

CITY CLERK ORIGINAL

C-6027-1
07/03/2012

THIRD AMENDMENT TO BANK OF AMERICA LEASE (1ST FLOOR LEASE)

THIS THIRD AMENDMENT TO BANK OF AMERICA LEASE (the "Amendment") is entered into this 3rd day of JULY, 2012 by and between CITY OF GLENDALE, an Arizona municipal corporation, successor-in-interest to Lincor Properties of Arizona and Glendale Financial Center Partnership ("Landlord"), and BANK OF AMERICA, NATIONAL ASSOCIATION, a national banking association ("Tenant").

RECITALS

- A. Landlord and Tenant or their predecessor(s)-in-interest entered into a Commercial Office Lease dated May 20, 1986 (the "Original Lease"), as amended by that First Amendment to Lease dated June 19, 1987 and that Second Amendment to Lease dated March 21, 2007 (the foregoing documents collectively hereinafter referred to as the "Lease"), pursuant to which Tenant leases from Landlord that space consisting of 7,220 rentable square feet and located on the first floor (the "Premises") of that building known as the Glendale Financial Center (also referred to as the Bank of America Plaza), which is located at 5800 West Glenn Drive, Glendale, Arizona (the "Building"), as further described in the Lease;
- B. The term of the Lease was set to expire on July 31, 2012 and Tenant has timely exercised its option to extend the Lease term for a period of five (5) years; and
- C. The parties desire to extend the term of the Lease and modify other Lease terms as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenant and agreements set forth herein, the parties hereto agree as follows:

1. Recitals. The Recitals stated above are incorporated by reference into the terms of this Amendment. Landlord and Tenant agree that the Recitals are true and correct.
2. Lease Term. The term of the Lease is extended for a period of sixty (60) months and this amended lease term shall commence on August 1, 2012 and expire on July 31, 2017. The extended Term will be known as the "Renewal Term." References in the Lease to the Term shall include the Renewal Term unless the context otherwise requires.
3. Rent. During the Renewal Term, Tenant shall pay monthly base rent ("Base Rent") to Landlord in accordance with the rent schedule below. The rate of Base Rent payable shall be subject to annual increases of \$0.50 (fifty cents) per rentable square foot.

Period	Rate/Sf/yr	Annual Base Rent	Monthly Base Rent
August 1, 2012 – July 31, 2013	\$23.40	\$168,948.00	\$14,079.00
August 1, 2013 – July 31, 2014	\$23.90	\$172,558.00	\$14,379.83
August 1, 2014 – July 31, 2015	\$24.40	\$176,168.00	\$14,680.67
August 1, 2015 – July 31, 2016	\$24.90	\$179,778.00	\$14,981.50

August 1, 2016 – July 31, 2017	\$25.40	\$183,388.00	\$15,282.33
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4. Renewal. Landlord grants three (3) additional renewal period options to renew this Lease for additional periods of five (5) years each on the same terms and conditions provided in the Lease and this Amendment. Should Tenant exercise any option, Tenant must deliver written notice of its intent to renew to Landlord at least 180 days prior to the expiration of the Term. The Base Rent payable during any such Renewal Term shall be consistent with the \$0.50 annual increase illustrated in Section 3 above.
5. No Continuous Use. Notwithstanding anything to the contrary in the Lease, nothing in this Amendment or the Lease shall be construed as a continual use clause, and Tenant shall not be in default for interruptions of business operations as long as Tenant continues to pay rent as due and otherwise remains in compliance with the Lease.
6. Alterations. Notwithstanding anything to the contrary in the Lease, Landlord hereby agrees that Tenant, at Tenant's sole cost and expense, shall be permitted to make any non-structural alterations to the interior of the Premises at Tenant's discretion without notice to, or the consent of, Landlord.
7. Protected Items. Notwithstanding anything contained in the Lease to the contrary, computer servers, desktop stations, laptops, files or other personal property which could reasonably be expected to contain customer information (collectively, the "Protected Items"), which may inadvertently be left at the Leased Premises at the end of the Term (or upon any earlier termination), shall not become the property of, nor be disposed of, by Landlord; but, Landlord may arrange for storage of same at Tenant's cost for a period of not less than sixty (60) days, only after first providing an additional written notice to Tenant for Tenant to retrieve said items; both Landlord and Tenant agree that such items may contain sensitive, confidential and/or proprietary information which is subject to federal regulations as to ownership, possession, storage, disposal, removal or other handling. During the period that any Protected Items remain in storage, Tenant shall, in addition to ownership of such items, retain the right of possession and control of the Protected Items.
8. Self Insurance. So long as Tenant has a tangible net worth (determined in accordance with generally accepted accounting principles) of not less than Fifty Million Dollars (\$50,000,000.00), Tenant may satisfy all or any part of its obligations to provide insurance under this Lease by way of Self-Insurance (as defined below) provided that Tenant issues written notice of its Self-Insurance to Landlord before implementing the Self-Insurance program and complies with each of the following provisions:
 - A. For this Amendment, "Self-Insurance" means that Tenant is acting as though it were the insurance company providing the insurance required under the Lease; Tenant shall pay any and all amounts due in lieu of insurance proceeds as required under the Lease, which amounts will be treated as insurance proceeds; and
 - B. All amounts which Tenant pays or is required to pay and all losses or damages resulting from risks for which Tenant has elected to cover by Self-Insurance shall be subject to the waiver of subrogation provisions set forth in the Lease and shall not limit or relieve Tenant's or Landlord's indemnification obligations set forth in the Lease; and
 - C. If Tenant elects to cover any risk by Self-Insurance, and an event or claim occurs for which a defense or coverage would have been available from the insurance carrier had

