

**Memorandum
Community Economic Development Department**

To: Thomas Thomas, City Manager
Subject: Triumph Community Bank ATM Lease Agreement
Date: October 21, 2015



Triumph Community Bank (formerly Metrobank) held a ten year lease agreement with the City of Rock Island for an ATM drive-through lane on the north side of 5th Avenue between 18th and 19th Street. The lease expires on November 15, 2015. Triumph Community Bank would like to update their lease agreement with the bank's new name. The updated lease term is for three years at a rate of \$200 per month. The new lease will become effective on November 16, 2015 and terminate November 15, 2017 unless an extension is requested and granted per the terms outlined in Section 2 of the lease agreement.

RECOMMENDATION: The CED Department recommends that the City Council approve the proposed lease agreement with Triumph Community Bank subject to minor modifications by the City Attorney, and that the City Council authorize the City Manager to execute the contract documents.

Submitted by: Jeffery A. Eder, Assistant City Manager/CED Director
Brandy Howe, AICP, Urban Planner

Approved by: Thomas Thomas, City Manager

**AUTOMATED TELLER MACHINE (ATM)
LEASE AGREEMENT**

THIS LEASE AGREEMENT is made and entered into as of the 16th day of November, 2015, by and between the CITY OF ROCK ISLAND, ILLINOIS, an Illinois municipal corporation (hereinafter “LESSOR”), and Triumph Community Bank, a division of TBK Bank, SSB, (hereinafter “LESSEE”).

1. PREMISES. LESSOR does hereby lease unto LESSEE, upon the terms and conditions hereinafter contained, certain real property located on the north side of 5th Avenue between 18th and 19th Street in the City of Rock Island, Illinois for use as an ATM drive-through lane. In addition, LESSOR does hereby lease to LESSEE, a portion of the sidewalk area located immediately adjacent to the drive-through lane for operation of an ATM terminal and incidental equipment. All of such leased property is hereinafter referred to as the “Premises,” which is depicted on Exhibit “A” and made part of hereof.
2. TERM. The basic term of this Lease Agreement shall commence upon the date of this Lease Agreement and shall continue in full force and effect for a period of three (3) years. LESSEE shall have the option to extend the term of the lease for one extended term of three (3) years by giving the LESSOR written notice of its intent to do so at least sixty (60) days prior to the expiration of the basic term. Such extended term shall be upon the same terms and conditions as the original term hereof with the exception of the rental fee which shall be adjusted as provided in Section 3, below. At the end of the basic term, if the parties fail to agree upon an extension of the term and LESSOR receives a bona fide offer from a third party to lease the Premises for use as an ATM terminal, LESSEE shall have a right of first refusal to lease the Premises upon the same terms as contained in such offer. Such right of first refusal shall be exercised by LESSEE within fifteen (15) days of receipt of written notice from LESSOR of the receipt of such offer from a third party. Notwithstanding the foregoing, in the event LESSEE ceases operation of the ATM terminal, which cessation is not temporary in nature, the lease shall automatically terminate and be of no further force and effect. Upon termination of the lease, LESSEE shall remove the ATM terminal and any incidental equipment.
3. RENT. During the basic term hereof, LESSEE shall pay to LESSOR as rent for the use and occupancy of the Premises, the sum of two hundred (\$200) per month, payable in advance during each and every month of the term of this lease. Rent for any fractional month during the term hereof shall be pro-rated between the parties. If, as provided in Section 2, above, the parties agree to extend the lease an additional three (3) years, the rental rate for the extended term will be negotiated at the time of extension. Any lease rate increase would not exceed 5% of the monthly basic term rate.
4. MAINTENANCE. LESSEE shall have the sole responsibility of maintaining and securing the ATM terminal and incidental equipment. LESSEE shall also be responsible for the ordinary

maintenance of the drive-through lane of the Premises and for snow removal, to the extent the same is not performed by LESSOR in connection with snow removal of the adjacent street.

