

**CITY OF MARIANNA  
COMMISSION AGENDA MEMO  
REGULAR MEETING  
May 7, 2019**

**ADMINISTRATIVE STAFF REPORT**

**Subject:** Wells Fargo Bank  
Lease of East End of Historic First Bank

**Subject Background:** The City has just completed the repairs to the Historic First Bank Building as a result of Hurricane Michael. Wells Fargo Bank is still under construction with repairs. The Bank is in need of providing space for 2 employees to perform functions of the bank and serve the public.

Presently the bank is serving customers from a tent and very small mobile unit.

**Recommendation:** The City Staff and City Attorney have reviewed the proposed lease and find it conceptually acceptable, it is recommended the Commission approve the Lease subject to there being no substantive changes.

**Potential Motion:** I move to approve the Wells Fargo Lease subject to there being no substantive changes.

Approved for agenda by:



From: Wells Fargo Bank, Joni Lawler, Transaction Manager

To: City Commissioners of Marianna, Florida, Community Redevelopment Agency

Re: Seeking Approval from Board for leased space located at 2875 Caledonia Street, City of Marianna Historical Site



Wells Fargo is seeking approval from the Community Redevelopment Agency of Marianna and its Commissioners to lease space and parking for employees only, at 2875 Caledonia Street, Marianna, FL.

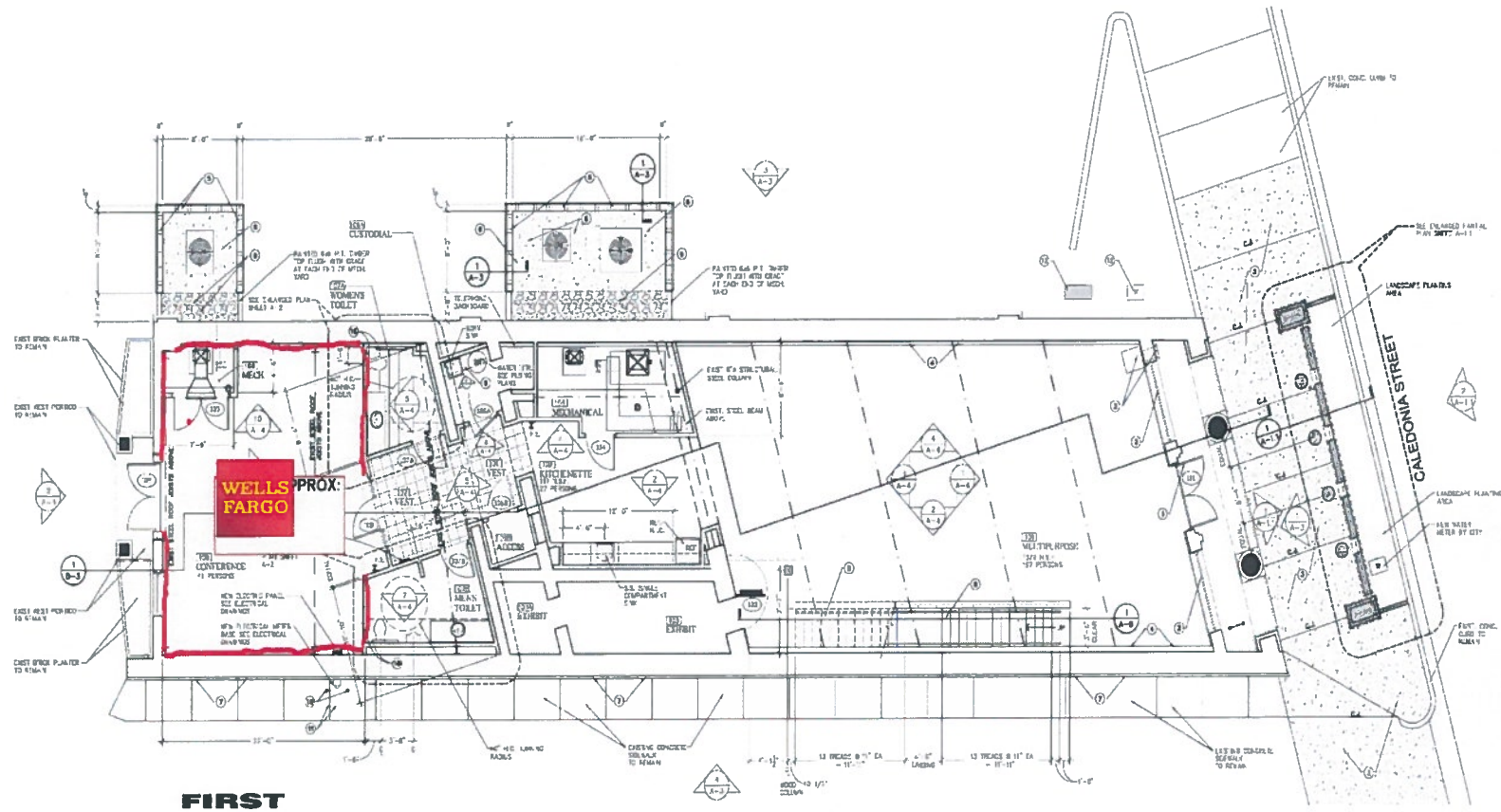
**License Agreement** attached is for lease of space on the most western side of the building, ID as 29X22 feet (Conference Room) attached also for your legal review and your review.

