrower, the sum specified on Schedule "II" attached hereto.

SECTION 4. ENABLING AGREEMENT CONTINUED.

The Enabling Agreement, as amended hereby, is hereby ratified, confirmed and approved and shall otherwise continue in full force and effect. Nothing in this Amendment No. 45 shall be deemed to adversely affect the authorizations in the Enabling Agreement as it existed prior to the effective date of this Amendment No. 45, or to adversely affect the interests of the holders of any Bonds issued or to be issued pursuant to such authorizations. Except as and only to the extent specifically amended hereby, such Enabling Agreement is hereby incorporated by reference.

SECTION 5. INDEMNITY.

To the extent permitted by law, the Agency and Gulf Breeze shall indemnify, defend and hold harmless Century against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds pursuant hereto, or in connection with the acquisition or operation of any project, or for any liability any way growing out of or resulting from the Enabling Agreement, as amended, this Amendment No. 45, the financing agreements and/or bond indentures executed in connection with the Bonds, including, without limitation, all costs and expenses of Century, including reasonable attorney's fees, incurred in the performance of any activities of Century in connection with the foregoing or the enforcement of any agreement of the Agency herein contained. Any such obligation of Gulf Breeze or the Agency shall be payable solely from the amounts available to them for such purposes under the Bond financing or any other plan of finance heretofore or hereafter undertaken by the Agency, and shall not constitute a general obligation or a pledge of the faith and credit of Gulf Breeze or the Agency, or an obligation to pay the same from any sources other than such amounts available to them for such purposes under the Bond financing.

SECTION 6. SEVERABILITY OF INVALID PROVISIONS.

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

SECTION 7. COUNTERPARTS.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8. EFFECTIVE DATE; AMENDMENTS.

This Amendment shall take effect when duly executed by the Parties and filed in accordance with the law. This Amendment may be amended only by written instrument signed by authorized representatives of Century and Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any then outstanding Bonds of the Agency or of any other member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected members, in the case of the rights of members.

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IN WITNESS WHEREOF, the Parties have caused this Amendment No. 45 to the Enabling Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF GULF BREEZE, FLORIDA

[SEAL]

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer
City Clerk

TOWN OF CENTURY, FLORIDA

[SEAL]

By: _____
Freddie W. McCall, Sr., Mayor

ATTEST:

By: _____
Leslie Gonzalez, Town Clerk

SCHEDULE "I" TO EXHIBIT B

The Senior Living Facility consists of the acquisition, construction, development, installation, furnishing and equipping of an approximately 120-unit senior living facility comprised of approximately 72 assisted living units and 48 memory support units for the elderly to be known as the "Osceola Senior Living Center, to be located at Lots 1, 2, 3 and 4, Osceola Corporate Center Replat Twenty, PB 21, PGS 135-137, Kissimmee, Osceola County, Florida 34741, and expected to be owned by the Borrower and managed initially by LivingVentures Management, LLC, a Florida limited liability company.

**SCHEDULE "II" TO EXHIBIT B
PAYMENT TO TOWN OF CENTURY**

\$350.00 per million principal amount of each issue, upon issuance thereof, but not less than \$2,500.00.

SCHEDULE "I"

The Senior Living Facility consists of the acquisition, construction, development, installation, furnishing and equipping of an approximately 120-unit senior living facility comprised of approximately 72 assisted living units and 48 memory support units for the elderly to be known as the "Osceola Senior Living Center, to be located at Lots 1, 2, 3 and 4, Osceola Corporate Center Replat Twenty, PB 21, PGS 135-137, Kissimmee, Osceola County, Florida 34741, and expected to be owned by the Borrower and managed initially by LivingVentures Management, LLC, a Florida limited liability company.

SCHEDULE I

RESOLUTION 33-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, APPROVING A PLAN OF FINANCE FOR THE REFINANCING OF A SENIOR LIVING FACILITY AND FOR THE COSTS OF THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, INSTALLATION AND EQUIPPING OF SENIOR LIVING FACILITIES LOCATED IN THE STATE OF TENNESSEE; APPROVING THE ISSUANCE OF APPROXIMATELY \$25,000,000 CAPITAL TRUST AGENCY REVENUE BONDS FOR THE PURPOSE OF FINANCING A LOAN PROGRAM TO ASSIST IN FINANCING AND REFINANCING SUCH FACILITIES; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida, has heretofore adopted Resolution No. 14-99 dated as of July 19, 1999 (the "Original Resolution"), and entered into an Interlocal Agreement between the City and the Town of Century, Florida, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 46 (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a legal entity and a public agency of the State of Florida, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 of the City, as amended, and its Articles of Incorporation, as amended and other applicable provisions of law (collectively, the "Act"), to enable public, private and not-for-profit organizations to obtain public assistance in financing or refinancing certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, pursuant to the Act and in accordance with the provisions of the Original Resolution, the Agency did on October 30, 2013, take official action by adopting its preliminary resolution (the "Agency Resolution") indicating its intent to authorize the financing of the hereinafter described project, and the issuance from time to time of revenue bonds (the "Bonds") by the Agency for a loan program for the purpose, among other things, of (i) refinancing a 73-unit independent living facility known as "The Lexington" located at 400 North Boone Street, Johnson City, Washington County, Tennessee 37604, and (ii) financing the acquisition, construction, development, furnishing and equipping of an approximately 88-unit assisted living facility to be known as "The Lexington House" and to be located at an existing structure adjacent to and adjoining The Lexington, Johnson City, Washington County, Tennessee 37604 (collectively, the "Senior Living Facilities"), as described in the attached Schedule "I"; and

WHEREAS, the City has been advised that the Agency desires to issue the Bonds in an aggregate principal amount of approximately \$25,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), to finance and refinance the Senior Living Facilities on behalf of The Lexington

Corporation, a Tennessee not-for-profit corporation, authorized to transact business in the State of Florida, or one or more of its affiliates, whose principal place of business is 2513 Wesley St, Johnson City, Tennessee 37601 (as applicable, the "Borrower") to fund a program herein described (the "Plan of Finance"); and

WHEREAS, the proposed Senior Living Facilities are appropriate to the needs and circumstances of the community in which they are located and will serve a public purpose by (i) providing gainful employment and making a significant contribution to the economic growth of the local community, (ii) promoting commerce within the State of Florida, (iii) providing safe, decent and accessible living facilities for the senior living community, and (iv) advancing the economic prosperity and the general welfare of the State of Florida and its people; and

WHEREAS, in order to improve health care, it is necessary and in the public interest to facilitate the financing of the Senior Living Facilities and to facilitate and encourage the planning and development of such Senior Living Facilities without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable; and

WHEREAS, the public purposes to be achieved by such Senior Living Facilities and the financing or refinancing thereof in compliance with the criteria and requirements of Chapter 159, Part II, Florida Statutes, as amended, implement the governmental purposes under the Florida Constitution of providing for the health, safety, and welfare of the people of the State of Florida; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires public approval of certain revenue bonds by an applicable elected representative or governmental unit on behalf of which such bonds are to be issued, following a public hearing; and

WHEREAS, (i) notice of such public hearing was given in the form required by the Code by publication at least fourteen (14) days prior to such public hearing in the *Pensacola News Journal* on November 18, 2013 and (ii) the Bonds and the Plan of Finance have been submitted to such public hearing held on behalf of the City Council of the City on December 2, 2013; and

WHEREAS, the City Manager has conducted the public hearing on behalf of the City Council and provided reasonable opportunity for all interested persons to express their views, both orally and in writing, and diligently and conscientiously considered all comments and concerns expressed by such individuals, if any; and

WHEREAS, the City Council desires to approve the Bonds and the issuance and sale thereof pursuant to the Plan of Finance and to grant all approvals required or contemplated by Section 147(f) of the Code, to express its approval of the action taken by the Agency and its officials pursuant to the Agency Resolution, and to grant all other approvals required by the

Enabling Agreement, as amended, and the Original Resolution in connection with the issuance and sale of the Bonds.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

SECTION 1. PUBLIC HEARING NOTICE AND REPORT APPROVED.

The City Council hereby approves the form of and the manner of publication of the Notice of Public Hearing (the "Notice") published on November 18, 2013 in the *Pensacola News Journal*, a newspaper of general circulation in the jurisdiction of the City. The City Council hereby approves the report of the public hearing conducted by the City Manager, a copy of which is attached as Exhibit "A" hereto. Such Notice and other means and methods utilized by the City to give notice of purpose, time and date of the public hearing provided reasonable notice sufficient to inform residents of the City of the proposed Bonds.

SECTION 2. BONDS AND PLAN OF FINANCE APPROVED.

For purposes of the Act, the City hereby approves the Plan of Finance described herein, and the issuance of the Bonds described in the Notice. The Agency and its officers, employees, agents and attorneys are hereby authorized from time to time to take all action, to execute and deliver such authorizations, approvals, certificates and documents, and to enter into, on behalf of the Agency, all interlocal agreements, repurchase agreements, bond credit or insurance agreements, reimbursement agreements, and other agreements, approvals or instruments deemed necessary or convenient to effect, implement, maintain and continue the Plan of Finance, the financing or refinancing of the Senior Living Facilities through the issuance from time to time of the Bonds and the purposes for which the Bonds are to be issued. No obligation of the Agency under any such agreement shall constitute an obligation of the City except to the extent the same may be expressly approved by the City. The Bonds shall be limited and special obligations of the Agency, and shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of the City.

SECTION 3. AMENDMENT NO. 47 TO THE ENABLING AGREEMENT RATIFIED.

Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of Amendment No. 47 to the Enabling Agreement (the "Amendment") to effect the approvals set forth in Section 1 and Section 2 hereof. Such Amendment shall be in substantially the form attached hereto as Exhibit "B," and the Mayor is authorized to execute and deliver the same on behalf of the City Council, with such changes not inconsistent herewith as the Mayor shall approve, her execution thereof to conclusively establish such approval.

SECTION 4. TEFRA APPROVAL.

After diligent and conscientious consideration of the views expressed by the persons appearing at the public hearing, the City Council hereby approves the Agency's Plan of Finance,

and the issuance by the Agency of approximately \$25,000,000 aggregate principal amount of revenue bonds for all purposes under Section 147(f) of the Code, for all purposes of the Enabling Agreement, as amended, and for all purposes of the Original Resolution.

SECTION 5. REPEALING CLAUSE.

All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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SECTION 6. EFFECTIVE DATE.

This resolution shall take effect immediately upon its adoption this 2nd day of December, 2013.

**GULF BREEZE, FLORIDA
CITY COUNCIL**

(SEAL)

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer, City Clerk

EXHIBIT "A"
REPORT OF CITY MANAGER

[Follows]

A-1

EXHIBIT "B"

**FORM OF AMENDMENT NO. 47
OF THE ENABLING AGREEMENT**

AMENDMENT NO. 47 TO INTERLOCAL AGREEMENT

This **AMENDMENT NO. 47 TO INTERLOCAL AGREEMENT** (this "Amendment No. 47") is made and entered into as of the 2nd day of December, 2013, by and among the **CITY OF GULF BREEZE, FLORIDA**, a municipal corporation of the State of Florida ("Gulf Breeze") and the **TOWN OF CENTURY, FLORIDA**, a municipal corporation of the State of Florida ("Century"). Gulf Breeze and Century may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Parties hereto have by Interlocal Agreement, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 46 (collectively, the "Enabling Agreement"), heretofore provided for the creation of the Capital Trust Agency (the "Agency"), to enable public, private and not-for-profit organizations to obtain public assistance in financing certain projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, The Lexington Corporation, a Tennessee not-for-profit corporation authorized to do business in the State of Florida, or one or more of its affiliates (as applicable, the "Borrower"), has represented to the Agency that, acting for itself or through its affiliates, it plans to own and operate and develop, own, and operate senior living facilities, each located in Johnson City, Tennessee; and

WHEREAS, on October 30, 2013, the Agency approved a request by the Borrower that the Agency issue its revenue bonds in a principal amount of approximately \$25,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), in one or more series from time to time (collectively, the "Bonds") and loan the net proceeds thereof to the Borrower, for the purpose, among other things, of (i) refinancing a 73-unit independent living facility known as "The Lexington" located at 400 North Boone Street, Johnson City, Washington County, Tennessee 37604, and (ii) financing the acquisition, construction, development, furnishing and equipping of an approximately 88-unit assisted living facility to be known as "The Lexington House," to be located at an existing structure adjacent to and adjoining The Lexington, Johnson City, Washington County, Tennessee 37604 (collectively, the "Senior Living Facilities"), as described in the attached Schedule "I"; and

WHEREAS, the Agency will issue its Bonds on a case-by-case basis after review by the Agency, to provide financing and refinancing from time to time for individual projects or groups of projects, or eligible financing programs, based upon the credit pledged therefor from one or more of the projects, the Borrower, a sponsor, a credit enhancement facility, if any, or from the revenues of any such programs; and

WHEREAS, Section 7 of the Enabling Agreement requires that as a condition precedent to the Agency issuing the Bonds, the Agency must obtain the prior written approval, evidenced by resolution, from the governing bodies of Century and Gulf Breeze approving such issuance and approving an amendment to the Enabling Agreement specifically authorizing such issuance. Such approval evidenced by appropriate resolutions has been obtained, authorizing the execution and delivery of this Amendment No. 47 to the Enabling Agreement with respect to the financing herein described; and

WHEREAS, the Parties desire to amend the Enabling Agreement to permit and authorize the Agency to issue the Bonds herein described and loan the proceeds to the Borrower in order to provide financing for the Senior Living Facilities;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. ENABLING AGREEMENT AMENDED FOR PROJECT.

This Amendment No. 47 is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds and to finance projects of the type and character of the Senior Living Facilities.

SECTION 2. BONDS, PROGRAM, PLAN OF FINANCE APPROVED.

The Parties do hereby approve and authorize the Bonds, and the issuance of such Bonds from time to time, in one or more series, in an aggregate principal amount of approximately \$25,000,000 (the exact amount to be determined by an appropriate official of the Agency to be sufficient to enable the refinancing and the financing of the Senior Living Facilities). Each installment or issue of such Bonds shall be designated by series, in such manner as the Agency shall determine, so as to separately identify each such installment or issue. The Agency and its officers, employees, agents and attorneys are hereby authorized to enter into, on behalf of the Agency, from time to time, interlocal agreements, cash management agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, escrow agreements, reimbursement agreements, security documents and other agreements, approvals or instruments deemed necessary or convenient to effect or implement the financing and refinancing of the Senior Living Facilities through the issuance of the Bonds, and the purposes and programs for which the Bonds are to be issued and to conform to the purposes stated in the Articles of Incorporation of the Agency to the authorizations herein contained. No obligation of the Agency under any such agreement or instrument shall constitute an obligation of Century or Gulf Breeze. The Bonds shall be limited and special obligations of the Agency, payable from the revenues or receipts of such programs or projects, payments made by the Borrower, a sponsor, or other sources relating to the purpose for which they are issued, all in the indentures for the Bonds. The Bonds shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of Century or Gulf Breeze.

SECTION 3. ADMINISTRATIVE FEES AND EXPENSES FOR THE TOWN OF CENTURY.

Upon the issuance of each series or installment of Bonds, Century shall be paid by either the Agency or Gulf Breeze, solely from amounts received from the Borrower, the sum specified on Schedule "II" attached hereto.

SECTION 4. ENABLING AGREEMENT CONTINUED.

The Enabling Agreement, as amended hereby, is hereby ratified, confirmed and approved and shall otherwise continue in full force and effect. Nothing in this Amendment No. 47 shall be deemed to adversely affect the authorizations in the Enabling Agreement as it existed prior to the effective date of this Amendment No. 47, or to adversely affect the interests of the holders of any Bonds issued or to be issued pursuant to such authorizations. Except as and only to the extent specifically amended hereby, such Enabling Agreement is hereby incorporated by reference.

SECTION 5. INDEMNITY.

To the extent permitted by law, the Agency and Gulf Breeze shall indemnify, defend and hold harmless Century against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds pursuant hereto, or in connection with the acquisition or operation of any project, or for any liability any way growing out of or resulting from the Enabling Agreement, as amended, this Amendment No. 47, the financing agreements and/or bond indentures executed in connection with the Bonds, including, without limitation, all costs and expenses of Century, including reasonable attorney's fees, incurred in the performance of any activities of Century in connection with the foregoing or the enforcement of any agreement of the Agency herein contained. Any such obligation of Gulf Breeze or the Agency shall be payable solely from the amounts available to them for such purposes under the Bond financing or any other plan of finance heretofore or hereafter undertaken by the Agency, and shall not constitute a general obligation or a pledge of the faith and credit of Gulf Breeze or the Agency, or an obligation to pay the same from any sources other than such amounts available to them for such purposes under the Bond financing.

SECTION 6. SEVERABILITY OF INVALID PROVISIONS.

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

SECTION 7. COUNTERPARTS.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8. EFFECTIVE DATE; AMENDMENTS.

This Amendment shall take effect when duly executed by the Parties and filed in accordance with the law. This Amendment may be amended only by written instrument signed by authorized representatives of Century and Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any then outstanding Bonds of the Agency or of any other member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected members, in the case of the rights of members.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 47 to the Enabling Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF GULF BREEZE, FLORIDA

[SEAL]

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer
City Clerk

TOWN OF CENTURY, FLORIDA

[SEAL]

By: _____
Freddie W. McCall, Sr., Mayor

ATTEST:

By: _____
Leslie Gonzalez, Town Clerk

SCHEDULE "I" TO EXHIBIT B

The Senior Living Facilities consist of the (i) refinancing of a 73-unit independent living facility known as "The Lexington" located at 400 North Boone Street, Johnson City, Washington County, Tennessee 37604, and (ii) acquisition, construction, development, furnishing and equipping of an approximately 88-unit assisted living facility to be known as "The Lexington House," to be located at an existing structure adjacent to and adjoining The Lexington, Johnson City, Washington County, Tennessee 37604, and expected to be owned by the Borrower and managed initially by MJM Associates, LLC, a Delaware limited liability company

**SCHEDULE "II" TO EXHIBIT B
PAYMENT TO TOWN OF CENTURY**

\$350.00 per million principal amount of each issue, upon issuance thereof, but not less than \$2,500.00.

SCHEDULE "I"

The Senior Living Facilities consist of the (i) refinancing of a 73-unit independent living facility known as "The Lexington" located at 400 North Boone Street, Johnson City, Washington County, Tennessee 37604, and (ii) acquisition, construction, development, furnishing and equipping of an approximately 88-unit assisted living facility to be known as "The Lexington House," to be located at an existing structure adjacent to and adjoining The Lexington, Johnson City, Washington County, Tennessee 37604, and expected to be owned by the Borrower and managed initially by MJM Associates, LLC, a Delaware limited liability company

SCHEDULE I

RESOLUTION 34-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, APPROVING A PLAN OF FINANCE FOR THE COSTS OF THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, IMPROVEMENT, INSTALLATION AND EQUIPPING OF SENIOR LIVING FACILITIES LOCATED IN THE STATE OF FLORIDA; APPROVING THE ISSUANCE OF APPROXIMATELY \$169,000,000 CAPITAL TRUST AGENCY REVENUE BONDS FOR THE PURPOSE OF FINANCING A LOAN PROGRAM TO ASSIST IN FINANCING SUCH FACILITIES; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida, has heretofore adopted Resolution No. 14-99 dated as of July 19, 1999 (the "Original Resolution"), and entered into an Interlocal Agreement between the City and the Town of Century, Florida, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 51 (including Amendments No. 14-A, 23-A, 24-A and 37-A) (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a legal entity and a public agency of the State of Florida, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 of the City, as amended, and its Articles of Incorporation, as amended and other applicable provisions of law (collectively, the "Act"), to enable public, private and not-for-profit organizations to obtain public assistance in financing or refinancing certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, pursuant to the Act and in accordance with the provisions of the Original Resolution, the Agency did on October 30, 2013, take official action by adopting its preliminary resolution (the "Agency Resolution") indicating its intent to authorize the financing of the hereinafter described project, and the issuance from time to time of revenue bonds (the "Bonds") by the Agency for a loan program for the purpose, among other things, of (i) refinancing the acquisition, renovation, installation and equipping of an existing senior living facility located in Town of Viera, Melbourne, Florida, West Palm Beach, Florida, and (ii) financing the acquisition, construction, development, installation and equipping of five (5) senior living facilities to be located in Town of Viera, Melbourne, Florida, West Palm Beach, Florida, Wildwood, Florida, Spring Hill, Florida and St. Petersburg, Florida (collectively, the "Senior Living Facilities"), as described in the attached Schedule "I"; and

WHEREAS, the City has been advised that the Agency desires to issue the Bonds in an aggregate principal amount of approximately \$169,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), to finance the Senior Living Facilities on behalf of Mainsail Healthcare Group II, LLC, a Florida limited liability company, or one or more of its affiliates, whose principal

place of business is 901 N. Flagler Drive 5, West Palm Beach, Florida 33401 (as applicable, the "Borrower") to fund a program herein described (the "Plan of Finance"); and

WHEREAS, the proposed Senior Living Facilities are appropriate to the needs and circumstances of the community in which they are located and will serve a public purpose by (i) providing gainful employment and making a significant contribution to the economic growth of the local community, (ii) promoting commerce within the State of Florida, (iii) providing safe, decent and accessible living facilities for the senior living community, and (iv) advancing the economic prosperity and the general welfare of the State of Florida and its people; and

WHEREAS, in order to improve health care, it is necessary and in the public interest to facilitate the financing of the Senior Living Facilities and to facilitate and encourage the planning and development of such Senior Living Facilities without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable; and

WHEREAS, the public purposes to be achieved by such Senior Living Facilities and the financing or refinancing thereof in compliance with the criteria and requirements of Chapter 159, Part II, Florida Statutes, as amended, implement the governmental purposes under the Florida Constitution of providing for the health, safety, and welfare of the people of the State of Florida; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires public approval of certain revenue bonds by an applicable elected representative or governmental unit on behalf of which such bonds are to be issued, following a public hearing; and

WHEREAS, (i) notice of such public hearing was given in the form required by the Code by publication at least fourteen (14) days prior to such public hearing in the *Pensacola News Journal* on November 18, 2013 and (ii) the Bonds and the Plan of Finance have been submitted to such public hearing held on behalf of the City Council on December 2, 2013; and

WHEREAS, the City Manager has conducted the public hearing on behalf of the City Council and provided reasonable opportunity for all interested persons to express their views, both orally and in writing, and diligently and conscientiously considered all comments and concerns expressed by such individuals, if any; and

WHEREAS, the City Council desires to approve the Bonds and the issuance and sale thereof pursuant to the Plan of Finance and to grant all approvals required or contemplated by Section 147(f) of the Code, to express its approval of the action taken by the Agency and its officials pursuant to the Agency Resolution, and to grant all other approvals required by the Enabling Agreement, as amended, and the Original Resolution in connection with the issuance and sale of the Bonds.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

SECTION 1. PUBLIC HEARING NOTICE AND REPORT APPROVED.

The City Council hereby approves the form of and the manner of publication of the Notice of Public Hearing (the "Notice") published on November 18, 2013 in the *Pensacola News Journal*, a newspaper of general circulation in the jurisdiction of the City. The City Council hereby approves the report of the public hearing conducted by the City Manager, a copy of which is attached as Exhibit "A" hereto. Such Notice and other means and methods utilized by the City to give notice of purpose, time and date of the public hearing provided reasonable notice sufficient to inform residents of the City of the proposed Bonds.

SECTION 2. BONDS AND PLAN OF FINANCE APPROVED.

For purposes of the Act, the City hereby approves the Plan of Finance described herein, and the issuance of the Bonds described in the Notice. The Agency and its officers, employees, agents and attorneys are hereby authorized from time to time to take all action, to execute and deliver such authorizations, approvals, certificates and documents, and to enter into, on behalf of the Agency, all interlocal agreements, repurchase agreements, bond credit or insurance agreements, reimbursement agreements, and other agreements, approvals or instruments deemed necessary or convenient to effect, implement, maintain and continue the Plan of Finance, the financing or refinancing of the Senior Living Facilities through the issuance from time to time of the Bonds and the purposes for which the Bonds are to be issued. No obligation of the Agency under any such agreement shall constitute an obligation of the City except to the extent the same may be expressly approved by the City. The Bonds shall be limited and special obligations of the Agency, and shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of the City.

SECTION 3. AMENDMENT NO. 52 TO THE ENABLING AGREEMENT RATIFIED.

Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of an amendment to the Enabling Agreement (the "Amendment") to effect the approvals set forth in Section 1 and Section 2 hereof. Such Amendment shall be in substantially the form attached hereto as Exhibit "B," and the Mayor is authorized to execute and deliver the same on behalf of the City Council, with such changes not inconsistent herewith as the Mayor shall approve, her execution thereof to conclusively establish such approval.

SECTION 4. TEFRA APPROVAL.

After diligent and conscientious consideration of the views expressed by the persons appearing at the public hearing, the City Council hereby approves the Agency's Plan of Finance, and the issuance by the Agency of approximately \$169,000,000 aggregate principal amount of

revenue bonds for all purposes under Section 147(f) of the Code, for all purposes of the Enabling Agreement, as amended, and for all purposes of the Original Resolution.

SECTION 5. REPEALING CLAUSE.

All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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SECTION 6. EFFECTIVE DATE.

This resolution shall take effect immediately upon its adoption this 2nd day of December, 2013.

**GULF BREEZE, FLORIDA
CITY COUNCIL**

(SEAL)

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer, City Clerk

EXHIBIT "A"
REPORT OF CITY MANAGER

[Follows]

EXHIBIT "B"

**FORM OF AMENDMENT NO. 52
OF THE ENABLING AGREEMENT**

AMENDMENT NO. 52 TO INTERLOCAL AGREEMENT

This **AMENDMENT NO. 52 TO INTERLOCAL AGREEMENT** (this "Amendment No. 52") is made and entered into as of the 2nd day of December, 2013, by and among the **CITY OF GULF BREEZE, FLORIDA**, a municipal corporation of the State of Florida ("Gulf Breeze") and the **TOWN OF CENTURY, FLORIDA**, a municipal corporation of the State of Florida ("Century"). Gulf Breeze and Century may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Parties hereto have by Interlocal Agreement, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 51 (collectively, the "Enabling Agreement"), heretofore provided for the creation of the Capital Trust Agency (the "Agency"), to enable public, private and not-for-profit organizations to obtain public assistance in financing certain projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, Mainsail Healthcare Group II, LLC, a Florida limited liability company, or one or more of its affiliates (as applicable, the "Borrower"), has represented to the Agency that, acting for itself or through its affiliates, it plans to acquire, develop, own, and operate six (6) senior living facilities in Town of Viera, Melbourne, Florida, West Palm Beach, Florida, Wildwood, Florida, Spring Hill, Florida and St. Petersburg, Florida; and

WHEREAS, on October 30, 2013, the Agency approved a request by the Borrower that the Agency issue its revenue bonds in a principal amount of approximately \$169,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), in one or more series from time to time (collectively, the "Bonds") and loan the net proceeds thereof to the Borrower, for the purpose, among other things, of (i) refinancing the acquisition, renovation, installation and equipping of an existing senior living facility located in Town of Viera, Melbourne, Florida, West Palm Beach, Florida, and (ii) financing the acquisition, construction, development, installation and equipping of five (5) senior living facilities to be known as "Viera Assisted Living Residence," "Viera Alzheimer's/Memory Care Residence," "Palm Beach Alzheimer's/Memory Care Residence," "The Villages Alzheimer's/Memory Care Residence," "Spring Hill Alzheimer's/Memory Care Residence," and "Tampa Bay Alzheimer's/Memory Care Residence" (collectively, the "Senior Living Facilities"), as described in the attached Schedule "I"; and

WHEREAS, the Agency will issue its Bonds on a case-by-case basis after review by the Agency, to provide financing and refinancing from time to time for individual projects or groups of projects, or eligible financing programs, based upon the credit pledged therefor from one or

more of the projects, the Borrower, a sponsor, a credit enhancement facility, if any, or from the revenues of any such programs; and

WHEREAS, Section 7 of the Enabling Agreement requires that as a condition precedent to the Agency issuing the Bonds, the Agency must obtain the prior written approval, evidenced by resolution, from the governing bodies of Century and Gulf Breeze approving such issuance and approving an amendment to the Enabling Agreement specifically authorizing such issuance. Such approval evidenced by appropriate resolutions has been obtained, authorizing the execution and delivery of this Amendment No. 52 to the Enabling Agreement with respect to the financing herein described; and

WHEREAS, the Parties desire to amend the Enabling Agreement to permit and authorize the Agency to issue the Bonds herein described and loan the proceeds to the Borrower in order to provide financing for the Senior Living Facilities;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. ENABLING AGREEMENT AMENDED FOR PROJECT.

This Amendment No. 52 is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds and to finance projects of the type and character of the Senior Living Facilities.

SECTION 2. BONDS, PROGRAM, PLAN OF FINANCE APPROVED.

The Parties do hereby approve and authorize the Bonds, and the issuance of such Bonds from time to time, in one or more series, in an aggregate principal amount of approximately \$169,000,000 (the exact amount to be determined by an appropriate official of the Agency to be sufficient to enable the financing or refinancing of the Senior Living Facilities). Each installment or issue of such Bonds shall be designated by series, in such manner as the Agency shall determine, so as to separately identify each such installment or issue. The Agency and its officers, employees, agents and attorneys are hereby authorized to enter into, on behalf of the Agency, from time to time, interlocal agreements, cash management agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, escrow agreements, reimbursement agreements, security documents and other agreements, approvals or instruments deemed necessary or convenient to effect or implement the financing or refinancing of the Senior Living Facilities through the issuance of the Bonds, and the purposes and programs for which the Bonds are to be issued and to conform to the purposes stated in the Articles of Incorporation of the Agency to the authorizations herein contained. No obligation of the Agency under any such agreement or instrument shall constitute an obligation of Century or Gulf Breeze. The Bonds shall be limited and special obligations of the Agency, payable from the revenues or receipts of such programs or projects, payments made by the Borrower, a sponsor, or other sources relating to the purpose for which they are issued, all in the indentures for the Bonds. The Bonds shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of Century or Gulf Breeze.

SECTION 3. ADMINISTRATIVE FEES AND EXPENSES FOR THE TOWN OF CENTURY.

Upon the issuance of each series or installment of Bonds, Century shall be paid by either the Agency or Gulf Breeze, solely from amounts received from the Borrower, the sum specified on Schedule "II" attached hereto.

SECTION 4. ENABLING AGREEMENT CONTINUED.

The Enabling Agreement, as amended hereby, is hereby ratified, confirmed and approved and shall otherwise continue in full force and effect. Nothing in this Amendment No. 52 shall be deemed to adversely affect the authorizations in the Enabling Agreement as it existed prior to the effective date of this Amendment No. 52, or to adversely affect the interests of the holders of any Bonds issued or to be issued pursuant to such authorizations. Except as and only to the extent specifically amended hereby, such Enabling Agreement is hereby incorporated by reference.

SECTION 5. INDEMNITY.

To the extent permitted by law, the Agency and Gulf Breeze shall indemnify, defend and hold harmless Century against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds pursuant hereto, or in connection with the acquisition or operation of any project, or for any liability any way growing out of or resulting from the Enabling Agreement, as amended, this Amendment No. 52, the financing agreements and/or bond indentures executed in connection with the Bonds, including, without limitation, all costs and expenses of Century, including reasonable attorney's fees, incurred in the performance of any activities of Century in connection with the foregoing or the enforcement of any agreement of the Agency herein contained. Any such obligation of Gulf Breeze or the Agency shall be payable solely from the amounts available to them for such purposes under the Bond financing or any other plan of finance heretofore or hereafter undertaken by the Agency, and shall not constitute a general obligation or a pledge of the faith and credit of Gulf Breeze or the Agency, or an obligation to pay the same from any sources other than such amounts available to them for such purposes under the Bond financing.

SECTION 6. SEVERABILITY OF INVALID PROVISIONS.

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

SECTION 7. COUNTERPARTS.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8. EFFECTIVE DATE; AMENDMENTS.

This Amendment shall take effect when duly executed by the Parties and filed in accordance with the law. This Amendment may be amended only by written instrument signed by authorized representatives of Century and Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any then outstanding Bonds of the Agency or of any other member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected members, in the case of the rights of members.

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IN WITNESS WHEREOF, the Parties have caused this Amendment No. 52 to the Enabling Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF GULF BREEZE, FLORIDA

[SEAL]

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer
City Clerk

TOWN OF CENTURY, FLORIDA

[SEAL]

By: _____
Freddie W. McCall, Sr., Mayor

ATTEST:

By: _____
Leslie Gonzalez, Town Clerk

SCHEDULE "I" TO EXHIBIT B

The Senior Living Facilities consist of:

1. The acquisition, renovation, installation, furnishing, and equipping of an existing approximately 82-unit senior living facility comprised of assisted living units for the elderly to be known as the "Viera Assisted Living Residence," located at 3325 Breslay Drive, Town of Viera, Melbourne, Brevard County, Florida 32940, and expected to be owned by the Borrower and managed initially by MJM Associates LLC, a Delaware limited liability company.
2. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as the "Viera Alzheimer's/Memory Care Residence," to be located at 3325 Breslay Drive, Town of Viera, Melbourne, Brevard County, Florida 32940, and expected to be owned by the Borrower and managed initially by MJM Associates LLC, a Delaware limited liability company.
3. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as "Palm Beach Alzheimer's/Memory Care Residence," to be located at the southeast corner of Kentucky Street and Congress Avenue, West Palm Beach, Palm Beach County, Florida 33406, and expected to be owned by the Borrower, and managed initially by MJM Associates LLC, a Delaware limited liability company.
4. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as "The Villages Alzheimer's/Memory Care Residence," to be located at 7046 Powell Road, Wildwood, Sumter County, Florida 34785, and expected to be owned by the Borrower and managed initially by MJM Associates LLC, a Delaware limited liability company.
5. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as "Spring Hill Alzheimer's/Memory Care Residence," to be located at the southeast corner of Parade Road and County Line Road, Spring Hill, Hernando County, Florida 34606, and expected to be owned by the Borrower and managed initially by MJM Associates LLC, a Delaware limited liability company.
6. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as Tampa Bay Alzheimer's/Memory Care Residence, to be located at 571 Martin Luther King, Jr. Street North, St. Petersburg, Pinellas County, Florida 33705, expected to be owned by the Borrower, and to be managed initially by MJM Associates LLC, a Florida limited liability company.

**SCHEDULE "II" TO EXHIBIT B
PAYMENT TO TOWN OF CENTURY**

\$350.00 per million principal amount of each issue, upon issuance thereof, but not less than \$2,500.00.

