

LEASE TERMINATION AGREEMENT AND RELEASE

This Lease Termination Agreement and Release ("**Agreement**") is entered into as of _____, 2014, by and between THE COUNTY OF MONTEREY, a political subdivision of the State of California ("**County**"), and CAPITAL ONE, N. A. ("**Tenant**").

F A C T S

A. County has entered into a Due Diligence and Access Agreement dated June 16, 2014 with Schilling Place Property, LLC and Schilling Place QC, LLC (collectively, "**Schilling**") with respect to a potential purchase by the County of the real property in the City of Salinas located at 1441, 1488, and 1494 Schilling Place (the "**Premises**").

B. Tenant leases the Premises from Schilling pursuant to the following leases: (1) that certain Land and Building Lease by and between Schilling Place Property, LLC (successor-in-interest to Lincoln National Life Insurance Company, successor-in-interest to Alexander Hamilton Life Insurance Company of American) (as landlord) and Capital One, N.A. (together with its affiliates, "**Capital One**") (successor-in-interest to HSBC Card Services, Inc.) (as tenant) dated as of December 28, 1990, as amended by that certain First Amendment to Land and Building Lease dated as of October 6, 1995 (together with all other amendments, addenda, memoranda and writings relating thereto), for the lease of the entire building known as 1441 Schilling Place, Salinas, California, and (2) that certain Lease Agreement by and between Schilling Place QC, LLC (successor-in-interest to Salinas Development Group) (as landlord) and Capital One (successor-in-interest to HSBC Card Services, Inc., fka Household Credit Services, Inc.) (as tenant) dated as of May 5, 2003 (together with all other amendments, addenda, memoranda and writings relating thereto) for the lease of the entire buildings known as 1488 and 1494 Schilling Place, Salinas, California.

The above referenced leases are collectively known in this Agreement as (the "**Leases**").

C. Should the County purchase the Premises, County and Tenant have agreed to terminate the Leases on the terms and conditions set forth below.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Delivery of Possession. Tenant shall deliver possession of the Premises to the County on the Termination Date as defined below and as of such date the Tenant no longer has the right to possession of the Premises or to have access to the Premises. Prior to the Termination Date, Tenant shall remove all of its personal property (excluding FFTM&E as described in Section 7 of this Agreement) from the Premises and deliver the Premises to the County in good order, repair and condition, reasonable wear and tear excepted, and in accordance with the terms and conditions of the Leases.

2. Termination of Leases. The Leases shall be deemed terminated as of the date the County acquires titles to the Premises (the "**Termination Date**"). Prior to the Termination Date, the Leases shall remain in full force and effect and Tenant shall pay all Base Rent, Operating Expenses, Real Property Taxes and other amounts payable by Tenant under the Leases for periods accruing prior to the Termination Date. Tenant's obligation to pay such amounts shall survive the termination of the Leases.

3. Termination Payment. In consideration for County's agreement to terminate the Leases if County acquires the Premises, on the Termination Date, the Tenant shall pay to County on the date set forth below the sum of Twenty-Three Million Dollars (\$23,000,000.00) (the "**Termination Payment**"). The Termination Payment is in addition to, and shall not be credited against, all other amounts payable by Tenant under the Leases prior to the Termination Date.

4. No Subtenancies. Tenant represents and warrants that Tenant has not subleased all or any portion of the Premises to any person or entity and that Tenant has not assigned the Leases.

5. Release of County. As of the Termination Date, Tenant, for itself and for its affiliated corporations, limited liability companies and partnerships, members, officers, directors, agents, representatives, employees, attorneys, shareholders, successors in interest, personal representatives, heirs, assigns and each of them, absolutely, fully and forever releases and discharges County, its supervisors, and County's property manager and their respective members, officers, partners, directors, agents, representatives, employees, servants, attorneys, successors in interest, assigns and each of them, whether past, present or future, of and from any and all claims, demands, liabilities, obligations, losses, controversies, costs, expenses, reasonable attorneys' fees and damages of every kind, nature, character or description whatsoever, whether in law or in equity, and whether known or unknown, suspected or unsuspected, arising out of, connected with, or in any way related to the Leases or Tenant's occupation of the Premises. Tenant acknowledges and agrees that the release set forth above applies to all claims relating to the Leases whether those claims are known or unknown, foreseen or unforeseen.

