

Date: July 13, 2023

To: Weber County Board of County Commissioners

From: Scott Mendoza
Community Development Department

Agenda Date: July 18, 2023

Subject: **Request to approve an amendment to an existing Merrill Lynch lease agreement.**

Attachments: A – Proposed Lease Payment Schedule
B – Proposed Fifth Amendment to Lease Agreement

Summary:

Weber County owns the Weber Center and leases office space to five different tenants, including Merrill Lynch. Merrill Lynch has leased space in the Weber Center since August of 1999 and since that time, their lease agreement has been amended four times for a variety of reasons. The original lease and subsequent amendments were agreements put in place by Merrill Lynch and Land of Og LLC, which was the previous owner of the office space leased by Merrill Lynch.

Merrill Lynch is proposing a fifth amended which allows for a reduction in rentable square footage. Currently, Merrill Lynch leases 7,162 square feet but would like to reduce that by 597 square feet. The space that's being vacated is a storage room that is no longer needed.

The monthly dollar amount attributed to the storage space is \$1,027.87. See Attachment A for a proposed schedule of new lease payments through January 31, 2026. See Attachment B for the proposed amendment to the Merrill Lynch lease agreement.

The term of the lease will remain unchanged and effective through January 31, 2032.

Attachment A

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Current Term	Full Lease Monthly Amount	Monthly Amount Attributable to the Storage Space SF	Total New Monthly Rental Rate
2/1/23 - 1/31/24	\$ 13,366.39	\$ 1,027.87	\$ 12,338.52
2/1/24-1/31/25	\$ 13,633.72	\$ 1,048.43	\$ 12,585.29
2/1/25-1/31/26	\$ 13,906.39	\$ 1,069.39	\$ 12,837.00

Gross Leasable Area	7,759
Net Rentable Area	6,502
Leasing Factor	1.1934

Net Rentable Area (Main Premises)	6,002
Gross Leasable Area (Main Premises)	7,163
<i>% Total Gross Leasable Area</i>	<i>92.31%</i>
Net Rentable Area (Storage)	500
Gross Leasable Area (Storage)	596.7
<i>% Total Gross Leasable Area</i>	<i>7.69%</i>

Attachment B

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FIFTH AMENDMENT TO LEASE AGREEMENT

This Fifth Amendment to Lease Agreement (this "Amendment") is made and entered into on _____, 2023 (the "Effective Date"), by and between WEBER COUNTY, State of Utah, successor-in-interest to LAND OF OG, L.L.C., a Utah limited liability company ("Landlord"), and MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, a Delaware corporation ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated August 16, 1999 (the "Original Lease"), as amended by that certain Lease Extension and Modification Agreement dated November 18, 2009, that certain Second Amendment to Lease dated August 12, 2014, that certain Third Amendment to Lease dated May 29, 2019, and that certain Fourth Amendment dated July 21, 2022 ("Fourth Amendment" and collectively, the "Lease"), pursuant to which Landlord leases to Tenant approximately 7,759 square feet of gross rentable area (as more particularly described in the Original Lease, the "Existing Premises") located at 2380 Washington Boulevard, Suite 110, Ogden, Utah 84401; and

WHEREAS, Landlord and Tenant have agreed to reduce the amount of gross rentable area by 597 rentable square feet and reduce the Monthly Base Rent and to make certain other modifications to the Lease, all as more particularly set forth below.

NOW THEREFORE, in consideration of the promises and covenants of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lease is hereby modified and amended and the parties mutually agree as follows:

1. Recitals. The recitals set forth above are true and correct, and are incorporated herein by reference.
2. Definitions. Any and all capitalized terms used but not otherwise defined in this Amendment will have the meanings ascribed to such terms in the Lease.
3. Premises. Effective as of August 1, 2023 (the "Surrender Date"), the Existing Premises shall be reduced by 597 rentable square feet (the "Surrender Area") as shown in Exhibit A attached hereto and made a part hereof. Effective on and after the Surrender Date, (i) the "Premises" shall consist of **7,162** rentable square feet and (ii) Tenant's Pro-Rata Share as defined in Section 1.01(O) of the Lease shall be amended to be **18.758%** (7,162/38,182). The Surrender Area shall be surrendered by Tenant in the condition required under the Lease.
4. Monthly Base Rent. During the Fourth Extension Term, base rent ("Base Rent") shall be amended from the Fourth Amendment and Tenant shall pay Base Rent on a monthly basis ("Monthly Base Rent") to Landlord as follows:

Fourth Extension Term Period	Annual Base Rent	Monthly Base Rent
Surrender Date – January 31, 2024	\$148,055.29	\$12,337.94
February 1, 2024 – January 31, 2025	\$151,016.42	\$12,584.70
February 1, 2025 – January 31, 2026	\$154,036.70	\$12,836.39

Monthly Base Rent shall be due and payable in equal monthly installments as set forth above, on or before the first (1st) day of each calendar month during the Fourth Extension Term.