Tenant not elected to cover such risk with Self-Insurance, Tenant, using the auspices of a recognized independent insurance adjuster, shall: (i) undertake the defense of any such claim, including, without limitation, a defense of Landlord, at Tenant's sole cost and expense (including attorney's fees, expert witness fees, and all costs of a claim, settlement, or litigation); and (ii) use of Tenant's own funds to pay any claim or replace, reconstruct and/or fully repair any property (including the Tenant Improvements) or otherwise provide the funding which would have been available from insurance proceeds but for such election by Tenant to cover such risk with Self-Insurance.

9. Notices. Section 25 of the Original Lease is modified to reflect that all notices, demands, consents, approvals and other communications which may be, or are required to be, given by either Landlord or Tenant to the other under the Lease will be given in writing, addressed to Landlord or Tenant with copies as directed at their respective addresses as indicated below, or at another other place as Landlord or Tenant may from time-to-time designate in writing, and (a) deposited with a commercially recognized national courier service, or (b) sent by registered or certified mail, postage prepaid. All notices will be deemed given upon the date shown for delivery or attempted delivery if sent by national courier service or registered/certified mail. The following are the notice addresses of the parties:

Landlord:

City of Glendale
c/o MODE Real Estate Management Services
4414 N. Civic Center Plaza, Suite 100
Scottsdale, Arizona 85251

with copies to:

Glendale City Attorney
5850 W. Glendale Ave., Suite 450
Glendale, Arizona 85301

AND

City of Glendale
Property Manager
5850 W. Glendale Ave., Suite 315
Glendale, Arizona 85301

Tenant:

Bank of America, N.A.
NC2-109-06-05
13510 Ballantyne Corporate Place
Charlotte, NC 28277
Attn.: Lease Administration

with a copy to:

Bank of America Corporate Workplace
TX1-609-18-13
1201 Main Street
Dallas, Texas 75202-3113
Attn: Transaction Specialist

10. Non-Disturbance. Landlord represents and warrants that, as of the date of this Amendment, there are no mortgages or deeds of trust constituting a lien or charge on the whole, or any portion, of the Building. As a condition to any future request for subordination, Landlord shall obtain an agreement from any and all mortgagees that shall include a non-disturbance agreement which shall be executed by the party to whose interest Tenant subordinates its interest and shall meet the following requirements: (i) The Subordination Agreement shall provide that so long as Tenant is not in default

under the Lease (beyond the applicable cure or grace period provided in the Lease), Tenant's leasehold estate, and Tenant's rights under the Lease including, but not limited to, possession, occupancy and use of the Premises in accordance with the Lease, shall remain undisturbed and shall survive any foreclosure, transfer in lieu of foreclosure or other enforcement of the mortgage or deed of trust, and any termination of any such lease, as applicable; (ii) there shall be no change in the terms of the Lease, no diminution of Tenant's rights provided for in the Lease, and no additional liability of Tenant; and (iii) the documentation shall be otherwise satisfactory to Tenant in the exercise of its reasonable judgment.

