

**FOURTH AMENDMENT TO ATM FACILITY  
LEASE AGREEMENT (this "Amendment")**

December \_\_\_\_, 2022

**LANDLORD:** CITY OF PENSACOLA, a municipal corporation of the State of Florida

**TENANT:** BANK OF AMERICA, N.A., a national banking association

**LEASED PREMISES:** Certain premises, as more particularly described in the Lease, having a street address of 440 East Cervantes Street, Pensacola, Florida

**LEASE:** ATM Facility Lease Agreement dated June 9, 1998; as amended by that Amendment to ATM Facility Lease Agreement dated as of January 24, 2002; as amended by that Amendment Two to ATM Facility Lease Agreement fully executed as of February 11, 2008; and as amended by that Third Amendment to ATM Facility Lease Agreement dated as of November 28, 2012 (collectively, the "Lease")

**EXTENDED EXPIRATION**

**DATE:** December 31, 2027

IN CONSIDERATION of the Leased Premises and the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and PROVIDED that the terms defined and referred to in the Lease shall have the same meaning when used in this Amendment, unless expressly stated otherwise, the Lease is hereby amended as follows:

1. **Extended Term.** The Lease is hereby amended to provide that the Term thereof is extended for an additional consecutive period of five (5) years, commencing on January 1, 2023, and expiring on December 31, 2027 (the "Extended Term").
2. **Rent.** The Lease is amended to reflect that throughout the Extended Term, Tenant shall pay Rent to Landlord in the amount of \$2,189.95 per month, plus applicable Florida sales tax, payable on the first day of each month as outlined in the Lease.
3. **Renewal Options.** The Lease is hereby amended to provide that Tenant shall have the option, in its sole and absolute discretion, to renew the term of the Lease for two (2) additional consecutive periods of five (5) years each (each, a "Renewal Term," and individually, the "First Renewal Term" and the "Second Renewal Term," respectively) by providing written notice to Landlord no later than three (3) months prior to the expiration of the Extended Term or the First Renewal Term, as applicable. During the First Renewal Term, if exercised, Tenant

shall pay Rent to Landlord in the amount of \$2,408.94 per month, plus applicable Florida sales tax; and during the Second Renewal Term, if exercised, Tenant shall pay Rent to Landlord in the amount of \$2,649.84 per month, plus applicable Florida sales tax.

4. **Assignment or Sublease.** Article 7 of the Lease is hereby amended to reflect that notwithstanding anything therein to the contrary, Tenant shall have the right, in its sole discretion and without Landlord's consent, to assign the Lease or to sublease the Leased Premises to any parent company, affiliate, or subsidiary of Tenant (each, an "Affiliate"; provided, however, that Tenant shall not assign the Lease or sublease the Leased Premises to a party other than an Affiliate without the consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall notify Landlord in writing of any assignment or sublease to an Affiliate within thirty (30) days after the date thereof.

5. **Lighting.** The Lease is amended to provide that Tenant shall have the right, at any time and without Landlord's consent, to (a) provide lighting during hours of darkness for operating the ATM in accordance with the requirements of applicable law and with Tenant's own lighting standards; and (b) provide additional lighting or modify its then-current lighting in connection with its ATM at any time. If required by applicable law or if deemed necessary by Tenant, in its sole discretion, to protect the health and safety of its customers, agents, employees, and invitees, Tenant shall have the right, at Tenant's sole cost and expense and subject to Landlord's prior approval of the plans for the Supplemental Lighting (as defined herein), which approval shall not be unreasonably withheld, conditioned, or delayed, to add supplemental lighting (the "Supplemental Lighting") in areas of the Property outside of the Leased Premises.

6. **Protected Items.** The Lease is amended to reflect that Tenant's personal property shall include the ATM and all cash and securities, computer servers, software, intellectual property, and other personal property associated with the ATM which could reasonably be expected to contain customer information and which may be subject to federal regulations as to ownership, possession, storage, disposal and handling (collectively, the "Protected Items"). Ownership of the Protected Items shall at all times be and remain vested in Tenant. The ATM shall not under any circumstances constitute, be or be deemed to be fixtures annexed to Landlord's property, and such ATM shall at all times be and remain free and clear of any claims, liens, or encumbrances created by Landlord. Landlord hereby waives any lien it has against Tenant, the Protected Items, and any other Tenant's property on the Leased Premises.

7. **Economic Sanctions Compliance.** Landlord represents that neither Landlord nor any of its subsidiaries nor, to the knowledge of Landlord, any director, officer, employee, or affiliate of Landlord, nor any third party to whom Landlord directs Tenant to make any payments required under the Lease, is an individual or entity ("Person") currently the subject of any sanctions administered or enforced by the United States Department of Treasury's Office of Foreign Assets Control ("OFAC"), or other relevant sanctions authority (collectively, "Sanctions"), nor is Landlord located, organized, or resident in a country or territory that is the subject of Sanctions; and Landlord represents and covenants that it has not knowingly engaged in, is not now knowingly engaged in, and shall not engage in, any dealings or transactions with any Person, or in any country or territory, that is the subject of Sanctions.