5. Renewal Options. Tenant shall continue to have the right to extend the term of the Lease beyond the Fourth Extension Term for two (2) additional consecutive periods of three (3) years each pursuant to Section 4 of the Fourth Amendment; provided, however, the Monthly Base Rent shall be amended from the Fourth Amendment as follows:

Option 1 Period	Annual Base Rent	Monthly Base Rent
February 1, 2026 – January 31, 2027	\$157,117.44	\$13,093.12
February 1, 2027 – January 31, 2028	\$160,259.79	\$13,354.98
February 1, 2028 – January 31, 2029	\$163,464.98	\$13,622.08

Option 2 Period	Annual Base Rent	Monthly Base Rent
February 1, 2029 – January 31, 2030	\$166,734.28	\$13,894.52
February 1, 2030 – January 31, 2031	\$170,068.97	\$14,172.41
February 1, 2031 – January 31, 2032	\$173,470.35	\$14,455.86

For the avoidance of doubt, the terms and conditions of Section 4 of the Fourth Amendment shall remain in full force and effect and unmodified, except for the Monthly Base Rent amounts listed above.

6. SNDA. Landlord warrants and represents that no party has any security interest (including, without limitation, any mortgage, deed of trust, or other lien or encumbrance) in the Premises or any portion thereof. Notwithstanding anything set forth in the Lease to the contrary, with respect to any future mortgages or other encumbrances entered into by Landlord and any mortgagee and/or beneficiary of any other lien, Landlord shall secure a Subordination, Non-Disturbance and Attornment Agreement (“SNDA”) from such future mortgagee, substantially in the form attached hereto as Exhibit B, for the benefit of Tenant that will be executed and delivered to Tenant within thirty (30) days after the date of any such future mortgage or other financing, and in the absence of such SNDA, the Lease, as amended from time to time, will not be deemed to be subordinate to the lien of such mortgage or other financing. There shall be no charge to Tenant for any SNDA provided in accordance with this Section.
7. Notices. Effective immediately, Section 16.01 of the Lease is amended by replacing Landlord’s and Tenant’s addresses for notices with the following:

Landlord:

Weber County
 2380 Washington Boulevard, Suite 250
 Ogden, Utah 84401
 Attn: Lease Administration

Tenant:

Via email to: notice@bofa.com using the Subject: Property ID (UT9-380)

with a hard copy to:

Merrill Lynch, Pierce, Fenner & Smith, Inc.
c/o Bank of America, National Association
100 N. Tryon Street
Mail Code NC1-007-25-50
Charlotte, North Carolina 28255
Property ID: (UT9-380)

Section 16.01 of the Lease is hereby modified to provide that any notices to be provided pursuant to the Lease may be sent via electronic mail to the address above, provided that any such notices shall be (a) accompanied by a written notice sent by either nationally recognized overnight courier service, or United States mail, postage fully prepaid, registered or certified 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.