6. Release of Tenant. Subject to the payment of the Termination Payment, (which is not released by this section), as of the Termination Date, County, for itself and its successors and assigns absolutely, fully and forever releases and discharges Tenant and its members, officers, partners, directors, shareholders, agents, representatives, employees, servants, attorneys, successors in interest, assigns and each of them, whether past, present or future, of and from any and all claims, demands, liabilities, obligations, losses, controversies, costs, expenses, reasonable attorneys' fees and damages of every kind, nature, character or description whatsoever, whether in law or in equity, and whether known or unknown, suspected or unsuspected, arising out of, connected with, or in any way related to the Leases or Tenant's occupation of the Premises. County acknowledges and agrees that the release set forth above applies to all claims relating to the Leases whether those claims are known or unknown, foreseen or unforeseen.

7. Effective on the Termination Date and provided County acquires the Property, Tenant, as seller, for and in consideration of the sum of One and No/100 Dollars (\$1.00), and other good and valuable consideration paid to Tenant by County, as purchaser, the receipt and sufficiency of which are hereby acknowledged, hereby assigns, sells, conveys, and delivers unto County and its successors, all of Tenant's right, title, and interest, if any, in and to all of the furniture, fixtures, tools, materials, and equipment, described on **Exhibit A** attached hereto and made a part hereof (collectively, the "**FFTM&E**").

The parties hereby acknowledge and agree that this Section 7 shall serve as a Bill of Sale and Assignment conveying title to the FFTM&E to County and its successors forever, for the consideration set forth herein, subject to the following:

COUNTY HEREBY ACCEPTS THE FFTM&E "AS IS", "WHERE IS", AND "WITH ALL FAULTS." TENANT HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION, OPERATION, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE FFTM&E , EXCEPT AS HEREIN SPECIFICALLY SET FORTH OR REFERRED TO, AND COUNTY HEREBY EXPRESSLY ACKNOWLEDGES THAT NO SUCH REPRESENTATIONS HAVE BEEN MADE. TENANT EXPRESSLY DISCLAIMS AND COUNTY ACKNOWLEDGES AND ACCEPTS THAT TENANT HAS DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY AND ALL REPRESENTATIONS, WARRANTIES, OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED, CONCERNING THE FFTM&E , INCLUDING, WITHOUT LIMITATION: (A) THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE FFTM&E ; (B) THE MANNER OR QUALITY OF THE CONSTRUCTION AND/OR MATERIALS, IF ANY, INCORPORATED INTO ANY OF THE FFTM&E , AND (C) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE FFTM&E. TENANT IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS, OR INFORMATION PERTAINING TO THE FFTM&E FURNISHED BY ANY BROKER, AGENT, EMPLOYEE, OR OTHER PERSON.

COUNTY SHALL ASSUME ALL RISK OF LOSS OF THE FFTM&E AND ANY AND ALL RESPONSIBILITY TO MOVE, STORE, PROTECT, MAINTAIN, REPAIR, OR REPLACE THE FFTM&E AFTER THE TERMINATION DATE. TENANT SHALL HAVE NO LIABILITY FOR ANY DAMAGE OR LOSS OF THE FFTM&E AFTER THE TERMINATION DATE.

Notwithstanding the foregoing, Tenant covenants and agrees to execute any and all other documents and instruments as may be reasonably required under applicable law in order to vest title in and to the FFTM&E in County.

County's and Tenant's obligations under this Section 7 shall survive the expiration or any termination of this Agreement.