SCHEDULE "I"

The Senior Living Facilities consist of:

7. The acquisition, renovation, installation, furnishing, and equipping of an existing approximately 82-unit senior living facility comprised of assisted living units for the elderly to be known as the "Viera Assisted Living Residence," located at 3325 Breslay Drive, Town of Viera, Melbourne, Brevard County, Florida 32940, and expected to be owned by the Borrower and managed initially by MJM Associates LLC, a Delaware limited liability company.
8. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as the "Viera Alzheimer's/Memory Care Residence," to be located at 3325 Breslay Drive, Town of Viera, Melbourne, Brevard County, Florida 32940, and expected to be owned by the Borrower and managed initially by MJM Associates LLC, a Delaware limited liability company.
9. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as "Palm Beach Alzheimer's/Memory Care Residence," to be located at the southeast corner of Kentucky Street and Congress Avenue, West Palm Beach, Palm Beach County, Florida 33406, and expected to be owned by the Borrower, and managed initially by MJM Associates LLC, a Delaware limited liability company.
10. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as "The Villages Alzheimer's/Memory Care Residence," to be located at 7046 Powell Road, Wildwood, Sumter County, Florida 34785, and expected to be owned by the Borrower and managed initially by MJM Associates LLC, a Delaware limited liability company.
11. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as "Spring Hill Alzheimer's/Memory Care Residence," to be located at the southeast corner of Parade Road and County Line Road, Spring Hill, Hernando County, Florida 34606, and expected to be owned by the Borrower and managed initially by MJM Associates LLC, a Delaware limited liability company.
12. The acquisition, construction, development, installation and equipping of an approximately 96-unit senior living facility comprised of assisted living units for the elderly to be known as Tampa Bay Alzheimer's/Memory Care Residence, to be located at 571 Martin Luther King, Jr. Street North, St. Petersburg, Pinellas County, Florida 33705, expected to be owned by the Borrower, and to be managed initially by MJM Associates LLC, a Florida limited liability company.

SCHEDULE I

RESOLUTION 35-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, APPROVING A PLAN OF FINANCE FOR THE COSTS OF THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, IMPROVEMENT, INSTALLATION AND EQUIPPING OF SENIOR LIVING FACILITIES LOCATED IN THE STATE OF FLORIDA; APPROVING THE ISSUANCE OF APPROXIMATELY \$50,000,000 CAPITAL TRUST AGENCY REVENUE BONDS FOR THE PURPOSE OF FINANCING A LOAN PROGRAM TO ASSIST IN FINANCING SUCH FACILITIES; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida, has heretofore adopted Resolution No. 14-99 dated as of July 19, 1999 (the "Original Resolution"), and entered into an Interlocal Agreement between the City and the Town of Century, Florida, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 49 (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a legal entity and a public agency of the State of Florida, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 of the City, as amended, and its Articles of Incorporation, as amended and other applicable provisions of law (collectively, the "Act"), to enable public, private and not-for-profit organizations to obtain public assistance in financing or refinancing certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, pursuant to the Act and in accordance with the provisions of the Original Resolution, the Agency did on October 30, 2013, take official action by adopting its preliminary resolution (the "Agency Resolution") indicating its intent to authorize the financing of the hereinafter described project, and the issuance from time to time of revenue bonds (the "Bonds") by the Agency for a loan program for the purpose, among other things, of acquiring, constructing, developing, improving, installing and equipping of three (3) senior living facilities to be located in Tampa, Florida, Palm Bay, Florida, Cooper City, Florida (collectively, the "Senior Living Facilities"), as described in the attached Schedule "T"; and

WHEREAS, the City has been advised that the Agency desires to issue the Bonds in an aggregate principal amount of approximately \$50,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), to finance the Senior Living Facilities on behalf of Senior Care Living 1, Inc., a Florida corporation, or one or more of its affiliates, whose principal place of business is 8380 Bay Pines Blvd., 3rd Floor, St. Petersburg, Florida 33709 (as applicable, the "Borrower") to fund a program herein described (the "Plan of Finance"); and

WHEREAS, the proposed Senior Living Facilities are appropriate to the needs and circumstances of the community in which they are located and will serve a public purpose by (i) providing gainful employment and making a significant contribution to the economic growth of the local community, (ii) promoting commerce within the State of Florida, (iii) providing safe, decent and accessible living facilities for the senior living community, and (iv) advancing the economic prosperity and the general welfare of the State of Florida and its people; and

WHEREAS, in order to improve health care, it is necessary and in the public interest to facilitate the financing of the Senior Living Facilities and to facilitate and encourage the planning and development of such Senior Living Facilities without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable; and

WHEREAS, the public purposes to be achieved by such Senior Living Facilities and the financing or refinancing thereof in compliance with the criteria and requirements of Chapter 159, Part II, Florida Statutes, as amended, implement the governmental purposes under the Florida Constitution of providing for the health, safety, and welfare of the people of the State of Florida; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires public approval of certain revenue bonds by an applicable elected representative or governmental unit on behalf of which such bonds are to be issued, following a public hearing; and

WHEREAS, (i) notice of such public hearing was given in the form required by the Code by publication at least fourteen (14) days prior to such public hearing in the *Pensacola News Journal* on November 18, 2013 and (ii) the Bonds and the Plan of Finance have been submitted to such public hearing held on behalf of the City Council on December 2, 2013; and

WHEREAS, the City Manager has conducted the public hearing on behalf of the City Council and provided reasonable opportunity for all interested persons to express their views, both orally and in writing, and diligently and conscientiously considered all comments and concerns expressed by such individuals, if any; and

WHEREAS, the City Council desires to approve the Bonds and the issuance and sale thereof pursuant to the Plan of Finance and to grant all approvals required or contemplated by Section 147(f) of the Code, to express its approval of the action taken by the Agency and its officials pursuant to the Agency Resolution, and to grant all other approvals required by the Enabling Agreement, as amended, and the Original Resolution in connection with the issuance and sale of the Bonds.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

SECTION 1. PUBLIC HEARING NOTICE AND REPORT APPROVED.

The City Council hereby approves the form of and the manner of publication of the Notice of Public Hearing (the "Notice") published on November 18, 2013 in the *Pensacola News Journal*, a newspaper of general circulation in the jurisdiction of the City. The City Council hereby approves the report of the public hearing conducted by the City Manager, a copy of which is attached as Exhibit "A" hereto. Such Notice and other means and methods utilized by the City to give notice of purpose, time and date of the public hearing provided reasonable notice sufficient to inform residents of the City of the proposed Bonds.

SECTION 2. BONDS AND PLAN OF FINANCE APPROVED.

For purposes of the Act, the City hereby approves the Plan of Finance described herein, and the issuance of the Bonds described in the Notice. The Agency and its officers, employees, agents and attorneys are hereby authorized from time to time to take all action, to execute and deliver such authorizations, approvals, certificates and documents, and to enter into, on behalf of the Agency, all interlocal agreements, repurchase agreements, bond credit or insurance agreements, reimbursement agreements, and other agreements, approvals or instruments deemed necessary or convenient to effect, implement, maintain and continue the Plan of Finance, the financing or refinancing of the Senior Living Facilities through the issuance from time to time of the Bonds and the purposes for which the Bonds are to be issued. No obligation of the Agency under any such agreement shall constitute an obligation of the City except to the extent the same may be expressly approved by the City. The Bonds shall be limited and special obligations of the Agency, and shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of the City.

SECTION 3. AMENDMENT NO. 50 TO THE ENABLING AGREEMENT RATIFIED.

Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of Amendment No. 50 to the Enabling Agreement (the "Amendment") to effect the approvals set forth in Section 1 and Section 2 hereof. Such Amendment shall be in substantially the form attached hereto as Exhibit "B," and the Mayor is authorized to execute and deliver the same on behalf of the City Council, with such changes not inconsistent herewith as the Mayor shall approve, her execution thereof to conclusively establish such approval.

SECTION 4. TEFRA APPROVAL.

After diligent and conscientious consideration of the views expressed by the persons appearing at the public hearing, the City Council hereby approves the Agency's Plan of Finance, and the issuance by the Agency of approximately \$50,000,000 aggregate principal amount of revenue bonds for all purposes under Section 147(f) of the Code, for all purposes of the Enabling Agreement, as amended, and for all purposes of the Original Resolution.

SECTION 5. REPEALING CLAUSE.

All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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SECTION 6. EFFECTIVE DATE.

This resolution shall take effect immediately upon its adoption this 2nd day of December, 2013.

**GULF BREEZE, FLORIDA
CITY COUNCIL**

(SEAL)

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer, City Clerk

EXHIBIT "A"
REPORT OF CITY MANAGER

[Follows]

EXHIBIT "B"

**FORM OF AMENDMENT NO. 50
OF THE ENABLING AGREEMENT**

AMENDMENT NO. 50 TO INTERLOCAL AGREEMENT

This **AMENDMENT NO. 50 TO INTERLOCAL AGREEMENT** (this "Amendment No. 50") is made and entered into as of the 2nd day of December, 2013, by and among the **CITY OF GULF BREEZE, FLORIDA**, a municipal corporation of the State of Florida ("Gulf Breeze") and the **TOWN OF CENTURY, FLORIDA**, a municipal corporation of the State of Florida ("Century"). Gulf Breeze and Century may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Parties hereto have by Interlocal Agreement, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 49 (collectively, the "Enabling Agreement"), heretofore provided for the creation of the Capital Trust Agency (the "Agency"), to enable public, private and not-for-profit organizations to obtain public assistance in financing certain projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, Senior Care Living 1, Inc., a Florida corporation, or one or more of its affiliates (as applicable, the "Borrower"), has represented to the Agency that, acting for itself or through its affiliates, it plans to develop, own, and operate three (3) senior living facilities in Tampa, Florida, Palm Bay, Florida and Cooper City, Florida; and

WHEREAS, on October 30, 2013, the Agency approved a request by the Borrower that the Agency issue its revenue bonds in a principal amount of approximately \$50,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), in one or more series from time to time (collectively, the "Bonds") and loan the net proceeds thereof to the Borrower, for the purpose, among other things, of financing the acquisition, construction, installation and equipping of three (3) senior living facilities to be known as "Tampa Bay Memory Care," "Palm Bay Memory Care," and "Cooper City Memory Care" and to be located in Tampa, Florida, Palm Bay, Florida and Cooper City, Florida, respectively, (collectively, the "Senior Living Facilities"), as described in the attached Schedule "I"; and

WHEREAS, the Agency will issue its Bonds on a case-by-case basis after review by the Agency, to provide financing and refinancing from time to time for individual projects or groups of projects, or eligible financing programs, based upon the credit pledged therefor from one or more of the projects, the Borrower, a sponsor, a credit enhancement facility, if any, or from the revenues of any such programs; and

WHEREAS, Section 7 of the Enabling Agreement requires that as a condition precedent to the Agency issuing the Bonds, the Agency must obtain the prior written approval, evidenced by resolution, from the governing bodies of Century and Gulf Breeze approving such issuance and approving an amendment to the Enabling Agreement specifically authorizing such issuance. Such approval evidenced by appropriate resolutions has been obtained, authorizing the execution and delivery of this Amendment No. 50 to the Enabling Agreement with respect to the financing herein described; and

WHEREAS, the Parties desire to amend the Enabling Agreement to permit and authorize the Agency to issue the Bonds herein described and loan the proceeds to the Borrower in order to provide financing for the Senior Living Facilities;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. ENABLING AGREEMENT AMENDED FOR PROJECT.

This Amendment No. 50 is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds and to finance projects of the type and character of the Senior Living Facilities.

SECTION 2. BONDS, PROGRAM, PLAN OF FINANCE APPROVED.

The Parties do hereby approve and authorize the Bonds, and the issuance of such Bonds from time to time, in one or more series, in an aggregate principal amount of approximately \$50,000,000 (the exact amount to be determined by an appropriate official of the Agency to be sufficient to enable the financing or refinancing of the Senior Living Facilities). Each installment or issue of such Bonds shall be designated by series, in such manner as the Agency shall determine, so as to separately identify each such installment or issue. The Agency and its officers, employees, agents and attorneys are hereby authorized to enter into, on behalf of the Agency, from time to time, interlocal agreements, cash management agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, escrow agreements, reimbursement agreements, security documents and other agreements, approvals or instruments deemed necessary or convenient to effect or implement the financing or refinancing of the Senior Living Facilities through the issuance of the Bonds, and the purposes and programs for which the Bonds are to be issued and to conform to the purposes stated in the Articles of Incorporation of the Agency to the authorizations herein contained. No obligation of the Agency under any such agreement or instrument shall constitute an obligation of Century or Gulf Breeze. The Bonds shall be limited and special obligations of the Agency, payable from the revenues or receipts of such programs or projects, payments made by the Borrower, a sponsor, or other sources relating to the purpose for which they are issued, all in the indentures for the Bonds. The Bonds shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of Century or of Gulf Breeze.

SECTION 3. ADMINISTRATIVE FEES AND EXPENSES FOR THE TOWN OF CENTURY.

Upon the issuance of each series or installment of Bonds, Century shall be paid by either the Agency or Gulf Breeze, solely from amounts received from the Borrower, the sum specified on Schedule "II" attached hereto.

SECTION 4. ENABLING AGREEMENT CONTINUED.

The Enabling Agreement, as amended hereby, is hereby ratified, confirmed and approved and shall otherwise continue in full force and effect. Nothing in this Amendment No. 50 shall be deemed to adversely affect the authorizations in the Enabling Agreement as it existed prior to the effective date of this Amendment No. 50, or to adversely affect the interests of the holders of any Bonds issued or to be issued pursuant to such authorizations. Except as and only to the extent specifically amended hereby, such Enabling Agreement is hereby incorporated by reference.

SECTION 5. INDEMNITY.

To the extent permitted by law, the Agency and Gulf Breeze shall indemnify, defend and hold harmless Century against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds pursuant hereto, or in connection with the acquisition or operation of any project, or for any liability any way growing out of or resulting from the Enabling Agreement, as amended, this Amendment No. 50, the financing agreements and/or bond indentures executed in connection with the Bonds, including, without limitation, all costs and expenses of Century, including reasonable attorney's fees, incurred in the performance of any activities of Century in connection with the foregoing or the enforcement of any agreement of the Agency herein contained. Any such obligation of Gulf Breeze or the Agency shall be payable solely from the amounts available to them for such purposes under the Bond financing or any other plan of finance heretofore or hereafter undertaken by the Agency, and shall not constitute a general obligation or a pledge of the faith and credit of Gulf Breeze or the Agency, or an obligation to pay the same from any sources other than such amounts available to them for such purposes under the Bond financing.

SECTION 6. SEVERABILITY OF INVALID PROVISIONS.

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

SECTION 7. COUNTERPARTS.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8. EFFECTIVE DATE; AMENDMENTS.

This Amendment shall take effect when duly executed by the Parties and filed in accordance with the law. This Amendment may be amended only by written instrument signed by authorized representatives of Century and Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any then outstanding Bonds of the Agency or of any other member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected members, in the case of the rights of members.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 50 to the Enabling Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF GULF BREEZE, FLORIDA

[SEAL]

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer
City Clerk

TOWN OF CENTURY, FLORIDA

[SEAL]

By: _____
Freddie W. McCall, Sr., Mayor

ATTEST:

By: _____
Leslie Gonzalez, Town Clerk

SCHEDULE "I" TO EXHIBIT B

The Senior Living Facilities consist of:

1. The acquisition, construction, development, furnishing and equipping of a 58 – unit senior living facility comprised of approximately 20 semi-private and 38 private memory care support units for the elderly intended to be known as Tampa Bay Memory Care, to be located at 0, 5616 and 5308 Kelly Road, Tampa, Hillsborough County, Florida 33615, and expected to be owned by the Borrower and managed initially by Validus Senior Living.
2. The acquisition, construction, development, furnishing and equipping of a 58 – unit senior living facility comprised of approximately 20 semi-private and 38 private memory care support units for the elderly intended to be known as Palm Bay Memory Care, to be located at 380 Malabar Road SE, Palm Bay, Brevard County, Florida 32907, and expected to be owned by the Borrower and managed initially by Validus Senior Living.
3. The acquisition, construction, development, furnishing and equipping of a 58 – unit senior living facility comprised of approximately 20 semi-private and 38 private memory care support unit for the elderly intended to be known as Cooper City Memory Care, to be located on Palm Avenue, Cooper City, Broward County, Florida 33024, and expected to be owned by the Borrower and managed initially by Validus Senior Living.

**SCHEDULE "II" TO EXHIBIT B
PAYMENT TO TOWN OF CENTURY**

\$350.00 per million principal amount of each issue, upon issuance thereof, but not less than \$2,500.00.

SCHEDULE "I"

The Senior Living Facilities consist of:

1. The acquisition, construction, development, furnishing and equipping of a 58 – unit senior living facility comprised of approximately 20 semi-private and 38 private memory care support units for the elderly intended to be known as Tampa Bay Memory Care, to be located at 0, 5616 and 5308 Kelly Road, Tampa, Hillsborough County, Florida 33615, and expected to be owned by the Borrower and managed initially by Validus Senior Living.
2. The acquisition, construction, development, furnishing and equipping of a 58 – unit senior living facility comprised of approximately 20 semi-private and 38 private memory care support units for the elderly intended to be known as Palm Bay Memory Care, to be located at 380 Malabar Road SE, Palm Bay, Brevard County, Florida 32907, and expected to be owned by the Borrower and managed initially by Validus Senior Living.
3. The acquisition, construction, development, furnishing and equipping of a 58 – unit senior living facility comprised of approximately 20 semi-private and 38 private memory care support unit for the elderly intended to be known as Cooper City Memory Care, to be located on Palm Avenue, Cooper City, Broward County, Florida 33024, and expected to be owned by the Borrower and managed initially by Validus Senior Living.

SCHEDULE I

RESOLUTION 36-13

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA, APPROVING A PLAN OF FINANCE FOR THE COSTS OF THE ACQUISITION, CONSTRUCTION, DEVELOPMENT, IMPROVEMENT, INSTALLATION AND EQUIPPING OF A SENIOR LIVING FACILITY LOCATED IN THE STATE OF FLORIDA; APPROVING THE ISSUANCE OF APPROXIMATELY \$48,000,000 CAPITAL TRUST AGENCY REVENUE BONDS FOR THE PURPOSE OF FINANCING A LOAN PROGRAM TO ASSIST IN FINANCING SUCH FACILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council (the "City Council") of Gulf Breeze, Florida (the "City"), a municipal corporation of the State of Florida, has heretofore adopted Resolution No. 14-99 dated as of July 19, 1999 (the "Original Resolution"), and entered into an Interlocal Agreement between the City and the Town of Century, Florida, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 52 (collectively, the "Enabling Agreement"), approving the creation of the Capital Trust Agency (the "Agency"), a legal entity and a public agency of the State of Florida, organized and existing under the provisions of Chapter 163, Part I, and Chapter 159, Part II, Florida Statutes, Ordinance No. 05-97 of the City, as amended, and its Articles of Incorporation, as amended and other applicable provisions of law (collectively, the "Act"), to enable public, private and not-for-profit organizations to obtain public assistance in financing or refinancing certain beneficial projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, pursuant to the Act and in accordance with the provisions of the Original Resolution, the Agency did on November 13, 2013, take official action by adopting its preliminary resolution (the "Agency Resolution") indicating its intent to authorize the financing of the hereinafter described project, and the issuance from time to time of revenue bonds (the "Bonds") by the Agency for a loan program for the purpose, among other things, of acquiring, constructing, developing, improving, installing and equipping an approximately 130-unit senior living facility to be known as "Equinox Senior Living Center," to be located in Jacksonville, Duval County, Florida (the "Senior Living Facility"), as described in the attached Schedule "I"; and

WHEREAS, the City has been advised that the Agency desires to issue the Bonds in an aggregate principal amount of approximately \$48,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), to finance the Senior Living Facility on behalf of Equinox of Jacksonville, LLC, a Florida limited liability company, or one or more of its affiliates, whose principal place of business is 1732 Margaret Street, Jacksonville, Florida 32204 (as applicable, the "Borrower") to fund a program herein described (the "Plan of Finance"); and

WHEREAS, the proposed Senior Living Facility is appropriate to the needs and circumstances of the community in which it is located and will serve a public purpose by (i) providing gainful employment and making a significant contribution to the economic growth of the local community, (ii) promoting commerce within the State of Florida, (iii) providing safe, decent and accessible living facilities for the senior living community, and (iv) advancing the economic prosperity and the general welfare of the State of Florida and its people; and

WHEREAS, in order to improve health care, it is necessary and in the public interest to facilitate the financing of the Senior Living Facility and to facilitate and encourage the planning and development of such Senior Living Facility without regard to the boundaries between counties, municipalities, special districts, and other local governmental bodies or agencies in order to more effectively and efficiently serve the interests of the greatest number of people in the widest area practicable; and

WHEREAS, the public purposes to be achieved by such Senior Living Facility and the financing or refinancing thereof in compliance with the criteria and requirements of Chapter 159, Part II, Florida Statutes, as amended, implement the governmental purposes under the Florida Constitution of providing for the health, safety, and welfare of the people of the State of Florida; and

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires public approval of certain revenue bonds by an applicable elected representative or governmental unit on behalf of which such bonds are to be issued, following a public hearing; and

WHEREAS, (i) notice of such public hearing was given in the form required by the Code by publication at least fourteen (14) days prior to such public hearing in the *Pensacola News Journal* on November 18, 2013 and (ii) the Bonds and the Plan of Finance have been submitted to such public hearing held on behalf of the City Council on December 2, 2013; and

WHEREAS, the City Manager has conducted the public hearing on behalf of the City Council and provided reasonable opportunity for all interested persons to express their views, both orally and in writing, and diligently and conscientiously considered all comments and concerns expressed by such individuals, if any; and

WHEREAS, the City Council desires to approve the Bonds and the issuance and sale thereof pursuant to the Plan of Finance and to grant all approvals required or contemplated by Section 147(f) of the Code, to express its approval of the action taken by the Agency and its officials pursuant to the Agency Resolution, and to grant all other approvals required by the Enabling Agreement, as amended, and the Original Resolution in connection with the issuance and sale of the Bonds.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GULF BREEZE, FLORIDA:

SECTION 1. PUBLIC HEARING NOTICE AND REPORT APPROVED.

The City Council hereby approves the form of and the manner of publication of the Notice of Public Hearing (the "Notice") published on November 18, 2013 in the *Pensacola News Journal*, a newspaper of general circulation in the jurisdiction of the City. The City Council hereby approves the report of the public hearing conducted by the City Manager, a copy of which is attached as Exhibit "A" hereto. Such Notice and other means and methods utilized by the City to give notice of purpose, time and date of the public hearing provided reasonable notice sufficient to inform residents of the City of the proposed Bonds.

SECTION 2. BONDS AND PLAN OF FINANCE APPROVED.

For purposes of the Act, the City hereby approves the Plan of Finance described herein, and the issuance of the Bonds described in the Notice. The Agency and its officers, employees, agents and attorneys are hereby authorized from time to time to take all action, to execute and deliver such authorizations, approvals, certificates and documents, and to enter into, on behalf the Agency, all interlocal agreements, repurchase agreements, bond credit or insurance agreements, reimbursement agreements, and other agreements, approvals or instruments deemed necessary or convenient to effect, implement, maintain and continue the Plan of Finance, the financing or refinancing of the Senior Living Facility through the issuance from time to time of the Bonds and the purposes for which the Bonds are to be issued. No obligation of the Agency under any such agreement shall constitute an obligation of the City except to the extent the same may be expressly approved by the City. The Bonds shall be limited and special obligations of the Agency, and shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of the City.

SECTION 3. AMENDMENT NO. 53 TO THE ENABLING AGREEMENT RATIFIED.

Pursuant to the Enabling Agreement, there is hereby approved the execution and delivery of Amendment No. 53 to the Enabling Agreement (the "Amendment") to effect the approvals set forth in Section 1 and Section 2 hereof. Such Amendment shall be in substantially the form attached hereto as Exhibit "B," and the Mayor is authorized to execute and deliver the same on behalf of the City Council, with such changes not inconsistent herewith as the Mayor shall approve, her execution thereof to conclusively establish such approval.

SECTION 4. TEFRA APPROVAL.

After diligent and conscientious consideration of the views expressed by the persons appearing at the public hearing, the City Council hereby approves the Agency's Plan of Finance, and the issuance by the Agency of approximately \$48,000,000 aggregate principal amount of revenue bonds for all purposes under Section 147(f) of the Code, for all purposes of the Enabling Agreement, as amended, and for all purposes of the Original Resolution.

SECTION 5. REPEALING CLAUSE.

All resolutions or parts thereof of the City in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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SECTION 6. EFFECTIVE DATE.

This resolution shall take effect immediately upon its adoption this 2nd day of December, 2013.

**GULF BREEZE, FLORIDA
CITY COUNCIL**

(SEAL)

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer, City Clerk

EXHIBIT "A"
REPORT OF CITY MANAGER

[Follows]

EXHIBIT "B"

**FORM OF AMENDMENT NO. 53
OF THE ENABLING AGREEMENT**

AMENDMENT NO. 53 TO INTERLOCAL AGREEMENT

This **AMENDMENT NO. 53 TO INTERLOCAL AGREEMENT** (this "Amendment No. 53") is made and entered into as of the 2nd day of December, 2013, by and among the **CITY OF GULF BREEZE, FLORIDA**, a municipal corporation of the State of Florida ("Gulf Breeze") and the **TOWN OF CENTURY, FLORIDA**, a municipal corporation of the State of Florida ("Century"). Gulf Breeze and Century may collectively be referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the Parties hereto have by Interlocal Agreement, dated as of August 2, 1999, as amended by Amendments No. 1 through No. 52 (collectively, the "Enabling Agreement"), heretofore provided for the creation of the Capital Trust Agency (the "Agency"), to enable public, private and not-for-profit organizations to obtain public assistance in financing certain projects or programs that benefit, enhance and/or serve a public purpose; and

WHEREAS, Equinox of Jacksonville, LLC, a Florida limited liability company, or one or more of its affiliates (as applicable, the "Borrower"), has represented to the Agency that, acting for itself or through its affiliates, it plans to develop, own, and operate a senior living facility in Jacksonville, Florida; and

WHEREAS, on November 13, 2013, the Agency approved a request by the Borrower that the Agency issue its revenue bonds in a principal amount of approximately \$48,000,000 (the exact amount to be determined by the appropriate official of the Agency, as being the amount required to fund the financing herein authorized), in one or more series from time to time (collectively, the "Bonds") and loan the net proceeds thereof to the Borrower, for the purpose, among other things, of financing the acquisition, construction, installation and equipping of an approximately 130-unit senior living facility to be known as Equinox Senior Living Center and to be located in Jacksonville, Duval County, Florida (the "Senior Living Facility"), as described in the attached Schedule "I"; and

WHEREAS, the Agency will issue its Bonds on a case-by-case basis after review by the Agency, to provide financing and refinancing from time to time for individual projects or groups of projects, or eligible financing programs, based upon the credit pledged therefor from one or more of the projects, the Borrower, a sponsor, a credit enhancement facility, if any, or from the revenues of any such programs; and

WHEREAS, Section 7 of the Enabling Agreement requires that as a condition precedent to the Agency issuing the Bonds, the Agency must obtain the prior written approval, evidenced by resolution, from the governing bodies of Century and Gulf Breeze approving such issuance and approving an amendment to the Enabling Agreement specifically authorizing such issuance. Such approval evidenced by appropriate resolutions has been obtained, authorizing the execution and delivery of this Amendment No. 53 to the Enabling Agreement with respect to the financing herein described; and

WHEREAS, the Parties desire to amend the Enabling Agreement to permit and authorize the Agency to issue the Bonds herein described and loan the proceeds to the Borrower in order to provide financing for the Senior Living Facility;

NOW, THEREFORE, the Parties hereby agree as follows:

SECTION 1. ENABLING AGREEMENT AMENDED FOR PROJECT.

This Amendment No. 53 is entered into pursuant to Section 7 of the Enabling Agreement for the purpose of authorizing the Agency to issue the Bonds and to finance projects of the type and character of the Senior Living Facility.

SECTION 2. BONDS, PROGRAM, PLAN OF FINANCE APPROVED.

The Parties do hereby approve and authorize the Bonds, and the issuance of such Bonds from time to time, in one or more series, in an aggregate principal amount of approximately \$48,000,000 (the exact amount to be determined by an appropriate official of the Agency to be sufficient to enable the financing or refinancing of the Senior Living Facility). Each installment or issue of such Bonds shall be designated by series, in such manner as the Agency shall determine, so as to separately identify each such installment or issue. The Agency and its officers, employees, agents and attorneys are hereby authorized to enter into, on behalf of the Agency, from time to time, interlocal agreements, cash management agreements, interest rate swap or hedge transactions, investment agreements, repurchase agreements, bond credit or insurance agreements, escrow agreements, reimbursement agreements, security documents and other agreements, approvals or instruments deemed necessary or convenient to effect or implement the financing or refinancing of the Senior Living Facility through the issuance of the Bonds, and the purposes and programs for which the Bonds are to be issued and to conform to the purposes stated in the Articles of Incorporation of the Agency to the authorizations herein contained. No obligation of the Agency under any such agreement or instrument shall constitute an obligation of Century or Gulf Breeze. The Bonds shall be limited and special obligations of the Agency, payable from the revenues or receipts of such programs or projects, payments made by the Borrower, a sponsor, or other sources relating to the purpose for which they are issued, all in the indentures for the Bonds. The Bonds shall not constitute a pledge of the faith and credit or taxing power of or constitute an obligation of Century or Gulf Breeze.

SECTION 3. ADMINISTRATIVE FEES AND EXPENSES FOR THE TOWN OF CENTURY.

Upon the issuance of each series or installment of Bonds, Century shall be paid by either the Agency or Gulf Breeze, solely from amounts received from the Borrower, the sum specified on Schedule "II" attached hereto.

SECTION 4. ENABLING AGREEMENT CONTINUED.

The Enabling Agreement, as amended hereby, is hereby ratified, confirmed and approved and shall otherwise continue in full force and effect. Nothing in this Amendment No. 53 shall be deemed to adversely affect the authorizations in the Enabling Agreement as it existed prior to the effective date of this Amendment No. 53, or to adversely affect the interests of the holders of any Bonds issued or to be issued pursuant to such authorizations. Except as and only to the extent specifically amended hereby, such Enabling Agreement is hereby incorporated by reference.

SECTION 5. INDEMNITY.

To the extent permitted by law, the Agency and Gulf Breeze shall indemnify, defend and hold harmless Century against any and all claims, losses, liabilities or damages to property or any injury or death of any person or persons occurring in connection with the issuance of the Bonds pursuant hereto, or in connection with the acquisition or operation of any project, or for any liability any way growing out of or resulting from the Enabling Agreement, as amended, this Amendment No. 53, the financing agreements and/or bond indentures executed in connection with the Bonds, including, without limitation, all costs and expenses of Century, including reasonable attorney's fees, incurred in the performance of any activities of Century in connection with the foregoing or the enforcement of any agreement of the Agency herein contained. Any such obligation of Gulf Breeze or the Agency shall be payable solely from the amounts available to them for such purposes under the Bond financing or any other plan of finance heretofore or hereafter undertaken by the Agency, and shall not constitute a general obligation or a pledge of the faith and credit of Gulf Breeze or the Agency, or an obligation to pay the same from any sources other than such amounts available to them for such purposes under the Bond financing.

SECTION 6. SEVERABILITY OF INVALID PROVISIONS.

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

SECTION 7. COUNTERPARTS.

This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 8. EFFECTIVE DATE; AMENDMENTS.

This Amendment shall take effect when duly executed by the Parties and filed in accordance with the law. This Amendment may be amended only by written instrument signed by authorized representatives of Century and Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any then outstanding Bonds of the Agency or of any other member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected members, in the case of the rights of members.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 53 to the Enabling Agreement to be executed by their duly authorized officers as of the date first above written.

CITY OF GULF BREEZE, FLORIDA

[SEAL]

By: _____
Beverly H. Zimmern, Mayor

ATTEST:

By: _____
Leslie Guyer
City Clerk

TOWN OF CENTURY, FLORIDA

[SEAL]

By: _____
Freddie W. McCall, Sr., Mayor

ATTEST:

By: _____
Leslie Gonzalez, Town Clerk

SCHEDULE "I" TO EXHIBIT B

The Senior Living Facility consists of the acquisition, construction, development, furnishing and equipping of an approximately 130 – unit senior living facility comprised of approximately 62 independent living units, 28 assisted living units, and 40 memory care units for the elderly intended to be known as “Equinox Senior Living Center,” to be located at or near the southwest corner of the intersection of Jefferson Street and Bay Street, adjacent to the Jefferson SkyWay Station, Jacksonville, Duval County, Florida, and expected to be owned by the Borrower and managed initially by Finlay Management, Inc., a Florida corporation.

**SCHEDULE "II" TO EXHIBIT B
PAYMENT TO TOWN OF CENTURY**

\$350.00 per million principal amount of each issue, upon issuance thereof, but not less than \$2,500.00.

SCHEDULE "I"

The Senior Living Facility consists of the acquisition, construction, development, furnishing and equipping of an approximately 130 – unit senior living facility comprised of approximately 62 independent living units, 28 assisted living units, and 40 memory care units for the elderly intended to be known as “Equinox Senior Living Center,” to be located at or near the southwest corner of the intersection of Jefferson Street and Bay Street, adjacent to the Jefferson SkyWay Station, Jacksonville, Duval County, Florida, and expected to be owned by the Borrower and managed initially by Finlay Management, Inc., a Florida corporation.

SCHEDULE I

Councilman Present: Joseph Henderson, Mayor Pro Tem J.B. Schluter, David G. Landfair, Cherry Fitch, and Mayor Zimmern.

ACTION AGENDA ITEMS:

A. SUBJECT: DISCUSSION AND ACTION REGARDING APPLICATION FOR SPECIAL EVENT FROM THE PENSACOLA SPORTS ASSOCIATION FOR THE DOUBLE BRIDGE RUN (02/01/2014).

Reference: Interim Chief of Police memo dated November 20, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE DOUBLE BRIDGE RUN.

Councilman Landfair made a motion to place staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilwoman Fitch. The vote for approval was unanimous.

B. SUBJECT: DISCUSSION AND ACTION REGARDING APPLICATION FOR SPECIAL EVENT FROM GULF BREEZE CHAMBER OF COMMERCE FOR HOLIDAY PARADE (12/07/2013).

Reference: Interim Chief of Police memo dated November 15, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE CHAMBER HOLIDAY PARADE.

Councilman Henderson made a motion to place staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilman Landfair. The vote for approval was unanimous.

C. SUBJECT: DISCUSSION AND ACTION REGARDING CHANGE ORDER REQUEST – TIGER POINT GOLF CLUB – MAIN BUILDING.

Reference: Director of Parks and Recreation memo dated November 18, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL AUTHORIZE CHANGE ORDER #2 IN THE TOTAL AMOUNT OF \$16,065.50 THEREBY INCREASING THE TOTAL PROJECT COST TO \$118,953.20.

Councilwoman Fitch made a motion to place staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilman Schluter. The vote for approval was unanimous.

