

**ATM LEASE**

Dell Rapids, SD – 317 E. 4<sup>th</sup> Street (BE #102210)

**KEY PROVISIONS SUMMARY**

Lease Date:	The date this Lease is executed by the last to sign of Landlord and Tenant as shown on the signature page(s) attached hereto.		
Landlord:	City of Dell Rapids, South Dakota		
Tenant:	Wells Fargo Bank, N.A., a national banking association		
Development:	The development commonly located at 317 E. 4 <sup>th</sup> Street, Dell Rapids, South Dakota		
Premises:	The ATM pad depicted in the site plan attached as <u>Exhibit A</u> (provided, however, that the term “Premises” does not include the land underlying the ATM pad site)		
Notice Addresses (Section 22):	Landlord:	Tenant:	
	City of Dell Rapids, South Dakota Attn: Justin Weiland PO Box 10 Dell Rapids, SD 57022 E:cityadmin@cityofdellrapids.com  With a copy to: Dell Rapids Law Firm Attn: Dean Hammer PO Box 100 Dell Rapids, SD 57022 E: dean@dellrapidslaw.com	Wells Fargo CPG Attn: Property Admin Dell Rapids, SD – 317 E. 4 <sup>th</sup> Street (BE #102210) MAC D1116-L10 1525 West W.T. Harris Blvd. Charlotte, NC 28262 E: PropertyAdmin@WellsFargo.com	
Commencement Date:	The date of the closing on the sale of the Development from Tenant (as seller) to Landlord (as buyer) (Section 2.4)		
Rent Payment Date:	Annually on November 1 (Section 5.1)		
Expiration Date:	Midnight at the end of the last day of the last full calendar month five (5) years after the Commencement Date (Sections 4.1 & 5.1)		
Renewal Term(s):	Three (3) terms of five (5) years each (Section 4.2)		
Rent (Section 5):	Year(s)	Annual Rent	
	Initial Term	\$1.00	
	Renewal Terms	\$1.00	
Landlord’s Rent Payment Address:	_____ Attn: _____ _____ _____ Contact Phone: _____ Contact Email: _____		
Exhibits:	Exhibit A – Site Plans & ATM Facility Exhibit B – Landlord’s W-9		

## ATM LEASE

THIS ATM LEASE (“Lease”) is entered into as of the Lease Date by Landlord and Tenant. The parties agree as follows:

### **1. Key Provisions Summary; Enumeration of Exhibits; Consent.**

References in the body of this Lease to a portion of the Key Provisions Summary (e.g., the defined terms in the left-hand column of the Key Provisions Summary) are deemed and construed to incorporate all the terms provided under each such referenced portion of the Key Provisions Summary. References in the Key Provisions Summary to a portion of the body of this Lease (e.g., Section references in the right-hand column of the Key Provisions Summary) are deemed and construed to incorporate all the terms provided under each such referenced portion of the body of the Lease. Notwithstanding the foregoing, if there is any inconsistency between the Key Provisions Summary and another portion of this Lease, the terms of the Key Provisions Summary control. The Exhibits enumerated in the Key Provisions Summary and attached to this Lease are incorporated in this Lease by reference and are to be construed as a part of this Lease. Each party shall perform all obligations on its part as set forth in any Exhibit. **Except where expressly provided otherwise in this Lease, any consent or approval required under this Lease will not be unreasonably withheld, delayed, or conditioned.** Whenever this Lease grants either party the right to take action, exercise discretion, establish rules and regulations, or make an allocation or other determination, such party shall act reasonably and in good faith and take no action which might result in the frustration of the other party’s reasonable expectations concerning the benefits to be enjoyed under this Lease. If a party withholds its consent or approval, such party shall, upon request, promptly deliver to the other a written statement specifying in detail the reason or reasons why such consent or approval was withheld or refused.

### **2. Premises, Access, Etc.**

**2.1. Development & Premises.** Landlord is the owner of the Development. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Premises.

**2.2. Access.** Tenant, its agents, employees, contractors, and invitees are hereby granted access to the Premises on a 24-hour per day 7-day per week basis for the purpose of installing, using, inspecting, maintaining, servicing, repairing, replacing, protecting, and removing one automated teller machine (“ATM”) at its current location. At all times, Landlord shall provide uninterrupted access to the Premises, including (a) the removal of any persons who (or any personal property, refuse, trash or other items which) obstruct or create unsafe path of travel to and from the Premises and the adjacent sidewalks and parking lot by Tenant’s agents, customers and employees, (b) pedestrian access from the parking lot and from the sidewalk along the abutting street and (c) vehicle access to the parking lot. In the event of any construction, remodeling, or other activity by Landlord at the Development, Landlord shall undertake such activities so as to permit access to the Premises to the fullest extent possible and so as to prevent the closure of any ATM. Tenant may abate in full Monthly Rent on a pro-rata basis for every day that access to the Premises or the parking lot is materially impeded. Landlord shall not construct any improvements within a 100-foot radius around the ATM facility that might materially impede access to or materially obscure visibility of the ATM facility. Landlord shall provide Tenant with unobstructed access to a side entry door adjacent to the Premises.

**2.3. Common Areas.** “Common Areas” (or sometimes “Common Area”) means all areas, improvements, space, and special services at the Development that are now or hereafter made available for the common or joint use and benefit of all tenants, customers, employees, contractors, licensees and invitees of the Development, including parking areas, driveways, exterior lighting, sidewalks, landscaped and planted areas, washrooms, lounges, shelters, utilities, service areas (including loading and un-

loading areas), retention basins (both on-site and off-site), signage, and trash disposal areas. Except as otherwise specifically provided in this Lease, Tenant, its employees, agents, contractors, licensees, and invitees are authorized, empowered, and privileged to use the Common Areas in common with others during the Lease Term.

**2.4. Delivery Condition.** Tenant accepts the Premises in its current as-is condition.

**2.5. Landlord's Representations.** Landlord represents to Tenant that as of the Lease Date and the Commencement Date Landlord has indefeasible fee simple title to the Premises.

**2.6. Operation of the Development.** Landlord covenants that it will operate and maintain the Development in a first-class condition and will not allow any use at the Development that (i) causes or creates a nuisance, (ii) is obnoxious, or (iii) generally detracts from the first-class nature of the Development including the following prohibited uses: a “drug-involved premises” (as defined in 21 U.S.C. § 856); funeral/cremation establishment; automobile, boat, or other motor vehicle sale, leasing, repair, or display establishment (e.g., used car lot, body repair facility, or service station); auction, bankruptcy, fire sale, or going out of business sale establishment; pawn shop; circus, carnival, amusement park; bowling alley; shooting gallery (e.g., a firearm range); off-track betting facility; bookstore, theater, or other facility selling or displaying books, magazines, literature, photographs, films, or videos containing Adult Material (as defined below); any residential use (e.g., living quarters, sleeping apartments, or lodging rooms); massage parlor (other than a regional or national chain such as Massage Envy); tattoo parlor; or vaping, cigar, smoking, marijuana, or “head” shop. “**Adult Material**” means any printed or pictorial work that appeals to a prurient interest in sex, is patently offensive according to contemporary community standards, and has no serious literary, artistic, political, or scientific value, and any printed or pictorial work rated X, XX, XXX (or of a rating assigned to works containing material more sexually explicit than XXX). Notwithstanding anything set forth to the contrary in this Lease, material will not be considered Adult Material if: (1) it is available, or of the type to be available to the community, through a broadcast network (i.e., NBC, ABC, or CBS) or (2) it is or has been in a public cinema or theater for viewing by the public in the community where the Premises are located; provided, however, that any material rated X, XX, XXX, or rated for more sexually explicit content than XXX, will be considered Adult Material regardless of how it is available for viewing by the general public in the community where the Premises are located.

**3. Intentionally Omitted.**

**4. Term.**

**4.1. Initial Term.** The initial term of this Lease begins on the Commencement Date and expires on the Expiration Date (“**Term**”).