8. Economic Sanctions Compliance. Landlord represents that neither Landlord nor any of its subsidiaries nor, to the knowledge of Landlord, any director, officer, employee, agent, affiliate or representative of Landlord, nor any third party to whom Landlord directs Tenant to make any payments required by 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. Landlord hereby agrees to indemnify, defend, and hold Tenant harmless from and against any and all claims, losses, and damages (including attorneys' fees and costs) arising from or related to any breach of the foregoing representations. Notwithstanding anything to the contrary in the Lease, if at any time during the term of the Lease as it may be extended, Tenant obtains knowledge that any representation made by Landlord pursuant to this Section is untrue, inaccurate, or incorrect, Landlord acknowledges that Tenant shall be required to place all payments due to Landlord under the Lease to a blocked account until such time as Tenant receives a waiver from the relevant sanctions authority allowing for payments to be made directly to Landlord. Landlord shall provide Tenant with at least thirty (30) days prior notice of any assignment or transfer of the Lease, which notice shall include the transferee's name, address, tax identification number, state and country of formation.
9. Customer Information Protection. Notwithstanding anything in the Lease to the contrary, throughout the term of the Lease and any extensions thereof, no computer servers, desktop stations, laptops, files or other personal property at the Premises which could reasonably be expected to contain customer information (collectively, the "Protected Items") shall become the property of Landlord, and such Protected Items shall be disposed of by Landlord only in accordance with this Section. If, after the expiration or earlier termination of the Lease, any Protected Items remain in the Premises, Tenant shall retain complete ownership and control of the Protected Items and Landlord shall notify Tenant in writing that such Protected Items remain in the Premises. If Tenant fails to retrieve the Protected Items within thirty (30) days from its receipt of such notice, Landlord may arrange for storage of such Protected Items at Tenant's cost for a period of not less than ninety (90) days, after which time Landlord may deem the Protected Items abandoned, and Landlord shall no longer be responsible for holding or storing the Protected Items, and Landlord may thereafter destroy any remaining Protected Items in accordance with applicable laws and at Tenant's expense. The parties acknowledge that the Protected 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.

10. Employee Representation. To Landlord's actual knowledge, Landlord represents and warrants that neither Landlord, nor any member, manager, officer, director, or employee of Landlord, is an employee or a spouse, domestic partner or dependent child of an employee of Tenant, and that no member, manager, officer, director, or employee of Tenant, and no spouse, domestic partner or dependent child of any member, manager, officer, director, or employee of Tenant, has a controlling interest in Landlord.
11. Digital Images. The parties agree to accept a digital image of the Lease and all amendments thereto, including this Amendment, as executed, as true and correct originals and admissible as best evidence for the purposes of State law, Federal Rule of Evidence 1002, and like statutes and regulations.
12. Commission. Landlord and Tenant each represents and warrants to the other that neither Landlord nor Tenant has dealt with any real estate broker, salesperson, or finder in connection with this Amendment, and no such person initiated or participated in the negotiation of this Amendment. Landlord and Tenant agree to indemnify, defend and hold each other harmless from and against any and all liabilities, claims, commissions, fees and other costs (including without limitation reasonable attorney fees) arising out of a breach of the foregoing representations.
13. Authority. Landlord and the person signing this Amendment on Landlord's behalf represent and warrant to Tenant that (a) Landlord is the sole owner in fee simple of the Premises; (b) Landlord has full right and authority to execute and perform its obligations under the Lease as amended hereby; (c) Landlord is, and since the date of its respective formation has been, duly organized, validly existing and in good standing with full power and authority to own its assets and conduct its business, and is duly qualified and in good standing in all jurisdictions in which the ownership or leasing of its property or the conduct of its business requires such qualification; (d) that the person signing this Amendment on Landlord's behalf is duly authorized to execute this Amendment on Landlord's behalf without further consent or approval by anyone; and (e) there are no ground leases, mortgages or deeds of trust presently encumbering the Premises, and no third-party approval or consent (such as, without limitation, a mortgagee, trustee or ground lessor) is required as a condition to the full force and effectiveness of this Amendment. Landlord shall deliver to Tenant promptly upon request all documents reasonably requested by Tenant to evidence the foregoing.
14. Entire Agreement. This Amendment is the entire agreement of the parties regarding modifications to the Lease provided herein, supersedes all prior agreements and understandings regarding such subject matter, may be modified only by a writing executed by the party against whom the modification is sought to be enforced, and shall burden and benefit the parties and their respective successors and assigns. No third parties are intended to be benefitted by the Lease or this Amendment.
15. Ratification of Lease Terms. All terms and conditions of the Lease, except as expressly amended pursuant to the terms of this Amendment, shall remain unchanged and in full force and effect and are hereby ratified and confirmed by Landlord and Tenant.
16. Counterparts and PDF Signatures. This Amendment may be executed in any number of counterparts with the same force and effect as if all signatures were appended to one document, each of which shall be deemed an original. Execution and delivery of this 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 Amendment by such party. Such PDF copies shall

constitute enforceable original documents.