8. Payment of Termination Payment. No later than September 1, 2014, Tenant shall deposit with the Escrow Holder (defined below) \$400,000 ("**Tenant's Deposit**") of the Termination Payment. The Tenant's Deposit shall be deposited in an interest-earning account for the credit of Tenant. The balance of the Termination Payment shall be deposited with Escrow Holder no later than one (1) business day prior to the scheduled close of escrow for County's acquisition of the Premises, provided the County has executed this Agreement and delivered such executed copy of the Agreement to Tenant. If the County fails to close on the acquisition of the Premises by October 17, 2014, Tenant may terminate this Agreement and the Termination Payment shall be returned to Tenant within two (2) days of such termination notice. "**Escrow Holder**" is First American Title Insurance Company, 1737 North First Street, Suite 500, San Jose, CA 95112, Attention: Teresa Woest, Senior Commercial Escrow Officer, email: TWoest@firstam.com, Telephone No. (408) 451-7972.

9. Default by Tenant. IN THE EVENT TENANT DOES NOT TIMELY DEPOSIT THE BALANCE OF THE TERMINATION PAYMENT WITH THE ESCROW HOLDER IN ACCORDANCE WITH THE TERMS OF SECTION 8, AND AS A RESULT THE COUNTY'S PURCHASE AND SALE AGREEMENT FOR THE PROPERTY IS TERMINATED BY THE SELLER, TENANT AND COUNTY AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SUFFERED BY COUNTY AS A RESULT OF TENANT'S FAILURE TO DEPOSIT THE TERMINATION PAYMENT PURSUANT TO THIS AGREEMENT, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, TENANT'S DEPOSIT REPRESENTS A REASONABLE ESTIMATE OF THE DAMAGES WHICH COUNTY WILL INCUR AS A RESULT OF SUCH FAILURE; PROVIDED, HOWEVER THAT THIS PROVISION WILL NOT LIMIT COUNTY'S RIGHT TO RECEIVE REIMBURSEMENT FOR ATTORNEYS' FEES IN THE EVENT TENANT WRONGFULLY REFUSES TO RELEASE TENANT'S DEPOSIT OR SUES FOR REIMBURSEMENT OF TENANT'S DEPOSIT AND COUNTY BECOMES THE PREVAILING PARTY IN ANY SUCH SUIT. THEREFORE, TENANT AND COUNTY HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL DAMAGES THAT COUNTY WOULD SUFFER IN THE EVENT THAT TENANT DEFAULTS AND FAILS TO DEPOSIT AND AUTHORIZE RELEASE THE TERMINATION FEE IS AN AMOUNT EQUAL TO THE TENANT'S DEPOSIT (WHICH INCLUDES ANY INTEREST ACCRUED THEREON IN ESCROW). SAID AMOUNT WILL BE THE FULL, AGREED LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY TENANT. THE PAYMENT OF SUCH AMOUNT IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTION 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO COUNTY PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. UPON DEFAULT BY TENANT, THE TENANT'S DEPOSIT (WHICH INCLUDES ANY ACCRUED INTEREST THEREON EARNED IN ESCROW) SHALL BE DELIVERED TO COUNTY, THIS AGREEMENT WILL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER EXCEPT FOR THE RIGHT OF COUNTY TO COLLECT SUCH LIQUIDATED DAMAGES FROM TENANT AND ESCROW HOLDER.

Tenant's Initial: _____

County's Initials: _____

10. Expiration. If the County does not enter into a purchase agreement with the Schilling by September 12, 2014, this Agreement shall terminate automatically, and Escrow Holder shall immediately return the Termination Payment including the Tenant's Deposit (including any interest earned thereon in escrow) to Tenant. If the County has not acquired title to the Premises by October 17, 2014, this Agreement shall terminate at the election of either party, and Escrow Holder shall immediately return the Termination Payment including the Tenant's Deposit (including any interest earned thereon in escrow) to Tenant provided Tenant is not in default of its obligations hereunder.

