

## ATM SPACE LEASE

THIS SPACE LEASE (hereinafter referred to as the "Lease") is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, ("Effective Date") by and between \_\_\_\_\_ ("Lessor"), a \_\_\_\_\_ corporation, and CABE & CATO, INC., a Georgia Corporation ("C&C").

In consideration of the terms, covenants and conditions hereinafter set forth, Lessor hereby leases to C&C certain floor space in Lessor's premises (each separate premises a "Building"), to have and to hold the same unto C&C during the term of this Lease in accordance with the following terms and provisions.

1. Use. C&C shall use and occupy space in Building located at SEE EXHIBIT A (approximately 3 feet x 3 feet) for the sole purpose of operating thereon an automated teller machine ("ATM"). C&C shall install the ATM at its own expense. C&C shall obtain any ATM and related equipment needed for future installations from a vendor of its choosing. Lessor shall not have any other ATM in any Building during the term of this Lease without prior written consent from C&C.

2. Installation and Operation of the ATM. C&C may install ATMs in an agreed upon location(s) as soon as practicable after the signing of this Lease. C&C will operate and maintain the ATM during the term of this Lease. The expansion of locations may occur with the consent of both parties.

3. Building Closing or Remodeling. If C&C is required to permanently or temporarily remove or relocate an ATM because of actions taken by Lessor, including, without limitation, closing or remodeling a Building in which an ATM is located, C&C will bear costs of de-installing the affected ATM. If the de-installation is due to remodeling or similar action by Lessor, C&C, in its sole discretion, may elect to reinstall the ATM in the affected Building when feasible.

4. ATM Space.

(a) Lessor shall make available to C&C so much of the space within each Building in which C&C operates an ATM as is necessary to enable customers to have access to the ATM and for maintenance and servicing of the ATM.

(b) For the term of this Lease, Lessor grants to C&C and third party servicing agents access to the ATMs and/or related property during hours of operation or, for purposes of servicing, during such designated pre-opening and post-closing hours as are mutually agreed upon. Lessor further grants to C&C, for its use and the use of its employees, agents and customers, in common with other entitled to use same, a nonexclusive license over the balance of Lessor's business premises for the sole purpose of ingress and egress to and from the Building. The space on the premise, as provided by Lessor, shall comply with the Americans with Disabilities Act (ADA) accessibility guidelines for buildings and facilities.

5. Maintenance and Service.

(a) C&C shall supply paper for transaction receipts at no charge.

(b) C&C shall supply custodial service, including the cleaning of the exterior of the ATM on a schedule normally available for like space in the Building. Lessor and C & C shall maintain the space surrounding the ATM in a safe, neat and orderly condition and shall take due care and caution so as to prevent Lessor's employees, representatives and customers from damaging the ATM.

(c) Lessor shall provide heat and air conditioning for the space the ATM is located at a

level consistent with and in kind like other portions of the Building. (This does not apply to exterior ATM Units)

(d) Lessor, at its expense, shall be responsible for electrical services for the ATM by providing a dedicated 110-amp line to each ATM.

(e) \_\_\_\_\_ shall be responsible for telephone expense.

(f) \_\_\_\_\_ shall provide all cash services and cash supply, paper loading, and first line maintenance (paper and cash miss feeds) for each ATM.

#### 5.1 Right to Cure.

In the event of any service problems and/or mechanical failures, Lessor agrees to notify C&C within twenty-four (24) hours of the first occurrence of the problem. C&C shall then have up to thirty (30) days within which to cure the problem and/or mechanical failure.

#### 6. Title: Risk of Loss.

(a) The ATM shall remain the property of C&C or its leasing companies.

(b) Lessor agrees to execute and deliver to C&C documentation to evidence and put third parties on notice of C&C's interest in each ATM.

(c) C&C shall maintain insurance on the ATM. However, C&C recommend that Lessor add the ATM to its umbrella liability policy.

(d) Lessor shall provide customary security measures for the Building(s).

#### 7. Taxes and Liens.

(a) C&C shall pay all personal property taxes or similar assessments directly relating to the ATM located in the Building as the same become due.

(b) Lessor shall at all times keep each ATM free of all liens and encumbrances and hereby waives any and all claims or liens, including statutory landlord liens, that it may impose itself on any ATM.

(c) Lessor shall be responsible for all sales taxes (if any) incurred in connection with the operation of the ATM.