17. Confidentiality; Non-Disclosure. Landlord and Tenant hereby acknowledge and agree that the contents of the Lease, as modified by this Amendment (including any proprietary information related to Landlord's or Tenant's business operations, collectively, the "Confidential Information") and any subsequent amendments thereto are confidential information and shall not be discussed, disclosed, or published other than with or to any employees, auditors, agents, accountants, brokers, consultants, and/or attorneys who need to know it and who are directed to comply with this confidentiality covenant. Notwithstanding the foregoing or any provision in this Amendment to the contrary, the Confidential Information may also be disclosed: (a) to the extent that disclosure is required by regulatory requirement or judicial or administrative process or other requirement of law (including, without limitation, in order to satisfy the requirements of applicable securities or banking laws); (b) in connection with any action or proceeding to enforce or interpret the Lease (as modified hereby) or any provision hereof; (c) to the extent that the information is in the public domain through no fault of or cause by the disclosing party; (d) to prospective tenants, subtenants, assignees, purchasers or lenders (provided that such prospective party signs a confidentiality and non-disclosure agreement prohibiting the disclosure of any Confidential Information (including the terms or provisions of the Lease, as modified hereby) to any party other than such prospective party's agents, accountants, brokers, consultants, attorneys, and/or lenders); or (e) to the extent otherwise expressly permitted by the Lease (as modified hereby) or consented to in writing by the other party. The parties agree to treat as confidential and to use reasonable efforts to prevent the inadvertent disclosure of proprietary information of either party delivered to the other pursuant to or in furtherance of the purposes of the Lease, as modified hereby. From and after the Effective Date, except with the prior written consent of the other party, neither Landlord nor Tenant shall make or permit to be made any public announcements or press releases concerning the Lease or any amendments to it, the terms of the Lease or such amendments, or any other information concerning the Lease or amendments to it or any transaction contemplated therein. This provision shall survive the termination of the Lease, as modified hereby.

[signatures follow on next page]

Attachment B
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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, which date shall be inserted in the blank at the top of the Page 1.

LANDLORD:

WEBER COUNTY,
State of Utah

By: _____
Name: _____
Title: _____
Date: _____

DRAFT

TENANT:

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
a Delaware corporation

By: Michelle M. Parker
Name: Michelle Parker UT9-380; CS73635
Title: Attorney-in-Fact
Date: 7/10/2023

For information about how Bank of America protects your privacy, including California specific rights that may apply, please visit www.bankofamerica.com/privacy.

EXHIBIT B

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is made and dated as of _____, 20__, by and between Bank of America, National Association, a national banking association, successor-in-interest to _____ ("Tenant"), _____ ("Mortgagee") and _____ ("Landlord").

WHEREAS, Mortgagee is the owner and holder of a promissory note dated _____, 20__, made by Landlord payable to the order of Mortgagee (herein, as it may have been or may be from time to time renewed, extended, amended or supplemented, called the "Note"), secured, without limitation, by a Deed of Trust (herein, as it may have been or may be from time to time renewed, extended, amended or supplemented, called the "Deed of Trust") recorded in Volume _____, Page _____, of the Real Property Records of _____ County, _____, covering the land (the "Land") described in Exhibit A which is attached hereto and incorporated herein by reference, and the improvements thereon (such Land and improvements being herein together called the "Property," and the Deed of Trust, and any other liens held by Mortgagee against the Property to secure the Note, being herein together called the "Mortgage"); and

WHEREAS, Tenant, as tenant, has executed a lease dated on or about _____ (as amended, the "Lease") with Landlord covering the portion of the Property described in the Lease (the "Premises"), located at _____; and

WHEREAS, the parties have agreed that the Lease shall be subordinate to the lien of the Mortgage under the conditions set forth in this Agreement.

THEREFORE, for and in consideration of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants and agreements herein contained, Tenant, Landlord and Mortgagee hereby agree as follows:

1. Subject only to the rights of Tenant hereinafter set forth, the Lease and all rights of Tenant thereunder are subject and subordinate to the lien of the Mortgage and any renewals or extensions thereof. This provision is acknowledged by Tenant to be self-operative and no further instrument shall be required to effect this subordination of the Lease. However, nothing herein is intended or shall be construed to subject to the lien of the Mortgage any property owned by Tenant or removable from the Premises by Tenant under the terms of the Lease.