D. SUBJECT: DISCUSSION AND ACTION REGARDING CAPITAL TRUST AGENCY BOND PROGRAM – LVI RD OSCEOLA, LLC – RESOLUTION 32-13.

Reference: City Manager memo dated November 21, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL PLACE RESOLUTION 32-13 ON THE DECEMBER 2, 2013, AGENDA FOR ADOPTION.

Councilman Landfair made a motion to place staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilman Henderson. The vote for approval was unanimous.

E. SUBJECT: DISCUSSION AND ACTION REGARDING CAPITAL TRUST AGENCY BOND PROGRAM – THE LEXINGTON/THE LEXINGTON HOUSE - - RESOLUTION 33-13.

Reference: City Manager memo dated November 21, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL PLACE RESOLUTION 33-13 ON THE DECEMBER 2, 2013, AGENDA FOR ADOPTION.

Councilman Schluter made a motion to place staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilman Henderson. The vote for approval was unanimous.

F. SUBJECT: DISCUSSION AND ACTION REGARDING CAPITAL TRUST AGENCY BOND PROGRAM – MAINSAIL HEALTH CARE GROUP II – RESOLUTION 34-13.

Reference: City Manager memo dated November 21, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL PLACE RESOLUTION 34-13 ON THE DECEMBER 2, 2013, AGENDA FOR ADOPTION.

Councilman Schluter made a motion to place staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilwoman Fitch. The vote for approval was unanimous.

G. SUBJECT: DISCUSSION AND ACTION REGARDING CAPITAL TRUST AGENCY BOND PROGRAM – SENIOR CARE LIVING 1 – RESOLUTION 35-13.

Reference: City Manager memo dated November 21, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL PLACE RESOLUTION 35-13 ON THE DECEMBER 2, 2013, AGENDA FOR ADOPTION.

Councilwoman Fitch made a motion to place staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilman Landfair. The vote for approval was unanimous.

H. SUBJECT: DISCUSSION AND ACTION REGARDING CAPITAL TRUST AGENCY BOND PROGRAM – EQUINOX OF JACKSONVILLE– RESOLUTION 36-13.

Reference: City Manager memo dated November 21, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL PLACE RESOLUTION 36-13 ON THE DECEMBER 2, 2013, AGENDA FOR ADOPTION.

Councilman Landfair made a motion to place staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilman Henderson. The vote for approval was unanimous.

I. SUBJECT: DISCUSSION AND ACTION REGARDING PENSACOLA BEACH NATURAL GAS SERVICE.

Reference: City Manager memo dated November 22, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPROVE THE MUTUAL RELEASE BETWEEN THE CITY OF GULF BREEZE AND THE CITY OF PENSACOLA RELATIVE TO DEVELOPMENT OF A NATURAL GAS UTILITY ON PENSACOLA BEACH AND THE PAYMENT OF \$470,000.00 TO THE CITY OF PENSACOLA.

Councilman Henderson made a motion to place the staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilman Landfair. The vote for approval was unanimous.

J. SUBJECT: DISCUSSION AND ACTION REGARDING APPOINTMENT OF GARY MICHAELS TO CAPITAL TRUST AGENCY BOARD.

Reference: City Manager memo dated November 22, 2013

RECOMMENDATION:

THAT THE CITY COUNCIL APPOINT GARY MICHAELS, 1201 SOUNDVIEW TRAIL, TO THE CAPITAL TRUST AGENCY BOARD OF DIRECTORS.

Councilman Landfair made a motion to place the staff's recommendation on the December 2, 2013, Regular Council meeting agenda. The motion was seconded by Councilman Schluter. The vote for approval was 4 – 0 – 1 with Councilwoman Fitch abstaining due to a conflict of interest because she is business partners with Gary Michaels.

K. Information Item

The City Manager introduced Jim Cox who was in attendance at the meeting. The City Manager advised that Mr. Cox would be meeting with each Councilmember and giving a professional presentation of the quarterly budget reports. Mr. Cox will also be soliciting input of what the Council would like to see on the quarterly reports. Mr. Cox will be contacting the Councilmembers to schedule these meetings before year's end. Mr. Cox spoke briefly about the City's Fiscal Year.

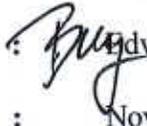
L. Public Forum.

ADJOURNMENT: 6:42 P.M.



City of Gulf Breeze

MEMORANDUM

To : Mayor and City Council
From :  Edwin A. Eddy, City Manager
Date : November 22, 2013
Subject: **Appointment to Capital Trust Agency Board**

The Capital Trust Agency Board has seven (7) members which includes Mayor Zimmern. Currently, the Board is meeting more frequently due to increased interest in CTA bond sponsorship/financing. Board member Thomas Bosworth has served on the CTA Board for 12 years. He has expressed interest in resigning from the Board to give others the opportunity to serve and to have the opportunity to travel without impacting Board business. Mr. Bosworth does not want to resign until a new member is appointed and "up to speed."

Attached is a letter from Gary Michaels which conveys his interest in serving on the CTA Board. Mr. Michaels' experience and educational background would seem to make him a perfect fit for the CTA Board. He has attended a few CTA meetings and remains interested in appointment to the CTA Board.

RECOMMENDATION:

THAT THE CITY COUNCIL APPOINT GARY MICHAELS, 1201 SOUNDVIEW TRAIL, TO THE CAPITAL TRUST AGENCY BOARD OF DIRECTORS.

GARY MICHAELS
1201 Soundview Trail
Gulf Breeze, FL 32561

Cell: 850.501.1122

Email: GaryMichaels@aol.com

November 21, 2013

Mr. Buz Eddy
City Manager
Gulf Breeze, FL 32561

Dear Mayor Zimmern, Mr. Eddy, Mr. Gray and Members of the Capital Trust Agency,

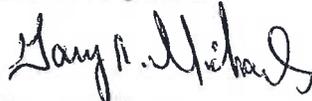
I would consider it a privilege to serve as a member on the Capital Trust Agency Board of Directors. I have lived in Gulf Breeze for the past 10 years and certainly consider it home. It is with true appreciation that I not only have the opportunity to live here, but to be an active contributor to the continued growth and development of our city.

Not only am I excited to work with and learn from such a dedicated group of our community's professionals, I believe that my work experience may be helpful to you. I first used my B.A. degree in Business Administration/Accounting concentration and my MBA to secure nursing home/assisted living administrator positions with Berkshire Health System and Beverly Enterprise from 1985-1995. I followed these positions with relocating to this area when hired by Delta Health Group as Vice-President of Operations. I was responsible for the acquisition of nursing homes and assisted living facilities. Analysis of financial information and the practical application of this knowledge is of great interest to me. I left the health care industry and have now been in real estate for the past 8 years, with over \$250m in sales and I continued to add to my administrative experience from 2007-2010 as Operations Manager of Levin-Rinke Resort Realty.

Through Gulf Breeze United Methodist Church, I have been a Stephen Minister and currently serve as church Treasurer. I have just completed my Chair position at Children's Home Society and am excited to learn of another place to serve within our local community. Through my recent opportunity to work with Mayor Zimmern, Mr. Eddy and the city staff as Co-Chair of the 50th Anniversary Gala for the City, my understanding of our history increased as did my respect for them and the work they have done and continue to do. As a professional and as a citizen, I do believe we have a responsibility to contribute and I have the desire to do so.

Thank you for your consideration of my appointment to The CTA Board of Directors and I assure you that I will serve with the same enthusiasm, interest and integrity as do each of you.

Sincerely yours,



Gary Michaels

Memo

To: Edwin Eddy, City Manager
From: Steve Milford 
Date: November 25, 2013
Re: Authorization to migrate bank accounts, required banking resolutions and banking agreements

As a condition of the Compass Bank refinancing of the Coastal Bank note, completed in October 2013, the City is obligated to make Compass its primary depository for the term of the note (15 years). The migration of accounts is expected to extend over several months. Staff will use this opportunity to consolidate several existing accounts to reduce total account costs and complexity of City banking operations. Staff expects to maintain the Tiger Point depository account with Coastal due to the proximity of the Coastal branch for daily deposits, but anticipates migrating all other governmental and utility banking, purchasing card and treasury management services.

Attached for review are BBVA Compass' documents for:

- 1) Letter agreement of the City to utilize Compass Bank as its primary despository
- 2) Certified Copy of Business Resolutions
- 3) Terms and Conditions for Compass Remote Deposit Online Special Promotion
- 4) Compass e-Access Automated Funds Transfer Agreement
- 5) New Account Request Form
- 6) Request for Treasury Management Services
- 7) Authorization Certificate
- 8) Treasury Management Agreement

Recommendations:

That the City Council adopt BBVA Compass Bank as the City's non-exclusive primary depository for government and utility operations subject to the terms of the attached letter agreement.

That the City Council adopt the resolutions required in the Business Resolutions attachment.

That the City Council direct staff to complete and or modify the required applications for accounts and services as may be in the best interest of the City during the course of the relationship with BBVA Compass and authorize the Mayor and/or City Manager to execute those applications.

That the City Council endorse and approve for BBVA Compass Bank: 1) the City Manager as Chief Financial Officer; 2) the Director of Finance as primary financial contact and administrator of the City's accounts, including authorization of inter-account, ACH and wire transfers; 3) the individuals holding the positions of City Manager, Assistant City Manager, City Clerk(s), and Chief of Police at any point in time as authorized account signers on any of the City's accounts.

That the City Council authorize the Mayor and/or City Manager to execute requisite documents to enable the accounts and services.

That the City Council direct staff to migrate the City's government and utility bank accounts and banking operations to BBVA Compass upon satisfaction with the above documents over a period thereafter not to exceed 90 days.



City of Gulf Breeze

October 18, 2013

OFFICE OF THE CITY MANAGER

BBVA Compass
Attention: John M. Gormley,
Commercial Banking-Senior Vice President
5055 Bayou Boulevard
Pensacola, Florida 32503

Re: Not Exceeding \$3,800,000 City of Gulf Breeze, Florida, Refunding Revenue Note, Series 2013

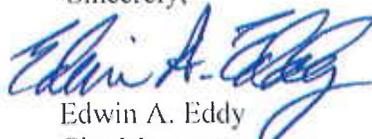
Dear Mr. Gormley:

In a proposal dated September 13, 2013, Compass Mortgage Corporation ("CMC") submitted a term sheet setting forth the conditions to CMC's making of a loan to be evidenced by the above-captioned note (the "2013 Note"). That term sheet conditioned CMC's making of the loan on certain conditions, two of which involved establishing certain banking relationships with BBVA Compass. The purpose of this letter is to establish an agreement between the City and CMC with respect to those two conditions set forth in the term sheet.

Accordingly, the City, by its execution below of its acceptance by an authorized officer of the City, does hereby agree with CMC: (1) to maintain the City's primary operating deposit relationship with BBVA Compass for so long as BBVA Compass provides services, market rates and terms competitive with other Florida Qualified Public Depositories for so long as the 2013 Note is outstanding and (2) to consider in good faith, within 60 days from the date of initial delivery of the 2013 Note to CMC and again within the first 60 days of the beginning of each fiscal year of the City for so long as the 2013 Note is outstanding, establishing other banking services with BBVA Compass so long as BBVA Compass provides services, market rates and terms and conditions which are competitive with services offered to the City by other service providers.

This letter agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to conflict of law principles and shall become effective when the acceptance below is executed and delivered by the City.

Sincerely,


Edwin A. Eddy
City Manager

Certified Copy of Business Resolutions

Full Legal Name of Business: City of Gulf Breeze

Form of Entity (check one):
 Corporation Partnership Association LLC Sole Proprietorship Other Municipality

1070 Shoreline Drive

Located at Gulf Breeze FL 32561-4702
City State Zip

Florida Country (if not USA)
Formed/operating under the laws of the State of

Deposit Accounts And Related Services

RESOLVED, that Compass Bank (the "Bank") is designated as a depository of the above-named business entity (the "Business") and that one or more deposit accounts be opened and maintained on behalf of the Business with the Bank by any one of the following named Authorized Representatives, that each deposit account shall be governed by the terms and conditions contained on or referred to in the signature card(s) which is authorized to be executed, that funds deposited in any deposit account may be withdrawn by check, draft, note or order of the Business when signed by any of the following Authorized Representatives:

whose signatures shall be certified to the Bank on the signature card(s), and Bank is authorized to pay such checks, drafts, notes, orders, or withdrawals, or to receive the same for credit of, or in payment for the payee, or any other legal holder when so signed, without inquiry as to the circumstances of the disposition of their proceeds, whether drawn to the individual order or tendered in payment of individual obligations of the Authorized Representative(s) named above, or otherwise.

Loans And Related Services

RESOLVED, that any of the following _____ Authorized Representatives:

are authorized on behalf of the Business and in the name of the Business: (1) to execute and deliver to the Bank such notes or other evidences of indebtedness of the Business for monies borrowed (with interest), as the Bank may require, and to execute and deliver from time to time renewals or extensions of such notes or other evidences of indebtedness; (2) to convey, grant, assign, transfer, pledge, mortgage, grant a security interest in, or otherwise hypothecate and deliver by such instruments in writing or otherwise as may be demanded by the Bank, any instruments, accounts receivable, deposit accounts, inventory, equipment, general intangibles, warehouse receipts, bills of lading, stock, bonds, chattel paper, real property or any other personal property now or hereafter owned or acquired by the Business as may be required by the Bank to secure the payment of any notes or other indebtedness of the Business to the Bank, whether arising pursuant to this resolution or otherwise, and to discount and rediscount the same; (3) to waive demand, presentment, protest, notice of protest and notices of non-payment, intent to accelerate and acceleration; and (4) to perform all acts and execute and deliver all instruments which the Bank may deem necessary or desirable to carry out the purposes of these resolutions.

Online Banking

RESOLVED, that the Business shall subscribe to one or more of the online banking services offered by the Bank (referred to collectively as the "Online Banking Services" or "Online Banking"). The following accounts held by the Business at the Bank shall be included within the Business' subscription to Online Banking. These accounts, together with any additional accounts later included within the Business' subscription to Online Banking, collectively shall be referred to as the "Online Accounts":

FURTHER RESOLVED, that the Business acknowledges and agrees that by subscribing to Online Banking or by accessing or permitting access to the Business' subscription to Online Banking, the Business accepts and agrees to the Agreement and Disclosure Statement for Online Banking (the "Online Banking Agreement"). The Agreement is posted on the Bank's Web site, at <http://www.bbva.compass.com>.

FURTHER RESOLVED, that the Business acknowledges and agrees that, as more fully described in the Online Banking Agreement, transfers into, out of and between all of the Online Accounts may be made electronically by any individual who obtains the security code used to access the Business' subscription to Online Banking (including transfers through bill payments), regardless of whether that individual is a signatory on any particular account.

FURTHER RESOLVED, that the Business agrees: (1) to maintain the confidentiality of the security codes used to access the Business' subscription to Online Banking; and (2) as provided in the Online Banking Agreement, to accept responsibility for all transfers into, out of and between all of the Online Accounts made using the security codes.

FURTHER RESOLVED, that the following individual, who is (i) an officer (if the Business is a corporation, association or other entity), (ii) a partner (if the Business is a general partnership), (iii) general partner (if the Business is a limited or registered partnership), (iv) a member or, if so provided in the Business' governance documents, a manager (if the Business is an LLC), or (v) the owner (if the Business is a sole proprietor) is authorized on behalf of the Business: (a) to enter into the Online Banking Agreement and any other agreements with the Bank necessary to effectuate the Business' subscription to Online Banking; (b) to include additional Bank accounts for which this individual is a signatory as Online Accounts within the Business' subscription to Online Banking; and (c) to make draws on each loan, line of credit, and credit card account designated now or in the future as an Online Account, whether in these resolutions, by the Authorized Representative, or otherwise, and regardless of whether the Authorized Representative is a signatory on that Online Account.

Authorized Representative: _____

Miscellaneous

RESOLVED, that the following Authorized Representative:

- is authorized to execute a "Telephone Transfer Authorization" form which will designate persons authorized to give telephone instructions to the Bank to transfer funds between specified deposit accounts of this Business at the Bank.
- is authorized to rent one or more Safe Deposit Boxes from the Bank, and execute applicable agreements and signature cards.
- is authorized to enter into a Night Depository agreement with the Bank, and execute applicable agreements and signature cards.
- is authorized to enter into agreements with the Bank for electronic and other banking services including but not limited to payroll processing, electronic entry processing, account reconciliation, trust, investment and brokerage services (and obtain and maintain any accounts related thereto), commercial billing services, and corporate cash management.



FURTHER RESOLVED, that all transactions, if any, with respect to any deposits, withdrawals, discounts, rediscounts, and borrowing by or on behalf of and/or in the name of the Business with the Bank and/or its affiliates prior to the adoption of these resolutions are ratified, approved and confirmed.

FURTHER RESOLVED, that any and all prior resolutions adopted by the Business and delivered to the Bank as governing operation of this Business' account(s), are in full force and effect, as supplemented or modified by this authorization.

FURTHER RESOLVED, that the Bank may rely on these resolutions in establishing the Business' depository account, that these resolutions shall continue in full force and effect until the Bank shall receive official notice in writing from the Business of the modification or revocation of these resolutions and shall in writing acknowledge receipt thereof, and that the certification below as to the signature of the above-named Authorized Representatives shall be binding on the Business.

Certificate

I serve the Business in the capacity identified below, and I certify that:

- * The foregoing is a full, true and correct copy of resolutions duly and regularly adopted by (i) the Board of Directors or Trustees (if the Business is a corporation, association or "other" entity), (ii) all Partners (if the Business is a general partnership), (iii) all General Partners (if the Business is a Limited Partnership or Registered Partnership), (iv) all Members or Managers (if the Business is an LLC), or (v) Owner (if the Business is a Sole Proprietorship) (collectively referred to as the "Governing Group"), either at a meeting of the Governing Group duly held on the date shown below, at which a quorum was at all times present and acting or, if the Business is a corporation or partnership, by unanimous written consent. The Business' Governing Group adopted these resolutions _____ (Month, Day, Year)
- * The Business' Governing Group have and at the time of adoption had full power and lawful authority to adopt the resolutions and to confer the powers granted to the Authorized Persons who have full power and lawful authority to exercise the same.
- * There is no provision in the Articles, Charter, By-Laws, or any other organizational documents or agreements of the Business (referred to as the "Governance Documents") limiting the power of the Governing Group to pass these resolutions, that these resolutions are in conformity with the Governance Documents, and that attached to these resolutions are complete, accurate and current copies of the Business' Governance Documents as of the date shown below.
- * These resolutions are still in full force and effect, have not been amended or revoked, and have been recorded in the minute books of this Business, and that the specimen signatures below are the signatures of the Authorized Representatives who are authorized to act for the Business by virtue of these resolutions.

PRINTED NAME	TITLE/POSITION	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____

IN WITNESS WHEREOF, I have subscribed my name as of this _____ day of _____ and, if the Business is a corporation, I have affixed its seal.

For Corporations, Associations, LLCs, Sole Proprietorships and "Other" entities:

By: _____
Printed Name

Signature

- Its: _____
- This Certificate must be completed by the individual holding the position shown below:***
- * ***If the Business is a corporation or "Other" entity, by the Secretary***
 - * ***If the Business is an LLC, by a Member or, if the LLC is manager-managed, by the Manager***
 - * ***If the Business is an association, by an Officer***
 - * ***If the Business is a Sole Proprietorship, by the Owner/Sole Proprietor***

For Partnerships: This Certificate must be completed by all Partners if the Business is a general partnership and by all General Partners if the Business is a Limited or Registered Partnership:

- By signing below, each Partner/General Partner agrees and affirms:
- * If any other person becomes interested in the Business as a partner of the undersigned, or if our relationship as partners is altered in any way (for example, if the Business shall become incorporated), the undersigned will notify the Bank promptly.
 - * Notwithstanding any modification or termination of the power of any of the undersigned to represent the Business, whether by expiration of any partnership agreement, by death or retirement of any partner, the accession of one or more new partners, or otherwise, and notwithstanding any notice of such event that the Bank may receive, this authority recognized in this Certificate shall continue to be binding upon each of the undersigned individually, their legal representatives, and the Business until written notice to the contrary, signed by one of the undersigned or its duly authorized agent or representative, shall have been received by the Bank.
 - * The rights evidenced by or contained in this certificate are in addition to and not in limitation of the rights inherent in a partner.

_____	_____
<small>Printed Name</small>	<small>Signature</small>
_____	_____
<small>Printed Name</small>	<small>Signature</small>
_____	_____
<small>Printed Name</small>	<small>Signature</small>
_____	_____
<small>Printed Name</small>	<small>Signature</small>
_____	_____
<small>Printed Name</small>	<small>Signature</small>
_____	_____
<small>Printed Name</small>	<small>Signature</small>

Terms and Conditions for Compass Remote Deposit Online® Special Promotion

BBVA Compass is running a special six-month promotion for customers who sign up for the service implemented between July 1 - December 31, 2013.

The services require a 12-month commitment. Termination fees apply to accounts that cancel Compass Remote Deposit Online within the first 12-months of service.

Early cancellation by the Customer (or by the Bank because of a breach of the agreement by Customer) of the Remote Deposit service will result in a termination fee being assessed to your primary deposit account or any other account at BBVA Compass.

(Early Termination Fee - \$400)

Customer name _____
Account No. _____
Address _____
City _____ State _____ Zip _____

Authorized Signer _____
Print name _____
Title _____
Signature _____

Relationship
Manager Name _____
Print name _____

Compass e-Access® Automated Funds Transfer Agreement

THIS COMPASS E-ACCESS AUTOMATED FUNDS

TRANSFER AGREEMENT (this "Agreement") is entered

into this ____ day of _____, _____, by and

between Compass Bank ("BBVA Compass"), and

("Company")

Recital:

WHEREAS, Company desires to initiate fully automated wire transfers through the use of Compass e-Access, one of BBVA Compass' online Treasury Management Services Internet Web sites ("Compass e-Access") as provided in the BBVA Compass Treasury Management Services Agreement (the "TMS Agreement") between Company and Compass, and particularly those provisions of the TMS Agreement set forth therein in the section titled Compass e-Access Online Services (the "Online Services Provisions").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and BBVA Compass agree as follows:

1. **Authorization for Wire Transfer Services.** BBVA Compass is authorized and directed to act upon Company's instructions to execute Company's payment orders for wire transfers, subject to and in accordance with the terms and conditions of this Agreement. Wire transfers are "funds transfers" under and for purposes of Article 4A of the Uniform Commercial Code, as adopted in the state in which BBVA Compass maintains Company's accounts.
2. **Incorporation of Treasury Management Services Agreement.** The terms and provisions of the TMS Agreement, including the Compass e-Access Online Services Provisions, are hereby incorporated into this Agreement. Unless otherwise defined in this Agreement, all capitalized terms shall have the meaning given to them in the TMS Agreement. In the event of a conflict between this Agreement and the TMS Agreement, this Agreement shall govern.
3. **Authorized Wire Users.** In accordance with Section 2 of the Online Services Provisions, the Company, through an Authorized Person, on implementation forms provided by Compass, has designated and authorized certain persons as Authorized Wire Users for the purpose of initiating wire transfers through Compass e-Access. The Online Services Provisions set forth (i) the procedures for designating Company's accounts from and to which wire transfers and Drawdown Wire Transfer Requests may be initiated ("Authorized Accounts"), and (ii) the manner in which individual transaction amounts and individual daily limits will be imposed on Authorized Wire Users. All wire transfers initiated by any Authorized Wire User through Compass e-Access are subject to the General Provisions of the TMS Agreement and the Online Services Provisions. The following Accounts are hereby designated as Company's accounts from and to the credit of which Authorized Wire Users may initiate wire

transfers and Drawdown Wire Transfer Requests using Compass e-Access, and are the same Accounts designated on the implementation forms:

Authorized Compass e-Access Accounts (REQUIRED)

4. **Security Procedures.** The security procedures for initiating wire transfers and Drawdown Wire Transfer Requests through Compass e-Access are described in Section 2 of the Compass e-Access Online Services Provisions. Those security procedures are referred to in this Agreement as the "Security Procedures." For additional security, secondary approval is required on all freeform (non-repetitive) wire transfers \$2,000,000 and over initiated via Compass e-Access.

BBVA Compass may offer to Company automated telefax or e-mail confirmations of all wire transfers initiated by the Company. These confirmations will be sent to Company simultaneously with Compass' execution of Company's payment order for the wire transfer.

- If checked, Company elects to receive automated telefax or e-mail confirmations if offered by BBVA Compass and designates the following accounts for which Company elects this service and the following telefax number or e-mail address to which BBVA Compass will send the confirmations:

Automated Confirmation Accounts (OPTIONAL)

Telefax Number or Email Address:

5. **Wire Transfers Not Via Compass e-Access.** In the event that (a) Compass e-Access is at any time inoperable, or Company's hardware or software fails to adequately communicate with the Compass e-Access system, or (b) Company wishes to initiate funds transfer transactions other than by Compass e-Access, Company may initiate wire transfers by telephonically contacting BBVA Compass' Wire Transfer Department using the procedures set forth in this Section of this Agreement (the "Telephonic Security Procedures"). These procedures apply to wire transfers not initiated using Compass e-Access. Company hereby designates and authorizes the following individuals ("Telephone Wire Users") to initiate wire transfers by direct telephonic communication with BBVA Compass' Wire Transfer

department using the Telephonic Security Procedures (with the per-transaction amount limits, if any, set forth opposite their respective names):

Telephone Wire User Name and \$Limit (OPTIONAL) (Indicate "None" if there is no limit.)

_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____

If a Telephone Wire User attempts to initiate a wire transfer that exceeds any limit set forth above, BBVA Compass will refuse to process the attempted wire transfer.

Telephone Wire Users may initiate wire transfer transactions from the following accounts maintained by Company at BBVA Compass (the "Telephone Accessed Accounts"):

Telephone Accessed Accounts (OPTIONAL)

If checked, Company elects to use the same accounts listed

under Authorized Accounts in Section 3.

Or, List Telephone Accessed Accounts

_____	_____
_____	_____
_____	_____
_____	_____

In accordance with the provisions of this Agreement, BBVA Compass is authorized and directed (i) to provide a Telephone Wire User any information related to this Agreement; (ii) to execute payment orders for wire transfers upon the request of any Telephone Wire User, and (iii) to take any other actions regarding a wire transfer requested by a Telephone Wire User pursuant to this Agreement. Without limiting application of the Telephonic Security Procedures, BBVA Compass is authorized and directed to act on any directions from a person representing himself as a Telephone Wire User which BBVA Compass believes to have been communicated by a Telephone Wire User. BBVA Compass may, but it is not required to, record any voiced instructions transmitted to BBVA Compass. BBVA Compass will provide each Telephone Wire User with a unique personal identification number ("PIN"). A Telephone Wire User shall communicate to BBVA Compass the PIN when initiating, amending or canceling a payment order. If the Telephone Wire User does not provide BBVA Compass with the correct PIN, BBVA Compass will refuse to accept, amend or cancel the payment order. Company may request BBVA Compass to change a PIN upon written request, and BBVA Compass may

change a PIN upon written notice to Company.

Address to Which BBVA Compass Will Mail PINs (OPTIONAL)

Attention: _____

6. Agreements Regarding Security Procedures. Company agrees that the Security Procedures and Telephonic Security Procedures constitute commercially reasonable security procedures for the Company. Company agrees to be bound by any payment order (or any request for cancellation or amendment of a payment order) for a wire transfer initiated in Company's name and accepted by BBVA Compass in compliance with the Security Procedures or Telephonic Security Procedures, as applicable, regardless of whether or not the Company actually authorized the wire transfer. If a payment order for any wire transfer is accepted by BBVA Compass in compliance with the Security Procedures or Telephonic Security Procedures, as applicable, and the payment order contains any error, to the full extent allowed by law Company shall be liable for and shall indemnify BBVA Compass against the amount of the payment order and all claims and all of Compass' losses and expenses, including attorneys' fees, relating to the erroneous payment order. Compass' records demonstrating that it complied with the Security Procedures or Telephonic Security Procedures, as applicable, with respect to any payment order will be deemed conclusive proof that the Company is bound by that payment order. If the payment order for a wire transfer (or any request for cancellation or amendment of a payment order) received by BBVA Compass was transmitted or authorized by Company, Company shall be obligated to pay the amount of the payment order regardless of whether or not BBVA Compass complied with the Security procedures or Telephonic Security Procedures with respect to that payment order and whether or not that payment order was erroneous in any respect or whether or not that error would have been detected if BBVA Compass had complied with such procedures.

Company acknowledges and agrees that, in the event, Company (acting through an Authorized Person) requests BBVA Compass to accept any payment order for a wire transfer made by using any security procedures other than the Security Procedures or Telephonic Security Procedures set forth in this Agreement (which BBVA Compass may accept or refuse at its' discretion), then Company will be deemed to have chosen other security procedures after BBVA Compass offered and Company refused security procedures that were commercially reasonable for Company, and Company expressly agrees to be bound by any payment order, whether or not authorized, issued in its name in accordance with such other security procedures.

7. Transfer Requests.

(a) Initiating Transfers. Subject to the further terms and conditions of this Agreement, wire transfers shall be from or, for Drawdown Wire Transfer Requests, to (i) Authorized Accounts if made through BBVA Compass e-Access, or (ii) Telephone

Accessed Accounts if made in accordance with the terms of Section 5 of this Agreement, and in either case, shall be to or, for Drawdown Wire Transfer Requests, from an account with BBVA Compass (or an affiliate of Compass) or another financial institution. Automated wire transfer requests not initiated through Compass e-Access will be accepted during the normal business hours of Compass' Wire Transfer Department, which are subject to change upon notice to Company. Company agrees that, except as otherwise provided for herein, all wire transfers originated by or on behalf of Company shall be in compliance with the terms of this Agreement, the TMS Agreement, including the Online Services Provisions and applicable law, including the terms and provisions of Article 4A of the Uniform Commercial Code, as adopted in the state in which BBVA Compass maintains the Company's accounts.

(b) Honoring Transfers. BBVA Compass will accept a request for a wire transfer only if the Authorized Wire User or Telephone Wire User, as applicable, makes the request in accordance with the terms and requirements stated in the TMS Agreement, the Online Services Provisions and this Agreement. BBVA Compass has no obligation to honor, either in whole or in part, any wire transfer request or amendment thereto (1) which exceeds the aggregate collected balances in the Authorized Accounts or the Telephone Accessed Accounts, as applicable; (2) which is not in accordance with each term and condition provided for in the TMS Agreement, the Online Services Provisions, this Agreement and applicable law; (3) which is not, or BBVA Compass believes may not be, authorized or correct; or (4) which is impracticable or not feasible to accept. In addition, BBVA Compass shall be excused from failure or delay in issuing or accepting a payment order for a wire transfer if such issuance or acceptance would result in Compass' having exceeded any limitation upon its intraday net funds position established pursuant to present or future guidelines or in Compass' otherwise violating any provision of any present or future bank regulatory statute, rule, regulation or risk control program. If the applicable Authorized Account or Telephone Accessed Account, as applicable, does not contain sufficient funds for the requested wire transfer, BBVA Compass may, at its option, accept the payment order for the wire transfer and debit any such account into overdraft, and BBVA Compass shall not be liable for damages to Company as a result thereof; provided, BBVA Compass has no obligation to debit any such account into overdraft. If BBVA Compass creates an overdraft to complete a wire transfer, Company agrees to pay to BBVA Compass the amount of the overdraft upon demand, together with interest accruing on the amount of the overdraft from the date of its creation at the maximum rate of interest permitted under applicable law. Company hereby authorizes BBVA Compass to charge any of Company's (or its affiliates') accounts (even if not an Authorized Account or a Telephone Accessed Account) at any time for such amount. Except as provided in the Online Services Provisions, and notwithstanding anything in this Agreement to the contrary, BBVA Compass agrees to use reasonable efforts to execute all properly authorized payment orders for wire transfers on the date received, provided that (i) BBVA Compass receives Company's payment order by 4:30 p.m., Central Time for Domestic Wire Transfer requests; 3:30 p.m. Central Time for International Wire Transfer requests in U.S. Dollars; 2:30

p.m. Central Time for International Wire Transfer requests in foreign currency; and (ii) such day is a business day for Compass, the Federal Reserve, and the beneficiary's bank or, for Drawdown Wire Transfer Requests, the receiver's bank. In executing the payment order for any wire transfer, BBVA Compass may utilize such means of transmission as BBVA Compass reasonably selects. If Company originates multiple payment orders for execution on the same day, BBVA Compass may execute the payment orders in any order convenient to Compass. If Company directs BBVA Compass to use a specific intermediary bank or specific means of execution, Company assumes all risks of failure or of non-payment by the intermediary bank and all risks of loss by the means directed. Until BBVA Compass receives final settlement in collected funds, BBVA Compass has no obligation to accept or pay Company the amount of a payment order showing Company as beneficiary. If BBVA Compass does not receive such final settlement, Company agrees to refund all amounts BBVA Compass paid to Company relating to the payment order, and the originator of the payment order shall be deemed not to have paid Company.

(c) Canceling and Amending Payment Orders. If Company wishes to cancel or amend a payment order previously transmitted to Compass, Company must transmit notice of the requested cancellation or amendment in compliance with the Security Procedures or Telephonic Security Procedures, and must include the amount and recipient of the payment order in the notice. BBVA Compass will make a reasonable effort to comply with any request by Company to cancel or amend a payment order that is made before Compass' acceptance of that payment order but only if Compass's Wire Transfer Department has been given sufficient notice and a reasonable opportunity to act on it. BBVA Compass has no obligation or duty to cancel or amend a payment order for a wire transfer once BBVA Compass accepts that payment order. If BBVA Compass consents to cancel or amend an accepted payment order, Company shall indemnify and hold BBVA Compass harmless for all loss and expense, including attorneys' fees, relating to the cancellation and amendment or attempted cancellation and amendment.

(d) Repetitive and Free-Form Wire Transfers. The BBVA Compass e-Access system provides templates for the following types of wire transfers: (i) repetitive wire transfers that are created and maintained by Company, and which are known as "customer-defined repetitive wire transfers," (ii) repetitive wire transfers that are created and maintained by Compass, and which are known as "bank-defined repetitive funds transfers," and (iii) "free-form wire transfers." These wire transfers are created according to instructions and procedures set forth in a user manual provided by BBVA Compass to Company and through instructions and procedures contained in the Compass e-Access system.

8. Automatic Standing Wire Transfers. An automatic standing wire transfer ("AST") is the standing order of the Company to BBVA Compass to transfer automatically a dollar amount established according to criteria defined by Company to a designated recipient at intervals determined by the Company without further act or instruction by the Company. To originate an ongoing AST, the Company must provide Compass, on an

implementation form signed by an Authorized Person, instructions setting forth the following information:

- (1) The designated Account from which funds are to be drawn;
- (2) Criteria to determine amount to be transferred;
- (3) Bank to which funds are to be transferred;
- (4) Name of the receiving party and account number to which funds are to be transferred; and
- (5) Dates or intervals on which transfers are to be automatically made.