#### 8. Liability.

(a) Except for the rent payments provided for herein, for the period during which the ATM is installed and operational, C&C shall have no liability to Lessor of any nature whatsoever, including any special, incidental, exemplary or consequential liabilities. In the event C&C suffers any loss, liability and expense in connection with this Lease, Lessor shall indemnify and hold C&C harmless from all such loss, liability and expense. LESSOR ACKNOWLEDGES THAT C&C, ITS AFFILIATES, REPRESENTATIVES, AGENTS, DISTRIBUTORS AND INDEPENDENT CONTRACTORS HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES IN CONNECTION WITH THE ATM OR ANY PROJECTED REVENUES OR EXPENSES IN CONNECTION WITH THE OPERATION OF THE ATM.

(b) Each party shall be excused from performance, and shall have no liability, for any period and to the extent that such party is prevented, hindered or delayed from performing any services or other obligations under this Lease, in whole or in part, as a result of acts, omissions or events beyond the reasonable control of such party, including by way of illustration and not limitation, acts or omissions of the other party, third party nonperformance, failure or malfunction of computer or telecommunications hardware, equipment or software, breach or other

nonperformance, failure or malfunction of computer or telecommunications hardware, equipment or software, breach or other nonperformance by vendors and suppliers, strikes or labor disputes, riots, war, fire, acts of God or government regulations.

9. Violations of Criminal Law.

(a) During the term of this Lease, Lessor agrees to abide by all local, state, and federal criminal laws in the operation of its business on its premises. Any owner, employee, or agent of Lessor is prohibited to use or cause the use of the ATM in any manner that violates any local, state, or federal criminal law. A violation of this provision by Lessor shall constitute a material breach of the Lease and C&C, at its sole discretion, shall be entitled to terminate the Lease immediately.

(b) In addition to its other indemnification obligations hereunder, and in no way as a limitation thereof, Lessor shall indemnify and hold C&C and its officers, directors, employees, stockholders, agents, and representatives harmless to the greatest extent possible under applicable law from and against any and all judgments, fines, penalties, amounts paid in settlement and any other amounts reasonably incurred or suffered by such indemnitees (including attorneys' fees) in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Lessor, to which an indemnitee is, was, or at any time becomes a party, or is threatened to be made a party, resulting from the Lessor's failure to comply with its obligations pursuant to this paragraph 9.

An indemnitee wishing to claim indemnification under this Lease shall promptly notify the Lessor of any event that may give rise to an indemnification right hereunder, but the failure to notify shall not relieve the Lessor of any liability it may have to such indemnitee, except to the extent that the same prejudices the Lessor. In the event of any legal action in connection with which there is, or may be, an indemnification right hereunder, (A) the Lessor shall have the right to assume the defense thereof, and the Lessor shall not be liable to such indemnitee for any legal expenses of other counsel or any other costs and expenses subsequently incurred by such indemnitee in connection with the defense thereof, except that if the Lessor elects not to assume such defense, the indemnitee may retain counsel which is reasonably satisfactory to the Lessor, and the Lessor shall pay, promptly as statements therefor are received, the reasonable fees and expenses of such counsel for the indemnitee (which may not exceed one firm in any jurisdiction), (B) the indemnitee will cooperate in the defense of any such matter including the production of records and proper personnel to provide testimony, and (C) the Lessor shall not be liable for any settlement effected without its prior written consent (such consent not to be unreasonably withheld or delayed). Notwithstanding the above, in the event that the Lessor elects not to assume such defense, the indemnitee may call upon the Lessor to pay or compromise said claim in accordance with its obligations hereunder.

(c) Lessor agrees to notify C&C of any such violation. C&C shall have no Liability to Lessor of any nature for cooperating with law enforcement officials regarding the operation of the ATM on the premises.

10. Signage. Lessor will permit C&C to place signage on the exterior of each Building in which an ATM is operated (*if* C&C desires *and* lessor approves) which prominently advertises the ATM, at C&C's expense and in accordance with local law **and approval of Lessor** (example: "ATM Available Inside" decals). Lessor will permit C&C, to place signage on the ATM or any ATM receipts.

11. Term. The term of this Lease shall commence on the date first above written and shall continue for \_\_\_\_\_ year(s). This Lease shall automatically renew for an additional period of 1 year(s) upon expiration unless terminated by either party giving the other party written notice of intent not to renew at least ninety (90) days prior to the expiration date of the original term or any renewal thereof. C&C may terminate this Lease during the original term or any renewal term for any reason and without any penalty or liability (other than accrued rent) by giving Lessor written notice at least thirty (30) days prior to such termination. C&C

may terminate this Lease immediately in the event Lessor has failed to fulfill any of its obligations under the terms hereof, including but not limited to payment of the subsidy under Section 9.