2. In the event of any foreclosure under the Mortgage, either by judicial proceeding or by power of sale, or if conveyance or transfer of the Property shall be made in lieu of foreclosure (any such foreclosure or conveyance or transfer in lieu of foreclosure being herein referred to as "Enforcement" and any party owning the Property or any interest therein as a result of Enforcement, and its successors and assigns, being herein called "Owner"), then the Lease shall not be terminated as a result of the Enforcement, whether by operation of law or otherwise. Notwithstanding the Enforcement, and the fact that the Lease is subordinate to the lien of the Mortgage, the Lease shall continue in full force and effect as a binding lease agreement between Owner and Tenant in accordance with its terms, the rights of Tenant under the Lease shall not be interfered with or disturbed by Owner, and Tenant shall retain all accrued rights, if any, to self-help, abatement of rent, and other remedies permitted under the express terms of the Lease. Nothing herein shall negate the right of Owner to exercise the rights and remedies of Landlord under the Lease, including, without limitation, the right to terminate the Lease because of an Event of Default by Tenant under the Lease, and as to any

breach or failure by Tenant under the Lease existing at the time of Enforcement, the Enforcement shall not operate to waive or abate the running of any notice or cure period or any action initiated by Landlord under the Lease to terminate the Lease on account of an Event of Default by Tenant. Nothing in this Agreement shall obligate Tenant to pay rent or other charges to Mortgagee until Mortgagee has succeeded to the interest of Landlord under the Lease and Tenant has received written notice thereof from Mortgagee, together with satisfactory evidence demonstrating that Mortgagee or Owner has succeeded to Landlord's interest under the Lease and directing where rent should be mailed. The term "Event of Default" as used herein means a breach or failure to perform by Tenant under the Lease which continues beyond the applicable cure or grace period, if any, provided in the Lease.

3. Tenant agrees that in the event of Enforcement, Tenant will attorn to Owner upon and subject to the terms and conditions of the Lease, including payment to Owner of all rentals and charges thereafter becoming due under the Lease, all without change in the terms or provisions of the Lease. Tenant agrees that Owner shall not be bound by (a) any payment of rent or additional rent made more than thirty (30) days in advance of the due date thereof, except advance rental payments expressly provided for in the Lease, or (b) any payment of rent made to Landlord thirty (30) days or more after the date on which Owner notifies Tenant in writing of its ownership of the Property as successor in interest to Landlord. Upon request by Tenant, Owner and Tenant shall execute and deliver an instrument or instruments confirming the non-disturbance and attornment herein provided for.

4. Tenant acknowledges that this Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement by Mortgagee.

5. Mortgagee may elect at any time to cause the Mortgage to be subordinate and junior to the Lease by filing an instrument in the real property records of the county in which the Property is located specifying that election and concurrently providing Tenant with written notice of that election.

6. All notices required or which any party desires to give hereunder shall be in writing and shall be addressed or delivered to the respective addresses set forth at the end of this Agreement, or to such other address as may have been previously designated by the intended recipient by notice given in accordance with this Section. If sent by prepaid, registered or certified mail (return receipt requested), the notice shall be deemed effective when the receipt is signed or when the attempted initial delivery is refused or cannot be made because of a change of address of which the sending party has not been notified; and if transmitted by personal delivery or via nationally recognized overnight mail courier service, the notice shall be effective on the earlier of (a) the date of receipt, or (b) if receipt is refused or cannot be completed due to a change of address of which the recipient has not notified the party delivery such notice, the date on which delivery is initially attempted. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt.

7. This Agreement shall inure to the benefit of and shall be binding upon Mortgagee, Landlord, and Tenant and their respective successors and assigns, and any Owner and its heirs, personal representatives, successors and assigns. This Agreement and its validity, enforcement and interpretation, shall be governed by the laws of the State of _____ and applicable United States federal law. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest.

8. This Agreement may be executed in any number of counterparts with the same force and effect as if all signatures were appended to one document, each of which shall be deemed an original. Further, unless Mortgagee requires that the Agreement be recorded, the execution and delivery of the Agreement by portable document format ("PDF") copy or other electronic copy bearing the signature of any party hereto

shall constitute a valid and binding execution and delivery of this Agreement by such party. Such PDF or other electronic copies shall constitute enforceable original documents.

[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

MORTGAGEE:

By: _____
Name: _____
Title: _____

TENANT:

Bank of America, National Association

By: _____
Name: _____
Title: Vice President

LANDLORD:

By: _____
Name: _____
Title: _____

Address of Mortgagee:

Attention: _____

Address of Tenant:

100 N. Tryon Street
Mail Code NC1-007-25-50
Charlotte, North Carolina 28255
Attention: **(PROJECT ID)**

Address of Landlord:

Attention: _____

Exhibit A

[Legal Description of Land]