11. General. The persons executing this Agreement on behalf of the parties hereto represent and warrant that they have the authority to execute this Agreement on behalf of said parties and that said parties have authority to enter into this Agreement. County and Tenant acknowledge that they have received independent legal

advice from their attorneys with respect to the advisability of executing this Agreement. If a party files a legal action to enforce this Agreement, the prevailing party in such action shall be entitled to recover all of its attorneys' fees and costs. This Agreement contains the entire agreement between the parties and may only be modified or amended by a writing signed by all parties. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. The parties hereto represent and warrant that they have not transferred or otherwise assigned, either by contract or operation of law, any of the claims released under this Agreement. Preparation of this Agreement by County or County's agent and submission of same to Tenant shall not be deemed an offer by County to enter into this Agreement. This Agreement shall become binding upon County and Tenant only when fully executed by all parties and when fully executed copies have been delivered.

12. Counterparts and Facsimiles. This Agreement may be executed in one or more counterparts, which shall be deemed effective upon full execution of this Agreement by all parties. Each counterpart shall be deemed an original, but all of which together shall constitute one and the same instrument and agreement. In addition, a copy of this Agreement executed by a party hereto and telecopied to the other party shall be deemed to constitute delivery of an originally executed copy of this Agreement to the other party. A facsimile signature shall be enforceable to the same extent as an original signature.

13. Escrow. The Termination Payment (including Tenant's Deposit) shall be deposited with the Escrow Holder and shall be held in escrow pursuant to the terms of this Agreement. Escrow Holder shall cause the Termination Payment to be deposited into an interest bearing account. Escrow Holder shall pay the Termination Payment and the Tenant's Deposit at the closing on the Termination Date upon the consummation of the closing in accordance with this Agreement. The Tenant's tax identification number is 72-0210640 and the County's tax identification number is 94-6000524. On request, Tenant or County shall furnish Escrow Holder with a duly executed I.R.S. Form W-9 "Payer's Request for Taxpayer Identification Number". If either party makes a demand upon Escrow Holder for delivery of the Termination Payment or the Tenant's Deposit, Escrow Holder shall give notice to the other party of such demand. If a notice of objection to the proposed payment is not received from the other party within ten (10) business days after the giving of notice by Escrow Holder, Escrow Holder is hereby authorized to deliver the Termination Payment or the Tenant's Deposit to the party who made the demand. If Escrow Holder receives a notice of objection within said period, then Escrow Holder shall continue to hold the Termination Payment or the Tenant's Deposit and thereafter pay it to the party entitled when Escrow Holder receives: (i) a notice from the objecting party withdrawing the objection, or (ii) a notice signed by both parties directing disposition of the Deposit, or (iii) a judgment or order from a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

COUNTY:

COUNTY OF MONTEREY, a political
subdivision of the State of California

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Charles J. McKee, County Counsel

By: _____

Leslie J. Girard
Chief Assistant County Counsel

[Tenant and Escrow Holder Signatures on Next Page]

TENANT:

CAPITAL ONE, N.A.

By: _____

(print name)

(print title)

ESCROW HOLDER:

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____

(print name)

(print title)

EXHIBIT A (Page 1 of 2)

FURNITURE, FIXTURES, TOOLS, MATERIALS AND EQUIPMENT (FFTM&E)

1441 Schilling Place (North Building, 1st Floor)

- Approximately **570** outfitted work stations (mix between Steelcase, Evener and Context).
- Outfitted furniture for **14** closed executive office spaces and **7** conference rooms.
- **2** emergency defibrillators, **1** eyewash stations and **2** mechanical equipment lock-out stations.
- **1** 2000kW Diesel Generator with 2,000 gallon tank, and 400kVA Mitsubishi UPS system (including batteries).
- **1** large commercial trash compacting unit (located outside on north side of building).
- **1** electric maintenance vehicle and one **1** electric fork lift (both with batteries and charging units).
- **1** washer and dryer (set) located in janitor's closet and **1** mail box cabinet located in main hallway.
- **All** other furniture and fixtures (including shelving, racking, caging, lockers and filing cabinets) in this portion of the building as of 8/1/14.
- **All** surveillance, monitoring and card reading equipment for this building as of 8/1/14.
- **All** maintenance tools (including portable generators, and sewer cleaning and janitorial equipment & supplies), hand carts, ladders, materials, repair parts, filters and portable cooling units located in this portion of the building as of 8/1/14.
- **All** computer networking cabinets, racking and chiller unit in computer room as of 8/1/14.