11.1 Buy Out Clause. At any time after initial term of this Lease, Lessor may purchase the ATM from C&C at fair market value. Lessor also has the option of purchasing a new ATM from C&C. In the event Lessor purchases a new ATM from C&C, Lessor shall bear any delivery and installation charges associated with exchanging the new ATM for the leased ATM.

11.2 Payment Obligations.

(a) C&C agrees to pay Lessor rent during the term of this Lease as set forth in Exhibit A

12. Termination Upon Bankruptcy or Insolvency. In the event that (a) a Party shall become insolvent; (b) a Party shall make an assignment of its property for the benefit of creditors or shall seek liquidation or reorganization under any insolvency or bankruptcy law; (c) a petition is filed by or against a Party under any provision of the United States Bankruptcy Code which is not dismissed or stayed within sixty (60) days after its filing; or (d) a receiver or trustee for a Party shall not have been discharged within sixty (60) days from the date of appointment, then the other Party may immediately terminate this Agreement and pursue all other available remedies at law or in equity.
13. Right to Match. In the event this Lease is terminated for any reason, Lessor grants, upon such termination, to C&C a right to match any bona fide third party offer in connection with the use and/or operation of an ATM. Such right shall last for the period of time that otherwise would have been the remaining portion of the term if no termination had occurred.
14. Trade Secrets. The ATM consists in part of computer programs, procedures, forms and other related materials, which have been acquired, developed by C&C or third parties at substantial expense. Lessor acknowledges that the foregoing are trade secrets which are of great value to C&C, and disclosure to others of any of the programs, procedures, forms and other related materials with respect to the ATM will result in loss and irreparable damage to C&C. Lessor therefore agrees not to disclose to others any information regarding such programs, procedures, forms and other related materials with respect to the ATM. Lessor acknowledges that the ATM, certain service and trademarks, computer programs, procedures, forms and other related materials belongs to and are trade secrets of third parties and shall not in any way reconfigure or reverse engineer such in any manner whatsoever.
15. Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire Agreement between C&C and Lessor with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings. This Agreement may not be released, discharged, abandoned, changed or modified in any manner except by an instrument in writing signed by a duly authorized officer or representative of both C&C and Lessor.
16. Waiver. The failure of either Party to enforce at any time any provisions of this Agreement or to exercise any right herein provided shall not, in any way, be construed to be a waiver of such provision or right in connection with any subsequent breach or default, and shall not, in any way, affect the validity of this Agreement or any part hereof, or limit, prevent or impair the right of such Party, subsequently, to enforce such provision or exercise such right.
17. Notices. Any notice required or permitted hereunder shall be in writing and may be given by personal service or by depositing same in the United States mail, first class postage prepaid, to the address of the Party receiving notice as appears on the signature page of this Lease or as changed through written notice to the other party.
18. Governing Law. This Agreement shall be construed in accordance with Georgia law, and venue for any actions pertaining to this Agreement shall be in Atlanta, Fulton County, Georgia.
19. Binding Effect; Successors and Assignments. This Agreement is binding on the Parties and their respective successors and assigns. Lessor may not assign this Agreement without the prior written consent of C&C.
20. Captions. Captions contained in this Lease are inserted only as a matter of convenience and in no way define, limit, or extend the scope or intent of this Lease or any provision hereof.

- 21. Relationship of the Parties. It is expressly understood and acknowledged that it is not the intention or purpose of this Lease to create, nor shall the same be construed as creating, any type of partnership, relationship or joint venture.
- 22. Compliance with Laws. Each Party will perform its obligations under this Lease in strict compliance with all applicable laws, orders or regulations of all appropriate jurisdictions.
- 23. Quiet Enjoyment. C&C shall quietly enjoy the floor space attributed in each Building identified in during each term of this Lease without hindrance or molestation by anyone claiming by, through or under Lessor.

[LESSOR]

CABE & CATO, INC.  
 276 Village Parkway  
 Marietta, GA 30067  
 (770) 226-0333

By: \_\_\_\_\_  
 Signature  
 Printed Name:  
 Title:

By: \_\_\_\_\_  
 Signature  
 Printed Name:  
 Title:

Date:	Date:
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# EXHIBIT A