



# City of Grand Island

Tuesday, April 25, 2017

Council Session

## Item G-14

**#2017-129 - Approving Amendment to Lease Agreement with Wells Fargo Regarding Parking Stalls**

Staff Contact: Jerry Janulewicz

# **Council Agenda Memo**

**From:** Jerry Janulewicz, City Attorney

**Meeting:** April 25, 2017

**Subject:** Modification of Lease Agreement with Wells Fargo Bank

**Presenter(s):** Jerry Janulewicz, City Attorney

## **Background**

The City of Grand Island and Wells Fargo Bank, N.A. (“Wells Fargo”) are parties to a lease agreement whereby City leases to Wells Fargo ten (10) parking stalls located immediately north of the Wells Fargo branch located at 304 West Third Street. Wells Fargo is requesting that the City approve a modification of this lease agreement as part of Wells Fargo’s efforts to comply with federal law by which it is required to adopt and put in place a “Living Will” to ensure the orderly resolution of its assets, including leasehold interests, in the case of material financial distress. The lease modification, if approved, would preclude the City from terminating the lease upon a “resolution event,” such as insolvency or appointment of a receiver.

## **Discussion**

The Lease Agreement between the city and Wells Fargo does not prohibit assignment of the lease nor does it provide for termination in the event of tenant’s insolvency, bankruptcy or similar event. Thus, the proposed modification does not substantially change the legal relationship between the city as landlord and Wells Fargo as tenant under the existing lease agreement.

## **Alternatives**

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

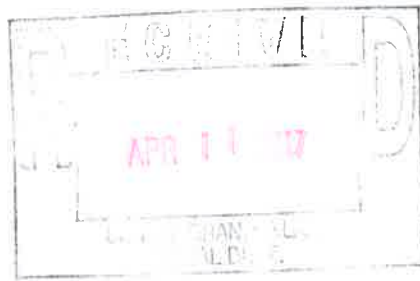
1. Adopt the Resolution approving the modification.
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

## **Recommendation**

City Administration recommends that the Council adopt the Resolution.

## **Sample Motion**

Move to approve the resolution approving the modification of the lease agreement between the City and Wells Fargo Bank.



**Wells Fargo & Co.**  
Corporate Properties Group  
Attn: Lease Admin/Cynthia Burns  
MAC D1086-300  
550 S. Tryon St., 30<sup>th</sup> Floor  
Charlotte, NC 28202  
E: LeaseRRP@WellsFargo.com

April 5, 2017

City of Grand Island  
Attn: Robert J. Sivick  
PO Box 1968  
Grand Island, NE 68802

By FedEx Overnight Delivery

Re: Wells Fargo's "Living Will" & Lease Agreement (as amended, if amended) between Landlord and Wells Fargo for 314 W S Front St, Grand Island, NE (collectively, the "Lease") - BE #109304

Dear Landlord:

As you may be aware, all large financial services companies, including Wells Fargo, are required by federal law to file a resolution plan (sometimes called a "living will") with federal regulators to ensure the orderly resolution of the company's assets in case of material financial distress or failure.

In general, federal law already provides federal regulators the means to resolve a financial company's assets in case of insolvency. For example, applicable law grants the FDIC the right to enforce a lease against a landlord even if the lease includes remedies for tenant insolvency. Even so, the federal guidance document for financial institution resolution plans provides that financial companies must modify their leases to incorporate terms precluding the automatic termination of a lease in case of insolvency. Therefore, to comply with the guidance document we have crafted proposed Resolution & Recovery terms for inclusion in our Lease, which are enclosed with this letter as Exhibit A.

To assist us in complying with federal requirements, we respectfully request that you sign this letter below indicating your agreement to amend the Lease to include the proposed Resolution & Recovery terms. After signing, please return the signed letter to us at the above address (a scanned PDF sent to the above email address also is acceptable). Since we are attempting to modify thousands of leases in a short time frame, we are grateful for your prompt attention to this matter.

You may receive more than one letter if you have more than one lease with us. If so, we apologize in advance, but if you will let us know, we will designate one point of contact to work with you on all leases.

If you have any questions, please email LeaseRRP@WellsFargo.com and someone will be in touch with you shortly. Thank you for helping us comply with our federal regulatory requirements.