**4.2. Options to Extend.** Tenant may renew the Term for the number of Renewal Terms set forth in the Key Provisions Summary by giving written notice of renewal to Landlord not later than 90 days prior to expiration of the then current Term, in which event the Expiration Date will be midnight at the end of the last day of the then current Renewal Term. If the Term is extended, “Term” includes each Renewal Term. Each Renewal Term is subject to the terms of this Lease.

**4.3. Termination for Cause.** Tenant may terminate this Lease upon 30 days’ prior written notice to Landlord if the Development is vacant, abandoned, or closed or (ii) if Tenant determines that (A) the security of the ATM facility, the ATM network, or Tenant’s proprietary software or systems is threatened or (B) that the Premises are not a safe banking environment for its customers (e.g., vandalism of the ATM or other criminal activities at or near the Premises, etc.).

**4.4. Holding Over.** Subject to Section 27 below, any holding over with Landlord’s consent after the expiration of the Term will be on a month-to-month basis terminable by either party upon

30 days' prior written notice. If Tenant holds over, Monthly Rent will be 130% of the Monthly Rent in effect immediately prior to the expiration of the Term.

## **5. Rent.**

**5.1. Rent Commencement Date & Payment Address.** Tenant shall send all rent payments to Landlord's Rent Payment Address. Landlord may modify Landlord's Rent Payment Address upon not less than sixty (60) days' prior written notice thereof to Tenant (accompanied by a current, complete, and accurate IRS W-9 if not already provided). Landlord acknowledges that Tenant must receive a current, complete, and accurate IRS W-9 from Landlord to process the payment of rent. Tenant is not subject to any late charges/interest or in default for non-payment of rent prior to receipt of a current, complete, and accurate IRS W-9 from Landlord. Landlord's current, complete, and accurate W-9 is set forth in Exhibit B.

**5.2. Conditions of Payment.** Except as otherwise provided herein, Tenant shall pay all rent without demand, deduction, set-off, or counterclaim in advance on the first day of each calendar month during the Term. Tenant's Monthly Rent includes all Common Area maintenance charges and Tenant is not obligated to pay Landlord any other charges for such maintenance in connection with this Lease.

**5.3. Definition. "Lease Year"** means each period of twelve (12) full consecutive calendar months beginning with the first full calendar month after the Rent Commencement Date and each subsequent period of twelve (12) consecutive calendar months thereafter during the Lease Term; provided, however, that if the Rent Commencement Date occurs on a day other than the first day of a calendar month, then the initial fractional month from the Rent Commencement Date to the last day of the month in which the Rent Commencement Date occurs plus the next succeeding twelve (12) full calendar months constitutes the first Lease Year of the Term. Rent and other matters that are computed with reference to a Lease Year will be ratably adjusted, on a per diem basis, for any period prior to the first full calendar month of the first Lease Year and for any partial month within the Lease Term.

## **6. Design and Installation of ATM Facility.**

**6.1. Plans.** Tenant's ATM facility and site plan are depicted in Exhibit A, which are hereby approved by Landlord. Upon Tenant's request, Landlord shall provide Tenant with information regarding the Development or the Premises that may be necessary or useful for the installation, construction, or operation of the ATM facility. Tenant shall only operate one (1) ATM at its current location depicted by the site plan.

**6.2. Permits.** Tenant shall obtain, at Tenant's sole expense, all building, signage, construction, utility, and operating permits, approvals, and consents required to operate the ATM facility at the Premises. Landlord shall cooperate with Tenant in obtaining such permits, etc., and Tenant shall reimburse Landlord for any actual out-of-pocket costs incurred by Landlord in connection with such cooperation. If Tenant is unable to obtain the permits, etc., necessary to operate the ATM facility at the Premises, all without payment of unusual fees or costs or the satisfaction of unusual conditions, then Tenant may, at its option without penalty, terminate this Lease upon prior written notice thereof to Landlord. Notwithstanding anything else set forth in this Lease to the contrary, Tenant is not obligated to pay any rent or other costs pursuant to this Lease if Tenant is unable to obtain all applicable permits, etc., despite commercially reasonable due diligent efforts.

**6.3. Installation.** Tenant may install at Tenant's such additional equipment or features as Tenant deems appropriate, including one or more of the following (a) a telephone or other support system for such equipment, (b) trash receptacles, (c) a branch computer terminal, with all supporting telecommunications equipment, (d) a customer service phone, (e) a merchant depository, (f) utility lines and conduits, and (g) such other equipment and accessories as are or become normally provided by Tenant in connection with the operation of an ATM facility. All or any portion of the ATM facility may be bolted to the floor or

ground level surface of the Premises or otherwise securely attached to the Premises. Notwithstanding anything in this Lease to the contrary, Tenant may change the ATM facility by removing, replacing, or adding, from time to time, some or all of the equipment and features offered.

**6.4. Tenant's Property.** The ATM facility and all of Tenant's trade fixtures and personal property remain the property of Tenant at all times.

**6.5. Lighting & Security.** Tenant may, at Tenant's sole cost, install (a) all lighting fixtures reasonably necessary to comply with all laws, regulations, and other government requirements imposed on Tenant or Landlord pertaining to the lighting of ATMs/night depositories and to comply with Tenant's ATM/night depository lighting policy, as each may change from time to time (collectively, "**ATM/Night Depository Lighting Requirements**"), and (b) other fixtures and alterations required to comply with any laws governing the operation of ATMs and night depositories. Landlord, at no out-of-pocket cost, shall cooperate with Tenant in Tenant's efforts to comply with the ATM/Night Depository Lighting Requirements and all other laws and regulations governing the operation of ATMs and night depositories. Landlord shall provide lighting in the Common Areas consistent with lighting provided at comparable developments in the vicinity of the Development. Tenant may, at its own expense, install its own security system at the Premises. Tenant is solely responsible, at Tenant's sole expense, for the monitoring, operation, and removal of such security system. Any security system installed by Tenant will be for the sole benefit of Tenant and Landlord has no right to rely on any such security system. Landlord shall establish and follow reasonable security standards for the Common Areas and the balance of the Development.

## **7. Trademarks & Signage.**

**7.1. Trademarks & Usage.** Tenant may operate its ATMs under any trade name, logo, trademark, or service mark permitted by law (collectively, "**Marks**"). Each party's Marks remain the sole property of such party. Landlord and Tenant shall not use a Mark of the other party in advertising or otherwise without the prior written consent of the party owning the Mark; provided, however, that Tenant is permitted to include the location/address of the ATM facility in Tenant's directories of ATM facility locations published by Tenant from time to time.

**7.2. Signage.** Subject to Landlord's approval and applicable law, Tenant may place its standard ATM signage on any ATM at the Premises. Landlord hereby approves Tenant's ATM signage as depicted in Exhibit A. At its discretion, Tenant may enclose an ATM within a kiosk structure and may place its signage on the kiosk structure. Tenant's signage (a) will be fabricated, installed, and maintained by Tenant at Tenant's sole expense, (b) will be consistent with the then-current signage standards at the Premises, and (c) will at all times remain the property of Tenant. Subject to applicable law and Landlord's prior written approval, Tenant may change its signage at any time; provided, however, that Landlord's consent is not required to change signage based upon a change in Tenant's standard corporate signage, name, or logo as long as such changes comply with applicable law and Tenant's signage is not increased in size. At any time, without Landlord's consent, Tenant may replace its standard ATM signage with generic, unbranded signage, so long as such new replacement signage is no larger than and is installed in the same locations as Tenant's branded signage.

**7.3. Directional Signage.** Tenant may place signs identifying Tenant's operations in the Premises and in the vicinity of the Premises (including "coming soon" or "opening soon" signage). Such signs will be of such dimensions and at such locations as are permitted by applicable law.

## **8. Use.**

Tenant may use the Premises for the operation of one or more ATMs and related and/or similar equipment. So long as this Lease remains in effect, Landlord shall not, without the prior written consent of

Tenant (which consent may be granted or withheld in Tenant's sole discretion without considering the interests of Landlord or any third-party) install or operate, or permit the installation or operation of, any ATM or similar mechanism for effecting financial transactions within any part of the Development (including within any building or other structure located at the Development).