- Terms are \$950 a month
- 6 months agreement which include utilities
- Restrictive use of restrooms
- Times of use (in agreement)

**The Premises is for the following uses only:**

We will like approval to move desks for employees with laptops. They will be greeting customers and answering their needs only. There will be no cash taken or disbursed at the location.

# Wells Fargo Proposed Location





**DONOFRO ARCHITECTS**  
 2910 CALEDONIA ST.  
 MARIANNA, FL 32446  
 OFFICE: (850) 482-5281

P.O. BOX 861  
 MARIANNA, FL 32447  
 FAC: (850) 482-8609

## LICENSE AGREEMENT

[Marianna, FL – 2875 Caledonia Street] (BE # \_\_\_\_\_)

This LICENSE AGREEMENT (this "Agreement") is entered into by CITY OF MARIANNA, COMMUNITY REDEVELOPMENT AGENCY ("Licensor"), and WELLS FARGO BANK, N.A. ("Licensee"), as of the date this Agreement is executed by the last to sign of Licensor and Licensee as shown on the signature page(s) attached hereto (the "Effective Date"). The parties agree as follows:

1. **Grant of License.** Licensor hereby grants to Licensee an exclusive, irrevocable license to occupy and use the space within the 1<sup>st</sup> floor of the building located at 2875 Caledonia Street, Marianna, Florida (the "Building"), such space described and/or depicted on Exhibit A attached hereto and by this reference made a part hereof (the "Premises") for office purposes. As an appurtenance to the Premises, this Agreement includes the non-exclusive right for Licensee, its employees, agents and invitees, to use the common areas on and within the Building and the land upon which the Building is located, including but not limited to the parking areas, restrooms, entranceways, exits, corridors, rights of way, and other means of ingress and egress for reasonable vehicular and pedestrian access to and from the Premises and the common areas.

2. **Term.** The term of this Agreement (the "Term") commences on the Effective Date and expires at midnight at the end of the last day of the calendar month 6 (six) months after the Effective Date (the "Expiration Date").

3. **Termination on Default.** Except as otherwise provided in Section 9 below, either party may terminate this Agreement as to any or all Premises at any time if either party defaults under any provision of this Agreement and fails to cure such default within thirty (30) days after it received written notice of such default.

4. **Fees.** Licensee shall to pay to Licensor, at Licensor's address set forth in Section 10 below, monthly fee of \$950.00, beginning on the Effective Date, such rental due and payable in advance without notice on or before the first day of each month during the term. Rental for any partial month will be prorated on a daily basis.

5. **Licensee and Licensor Obligations.**

5.1. **Compliance with Laws; Real Estate Taxes.** Licensee's operation from the Premises shall be in compliance with all applicable federal, state, and local laws, ordinances, rules, and regulations. Licensor shall pay when due all real estate taxes, charges, and assessments levied against the Premises and the land and improvements thereon other than Licensee's personal property, which shall be the responsibility of Licensee.