11. Compliance with Executive Order and Patriot Act. Landlord and Tenant each represent and warrant that it and each of its subsidiaries, predecessors, agents, direct and indirect owners and their respective affiliates have at all applicable times been, are now, and will in the future, comply with U.S. Executive Order 13224 ("Order"). No action, proceeding, investigation, charge, claim, report or notice has been filed, commenced or threatened against any of them alleging any failure to comply with the Order. Neither Landlord, Tenant, nor any of its respective agents, subsidiaries or other affiliates has knowledge or notice of any fact, event, circumstance, situation or condition which could reasonably be expected to result in (i) any action, proceeding, investigation, charge, claim, report or notice being filed, commenced or threatened against any of them alleging any failure to comply with the Order, or (ii) the imposition of any civil or criminal penalty against any of them for any failure to comply. Landlord and Tenant each represent and warrant that neither it nor its partners are included in the OFAC List set forth in the Order or 31 CFR Ch V (Part 595) Appendix A.
12. Defined Terms. Capitalized terms shall have the meanings set forth in the Lease and Amendment unless otherwise defined.
13. Binding Effect. This Amendment and its terms shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors, and assignees, and anyone claiming by, through, or under any of them. This Amendment may not be modified, amended or terminated except by a written instrument executed by the parties, or their successors-in-interest.
14. Legal Representation. Each party acknowledges that it has been represented or has had ample opportunity to obtain representation of counsel with respect to this Amendment and, accordingly, each party represents to the other that it has read and understood the terms and the consequences of executing this Amendment, and that, except as expressly set forth, no representations have been made by either party to induce the other party to execute this Amendment.
15. Governing Law. This Amendment is made in, and shall be governed, enforced and construed under the laws of the state of Arizona.
16. Notices. All notices, demands, or other communications between the parties must be in writing and given in the manner set forth in Section 9.
17. Waiver. No delay or omission by either party in exercising any right or power under the Lease or this Amendment shall impair any such right or constitute a waiver thereof, unless the waiver is in writing and executed by that party. A waiver of any covenant, condition or term in this Amendment shall not be construed as a waiver of any succeeding breach of the same or other covenant, condition or term.

18. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.
19. Digital Image. The parties agree to accept a digital image of this Amendment, as executed, as a true and correct original and admissible as best evidence for the purposes of State law, Federal Rule of Evidence 1002, and the like statutes and regulations.
20. Authority. If Landlord or Tenant is a corporation, general or limited partnership or individual owner, each individual executing this Amendment on behalf of that corporation, partnership or individual represents and warrants that he or she is authorized to execute and deliver this Amendment on behalf of the corporation, in accordance with corporation's bylaws, or as a partner or individual is authorized to execute this document, and that this Amendment is binding upon the corporation and/or partnership or individual, except as to those individuals signing on behalf of a corporation. Landlord warrants and represents that other than City Council approval, no further approval or consent is required for this Amendment.
21. Amendment. The terms and provisions of this Amendment modify the Lease. In the event of any discrepancy between this Amendment and the Lease, the terms of this Amendment shall prevail. Except as modified by this Amendment, the terms of the Lease shall remain in full force and effect. Submission of this Amendment for examination does not constitute an option to renew, or reservation of space for the Premises. This Amendment shall be effective only when executed by both parties and received by Tenant. Until such time, this offer may be revoked at any time, at Tenant's option.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first set forth hereinabove.

LANDLORD:

CITY OF GLENDALE, an Arizona municipal corporation

By: Horatio Skeete

Name: Horatio Skeete

Its: Acting City Manager

ATTEST:

Pamela Hanna, City Clerk
Pamela Hanna, City Clerk

APPROVED AS TO FORM:

Craig Tindall, City Attorney
Craig Tindall, City Attorney

TENANT:

BANK OF AMERICA, NATIONAL ASSOCIATION, a national banking association

By: Judy Wilkinson

Name: Judy Wilkinson 5/23/12

Its: Assistant Vice President