**9. Maintenance.**

**9.1. Tenant's Obligations.** Subject to Section 15 below, Tenant shall, at Tenant's sole expense, maintain and repair the ATM facility and the non-structural portion of the Premises in a clean and good condition, reasonable wear and tear and casualty excepted. Tenant may service the Premises and the ATM facility at any time. Landlord shall provide Tenant with all necessary vehicular and pedestrian access and all authorizations, keys, and other assistance necessary to permit Tenant to service the ATM facility and utilities without prior notice to Landlord. Tenant may engage an independent contractor to perform Tenant's maintenance obligations hereunder.

**9.2. Landlord's Obligations.** Subject to Section 15 below, Landlord shall maintain the Development (including the Common Areas and parking areas) in first-class condition and repair. Landlord's obligations include the removal of snow and ice from Common Area walkways, driveways, and parking lots in the area surrounding the Premises in accordance with local ordinances. Such maintenance shall include the prompt removal of any (i) persons who obstruct or create an unsafe path of travel to and from the Premises and the adjacent sidewalks and parking lot by Tenant's customers, employees and agents, and (ii) personal property, refuse, debris, trash, or other items which may remain on the Development following the removal of such persons.

**10. Services and Utilities.**

**10.1. Utility Services at the Premises.** Landlord, at its sole expense, shall: (a) stub electric and telephone lines to the Premises, (b) install at the Premises a separate electrical meter for such electricity as may be needed to operate the ATM facility, and (c) install a telephone backboard for such telephone service as may be needed to operate the ATM facility. Once a separate meter is installed, Tenant shall pay for all electricity, telephone, and data lines and other utility services dedicated to Tenant's operation of the ATM facility.

**10.2. Interruption of Service.** Landlord shall not permit any person or entity to tamper with Tenant's telephone, data lines, or other telecommunications wiring, panels, or equipment. Any deliberate interruption of power to the ATM facility caused by Landlord, its agents, employees, or contractors, shall not last more than twenty-four (24) consecutive hours and shall be subject to Tenant's express prior written consent, which consent may be withheld in Tenant's sole discretion without considering the interests of Landlord or any third-party. Tenant may post notices at the Premises at least twenty-four (24) hours in advance of any interruption of service. In addition to the liquidated damages set forth below, Tenant's Monthly Rent payable hereunder will be abated on a per diem basis (based on a thirty (30) day month) for any day during which the power and/or service from telephone or data lines is shut off to the ATM facility (unless Tenant causes the power or service to be shut off to the ATM facility, as applicable). Landlord shall reimburse Tenant for any costs and expenses Tenant incurs in making the ATM facility fully operational as a result of any interruption of services, data transmission, or utilities to the ATM facility caused by or within the reasonable control of Landlord, its agents, employees, or contractors. **TENANT'S ACTUAL DAMAGES AS A RESULT OF SUCH INTERRUPTION OF SERVICES, DATA TRANSMISSION, OR UTILITIES TO THE ATM FACILITY WOULD BE DIFFICULT OR IMPOSSIBLE TO DETERMINE, AND THE SUM OF FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) PER DAY THAT SUCH SERVICE, DATA TRANSMISSION, OR UTILITY IS INTERRUPTED TO THE ATM FACILITY IS THE BEST ESTIMATE OF THE AMOUNT OF DAMAGES TENANT WOULD SUFF-**

**FER AS A RESULT OF SUCH INTERRUPTION; PROVIDED, HOWEVER, THAT THIS PROVISION WILL NOT LIMIT LANDLORD'S INDEMNITY OBLIGATIONS AND TENANT'S RIGHTS TO THOSE INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT.**

**11. Marketing Table.**

Since the Landlord is a municipality, Tenant shall not be permitted to conduct in-person marketing activities at the Development which is a publicly owned building. Tenant shall not block walkways or access to other tenants' space.

**12. Insurance.**

**12.1. Property Insurance.** During the Lease Term, (i) Landlord shall maintain, or cause to be maintained, Commercial Property insurance ("**CP Insurance**") that insures the Development and Landlord's personal property at the Development on a full replacement cost basis (exclusive of Tenant's betterments at the Premises) and (ii) Tenant shall maintain CP Insurance that insures Tenant's personal property and betterments in and about the Premises on a full replacement cost basis. Each CP Insurance policy shall, at a minimum, insure against the perils included in the ISO special causes of loss form CP 10 30 and any amendments or "all-risk" coverage, including loss or damage due to fire and the risks normally included in extended coverage (e.g., flood, windstorm, and earthquake). Landlord may satisfy the insurance requirements by providing proof of comparable coverage through the South Dakota Public Assurance Alliance.

**12.2. Waiver of Subrogation.** Except to the extent caused by the gross negligence or willful or wanton misconduct of the other party, Tenant and Landlord hereby waive any and all rights of recovery, claims, actions, or causes of action against each other, by way of subrogation or otherwise, including their respective employees, officers, directors, subsidiaries, affiliates, agents, representatives, and assigns, for any loss or damage that may occur to the Development, Landlord's personal property, Tenant's betterments in and about the Premises, and Tenant's personal property by reason of fire or other casualty, regardless of cause or origin. Landlord and Tenant shall obtain a waiver of subrogation from their respective insurers and shall endorse their respective CP Insurance policies to reflect such waiver of subrogation. The above waiver of subrogation applies whether or not there are any deductibles or self-insurance and in the absence of any CP Insurance.

**12.3. Liability Insurance.** During the Term, Landlord and Tenant shall maintain commercial General Liability insurance ("**CGL Insurance**") with limits of liability not less than \$1,000,000 per occurrence with a general aggregate of not less than \$2,000,000 covering liability arising from each party's operations at the Development or Premises, as applicable, independent contractors, product-completed operations, personal injury, and advertising injury, and contractual liability that includes this Lease as an insured contract. Landlord may satisfy the liability insurance requirements by providing proof of comparable coverage through the South Dakota Public Assurance Alliance.

**12.4. Ratings, Certificates.** With respect to CGL Insurance, Tenant shall name Landlord as an additional insured and Landlord shall name Tenant as an additional insured. In addition, the CGL Insurance: (i) must be endorsed to be primary and non-contributory, rather than excess, with respect to each party's additional insured status; (ii) endorsed to provide cross-liability coverage if they do not contain a standard ISO separation of insureds provision; (iii) must not contain any endorsement or provision that states the limits of the policy will not stack, pyramid or be in addition to any other limits provided by that insurer, and (iv) have no cross suits exclusion, or any similar exclusion that excludes coverage for claims brought by an additional insured under the policy against another insured under the policy. All insurance policies required by this Section 12 (i) must be issued by insurance companies having an "A" rating or better by Standard and Poor's, and if not rated by Standard & Poor's, then a rating of "A" by A.M. Best Company, and (ii) may be satisfied by a primary policy or combination of primary, excess, or umbrella

policies. The insurance provisions set forth in this Section 12 set forth the minimum amounts and scopes of coverage to be maintained by Landlord and Tenant and are not to be construed in any way as a limitation on each party's liability under this Lease. Tenant may satisfy any or all of the above insurance requirements by use of self-insurance, deductible, and/or a captive insurance company (and the rating requirements set forth above are not applicable to Tenant's self-insurance or to policies issued by a captive insurance company). The responsibility to fund any financial obligation for self-insurance, the election not to insure, and the amount of any deductible are assumed by, for the account of, and at the sole risk of each party. Each party shall furnish Certificates of Insurance to the other party evidencing all of the above-described insurance policies prior to or upon execution of this Lease and annually thereafter, but not later than ten (10) business days after the expiration of each policy. Each party shall notify the other party within 30 days after receiving any Notice of Cancellation, material modification, reduction in coverage, or non-renewal from its insurer that results in non-compliance with the insurance requirements set forth in this Section 12.