5.2. **Utilities.** Licensor shall provide electric, water, sewer and HVAC services to the Premises and common areas, at Licensor's cost, at such levels as are necessary or appropriate for the normal operations of Licensee's business in or about the Premises and for the comfortable occupancy by Licensee's employees, agents and invitees.

5.3. **Access to Premises/Maintenance.** Licensor shall provide to Licensee, its agents, employees and invitees, access to the Premises, from 9 a.m. to 5 p.m., Monday through Friday, and from 9 a.m. to 2 p.m., Saturday. Licensee shall not unreasonably interfere with the normal operations of Licensor's business in or about the Premises. Licensor shall perform, at Licensor's sole cost and expense, all

maintenance and repair of the Building (other than the Premises) and the common areas, driveways, and parking areas on the development. Licensee shall perform, at Licensee's sole cost and expense, all maintenance and repair of the Premises, normal wear and tear and casualty excepted.

**6. Insurance.**

**6.1. Property Insurance.** During the Term, (i) Licensor shall maintain, or cause to be maintained, Commercial Property insurance ("**CP Insurance**") that insures the Premises and Licensor's personal property at the Premises on a full replacement cost basis (exclusive of Licensee's betterments at the Premises) and (ii) Licensee shall maintain CP Insurance that insures Licensee's personal property and betterments in and about the Premises on a full replacement cost basis. Each CP Insurance policy shall, at a minimum, insure against the perils included in the ISO special causes of loss form CP 10 30 and any amendments or "all-risk" coverage, including loss or damage due to fire and the risks normally included in extended coverage (e.g., flood, windstorm, and earthquake).

**6.2. Waiver of Subrogation.** Except to the extent caused by the gross negligence or intentional act or omission of Licensee or Licensor, Licensee and Licensor hereby waive any and all rights of recovery, claims, actions, or causes of action against each other, by way of subrogation or otherwise, including their respective employees, officers, directors, subsidiaries, affiliates, agents, representatives, and assigns, for any loss or damage that may occur to the Premises, Licensor's personal property, Licensee's betterments in and about the Premises, and Licensee's personal property by reason of fire or other casualty, regardless of cause or origin. Licensor and Licensee shall obtain a waiver of subrogation from their respective insurers and shall endorse their respective CP Insurance policies to reflect such waiver of subrogation. The above waiver of subrogation applies whether or not there are any deductibles or self-insurance and in the absence of any CP Insurance.

**6.3. Liability Insurance.** During the Term, Licensor and Licensee shall maintain commercial General Liability insurance ("**CGL Insurance**") with limits of liability not less than \$1,000,000 per occurrence with a general aggregate of not less than \$2,000,000 covering liability arising from each party's operations at the Premises, as applicable, independent contractors, product-completed operations, personal injury, and advertising injury, and contractual liability that includes this Agreement as an insured contract. With respect to CGL Insurance, Licensee shall name Licensor as an additional insured with respect to Licensee's negligence for any claims arising out of Licensee's operations in or upon the Premises, and Licensor shall name Licensee, its employees, officers, directors, subsidiaries, affiliates, partners, or sublessees, as additional insureds with respect to Licensor's negligence for any claims arising out of operations of Licensor or Licensor's agents or contractors in or upon the Premises or Common Areas.

**7. Indemnification.**

Subject to the waiver of subrogation provision in Section 6 above, Licensee shall indemnify, hold harmless, pay, and reimburse Licensor from and for any and all losses, damages, liability, or expenses (including reasonable attorneys' fees, court costs, and expert witness fees) actually incurred by Licensor, arising from loss of life, personal injury and/or property damage, caused by or resulting from, in whole or in part, any negligent act or omission or intentional misconduct of Licensee, its agents, employees, or contractors, in connection with Licensee's use or occupancy of the Premises. Subject to the waiver of subrogation provision in Section 6 above, Licensor shall indemnify, hold harmless, pay, and reimburse Licensee from and for any and all losses, damages, liability, or expenses (including reasonable attorneys' fees, court costs, and expert witness fees) actually incurred by Licensee, arising from loss of life, personal injury