BBVA Compass will execute payment orders for these automatic wire transfers on the dates, to the recipients and at the intervals specified by Company in its instructions to BBVA Compass until otherwise notified by Company to cancel the AST. Following receipt of Company's instructions regarding an AST, BBVA Compass shall have no obligation to Company with respect to the AST other than to make the automatic wire transfer according to Company's instructions, but only so long as there are sufficient funds in the designated Account to execute a particular payment order. BBVA Compass has no duty of inquiry or investigation regarding the performance of any contract or the completion of any transaction between Company and any recipient of an AST. In order to cancel an AST, Company must notify BBVA Compass in writing at least two (2) business days prior to the payment date for the next scheduled payment order under that AST.

9. Identifying Information. Company understands and agrees that all wire transfers shall be executed on the basis of the following information provided by Company in its payment order (which is referred to collectively as "Identifying Numbers"): (i) account number or other identifying number for the beneficiary or, for Drawdown Wire Transfer Requests, receiver of the wire transfer; and (ii) the identifying number for any bank to, from or through which the funds are to be sent (a "Receiving Bank"). BBVA Compass and any other bank processing the payment order for wire transfer (a "Processing Bank") may rely solely on the Identifying Numbers that Company provides in its order, regardless of whether Company's order also identifies the beneficiary, receiver or Receiving Bank by name, and no Processing Bank has any obligation to confirm that any Identifying Number applies to any named beneficiary, receiver or Receiving Bank or to identify any discrepancy between any Identifying Number and the name provided by Company for any beneficiary, receiver or Receiving Bank. The foregoing is intended to be consistent with and subject to the terms and provisions of Sections 4A-207 and 4A-208 of the Uniform Commercial Code as in effect in the state in which BBVA Compass maintains Company's accounts, except that knowledge (whether actual or constructive) by BBVA Compass of any discrepancy or inconsistency in the information provided in connection with any payment order for a wire transfer shall not change or impair the right of BBVA Compass to execute a payment order for a wire transfer as provided in this subsection. Neither BBVA Compass nor any Processing Bank shall have any liability for executing any payment order, even if it has knowledge of the discrepancy or inconsistency.

10. Prior Agreements. This Agreement supercedes all prior agreements between BBVA Compass and Company regarding wire transfers.

THIS AGREEMENT is entered into as of the date first above written.

COMPANY

Company Name (print or type)

By: _____

(Signature of "Authorized Person" of Company)

Name: _____ (Print)

Title: _____ (Print)

BBVA Compass

By: _____ (Signature)

Name: _____ (Print)

Title: _____ (Print)

Reviewed By Wire Transfer Department

New Account Request Form

Person providing information should we have any questions: _____

Telephone: _____ Fax: _____ E-Mail: _____

COMPANY NAME ON ACCOUNT _____
(As filed with the Secretary of State)

ADDITIONAL NAME on line 2 _____
(E.G., Payroll, General Fund, Accounts Payable, Credit Cards, etc.)

TAX ID # _____

PHYSICAL STREET ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

BUSINESS PHONE: _____ FAX: _____

STATEMENT MAILING ADDRESS: *(If different from above)*

_____ *Street or P.O. Box* _____ *City* _____ *State* _____ *Zip*

ACCOUNT OWNERSHIP:

___ CORPORATION ___ LLC ___ PARTNERSHIP ___ ASSOCIATION

___ UNINCORPORATED INDIVIDUAL

___ STATE LEGAL DOCUMENTS ISSUED IN

Type of Business: _____

Date of Establishment: _____

Annual Revenue _____

Regulation GG Certification:

1. Is this company involved with Internet Gambling in any way? Yes ____ No ____
2. Does the customer agree not to use its accounts for transactions deriving from or related to Internet Gambling? Yes ____ No ____
3. Customer agrees to notify BBVA Compass in the event of any change in circumstance to the previous two questions. Yes ____ No ____

When will the account be active?

Are we ordering supplies; i.e checks, deposit slips, endorsement stamps, deposit bags?

When will account be funded for initial deposit and dollars to cover supplies?

Does this account need to be linked to an analysis group?

How would you like to handle your cancelled checks?

How would you like your "Returned Deposited Items" processed?

Will any non-signers be authorized to have access to specific information on accounts?
(Such as obtain a copy of a paid check, deposit slip, deposited items, or request a copy of a bank statement, order supplies, Etc.)

IF YES, Please return the **Authorization for Non-Account Signer** form to us or provide a written authorization letter signed by Authorized signer on account and return with this profile form.

Will you be initiating wire transfers from this account i.e. funds transfer agreement and/or E-access?

Will you be subscribing to on line banking services; i.e. E-Access and or other TM services?

OFFICE USE ONLY:

Officer on Account _____

Officer # _____ Cost Center _____

Branch # _____ City Code _____

(Bi-national Synergies Referral/UG #) _____

Account Opened by _____ Date _____

ACCOUNT SIGNER(S) INFORMATION

(Signature cards will be sent upon receipt of this information)

Should any authorized individuals change, it is the company's responsibility to notify their Account Officer or the Business Relationship Services group of these changes. Authorizations of non-signers requesting information is only recognized when calling the Commercial Banking Departments or Business Relationship Services. Other areas of BBVA Compass will only recognize names of individuals that are on the account signature cards on file.

Required Information (please complete one for each signer)

(Please Print Name) _____

Title (Pres., Member) _____ SSN # _____

Physical Address _____

City _____ State _____ Zip Code _____

Phone Number _____ Birth Date _____

DL # _____ State _____ ID Expiration Date _____

E-mail Address _____

Are you a U.S. Citizen? Yes ____ No ____

(If no to US Citizen question, please answer the following questions)

What is the name of your citizenship country? _____

Do you hold any political office in your citizenship country? Yes ____ No ____

If yes, what position? _____

Do any of your family members hold a political office in your citizenship country?

Yes ____ No ____

If yes, Name, Position _____

Are you a close friend or associate of any senior political official in your citizenship country?

Yes ____ No ____

If yes, Name, Position _____

If multiple accounts are needed, please provide information on next page for each account.

Documentation to be **included** with your information (including W-9)

___ ARTICLES ___ PARTNERSHIP DOCS ___ TRADE NAME AFFIDAVIT

___ EMPLOYER TAX IDENTIFICATION FORM

TYPE OF ACCOUNT(s):

- ___ Treasury Management Analysis Checking Account (0007)
- ___ Build to Order Business Checking (0008)
- ___ Compass Works for Business (0034)
- ___ Preferred Business Money Market (0044)
- ___ Corporate Money Market Account (0051)
- ___ Controlled Disbursement Account (0054)
- ___ Analyzed Business Interest Checking (0004)
- ___ Public Funds Interest Checking (0033)
- ___ Business Interest Checking (0011)
- ___ Public Funds Money Market Account (0030)
- ___ Certificate of Deposit/Time Deposit
- ___ Depositrack Sub Account (0005)
- ___ Business Checking (0003)

For multiple accounts, indicate information regarding each account here.

Item	Account Name	Tax ID	Signers	Type of account Checking or Money Market
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

REQUEST FOR TREASURY MANAGEMENT SERVICES

The customer identified below ("Customer") requests Compass Bank ("Compass") to provide each Treasury Management service (a "Service") requested for each designated Compass Bank account owned by Customer (an "Account"), all as identified on each accompanying grid of Requested Treasury Management Services (the "Service Grid," whether one or more), which is incorporated into this Request. Each requested Service is provided under and governed by the Compass Bank Treasury Management Services Agreement (the "Master Services Agreement") and any additional agreement governing a requested Service identified on the Service Grid (an "Applicable Agreement"). Customer requests each Service identified on the Service Grid to be provided in addition to any other Services that Customer already may be receiving from Compass.

Implementation Process: Customer must complete this Request, including the Service Grid. If Customer wishes to designate one or more of Customer's employees to provide the information and instructions required in order for Compass to provide each requested Service for each identified Account (the "Service Instructions"), Customer may execute the Compass Bank Authorization Certificate (the "Authorization Certificate") designating other individuals to act on behalf of the Customer in establishing Treasury Management Services at Compass. Upon receiving Customer's completed and signed Request, Compass will collect the Service Instructions from the individual signing below or any one or more Authorization Certificate Designated Contacts. Compass will deliver written confirmation of the Service Instructions for each Service that Compass approves Customer to receive.

By signing below, Customer:

- Agrees to the Implementation Process described above,
- Agrees that, unless and until Customer notifies Compass in writing that any one or more of Customer's Designated Contacts no longer is authorized to act on behalf of the Customer, Compass is entitled to rely on all Service Instructions regarding any Service that is provided or confirmed by any individual identified in the Authorization Certificate as a Designated Contact, whether the Service Instructions are provided for the initial implementation of the requested Service or for any enhancements, upgrades or other modifications to that Service;
- Acknowledges receipt of the Master Services Agreement and any Applicable Agreement for a requested service identified on the Service Grid, including the related fee schedules, each of which is incorporated by reference into this Agreement; and
- Agrees that, for each Service which Compass approves Customer to receive, Customer will be bound by the terms of the Master Services Agreement and any Applicable Agreement, as implemented according to the Service Instructions provided by any one or more of Customer's Designated Contacts.

Customer must be the accountholder on each Account identified in the accompanying Service Grid. The individual signing on Customer's behalf must be either (i) an authorized signer on the Corporate Resolution or other applicable document for each Account designated in the accompanying Service Grid, or (ii) identified as an authorized signer on the Customer's Authorization Certificate.

Name of Customer City of Gulf Breeze **Date:** _____

By: _____
Authorized Signer Printed name of Individual Signing on Customer's Behalf

Its: _____
Title of Individual Signing on Customer's Behalf

Customer Physical Address: 1070 Shoreline Dr., Gulf Breeze, FL 32561-4702 _____

(850) 934-5113 **(850) 934-5126**
Phone Number: Fax Number:

AUTHORIZATION CERTIFICATE

The undersigned, being an authorized signer as designated by the Corporate Resolution on file with Compass Bank and the _____ (Title) of the entity named below ("Customer") hereby certifies that the individuals listed below have the authority to sign all agreements, instructions, and other documents related to treasury management services to be provided by Compass Bank (the "Bank"). Failure to include an individual's name on this certificate does not eliminate or reduce any authority conferred by another secretary's certificate, resolution, unanimous consent or other agreements or instructions provided to the Bank. The Bank is entitled to rely on this certificate until it receives written notice that an individual authority as indicated in this certificate no longer exists.

NAME OF DESIGNATED CONTACT	CONTACT INFORMATION	SPECIMEN SIGNATURE
	Phone: Email:	

Executed effective as of the _____ day of _____, 20_____.

Company Name: _____ City of Gulf Breeze

By: _____
(Must be an authorized signer on the Corporate Resolution.)

Printed Name: _____

Verified by Compass Bank officer _____ Date _____

Terms and Conditions

Treasury Management Agreement

Prepared for: City of Gulf Breeze Florida
Effective date: 10/1/2013

BBVA Compass
Kathryn Ellis
Vice President

Table of Contents

INTRODUCTION	2
GENERAL PROVISIONS	4
IMAGE CASH LETTER SERVICES	7
COMPASS REMOTE DEPOSIT ONLINE [®] SERVICES	11
COMPASS E-ACCESS [®] ONLINE SERVICES	14
COMPASSVIEW [®] SERVICES	22
AUTOMATED CLEARING HOUSE SERVICES	24
ZERO BALANCE ACCOUNT SERVICES	30
SECURE FTP SERVICES	31

For questions, please contact BBVA Compass General Counsel.

BBVA Compass Treasury Management Services Agreement

This Services Agreement contains terms and conditions for the Treasury Management Services offered by BBVA Compass. The General Provisions of this Agreement apply to all Treasury Management Services, and other provisions govern specific Treasury Management Services. By signing and submitting a Request for Treasury Management Services to BBVA Compass, you agree to be bound by the General Provisions and the provisions governing each requested service contained in this Services Agreement. You also agree to the Implementation Process described in your Request, including the method by which BBVA Compass will collect and confirm the Service Instructions for each requested service provided to you.

BBVA Compass may change the terms and conditions of services provided to you under this Agreement upon ten (10) days prior written notice to you. Your continued use of the service constitutes your acceptance of the change. As a new service is added to the Treasury Management product line, this Agreement will be updated to include the terms and conditions for that service, and you will be provided with a revised document upon the purchase of that service.

Please review this Services Agreement carefully and retain it for your records. As you add services in the future, they will also be covered by the terms and conditions contained in this Agreement. This Services Agreement and the Non-Consumer Account Agreement serve as the governing documents for your BBVA Compass Treasury Management relationship.

Should you have any questions about this Agreement, or the Non-Consumer Account Agreement, please contact your Relationship Manager or Treasury Management Representative. Thank you for choosing BBVA Compass as your Treasury Management service provider. We appreciate your business and look forward to serving you.

In this Compass Bank Treasury Management Services Agreement (the "Agreement") Compass Bank is referred to as "BBVA Compass" and the customer obtaining services from Compass is referred to as "Company." The specific instructions by which a Treasury Management service will be provided to Company (referred to as the "Service Instructions") are part of and Incorporated into the Agreement.

GENERAL PROVISIONS

1. Fees. Company will pay BBVA Compass in immediately available funds when due the fees and charges listed in the then current fee schedule or otherwise chargeable to Company in connection with each Treasury Management Service provided. Notwithstanding anything herein to the contrary, BBVA Compass may change the amount of such fees and charges, or add new fees and charges, after providing Company with at least 10 days notice prior to the effective date of the change or addition. Additionally, Company will pay and reimburse BBVA Compass for all governmental and third party fees or taxes arising out of or related to BBVA Compass' providing Treasury Management Services to Company. These required fees and taxes would be limited to those required to provide and maintain the services the Company has contracted BBVA Compass to provide. Company authorizes and directs BBVA Compass to debit the Company Account (as that term is defined in this Agreement) (a) on or before the 25th of each month for the amount of all such fees then due, and (b) at other times as necessary to pay all other amounts owing from time to time under and as provided for in this Agreement.
2. Company Account. Company will, at all times it is utilizing BBVA Compass Treasury Management Services, maintain with BBVA Compass one or more deposit accounts in the Company's name (each a "Company Account"). Company will at all times maintain with BBVA Compass in the Company Account collected balances sufficient to reimburse BBVA Compass for all items, orders for payment, and other amounts which BBVA Compass pays on Company's behalf or are chargeable to Company in connection with any Treasury Management Service. Each Company Account and all other deposits and other accounts of the Company located at BBVA Compass (or an affiliate of BBVA Compass) shall each be subject to the terms and provisions of all deposit agreements and contracts relating to those accounts, as they may be amended and modified from time to time.
3. Data Review. Company has the sole responsibility for confirming the accuracy and validity of all information, data, entries, and processing services prepared and performed by BBVA Compass. Company shall carefully review all reports prepared by BBVA Compass and shall reject in writing incorrect daily reports within 5 working days (i.e., a day other than a Saturday, Sunday, or a federal banking holiday) after receipt and all other reports provided by BBVA Compass within 10 working days after receipt. Company's failure to so reject any report constitutes (a) Company's acceptance of the report, and (b) notwithstanding the terms of Section 5 of these General Provisions, and except as prohibited by law, the release of BBVA Compass from any liability arising under or in connection with the report.
4. Authorized Persons. The persons whose names and signatures are set forth on an Authorization Certificate delivered to BBVA Compass by Company at the time Company initially requests a Treasury Management Service covered by this Agreement ("Authorization Certificate") are authorized to request and obtain Treasury Management Services from BBVA Compass. Any Authorized Person shall continue as an Authorized Person until BBVA Compass is notified otherwise in writing by the delivery of a new Authorization Certificate. Any Authorized Person may designate in writing those officers and employees of Company authorized to act on behalf of the Company with respect to specific Treasury Management Services.
5. Standard of Care; Limitation of Liability; Indemnity.
 - (a) BBVA Compass agrees to use substantially the same type of procedures and equipment in performing the services requested by Company as BBVA Compass uses in performing similar services on its own behalf. These standards of care, and BBVA Compass' compliance with any instructions given it by Company, or believed by BBVA Compass to be given it by Company, shall constitute proper, reasonable, and ordinary standards of care.
6. Term; Termination. Subject to the following provisions, the terms and conditions contained in this Agreement shall continue in effect so long as Company is using or has requested from BBVA Compass a Treasury Management Service; provided, however, that either party shall have the right, upon 30 days written notice to the other, to terminate any or all Treasury Management Services then being provided by BBVA Compass to Company with or without cause, provided that all obligations arising prior to termination shall not be affected by termination. Further, BBVA Compass may terminate any or all existing Treasury Management Services at any time without notice to any party upon the happening of any of the following events or circumstances: (a) Company's violation or breach of any of the terms or conditions contained in this Agreement or in any agreement to provide specific Treasury Management Services;

(b) Subject to and without limiting any other provision in this

Agreement, or in any other document from time to time entered into between BBVA Compass and Company, BBVA Compass liability to Company for its failure to provide any Treasury Management Service or other service to Company is limited to the amount of liability imposed by applicable law, including, but not limited to, all liability provisions set forth in the Uniform Commercial Code as adopted in the state where BBVA Compass maintains Company's accounts; provided that under no circumstances shall BBVA Compass' liability exceed the amount of actual costs and damages incurred by Company directly as a result of such failure; provided further that BBVA Compass shall not be liable under any circumstances for any consequential, special, punitive, incidental, or similar damages arising from or in connection with the Treasury Management Services to be provided to Company by BBVA Compass.

COMPANY WILL, TO THE EXTENT ALLOWED BY LAW, INDEMNIFY AND HOLD BBVA COMPASS, ITS OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, ATTORNEYS, AND CONTRACTORS, HARMLESS FROM ANY CLAIM, LOSS, PENALTY, ASSESSMENT, COST, OR DAMAGE, WHETHER IN CONTRACT OR IN TORT (INCLUDING REASONABLE ATTORNEY'S FEES), AND ARISING OUT OF ANY ERRORS, NEGLIGENCE, ACTION, NONACTION, OR INVOLVEMENT BY COMPANY OR BBVA COMPASS, OR THEIR RESPECTIVE OFFICERS (INCLUDING INDIVIDUALS PORTRAYING THEMSELVES AS OFFICERS), EMPLOYEES, AGENTS, AFFILIATES, CONTRACTORS, AND ATTORNEYS, UNDER THIS AGREEMENT, OR IN CONNECTION WITH THE TREASURY MANAGEMENT SERVICES PROVIDED UNDER THIS AGREEMENT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THOSE ASSERTED BY THIRD PARTIES FOR REIMBURSEMENT OR DAMAGES AND THOSE WHICH ARISE OUT OF OR UNDER THE ELECTRONIC FUNDS TRANSFER ACT, ANY APPLICABLE STATE ELECTRONIC FUND TRANSFER RULES OR REGULATIONS, OR ANY RULES OR GUIDELINES OF ANY AUTOMATED CLEARING HOUSE. Actual receipt by BBVA Compass of proper notice or delivery of any information (including stop payment, return, process, dishonor, and similar notices required under this Agreement or any agreement executed by Company from time to time) from Company before the deadline required by BBVA Compass in its sole discretion is an express and condition precedent to BBVA Compass' related obligation to perform any service or to meet any deadline imposed by law, regulation, or any person. Company bears the burden of proof of the time and manner of BBVA Compass' actual receipt of any notice or transmittal of information.

- (b) misrepresentation by Company of any material fact in any statement, report, or representation given or made to BBVA Compass in connection with any Treasury Management Service provided by BBVA Compass to Company; (c) receipt by BBVA Compass of any legal process with respect to any of Company's deposit accounts; (d) Company's business failure, insolvency, or bankruptcy; (e) the default or violation by Company, or any affiliate of Company, in any document, instrument or agreement between BBVA Compass and Company or between BBVA Compass and that affiliate; or (f) BBVA Compass is required to terminate pursuant to any law, regulation or supervisory regulatory agency. All sums Company owes to BBVA Compass for any Treasury Management Service shall be due and payable in full immediately upon the termination of the service. All warranties, indemnities, representations, and covenants made before termination, including, but not limited to, all provisions of Section 5 of these General Provisions, shall survive and be binding and enforceable after termination of Treasury Management Services, and termination of this Agreement or any Service shall not affect the rights or obligations of either party which may have arisen or accrued prior to such termination. Upon termination of any services for any reason, BBVA Compass shall have no further obligations or duties.
7. No waiver. No delay or failure of BBVA Compass to exercise any option or right set forth in this Agreement shall constitute a waiver of that option or right. BBVA Compass' waiver of any right, agreement or option on one occasion shall not constitute or be deemed a waiver as to any future occasion.
8. Representations and Warranties. Company represents, warrants, and covenants to and with BBVA Compass: (a) it is duly organized, validly existing, and in good standing in the state of its organization; (b) the execution, delivery and performance of all documents or agreements provided in connection with any Treasury Management Service are within its powers, have been duly and validly authorized, and do not contravene its charter, by-laws, or any indenture, agreement, undertaking, law, regulation or order binding it; (c) no approval, consent or authorization of any government authority beyond those provided is necessary for Company to obtain any Treasury Management Service from BBVA Compass; and (d) the terms and conditions contained in this Agreement are valid and binding obligations of Company enforceable in accordance with their terms. EXCEPT AS REQUIRED BY LAW, BBVA COMPASS MAKES NO REPRESENTATIONS, WARRANTIES, AGREEMENTS, OR GUARANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (i) ANY REPRESENTATIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO ANY ITEMS OR TREASURY MANAGEMENT SERVICES PROVIDED BY BBVA COMPASS TO COMPANY; (ii) ANY WARRANTIES ARISING UNDER THE UNIFORM COMMERCIAL CODE AS ADOPTED IN THE STATE IN WHICH BBVA COMPASS MAINTAINS COMPANY'S ACCOUNTS; (iii) ANY WARRANTIES WITH RESPECT TO COMPLIANCE WITH THE ELECTRONIC FUNDS TRANSFER ACT OR REGULATION E OF THE FEDERAL RESERVE BOARD; (iv) ANY RULE OR REGULATION OF ANY AUTOMATED CLEARING SYSTEM; OR (v) ANY STATE ELECTRONIC FUNDS TRANSFER STATUTE OR REGULATIONS.
9. Omitted in its entirety.
10. Notices. Notices and communications from BBVA Compass to Company regarding any Treasury Management Service may be in writing, postage prepaid by first class mail or hand-delivered, or may be delivered electronically by facsimile or e-mail or, if a Treasury Management Service is provided by access to an Internet website, then by the posting of a notice or communication on the website. Notices and communications from Company to BBVA Compass regarding any Treasury Management Service shall be in writing, postage prepaid by first class mail, email or hand delivered to local branch office.
11. Changes.
- BBVA Compass may make changes to the terms and conditions contained in this Agreement at any time from time to time by notice thereof to Company. Such changes shall automatically become effective 10 days after the date of such notice unless rejected by the Company within such 10 day period. If the Company rejects any such change, in writing, then all Treasury Management Services shall automatically terminate. Notwithstanding the foregoing, BBVA Compass may change any term or condition if BBVA Compass, in its sole discretion, determines that the change is necessary (A) to avoid potential loss to BBVA Compass or the Company, or (B) due to circumstances that substantially affect BBVA Compass operations, and in either case the change shall be effective immediately upon delivery of notice to Company, or (ii) to maintain or restore the security of a funds transfer system or deposit account, in which case the change may be made without prior written notice to Company.
- Any changes or modifications requested by Company to the Treasury Management Services provided by BBVA Compass are subject to the written approval of BBVA Compass. If BBVA Compass so elects, price changes may be implemented concurrently with the requested changes or modifications. The Company shall reimburse BBVA Compass for all costs and expenses required to implement any such changes or modifications.
12. Eligible Accounts
- (a) Designated Eligible Accounts. BBVA Compass will provide Company with Treasury Management Services through and using the following designated types of Accounts:
- (1) If Company is a BBVA Compass non-consumer commercial customer
- Management Analysis Checking Account
 - Analyzed Business Interest Checking Account
 - Corporate Interest Checking
 - Corporate Money Market Account
 - Public Funds Analyzed Interest Checking
 - Public Funds Money Market Account
 - Public Funds Interest Checking
 - Corporate Money Market Account
 - Controlled Disbursement Account
- (2) If Company is a customer of BBVA Compass' Correspondent Banking Division:
- Correspondent Banking Due To Account
- Company agrees to maintain one or more of the foregoing accounts consistent with the Treasury

Management Services provided to Company by BBVA Compass.

(b) Other Accounts.

(1) The following accounts are not designated as Eligible Treasury Management Accounts but are allowed limited Treasury Management Services:

- Business Build to Order Checking
 - Business Interest Checking Account
 - IOLTA Account
- CompassWorks for Business Account ®
- Preferred Money Market for Business
- Business Statement Savings
- Non-consumer Certificates of Deposit and Time Deposits

(2) BBVA Compass will not provide Treasury Management Services through or using any other type of account provided by BBVA Compass.

Company agrees it will not request that BBVA Compass provide any Treasury Management Services through or using any type of account other than those types of Accounts set forth in Section 12(a) and those accounts with limited Treasury Management Services in 12(b) (1) above.

13. Miscellaneous.

- (a) BBVA Compass is an independent contractor and not Company's agent, partner, or employee.
- (b) BBVA Compass will use reasonable efforts to hold in confidence and not disclose to other than its affiliates, employees, agents and independent contractors all confidential information received by BBVA Compass in the course of rendering its Treasury Management Services except to the extent disclosure is required by legal process or by any regulatory or supervisory agency. The Company acknowledges and agrees that BBVA Compass may employ third-party servants, agents, independent contractors or other persons or entities to perform such service, and that BBVA Compass will not be liable for disclosure by any third-party servants, agents, independent contractors or other persons or entities.
- (c) Specifications, tapes, and programs generated by BBVA Compass in connection with any Treasury Management Service are BBVA Compass' sole property unless otherwise provided in this Agreement. All data, reports, items or other materials which Company is required to furnish or perform, including computer tapes or data, will conform to BBVA Compass computer and other specifications unless waived in writing by BBVA Compass. BBVA Compass is authorized, but not required, to electronically record telephone conversations between BBVA Compass and Company's agents or employees.
- (d) Absent clear error, the records of BBVA Compass shall be conclusive evidence with respect to the matters governed by this Agreement.
- (e) The terms and conditions set forth in this Agreement constitute entire agreement between the parties, supersede all prior agreements relating to the Treasury Management Services governed by this Agreement, and any other agreements (including but not limited to depository agreements) to the extent that they conflict with any terms herein, and except as provided in Section 11 of

these General Provisions shall not be modified nor any provision waived by BBVA Compass except by a written instrument duly executed by BBVA Compass. Any waiver shall be effective only for the specific purposes, circumstances and duration provided in that waiver. Company acknowledges that, in entering into this Agreement, Company has not relied on any oral promises or on any representations made by BBVA Compass other than those specifically set forth in this Agreement. All captions and headings in this Agreement are included for convenience and reference. These terms and conditions and all Treasury Management Services provided Company by BBVA Compass shall be governed by the laws of the State where BBVA Compass maintains Company's accounts and by applicable federal laws and regulations. These terms and conditions shall be deemed to be amended automatically, without notice to either party, to comply with any statute, regulation, or ruling of any government agency to whose jurisdiction BBVA Compass is subject. All Treasury Management Services may be assigned by BBVA Compass and may be assigned by Company upon BBVA Compass' prior written consent. These terms and conditions shall bind and inure to the benefit of the parties and their representatives, successors, and assigns.

- (f) Company expressly warrants that Company is not a "Consumer" as defined in section 205.2(e) of Regulation E of the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and that Company will use each Treasury Management Service solely for business, and not personal, family or household purposes.
- (g) Each reference herein to a "check" shall include all "items" under and as defined in Section 4-104(a)(9) of the Uniform Commercial Code as adopted in the State where BBVA Compass maintains Company's accounts and all "substitute checks" as defined in the Check Clearing for the 21st Century Act (a/k/a Check 21 Act) and Regulation CC of the Board of Governors of the United States Federal Reserve Board.
- (h) All of BBVA Compass' obligations, responsibilities and covenants set forth in this Agreement, whether express or implied, shall be suspended if at any time BBVA Compass' compliance is prevented by, or is in conflict with, any federal or state law, regulation or rule, the order of any court of competent jurisdiction, acts of God or of the public enemy, war, epidemic, strike, lockout, riot, weather condition, equipment failure or malfunction, material shortage, electric power disruption or shortage, communication failure or other condition or circumstance not wholly controlled by BBVA Compass.
- (i) Nothing in this Agreement nor any course of dealing between the Company and BBVA Compass constitutes a commitment or obligation to lend money or extend credit to the Company or to otherwise advance money to the Company for any reason, including payment of any item contrary to BBVA Compass' published availability schedules.
- (j) The General Provisions set forth in this Agreement apply to any Treasury Management Service obtained by Company from BBVA Compass, whether or not that particular Treasury Management Service is provided for specifically in this Agreement or in other agreements between the Company and BBVA Compass and further apply to any new Treasury Management Service introduced by BBVA Compass and obtained by Company after the date on which this Agreement is delivered to Company.

- (k) Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable for any reason, such holding shall not invalidate or render unenforceable any other provisions of this Agreement. To the extent permitted by applicable law, the parties hereto waive any provision of law which prohibits or renders unenforceable any provision hereof, and to the extent that such waiver is not permitted by applicable law, the parties intend that such provision be interpreted as modified to the minimum extent necessary to render such provision enforceable.
- (l) Interpretation. The parties agree that the parties have carefully reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities be resolved against the drafting party shall not be employed in the interpretation of this agreement. The article and section headings contained in this agreement are for reference purposes only and shall not affect the interpretation of this Agreement.
- (m) Equitable Relief. Company acknowledges and agrees that, in the event of a breach or threatened breach of any provision in this Agreement involving Confidential Information or any infringement or misappropriation of any intellectual property rights with respect to the Licensed Products, money damages would be an inadequate remedy and BBVA Compass shall be entitled to seek equitable relief from a court of law, including temporary or permanent injunctive relief.
- (n) Terminology. Whenever terms such as "include" or "including" are used in this Agreement, they shall mean "include" or "including", as the case may be, without limiting the generality of any description or word preceding such term. Whenever the expression "satisfactory to BBVA Compass", "in BBVA Compass' judgment" or similar words are used, or BBVA Compass is granted the contractual right to choose between alternatives or to express its opinion, the satisfaction, judgment, choices and opinions are to be made in BBVA Compass' sole and absolute discretion. Whenever the terms "state" or "states" are used in this Agreement, it shall mean one or more of the 50 states that make up the United States of America, the District of Columbia, and/or one or more of the politically organized territories of the United States of America or, if the reference is to a Mexican political entity, the Federal Republic of Mexico and/or one or more of the states thereof.
- (o) Applicable Law. This Agreement shall be governed by the laws of the state where we maintain your account or, if we maintain accounts for you in more than one state, the state where the first account with BBVA Compass was opened and applicable federal laws and regulations in effect from time to time
- (p) To the extent there is a conflict in the terms of the Agreement and any other agreement or contract between Company and BBVA Compass, the terms of the Agreement will control for the purposes of Treasury Management Service related issues.

IMAGE CASH LETTER SERVICES

Upon Company's submission of a request for Compass Bank's (hereinafter "BBVA Compass") Image Cash Letter services (hereinafter "ICL Service" or "ICL Services") and the approval of the Company for this service Company agrees:

1. **General.** The terms and provisions of this Compass Image Cash Letter Service agreement (hereinafter the "Agreement") provide for the collection of check transaction data, including, but not limited to, check images, between organizations and systems for the purposes of clearing the check payments

electronically without the physical presentation of the check (the "Transactions"). BBVA Compass may from time to time agree to accept Transactions from Company, or its actual or apparent agent in the event that Company utilizes the lockbox services of a third party for the collection and processing for deposit checks and other items, and in such case the Transactions shall be governed by the terms and conditions set forth herein or incorporated herein by reference.

2. **System Description.** BBVA Compass' Image Cash Letter service is a delivery mechanism used to transport check transaction data, including check images, between organizations and systems for the purposes of clearing the check payments electronically. To create an "Image Cash Letter", Company captures the check transaction data including an image of the front (including the MICR line) and back of the original check for transmission to BBVA (hereinafter "Image Cash Letter").
3. **Authorized Transactions.** BBVA Compass shall be conclusively entitled to deem the Transactions to be authorized by, and binding upon, Company: (i) if the Transactions and the electronic transmission of a file are made by Company or its actual or apparent agent, or (ii) if BBVA Compass reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of Company, or (iii) in the event Company utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of Company and BBVA Compass reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of Company.
4. **Representations and Warranties of Company.** As to the Transactions transmitted to BBVA Compass, Company represents and warrants to BBVA Compass that: (i) the Transactions and authorization, preparation and presentment of the Transactions comply with the terms and conditions set forth in this Agreement; (ii) the Image Cash Letter of the checks transmitted to BBVA Compass is a true and correct image of the original paper check and has not been altered in any manner by Company or any third party acting on behalf of Company, (iii) Company, or a third party acting on behalf of Company, has reviewed and confirmed that the image captured is identical in all respects to the original paper check and that the amount and the Routing Transit Number of the check captured are accurate, (iv) the original paper check has not previously been deposited for collection with BBVA Compass or any other financial institution, (v) Company represents that it will retain the original check or, in the event Company utilizes the lockbox services of a third party or other similar services, that the third party will retain the original check for at least five (5) days and for such additional period as may be required in the event of a disputed electronic image or substitute check, (vi) Company agrees that in the event that a maker of a check asserts that the Transaction is unauthorized, the processing of the original item may be subject to additional terms of dishonorment, (vii) Company has no knowledge or notice of information to indicate that the Transaction is fraudulent or not authorized by the maker of the check, (viii) Company or its actual or apparent agent or any third party acting on Company's behalf will not cause or allow the original of any truncated check to be deposited with BBVA Compass or any other financial institution, or otherwise presented for payment; (x) Company agrees to and will follow the procedures (hereinafter "Procedures") for transmitting Image Cash Letter set forth in the separately distributed Image Cash Letter User Guide as the same may be updated from time to time at the sole discretion of BBVA Compass, (xi) Company will give BBVA Compass full and prompt cooperation and assistance in the investigation and/or the defense of any claim, complaint, issue and/or liability arising out of the services provided under this Agreement, (xii) only checks made payable to Company will be presented via the ICL Service, (xiii) Company will secure all checks deposited

through the ICL Service in such a manner that they are accessible only to those employees, agents and authorized representatives that have a need to access the checks in the performance of their duties for the Company until the same are destroyed, returned to the maker, delivered to BBVA Compass or surrendered to law enforcement authorities, (Company agrees that, at a minimum, the checks will be kept in a locked compartment, secure filing cabinet, safebox, etc...); (xiv) Company will restrict access to the ICL Service software and hardware only to those employees, agents and authorized representatives that have a need to access the same in the performance of their duties for the Company. The ability to access the ICL Service will be treated as confidential information and protected at least to the extent that the Company would protect its own trade secrets, secure processes, proprietary information, customer list or other confidential information; and (xiv) Company will comply with any applicable rules instituted by ECCHO (Electronic Check Clearing House Organization). In the normal course of business, BBVA Compass makes commercially reasonable efforts to inform its customers of any changes in any applicable laws, regulations or rules that affect the products or services provided. While it is, and remains, Company's responsibility and obligation to comply with all applicable laws, rules and regulations (including, but not limited to ECCHO rules), BBVA Compass will make reasonable efforts to advise Company of any changes to any ECCHO rules. The ECCHO rules are available to Company at www.eccho.org.