### **13. Indemnification.**

Subject to the waiver of subrogation provision in Section 12 above, Tenant shall indemnify, hold harmless, pay, and reimburse Landlord from and for any and all losses, damages, liability, or expenses (including reasonable attorneys' fees, court costs, and expert witness fees) actually incurred by Landlord, arising from loss of life, personal injury and/or property damage, caused by or resulting from, in whole or in part, any negligent act or omission or intentional misconduct of Tenant, its agents, employees, or contractors, in connection with Tenant's use or occupancy of the Premises. Subject to the waiver of subrogation provision in Section 12 above, Landlord shall indemnify, hold harmless, pay, and reimburse Tenant from and for any and all losses, damages, liability, or expenses (including reasonable attorneys' fees, court costs, and expert witness fees) actually incurred by Tenant, arising from loss of life, personal injury and/or property damage, caused by or resulting from, in whole or in part, any negligent act or omission or intentional misconduct of Landlord, its agents, employees, or contractors, in connection with the Development. Notwithstanding the foregoing, in the event of the concurrent negligence or intentional misconduct of Tenant, its agents, employees, or contractors, on the one hand and that of Landlord, its agents, employees, or contractors, on the other hand, a party's (the "**Indemnifying Party**") obligation to indemnify the other as set forth in this Section 13 is limited to the extent of the Indemnifying Party's negligence and/or intentional misconduct, and that of its agents, employees, or contractors, including the Indemnifying Party's proportionate share of reasonable costs, attorneys' fees, court costs, expert witness fees, and other expenses incurred in connection with any claim, action, or proceeding brought with respect to such injury or damage. The obligations of Tenant and Landlord under this Section 13 survive the expiration or earlier termination of this Lease.

### **14. Taxes.**

Tenant is liable for all taxes assessed by any taxing authority (including sales taxes) which are attributable to Tenant's operation of the ATM facility and shall pay all personal property taxes assessed on Tenant's fixtures, equipment, and machinery. Landlord is liable for all taxes and/or assessments assessed by any taxing authority (including sales taxes) which are related to Landlord's occupancy or use or ownership of the Development, including: (a) personal property, fixtures, or equipment taxes assessed against Landlord's property; (b) franchise taxes assessed against Landlord; (c) taxes on Landlord's gross rents or profits; (d) inheritance, state, gift, income, transfer, or excess profit taxes assessed against Landlord; (e) sales taxes payable by Landlord; and (f) real property taxes and assessments, including any fees, interest and penalties arising from any such tax or assessment, assessed against all or any portion of the Development and the improvements located thereon, including any such taxes and assessments attributable to the Premises or any portion thereof.



**15. Damage by Fire or Other Casualty.**

**15.1. Damage to Development.** If the Development (or any portion thereof other than the Premises) is damaged or destroyed by fire or other casualty, Landlord shall, at Landlord's cost and expense, promptly repair the same to the extent Landlord's insurance proceeds are made available to Landlord therefor and provided that (a) such repairs, in Landlord's reasonable good faith opinion, can be made within 120 days from the date of such damage or destruction (without payment of overtime or other premiums) and (b) the cost of such repairs, in Landlord's reasonable good faith opinion, will not exceed 50% of the then replacement cost of the Development. If Landlord is not required to repair such damage or destruction, then Landlord shall, within 30 days from the date of such damage or destruction, either (i) notify Tenant in writing of Landlord's election to repair such damage or destruction, in which event Landlord shall promptly repair the same, or (ii) notify Tenant in writing of Landlord's election to immediately terminate this Lease, in which event this Lease is terminated effective as of the date of such damage or destruction. As provided in Section 2.2 above, Tenant may abate Monthly Rent if access to the ATM facility is materially impeded by Landlord's repairs or by such damage or destruction. Notwithstanding anything set forth to the contrary in this Section 15.1, Tenant may terminate this Lease effective as of the date of any such damage or destruction if Tenant reasonably determines in its good faith opinion that such damage or destruction substantially impairs the satisfactory operation of the ATM facility by notifying Landlord in writing of Tenant's election to terminate not later than 30 days after the date of such damage or destruction. In addition, and notwithstanding anything set forth to the contrary in this Section 15.1, if Landlord fails to complete the repairs described in this Section 15.1 within 120 days from the date of such damage or destruction, Tenant may terminate this Lease by giving 30 days' prior written notice of termination to Landlord not later than 30 days after such failure (provided, however, that if Landlord completes such repairs within the foregoing 30-day notice period, then Tenant's termination notice is void).

**15.2. Damage to Premises.** If the Premises (or any portion thereof) are damaged or destroyed by fire or other casualty, Tenant shall, at Tenant's cost and expense, promptly repair the same to the extent Tenant's insurance proceeds are made available to Tenant. Notwithstanding anything set forth to the contrary in this Section 15.2, Tenant may terminate this Lease effective as of the date of any such damage or destruction if (i) Tenant reasonably determines in its good faith opinion that such damage or destruction substantially impairs the satisfactory operation of the ATM facility, (ii) Tenant is not able to obtain permits to restore the Premises without payment of unusual fees or costs or the satisfaction of unusual conditions, or (iii) Tenant is prevented from restoring the Premises by events or conditions beyond its reasonable control by giving 30 days' prior written notice of termination to Landlord not later than 30 days after Tenant's good faith determination of any of the foregoing.

**16. Eminent Domain.**

Landlord shall promptly forward to Tenant all notices of eminent domain relating to the Premises or the Development. If all of the Premises are taken under the power of eminent domain, then this Lease is terminated as of the effective date of the taking. If a portion of the Premises, the building (if any) within which the Premises are located, the common area surrounding the Premises, or reasonable access to and from the common areas is taken under the power of eminent domain and the loss of such portion materially adversely affects Tenant, then Tenant may terminate this Lease by providing written notice of termination to Landlord not later than 30 days after the date of such taking. In the event of a partial taking, if Tenant does not elect to so terminate this Lease, then Landlord shall, at Landlord's cost and expense, promptly restore the remaining portion of the Premises, the building (if any), the common areas, and reasonable access as the case may be and the rent payable by Tenant will be abated to the extent that Tenant is unable to occupy and use the Premises. All damages and compensation awarded or paid because of such taking (other than compensation for the loss of Tenant's good will and improvements installed by Tenant at Tenant's expense, and Tenant's relocation expenses) belong to Landlord. All damages and compensation awarded or paid because of a taking of any improvements installed by Tenant at Tenant's expense belong to Tenant.

**17. Removal of ATM.**

Upon the expiration or sooner termination of this Lease, Tenant shall remove the ATM facility and related equipment, Tenant's signs (not including Landlord's directional signs), and Tenant's other moveable trade fixtures and personal property from the Premises, at Tenant's sole expense, within 30 days after the expiration or sooner termination of this Lease. Tenant shall, at its sole expense, reasonably repair any damage to the Premises caused by such removal. Landlord acknowledges that any repairs or cuts in any paved areas, walls, or other improvements made during the removal of the ATM facility will be made in a good and workmanlike manner so as to match as nearly as practicable the surrounding area. This does not mean, however, that any such repairs will be completely invisible.

**18. Assignment and Subletting.**

**18.1. Landlord's Consent.** Except as otherwise provided in this Section 18, Tenant shall not assign this Lease or sublet the whole or any part of the Premises (collectively, "**Transfer**") without the prior written consent of Landlord. If Tenant elects to initiate a Transfer of this Lease, Tenant shall provide Landlord with a written notice setting forth the reasonable details of such Transfer. If Tenant provides in such notice that Tenant remains liable for the full and complete performance of the terms and conditions of this Lease despite such Transfer, Landlord shall be deemed to have unconditionally given its consent to such Transfer and no further action or notice is required by either Landlord or Tenant. If Landlord's consent is required for a Transfer, Landlord shall notify Tenant whether the proposed Transfer is approved or rejected in Landlord's reasonable discretion not later than ten (10) business days after receipt of written notice thereof from Tenant (and if Landlord fails to notify Tenant within the ten (10) business day period, then Landlord's consent is deemed given). If Landlord does not consent to a proposed Transfer, Landlord shall provide Tenant with a reasonably detailed written explanation as to the reasons for withholding such consent. If the use of the Premises under the proposed Transfer does not violate any restrictive covenant or exclusive use provision applicable to the Premises, then Landlord's failure to consent to the Transfer of this Lease is deemed unreasonable. Landlord's consent to a Transfer serves to release Tenant of all further liability under this Lease.