Very truly yours,

Cynthia J. Burns  
Lease Management Operations Manager  
Corporate Properties Group

Accepted & Agreed this \_\_\_\_ day of \_\_\_\_\_ 2017

Landlord: \_\_\_\_\_

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

Signer Name: \_\_\_\_\_

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

Contract# A00010930420000

**EXHIBIT A**  
**Resolution & Recovery**

Tenant, as a national financial services company, is required by applicable federal requirements, including the Dodd-Frank Act, to restate federal insolvency law in the Lease and to ensure that Tenant has the continuing right to use the Premises during an insolvency related event (e.g., the appointment of a receiver pursuant to federal law) (a "**Resolution Event**"). Therefore, notwithstanding anything set forth in the Lease or applicable law to the contrary, if a Resolution Event occurs, and Tenant or an Affiliate (defined below) continues to pay all rent and other charges under the Lease timely and continues to maintain and repair the Premises, Landlord shall not terminate, modify, or prevent renewal of the Lease, suspend any services provided to Tenant, an Affiliate, or the Premises under the Lease, or otherwise exercise remedies under or in respect of the Lease arising from any default by Tenant or any Affiliate occurring as a result of a Resolution Event that is cured within a reasonable period following the commencement of such Resolution Event. In addition, but only in connection with a Resolution Event, Landlord hereby irrevocably and unconditionally consents to (i) any change of control of Tenant or any Affiliate in connection with a Resolution Event and (ii) to the assignment, delegation, novation, or transfer of any or all of Tenant's rights and obligations under the Lease, in whole or in part, to any entity that is or becomes (or, as of immediately prior to the Resolution Event, was) an Affiliate or a successor to the whole or a part of the business of Tenant or an Affiliate. Notwithstanding anything set forth in this Section to the contrary, Landlord is not required, even during a Resolution Event, to allow Tenant or an Affiliate to occupy the Premises after the final expiration date of the Lease. "**Affiliate**" has the meaning given such term in Section 2(k) of the Bank Holding Company Act of 1956, as amended from time to time (12 U.S.C. § 1841(k)) (i.e., "any company that controls, is controlled by, or is under common control with another company.").

# LEASE AGREEMENT

This agreement by and between the City of Grand Island, Nebraska, a Nebraska Municipal Corporation, hereinafter referred to as "City" and Wells Fargo Bank N.A. a national banking association, hereinafter referred to as "Wells Fargo", witnesseth:

## I.

The purpose of this agreement is to set forth the terms and conditions under which Wells Fargo will lease from the City ten (10) parking spaces immediately North of the Wells Fargo branch located at 304 West Third Street, Grand Island, Hall County, Nebraska.

## II.

This lease shall be in effect for a period of five (5) years from April 1, 2013 to March 31, 2018.

## III.

Wells Fargo agrees to pay the City Two Hundred and Fifty Dollars (\$250.00) per month for the ten (10) parking spaces or Two Thousand, Five Hundred Dollars (\$2,500.00) per year. The annual payment of Two Thousand, Five Hundred Dollars (\$2,500.00) shall be due in annual installments within thirty (30) days of the first day of each lease year.

## IV.

Wells Fargo shall designate the ten (10) leased spaces with signage and shall be solely responsible for the cost and maintenance of said signage.

## V.

The terms of this agreement shall be construed in accordance with the laws of the State of Nebraska.

## VI.

The terms contained in this document shall constitute the entire agreement between the parties and it may not be modified

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in any way except in writing and executed by duly authorized representatives of the parties.

THE CITY OF GRAND ISLAND

May 14, 2013  
Date

  
Jay Vavricek, Mayor


Attest:

  
RaNae Edwards, City Clerk

WELLS FARGO BANK N.A.

4/10/13  
Date

  
Title: Vice President

Approved:   
5/10/13 City Atty.

RESOLUTION 2017-129

WHEREAS, the City of Grand Island as landlord and Wells Fargo Bank, N.A. (“Wells Fargo”) as tenant are parties to a lease agreement whereby City leases to Wells Fargo ten (10) parking stalls located immediately north of the Wells Fargo branch located at 304 West Third Street; and

WHEREAS, the lease agreement was effective April 1, 2013 for a period of five (5) years; and

WHEREAS, Wells Fargo is required by federal law and regulating agencies to file a resolution plan with federal regulators to ensure the orderly resolution of the bank’s assets in case of material financial distress; and

WHEREAS, Wells Fargo’s resolution plan requires that its leases be modified to preclude automatic termination of the leases in case of insolvency, appointment of a receiver or other resolution event involving Wells Fargo.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the modification of lease agreement by and between the City of Grand Island and Wells Fargo providing for continuation of the lease agreement notwithstanding the occurrence of a resolution event on the part of Wells Fargo, should be and hereby is approved.

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Adopted by the City Council of the City of Grand Island, Nebraska, April 25, 2017.

\_\_\_\_\_  
Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

Approved as to Form	☐ _____
April 21, 2017	☐ City Attorney