5. **Image & MICR Quality.** Each Image Cash Letter transmitted by Company to BBVA Compass shall contain images of the front and the back of the scanned checks and remotely deposited by Company. Each image of each check shall be of such quality that the following information can clearly be read and understood by sight review by BBVA Compass of such image:
- (a) the amount of the check;
 - (b) the payee of the check;
 - (c) the signature of the drawer of the check;
 - (d) the date of the check;
 - (e) the check number;
 - (f) all other information placed on the check prior to the time an image of the check is captured, such as any required identification written on the front of the check and any endorsements applied to the back of the check.

Each image shall also meet all standards for image quality established by the American National Standards Institute ("ANSI"), the Board of Governors of the Federal Reserve or any other regulatory agency, clearing house or association. Company shall also capture and transmit to BBVA Compass the full-field MICR encoding on each check including spaces and dashes.

6. **Receipt of File.** Company shall be solely responsible for transporting, transmitting, or delivering Image Cash Letters to BBVA Compass by the times and on the dates specified by BBVA Compass. BBVA Compass may reject any Image Cash Letter determined by BBVA Compass, in its sole discretion, to have been submitted after or before the time required by any applicable schedule or deadline. Company agrees that Company shall be solely liable for, and BBVA Compass shall not have any liability whatsoever to Company for, any Image Cash Letter or other information contained therein that are not received by BBVA Compass or for any Image Cash Letter or other information contained therein that are intercepted or altered by an unauthorized third party. Company agrees that BBVA Compass has no obligation to accept an Image Cash Letter and, therefore, may reject any Image Cash Letter or other information contained therein submitted by Company. BBVA Compass has no obligation to notify Company of the rejection of an Image Cash Letter or other information contained therein. BBVA Compass shall have no liability to Company for the rejection of an Image Cash Letter or other information contained therein or for the failure to notify Company of such rejection. Upon receipt of a Image Cash Letter submitted by Company, BBVA Compass may examine such Image Cash Letter and other information contained therein to ensure that

Company has complied with this Agreement and followed the Procedures. If BBVA Compass determines that Company has not complied with this Agreement or followed the Procedures or if errors exist in the Image Cash Letter or other information contained therein], BBVA Compass, in its sole discretion, may reject the Image Cash Letter. BBVA Compass also reserves the right to charge Company for rejected images at the rates disclosed in the fee schedules or otherwise communicated to Company from time to time as provided for in this agreement. BBVA Compass may, at its option, also perform a risk management analysis of one or more Image Cash Letters submitted by Company to detect potentially fraudulent checks, and, in its sole discretion, BBVA Compass may reject any such Image Cash Letter or other information contained therein. If the Image Cash Letter is balanced and the and other information contained therein meet the requirements of Section 5 of this Agreement, then BBVA Compass may accept Image Cash Letter for deposit to Company's Account. Upon acceptance of the Image Cash Letter, BBVA Compass shall electronically notify Company of receipt and acceptance of the Image Cash Letter for deposit via email address provided to BBVA Compass. (hereinafter the "Acknowledgment Email"). The Acknowledgment Email confirms the Image cash Letter has been received and confirms information contained in the Image cash Letter such as check volumes and total deposit amount. Information and data reported in the Acknowledgment Email:(a) may be received prior to final posting and confirmation and is subject to correction and (b) is for informational purposes only and may not be relied upon. Company agrees that BBVA Compass shall have no liability for the content of payment-related information. Notwithstanding the fact that BBVA Compass has accepted a Image Cash Letter for deposit, any credit made to Company's Account shall be provisional, and Company shall remain liable to BBVA Compass for any errors, inaccuracies, breach of warranties and any other loss sustained by, or claim made against, BBVA Compass.

7. **Deposit Processing.** All deposits submitted prior to the cutoff time will be reconciled by the end of the day, except when a deposit requirement described in Section 5 above is unmet, or if BBVA Compass experiences interruptions in its systems operations or there are "quality issues", or if BBVA Compass declines one or more Transactions. If any such situation shall have occurred, BBVA Compass will communicate such action to the Company and provide information to remedy such situation if a remedy is possible and practical (in BBVA Compass' sole discretion). Company shall provide BBVA Compass with the names and telephone numbers of Company personnel responsible for resolution of pre-encoded items rejections and other processing matters. Company will notify BBVA Compass of any changes to such list. Company bears all responsibility and liability for any errors in encoding and for the overall quality of encoding of checks and other items. All items shall be endorsed as "Bank of First Deposit" in accordance with Regulation CC guidelines established by the Federal Reserve Bank. Information and funds available for withdrawal pertaining to the previous evening's deposit shall be available according to the funds availability schedule applicable to Company's account(s). An Acknowledgment Email will also provide information, including volumes and total deposit amount and will be available to Company upon successful receipt of your Image Cash Letter.

Electronic images of items from the previous evening's deposit received prior to the cutoff time will be available to Company pursuant to the guidelines in the User Guide via "Internet" retrieval from BBVA Compass images archive. Such electronic images may be obtained at 7 AM for the previous evening's deposit. There will be a 24-hour turnaround time by BBVA Compass to Company for: (i) encoding errors (conditional credit) and (ii) items posted twice. There will be a 48-hour turnaround time by BBVA Compass for: (i) disputed items and (ii) interest adjustments.

8. **Adjustments.** Company shall make all requests for adjustments of any kind to BBVA Compass' Business

Relationship Services Team at 1-800-607-4444, option 1 for AL/FL; 1-800-570-2791 for South TX; 1-866-876-4922 for North TX & 1-800-236-2059 for AZ/NM/CO/CA/EI Paso. The requests may be made via telephone, fax or e-mail. Each such request must be for an adjustment amount greater than Fifty Dollars (\$50.00). Company shall provide members of the Business Relationship Services Team with all necessary documentation requested by BBVA Compass to enable it to research and complete the requested adjustments. All debit and credit advices, including the adjustment and accompanying information, will be delivered to Company via first class USPS mail. Requests for adjustment received by BBVA Compass from Company shall be input by BBVA Compass into its adjustments system no later than the following day. BBVA Compass will undertake and exercise reasonable efforts for a period of one hundred twenty (120) days to follow up with other banking institutions concerning each deposit item for which restitution has been requested. BBVA Compass will check the status of pending requests every 15 days during this period. After such period, the item will either be charged off or be charged back to Company, as shall be warranted under the circumstances in BBVA Compass' sole discretion. Notwithstanding the previous sentences of this paragraph, in those instances when such 120 day period shall have expired without resolution, Company may nonetheless request that BBVA Compass undertake continued efforts (subject to the responsiveness of all other parties involved in the transaction in question, e.g., the Federal Reserve Bank and its operating rules) for a period not to exceed three hundred sixty-five (365) days from the date of deposit of the item for which restitution has been requested, and report its findings to Company.

9. **Inquiries and resolution/escalation of problems.** For all issues related to daily requests for information/resolution, Company shall communicate with members of BBVA Compass Business Relationship Services Team at 1-800-607-4444, option 1 for AL/FL; 1-800-570-2791 for South TX; 1-866-876-4922 for North TX & 1-800-236-2059 for AZ/NM/CO/CA/EI Paso.

10. **Provisional Settlement; Returns.** Company acknowledges that Transactions may be returned by the receiving institution for insufficient funds or other reasons. In addition, the Uniform Commercial Code and other applicable law may permit the Transactions to be returned for reason of alleged lack of authorization. Any credit or consideration given by BBVA Compass to Company with respect to any Transactions shall be deemed provisional, and BBVA Compass shall be entitled to revoke same without prior notice in the event one or more Transactions are rejected or returned to BBVA Compass. In the event one or more Transactions are returned for reason of alleged lack of authorization, Company may (i) promptly submit to BBVA Compass such proof of authorization and request that BBVA Compass forward such proof to the receiving institution for its consideration, or (ii) present the original paper check for collection in lieu of the electronic image. Company acknowledges and agrees that BBVA Compass may make adjustments to any credit or consideration given for a Transaction or Transactions to remedy any transmission and/or encoding errors.

11. **ICL Services by Third-Party Processor.** Upon Company's submission of a request for ICL Services on which Company has designated a third party to provide ICL processing services related to the Accounts (the "Processor") and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees as follows:

(a) Background

(i) Company separately has authorized the Processor to initiate Image Cash Letters electronically to each Company Account designated on the Services Instructions for ICL Services (each, a "Designated Account" for the purposes of the ICL Service).

(ii) At Company's request, BBVA Compass and the Processor have entered into the Image Cash Letter Service Agreement for Third-Party Processors (the "Third-Party Agreement"). Among other points, the Third-Party Agreement establishes the security procedures applicable to all Image Cash Letters to a Designated Account initiated electronically by the Processor, including without limitation the security codes and other devices that the Processor or its "Designated Users" must use (collectively, the Processor Codes").

(b) Transaction Authorization. Company hereby authorizes BBVA Compass:

(i) To provide the Processor with all software, Processor Codes and instructional materials necessary for the Processor to initiate Image Cash Letters electronically to each Company Account electronically (the "ICL Instructions").

(ii) To process Image Cash Letters to a Designated Account that is initiated electronically using the Processor Codes in accordance with the Third-Party Agreement and the ICL Instructions (each, an "Authorized Transaction").

(c) Reliance on Authorized Transaction. Each Authorized Transaction shall be deemed a transaction initiated by Company, and BBVA Compass may rely upon each Authorized Transaction as a transaction properly authorized by Company. BBVA Compass is authorized to process each Authorized Transaction until: (i) BBVA Compass receives written notice from Company that Company has revoked its authorization for the Processor to initiate Image Cash Letters to any or all Designated Accounts; and (ii) BBVA Compass has had a reasonable opportunity to act upon Company's notice.

(d) Limitation of Liability; Indemnity. Notwithstanding any other provision of this Agreement or any other agreement between BBVA Compass and Company, neither BBVA Compass nor any of its suppliers, licensors, service providers or vendors (each, including BBVA Compass, a "Provider") shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, "Damages") incurred by Company that arise from or relate to Company's authorization of Processor to initiate Image Cash Letters electronically to any Designated Account or the Processor's use of any electronic system or network for the initiation of these Image Cash Letters or the Processors misuse or misappropriation of information, technology or accounts. Notwithstanding any other provision of this Agreement, neither BBVA Compass nor any other Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, pandemic, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of Compass or Provider. In no event shall Compass or Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages. Company shall indemnify, to the extent allowable by State statute, protect and hold Compass and Provider and their respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all Damages incurred by a Provider that arise from or relate to Company's authorization of Processor to initiate Image Cash Letters electronically to any Designated Account or the Processor's use of any electronic system or network for the initiation of these ICL Image Cash Letters. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with

- such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA Compass and the obligation of Company to indemnify BBVA Compass with respect to the Processor's initiation of Image Cash Letters to any Designated Account, whether under this Agreement or any other agreement between BBVA Compass and Company, shall apply equally to all other Providers.
- (e) **Representations, Warranties and Covenants.** Company represents and warrants that each Image Cash Letter electronically submitted to BBVA Compass from the Processor will fully satisfy and comply with all applicable requirements of all applicable laws and regulations. Company expressly warrants (i) that neither Company nor the Processor is a "Consumer" as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (ii) that all Image Cash Letters initiated by the Processor are for commercial purposes, and not for personal or household purposes.
- (f) **Termination.** Notwithstanding any other provision regarding termination set forth in the Third-Party Agreement, this Agreement or in any other agreement between BBVA Compass and Company, BBVA Compass may limit, restrict, suspend or terminate, at any time, effective immediately, Processor's ability to initiate Image Cash Letters. BBVA Compass shall use reasonable efforts to promptly communicate notice of such action to Company and the Processor, and will thereafter provide written confirmation of such action if the initial notice of termination was not communicated in writing. BBVA Compass, at any time, may require Company or the Processor to execute additional documents or agreements in order for the Processor to continue to initiate Image Cash Letters electronically to any Designated Account.
12. **Company Indemnification.** Company agrees to indemnify, to the extent permissible by State statute, and hold BBVA Compass, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys' fees and cost of litigation) to which BBVA Compass may be subjected or which it may incur in connection with any claims which might arise from or out of Company's use of BBVA Compass's ICL Service or the processing of any check images or IRD's transmitted to Compass by Company or Company's actual or apparent agent. Company shall also hold BBVA Compass, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys' fees and cost of litigation) to which Company may be subjected or which it may incur in connection with any claims which might arise from or out of Company's use of or the failure of any software or hardware provided, required or suggested by BBVA Compass. The Company's indemnity obligations under this section shall survive termination of this Agreement.
13. **Compass's Right of Refusal.** BBVA Compass may, in its sole discretion, refuse to process any electronic image at any time without prior notification to Company.
14. **Limitation of Remedies.** In the event that BBVA Compass undertakes to correct any error caused by the Equipment or a third party vendor or any other third party acting on behalf of Company, BBVA Compass shall not have any liability with respect thereto. **It is Company's responsibility to verify that all Transactions were delivered to BBVA Compass and that the Transactions received by BBVA Compass were complete and accurate. A CONFIRMATION OF DELIVERY BY BBVA COMPASS DOES NOT RELIEVE COMPANY OF THIS OBLIGATION. Company's only remedy for an error by BBVA Compass employees, agents or representatives is for BBVA Compass to correct the error.**
15. **Audit Rights.** Upon reasonable notice, BBVA Compass may audit, at its own expense, Company's hardware, Software, security, procedures, processes and any and all relevant business records directly relating to this Agreement. If any errors or discrepancies for the audited period are found, BBVA Compass may, in its sole discretion and option, immediately terminate this Agreement.
16. **Security.** Company is advised that certain of the Services may be provided by way of the Internet. Use of any such method of communication requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections. Company acknowledges that data, including e-mail, electronic communications, and confidential financial data, may be accessed by unauthorized third parties when communicated to BBVA Compass using the Internet or other network or dial-up communications facilities, telephone or any other electronic means. With respect to BBVA Compass Internet System access, Company agrees to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by BBVA Compass. Until notified otherwise by BBVA Compass, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by Compass and to follow Compass' log-on procedures that support such protocols. Company acknowledges that BBVA Compass is not responsible for (i) notifying Company of any upgrades, fixes or enhancements to any such software. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by BBVA Compass in writing, Company agrees not to (i) use any software, program, application or any other device to access or log on to BBVA Compass' computer systems, web site or proprietary software; or (ii) automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from Compass' computer systems, web site or proprietary software. In the event of any system failure, BBVA Compass may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company's access to the BBVA Compass Internet System. Company assumes full responsibility for its selection of, access to, and use of products purchased from BBVA Compass as indicated on the Implementation Form. Company shall be responsible for the confidentiality, maintenance, and use both of its financial information on the BBVA Compass Internet System, and of its access number(s), password(s), log-in ID(s), and account number(s). If Company requires more than one authorized signer's signature or authorization to conduct certain transactions related to Company's account(s) or the Services, this requirement will be deemed solely for Company's own purposes. BBVA Compass will not be liable to Company as long as at least one authorized signer's signature appears on the Company's checks, drafts, instructions, or orders, or if BBVA Compass' records indicate that a transaction, payment or other product use was made by or on behalf of one authorized signer by telephone, BBVA Compass Internet System, or other method. This includes situations in which Company has provided its access number(s), password(s), log-in ID(s) and/or account number(s) to someone else to use. Company agrees not to hold BBVA Compass liable for following Company's written orders or instructions. Company agrees not to hold BBVA Compass liable for any damages of any kind resulting from Company's disclosure of its access number(s), password(s), log-in ID(s), or account numbers to any person identified or not identified on the Implementation Form. Company will be responsible for all orders and instructions entered through and under Company's access number(s), password(s), log-in ID(s), and/or account number(s), and any orders or instructions so received by BBVA Compass will be deemed to have been received from Company. All orders and instructions shall be deemed to be made at the time received by

BBVA Compass and in the form received. Company agrees to immediately notify (in the manner prescribed by BBVA Compass from time to time) BBVA Compass if Company learns of:

- any loss or theft of Company's access number(s), password(s), log-in ID(s) and/or account number(s); or
- any unauthorized use of any of Company's access number(s), password(s), log-in ID(s), and/or account number(s), or of the electronic Services or any of Company's information; or
- any receipt by Company of confirmation of an order that Company did not place; or any similarly inaccurate or conflicting report or information.

Company agrees to use only the software provided or instructed by BBVA Compass with the ICL service and to install all updates, patches and/or any other amendments or modifications to the same when directed by BBVA Compass to do so.

Company will restrict access to the hardware and software involved in providing the ICL service to only those employees that have a need to access the same in the performance of their duties for the companies and employ reasonable security measures to prohibit unauthorized access.

Company will restrict access to the non public information contained on the checks transmitted using the ICL service to only those employees that have a need to access the same in the performance of their duties for the companies and employ reasonable security measures to prohibit unauthorized access.

17. **Training.** Company agrees to require its employees to complete the training courses and materials supplied by BBVA Compass prior to implementing the ICL service and to complete all supplemental training that may be required by BBVA Compass from time to time.

COMPASS REMOTE DEPOSIT ONLINE® SERVICES

Upon Company's submission of a request for Compass Remote Deposit Online Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. **General.** The terms and provisions of this Services Agreement provide for use by the Company of BBVA Compass' remote deposit service for the collection of checks by creating a digitized image of each check and truncate the original check for the electronic transmission of a file to BBVA Compass where the image is processed and/or printed as a substitute paper check, referred to as an Image Replacement Document ("IRD"), collectively referred to herein as "Transactions" and individually referred to herein as a "Transaction." BBVA Compass may from time to time agree to accept Transactions from Company, or its actual or apparent agent in the event that Company utilizes the lockbox services of a third party for the collection and processing for deposit checks and other items, and in such case the Transactions shall be governed by the terms and conditions set forth herein or incorporated herein by reference.
2. **System Description.** By using BBVA Compass' remote deposit service, Company may process original paper checks by capturing the image, front and back along with the MICR line, of the original check for transmission to BBVA Compass using the transmitted image file. BBVA Compass will process the digital image or print an IRD and process the IRD check as if it were an original paper check. IRD's and digital images are processed for collection through the local Federal Reserve or other

clearinghouses, or directly to the paying institution. BBVA Compass' check image deposit service is intended to reduce transportation costs for delivery of deposits to BBVA Compass, expedite the deposit process and reduce the overall collection time for deposits.

3. **Authorized Transactions.** Under any of the following circumstances, BBVA Compass shall be conclusively entitled to deem the Transactions to be authorized by, and binding upon, Company: (i) if the Transactions and the electronic transmission of a file are made by Company or its actual or apparent agent, or (ii) if BBVA Compass reasonably believes the Transactions and the electronic transmission of a file were sent by an authorized representative of Company, or (iii) in the event Company utilizes the services of a third party for lockbox or other similar services to facilitate the processing of Transactions, provided that the Transactions and the electronic transmission of a file are in the name of Company and BBVA Compass reasonably believes that the Transactions and transmission of a file by such third party are sent on behalf of Company.

4. **Representations and Warranties of Company.** As to the Transactions transmitted to BBVA Compass, Company represents and warrants to BBVA Compass that: (i) the Transactions and authorization, preparation and presentation of the Transactions comply with the terms and conditions set forth in this Agreement; (ii) the digital image of the check transmitted to BBVA Compass is a true and correct image of the original paper check and has not been altered in any manner by Company or any third party acting on behalf of Company, (iii) Company, or a third party acting on behalf of Company, has reviewed and confirmed that the image captured is identical in all respects to the original paper check and that the amount of the check captured is accurate, (iv) the original paper check has not previously been deposited for collection with BBVA Compass or any other financial institution, (v) Company represents that it will retain the original check, or in the event Company utilizes the lockbox services of a third party or other similar services that the third party will retain the original check for at least five (5) days and for such additional period as may be required in the event of a disputed electronic image or IRD, and that Company or such third party will take all necessary efforts to safeguard any checks until they are destroyed, (vi) Company agrees that in the event that a maker of a check asserts that the Transaction is unauthorized, the processing of the original item may be subject to additional terms of dishonorment, (vii) Company has no knowledge or notice of information to indicate that the Transaction is fraudulent or not authorized by the maker of the check, (viii) Company or its actual or apparent agent or any third party acting on Company's behalf will not cause or allow the original or any truncated check to be deposited with BBVA Compass or any other financial institution, or otherwise presented for payment; (x) Company agrees to and will follow the procedures for transmitting image files set forth in the separately distributed Remote Deposit Services User Guide as the same may be updated from time to time at the sole discretion of BBVA Compass, (xi) Company will give BBVA Compass full and prompt cooperation and assistance in the investigation and/or the defense of any claim, complaint, issue and/or liability arising out of the services provided under this Agreement; and (xii) only checks made payable to Company will be presented via the Remote Deposit Service.

5. **Provisional Settlement; Returns.** Company acknowledges that Transactions may be returned by the receiving institution for insufficient funds or other reasons. In addition, the Uniform Commercial Code and other applicable law may permit the Transactions to be returned for reason of alleged lack of authorization. Any credit or consideration given by BBVA Compass to Company with respect to any Transactions shall be deemed provisional, and BBVA Compass shall be entitled to revoke same without prior notice in the event one or more Transactions are rejected or returned to BBVA Compass. In the

event one or more Transactions are returned for reason of alleged lack of authorization, Company may (i) promptly submit to BBVA Compass such proof of authorization and request that BBVA Compass forward such proof to the receiving institution for its consideration, or (ii) present the original paper check for collection in lieu of the electronic image or the IRD.

Company acknowledges and agrees that BBVA Compass may make adjustments to any credit or consideration given for a Transaction or Transactions to remedy any transmission and/or encoding errors.

6. **Equipment.** To utilize the services provided in this Agreement, the Company must use the equipment designated by BBVA Compass (the "Equipment") from time to time. Company may purchase the Equipment from BBVA Compass or from a third party vendor approved by BBVA Compass in writing.
7. **Software.** BBVA Compass may select software and related user materials ("Software") for utilization of the Remote Deposit Service and the processing of Transactions. Company acknowledges that any Software supplied by BBVA Compass for use in Transactions, including, but not limited to, any Software created or modified by BBVA Compass to be specific to Company's environment is the property of BBVA Compass and that BBVA Compass claims and reserves all rights and benefits therein afforded under copyright and other laws. Company's license of and permission to use the Software is non-exclusive and nontransferable, and it extends only to Company's own use of such Software for the purpose of processing Transactions as set forth in this Services Agreement. BBVA Compass' Software may not be used to process transactions with or through any other party without the express written consent of BBVA Compass and only BBVA Compass' Software may be used for the services described herein. Company further acknowledges that BBVA Compass' Software contains confidential information and trade secrets, which BBVA Compass has entrusted to Company in confidence. Company shall protect BBVA Compass' property and its interest in the trade secrets contained in the Software by controlling access to the Software, permitting none of its employees nor any other person not an employee or agent of BBVA Compass to examine, alter, attach, add to, modify, decode, reverse engineer, transcribe, extract or reproduce, in whole or in part, the Software in any way. Without limiting the generality of the foregoing, Company specifically agrees that it will not delete, mask or obscure any proprietary notices, which BBVA Compass places on any Software. Company further agrees to install all new versions, upgrades, patches, protocols and/or any other changes, amendments or alterations (collectively referred to herein as "Upgrades") to the Software within 10 days of receipt of the same or receipt of notice from the BBVA Compass of where and/or how to retrieve the Upgrades. Company may make one (1) copy of the software licensed hereunder to be used exclusively for backup purposes. Otherwise, Company shall not copy the software and shall not transfer or disclose it to any other person, firm or corporation except for those employees of Company who require such knowledge of the Software in the ordinary course and scope of their employment.
8. **Company Indemnification.** Company agrees to indemnify, to the extent permissible by State statute, and hold BBVA Compass, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys' fees and cost of litigation) to which BBVA Compass may be subjected or which it may incur in connection with any claims which might arise from or out of Company's use of BBVA Compass' remote deposit service or the processing of any check images or IRD's transmitted to BBVA Compass by Company or Company's actual or apparent agent. Company shall also hold BBVA Compass, its affiliates, directors, officers, employees, and agents harmless from and against all losses, liabilities, cost, damages and expenses (including reasonable attorneys' fees and cost of litigation) to which Company may be

subjected or which it may incur in connection with any claims which might arise from or out of Company's use of or the failure of any software or hardware provided, required or suggested by the BBVA Compass. The Company's indemnity obligations under this section shall survive termination of this Agreement.

9. **BBVA Compass' Right of Refusal.** BBVA Compass may, in its sole discretion, refuse to process any electronic image or IRD at any time without prior notification to Company.
10. **Limitation of Remedies.** In addition to the limitation of liability contained in the General Terms section of this agreement, BBVA Compass will use due care in its performance under this Services Agreement and it will, at its own expense, correct any data in which (and to the extent that) errors have been made by BBVA Compass' personnel or by malfunction of BBVA Compass' Software. However, the expense to BBVA Compass of correcting such data shall constitute BBVA Compass' only responsibility in connection with such errors or in connection with any other performance or nonperformance by BBVA Compass under this Agreement. In the event that BBVA Compass undertakes to correct any error caused by the Equipment or a third party vendor or any other third party acting on behalf of Company, BBVA Compass shall not have any liability with respect thereto.

It is Company's responsibility to verify that all Transactions were delivered to BBVA Compass and that the Transactions received by BBVA Compass were complete and accurate. A CONFIRMATION OF DELIVERY BY BBVA COMPASS DOES NOT RELIEVE COMPANY OF THIS OBLIGATION.
11. **Audit Rights.** Upon reasonable notice, BBVA Compass may audit, at its own expense, Company's hardware, Software, procedures, processes and any and all relevant business records directly relating to this Agreement. If any errors or discrepancies for the audited period are found, BBVA Compass may, in its sole discretion and option, immediately terminate this Agreement.
12. **Equipment Purchase and Maintenance.** If the Service Instructions for Remote Deposit Services recognize that Company has requested BBVA Compass to sell and maintain the Equipment (as defined in Section 6 above), then the following provisions also shall apply:

(a) Purchase Price.

- (i) Amount. The total purchase price of the Equipment (the "Purchase Price") will be determined by mutual agreement between BBVA Compass and the Company.
- (ii) Payment. Company may choose one of the following three (3) options for payment of the Purchase Price:
 - (A) Contemporaneously with the purchase of the Equipment, Company shall pay the Purchase Price to BBVA Compass in cash or otherwise pay, or agree to pay, in full in a single installment, and BBVA Compass would thereby acknowledge receipt of such payment or agreement to pay in full via a method other than cash;
 - (B) BBVA Compass shall offset the Purchase Price against deposit account earnings credits available to Company as reflected on Company's account analysis statement in six (6) equal, successive, monthly installment amounts ("Monthly Installments"). No interest shall accrue on the unpaid portion of the Purchase Price. If such earnings credits are insufficient to pay any Monthly Installment when the same

becomes due and payable, then BBVA Compass may deduct the Monthly Installment, as well as any past due Monthly Installment(s), from any of Company's accounts; or

- (C) BBVA Compass shall offset the Purchase Price against deposit account earnings credits available to Company as reflected on Company's account analysis statement in twenty four (24) equal, successive, Monthly Installments. No interest shall accrue on the unpaid portion of the Purchase Price. If such earnings credits are insufficient to pay any Monthly Installment when the same becomes due and payable, then BBVA Compass may deduct the Monthly Installment, as well as any past due Monthly Installment(s) from any of Company's accounts.

Obligation of Payment in Full. If Customer has elected to pay the Purchase Price in installments pursuant to Section 1(b)(ii) or (iii) hereof, then such obligation is absolute and unconditional and shall be unaffected by and survive any termination of the Agreement, the BBVA Compass Remote Deposit Online Services or any deposit account relationship(s) or other services to which the Agreement and remote deposit services relate. In the event of termination of any of the foregoing (by either Company or BBVA Compass), any unpaid balance of the Purchase Price shall be due and payable immediately, and BBVA Compass may deduct such unpaid balance from any Company Account.

Maintenance. BBVA Compass shall provide maintenance services ("Maintenance") for the Equipment through a third party vendor in accordance with the following:

- (i) Scope of Maintenance. Maintenance will cover repair or replacement of the Equipment so that it performs in accordance with its applicable documentation. Maintenance does not include replacement of consumable items. The foregoing is the sole and exclusive Maintenance obligation of BBVA Compass as it relates to the Equipment.
- (ii) Conditions of Availability of Maintenance Services. To be eligible for Maintenance, Customer shall promptly notify BBVA Compass of any error in the operation of the Equipment, and Company must maintain the Equipment in accordance with requirements and recommendations contained in the Equipment manufacturer's documentation. Maintenance Service does not include repairs for Equipment that has been subjected to unusual or extreme physical, environmental or electrical stress, or from which the original identification marks have been removed or altered, or which is damaged due to accident, misuse, neglect, or unauthorized or improper alteration, repair, installation, testing or modification. BBVA Compass will charge Company the then-current service rates in effect for maintenance that is necessitated by any of the foregoing conditions.
- (iii) Termination of Maintenance. BBVA Compass may terminate Maintenance in accordance with the terms and conditions of Section 6 (Term; Termination) of the General Provisions of this Agreement.

- (iv) Communication. To receive Maintenance, call BBVA Compass Business Relationship Services at (800) 607-4444.

Warranty. BBVA COMPASS HEREBY ASSIGNS AND TRANSFERS TO COMPANY ALL APPLICABLE MANUFACTURER'S WARRANTIES COVERING THE EQUIPMENT. BBVA COMPASS MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE EQUIPMENT, AND IT HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES (INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OF NONINFRINGEMENT) AND ANY AGREEMENTS, REPRESENTATIONS, AFFIRMATIONS AND WARRANTIES, WHETHER WRITTEN OR ORAL, MADE BY ANY AGENT, EMPLOYEE OR REPRESENTATIVE OF BBVA COMPASS.

Limitation of Liability. THE SOLE OBLIGATION OF BBVA COMPASS AND THE SOLE REMEDY OF COMPANY RELATING IN ANY WAY TO THE EQUIPMENT WILL BE TO MAINTAIN IT ACCORDING TO THE TERMS HEREIN. BBVA COMPASS SHALL HAVE NO LIABILITY TO COMPANY FOR THE ACTS OR OMISSIONS OF THIRD PARTIES. IN NO EVENT WILL BBVA COMPASS BE LIABLE TO COMPANY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OR OTHER ECONOMIC DAMAGE) ARISING OUT OF THE EQUIPMENT OR COMPANY'S USE OF OR INABILITY TO USE IT, EVEN IF BBVA COMPASS OR AN AUTHORIZED REPRESENTATIVE OF BBVA COMPASS IS AWARE, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER ARISING IN CONTRACT, TORT, WARRANTY OR OTHERWISE. IN NO EVENT WILL BBVA COMPASS BE LIABLE TO COMPANY FOR ANY REASON FOR ANY AMOUNT IN EXCESS OF THE PURCHASE PRICE. BBVA COMPASS NEITHER ASSUMES NOR AUTHORIZES ANY PERSON OR ENTITY TO ASSUME FOR IT ANY OTHER LIABILITIES.

Risk of Loss. Title to, and risk of loss of, or damage to, the Equipment shall pass to Company upon delivery of the Equipment.

13. DFARS. If Company is subject to Defense Federal Acquisition Regulation Supplement (DFARS), the following provisions apply:

- (a) Company agrees that the Software qualifies as "commercial" computer software within the meaning of all federal acquisition regulation(s) applicable to this procurement, and that the Software was developed exclusively at private expense.
- (b) If Company determines that it is unable to accept any of the license restrictions under which the Software is provided to Company because those restrictions fail to meet Company's needs or are inconsistent in any respect with federal law, Company immediately and before any use will return the Software to BBVA Compass.
- (c) Company's use, modification, reproduction, release, display, or disclosure of the Software or related documentation is subject solely to the terms of the license provided in Section 7 above.

14. **SECURITY.** Company is advised that certain of the Services may be provided by way of the Internet using the BBVA Compass Remote Deposit (collectively "BBVA Compass Internet System.") Use of any such method of communication requires that Company receive and transmit information via connection to remote computers over telephone lines or other Internet connections. Company acknowledges that data, including e-mail, electronic communications, and confidential financial data, may be accessed by unauthorized third parties when communicated to BBVA Compass using the Internet or other network or dial-up communications facilities, telephone or any other electronic means. With respect to BBVA Compass Internet System access, Company agrees to use software produced by third parties, including, but not limited to, "browser" software that supports a data security protocol compatible with the protocol used by BBVA Compass. Until notified otherwise by BBVA Compass, Company agrees to use software that supports the Secure Sockets Layer (SSL) protocol or other protocols accepted by BBVA Compass and to follow BBVA Compass' log-on procedures that support such protocols. Company acknowledges that BBVA Compass is not responsible for (i) notifying Company of any upgrades, fixes or enhancements to any such software; or (ii) any compromise of data transmitted across computer networks or telecommunications facilities, including, but not limited to, the Internet. With the exception of applications commonly known as web browser software, or other applications or access devices formally approved by BBVA Compass in writing, Company agrees not to (i) use any software, program, application or any other device to access or log on to BBVA Compass' computer systems, web site or proprietary software; or (ii) automate the process of obtaining, downloading, re-engineering, transferring or transmitting any information to or from BBVA Compass' computer systems, web site or proprietary software. In the event of any system failure, BBVA Compass may reserve the right to require additional documentation, including authorizations, from Company before accepting any order or re-instituting Company's access to the BBVA Compass Internet System. Company assumes full responsibility for its selection of, access to, and use of products purchased from BBVA Compass as indicated on the Implementation Form. Company shall be responsible for the confidentiality, maintenance, and use both of its financial information on the BBVA Compass Internet System, and of its access number(s), password(s), log-in ID(s), and account number(s). If Company requires more than one authorized signer's signature or authorization to conduct certain transactions related to Company's account(s) or the Services, this requirement will be deemed solely for Company's own purposes. BBVA Compass will not be liable to Company as long as at least one authorized signer's signature appears on the Company's checks, drafts, instructions, or orders, or if BBVA Compass' records indicate that a transaction, payment or other product use was made by or on behalf of one authorized signer by telephone, BBVA Compass Internet System, or other method. This includes situations in which Company has provided its access number(s), password(s), log-in ID(s) and/or account number(s) to someone else to use. Company agrees not to hold BBVA Compass liable for following Company's written orders or instructions. Company agrees not to hold BBVA Compass liable for any damages of any kind resulting from Company's disclosure of its access number(s), password(s), log-in ID(s), or account numbers to any person identified or not identified on the Implementation Form. Company will be responsible for all orders and instructions entered through and under Company's access number(s), password(s), log-in ID(s), and/or account number(s), and any orders or instructions so received by BBVA Compass will be deemed to have been received from Company. All orders and instructions shall be deemed to be made at the time received by BBVA Compass and in the form received. Company agrees to immediately notify (in the manner prescribed by BBVA Compass from time to time) BBVA Compass if Company learns of:

- any loss or theft of Company's access number(s), password(s), log-in ID(s) and/or account number(s); or
- any unauthorized use of any of Company's access number(s), password(s), log-in ID(s), and/or account number(s), or of the electronic Services or any of Company's information; or
- any receipt by Company of confirmation of an order that Company did not place; or any similarly inaccurate or conflicting report or information.