and/or property damage, caused by or resulting from, in whole or in part, any negligent act or omission or intentional misconduct of Licensor, its agents, employees, or contractors, in connection with the Premises. Notwithstanding the foregoing, in the event of the concurrent negligence or intentional misconduct of Licensee, its agents, employees, or contractors on the one hand and that of Licensor, its agents, employees, or contractors on the other hand, a party's (the "**Indemnifying Party**") obligation to indemnify the other as set forth in this Section 7 is limited to the extent of the Indemnifying Party's negligence and/or intentional misconduct, and that of its agents, employees, or contractors, including the Indemnifying Party's proportionate share of reasonable costs, attorneys' fees, court costs, expert witness fees, and other expenses incurred in connection with any claim, action, or proceeding brought with respect to such injury or damage. The obligations of Licensee and Licensor under this Section 7 survive the expiration or earlier termination of this Agreement.

**8. Casualty Damage.** If during the Term the Premises are destroyed or substantially damaged by fire or other casualty, Licensee may, to be exercised within thirty (30) days after such event, elect to terminate this Agreement by written notice to Licensor, which termination is deemed to be effective as of the date of the casualty. If Licensee terminates this Agreement pursuant to this Section 8, Licensee shall surrender possession of the Premises to Licensor, and neither party shall have any further liability hereunder.

**9. Assignment.** Except as otherwise provided in this Section 9, Licensee shall not assign this Agreement or sublet the whole or any part of the Premises (collectively, "**Transfer**") without the prior written consent of Licensor. The following events are not considered a Transfer under this Section 9: (i) a change in ownership of Licensee as a result of a merger, consolidation, reorganization, or joint venture; or (ii) the Transfer of this Agreement to any entity that controls, is controlled by, or is under common control with Licensee. Licensee is not required to obtain Licensor's consent and Licensor shall not delay, alter, or impede any of the foregoing transactions or combinations thereof.

**10. Notice.** Each party giving or making any notice, request, demand, consent, approval, or other communication (each, a "**Notice**" (but sometimes "**notice**")) pursuant to this Agreement shall: (i) give the Notice in writing; (ii) cause the Notice to be signed by an authorized representative of the sending party (the sending party's attorney is authorized to sign and send a Notice on behalf of the sending party); and (iii) use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: (a) personal delivery; (b) Registered or Certified Mail, in each case, return receipt requested and postage prepaid; (c) nationally recognized overnight courier, with all fees prepaid; (d) facsimile (but only if a party's fax number is included in its notice address below or is otherwise provided to the other party by a Notice); or (e) email (but only if a party's email address is included in its notice address below or is otherwise provided to the other party by a Notice). Each party giving a Notice shall address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the addresses listed below or to another Addressee or at another address as designated by a party in a Notice pursuant to this Section 10. Except as provided elsewhere in this Agreement, a Notice is effective only if (A) the party giving the Notice has complied with the above and (B) the Notice is deemed to have been received by the Addressee as provided below. A Notice is deemed to have been received by the Addressee as follows: (i) if a Notice is delivered in person, or sent by Registered or Certified Mail, or nationally recognized overnight courier, upon receipt by the Addressee as indicated by the date on the signed receipt; (ii) if a Notice is sent by facsimile, upon receipt by the party giving the Notice of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety to the Addressee's facsimile number; (iii) if a Notice is sent by email, upon sending the email to the Addressee's designated email address; and (iv) if the Addressee rejects or otherwise refuses to accept the

Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver the Notice; provided, however, that if a Notice is sent by facsimile or email, the party sending the Notice also must send, on the date that the facsimile or email is sent, a confirmation copy of the Notice (including the acknowledgement/transmission report described above) by one of the other methods set forth above (or else such facsimile or email notice is void).