**18.2. No Assignment.** The following events are not considered a Transfer under this Section 18: (i) a change in ownership of Tenant as a result of a merger, consolidation, reorganization, or joint venture; (ii) the sale of Tenant's assets (e.g., deposits, loans, this Lease, etc.) at the Premises as a going concern (a "**Store Sale**"); (iii) a Transfer of this Lease to any entity if a regulatory agency having jurisdiction over Tenant's business requires that Tenant divest itself of certain deposits and banking facilities (a "**Divestiture**"); (iv) the Transfer of this Lease to any entity that controls, is controlled by, or is under common control with Tenant; (v) the sale, exchange, issuance, or other transfer of Tenant's stock on a national exchange or between any entity that controls, is controlled by, or is under common control with Tenant; or (vi) the sale or transfer of at least ten (10) locations (including the Premises and this Lease) in a bulk sale to one transferee (a "**Bulk Sale**"). Tenant is not required to obtain Landlord's consent and Landlord shall not delay, alter, or impede any of the foregoing transactions or combinations thereof. Tenant has no further liability under this Lease arising after the effective date of a Store Sale, Divestiture, or Bulk Sale.

**18.3. Resolution & Recovery.**

**18.3.1. "Resolution Event"** means the filing of and pursuit of an insolvency related proceeding against Tenant or Tenant's assets pursuant to applicable law (e.g., the Dodd-Frank Wall Street Reform and Consumer Protection Act). For purposes of this Section 18.3 only, "**Affiliate**" means any entity that controls, is controlled by, or is under common control with Tenant.

**18.3.2.** Notwithstanding anything set forth in the Lease to the contrary, if a Resolution Event occurs, and Tenant or an Affiliate continues to (a) pay all rent and other charges under the Lease timely and (b) abide by the other material terms of the Lease, Landlord shall not, while a Resolution

Event is pending (and, except as otherwise provided in Section 18.3.4 below, for a period of eighteen (18) months thereafter): (i) terminate or modify the Lease; (ii) recapture the Premises; (iii) prevent renewal of the Lease pursuant to a right to renew set forth in the Lease (if any); (iv) suspend any services provided to Tenant, an Affiliate, or the Premises under the Lease; or (v) otherwise exercise remedies under or in respect of the Lease arising from a Resolution Event.

**18.3.3.** In addition, but only in connection with a Resolution Event, Landlord hereby consents to (i) any change of control of Tenant or an Affiliate and (ii) the assignment, delegation, or transfer of any or all of Tenant's rights and obligations under the Lease, in whole or in part, to any entity that is or becomes (or, as of immediately prior to the Resolution Event, was) an Affiliate or a successor to the whole or a part of the business of Tenant or an Affiliate.

**18.3.4.** Notwithstanding anything set forth in this Section 18.3 to the contrary, Landlord is not required, even during a Resolution Event, to allow Tenant or an Affiliate to occupy the Premises after the final expiration date of the Lease.

## **19. Default by Tenant.**

**19.1. Failure to Perform.** The occurrence of any one or more of the following events constitutes a default of this Lease by Tenant (a "**Tenant Default**"): (a) the failure by Tenant to make any payment of Rent, or any other payment required to be made by Tenant under this Lease, as and when due, where such failure continues for more than fifteen (15) days after Tenant's receipt of written notice of non-payment from Landlord; (b) the failure by Tenant to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Tenant, other than as described in subsection (a) above, where such failure continues for more than thirty (30) days after Tenant's receipt of written notice of default from Landlord (provided, that if the cure of such Tenant Default reasonably requires more than thirty (30) days to complete, then Tenant is not in default if Tenant promptly commences the cure of such Tenant Default and diligently pursues such cure to completion); and (c) except as otherwise provided in Section 18.3 above, the making by Tenant of any general assignment or general arrangement for the benefit of creditors, the filing by or against Tenant of a petition to have Tenant adjudged bankrupt or a petition reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within sixty (60) days of filing), or the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged in thirty (30) days after appointment of said trustee or receiver, or the filing of a petition for the appointment of the same, whichever occurs first.

**19.2. Remedies in Default.** Upon the occurrence of a Tenant Default, and subject to terms and conditions provided herein, Landlord may, as Landlord's sole and exclusive remedies: (a) perform, on Tenant's behalf, any unperformed covenant or obligation hereunder constituting such Tenant Default (after giving Tenant written notice of Landlord's intention to do so except in the case of emergency), in which event Tenant shall reimburse Landlord for all reasonable expenses reasonably incurred by Landlord in doing so, plus interest at the Default Rate, which expenses and interest will be additional rent and shall be payable by Tenant within thirty (30) days after written demand therefor by Landlord; and/or (b) terminate this Lease and collect liquidated damages from Tenant in an amount equal to (i) the sum of all amounts due hereunder to the date of termination, plus (ii) the aggregate monthly rent remaining over the unexpired portion of the Term, plus the reasonable cost to Landlord for any repairs and other costs of re-letting (such as broker's commissions and the cost of advertising), all reduced to present value using a discount rate equal to the interest rate of a governmental security having a maturity closest to the then current expiration of the Term, less (iii) the aggregate fair net rental value of the Premises over the remaining portion of the Term (provided, however, a reasonable period of time, not to exceed eighteen (18) months, may be considered as a leasing period by which the Premises would not be leased and therefor no income would be realized for such period) reduced to present value, plus (iv) Landlord's costs and expenses incurred in the enforcement hereof including reasonable attorneys' fees actually incurred as

herein provided. **LANDLORD HEREBY WAIVES ANY AND ALL OTHER RIGHTS AND REMEDIES TO WHICH LANDLORD MAY BE ENTITLED, AT LAW OR IN EQUITY, INCLUDING ANY RIGHT OF RE-ENTRY WITHOUT TERMINATING THIS LEASE AND ANY LOCK-OUT REMEDIES AVAILABLE UNDER APPLICABLE LAW.**

**19.3. Mitigation & Lien Waiver.** Notwithstanding anything to the contrary set forth herein, Landlord shall use its reasonable best efforts to mitigate its damages resulting from a Tenant Default. **LANDLORD HEREBY WAIVES AND DISCLAIMS ALL STATUTORY AND CONTRACTUAL LIEN RIGHTS IN TENANT’S FURNITURE, FIXTURES, TRADE FIXTURES, EQUIPMENT, MERCHANDISE, AND OTHER PERSONAL PROPERTY NOW OR HEREAFTER PLACED AT THE PREMISES.**

**20. Default by Landlord.**

“**Landlord Default**” means Landlord’s failure to perform or observe any of its obligations under this Lease after a period of thirty (30) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after receiving notice from Tenant setting forth in reasonable detail the nature and extent of such failure. If Landlord commits a Landlord Default, Tenant, in addition to any remedies available under law or equity, may, without being obligated to and without waiving the Landlord Default, cure the Landlord Default. Landlord shall pay Tenant, upon demand, all costs, expenses, and disbursements incurred by Tenant to cure the Landlord Default. If Landlord does not make such payment within thirty (30) days of demand, Tenant may deduct all such costs and expenses from the rent next coming due. If Tenant elects not to cure the Landlord Default, Tenant may either terminate this Lease upon written notice to Landlord after the expiration of any applicable cure period or abate any and all rent payments owed to Landlord until the date that such Landlord Default is cured by Landlord (at which time Tenant shall resume making rental payments owed for the period after the date of cure).