COMPASS E-ACCESS® ONLINE SERVICES

Upon Company's submission of a request for Compass e-Access Online Services, or any service accessed only via Single Sign-On application and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. **Online Access.** Company may conduct online one or more of the following Treasury Management Services (as selected by Company in the Service Instructions for Compass e-Access Online Services) through access to and by use of Compass e-Access, one of BBVA Compass' online Treasury Management Internet Web sites: (a) Balance Reporting Services; (b) Book Transfer Services; (c) Stop Payment Services; (d) Automated Clearing House Services; (e) Wire Transfer Services; (f) Compass e-Payables; (g) Electronic Report Delivery Services; (h) Alerts Services; (i) Enhanced Lockbox Services; and (j) Loans Services (collectively, the "Online Services").

BBVA Compass may make certain features that are provided as part of any Online Service accessible both online and through an internet-enabled cell phone or other handheld device that can send and receive information using the technology that supports the Compass e-Access (a "Mobile Device"). For example, if Company has chosen to receive Balance Reporting Services through Compass e-Access, Users (as defined below) may receive certain reports that are provided as part of the Balance Reporting Services both online and on a Mobile Device. BBVA Compass, in its sole discretion, will determine which Treasury Management Services and which features within any particular Treasury Management Service may be accessible through Mobile Devices.

Company's use of Compass e-Access shall be subject to these terms and conditions, all instructions and guidelines established from time to time by BBVA Compass, all applicable software and user documentation terms and conditions, and all applicable state and federal laws and regulations. Company will only be granted access to, and agrees only to access, Compass e-Access to transact or conduct the Online Services selected by Company in the Service Instructions for Compass e-Access. Company may only transact those Online Services that BBVA Compass has agreed to provide and has implemented for Company.

Balance Reporting Services, Automated Clearing House Services, and Enhanced Lockbox Services shall mean those services described elsewhere in this Agreement. Balance Reporting Services, Automated Clearing House Services, and Enhanced Lockbox Services shall be subject to all terms and conditions applicable to those services as set forth elsewhere in this Agreement.

Wire Transfer Services shall mean those services described in a separate Compass e-Access Automated Funds Transfer Agreement between BBVA Compass and the Company. Wire Transfer Services shall be subject to the terms and conditions of the Compass e-Access Automated Funds Transfer Agreement and the General Provisions of this Agreement.

Book Transfer Services allow Company to transfer funds between accounts maintained by Company at BBVA Compass.

Stop Payment Services allow Company to obtain the current status of items issued by Company and place stop payment instructions on a single item or range of items. Company may also cancel a previously placed stop payment instruction.

- The undersigned agrees to hold BBVA Compass harmless, to the extent permissible by State statute, and indemnify it against any loss, expense, or cost incurred resulting from BBVA Compass' refusal to pay any item upon which customer places a stop payment request.
- A stop payment request issued via Compass e-Access will expire and become null and void twenty-four (24) months from the date received, unless revoked or released prior to that time, or unless renewed for additional periods of not more than twenty-four (24) months.
- Reasonable notification of a stop payment must be given at least twenty-four (24) hours prior to the relevant item being presented for payment. The stop payment fee applicable to a stop payment order initiated electronically will apply to each stop payment request.
- Stop payment requests initiated through Compass e-Access may not be cancelled the same day the stop payment requests are initiated.
- Stop payments must be submitted between 7:00 a.m. and 9:00 p.m. CT Monday-Friday. Stop payment requests placed at any other time may not be processed.

Electronic Report Delivery Services allow Company to obtain reports and statements. The form and content of the reports and statements shall be determined by BBVA Compass.

Alerts Services allows Company to receive notifications related to specific events, balances or transactions. The Company may subscribe to receive alerts for certain scenarios within the ACH, Balance Reporting, Wire Transfer, ERD Reporting, and Positive Pay Services. Some alerts are delivered every day on a regular schedule while others are sent in real time depending on the alert type and configuration. BBVA Compass shall not be liable to Company FOR ANY DAMAGES INCURRED as a result of BBVA Compass' delayed delivery of the Alerts Service if such delayed delivery is caused, directly or indirectly, by circumstances or events outside the reasonable control of BBVA Compass, including, but not limited to, power failures, telecommunications failures, internet server outages, lack of cellular service, or failure by Company to provide BBVA Compass with accurate delivery instructions.

- The Corporate Administrator permissions the Alerts service to the authorized User(s). Each authorized User may select to receive their notices via phone, fax, e-mail, wireless device text, or via a combination of these delivery channels. Each message is customized to fit the particular channel through which it is being delivered. For added security, all alerts will mask the related account number(s). Phone and fax notifications may be delivered to anywhere in the continental US including Alaska, Hawaii, and Puerto Rico as well as in Canada. The wireless device messages are delivered in tiny text format.
- BBVA Compass shall not be liable to Company FOR ANY DAMAGES INCURRED for its failure to provide the Alerts Service if such failure is because of circumstances or events outside the reasonable control of BBVA Compass, including, but not limited to, power failures, telecommunications failures, internet server outages, lack of cellular service, or failure by Company to provide BBVA Compass with accurate delivery instructions.

- BBVA Compass' liability to Company for its failure to provide the Alerts Services is hereby specifically limited to the amount paid by Company to BBVA Compass for the Alerts Service. Further, BBVA Compass shall not be liable under any circumstances for any consequential, special, punitive, incidental, or similar damages arising from or in connection with the Alerts Service to be provided to Company by BBVA Compass.

- COMPANY WILL INDEMNIFY, TO THE EXTENT PERMISSIBLE BY STATE STATUTE, AND HOLD BBVA COMPASS, ITS OFFICERS, EMPLOYEES, AGENTS, AFFILIATES, ATTORNEYS, AND CONTRACTORS, HARMLESS FROM ANY CLAIM, LOSS, PENALTY, ASSESSMENT, COST, OR DAMAGE, WHETHER IN CONTRACT OR IN TORT (INCLUDING REASONABLE ATTORNEY'S FEES), AND ARISING OUT OF ANY ERRORS, NEGLIGENCE, ACTION, NON-ACTION, OR INVOLVEMENT BY COMPANY OR BBVA COMPASS, OR THEIR RESPECTIVE OFFICERS (INCLUDING INDIVIDUALS PORTRAYING THEMSELVES AS OFFICERS), EMPLOYEES, AGENTS, AFFILIATES, CONTRACTORS, AND ATTORNEYS, UNDER THIS AGREEMENT, OR IN CONNECTION WITH THE ALERTS SERVICE PROVIDED UNDER THIS AGREEMENT, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THOSE ASSERTED BY THIRD PARTIES FOR REIMBURSEMENT OR DAMAGES AND THOSE WHICH ARISE OUT OF OR UNDER THE ELECTRONIC FUNDS TRANSFER ACT, ANY APPLICABLE STATE ELECTRONIC FUND TRANSFER RULES OR REGULATIONS, OR ANY RULES OR GUIDELINES OF ANY AUTOMATED CLEARING HOUSE.

Loan Services allow a Company to: obtain information (including transaction history and account balances) on any loan or line of credit account that BBVA Compass has allowed to be included in the Online Services ("e-Accessible Loans"); make payments on any e-Accessible Loan, if permitted; and, if available, request advances on an e-Accessible Loan and (if the advance request is approved) transfer the advanced funds to a Company Account that is accessible through the Online Services.

2. **Internet Security.** Company shall designate in writing to BBVA Compass an individual (the "Corporate Administrator") to serve as its system and security administrator for Compass e-Access. The designating document must contain original signatures of the Corporate Administrator and a person whose signature appears on the Authorization Certificate for the BBVA Compass Treasury Management Services Agreement. The Corporate Administrator shall be responsible for (a) granting and revoking authority to designated users ("Designated Users") to access Compass e-Access and use the Online Services, including but not limited to applications accessed via Single Sign-On (b) defining the scope of authority (i) for each Designated User with respect to the Online Services selected by Company, and (ii) for each Authorized Wire User (defined below) with respect to Wire Transfer Services, if selected by Company, including the designation of individual amount and individual daily limits for Wire Transfer Services transactions, (c) defining those accounts maintained by Company at BBVA Compass for which each Designated User shall have access and responsibility, (d) determining which Designated Users shall receive reports delivered through Electronic Report Delivery Services (if that service is selected by Company), and (e) selecting a back-up system and security administrator from among the Designated Users (the "Back-Up Administrator") if the Company will have three or more Designated Users. The Corporate Administrator shall grant to the Back-Up Administrator (if applicable) the authority to perform the obligations of the Corporate Administrator in the Corporate Administrator's absence. Compass e-Access shall be accessed, and Online Services shall be conducted or transacted, only by the Corporate Administrator, by a Designated User or, with respect to Wire Transfer Services, by an Authorized Wire User. If Company

desires to change its Corporate Administrator, Company shall provide prior written notice to BBVA Compass of such change, signed by the new Corporate Administrator and a person whose signature appears on the Authorization Certificate for the BBVA Compass Treasury Management Services Agreement. The notice may be telefaxed to BBVA Compass, but it must be followed by a document with original signatures on it. No change of Corporate Administrator by Company shall be effective until accepted by BBVA Compass, and BBVA Compass has had a reasonable opportunity to update its records.

After Company has designated to BBVA Compass the identity of the Corporate Administrator, BBVA Compass shall provide the Corporate Administrator with the World Wide Web address of Compass e-Access on which the Online Services shall be accessible (the "Standard Compass e-Access Address") and, if BBVA Compass has developed a site specifically for use with a Mobile Device, the address for that site (the "Mobile e-Access Address").

BBVA Compass shall also provide the Corporate Administrator an identification code (the "Customer ID"), a password (the "Customer Password"), a user identification code ("User ID"), and a user password ("User Password"). The Corporate Administrator shall provide to each Designated User the Customer ID, the Customer Password and assign to each Designated User an individual User ID and User Password. The Corporate Administrator shall set-up each Designated User on Compass e-Access.

In addition to the IDs, Passwords and Company Codes described in this Section, each Corporate Administrator, Designated User, Authorized Wire User and Authorized ACH User (sometimes called a "User") will be required to select or create one or more alphanumeric codes (each, a "User Password"), images (each, a "Security Image"), phrases (each, a "Security Phrase"), question with a matching answer (each a "Challenge Question") or other types of security codes (referred to collectively as the "BBVA Compass Site IDs"). A User may be required to select separate BBVA Compass Site IDs for other online services provided by BBVA Compass. To gain access to Compass e-Access using a Mobile Device, a User may be required to select, create or provide alternative security codes or use other security methods (the "Alternative Security Methods"). The IDs, Passwords and Company Codes described in this Section, together with the BBVA Compass Site IDs and the Alternative Security Methods, are referred to as the "Security Codes." In selecting Security Codes, each User should select items that are different from any other security code that the User may have for other BBVA Compass products or for other secure accounts the User may have with others. The Security Codes must be used to gain access to Compass e-Access, and BBVA Compass will not allow access to Company Accounts through Compass e-Access without the Security Codes.

Company agrees that use of the Security Codes will authenticate the identity of each User and verify the instructions submitted through Compass e-Access. Security Images and Security Phrases or other items from the BBVA Compass Site ID will be presented to Users to help distinguish the Compass e-Access site from a site fraudulently created to look like this site (sometimes called a "phishing" or "pharming" site). Company agrees to instruct all Users that: (a) when attempting to log in to Compass e-Access through the Standard Compass e-Access Address, Users should not access a site that appears to be BBVA Compass' site but does not present the Security Image, Security Phrase, or other item that each User selected or created as personal BBVA Compass Site IDs; and (b) when attempting to log in using as Mobile Device and/or through the Mobile e-Access Address, Users will not be presented with their personal BBVA Compass Site IDs. In order to prevent unauthorized access to the Company Accounts and unauthorized use of Compass e-Access services, Company

agrees to maintain the confidentiality of the Security Codes, and to instruct all Users also to maintain the confidentiality of the Security Codes. Company also agrees to review promptly each statement sent by BBVA Compass for any Company Account that is accessible through Compass e-Access in order to detect any unauthorized transactions. To the fullest extent permitted by applicable law, Company is responsible for all transactions on Company Accounts initiated using the Security Codes. Company is responsible for maintaining the confidentiality of all Security Codes, and for implementing the necessary internal controls, balancing and reconciliation functions, and audit procedures to prevent unauthorized use of Compass e-Access.

Company agrees that the use of the Security Codes constitutes a commercially reasonable security procedure for Company. Company also agrees to be bound by all requests, communications, or other instructions to BBVA Compass that are initiated using Compass e-Access and in compliance with this security procedure (including any Book Transfers, Positive Pay Payment Instructions, Stop Payment Requests, payment orders for wire transfers and ACH entries, and requests for cancellation or amendment of payment orders for wire transfers and ACH entries), regardless of whether or not Company actually authorized the instruction. If any instruction initiated through Compass e-Access and accepted by BBVA Compass in compliance with this security procedure contains any error, to the full extent allowed by law, Company shall be liable for, and shall indemnify, to the extent permissible by State statute, BBVA Compass against any claims, losses and expenses BBVA Compass may incur that arises from or relates to the erroneous instructions. BBVA Compass' records demonstrating compliance with this security procedure will be deemed conclusive proof that the payment order received by BBVA Compass was authorized and that Company is bound by those instructions. Company agrees to download and install any and all security software required by BBVA Compass and to install all updates, patches and/or any other amendments or modifications to the same when directed by BBVA Compass to do so. Company will not be allowed to access the Compass e-Access website and utilize its services unless any and all required security software is installed on all desktop computers and laptop computers accessing Compass e-Access (not applicable to the mobile application).

Wire Transfers: To utilize wire transfer services via Compass e-Access, Company must execute and deliver to BBVA Compass the Compass e-Access Automated Funds Transfer Agreement, which shall be a condition to the Company's use of Wire Transfer Services. Designated Users of Compass e-Access that are not specifically authorized by the Company or the Corporate Administrator as Authorized Wire Users (as defined below) shall not be permitted access to Wire Transfer Services. With respect to Wire Transfer Services, Company has two options to authorize individuals to receive a randomly generated numeric authorization code and initiate Wire Transfer Services:

- 1. One Time Passcodes.** The Corporate Administrator may utilize Compass e-Access to authorize an individual or individuals to initiate wire transfers ("Authorized Wire Users"). Once authorized by the Corporate Administrator, Authorized Wire Users will be required to set up the process to receive an authorization code, good for one online session, to verify each wire transfer request in the form of a code delivered to the Authorized Wire User via email, text message or automated voice telephone call ("One Time Passcode"); or
- 2. Authentication Token.** The Company may select that each Authorized Wire User receive a physical token to receive authorization codes to initiate wire transfers ("Authorization Token"). To receive an Authorization Token, the Authorized Wire User must (i) be authorized by the Company to initiate wire transfers; (ii) provide certain information designated by BBVA Compass regarding each Authorized Wire User with which BBVA Compass can, when necessary, confirm the identification

of each Authorized Wire User. BBVA Compass will provide each Authorized Wire User that will utilize an Authentication Token with (i) a unique user identification code ("Wire User ID") the use of which permits general recognition of the Authorized Wire User by the BBVA Compass Wire Transfer Services automated system, and (ii) the Authentication Token. Each Authorized Wire User utilizing Authentication Tokens is required to select a personal identification number ("Personal ID") when first using the Wire Transfer Services, and to change that Personal ID periodically when prompted thereafter. If any Authorized Wire User utilizing Authentication Tokens does not select a Personal ID within ninety (90) days after receipt of the Authentication Token, BBVA Compass may disable the token.

To use the Wire Transfer Service, an Authorized Wire User must be set up for One Time Pass Codes or have an Authentication Token. If an Authentication Token is not requested by the Company, the default authorization methodology will be One Time Pass Codes.

Company agrees to instruct each Authorized Wire User: (i) to maintain the confidentiality and security of the Personal ID, and not to disclose this ID; (ii) to safeguard the security of the token; (iii) immediately to notify BBVA Compass if the token is lost and/or (iv) maintain the confidentiality and security of the process to initiate a One Time Passcode and any devices that may receive the same (including, but not limited to, computers, email accounts and cellular telephones).

An Authorized User should not request that One Time Passcodes be sent to unsecure devices. Company agrees to instruct and monitor each Authorized Wire User accordingly.

Company agrees to be bound by any wire transfers initiated in compliance with these procedures. **Company agrees to hold harmless BBVA Compass from and against any loss caused by the failure by any Authorized Wire User to select, change, or to maintain the confidentiality of the Personal ID, and/or the request that a One Time Passcode be sent to an unsecure device and expressly assumes the risk of loss with respect to any wire transfer initiated using any One Time Passcode, token or Personal ID that has not been maintained and/or protected according to the terms of this Agreement.**

BBVA Compass shall not be liable to Company FOR ANY DAMAGES INCURRED for its failure to provide the One Time Passcode if such failure is because of circumstances or events outside the reasonable control of BBVA Compass, including, but not limited to, power failures, telecommunications failures, internet server outages, lack of cellular service, or failure by Company or the Authorized Wire User to provide BBVA Compass with accurate and/or complete delivery instructions.

If the Corporate Administrator elects to authorize wire users via Compass e-Access utilizing One Time Passcodes, Company agrees that even though email is commonly used for many business communications, BBVA Compass cannot guarantee the security or delivery of any e-mail notice, and BBVA Compass will have no liability: (1) for any delays or failure in providing this e-mail notice to an Authorized Wire User, (2) if the e-mail is intercepted, altered and/or forwarded to any party other than the Authorized Wire User, or (3) if the e-mail is infected with intrusive or destructive programs during the delivery process. Company further agrees that BBVA Compass will have no liability: (1) for any delays or failure in providing text messages or cellular telephone calls to an Authorized Wire User, (2) if the text message or cellular telephone call is intercepted altered and/or forwarded to any party other than the Authorized Wire User, or (3) if the text message or cellular telephone call is infected with intrusive or destructive programs during the delivery process. Under no circumstances will BBVA Compass be liable for any consequential, special, punitive,

incidental, or other damages arising from or in connection with any delay or failure to provide any One Time Passcode.

If offered by BBVA Compass, in its discretion, Company may elect, with respect to one or more of its Accounts, to receive from BBVA Compass an automated confirmation message that BBVA Compass has received and executed a Wire Transfer Services transaction or payment order for each transaction initiated from the Accounts selected by Company ("Automated Confirmation"). If Company elects to receive Automated Confirmation, an Authorized Person shall provide BBVA Compass a list of Accounts for which the Company elects to receive Automated Confirmation and a telephone facsimile number (the "Notification Number") and/or e-mail address to which BBVA Compass will send the automated confirmation messages. BBVA Compass will send to the Notification Number and/or e-mail address an automated message regarding the receipt and execution of each transaction or payment order initiated through each Account selected by Company for Automated Confirmation. If Company elects to receive Automated Confirmation, Company agrees that it will diligently monitor the automated confirmation messages received from BBVA Compass and will act upon the information in a responsive manner. Company agrees that, even though email is commonly used for many business communications, BBVA Compass cannot guarantee the security or delivery of any e-mail notice, and BBVA Compass will have no liability: (1) for any delays or failure in providing this e-mail notice to Company, (2) if the e-mail is intercepted and altered and/or forwarded to any party other than Company, or (3) if the e-mail is infected with intrusive or destructive programs during the delivery process. Under no circumstances will BBVA Compass be liable for any consequential, special, punitive, incidental, or other damages arising from or in connection with any delay or failure to provide any e-mail notice. Company, not BBVA Compass, has final responsibility to confirm the receipt or transmission of any wire transmission to or from a Company Account.

If Company requests, based on technical or administrative constraints, that BBVA Compass perform all set-up functions for Company, BBVA Compass will do so; provided, however, that Company hereby acknowledges that Company and the Corporate Administrator remain responsible for all access to Compass e-Access and actions taken by the Corporate Administrator and Designated Users with respect to Online Services.

ACH Transactions: Designated Users of Compass e-Access that are not specifically authorized by the Company or the Corporate Administrator as Authorized ACH Users (as defined below) shall not be permitted access to Automated Clearing House Services. With respect to Automated Clearing House Services selected by Company, Company has two options to authorize individuals to receive a randomly generated numeric authorization code and access Automated Clearing House Services ("ACH Services"):

- 1. One Time Passcodes.** The Corporate Administrator may utilize Compass e-Access to authorize an individual or individuals to access ACH Services (collectively "Authorized ACH Users" or individually "Authorized ACH User"). Once authorized by the Corporate Administrator, Authorized ACH Users will be required to set up the process to receive an authorization code to verify transactions using the ACH Services ("ACH Transactions") in the form of a code, good for one online session, delivered to the Authorized Wire User via email, text message or automated voice telephone call ("One Time Passcode"); or
- 2. Authentication Token.** The Company may select that each Authorized ACH User receive an Authorization Token to initiate an ACH Transaction. To receive an Authorization Token, the Authorized ACH User must (i) be authorized by the Company to utilize ACH Services; (ii) provide certain information designated by BBVA Compass regarding each Authorized ACH User with which BBVA Compass can, when necessary, confirm the

identification of each Authorized ACH User. BBVA Compass will provide each Authorized ACH User that will utilize an Authentication Token with (i) a unique user identification code ("RSA User ID") the use of which permits general recognition of the Authorized ACH User by the BBVA Compass ACH Services automated system, and (ii) the Authentication Token. Each Authorized ACH User utilizing Authentication Tokens is required to select a personal identification number ("Personal ID") when first using ACH Services, and to change that Personal ID periodically when prompted thereafter. If any Authorized ACH User utilizing Authentication Tokens does not select a Personal ID within ninety (90) days after receipt of the Authentication Token, BBVA Compass may disable the token.

To use ACH Services, an Authorized ACH User must be set up for One Time Pass Codes or have an Authentication Token. If an Authentication Token is not requested by the Company, the default authorization methodology will be One Time Pass Codes.

Company agrees to instruct each Authorized ACH User: (i) to maintain the confidentiality and security of the Personal ID, and not to disclose this ID; (ii) to safeguard the security of the token; (iii) immediately to notify BBVA Compass if the token is lost and/or (iv) maintain the confidentiality and security of the process to initiate a One Time Passcode and any devices that may receive the same (including, but not limited to, computers, email accounts and cellular telephones).

An Authorized User should not request that One Time Passcodes be sent to unsecure devices. Company agrees to instruct and monitor each Authorized ACH User accordingly.

Company agrees to be bound by any ACH Transactions initiated in compliance with these procedures. **Company agrees to hold harmless BBVA Compass from and against any loss caused by the failure by any Authorized ACH User to select, change, or to maintain the confidentiality of the Personal ID, and/or the request that a One Time Passcode be sent to an unsecure device and expressly assumes the risk of loss with respect to any ACH Transaction initiated using any One Time Passcode, token or Personal ID that has not been maintained and/or protected according to the terms of this Agreement.**

BBVA Compass shall not be liable to Company FOR ANY DAMAGES INCURRED for its failure to provide the One Time Passcode if such failure is because of circumstances or events outside the reasonable control of BBVA Compass, including, but not limited to, power failures, telecommunications failures, internet server outages, lack of cellular service, or failure by Company or the Authorized ACH User to provide BBVA Compass with accurate and/or complete delivery instructions.

If the Corporate Administrator elects to authorize ACH Users via Compass e-Access utilizing One Time Passcodes, Company agrees that even though email is commonly used for many business communications, BBVA Compass cannot guarantee the security or delivery of any e-mail notice, and BBVA Compass will have no liability: (1) for any delays or failure in providing this e-mail notice to an Authorized ACH User, (2) if the e-mail is intercepted, altered and/or forwarded to any party other than the Authorized ACH User, or (3) if the e-mail is infected with intrusive or destructive programs during the delivery process. Company further agrees that BBVA Compass will have no liability: (1) for any delays or failure in providing text messages or cellular telephone calls to an Authorized ACH User, (2) if the text message or cellular telephone call is intercepted altered and/or forwarded to any party other than the Authorized ACH User, or (3) if the text message or cellular telephone call is infected with intrusive or destructive programs during the delivery process. Under no circumstances will BBVA Compass be liable for any consequential, special, punitive,

incidental, or other damages arising from or in connection with any delay or failure to provide any One Time Passcode.

Company acknowledges that while BBVA Compass will attempt to ensure that the Customer ID, Customer Password, all User IDs, all User Passwords, all Wire User IDs, all RSA User IDs, all Personal IDs, all One Time Passcodes and all electronic communications between Company and BBVA Compass are encrypted, scrambled or otherwise protected against interception by a person whose access to Compass e-Access is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and BBVA Compass through Compass e-Access. Company, the Corporate Administrator, each Designated User and, if applicable, each Authorized Wire User and/or each Authorized ACH User are responsible for safekeeping the Customer ID, the Customer Password, all User IDs, all User Passwords, and, if applicable, all Wire User IDs, RSA User IDs and Personal IDs (singularly, a "Company Code," and collectively, the "Company Codes") and, with respect to Wire Transfer Services and/or ACH Services (if applicable), One Time Passcodes and authentication tokens. Company, the Corporate Administrator, Designated Users and, if applicable, each Authorized Wire User and/or each Authorized ACH User shall not, at any time, permit access to Compass e-Access by any person who does not need to obtain access to Compass e-Access consistent with Company's rights hereunder.

If a Corporate Administrator loses or forgets a Customer ID or Customer Password, the Back-Up Administrator, or, if there is none, another Designated User, should provide assistance. If a Corporate Administrator loses or forgets his or her User ID or a User Password, the Corporate Administrator should contact BBVA Compass for assistance. If a Designated User loses or forgets a Customer ID, Customer Password, User ID or a User Password, the Corporate Administrator should provide assistance.

If an Authorized Wire User and/or an Authorized ACH User (collectively referred to herein as "Authorized User") loses an authentication token for Wire Transfer Services and/or ACH Services, the Authorized User shall immediately notify BBVA Compass by telephone, at which time BBVA Compass will disable the lost token. An Authorized Person shall thereafter request from BBVA Compass in writing a replacement token. The request for a replacement token must be signed by the Authorized Person and may be telefaxed to BBVA Compass, but the telefax must be followed by the original written request bearing the Authorized Person's original signature. After receiving a written communication requesting a replacement token, BBVA Compass will mail a replacement token directly to the Authorized User who lost the token. The Authorized User is required to select a new Personal ID when first initiating a transaction using the replacement token, and to change the Personal ID periodically thereafter. **The consequences of an Authorized User's failure to select, to change or to protect the confidentiality of a Personal ID as required by this Agreement is set forth above in this Section 2.**

If an Authorized User loses or forgets a Wire User ID and/or an RSA User ID, the individual shall contact BBVA Compass by telephone. BBVA Compass will authenticate the individual's identification using the information regarding the individual provided by an Authorized Person in the implementation forms and communicate to the individual the applicable Wire User ID and/or RSA User ID.

If an Authorized User loses or forgets a Personal ID associated with an authentication token, the User shall contact BBVA Compass by telephone. BBVA Compass will authenticate the User's identification using the information regarding the User provided by an Authorized Person in the implementation forms, and BBVA Compass will re-set the token with a new Personal ID, which the User must change when first initiating a wire

transfer using the re-set token and periodically thereafter. **The consequences of an Authorized User's failure to change or to protect the confidentiality of the new Personal ID as required by this Agreement is set forth above in this Section 2.**

If Company believes that one or more Company Codes have become known or obtained by unauthorized persons (whether or not employed by Company), the following procedures apply: if, under the terms of this Section 2, (a) the Company Code is one for which the Corporate Administrator would be responsible for changing if the Company Code was lost, the Corporate Administrator shall immediately change the Company Code; or (b) the Company Code is one for which the Corporate Administrator or an Authorized User, if applicable, would be required to contact BBVA Compass if the Company Code was lost, the Corporate Administrator or Authorized User, if applicable, shall immediately notify BBVA Compass. If Company believes that an authentication token has become known or obtained by unauthorized persons (whether or not employed by Company), it is the responsibility of each Authorized User and an Authorized Person immediately to follow the procedures set forth above in this Section 2 for lost authentication tokens. Additionally, BBVA Compass may change or disable any Company Code or authentication token at any time and for any reason. If BBVA Compass takes such action, BBVA Compass will make every reasonable effort to notify Company promptly. BBVA Compass assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company's agents or representatives or anyone else for unauthorized disclosure or use of Company Codes or authentication tokens. Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for the Company.

If Company is unable to access Compass e-Access or transact or conduct any Online Services, Company shall immediately notify BBVA Compass of such inability but shall transact or conduct such service through other means available to Company.

3. **Authorized Transactions.** BBVA Compass may rely upon any Online Service transacted or conducted through or by use of Compass e-Access as properly authorized by Company (including, without limitation, any transfer of funds, any advance from an e-Accessible Loan or any instructions or information related thereto it receives from Company through Compass e-Access). The Corporate Administrator, each Designated User and, if applicable, each Authorized User to whom BBVA Compass or the Corporate Administrator has provided access to Company Codes, or who has otherwise obtained access to Company Codes, is deemed an authorized representative of Company for purposes of all Online Services transacted or conducted through or by use of Compass e-Access, whether or not such person is authorized by this Agreement or any other agreement between BBVA Compass and Company. All Authorized Users who have received authentication tokens from BBVA Compass, or anyone who has otherwise received an authentication token by any means, are deemed authorized representatives of Company for purposes of Wire Transfer Services and/or ACH Services transacted or conducted through or by use of Compass e-Access, whether or not such person is authorized by this Agreement or any other agreement between BBVA Compass and Company.

Company acknowledges and agrees that its Corporate Administrator and/or a Designated User is authorized to request advances on any e-Accessible Loans where advances are available, regardless of whether the Corporate Administrator and/or the Designated User is authorized to do so under the applicable loan documentation. Company authorizes BBVA Compass to process and make advances on e-Accessible Loans

without further verification or authorization if requested by the Corporate Administrator and/or a Designated User in accordance with the procedures and processes set forth herein.

Notwithstanding the terms of any Treasury Management Services Agreement or any other agreement between Company and BBVA Compass, once Company accesses Compass e-Access to transact or conduct any Online Service, BBVA Compass will not verify that the transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by BBVA Compass. BBVA Compass is authorized by Company to process transactions in accordance with information BBVA Compass receives electronically from Company. Company shall be solely responsible for the information contained in the instructions and BBVA Compass shall have no responsibility for erroneous data provided by Company. **BBVA Compass shall have no liability for losses resulting from or related to Company's failure to limit access to Compass e-Access or maintain the confidentiality of the Company Codes and authentication tokens.** At the sole discretion of BBVA Compass, BBVA Compass may also require the use of other identifying information or other security procedures for certain Online Services and BBVA Compass may add to, change or delete any security procedure.

4. Transaction Processing.

Wire Transfers: Wire transfers are processed subject to the conditions and limitations provided below. For the purposes of this Agreement, the following definitions apply:

- A "Domestic Wire Transfer" means an outgoing wire transfer in U.S. Dollars (USD) sent either:
 - (i) To the beneficiary's account at a bank located in the United States, or
 - (ii) To a bank located in the United States, for credit to the beneficiary's account at a bank located outside the United States. This kind of a transfer is commonly referred to as an "International Fed Wire."
- A "Drawdown Wire Transfer Request" is an instruction by Company to debit an account held by Company or another party at a different financial institution. The party holding the account to be debited must authorize the requested Drawdown Wire Transfer. If the transfer is authorized, Company will receive an incoming wire for deposit into Company's account specified in the Drawdown Request.
- An "International Wire Transfer" means an outgoing wire transfer sent either:
 - (i) In USD to the beneficiary's account at a bank located outside the United States, or
 - (ii) In foreign currency.
- (a) Domestic Wire Transfers and Drawdown Requests: Domestic wire transfers and Drawdown Wire Transfer Requests initiated through Compass e-Access and received by BBVA Compass from 8:00 a.m. to 4:30 p.m. Central Time on a day that both BBVA Compass and the Federal Reserve are open for business will be processed the same day; however, if the Federal Reserve is closed on a day BBVA Compass is open for business, the wire transfer will be processed by the Federal Reserve on the next business day the Federal Reserve is open for business. Domestic wire transfers and Drawdown Wire Transfer Requests initiated through Compass e-Access and received by BBVA Compass after 4:30 p.m. Central Time on a day BBVA Compass is open for business or at any time on a day on which BBVA Compass is not open

for business will be processed on the next day BBVA Compass and the Federal Reserve are open for business.

- (b) Drawdown Wire Transfer Requests: BBVA Compass assumes no responsibility for the failure by any financial institution receiving a Drawdown Wire Transfer Request to approve the Request, and has no duty to notify Company if the Request is not approved.
- (c) International Wire Transfers: International wire transfers in USD initiated through Compass e-Access and received by BBVA Compass from 8:00 a.m. to 3:30 p.m. Central Time on a day that BBVA Compass is open for business will be processed the same day. International wire transfers in U.S. Dollars initiated through Compass e-Access and received by BBVA Compass after 3:30 p.m. Central Time on a day that BBVA Compass is open for business or at any time on a day on which BBVA Compass is not open for business will be processed on the next day BBVA Compass is open for business.

International Wire Transfers in foreign currency must be initiated through Compass e-Access and received by BBVA Compass between 8:00 a.m. to 2:30 p.m. Central Time on a day that BBVA Compass is open for business will be processed the same day.

International wire transfers in foreign currency initiated through Compass e-Access and received by BBVA Compass after 2:30 p.m. Central Time on a day that BBVA Compass is open for business or at any time on a day on which BBVA Compass is not open for business will be processed on the next day BBVA Compass is open for business.