Notice Addresses for Each  
“Addressee”:

Licensor:  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
F: \_\_\_\_\_  
E: \_\_\_\_\_

Licensee:  
Wells Fargo CPG  
Attn: Property Admin (BE # \_\_\_\_\_)  
MAC D1116-L10  
1525 West W.T. Harris Blvd.  
Charlotte, NC 28262  
F: 704.590.0436  
E: PropertyAdmin@WellsFargo.com

**11. Additional Terms.**

**11.1. General Terms.** (i) Licensor shall have the right to enter the Premises at reasonable times and with reasonable notice to Licensee; (ii) The descriptive headings/captions of the sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement’s construction or interpretation; (iii) The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement; (iv) The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement; (v) The prevailing party in any litigation involving this Agreement shall be entitled to reasonable attorneys’ fees actually incurred; (vi) The laws of the State of Florida (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates; (vii) The terms, conditions, covenants, and agreements of this Agreement extend to and are binding upon Licensor, Licensee, and their respective successors and permitted assigns, and upon any person or entity coming into ownership or possession of any interest in the Premises by operation of law or otherwise; (viii) If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this Agreement, or the application of such term, covenant, or condition to parties or circumstances other than those to which it is held invalid, illegal, or unenforceable, is not affected thereby and each term, covenant, and condition of this Agreement remains valid and enforceable to the fullest extent permitted by law, but only if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable; and (ix) Except where otherwise expressly provided for in this Agreement, any consent or approval required under this Agreement shall not be unreasonably withheld, delayed or conditioned.

**11.2. Business Day.** “**Business Day**” (or “**business day**”) means, as to any party, any day that is not a Saturday, Sunday, or other day on which national banks are authorized or required to close in the state, commonwealth, or jurisdiction where the Premises are located; If the last day of any time period hereunder, or the last day for performance of any obligation, or for giving any notice, or for taking any other action hereunder falls on a day that is not a Business Day, then such last day shall be extended to the first day thereafter that is not a Business Day.

**11.3. Waiver.** The parties may waive any provision of this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Agreement, and



no act, omission, or course of dealing between the parties operates as a waiver or estoppel of any right, remedy, or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.

**11.4. Merger/Prior Licenses.** This agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this agreement are expressly merged into and superseded by this agreement. The provisions of this agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this agreement, the parties have not relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this agreement. There is no condition precedent to the effectiveness of this agreement other than those expressly stated in this agreement.

**11.5. Trade Marks.** Each party's trade names, logos, trademarks and service marks permitted by law (collectively, "**Trade Marks**") remain the sole property of such party. Licensor and Licensee shall not use a Trade Mark of the other party in advertising or otherwise without the prior written consent of the party owning the Trade Mark.

**11.6. Quiet Enjoyment.** During the Term, Licensor covenants and agrees, provided Licensee pays all fees and performs the terms and conditions of this Agreement as and when required, to take all necessary steps to secure to Licensee and to maintain for the benefit of Licensee the quiet and peaceful possession and enjoyment of the Premises and all rights appurtenant thereto, without disturbance by Licensor or any other person claiming title to the Premises, the development of which the Premises is a part, or any part thereof of either of the foregoing.

**11.7. Brokerage Commissions.** Licensor and Licensee warrant and represent that they have not dealt with any real estate broker or salesman in connection with this Agreement. Licensor and Licensee further represent they have dealt with no other person that would create any liability for the payment of a commission by the other party. The party who breaches this warranty shall defend, hold harmless, and indemnify the non-breaching party from any claims or liability arising from the breach.

**11.8. Effectiveness; Date.** This Agreement will become effective when all parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature) will be deemed the date of this Agreement.

**11.9. Radon.** Pursuant to Section 404.056(6) of the Florida Statutes, Licensor is required to notify Licensee of the following: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

**11.10. Deed Restriction.** Nothing in this Agreement is intended or shall be construed as a release, waiver or modification of the use restriction set forth in the Special Warranty Deed from Wachovia Bank, National Association to Licensor dated January 14, 2008, recorded in Official Records Book 1177, page 200, public records of Jackson County, Florida.

**11.11. Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL.**

[Remainder of Page Left Blank Intentionally –  
Signatures on Following Page(s)]

The parties hereby execute this Agreement as of the dates set forth below.

Licensor:

**CITY OF MARIANNA, COMMUNITY REDEVELOPMENT AGENCY**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Licensee:

**WELLS FARGO BANK, N.A.**

By \_\_\_\_\_  
Joni Marie Lawler, Vice President

Date: \_\_\_\_\_

By \_\_\_\_\_  
Chris Hanrahan, Vice President

Date: \_\_\_\_\_

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