**21. Control of ATM; Confidentiality.**

**21.1. Control.** Landlord acknowledges that the operation of the ATM facility is governed by the policies and procedures developed or to be developed by Tenant from time to time. Therefore, except as expressly set forth herein otherwise, Tenant has the right to control and manage the ATM facility, the operation and maintenance thereof, and all business and transactions conducted therefrom, including the functions and features provided, the development of products, and the pricing of services (including surcharges on Tenant’s customers or non-customers).

**21.2. Confidentiality.** In the course of its performance under this Lease, Tenant may deliver to Landlord certain oral and written information, and plans and drawings regarding the ATM facility, and the operation thereof, which information is proprietary in nature (the “**Tenant Materials**”). Landlord shall (i) keep the Tenant Materials and the existence and contents of this Lease confidential, (ii) only make such information available to its officers, directors, and employees only on a need-to-know basis, and (iii) not disclose such information to any person or entity without the prior written consent of Tenant. If this Lease is terminated, Landlord shall return to Tenant all Tenant Materials and any copies thereof. Landlord shall not, directly or indirectly, use the Tenant Materials in its business or in its dealing with any other person or entity.

**22. Notices.**

**22.1. Written Notice; Delivery Methods.** Each party giving or making any notice, request, demand, consent, approval, or other communication (each, a “**Notice**” (but sometimes “**notice**”)) pursuant to this Lease shall: (i) give the Notice in writing; (ii) cause the Notice to be signed by an authorized representative of the sending party (the sending party’s attorney is authorized to sign and send a Notice on

behalf of the sending party); and (iii) use one of the following methods of delivery, each of which for purposes of this Lease is a writing: (a) personal delivery; (b) Certified Mail, return receipt requested, with postage paid; (c) nationally recognized overnight courier, with all fees paid; or (d) email (but only if a party's email address is included in its notice address in the Key Provisions Summary or is otherwise provided to the other party by a Notice).

**22.2. Addresses.** Each party giving a Notice shall address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the address(es) listed in the Notice Addresses section of the Key Provisions Summary or to another Addressee or at another address as designated by a party in a Notice pursuant to this Section 22. Notices may not be sent to the Premises. Any notice sent to the Premises is deemed ineffective.

**22.3. Effectiveness of a Notice.** Except as provided elsewhere in this Lease, a Notice is effective only if (i) the party giving the Notice has complied with the two subsections set forth above and (ii) the Notice is deemed to have been received by the Addressee. A Notice is deemed to have been received by the Addressee as follows: (a) if a Notice is delivered in person, sent by Certified Mail, or sent by nationally recognized overnight courier: on the earlier of the date of delivery or the date the Notice is available for pickup, all as evidenced by the records of the delivering person or entity; (b) if a Notice is sent by email: on the date the email Notice is sent to the Addressee's email address; and (c) if the Addressee rejects or otherwise refuses to accept the Notice (e.g., if the Addressee does not pick up the Notice timely), or if the Notice cannot be delivered because of a change in address for which no Notice was given: upon the rejection, refusal, or inability to deliver the Notice, which shall be deemed to be the date of rejection, refusal, inability to deliver, or availability for pickup, all as evidenced by the records of the delivering person or entity. If a Notice is sent by email, the party sending the Notice also must send, unless such requirement is waived in a return email from the receiving party, a confirmation copy of the Notice by one of the other methods in the first subsection set forth above within three (3) business days after the send date of the email, but the lack of delivery of such other Notice does not negate the email Notice.

**22.4. Delivery Time of Notice.** Notwithstanding the foregoing, if any Notice is received after 5:00 p.m. on a Business Day where the Addressee is located, or on a day that is not a Business Day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next Business Day where the Addressee is located.

**23. Subordination, Non-Disturbance, and Attornment.**

**23.1.** This Lease is subject and subordinate to the lien of all mortgages or deeds of trust which may now affect or encumber all or any portion of the Premises and to all renewals, modifications, consolidations, replacements, and extensions thereof. Landlord shall use commercially reasonable efforts to obtain a Subordination, Non-Disturbance, and Attornment Agreement ("**SNDA**") from Landlord's current lender providing generally that the mortgagee, trustee, or any purchaser at the foreclosure of the mortgage or deed of trust will not disturb Tenant's possession of the Premises and that Tenant will attorn to such mortgagee, trustee, or purchaser at foreclosure as Landlord under the terms and conditions of this Lease upon receiving written notice that such party has succeeded to the interest of Landlord under this Lease. Tenant shall be liable for all costs and expenses of obtaining such SNDA.

**23.2.** This Lease is subject and subordinate to the lien of all mortgages or deeds of trust which may hereafter affect or encumber all or any portion of the Premises and to all renewals, modifications, consolidations, replacements, and extensions thereof; provided, however, that the foregoing provision shall only be applicable to those mortgages or deeds of trust for which Tenant has been provided an SNDA. Tenant shall be liable for all costs and expenses of obtaining such SNDA.

**24. Hazardous Materials.**

**24.1. Definitions.** “**Environmental Law**” means any law, statute, ordinance, rule, or regulation pertaining to health, industrial hygiene, Hazardous Materials (as defined below), or the environment including, without limitation CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980) and RCRA (Resources Conservation and Recovery Act of 1976). “**Hazardous Materials**” means petroleum, asbestos, polychlorinated biphenyls, formaldehyde, radioactive materials, radon gas, mold, or any chemical, material or substance now or hereafter designated, classified or regulated as being “toxic” or “hazardous” or a “pollutant” or words of similar import, under any Environmental Law.

**24.2. Compliance.** To the best knowledge of Landlord, there are no Hazardous Materials located on, under, or about the Premises. Tenant and Landlord will each handle, treat, deal with, and manage any Hazardous Materials in, on, under or about the Premises (in the case of Tenant) and the Development (in the case of Landlord) in compliance with all Environmental Laws and prudent industry practices regarding Hazardous Materials. Neither Landlord nor Tenant will use any Hazardous Materials in the Development or the Premises, respectively, except as necessary in the ordinary course of business and in full compliance with all Environmental Laws. Landlord will use its best efforts to cause any other tenants of Landlord at the Development to comply with all Environmental Laws and to not allow any other tenant to use any Hazardous Materials except as necessary in the ordinary course of business and in compliance with all Environmental Laws. Tenant will promptly notify Landlord of any release or presence of any Hazardous Material in the Premises of which Tenant becomes aware and Landlord will promptly notify Tenant of any release or presence of any Hazardous Material in any area where Tenant’s customers, employees, agents, or contractors may be likely to be present.

**24.3. Remediation.** If Hazardous Materials are released at the Premises by Tenant, its agents, employees, or contractors, then Tenant is solely responsible for the removal and/or remediation of such Hazardous Materials to the extent required by governmental authorities in compliance with applicable Environmental Laws. Landlord is solely responsible for the removal and/or remediation of any other Hazardous Materials at the Premises regardless of when discovered and to the extent required by governmental authorities in compliance with applicable Environmental Laws as well as to the extent required to allow construction, operation, and removal of the ATM facility.

**24.4. Indemnification.** Tenant shall indemnify and hold Landlord harmless from and against any and all claims, actions, suits, proceedings, loss, liabilities, damages, fines, costs, or expense (including reasonable attorneys’ fees, consultants’ fees, investigation and laboratory fees, court costs, and litigation expenses), which arise from the presence of Hazardous Materials at the Premises released by Tenant or its agents, employees, or contractors. Landlord shall indemnify and hold Tenant harmless from and against any and all claims, actions, suits, proceedings, loss, liabilities, damages, fines, costs, or expense (including reasonable attorneys’ fees, consultants’ fees, investigation and laboratory fees, court costs, and litigation expenses), which arise from the presence of Hazardous Materials in the Premises unless such presence was caused by Tenant or its agents, employees, or contractors.

**25. Quiet Enjoyment.**

Landlord covenants that so long as Tenant has not committed a Tenant Default under the terms of this Lease Tenant will have quiet and peaceful possession of the Premises and will enjoy all of the rights herein granted without interference by Landlord or anyone claiming by, through or under Landlord or by the lessor under any master lease of the Development.