For any International Wire Transfer initiated in Mexican Pesos, the scheduled "Value Date" (i.e., the date the wire transfer posts to the beneficiary's account) will be the same business day on which processing of the wire transfer is completed. For any International Wire Transfer initiated in Canadian Dollars, the scheduled Value Date will be one (1) business day after the day on which processing of the wire transfer is completed. For International Wire Transfers initiated in any other foreign currency, the scheduled Value Date will be two (2) business days after the day on which processing of the wire transfer is completed. The foreign currency exchange rates quoted for International Wire Transfers on Compass e-Access will be used for each foreign currency International Wire Transfer initiated via Compass e-Access UNLESS Company obtains a custom rate and related confirmation number from BBVA Compass and properly enters the custom rate confirmation number in the designed field when initiating the wire transfer. The foreign currency exchange rates quoted on Compass e-Access may differ from the exchange rates quoted by BBVA Compass for other purposes. If BBVA Compass makes an error in entering any foreign currency exchange rate on Compass e-Access, BBVA Compass reserves the right, in processing any International Wire Transfer initiated at the incorrect exchange rate, to substitute the correct exchange rate or to decline to process that wire transfer, as BBVA Compass may determine in its sole discretion.

Automated Clearing House (ACH) Transactions: ACH transactions initiated through Compass e-Access and received by BBVA Compass by 6:00 p.m. Central Time on a day BBVA Compass is open for business will be processed the same day. ACH transactions initiated through Compass e-Access and received by BBVA Compass after 6:00 p.m. Central Time on a day BBVA Compass is open for business or on a Saturday, Sunday, or holiday on which BBVA Compass is not open for business will be processed on the next day BBVA Compass is open for business.

Recurring ACH Payments. The Recurring ACH Payment feature available in the Compass e-Access system permits each of Company's Authorized ACH Users to establish a standing order of the Company to BBVA Compass to submit a group of one or more Entries (referred to as an "ACH Batch") on an automated and recurring basis, without further act or instruction by Company (a "Recurring ACH Payment"). In setting up a Recurring ACH Payment on the e-Access system, Company shall specify when each ACH Batch is to be transmitted, including:

- The Start Date, which is the date requested by Company as the Settlement Date for the first transmission of this ACH Batch.
- The Activation Time, which is the time at which Company requests the Compass e-Access system to activate each ACH Batch.
- The Recurrence Pattern, which is the frequency with which Company requests the Compass e-Access system to activate each ACH Batch: daily, weekly, monthly or yearly, and the day(s) within each week, month or year.
- The Back Dated or Future Dated designation, which indicates whether an ACH Batch should be back-dated or future-dated if the requested Settlement Date is a holiday or other non-business day.

The Compass e-Access system will activate and, subject to the overall terms of this Agreement and any additional approval required of Company, BBVA Compass will process each Recurring ACH Payment according to the instructions provided by Company through the Compass e-Access system. If the Company has elected to require additional approval for recurring ACH Payment, BBVA Compass will not process any ACH Batch until the necessary approval has been provided by Company. With respect to each properly established ACH Recurring Payment, BBVA Compass has (a) no duty to make any inquiries regarding the performance of any contract or the completion of any transaction between Company and the recipient of any Entry, (b) no obligation to Company other than to transmit each ACH Batch according to Company's instructions, and (c) no liability if BBVA Compass fails to transmit any ACH Batch (i) due to an Overlimit Entry, or (ii) if Company is using Prepaid ACH services and there are insufficient funds in the designated Company Account to execute that ACH Batch. In order to cancel a Recurring ACH Payment, Company must use the Compass e-Access system (a) to delete the recurring payment feature from the ACH Batch, (b) to disable the ACH batch, or (c) to delete the ACH Batch.

Book Transfers: Book Transfers initiated through Compass e-Access and received by BBVA Compass from 7:00 a.m. to 9:00 p.m. Central Time on a day BBVA Compass is open for business will be posted to the applicable accounts the same day. Book Transfers initiated through Compass e-Access and received by BBVA Compass at any time other than from 7:00 a.m. to 9:00 p.m. Central Time or on Saturday, Sunday, or holiday on which BBVA Compass is not open for business will be posted to the applicable account on the next day BBVA Compass is open for business.

Stop Payment Requests: Stop Payment Requests initiated through Compass e-Access and received by BBVA Compass from 7:00 a.m. to 9:00 p.m. Central Time on a day BBVA Compass is open for business will be filed in relation to the applicable account the same day. Reasonable notification of a Stop Payment Request must be given to BBVA Compass at least twenty-four (24) hours prior to the relevant item being presented for payment. Stop Payment Requests initiated through Compass e-Access and received by BBVA Compass any time other than from 7:00 a.m. to 9:00 p.m. Central Time on a day BBVA Compass is open for business will not be accepted by Compass e-Access, will not be processed, and are not valid.

To the extent the procedures and timing requirements set forth herein for stop payment requests initiated through Compass e-Access are inconsistent with any provisions applicable to stop payment requests set forth in the Uniform Commercial Code, then those provisions are deemed to be varied by agreement as contemplated by Section 1-302 of the Uniform Commercial Code.

5. **Grant of License.** BBVA Compass hereby grants Company a limited, nonexclusive, non-transferable, limited term, royalty-free, revocable sublicense to use Compass e-Access and the software creating, maintaining and supporting Compass e-Access (the "Software") and the printed user materials provided in connection therewith (the "Documentation") solely to conduct transactions in connection with the Online Services, for Company's internal business purposes only. Except as specifically provided herein, BBVA Compass does not grant to Company any other right or license, express or implied. Company may not sublicense, sell, lease, distribute or provide access to Compass e-Access, the Software or Documentation to any third parties, nor use the Software or Documentation in a service bureau, time-sharing or other similar arrangement, nor make any other use of the Software or Documentation that is not expressly permitted hereunder. BBVA Compass or a third party are the exclusive owners of and shall retain all right, title and interest in and to Compass e-Access, the Software, the Documentation and the Intellectual Property Rights (as defined herein).

6. **Equipment.** In connection with its use of Compass e-Access and Online Services for the purposes provided in this Agreement, or otherwise, Company shall obtain Internet browser software specified by BBVA Compass. Company shall be solely responsible for ensuring equipment and software compatibility with Compass e-Access and Online Services. All hardware and telecommunications equipment will be purchased and maintained by Company.

7. **BBVA Compass Representations and Warranties.** Subject to all terms of this Agreement, BBVA Compass warrants that it has the right to grant the sublicense to the Software and Documentation. In the event the Software or Documentation, or any portion thereof, is held to constitute an infringement of any third party's rights, and use thereof is enjoined, BBVA Compass shall, at its election: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Software and Documentation.

8. **Limitation of Liability; Indemnity.** Notwithstanding any other provision of this Agreement or any other agreement between BBVA Compass and Company, neither BBVA Compass nor any of its suppliers, licensors, service providers or vendors (collectively, including BBVA Compass, the "Providers") shall have any liability for any liabilities, losses, damages, claims, judgments, costs or expenses (collectively, "Damages") that Company asserts or sustains as a result of Company's use of Compass e-Access or Online Services.

The liability of BBVA Compass or any other Provider for any Damages asserted by Company arising as a result of the acts or omissions of any Provider, except as may be the result of criminal actions, gross negligence, theft or fraud by employees or third parties authorized by BBVA Compass, shall be limited to interest on the funds at issue at the "federal funds rate" paid by BBVA Compass at the close of business on each day such act or omission remains uncorrected; provided, however, if BBVA Compass or such other Provider is unable to recover funds from a person or entity who or which receives such funds as a result of such Provider's acts or omissions and who has no claim to such funds, such Provider shall be liable for Company's actual loss, not to exceed the amount of unrecovered funds to which such unauthorized recipient has no claim, plus interest rate described above.

Notwithstanding any other provision of this Agreement, no Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform

any obligation hereunder which is caused by fire, natural disaster, strike, civil unrest, any inoperable communications facilities or any other circumstance beyond the reasonable control of BBVA Compass or such other Provider. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages.

Company shall indemnify, to the extent permissible by State statute, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all Damages imposed upon or incurred by a Provider or in any way relating to this Agreement, Compass e-Access or Online Services. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA Compass and the obligation of Company to indemnify BBVA Compass, whether under this Agreement or any other agreement between BBVA Compass and Company applicable to the Online Services shall apply equally to all other Providers with respect to access to or use of, or any Online Service transacted through or by use of, Compass e-Access.

9. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, COMPASS E-ACCESS, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED FOR COMPANY'S USE DURING THE TERM HEREOF "AS IS" AND "WHERE IS", AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BBVA COMPASS AND THE OTHER PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES AND DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH REGARD TO COMPASS E-ACCESS, THE SOFTWARE OR THE DOCUMENTATION, OR USE OF COMPASS E-ACCESS BY COMPANY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY AND NON-INFRINGEMENT. BBVA COMPASS DOES NOT WARRANT THAT THE OPERATION OF COMPASS E-ACCESS OR SOFTWARE WILL BE UNINTERRUPTED, ERROR FREE OR FREE FROM ANY OTHER PROGRAM LIMITATIONS. BBVA COMPASS DOES NOT MAKE ANY REPRESENTATION REGARDING THE USE OR THE RESULTS OF THE USE OF COMPASS E-ACCESS, THE SOFTWARE OR THE DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. COMPANY ACKNOWLEDGES THAT IT MUST PROVIDE ALL EQUIPMENT AND PROVIDE AND MAINTAIN SERVICE THROUGH AN INTERNET SERVICE PROVIDER ("ISP") SUITABLE TO ACCESS COMPASS E-ACCESS AND IS SOLELY RESPONSIBLE FOR ALL FEES, COSTS AND CHARGES ASSOCIATED WITH AND MAINTENANCE OF SUCH EQUIPMENT OR SERVICE. COMPANY ACKNOWLEDGES THAT ITS ISP MAY HAVE UNINTENDED EFFECTS ON COMPANY'S USE OF COMPASS E-ACCESS AND THE ABILITY TO CONDUCT OR TRANSACT ONLINE SERVICES (INCLUDING, WITHOUT LIMITATION, COMPANY'S ABILITY TO ACCESS COMPASS E-ACCESS), AND THAT BBVA COMPASS SHALL HAVE NO RESPONSIBILITY FOR SUCH EFFECTS. COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH BBVA COMPASS' COMPUTERS, AND ASSUMES THE RISK THAT BBVA COMPASS' COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. COMPANY FURTHER ACKNOWLEDGES THAT BBVA COMPASS SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR THE SATISFACTORY PERFORMANCE OF COMPANY'S HARDWARE AND SOFTWARE USED TO INITIATE OR RECEIVE COMMUNICATIONS OVER THE INTERNET. COMPANY ALSO ACKNOWLEDGES THAT ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF COMPASS E-ACCESS IS DONE AT

COMPANY'S OWN DISCRETION AND RISK AND THAT COMPANY WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO COMPANY'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

Company's right to access and submit transactions through Compass e-Access.

COMPASSVIEW® SERVICES

10. **Proprietary Rights.** Company acknowledges that BBVA Compass or the other Providers shall retain all rights, title and interests in and to Compass e-Access, the Software (including, without limitation, the source code, listings, magnetic media and any support materials related thereto) and Documentation, as well as the ideas and concepts incorporated in those items, and all modifications, improvements and enhancements thereof and additions thereto, including ownership of all trade secrets, copyrights and other associated proprietary and intellectual property rights pertaining thereto (collectively, the "Intellectual Property Rights"), except as granted hereunder. Company shall not take any action that is inconsistent with the Intellectual Property Rights of BBVA Compass or any Provider, nor shall it take any actions or engage in any conduct that violates the Intellectual Property Rights of BBVA Compass or any other Provider.

The Software and Documentation include trade secrets and other proprietary information of BBVA Compass and its suppliers, licensors, service providers and vendors and are confidential property of such person(s) or legal entity(ies). Company shall treat as confidential and shall not disclose or otherwise make available the Software, the Documentation (collectively, the "Confidential Information"), in any form, to any person other than Company's employees who have a need to know such Confidential Information. Company shall not attempt to nor shall it reverse engineer, disassemble, decompile or otherwise attempt to derive source code from Confidential Information, make the Confidential Information available to any third parties, modify, adapt, translate or create derivative works based upon such Confidential Information, or permit or authorize any third party to do any of the foregoing.

Company will instruct its employees who have access to the Confidential Information to keep the same confidential, by using the same care and discretion which Company uses with respect to its own confidential property and trade secrets. Company agrees that it shall not take any action to change or make any modification to Compass e-Access or the Software.

11. **Company's Additional Representations, Warranties and Covenants.** Company represents and warrants that each electronic communication submitted to BBVA Compass by the Company by use of Compass e-Access fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a "Consumer" as defined in Section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (b) that all transactions initiated by Company using Compass e-Access are for commercial purposes, and not for personal or household purposes.
12. **Termination.** Notwithstanding any other provision regarding termination set forth herein or in any other agreement between BBVA Compass and Company, BBVA Compass may terminate Company's access to and its ability to transact Online Services through Compass e-Access at any time, effective immediately. BBVA Compass shall use reasonable efforts to communicate notice of the termination to Company promptly, and will thereafter provide written confirmation of the Termination if the initial notice of termination was not communicated in writing. BBVA Compass may require Company to execute additional documents or agreements to continue to conduct or transact Online Services through or by use of Compass e-Access at any time. The terms and provisions of Sections 5, 8, 9 and 10 of this Agreement shall survive the termination of this Agreement and

Upon Company's submission of a request for CompassView Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, and in addition to its agreements set forth below with respect to provisions applicable generally to CompassView Services Company agrees:

Upon Company's submission of a request for CompassView Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, and in addition to its agreements set forth below with respect to provisions applicable generally to CompassView Services Company agrees:

1. **PC Access.** Use of the Program (as hereinafter defined) shall be subject to the terms and conditions contained in this Agreement applicable to the Program and Software (as hereinafter defined), all operating procedures established from time to time by BBVA Compass, Company's completion and delivery to BBVA Compass of all questionnaires and information required for the Service Instructions for the service, and all applicable state and federal laws and regulations.
2. **Software Security.** The Software requires the Company to designate a "System Administrator" to maintain password security and grant software access authorization to designated users. After the "System Administrator" has followed the instructions from the User Manual for assigning passwords to designate users, each designated user is responsible for safekeeping their individual password. The "System Administrator" is responsible for adding or deleting users and monitoring their corresponding passwords. BBVA Compass assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company's agents or representatives for unauthorized disclosure or use of the password. Company agrees that the security procedures in this Section constitute commercially reasonable security procedures for the Company. Company accepts sole responsibility for safeguarding information regarding the security password provided for in using the Software and for any unauthorized or fraudulent use of the Software purportedly on Company's behalf. Company may not, at any time, disclose or disseminate the Software to any person who does not need to obtain access to the Software or the Program consistent with Company's rights under this Agreement. Under no circumstances may Company "unlock" the code of the Software, as the term is generally used in the trade. BBVA Compass claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Software, and in all system documentation related to the Software, as unpublished works.

Company acknowledges that, in the event of Company's breach of any of the provisions, terms or conditions of any CompassView Services, BBVA Compass will not have an adequate remedy in money or damages. BBVA Compass shall therefore be entitled to obtain an injunction against the breach from any court of competent jurisdiction immediately upon request. BBVA Compass' right to obtain injunctive relief shall not limit its right to seek further remedies.

Company's obligations hereunder shall remain in effect for as long as Company continues to possess or use the Software or any trade secrets derived therefrom.

Company may use the program (to the extent then available and as modified or upgraded from time to time) supplied by BBVA Compass to Company (the "Program"), together with the software containing the Program (the "Software") to retrieve and view images of paid checks, other paper debit items, and paper credit items from a CD-ROM that contains images of items

posted during the Company's designated statement period. Company may also request that paid checks or other MICR encoded items from a prior historical period be imaged onto a CD-ROM. BBVA Compass shall have no liability to Company for checks or other items from a prior historical period that are destroyed prior to imaging, provided that BBVA Compass will provide Company with a photocopy of checks or other items destroyed prior to imaging that were drawn on an account maintained by Company at BBVA Compass. Company acknowledges that some checks or items from a prior historical period may not be in a physical condition adequate for imaging, and Company agrees to pay any processing fees for checks or items that are not capable of imaging and charges for the return of those checks and items.

PROVISIONS APPLICABLE TO SECURE FTP AND COMPASSVIEW SERVICES

The following provisions are each applicable to Secure FTP, and CompassView Services and are in addition to the provisions set forth above that are applicable specifically to those services. Upon Company's submission of a request for and the approval of the Service Instructions for any of these services, or upon its use of any of these services, whichever occurs first, Company agrees:

1. **Grant of Sub-License.** BBVA Compass grants to Company, and Company accepts from BBVA Compass, a nontransferable, nonexclusive right and sublicense to use the current version of the Software for, as applicable and as requested by Company, Secure FTP, or CompassView Services. The Software shall be used solely by individuals designated by Authorized Persons of Company as "System Administrators" (who may then designate and monitor the actual users of the Software and any limitations of their use). Company agrees to pay a one time fee for its sublicense of the Software. As used in these provisions applicable to Secure FTP, and CompassView Services, the terms "Program" and "Software" have the meanings as used, respectively, in the provisions of this Agreement specifically applicable to those services.
2. **Copies.** Company agrees that the source code and listings of Software shall not be copied except for backup and archival purposes. Software may not be copied onto any media (e.g., magnetic tape, paper tape, disk memory cartridges, read-only memory, etc.) for any other purpose without BBVA Compass' prior written authorization.
3. **Ownership and Use of Software.** The Software and all copies of the Software including partial copies, modifications or updated programs, are proprietary to BBVA Compass and its licensor and title to the Software remains in BBVA Compass' licensor. All applicable rights to patents, copyrights, trademarks and trade secrets in the Software are and shall remain in BBVA Compass' licensor. Company has no right to sell, assign, or in any other manner transfer or encumber the Software. Any modifications or additions to the Software made by Company shall not reduce BBVA Compass' rights or the responsibilities of Company under and this Agreement. At BBVA Compass' request, all Software (and copies thereof) shall be returned to BBVA Compass upon the termination of this Agreement.
4. **Agreements of Company.** In connection with its use of the Program and Software for the purposes provided in this Agreement, or otherwise, Company agrees to purchase hardware, software, support services, communication equipment and links as specified by BBVA Compass. Company shall be solely responsible for ensuring equipment compatibility with BBVA Compass' equipment and the Program. All hardware and phone line(s) will be purchased and maintained by Company.
5. **Modifications; Format and Media.** Company acknowledges and agrees that, from time to time, the Software may be modified. BBVA Compass agrees to convey any modifications to Company promptly upon receipt by BBVA Compass, and Company agrees to utilize the modifications as so instructed. However, BBVA Compass has no responsibility for the format and media guidelines, or any other characteristics of the Software, other than its obligation to make reasonable efforts to notify its licensor of problems when requested in writing by Company.
6. **Confidentiality.** The source code, listings, magnetic media, and any Company support materials and documentation supplied under this Agreement, as well as the ideas and concepts incorporated in those items, are confidential to and trade secrets of BBVA Compass and its licensor ("PC Confidential Information"). Company agrees to provide PC Confidential Information only to those employees, agents, and independent contractors who are required to know of its existence. Company shall inform all such individuals of the confidential nature of the PC Confidential Information, and such persons shall be bound by the terms and conditions of this Agreement. Company further agrees to take all other actions necessary or appropriate to preserve the confidentiality of the PC Confidential Information and to protect and secure the Software in a manner consistent with BBVA Compass' rights. Except as specifically provided in this Agreement, Company agrees not to publish, disclose, display, or otherwise make available any PC Confidential Information without the advance written consent of BBVA Compass.
7. **Company's Additional Representations, Warranties and Covenants.** Company represents and warrants that all instructions or communications submitted to BBVA Compass by the Company by use of the Program and the Software fully satisfies and complies with all applicable requirements of all applicable laws and regulations. Company expressly warrants (a) that Company is not a "Consumer" as defined in section 205.2(e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (b) that all transactions initiated by Company using the Program or Software are for commercial purposes, and not for personal or household purposes.
8. **BBVA Compass' Representations and Warranties.** Subject to all terms of this Agreement, BBVA Compass warrants that it has the right to grant the sub-license to the Software. In the event the Software of any portion of the Software is held to constitute an infringement of any third party's rights, and use of the Software by Company is enjoined, BBVA Compass shall, at its election: (a) promptly procure the right for Company; or (b) notify Company of its intent to discontinue use of the Software.
9. **Disclaimer of Warranty.** COMPANY ACKNOWLEDGES THAT THE SOFTWARE MUST INTERFACE WITH BBVA COMPASS' COMPUTERS, AND ASSUMES THE RISK THAT BBVA COMPASS' COMPUTERS MIGHT NOT BE OPERATIONAL OR COMPATIBLE AT ALL TIMES. EXCEPT AS PROVIDED IN THE WARRANTY BELOW, BBVA COMPASS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE SOFTWARE OR ITS USE AND DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY ACKNOWLEDGES THAT THE SOFTWARE AND MAY NOT OPERATE ERROR-FREE OR WITHOUT INTERRUPTION. COMPANY AGREES THAT BBVA COMPASS SHALL NOT HAVE LIABILITY TO COMPANY BASED ON NONPERFORMANCE, DEFECT OR FAILURE OF THE SOFTWARE OR BBVA COMPASS' COMPUTER TO PERFORM PROPERLY.
10. **Warranty and Exclusive Remedy.** BBVA Compass does not warrant that the Software is error-free and BBVA Compass shall not be liable for any losses or damages associated with any errors in the Software. If Company discovers what it believes to be an error in the Software, it shall bring the error to the attention of BBVA Compass. Upon verification of the error, BBVA Compass shall request its vendor to make reasonable efforts to correct the error or find alternative means of

accomplishing the task in question provided that neither BBVA Compass nor its vendor shall be obligated to correct, cure, or otherwise remedy any nonconformity or defect in the Software if Company has made any changes to the Software, if the Software has been misused or damaged in any respect, or if Company has not reported to BBVA Compass the existence and nature of such nonconformity or defect promptly upon its discovery. If BBVA Compass or its vendor are unable to do this, Company may, at its option, terminate the service. Company shall not receive any refund. This right to terminate constitutes Company's sole and exclusive remedy for any failure of the Software to operate properly or failure to operate in accordance with its documentation.

which are accessible through an applicable regional clearing house association.

- (j) "Rules" mean the operating rules and operating guides of the applicable regional clearing house association and the National Automated Clearing House Association ("N.A.C.H.A.").
- (k) "Settlement Date" means, with respect to any Entry, the date on which such Entry is reported to the account of BBVA Compass by the applicable Federal Reserve Bank in accordance with the Rules.
- (l) "Software" means the computer software used in connection with transfers made under this Agreement. All capitalized terms not defined in this Agreement shall have the meanings set forth in the Rules.

AUTOMATED CLEARING HOUSE SERVICES

Upon Company's submission of a request for Automated Clearing House Services ("ACH Services") and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees:

1. **Definitions.** In addition to the capitalized terms defined elsewhere in this Agreement the following terms shall have the following meanings:
 - (a) "Account" means any account at BBVA Compass owned by Company, whether a deposit, clearing, investment, special, or general account, into which or from which Company requests or authorizes Funds to be transferred.
 - (b) "Customer" means the person, entity or other organization holding the account at a Participating Depository Institution to which an Entry relates. The term "Customer" includes, without limitation, Company's customers and the employees of those customers, Company's employees and, with respect to the concentration of Funds, Company and its affiliates.
 - (c) "Designated Persons" at Company shall mean the individuals designated by an Authorized Person (or by a systems manager designated by an Authorized Person) to BBVA Compass in writing who shall be the Designated Persons for purposes of this Agreement.
 - (d) "Entry" or "Entries" mean an electronic transfer of Funds to Company's accounts from third party accounts or from Company's accounts to third party accounts and for automatic deposit programs.
 - (e) "Entry Settlement Limit" means the maximum aggregate amount of In-Process Entries permitted to be outstanding at any time, which amount shall be separately communicated to Company by BBVA Compass in writing from time to time.
 - (f) "Funds" means Company's funds held at BBVA Compass or another financial institution which are available for transfer under this Agreement, whether held in the form of investments, instruments, or balances.
 - (g) "In-Process Entries" means the aggregate dollar amount of all credit or debit Entries initiated by Company and in process on any date for which settlement has not occurred with respect to credit Entries, or the applicable period for the return of items has not expired with respect to debit Entries.
 - (h) "Overlimit Entry" means an Entry the amount of which would cause the aggregate amount of In-Process Entries to exceed the Entry Settlement Limit.
 - (i) "Participating Depository Financial Institutions" means, collectively, BBVA Compass and all other financial institutions holding accounts of Company and Customers
2. **Transfer Services Authorization.** Company authorizes and directs BBVA Compass upon a Designated Person's request and as otherwise permitted by this Agreement, to transfer Funds of Company, by automated clearing house, for payment directly to Company or to any third party designated by the Designated Person. Company further authorizes and directs BBVA Compass to concentrate its Funds to or from all sources from which Funds are available for transfers made under this Agreement. In connection with the foregoing, BBVA Compass agrees to process Entries. Company shall be responsible for generating, accepting, and authorizing all Entries and delivering the same to BBVA Compass in the form specified in this Agreement and otherwise in accordance with these terms. BBVA Compass shall not be obligated at any time to transfer from any Account any amount in excess of the collected balance on deposit in the Account at the time of the request or time of transfer. BBVA Compass shall have the right, but shall not be obligated, to refuse any transfer for the purpose of determining whether Company has authorized the transfer and shall incur no liability for any delay caused by its determination.
3. **Obligations of Company.** Company shall provide all items specified in this Agreement, and any additional items reasonably requested by BBVA Compass, in a complete, accurate, and timely manner, and in the form specified by BBVA Compass. Company shall provide, at its expense, all magnetic tapes, electronic equipment, and other media required in order to satisfy the media and format requirements required by BBVA Compass from time to time.
 - (a) Signed Authorization. Prior to the initiation of the first Entry to an Account, Company will execute on its own behalf and will obtain completed and duly executed written authorization agreements ("Authorization Agreements") from its Customers that desire preauthorized electronic transfers to or from their accounts with Participating Depository Financial Institutions ("Customer Accounts"). The Authorization Agreements shall authorize Company to initiate Entries with respect to its Customers' Accounts. The Authorization Agreements shall be in a form that complies with the Rules, Regulation E of the Board of Governors of the United States Federal Reserve Board, the Electronic Funds Transfer Act, and all other applicable federal and state laws and regulations. Company agrees to provide a copy of the Authorization Agreement to the Customer at the time it is executed. Company agrees to retain and maintain the original or a microfilm or other copy of the Authorization Agreement and its records relating to the Authorization Agreement as required by the Rules. Without limiting any term or provision of this Agreement, Company shall indemnify, to the extent permissible by State statute, and hold BBVA Compass harmless for its failure to comply with the terms of the preceding sentence. Upon request of BBVA Compass, an Originating Depository Financial Institution, or a Receiving Depository Financial Institution, Company shall promptly furnish an original or copy of the Authorization Agreement to the requesting party. If the Customers' Authorization

Agreements are changed, Company shall not initiate any Entries to or from those Customers' Accounts, except in accordance with the Authorization Agreement as changed. Company shall not initiate any Entries to or from any Customers' Accounts after expiration, termination, or cancellation of those Customers' Authorization Agreements. Company agrees to release and hold harmless BBVA Compass from and against any loss, cost, demand, action or cause of action arising from any dispute between Company and any Customer with respect to any Authorization Agreement.

- (b) Regularly Scheduled Debit Entries. Company shall comply in all respects with the requirements of the Rules and all state and federal laws and regulations, including notification to Customers (i) if the amount of any debit Entry differs from that of the next previous debit Entry relating to the same Authorization Agreement or the preauthorized amount or range of amounts; (ii) if any change is made by Company to the date on which a debit entry is scheduled to be transferred from a Customer's account; or (iii) under any other circumstances required under the Rules.
- (c) Form and Format. All Entries shall be in the form of an unbalanced file. As used in this paragraph, an unbalanced file means an Entry that contains only the originating items for that Entry without any corresponding offset or settlement transaction. All Prenotifications and Entries shall be furnished to BBVA Compass prior to the opening of business on the applicable Settlement Date in computer readable media as provided under the Rules, and in the record format specified by BBVA Compass from time to time. BBVA Compass may reject any Entry which BBVA Compass determines in its sole discretion not to be in compliance with its then applicable media and format requirements, the Rules, any federal or state laws or regulations, or the terms and conditions of this Agreement. The parties agree that BBVA Compass has no responsibility to determine whether Company has complied with any federal or state law or regulation.
- (d) Delivery. Company shall be solely responsible for transporting, transmitting, or delivering to the delivery point, by the times and on the dates specified by BBVA Compass, all Entries, Entries files, and other data, computer tapes, information, instruments, and documents to be supplied to BBVA Compass in connection with ACH Services. BBVA Compass may reject any Entry determined by BBVA Compass, in its sole discretion, to have been submitted after or before the time required by any applicable schedule or deadline.
- (e) Other Duties. All Designated Persons shall be trained personnel familiar with the Software and Rules and procedures described in this Agreement and with the ACH Originators Handbook by N.A.C.H.A. (Company shall be responsible for providing necessary training).
- (f) Limitations. Company agrees that BBVA Compass will not process an Overlimit Entry. BBVA Compass will suspend any Overlimit Entry submitted by Company and may, following its receipt of an Overlimit Entry, suspend all In-Process Entries. Company acknowledges that any Overlimit Entry or other In-Process Entries suspended by BBVA Compass will not settle on their scheduled Settlement Date. If Company wishes to initiate an Entry that would cause the amount of In-Process Entries to exceed the Entry Settlement Limit, Company may submit to BBVA Compass its request to initiate an Entry that otherwise would be an Overlimit Entry. Company must submit its request at least two (2) business days prior to the date on which Company wishes to initiate the Entry that otherwise would be an Overlimit Entry. BBVA Compass may require from Company financial or other

information in connection with BBVA Compass' consideration of the request. BBVA Compass may grant or deny Company's request at its sole discretion. In addition to the foregoing, BBVA Compass generally reserves the right to limit the nature and amount of the preauthorized debit/credit Entries processed under this Agreement or to refuse to process any debit/credit Entries under this Agreement if, in BBVA Compass' sole judgment (i) there is reasonable cause to believe that any Entry will be returned or will not settle in the ordinary course of the transaction for any reason, (ii) to do otherwise would violate any limit set by the applicable clearing house association or any governmental authority or agency to control payment system risk, or (iii) a preauthorized credit Entry or the return of a preauthorized debit Entry would create an overdraft of Company's Accounts. If any of the foregoing actions are taken by BBVA Compass with respect to a particular preauthorized debit/credit Entry, BBVA Compass will notify Company as promptly as practicable, but in no event later than two (2) business days after its decision.

- (g) Providing Information Upon Request. Within five (5) business days of BBVA Compass' request, Company shall provide to BBVA Compass all information necessary to respond to any inquiries from N.A.C.H.A. about Company or Company's WEB Entries.
- (h) Prohibited Entries. Notwithstanding any provisions of this Agreement to the contrary, Company agrees that it will not act as a Third-Party Sender (as defined in the Rules) to initiate any Entry on behalf of another party unless BBVA Compass has agreed Company may do so, and Company has entered into the Amendment to this Agreement for ACH Services By Third-Party Senders.
- (i) Company also agrees to permit Compass, its regulators and/or agents to examine Company's books, records, practices and systems to confirm that Company maintains the security practices and procedures required by this Agreement to protect the financial information Company obtains from Customers and to verify Company's ongoing compliance with the NACHA rules. Any such examination will be conducted during normal business hours upon written notice to Company, which agrees to cooperate fully by providing Compass with access to reports of audits, tests and/or other evaluations of information security policies and procedures conducted in the ordinary course of Company's business.

- 4. **Scope of BBVA Compass' Services.** If the Entries comply with the Rules and requirements of this Agreement, BBVA Compass will process and transmit the Entries to the Participating Financial Depository Institutions, subject to the Rules. BBVA Compass has no obligation to act on, correct, reverse, adjust, or stop payment or posting of Entries or Entry data that does not comply with the requirements or deadlines of BBVA Compass or the Rules. BBVA Compass has no obligation to detect errors with respect to any Entry. However, if BBVA Compass detects an error with respect to a Entry, BBVA Compass will attempt to give Company notice of the error, and Company agrees to furnish to BBVA Compass corrections promptly via the Software or as BBVA Compass shall direct. If Company discovers that any Entry is in error, Company immediately shall give telephonic notice to BBVA Compass of the complete nature of the error and Entries affected, confirmed immediately thereafter in writing ("Company Error Notice"). Company has no right to reverse, adjust or stop payment or posting of any Entry after the Entry has been transmitted by BBVA Compass or subsequent to any earlier time as the Rules or BBVA Compass may prescribe from time to time, except in accordance with procedures contained in the Rules, or any other applicable agreement.

BBVA Compass has no obligation to determine whether the recipient identified in any Entry, whether submitted alone or

included within any batch of Entries, is the accountholder for the account to or from which funds are to be transferred. If any Entry contains any inconsistent information or other discrepancy regarding the name of the intended recipient and the account to or from which the funds are to be transferred, BBVA Compass shall make the transfer on the basis of the account number, even if that number identifies an account held by a person or entity other than the named recipient.

5. **Payment.**

- (a) **Credit Entries.** BBVA Compass reserves the right to require that Company pay BBVA Compass in immediately available funds at the time of transmittal the amount of each credit Entry submitted by Company.
- (b) **Debit Entries.** BBVA Compass shall on the applicable Settlement Date credit the Account with the amount of each debit Entry transmitted to BBVA Compass by its Automated Clearing House. In the event any Entry is properly returned by a Receiving Depository Financial Institution after BBVA Compass has provided credit, Company shall, upon demand, repay BBVA Compass the amount of the returned Entry or Depository Transfer Check.
- (c) **Deletion/Reversal.** Actual receipt by BBVA Compass of proper notice or delivery of any information (e.g., stop payment, return, processing, dishonor and similar notices required by this Agreement, the Rules, or any other instrument) from Company before the deadline required by BBVA Compass in its sole discretion is an express and condition precedent to BBVA Compass' related obligation to perform any service or to meet any deadline imposed by law or regulation. Company bears the burden of proof of the time and manner of BBVA Compass' actual receipt of any notice or transmittal of information.

6. **Rejected Entries.** Company shall be responsible for remaking any Entries rejected during processing or rejected by any Participating Depository Financial Institutions ("Rejected Entries"), except Entries rejected as a result of BBVA Compass' error, if sufficient data is made available to BBVA Compass to permit it to remake those Entries in a correct manner ("Correcting Entries"). In the case of Rejected Entries which are debits or any adjustment memoranda or Entries relating to a debit Entry, upon notification by BBVA Compass, Company immediately will provide BBVA Compass with sufficient available collected funds to reimburse and indemnify, to the extent permissible by State statute, BBVA Compass for any funds which were received or subject to any adjustment. Company shall retain for not less than five (5) banking days after midnight of the Settlement Date all information necessary to remake any Entries, file or make any Correcting Entries, and, if requested by BBVA Compass, shall supply such information to BBVA Compass.