1441 Schilling Place (North Building, 2nd Floor)

- Approximately **19** outfitted work stations (Steelcase).
- Outfitted furniture for approximately **3** closed office spaces and **1** conference room.
- **1** eyewash station and **2** mechanical equipment lock-out stations.
- **All** maintenance tools (including grinders, presses, drills and key making machine), manuals, materials, and repair parts located in this portion of the building as of 8/1/14.
- **All** other furniture and fixtures (including shelving, racking, caging, and filing cabinets) in this portion of the building as of 8/1/14.
- **All** plans, specifications, owner's manuals and maintenance logs for the whole Premises.

1441 Schilling Place (South Building, 1st Floor) *including main lobby

- Approximately **104** Steelcase and **166** Context outfitted work stations.
- Outfitted furniture for approximately **9** closed executive office spaces and **10** conference rooms.
- **2** emergency defibrillators. **1** eyewash station and **2** mechanical equipment lock-out stations.
- **1** small commercial trash compacting unit (located outside on east side of building).
- **All** cafeteria equipment (including refrigerated sandwich table, refrigerators, walk-ins. stoves, fryers, grills, slicer, mixer, range, ice makers, dishwasher, recycling and trash containers, and cash registers), tables and chairs (inside and in patio area) located in this portion of the building as of 8/1/14.
- **All** other furniture and fixtures (including shelving, racking, and filing cabinets) in this portion of the building as of 8/1/14.
- **All** surveillance, monitoring, card reading and video conferencing equipment for this building as of 8/1/14.

1441 Schilling Place (South Building, 2nd Floor)

- Approximately **320** Context outfitted work stations.
- Outfitted furniture for approximately **22** closed executive office spaces and **12** conference rooms(including Board Room).
- **2** emergency defibrillators, **2** evacuation chairs, **1** eyewash station and **2** mechanical equipment lock-out stations.

EXHIBIT A (Page 2 of 2)

FURNITURE, FIXTURES, TOOLS, MATERIALS AND EQUIPMENT (FFTM&E)

1488 Schilling Place (Former Credit Card Processing Center Building)

- 1 Barrett fork lift and 1 Hyster N40FR fork lift (both with batteries and charging unit).
- 1 Daewoo G25S fork lift and 1 Clark forklift.
- 2 Raymond SA/CSR30T fork lift (with batteries, charging units and battery handling system for each).
- 6 manual pallet jacks and 3 electric pallet jacks (with batteries and charging units for each).
- 3 red heavy-duty warehouse carts, 2 stair step type ladders and 2 16 foot fiberglass regular ladders.
- 3 commercial refrigerators and 1 commercial ice making machine, 1 recycling unit, 1 flat screen TV, and approximately 8 cafeteria tables with chairs (all located in employee break room).
- 2 commercial air compressors.
- 1 1500kW diesel generator with 1,600 gallon tank, and 1500kVA Mitsubishi UPS system (including batteries).
- 1 emergency defibrillator, 3 eyewash stations and 3 mechanical equipment lock-out stations.
- 1 Commercial dust collecting unit/system and 1 commercial shredded material bailing unit (located in dock area).
- All other furniture and fixtures (including shelving, racking, caging, lockers and outfitted workstations) in this building as of 8/1/14.
- All surveillance, monitoring and card reading equipment for this building as of 8/1/14.

1494 Schilling Place (Daycare Building)

- All furniture, fixture and equipment in this building as of 8/1/14.
- All playground equipment and storage shed associated with this building as of 8/1/14.
- All surveillance, monitoring and card reading equipment for this building as of 8/1/14.
- 1 Emergency Defibrillator, 1 eyewash station and 1 mechanical equipment lock-out station.

All keys and or combinations/codes for the above referenced FFTM&E associated with the Premises to be given to County by Tenant on the Termination Date stated in the Agreement.