5. CONSTRUCTION. In the event that the LESSEE wishes to replace the existing ATM terminal with a new ATM terminal and any incidental equipment, or if the Premises requires maintenance or reconstruction (e.g. sidewalk or drive-through lane), LESSEE, at its sole cost and expense, shall perform any and all construction to allow the operation of such ATM terminal and Premises. The plans and specifications for such construction shall be first submitted to LESSOR for its written approval prior to commencement of construction. LESSEE shall comply with all applicable rules and regulations, ordinances, and governmental obligations of every kind or nature pertaining to the installation and operation of the ATM terminal and will hold LESSOR harmless, protect and defend against any fine, penalty or damage for any actual or alleged failure on the part of LESSEE to comply therewith.
6. LESSEE'S PROPERTY. LESSEE acknowledges that the ATM terminal and incidental equipment necessary for the operation thereof is the sole property of LESSEE and that nothing in this lease or the relationship of the parties will give LESSOR any propriety interest in the same nor any responsibility therefore.
7. INDEMNIFICATION. LESSEE, with respect to its use and occupancy of the Premises and the installation of the ATM terminal agrees to hold harmless, indemnify, and, at LESSOR's option, defend LESSOR, its agents, servants, employees, officers, and council against any, all, and every demand, claim, assertion of liability or action arising or alleged to have arisen out of any act or omission of LESSEE, its agents, servants, and employees.
8. INSURANCE. LESSEE shall maintain, at its sole cost and expense, a policy or policies of insurance with policy limits of not less than \$500,000 for injury to or death of any person, \$1,000,000 for injury to or death of any number of persons arising out of any one occurrence, and \$250,000 for damage to property or others arising out of any one occurrence. Said policy or policies shall provide, among other things, contractual liability insurance, recognizing and insuring the assumption of liability undertaken by LESSEE under the provisions of the preceding paragraph and shall name LESSOR as an additional insured thereunder. Prior to the commencement of the term, LESSEE shall deliver to LESSOR a Certificate of Insurance evidencing such coverage.
9. NO RESPONSIBILITY OF LESSOR. LESSEE recognizes that LESSOR shall not be responsible in any manner for any damage or destruction of the ATM terminal or related facilities nor theft therefrom, vandalism, mischief or other loss no matter how occasioned and that the same is not covered by any policy of insurance carried by LESSOR on the Premises. LESSEE may, at LESSEE's option, insure the ATM terminal at its own cost and expense against any such damage destruction, theft, vandalism or other loss. In addition, LESSOR shall

not be responsible to LESSEE in any manner for loss of business or other loss occasioned by repairs, resurfacing or other maintenance to 5th Avenue or utilities lying therein or thereunder; provided, however, that LESSEE shall not be required to pay the rental specified herein for any extended period in which it is so prohibited from utilizing the ATM and adjacent drive-through lane.

10. NOTICE. Notices, as provided herein, shall be sufficient if sent by registered or certified mail, postage prepaid and addressed to:

To LESSOR:
ATTN: City Manager
City of Rock Island
1528 3rd Avenue
Rock Island, IL 61201

To LESSEE:
ATTN: Mary Ann Reid
TBK, SSB d/b/a Triumph Community
Bank
Vice President Facilities Management
852 Middle Road
Bettendorf, IA 52722

11. DEFAULT. In the event either party fails to perform its obligations in accordance with the terms and conditions hereof, the defaulting party shall have thirty (30) days after receipt of written notice from the non-defaulting party to cure the stated default; otherwise, the non-defaulting party may cure the default at the defaulting party's expense or terminate this lease.

12. TERMINATION DUE TO RECONFIGURATION. LESSOR reserves the right to terminate this lease and all of its obligations hereunder upon no less than ninety (90) days prior written notice to LESSEE in the event LESSOR decides to redesign 5th Avenue to such an extent that the operation of the ATM terminal would no longer be feasible. Upon such termination, LESSOR will cooperate with LESSEE in an attempt to relocate the ATM terminal to a substitute location.

IN WITNESS WHEREOF, the parties have executed this LEASE AGREEMENT as of the day and year first written above.

LESSOR
City of Rock Island

LESSEE
Triumph Community Bank, a division of
TBK Bank, SSB

Thomas Thomas, City Manager

Mary Ann Reid, Vice President Facilities
Management