7. **Returned and Disputed Entries.** Returned Entries will be delivered by BBVA Compass to Company and Company shall reimburse BBVA Compass immediately in collected funds for the amount of these items and any fees associated with these items. BBVA Compass reserves the right to require that Company supply drafts for redeposited return items. If any Customer notifies BBVA Compass that an Entry was in an incorrect amount, was not properly authorized, was erroneous or unauthorized under any applicable law or regulation, or was otherwise improperly, erroneously or unlawfully processed or paid, Company agrees to pay to BBVA Compass, in immediately available funds, the full amount of the Entry, plus any expenses for costs (including legal fees) incurred by BBVA Compass in connection with that Entry. Company further agrees that BBVA Compass may, as appropriate, pay the amount to the Customer or may return the amount to Company; provided, however, that upon payment of the amount by Company to the Customer, BBVA Compass shall be absolved and released from any expenses or costs incurred by Company with respect

to such Entry. When a returned Entry indicated "payment stopped" as the reason for the return, Company shall not reinitiate that Entry unless Company subsequently received the Customer's authorization for reinitiation of that Entry.

8. **Notice of Entries.**

- (a) Company shall provide each Customer with positive written notice of each credit Entry to the Customer's Account ("Positive Credit Notice"), and shall otherwise fully comply with the provisions of the Electronic Funds Transfer Act, Regulation E of the Board of Governors of the United States Federal Reserve Board and any applicable state law, rules or regulations governing electronic fund transfers.
- (b) Company shall provide written notice to each Customer of the amount and scheduled date of each debit Entry prior to the scheduled date of the debit Entry. All such written notices of debit Entries, and any other means of debit Entry notice selected by Company, shall fully comply with the Electronic Funds Transfer Act, Regulation E of the Board of Governors of the United States Federal Reserve Board and any applicable state law, rules or regulations governing such electronic fund transfers.

9. **Entry Settlement.** Company shall provide BBVA Compass with immediately available funds not later than 8:00 o'clock a.m. Central Time on each Settlement Date sufficient in amount to pay all Entries initiated by Company which are to be settled on that date. Company hereby authorizes and instructs BBVA Compass to make deposits and withdrawals from any of Company's Accounts as appropriate to provide the services specified in this Agreement. Notwithstanding anything in this Agreement to the contrary, BBVA Compass reserves the right to require that sufficient collected funds be in Company's Accounts prior to the time any Entry is processed by BBVA Compass under this Agreement.

10. **Effect of Rules.** The parties hereto expressly agree to be bound by the Rules as now or hereafter in effect, including, without limitation, that Company shall be bound by and comply with all limitations and requirements imposed upon an "Originator" under the Rules. Any changes in the Rules shall be deemed to automatically amend this Agreement, effective as of the date the changes in the Rules become effective. It is agreed that no Rule shall be deemed to diminish BBVA Compass' rights under this Agreement, except in the case of direct conflict, in which event the Rules shall control. Without limiting the foregoing, BBVA Compass may issue from time to time operating rules and procedures to Company describing the operating procedures for each service provided under this Agreement. From time to time, BBVA Compass may also issue updates to the operating rules and procedures. Company agrees that it will access and utilize all such services in accordance with the operating rules and procedures.

11. **File Suspension.** Notwithstanding anything in this Agreement to the contrary, BBVA Compass shall not be liable if a file suspends in connection with an Entry as the result of an error by Company or BBVA Compass' inability to contact a Designated Person, after using reasonable efforts to make contact.

12. **ACH Services by Third-Party Processor.** Upon Company's submission of a request for ACH Services on which Company has designated a third party to provide payment and processing services related to the Accounts (the "Processor") and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, Company agrees as follows:

(a) **Background**

- (i) Company separately has authorized the Processor to initiate ACH Entries electronically to and from each

Company Account designated on the Services Instructions for ACH Services (each, a "Designated Account" for the purposes of the ACH Services).

- (ii) At Company's request, BBVA Compass and the Processor have entered into the Automated Clearing House Services Agreement for Third-Party Processors (the "Third-Party Agreement. Among other points, the Third-Party Agreement establishes the security procedures applicable to all ACH Entries to and from a Designated Account to be initiated electronically by the Processor, including without limitation the security codes and other devices that the Processor or its "Designated Users" must use (collectively, the Processor Codes").
- (b) Transaction Authorization. Company hereby authorizes BBVA Compass:
 - (i) To provide the Processor with all software, Processor Codes and instructional materials necessary for the Processor to initiate ACH Entries electronically to and from each Company Account electronically (the "ACH Instructions").
 - (ii) To process each ACH Entry (including all related instructions or information) to or from a Designated Account that is initiated electronically using the Processor Codes in accordance with the Third-Party Agreement and the ACH Instructions (each, an "Authorized Transaction").
- (c) Reliance on Authorized Transaction. Each Authorized Transaction shall be deemed a transaction initiated by Company, and BBVA Compass may rely upon each Authorized Transaction as a transaction properly authorized by Company. BBVA Compass is authorized to process each Authorized Transaction until: (i) BBVA Compass receives written notice from Company that Company has revoked its authorization for the Processor to initiate ACH Entries to and from any or all Designated Accounts; and (ii) BBVA Compass has had a reasonable opportunity to act upon Company's notice.
- (d) Limitation of Liability; Indemnity. Notwithstanding any other provision of this Agreement or any other agreement between BBVA Compass and Company, neither BBVA Compass nor any of its suppliers, licensors, service providers or vendors (each, including BBVA Compass, a "Provider") shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, "Damages") incurred by Company that arise from or relate to Company's authorization of Processor to initiate ACH Entries electronically to or from any Designated Account or the Processor's use of any electronic system or network for the initiation of these ACH Entries.

The liability of BBVA Compass or any other Provider for any Damages incurred by Company as a result of the acts or omissions of any Provider, except as may be the result of criminal actions, gross negligence, theft or fraud by employees or third parties authorized by BBVA Compass, shall be limited to interest on the Damages at issue, which shall accrue at the "federal funds rate" for each day on which such act or omission remains uncorrected; provided, however, if BBVA Compass or any other Provider is unable to recover any amount paid to an individual or entity that has no claim to such funds, such Provider shall be liable for Company's actual loss, not to exceed the unrecovered balance of the amount paid to the recipient that has no claim, plus interest rate described above.

Notwithstanding any other provision of this Agreement, neither BBVA Compass nor any other Provider shall have any responsibility for Damages arising, directly or indirectly, from any error, delay or failure to perform any obligation hereunder which is caused by fire, natural disaster, pandemic, strike, civil unrest, any inoperable

communications facilities or any other circumstance beyond the reasonable control of that Provider. In no event shall any Provider be liable to Company or any third party for any indirect, consequential, special, punitive or exemplary damages.

Company shall indemnify, to the extent permissible by State statute, protect and hold the Providers and their respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all Damages incurred by a Provider that arise from or relate to Company's authorization of Processor to initiate ACH Entries electronically to or from any Designated Account or the Processor's use of any electronic system or network for the initiation of these ACH Entries. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages. In addition to the foregoing, all disclaimers and limitations on the liability of BBVA Compass and the obligation of Company to indemnify, to the extent permissible by State statute, BBVA Compass with respect to the Processor's initiation of ACH Entries to or from any Designated Account, whether under this Agreement or any other agreement between BBVA Compass and Company, shall apply equally to all other Providers.

- (e) Representations, Warranties and Covenants. Company represents and warrants that each ACH Entry electronically submitted to or received by BBVA Compass from the Processor will fully satisfy and comply with all applicable requirements of all applicable laws and regulations. Company expressly warrants (i) that neither Company nor the Processor is a "Consumer" as defined in Section 205.2 (e) of Regulation E promulgated by the Board of Governors of the United States Federal Reserve Board pursuant to the Consumer Credit Protection Act, as amended, 15 U.S.C. 1601 et. seq., and (ii) that all ACH Entries initiated by the Processor are for commercial purposes, and not for personal or household purposes.
- (f) Termination. Notwithstanding any other provision regarding termination set forth in the Third-Party Agreement, this Agreement or in any other agreement between BBVA Compass and Company, BBVA Compass may terminate at any time, effective immediately, Processor's ability to initiate ACH Entries. BBVA Compass shall use reasonable efforts to promptly communicate notice of the termination to Company and the Processor, and will thereafter provide written confirmation of the termination if the initial notice of termination was not communicated in writing. BBVA Compass, at any time, may require Company or the Processor to execute additional documents or agreements in order for the Processor to continue to initiate ACH Entries electronically to or from any Designated Account.

13. **Returned Check Entries.** If any Entry initiated by Company relates to a check or other item (within the meaning of Revised Article 4 of the Uniform Commercial Code) that previously was returned unpaid due to insufficient or uncollected funds (a returned check or "RCK Entry"), Company represents and warrants to BBVA Compass that the RCK Entry complies with the Rules and this Agreement. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each RCK Entry initiated by Company:

- (a) The item to which the RCK Entry relates:
 - (i) Is a negotiable demand draft drawn on or payable through or at a Participating Depository Financial Institution, other than a Federal Reserve Bank or Federal Home Loan Bank;
 - (ii) Contains a pre-printed serial number;

- (iii) Is in an amount less than \$2,500;
 - (iv) Indicates on its face that it was returned due to insufficient or uncollected funds in the Customer's account;
 - (v) Is dated 180 days or less from the date that Company initiated the RCK Entry;
 - (vi) Is drawn on an account held by a consumer Customer; and
 - (vii) Has been previously presented (A) no more than two times in its physical form, if the entry is an initial RCK Entry; or (B) no more than one time in its physical form and no more than one time as an RCK Entry, if the entry is a reinitiated RCK Entry;
- (b) Company has good title or is otherwise entitled to enforce the returned item to which the RCK Entry relates;
 - (c) All signatures on the returned item to which the RCK Entry relates are authentic and authorized;
 - (d) The returned item to which the RCK Entry relates has not been altered;
 - (e) The returned item to which the RCK Entry relates is not subject to any defense or claim in recoupment that could be asserted against Company or BBVA Compass;
 - (f) Company has no knowledge of the insolvency or bankruptcy of the maker or drawer of the returned item to which the RCK Entry relates;
 - (g) The amount of the returned item, item number and account number contained on the returned item to which the RCK Entry relates are accurately reflected in the RCK Entry, and the amount of the RCK Entry does not include any service charge, fee or other amount associated with the returned item;
 - (h) After initiating the RCK Entry, Company will not re-present the item to which the RCK entry relates or a copy of such item unless the related RCK entry has been returned unpaid;
 - (i) The information encoded after issue in magnetic ink on the returned item to which the RCK Entry relates is correct;
 - (j) Any restrictive endorsement set forth on the returned item to which the RCK Entry relates is void or ineffective;
 - (k) Company will retain a reproducible and legible copy of the front and back of the returned item to which the RCK Entry relates for seven (7) years from the applicable Settlement Date and, within five (5) business days of BBVA Compass' request, shall provide to BBVA Compass a copy of the front and back of that returned item (indicating, if applicable, that the item has been finally paid);
 - (l) Before receiving the item to which the RCK Entry relates, Company provided the Customer who signed that item with written notice that clearly and conspicuously stated Company's policy for re-presenting electronically items returned for insufficient or uncollected funds.

Company agrees to indemnify, to the extent permissible by State statute, BBVA Compass from and against any fine action, claim, demand, loss, liability or expense, including attorneys' fees and costs, resulting directly or indirectly from either Company's breach of any representation, warranty or promise in this paragraph or Company's failure to comply with the Rules or this Agreement in connection with any RCK Entry.

14. **Accounts Receivable Entries.** If Company uses any check or share draft provided by a Customer via the U.S. Mail or at a

dropbox location as the source document to initiate a debit Entry to that Customer's account (an accounts receivable or "ARC Entry"), Company represents and warrants to BBVA Compass that the ARC Entry will comply with the Rules and this Agreement. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each ARC Entry initiated by Company:

- (a) The check or sharedraft to which the ARC Entry relates:
 - (i) Contains a pre-printed serial number;
 - (ii) Is drawn on the deposit account of a consumer Customer and not on any credit card or other loan account; and
 - (iii) Was completed and signed by that Customer;
 - (iv) Will not be presented or otherwise used to obtain payment;
 - (v) Will be destroyed by Company within fourteen (14) days of the Settlement Date of that ARC Entry;
- (b) The ARC Entry accurately reflects the amount, routing number, account number, and the serial number of the check or sharedraft to which the ARC Entry relates, and does not include any service charge, fee or other amount;
- (c) Company shall retain a reproducible and legible image, microfilm, or copy of the front of the check or sharedraft to which the ARC Entry relates for two (2) years from the Settlement Date of the ARC Entry and, within five (5) business days of BBVA Compass' request, shall provide to BBVA Compass a copy of that check or sharedraft (designated on its face as "Copy");
- (d) Before receiving the check or sharedraft to which the ARC Entry relates, Company provided clear and conspicuous written notice to the Customer that Company's receipt of the Customer's check will authorize Company to initiate an ARC Entry debiting Customer's account according to the terms of the Customer's check.
- (e) (i) Company has reasonable procedures by which Customers may opt-out of the conversion of their checks or sharedrafts to ARC Entries; and
 - (ii) At the time the ARC Entry was initiated, Company had not received any opt-out notice from the Customer who had signed the related check or sharedraft;
- (f) In processing an ARC Entry, Company will electronically capture the MICR line from the check or sharedraft, and will not key-enter the routing number, account number or check serial number except to correct errors relating to MICR misreads, misencoding or processing rejects; and
- (g) The ARC Entry is not being used to transmit a credit Entry, other than a reversal, to the Customer's account;

Company agrees to indemnify, to the extent permissible by State statute, BBVA Compass from and against any fine, action, claim, demand, loss, liability or expense, including attorneys' fees and costs, resulting directly or indirectly from either Company's breach of any representation, warranty or promise in this paragraph or Company's failure to comply with the Rules or this Agreement in connection with any ARC Entry.

15. **Telephone-Initiated Entries.** If Company obtains oral authorization from a consumer Customer via the telephone to initiate a single debit Entry to that Customer's account (a telephone-initiated or "TEL Entry"), Company represents and warrants to BBVA Compass that the TEL Entry complies with the Rules. In addition to this general representation and

warranty, Company represents, warrants and promises that, with respect to each TEL Entry initiated by Company:

- (a) Company obtained the consumer Customer's oral authorization for the TEL Entry either:
 - (i) During a telephone call initiated by the Customer;
 - (ii) While there was a written agreement in effect between the Customer and Company; or
 - (iii) Within two (2) years after the Customer purchased goods or services from Company;
- (b) Company did not engage in any fraudulent or deceptive business practice in connection with the transaction for which the TEL Entry authorization was obtained, regardless of whether Company was otherwise in compliance with the Rules;
- (c) Company either tape recorded the consumer Customer's oral authorization of the TEL Entry or, before the Settlement Date of the TEL Entry, provided the Customer with written notice confirming the oral authorization;
- (d) Company shall retain the original or a duplicate tape recording of the consumer Customer's oral authorization of the TEL Entry, or a copy of the written notice confirming this authorization, as applicable, for two (2) years from the date of the authorization and, within five (5) business days of BBVA Compass' request, shall provide to BBVA Compass a copy of the tape recording of or the written notice confirming the Customer's oral authorization;
- (e) The following information was provided in connection with the oral authorization and also in any written confirmation notice given to the consumer Customer:
 - (i) The date on or after which the Customer's account would be debited;
 - (ii) The amount to be debited from the Customer's account;
 - (iii) The Customer's name;
 - (iv) A telephone number answered during normal business hours that the Customer could call with questions;
 - (v) The date of the Customer's oral authorization; and
 - (vi) A clear and concise statement explaining that the Customer's oral authorization will be used to initiate a single ACH debit Entry to the Customer's account;
- (f) If Company provided the consumer Customer with written notice confirming the Customer's oral authorization of the TEL Entry, then:
 - (i) Company disclosed to the Customer during the telephone call the method by which the notice would be provided; and
 - (ii) The written notice contained the information specified in subparagraph (e) above, and explained the Customer's right to contact Company at the designated telephone number to correct any errors appearing in the notice;
- (g) Before initiating the TEL Entry, Company utilized commercially reasonable procedures to verify:
 - (i) The identity (name, address and telephone number) of the consumer Customer who orally authorized the TEL Entry by confirming pertinent information with that Customer; and

(ii) The routing numbers obtained from the Customer;

- (h) The TEL Entry is not being used to transmit a credit Entry, other than a reversal, to the consumer Customer's account; and
- (i) Within five (5) business days of BBVA Compass' request, Company shall provide to BBVA Compass all information necessary to respond to any inquires from N.A.C.H.A. about Company or Company's TEL Entries.

Company agrees to indemnify, to the extent permissible by State statute, BBVA Compass from and against any fine, action, claim, demand, loss, liability or expense, including attorneys fees and costs, resulting directly or indirectly from either Company's breach of any representation, warranty or promise in this paragraph or Company's failure to comply with the Rules or this Agreement in connection with any TEL Entry.

16. Internet-Initiated Entries. If Company obtains authorization from a consumer Customer via the Internet to initiate either a single debit Entry or recurring debit Entries to that Customer's account ("WEB Entry"), Company represents and warrants to BBVA Compass that the WEB Entry complies with the Rules and the federal Electronic Funds Transfer Act, as implemented by Regulation E. In addition to this general representation and warranty, Company represents, warrants and promises that, with respect to each WEB Entry initiated by Company:

- (a) Company obtained authorization for that Entry in accordance with the technical specifications for WEB Entries that BBVA Compass provided separately to Company. Company agrees to provide a hard copy of the authorization to the Customer if requested to do so.
- (b) Company has employed a commercially reasonable fraudulent transaction detection system to screen that Entry.
- (c) Company did not engage in any fraudulent or deceptive business practice in connection with the transaction for which the WEB Entry authorization was obtained, regardless of whether Company was otherwise in compliance with the Rules.
- (d) Company has employed commercially reasonable methods of authentication to verify the identity of the Customer authorizing that Entry.
- (e) Company has used commercially reasonable procedures to verify the validity of the routing numbers for the Customer's account to be debited.
- (f) All transmissions of information related to the WEB Entry (whether between the Company and its Customer, between the Company and BBVA Compass, or between the Company and any third party), were either (1) encrypted using a commercially reasonable security technology, or (2) transmitted via a secure Internet session that utilizes a commercially reasonable security technology. In either case, the technology used to secure the transmission must comply with the technical specifications for WEB Entries that BBVA Compass provided separately to Company.
- (g) Company agrees:
 - (i) to develop, implement and maintain effective security policies and procedures (including administrative, technical and physical safeguards) to ensure that the financial information Company obtains from Customers is protected. These policies and procedures shall comply with the technical specifications for WEB Entries that BBVA Compass provided separately to Company and, at a minimum, shall include adequate levels of:

- (A) physical security to protect against theft, tampering, or damage;
 - (B) personnel and access controls to protect against unauthorized access and use; and
 - (C) network security to ensure secure capture, storage, and distribution.
- (ii) to conduct or cause to be conducted annual audits of Company's security policies and procedures to protect Customer's financial information. The results of each annual audit shall be documented in a written report. Company shall deliver a copy of this report to BBVA Compass within ten (10) days after Company completes or receives the report, as applicable.
- (h) The Entry is not being used to transmit a credit Entry, other than a reversal, to the consumer Customer's account. Company agrees to indemnify, to the extent permissible by State statute, BBVA Compass from and against any fine, action, claim, demand, loss, liability or expense (a "Loss"), including attorneys' fees and costs, resulting directly or indirectly from Company's initiation of any WEB Entry, including without limitation any Loss related to or arising from Company's breach of any representation, warranty or promise made with respect to any WEB Entry or Company's failure to comply with the Rules or this Agreement in connection with any WEB Entry.
 - (i) BBVA Compass reserves the right, at any time and without notice to Company, to decline to process any one or more WEB Entries submitted by Company in the event that BBVA Compass, in its sole discretion, determines that: (i) Company has failed to maintain the security practices and procedures required by this Agreement; (ii) Company has failed either to perform an annual audit or to provide the report of the annual audit to BBVA Compass within the time period required by this Agreement; (iii) Company has failed to satisfy any other requirement of this Agreement applicable to WEB Entries; (iv) the rate of WEB entries returned to Customer is deemed excessive; or (v) Company's activities place BBVA Compass at a higher risk than when BBVA Compass initially approved Company to originate WEB Entries.

to obtain payment of, or to cause another bank to pay or to obtain payment of, a fixed or determinate amount of money that is to be paid to, or obtained from, a receiver; and any and all settlements, accounting entries, or disbursements that are necessary or appropriate to carry out the instruction.

- (c) Company agrees to develop, implement and maintain effective policies and procedures to ensure that its employees, agents, authorized representatives, contractors and/or third party processors who may, at any time, initiate an Entry on behalf of the Company are fully trained, aware of, and are following the NACHA rules, including, but not limited to, the rules governing IATs.
- (d) IATs will be scanned by Compass prior to posting the transaction to ensure that such transactions comply with all applicable statutes, laws, regulations and rules of the United States government, a State or any political subdivision thereof, including, but not limited to, the rules of the Office of Foreign Assets Control ("Applicable Law"). The Office of Foreign Assets Control ("OFAC") publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called "Specially Designated Nationals" or "SDNs." All assets of SDNs are blocked and U.S. persons are generally prohibited from dealing with them.
- (e) In the event that a scan of an IAT indicates the completion of the transaction may violate Applicable Law, Compass will suspend the IAT until the IAT is determined to not violate Applicable Law or as otherwise directed by Applicable Law or the appropriate law enforcement authorities.
- (f) Notwithstanding any other provision of this Agreement or any other agreement between Compass and Company, neither Compass nor any of its suppliers, licensors, service providers or vendors (each, including Compass, a "Provider") shall have any liability for any losses, damages, claims, judgments, costs or expenses (collectively, "Damages") incurred by Company that arise from or relate to Compass' failure or refusal to complete an IAT.
- (g) Because IATs are international transactions, they require additional time for settlement. Settlement for IAT origination complies with the standard timeframes for domestic ACH (on the effective date specified), but settlement with the foreign receiver may take an additional 1-2 business days. As a result, some IATs may take 3 or more business days for the recipient to receive credit. However, Company is required to have immediately available funds sufficient to pay all IAT Credit Entries at the time of transmission.
- (h) Company shall indemnify, to the extent permissible by State statute, protect and hold Compass and its respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person") harmless from and against any and all damages, losses, penalties, fines and/or assessments ("Damages") suffered or incurred that arise from or relate to Company's initiation of IAT Entries or the Company's use of any electronic system or network for the initiation of these ACH Entries. Company will, at its own expense, defend any action or proceeding brought against any Indemnified Person in connection with such Damages.

17. International ACH Transactions

- (a) International ACH Transactions (IATs) are required to use the IAT Standard Entry Class (SEC) code and provide the additional information set forth in the applicable user guide as updated from time to time.
- (b) An IAT is defined as a debit or credit entry sent through the U.S. ACH network that is part of a payment transaction involving a financial agency's office that is not located in the territorial jurisdiction of the United States. For the purposes of this definition:
 - "Financial agency" means an entity that is authorized by applicable law to accept deposits or is in the business of issuing money orders or transferring funds.
 - An office of a financial agency is involved in the payment transaction if it (i) holds an account that is credited or debited as part of the payment transaction, (ii) receives payment directly from a person/organization or makes payment directly to a person/organization as part of the payment transaction, or (iii) serves as an intermediary in the settlement of any part of the payment transaction.
 - For IAT purposes, the term "payment transaction", refers to an instruction of a sender to a bank to pay, or

ZERO BALANCE ACCOUNT SERVICES

Upon Company's submission of a request for Zero Balance Account Services and the approval of the Service Instructions for this service,

or upon its use of the service, whichever occurs first, Company agrees:

1. **Account Services.** BBVA Compass shall establish one or more demand deposit accounts (each a "Zero Balance Account"), and a separate demand deposit account (the "Master Account"), which may be the Company Account, as defined in this Agreement. At the close of each banking day, BBVA Compass shall create a zero balance in each Zero Balance Account by depositing funds from or transferring funds to the Master Account. Company agrees to maintain in the Master Account and Zero Balance Accounts at all times and in collected, immediately available funds, an aggregate amount sufficient to pay all charges to and checks or other items presented against each Zero Balance Account and Master Account. Company authorizes and directs BBVA Compass, at any time and without prior notice to Company, to transfer to each Zero Balance Account from the Master Account, or other deposit accounts of Company maintained at BBVA Compass, funds in the amount sufficient to pay any checks, items or charges presented against or payable from each Zero Balance Account. Upon prior written agreement with BBVA Compass, Company may add, remove, or change the designation of an account as a Zero Balance Account or BBVA Compass may make any changes without prior notice to Company.
1. **Items Drawn on Zero Balance Account.** All items drawn on or presented in connection with Zero Balance Accounts must be in a format approved by BBVA Compass and shall contain such routing transit numbers and other information required by BBVA Compass. Specifically, all items will be printed on MICR-Bond paper, having a minimum weight of 24 pounds. The magnetic encoding on each item will include correct routing number, account number and serial number. Company will provide a sample of checks and deposit slips (as directed on the check printing specifications) to BBVA Compass from each check printing, including subsequent reorders, for the purpose of testing MICR quality.
2. **Overdrafts.** If at any time the Master Account, after deducting any amounts payable from or chargeable to the Master Account, fails to contain collected, immediately available funds in the amount required to pay the total aggregate amount of checks, items and charges payable against or chargeable to the Master Account and each Zero Balance Account, the Company shall be liable for BBVA Compass' demand deposit checking account "insufficient funds" charges as in effect from time to time and BBVA Compass may, in its sole discretion, do any one or more of the following:
 - (a) Pay in any order any or all of the checks, items, or charges and charge the amount of any payment to the applicable account thereby causing an overdraft to be created in the account subject to BBVA Compass' overdraft policies and charges; or
 - (b) Dishonor in any order any or all of the checks or items and return the same to the presenter, in which case the policies, charges, and rules provided for in BBVA Compass' deposit agreement shall apply, including but not limited to, provisions in the deposit agreement relating to insufficient funds and returns policies or charges

SECURE FTP SERVICES

Upon Company's submission of a request for Secure FTP Services and the approval of the Service Instructions for this service, or upon its use of the service, whichever occurs first, and in addition to its agreements set forth below with respect to provisions applicable generally to CompassView Services, Company agrees:

1. **Definition.** Secure File Transfer Protocol ("Secure FTP") is a file transfer method for companies to exchange large files and sensitive data (and images if applicable) over the Internet.

Secure FTP uses Secure Sockets Layer (SSL) technology and digital certificates to ensure confidentiality, authentication and nonrepudiation of transferred data and/or images.

2. **Access.** Company may conduct one or more of the following Treasury Management Services and functions (as shown in the Service Instructions for Secure FTP Services) through access to and by use of Secure FTP: (a) Automated Clearing House Services; (b) Compass e-Payables Services; (c) Electronic Delivery Services; (d) receive a Lockbox file; and (e) receive Account Analysis Statements. Company's use of Secure FTP shall be subject to these terms and conditions, all instructions and guidelines established from time to time by BBVA Compass, all applicable software and user documentation terms and conditions, and all applicable state and federal laws and regulations. Company will only be granted access to, and agrees only to access, Secure FTP to transact or conduct the Secure FTP Services shown in the Service Instructions for Secure FTP. Company may transact only those Secure FTP Services that BBVA Compass has agreed to provide and has implemented for Company.

Compass e-Payables Services and Automated Clearing House Services shall mean those services described by those terms elsewhere in this Agreement. Compass e-Payables Services and Automated Clearing House Services shall be subject to all other terms and conditions applicable to those services as set forth in this Agreement.

Electronic Delivery Services allow Company to obtain or send files, reports and statements. The format and content of the files, reports and statements shall be determined by BBVA Compass. Receipt of Lockbox files using Secure FTP Services is subject to all other terms and conditions applicable to Lockbox Services set forth elsewhere in this Agreement.

3. **Software.** Secure FTP requires the use of Secure FTP Client Software and a Secure FTP Digital Certificate to exchange data (and images if applicable). Company may provide its own Secure FTP Client Software and Secure FTP Digital Certificate to use with BBVA Compass Secure FTP, or Company may request BBVA Compass to supply either (or both) the Secure FTP Client Software and Secure FTP Digital Certificate. If Company provides its own Secure FTP Client Software and/or Secure FTP Digital Certificate (collectively the Company "Software"), Company certifies that: (a) the Company Software uses SSL based (not SSH based) technology; (b) complies with one of the algorithms and hashes listed in the Service Instructions for Secure FTP; and (c) the certificate is not expired. If BBVA Compass provides either/both the Secure FTP Client Software and Secure FTP Digital Certificate, use of the Software shall be subject to the terms and conditions contained in this Agreement applicable to the Software, including the Software Security section below and the section titled Provisions Applicable to CompassView Services, and Secure FTP, and all applicable state and federal laws and regulations.
4. **Software Security.** Company shall designate in writing to BBVA Compass those individuals who will be permitted to access Secure FTP ("Designated Users"). The designating document must contain the original signatures of a person whose signature appears on the Authorization Certificate for the BBVA Compass Treasury Management Services Agreement. Secure FTP shall be accessed, conducted or transacted, only by the Designated Users. If Company desires to change or add a Designated User, Company shall provide prior written notice to BBVA Compass of such change, signed by a person whose signature appears on the Authorization Certificate for the BBVA Compass Treasury Management Services Agreement. The notice may be telefaxed to BBVA Compass, but it must be followed by a document with an original signature on it. No change of Designated Users by Company shall be effective until accepted by BBVA Compass, and BBVA Compass has had a reasonable opportunity to update its records.

After Company has designated to BBVA Compass the identity of the Designated Users, BBVA Compass shall provide the Designated Users with the Uniform Resource Locator ("URL") address of Secure FTP on which the Secure FTP Services shall be accessible. BBVA Compass shall also provide each Designated User an identification code (the "User ID"), a password (the "User Password"), a certificate identification code ("Certificate Passphrase") the use of which permits general recognition of the Designated User by the Secure FTP Services automated system.

Company acknowledges that while BBVA Compass will attempt to ensure that the User ID, User Password, Certificate Passphrase and all electronic communications between Company and BBVA Compass are encrypted, scrambled or otherwise protected against interception by a person whose access to Secure FTP is unauthorized, Company nonetheless accepts and assumes all risk of loss or dissemination of information attributable to the electronic communications between Company and BBVA Compass through Secure FTP. Each Designated User is responsible for safekeeping the User ID, the User Password, and Certificate Passphrase (singularly, a "Company Code", and collectively, the "Company Codes"). Company and each Designated User shall not, at any time, permit access to BBVA Compass Secure FTP by any person who does not need to obtain access to BBVA Compass Secure FTP consistent with Company's rights hereunder. If a Designated User loses or forgets a User ID, User Password or Certificate Passphrase, the Designated User should contact BBVA Compass for assistance.

If Company or any Designated User believes that one or more Company Codes have become known or obtained by unauthorized persons (whether or not employed by Company), the Company shall immediately notify BBVA Compass to enable BBVA Compass to disable the affected Company Code(s). Additionally, BBVA Compass may change or disable any Company Code at any time and for any reason. If BBVA Compass takes such action, BBVA Compass will make every reasonable effort to notify Company promptly. BBVA Compass assumes no responsibility to discover, audit, or report to Company any possible breach of security by Company's agents or representatives or anyone else for unauthorized disclosure or use of Company Codes. Company acknowledges that the security procedures in this Section constitute commercially reasonable security procedures for the Company.

If Company is unable to access Secure FTP or transact or conduct any Secure FTP Services, Company shall immediately notify BBVA Compass of such inability but shall transact or conduct such service through other means available to Company.

BBVA Compass claims and reserves all rights and benefits afforded under federal copyright law in all software programs and user materials that constitute the Software, and in all system documentation related to the Software, as unpublished works. Company hereby authorizes BBVA Compass to enter Company's premises in order to inspect the Software in any reasonable manner during regular business hours.

Company acknowledges that, in the event of Company's breach of any of the foregoing provisions, BBVA Compass will not have an adequate remedy in money or damages. BBVA Compass shall therefore be entitled to obtain an injunction against the breach from any court of competent jurisdiction immediately upon request. BBVA Compass' right to obtain injunctive relief shall not limit its right to seek further remedies.

Company's obligations hereunder shall remain in effect for as long as Company continues to possess or use the Software or any trade secrets derived therefrom.

Authorized Transactions. BBVA Compass may rely upon any Secure FTP Service transacted or conducted through or by use of Secure FTP as properly authorized by Company (including,

without limitation, any instructions or information related thereto it receives from Company through Secure FTP). Each Designated User to whom BBVA Compass has provided access to Company Codes, or who has otherwise obtained access to Company Codes, is deemed an authorized representative of Company for purposes of all Secure FTP Services transacted or conducted through or by use of Secure FTP, whether or not such person is authorized by this Agreement or any other agreement between BBVA Compass and Company.

Notwithstanding the terms of any Treasury Management Services Agreement or any other agreement between Company and BBVA Compass, once Company accesses BBVA Compass Secure FTP to transact or conduct any Secure FTP Service, BBVA Compass will not verify that the transaction is authorized and Company is solely responsible for the accuracy and completeness of any data or information received by BBVA Compass. BBVA Compass is authorized by Company to process transactions in accordance with information BBVA Compass receives electronically from Company. Company shall be solely responsible for the information contained in the instructions and BBVA Compass shall have no responsibility for erroneous data provided by Company. BBVA Compass shall have no liability for losses resulting from or related to Company's failure to limit access to Secure FTP or maintain the confidentiality of the Company Codes. At the sole discretion of BBVA Compass, BBVA Compass may also require the use of other identifying information or other security procedures for certain Secure FTP Services and BBVA Compass may add to, change or delete any security procedure.

6. Transaction Processing.

Automated Clearing House (ACH) Transactions: ACH transactions initiated through BBVA Compass Secure FTP and received by BBVA Compass by 6:00 p.m. Central Time on a day BBVA Compass is open for business will be processed the same day; if the Federal Reserve is closed on a day BBVA Compass is open for business, the ACH transactions will be processed by the Federal Reserve on the next business day the Federal Reserve is open for business. ACH transactions initiated through Secure FTP and received by BBVA Compass after 6:00 p.m. Central Time on a day BBVA Compass is open for business or on a Saturday, Sunday, or holiday on which BBVA Compass is not open for business will be processed on the next day BBVA Compass is open for business.

7. **Positive Pay Files:** Positive Pay files submitted through BBVA Compass Secure FTP and received by BBVA Compass by 7:00 p.m. Central Time on a day BBVA Compass is open for business will be process that night. Positive Pay files submitted through Secure FTP and received by BBVA Compass after 7:00 p.m. Central Time on a day BBVA Compass is open for business or on a Saturday, Sunday, or holiday on which BBVA Compass is not open for business will be processed on the next day BBVA Compass is open for business.