**26. Compliance with Laws.**

Landlord and Tenant shall comply with applicable federal, state, and local laws, rules, regulations, and ordinances. Tenant shall be responsible for compliance with the American with Disabilities Act and

other disabled access laws and regulations (collectively “**ADA**”) at the Premises. Landlord shall be responsible for compliance with the ADA at the Development. Landlord shall reasonably cooperate with Tenant in connection with Tenant’s efforts to comply with the ADA and other applicable laws. Notwithstanding the foregoing, Landlord acknowledges that many of Tenant’s covenants and obligations hereunder, including the establishment, closure, and relocation of the ATM facility, are subject to Tenant’s obtaining the consent or approval of all regulatory agencies (including the Comptroller of Currency) now or hereafter empowered to regulate Tenant and its business operations and such regulations supersede the terms and conditions of this Lease.

**27. Force Majeure.**

**27.1. Definition.** “**Force Majeure Event**” means any act or event, whether foreseen or unforeseen, that meets all three of the following tests: (a) the act or event prevents a party (the “**Non-Performing Party**”), in whole or in part, from (i) performing its obligations under this Lease, or (ii) satisfying any conditions to the obligations of the other party (the “**Performing Party**”) under this Lease; (b) the act or event is beyond the reasonable control of and not the fault of the Non-Performing Party; and (c) the Non-Performing Party has been unable to avoid or overcome the act or event by the exercise of due diligence. In furtherance of the definition of Force Majeure Event and not in limitation of that definition, each of the following acts or events is an example of an act or event that could be a Force Majeure Event if the act or event meets each of the above requirements of this Section 27.1: accident; fire; act of God; act of a public enemy; injunction; riot; strike; lockout; insurrection; war; terrorist attack; court order; requisition or order of governmental body or authority; epidemic, pandemic, or quarantine (such as the events connected with COVID-19); and inability to procure labor or materials from normally available sources. Notwithstanding the preceding definition of a Force Majeure Event, a Force Majeure Event excludes economic hardship, changes in market conditions, and insufficiency of funds.

**27.2. Suspension of Performance.** If a Force Majeure Event occurs, the Non-Performing Party is excused from (i) whatever performance is prevented by the Force Majeure Event to the extent prevented, and (ii) satisfying whatever conditions precedent to the Performing Party’s obligations that cannot be satisfied, but only to the extent they cannot be satisfied due to the Force Majeure Event. Notwithstanding the preceding sentence, a Force Majeure Event does not excuse any obligation by either the Performing Party or the Non-Performing Party to make any payment required under this Lease.

**27.3. Obligations of Non-Performing Party.** Not later than five (5) business days after becoming aware of the occurrence of a Force Majeure Event, the Non-Performing Party shall send written notice to the Performing Party describing the particulars of the occurrence, including an estimate of its expected duration and probable impact on the performance of the Non-Performing Party’s obligations under this Lease. During the continuation of the Force Majeure Event, the Non-Performing Party shall (i) furnish timely, regular written reports updating the initial notice and providing any other information reasonably requested by the Performing Party; (ii) exercise commercially reasonable efforts to mitigate or limit damages to the Performing Party; (iii) exercise commercially reasonable due diligence to overcome the Force Majeure Event; (iv) to the extent that it is able, continue to perform its obligations under this Lease; and (v) cause the suspension of performance to be of no greater scope and no longer duration than the Force Majeure Event requires.

**27.4. Resumption of Performance.** When a Force Majeure Event no longer prevents the Non-Performing Party from (i) resuming performance of its obligations under this Lease, or (ii) satisfying the conditions precedent to the Performing Party’s obligations, the Non-Performing Party shall immediately give the Performing Party written notice to that effect and shall resume performance under this Lease no later than five (5) business days after the notice is delivered.

**27.5. Exclusive Remedy.** Except as explicitly set forth otherwise in this Lease, the relief offered by this Force Majeure provision is the exclusive remedy available to the Non-Performing Party with

respect to a Force Majeure Event. In addition, the liability of either party for an event that arose before the occurrence of the Force Majeure Event is not excused as a result of such occurrence.

**28. Brokers.**

Each party represents to the other that it has had no dealings with any real estate broker, agent, or finder in connection with the negotiation of this Lease and that it knows of no real estate broker or agent entitled to any commission or finder's fee in connection with this Lease. Each party shall indemnify and hold harmless the other party from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs, and expenses (including attorneys' fees and costs) with respect to any leasing commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker, agent, or finder.

**29. Conditions Precedent.**

All obligations of Tenant under this Lease are subject to the occurrence of, or Tenant's written waiver of, each of the following conditions precedent: (i) Sufficient evidence of Landlord's title to the Premises and authority to enter into this Lease; (ii) Landlord's receipt of any consent or approval required by the CCR Docs (or other recorded document) and from any tenant (anchor or otherwise) or lender having consent or approval rights for this Lease or for the use of the Premises for an ATM; (iii) Except as otherwise provided in clause (ii) above, Tenant's ability to procure all building, signage, construction, and operating permits, approvals, and consents for an ATM at the Premises; and (iv) Tenant's ability to access required utilities without payment of unusual fees or costs.

**30. Additional Terms.**

**30.1. Default Rate of Interest.** The "**Default Rate**" of interest shall be the lesser of eight percent (8%) per annum or the rate per annum equal to the then current prime interest rate published in The Wall Street Journal in its "Money Rates" section.

**30.2. Successors or Assigns.** The terms, conditions, covenants, and agreements of this Lease extend to and are binding upon Landlord, Tenant, and their respective heirs, administrators, executors, legal representatives and permitted successors, subtenants, and assigns, if any, and upon any person or entity coming into ownership or possession of any interest in the Premises by operation of law or otherwise.

**30.3. Severability.** If any term, covenant, or condition of this Lease or the application thereof to any person or circumstance is, to any extent, invalid, illegal, or unenforceable, the remainder of this Lease, or the application of such term, covenant, or condition to parties or circumstances other than those to which it is held invalid, illegal, or unenforceable, is not affected thereby and each term, covenant, and condition of this Lease remains valid and enforceable to the fullest extent permitted by law, but only if the essential terms and conditions of this Lease for each party remain valid, binding, and enforceable.

**30.4. Memorandum of Lease.** Neither Landlord nor Tenant will permit, allow or cause this Lease, or any amendment to this Lease, to be recorded in any public registry or office of register of deeds; provided, however, at the request of either party, Landlord and Tenant shall execute a recordable memorandum of this Lease setting forth the names and addresses of the parties, a reference to this Lease with its date of execution, specific legal descriptions of the Premises, the Commencement Date, the Rent Commencement Date, the term of this Lease, and any Renewal Term(s), which memorandum may be recorded by Tenant at Tenant's expense or by Landlord at Landlord's expense in the appropriate public records of the jurisdiction in which the Premises are situated.

**30.5. Waiver.** The parties may waive any provision of this Lease only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in



exercising any right or remedy or in requiring the satisfaction of any condition under this Lease, and no act, omission, or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver once given is not to be construed as a waiver on any future occasion or against any other person or entity.

**30.6. Amendment.** The parties may amend this Lease only by a written agreement of the parties that identifies itself as an amendment to this Lease.

**30.7. Headings & Interpretation.** The descriptive headings/captions of the sections and subsections of this Lease are for convenience only, do not constitute a part of this Lease, and do not affect this Lease's construction or interpretation. Whenever used in this Lease: (i) the words "herein", "hereof", and similar words refer to this Lease in its entirety and not solely to any specific sentence, paragraph, or section; (ii) the words "include," "includes," and "including" mean considered as part of a larger group, incorporate "without limitation", and are not limited to the items recited; (iii) the word "shall" means "is obligated to"; (iv) the word "may" means "is permitted to, but is not obligated to"; and (v) unless otherwise noted reference to a specific Section or Exhibit is a reference to a Section or Exhibit in this Lease.

**30.8. Choice of Law.** The laws of the state, commonwealth, or jurisdiction where the Premises are located (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Lease and the transactions it contemplates, including its interpretation, construction, performance, and enforcement.

