

**SECOND AMENDMENT TO PERMIT AGREEMENT
No. 5253**

This Second Amendment to Permit Agreement ("Second Amendment"), dated for reference purposes only as of January 23, 2018, is by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California ("County" or "Permitter"), and BANK OF AMERICA, N.A., a national banking association ("Permittee").

Recitals

A. As authorized by San Mateo County Resolution No. 61629, County and Permittee entered into a Permit Agreement dated for reference purposes only as of January 6, 1998 (collectively with all executed amendments, the "Agreement") for use of a portion of the County/East Palo Alto Community Services Building located at 2415 University Avenue in the City of East Palo Alto, California, for the installation and operation of an Automated Teller Machine ("ATM"), Customer Bank Communication Terminal ("CBCT") system and associated equipment; and

B. As authorized by San Mateo County Resolution No. 65416, County and Permittee entered into a First Amendment to Permit Agreement dated for reference purposes only as of March 1, 2013 (the "First Amendment"), to extend the Term and increase the Rent, under the terms and conditions set forth in the Agreement; and

C. The term of the Agreement will expire on February 28, 2018; and County and Permittee desire to amend the Agreement to extend the Term and increase the Rent accordingly, under the terms and conditions set forth in the Agreement.

Agreement

For good and valuable consideration as hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree to amend and modify the Agreement as follows:

1. **Use.** The Building and parking lot shall be closed from 1:00 AM to 6:00 AM Monday through Sunday. During this time, ATM shall be inaccessible to all parties.
2. **Term.** Notwithstanding any other references to the term in the Agreement, and subject to the Permittee's Extension Option as set forth below in Section 3, the term ("Term") of the Agreement is hereby extended to February 28, 2023.
3. **Option to Extend Term.** Permittee shall have the right to further extend the Term for one period of five (5) years beyond February 28, 2023 ("Extension Option"). If Permittee is not then in material default under the terms of the Agreement, including any applicable notice and cure period, Permittee, at its sole discretion, may exercise the

Extension Option, if at all, only by giving written notice to Permittor no later than August 31, 2022.

4. **Rent.** Commencing on March 1, 2018, the monthly Base Rent shall increase to One Thousand Seven Hundred Forty Six and 62/100 Dollars (\$1,746.62), which Base Rent shall be in effect through February 28, 2019. For the period prior to March 1, 2018, the Base Rent shall be calculated in accordance with the First Amendment.

5. **Adjustments to Base Rent.** Notwithstanding Section 6.C. (Base Rent Adjustment) of the Agreement, beginning on March 1, 2019, and on the 1st day of March of each successive year of the Term and during any Extension Option of the Agreement, the monthly Base Rent shall be adjusted to equal one hundred three percent (103%) of the monthly Base Rent for the immediately preceding permit year.

6. **Access/Compliance with Laws.** The second (2nd) paragraph of Section 12 of the Permit Agreement shall be deleted in its entirety, and in its place there shall be inserted the following:

Permittee, its agents, employees and contractors shall have access to the Premises except during the hours of 1:00 AM through 6:00 AM Monday through Sunday for the purposes of installing, inspecting, maintaining, servicing, repairing, replacing, protecting or removing the ATM Facility.

7. **Effective Date; Approval.** This Second Amendment shall become effective (the "Effective Date") when the County Board of Supervisors adopts a resolution authorizing the execution of this Second Amendment and the Second Amendment is duly executed and delivered by Permittee and Permittor. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECOND AMENDMENT, PERMITTEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF COUNTY HAS AUTHORITY TO COMMIT COUNTY HERETO UNLESS AND UNTIL THE COUNTY BOARD OF SUPERVISORS HAS ADOPTED A RESOLUTION AUTHORIZING THE EXECUTION OF THIS SECOND AMENDMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF PERMITTEE AND PERMITTOR PURSUANT TO THIS SECOND AMENDMENT ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS SECOND AMENDMENT SHALL BE NULL AND VOID UNLESS THE BOARD OF SUPERVISORS ADOPTS A RESOLUTION AUTHORIZING THE EXECUTION OF THIS SECOND AMENDMENT. APPROVAL OF THIS SECOND AMENDMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF COUNTY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON COUNTY.

8. **Counterparts.** This Second Amendment may be executed in two counterparts, each of which shall be deemed an original, but both of which taken together shall constitute one and the same instrument. Execution and delivery of this Second Amendment by portable document format ("PDF") copy bearing the PDF signature of any party hereto shall constitute a valid and binding execution and delivery of this

Second Amendment by such party. Such PDF copies shall constitute enforceable original documents.

9. **No Further Amendments; Conflicts.** All the terms and conditions of the Agreement remain in full force and effect except as expressly provided in this Second Amendment. The Agreement constitutes the entire agreement between Permitter and Permittee regarding the Premises and may not be modified except by an instrument in writing duly executed by the Permitter and Permittee. In the event of any conflict between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall control.

10. **Notices.** Addresses for purposes of notice under the Agreement shall be:

If to County: Assistant County Manager
 400 County Center
 Redwood City, CA 94063

If to Permittee: Bank of America, National Association
 NC2-150-03-06
 13850 Ballantyne Corporate Place
 Charlotte, NC 28277
 Attn: Lease Administration (CAW-224)

With a copy to: Bank of America, National Association
 2505 W. Chandler Blvd
 AZ1-805-01-30
 Chandler, AZ 85224
 Attn: Leslie O'Brien, Vice President (CAW-224)

Any notices to be provided pursuant to the Agreement may be sent via a nationally recognized overnight courier service, in addition to the delivery methods set forth in the Agreement.

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County and Permittee have executed this Second Amendment to Permit Agreement as of the date first written above.

PERMITTEE:

BANK OF AMERICA, N.A.,
a national banking association

CDEM # 36933

CAW-224

By: Leslie O'Brien 12/1/17
Leslie O'Brien

Its: Vice President

COUNTY:

COUNTY OF SAN MATEO,
a political subdivision of the State of California

By: _____
Dave Pine
President, Board of Supervisors

Attest:

Clerk of the Board

Resolution No.: _____