8. **Notices; Addresses.** Section 10.4 of the Lease is hereby amended to provide that notices required or permitted under the Lease may be delivered by nationally recognized overnight courier service or by certified U.S. Mail, return receipt requested. Any notice sent by overnight courier shall be deemed delivered one (1) business day after the business day on which the notice is submitted to the courier service, and any notice sent by certified U.S. Mail shall be deemed delivered three (3) days after being placed with the U.S. Postal Service. In addition to the methods set forth above, notices may be properly served if delivered by electronic mail to the electronic mail address(es) shown below (or to such other electronic mail address as may be provided by Landlord or Tenant to the other from time to time in accordance with this Section), provided that any such notices shall be (a) accompanied by a written notice sent by either nationally recognized overnight courier service, or certified U.S. Mail; and (b) deemed delivered upon delivery, if delivered on a business day prior to 5:00 p.m. Eastern time, or on the next business day, if delivered after 5:00 p.m. Eastern time or on a non-business day. A message received indicating that delivery via email was unsuccessful or that the recipient is out of office shall not be deemed to be receipt. For purposes of this Section, "business day" shall mean a day other than Saturday, Sunday, or any federal banking holiday. In addition, the Lease is modified to reflect that the parties' addresses for notices are as follows:

**Tenant's Notice Address:**

Via email to: notice@bofa.com using the Subject: Property ID FLW-164

Via certified mail or  
overnight courier to: Bank of America, National Association  
100 N. Tryon Street  
Mail Code NC1-007-25-50  
Charlotte, North Carolina 28255  
Property ID: FLW-164

**Landlord's Notice Address:** City of Pensacola  
222 W Main Street  
Pensacola, Florida 32502  
Attn: City Administrator

9. **Commissions.** The parties acknowledge and agree that no discussions or negotiations were had with any broker concerning this Amendment other than Jones Lang LaSalle Americas, Inc. ("Authorized Broker"), representing Tenant. Each of Landlord and Tenant agrees to indemnify and hold the other harmless from and against any and all claims for a brokerage commission or other compensation arising out of its respective dealings with any real estate broker or agent other than Authorized Broker in connection with the negotiation of this Amendment. Tenant shall be solely responsible for paying any commission owed to Authorized Broker in connection with this Amendment.

10. **Effect.** Except as amended hereby, the Lease shall continue in full force and effect, and Landlord and Tenant do hereby ratify and affirm all the terms, conditions, and covenants of the Lease as amended hereby. In the event of any discrepancy between this Amendment and the Lease, the terms of this Amendment shall prevail. This Amendment and all obligations and

undertakings herein shall be binding upon, and shall inure to the benefit of the parties, hereto, their heirs, executors, administrators, successors, and assignees, and/or anyone claiming by, through, or under any of them.

11. **Authority.** The parties hereto and the persons signing this Amendment on behalf of said parties represent and warrant to the other party that they have full right and authority to execute and perform its obligations under the Lease as amended by this Amendment, and that such persons are duly authorized to execute this Amendment on behalf of said party without further consent or approval by anyone. Each party shall deliver to the other party promptly upon request all documents reasonably requested by the party to evidence such authority. Landlord specifically warrants and represents that this Amendment does not require the consent of any third party, including, but not limited to, any mortgagee or ground lessor.

12. **Multiple Counterparts; Electronic Signatures.** This Amendment may be executed in multiple counterparts, each of which shall constitute an original instrument, but all of which shall constitute one and the same agreement. Execution and delivery of this Amendment by portable document format (“PDF”), email, or other form of electronic transmission bearing the PDF or other electronic signature of any party hereto shall constitute a valid and binding execution and delivery of this Amendment by such party. Such PDF copies shall constitute enforceable original documents.

13. **Digital Image.** The parties agree to accept a digital image of the Lease, including all amendments thereto, as executed, as a true and correct original and admissible as best evidence for purposes of State law, Federal Rule of Evidence 1002, and like statutes and regulations.

14. **Governing Law.** This Amendment is made in, and shall be governed, enforced and construed under the laws of the state in which the Leased Premises are located.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment as of the date on which the latter of the parties signs it, as evidenced in the below signature blocks.

**LANDLORD:**

CITY OF PENSACOLA, a municipal corporation of the State of Florida

By: \_\_\_\_\_  
Name: Kerrith Fiddler  
Title: City Administrator  
Date: \_\_\_\_\_

**TENANT:**

BANK OF AMERICA, NATIONAL ASSOCIATION, a national banking association

By: \_\_\_\_\_  
Name: Kathleen M. Luongo  
Title: Vice President  
Date: \_\_\_\_\_