**30.9. Authority to Execute.** Each party represents to the other party that this Lease: (i) resulted from an arm's-length negotiation; (ii) has been duly authorized, executed, and delivered by and on behalf of such party; and (iii) constitutes the valid, binding, and enforceable agreement of such party in accordance with the terms of this Agreement. In addition, Landlord represents to Tenant that Landlord has the full right, power, and authority to enter into this Lease without the necessity of obtaining any third-party approval (other than those already obtained by Landlord) and that the terms of this Lease do not violate any lease, loan, condition, covenant, restriction, exclusive, or any other agreement or provisions which existed prior to the date of this Lease.

**30.10. No Construction Against Drafting Party.** Landlord and Tenant acknowledge that each of them and their respective counsel have had an opportunity to review this Lease and that this Lease will not be construed for or against either party merely because such party prepared or drafted this Lease or any particular provision thereof.

**30.11. Counterparts & Digital Signatures.** The parties may execute this Lease in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Lease. The signatures of all parties need not appear on the same counterpart. This Lease is valid, binding, and enforceable against a party only when executed by an authorized individual on behalf of a party by means of (i) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (ii) an original manual signature; or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature has for all purposes the same validity, legal effect, and admissibility in evidence as an original manual signature. This Lease is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Lease, a party must produce or account only for the executed counterpart of the party to be charged.

**30.12. Acceptance.** The submission of this Lease to Landlord by Tenant or to Tenant by Landlord does not constitute an offer to lease. This Lease becomes effective only upon the execution and delivery thereof by both Landlord and Tenant.

**30.13. Damages.** Notwithstanding anything set forth in this Lease to the contrary, neither party is liable to the other for any special, indirect, punitive, or consequential damages.

**30.14. Time of the Essence.** Time is of the essence in this Lease.

**30.15. Business Days.** “**Business Day**” (or “**business day**”) means, as to any party, any day that is not a Saturday, Sunday, or other day on which national banks are authorized or required to close in the state, commonwealth, or jurisdiction where the Premises are located (“**Bank Holiday**”). To compute a time period under this Lease when the period is stated in days or a longer unit of time: (i) exclude the day of the event that triggers the period; (ii) count every day, including intermediate Saturdays, Sundays, and Bank Holidays; and (iii) include the last day of the period, but if the last day is a Saturday, Sunday, or Bank Holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Bank Holiday.

**30.16. Attorneys’ Fees.** In the event of any litigation related to this Lease, whether to enforce its terms, recover for default, or otherwise, if either party receives a judgment, settlement, or award in its favor (the “**Receiving Party**”) against the other party (the “**Paying Party**”) in such litigation, the Paying Party shall pay upon demand all of the Receiving Party’s costs, charges, and expenses (including reasonable attorneys’ fees, court costs, and expert witness fees) arising out of such litigation (including the costs of any appeal related thereto); provided, however, that if prior to commencement of a trial in the litigation the Paying Party offers to pay an amount equal to or in excess of such judgment, settlement, or award, the Receiving Party is not entitled to any such costs, charges, expenses, or attorneys’ fees.

**30.17. Third-Party Beneficiaries.** This Lease does not and is not intended to confer any rights or remedies upon any person or legal entity other than the signatories.

**30.18. Survival.** The provisions of this Lease that would require that they survive the expiration or earlier termination of the Lease in whole or part to give them full effect survive the expiration or termination of this Lease in whole or part for any reason, regardless of the date, cause, or manner of such expiration or termination. In addition, all rights of action arising from or related to this Lease that accrue during the term of the Lease, and any remedies for such claims, both legal and equitable, survive the expiration or earlier termination of this Lease.

**30.19. Anti-Money Laundering, Sanctions, and Anti-Corruption.**

**30.19.1. “AML Laws”** means all U.S. anti-money laundering laws that criminalize money laundering or any predicate crimes to money laundering. “**Anti-Corruption Laws**” means the U.S. Foreign Corrupt Practices Act and any similar applicable statute, rule, or regulation relating to bribery or corruption. “**Sanctions**” means any economic, trade, or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes, or anti-terrorism laws imposed from time to time by the United States government including but not limited to those administered or enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control. Each party represents to the other party that it is not a target of Sanctions and will not directly or indirectly transfer any of its interest in the Lease to a target of Sanctions. At all times during the Lease Term each party shall not violate applicable Sanctions, AML Laws, or Anti-Corruption Laws to the extent that such violation results in it being unlawful for the non-violating party to transact business under the Lease with the violating party. If a violation occurs that results in it being unlawful for the non-violating party to transact business under the Lease with the violating party, the non-violating party may suspend, upon written notice thereof to the violating party, any monetary obligations under the Lease until such time as the violating party is no longer in violation. In addition, if such violation is not cured promptly, the non-violating party may terminate the Lease upon prior written notice thereof to the violating party.

**30.19.2. “Sanctions Info”** means (i) full legal name, (ii) TIN/SSN for an entity or individual, as applicable, that is a party to the Lease, and (iii) full current business street address. “**Entity Signatory**” (collectively, “**Entity Signatories**”) means an entity that executes this Lease directly or indirectly for an entity party. Landlord shall, prior to execution of this Lease, deliver to Tenant a notice setting forth Sanctions Info for all entities and individuals that are a party to the Lease and for all Entity Signatories (e.g., if the entity executing the Lease is John Smith LLC (the entity party) by Peter Jones LLC, its sole manager (the Entity Signatory), by Jack Miller, its sole manager, then the notice must include Sanctions Info for John Smith LLC and for Peter Jones LLC, but not for Jack Miller). Thereafter, each party shall, within five (5) business days after receipt of written notice thereof from the other party, deliver to the requesting party a notice setting forth the Sanctions Info (see example above) for all entities and individuals that are a party to the Lease and for all Entity Signatories.

**30.20. Lease Date.** The date this Lease is signed by the last party to sign it (as indicated by the date associated with that party’s signature) will be deemed the date of this Lease. If a party signs but fails to date a signature the date that the other party receives the signing party’s signature will be deemed to be the date that the signing party signed this Lease and the other party may inscribe that date as the date associated with the signing party’s signature; provided, however, if only one party dated this Lease, then such date is the date of this Lease.

**30.21. Merger/Prior Agreements.** THIS LEASE CONSTITUTES THE FINAL AGREEMENT BETWEEN THE PARTIES. IT IS THE COMPLETE AND EXCLUSIVE EXPRESSION OF THE PARTIES’ AGREEMENT ON THE MATTERS CONTAINED IN THIS LEASE. ALL PRIOR AND CONTEMPORANEOUS NEGOTIATIONS AND AGREEMENTS BETWEEN THE PARTIES ON THE MATTERS CONTAINED IN THIS LEASE ARE EXPRESSLY MERGED INTO AND SUPERSEDED BY THIS LEASE. THE PROVISIONS OF THIS LEASE MAY NOT BE EXPLAINED, SUPPLEMENTED, OR QUALIFIED THROUGH EVIDENCE OF TRADE USAGE OR A PRIOR COURSE OF DEALINGS. IN ENTERING INTO THIS LEASE, THE PARTIES HAVE NOT RELIED UPON ANY STATEMENT, REPRESENTATION, OR AGREEMENT OF THE OTHER PARTY EXCEPT FOR THOSE EXPRESSLY CONTAINED IN THIS LEASE. THERE IS NO CONDITION PRECEDENT TO THE EFFECTIVENESS OF THIS LEASE OTHER THAN THOSE EXPRESSLY STATED IN THIS LEASE.

**31. Waiver of Jury Trial.**

EACH PARTY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL.

[Remainder of Page Left Blank Intentionally –  
Signatures on Following Page(s)]

The parties hereby execute this Lease as of the dates set forth below.

Landlord:

Tenant:

**CITY OF DELL RAPIDS, SOUTH DAKOTA**

**WELLS FARGO BANK, N.A.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

SITE PLANS & ATM FACILITY

**EXHIBIT B**

LANDLORD'S W-9