

MARQUETTE COMMONS ATM LESE AGREEMENT

THIS ATM LEASE AGREEMENT dated as of the 12th day of May, 2022, by and between the City of Marquette Downtown Development Authority ("DDA"), and Boricua Processing, LLC, a Michigan Limited Liability Company, of 127 W. Washington Street, Suite C, Marquette, MI 49855 ("Provider").

- A. DDA is the owner and operator of a building ("The Marquette Commons") located at 112 S. Third St, Marquette, MI 49855.
- B. Provider desires to lease space in The Marquette Commons not to exceed thirty-six square feet (6 feet by 6 feet) ("Leased Premises").

NOW THEREFORE, in consideration of the mutual promises herein contained, DDA and Provider hereby agree as follows:

1. Leased Premises

- 1.1 DDA hereby leases to Provider, and Provider hereby leases from DDA, the Leased Premises solely for maintenance and operation of an automated teller machine ("ATM").

2. Rental

- 2.1 Provider agrees to pay 20% of every \$2.50 transaction fee to the DDA each month via check made out to "The City of Marquette DDA". Payment is due no later than the 5th of each month. A transaction will not include a customer request for transfer of funds or fund balance inquiries.
- 2.2 Transactions offered at the ATM located on the Leased Premises include cash withdrawals and advances and account transfers.
- 2.3 Provider will give the DDA a monthly electronic report evidencing all transactions for the month so as to allow the DDA to reconcile the payments made by the Provider.

3. Maintenance and Operation

- 3.1 So long as this Lease remains in full force and effect, Provider will use its best efforts to keep the ATM in full operating condition.
- 3.2 Provider is responsible for purchasing, programming and maintaining the ATM.
- 3.3 Provider is responsible for filling the ATM with cash.
- 3.4 DDA agrees at its sole expense to maintain the Leased Premises in good repair and in clean condition at all times.
- 3.5 Shall the ATM require specific electrical, telephone, and/or internet connections not already available at the Leased Premises, Provider is responsible for all costs associated with providing necessary connections. Shall this require any physical work or alterations be made to the Premises, the Provider must obtain approval for said changes by DDA before any work may begin. The DDA will responds within a reasonable time frame.
- 3.6 DDA is responsible for providing and maintaining electrical and internet utilities at the Premises. The Provider may use these utilities as necessary for the ATM machine. Potential

disruptions to internet, beyond the DDA's immediate control, will be addressed during regular business hours, Monday-Friday, 9 AM-5 PM.

4. Term

4.1 This Lease shall commence on the day that installation of the ATM has been completed or on such earlier date that the parties shall mutually agree ("Commencement Date"), but in no event shall such commencement date be later than one hundred twenty (120) days after the date of this Lease.

4.2 Unless sooner terminated by either of the parties pursuant to Sections 10 or 13, this Lease shall continue in effect for a period of one (1) year from the date hereof. The term shall be automatically extended for an additional one-year term unless notice of termination is given by one party to the other at least ninety (90) days prior to the end of the original term or any extension.

5. Leasehold Improvements

5.1 DDA understands that the Leased Premises shall be improved by the installation of the ATM, and DDA understands and agrees that all operational rights, use and control of the ATM shall be exclusively that of Provider. At the expiration of this Lease, DDA agrees to give Provider a reasonable time period to remove the improvements placed on the Leased Premises by Provider and repair the premises occupied by the ATM to its original form. A contractor of mutual agreement of both parties will be used to perform the repairs, if any are necessary.

6. Access to ATM

6.1 DDA or its employees shall have only the same limited right of access to the ATM as Provider grants to the general public.

6.2 DDA shall permit Provider, its employees or agents, to have access to the ATM at all times during which The Marquette Commons is open to the public.

7. Operation of Leased Premises

7.1 The parties mutually agree that DDA shall retain the absolute right to sell, close or otherwise dispose of The Marquette Commons, or any portion thereof.

7.2 DDA further retains the absolute right to establish the building hours and days of operation and to change any hours and days of operation for the building during the term of this Lease.

8. Non-Exclusive Use of Premises

8.1 Provider acknowledges that its use of The Marquette Commons is not exclusive and that DDA, members of the public, and its invitees shall have the right in common with Provider, its invitees, and others to use the Marquette Commons.

9. Insurance

9.1 Provider, at its own expense, shall maintain liability insurance protecting and insuring DDA from all claims for injury or damage to persons or property arising out of the use of the Leased Premises and any common area by Provider, its employees, agents, invitees and licensees. The amount of the insurance shall not be less than One Million (\$1,000,000.00) Dollars per occurrence or accident, bodily injury or death and not less than Three Hundred Thousand (\$300,000.00) Dollars for property damage. Provider shall provide DDA with a copy of said policy with proof of payment of premiums thereon. The insurance policy shall bear an endorsement to the effect that the insurer agrees to notify DDA not less than thirty (30) days in advance of any modification or

cancellation thereof. DDA shall be named as an additional insured on the insurance policy required by this Lease.

9.2 Provider, at its own expense, shall maintain insurance coverage adequate to cover any damage that may occur to the ATM or any other property owned by Provider in The Marquette Commons, or for any loss Provider may incur related to its ATM being located in The Marquette Commons, including damage due to fire or theft.

10. Liability

10.1 Provider agrees to release and hold DDA harmless from any liability resulting solely from Provider's negligence or the malfunction of the ATM.

10.2 Provider further agrees that it will defend, indemnify, protect and save DDA and its property, including the Leased Premises harmless from and against all claims and legal liabilities or cost, including theft, vandalism, breakage, service charges, laborers, material men's or mechanics liens that may attach to DDA's property, including the Leased Premises by reason of Provider's use or occupancy of the Leased Premises or its ATM operation thereon.

10.3 Provider further agrees that in the event this Lease or any part thereof is found by any court of competent jurisdiction or federal or state regulatory agency to be illegal or in violation of any federal or state banking statute or other law, ruling or regulation, it shall use its best efforts to either expeditiously remedy the situation constituting such violation or affected supplement. Or in the event that Provider determines in its judgment it cannot remedy the situation or does not elect to appeal the finding, it may terminate this Lease upon ten (10) days written notice to the DDA.

11. Taxes

11.1 Provider shall pay all taxes or charges levied and assessed against its business and property conducted or located on the Leased Premises.

12. Destruction or Condemnation

12.1 In the event of destruction or damage to The Marquette Commons, either in whole or in part, which would in either party's judgment prevent the use or occupancy of the Leased Premises for the intended purpose of this Lease, either party may upon no more than ten (10) days written notice to either party after the date of such damage or destruction (the "Destruction Date"), elect to either:

- (i) terminate this Lease with respect to a damaged or destroyed ATM as of the Destruction Date; or
- (ii) at DDA's expense and option, rebuild or replace the building as promptly as possible.

13. Termination

13.1 If either party is in breach or violation of any of its duties, covenants or undertakings under this Lease, and has not remedied the same within the time period specified in this Lease for the performance of said obligation (or, if such time is not specified, within ten (10) days after notice in writing by the party not in breach), or if either party shall go into bankruptcy or become insolvent, whether voluntarily or involuntarily suffer the appointment of a receiver of its assets or any part thereof, then this Lease may be terminated immediately by notice in writing addressed to the party in breach or violation, under this paragraph. Such notice forthwith terminates all rights, privileges and advantages of such breaching party hereunder except as provided in Section 13.2.

13.2 DDA may terminate this Lease upon ten (10) days prior written notice to Provider in the

event DDA is determined, by a court of competent jurisdiction or applicable federal or state regulatory agency under any applicable statute, rule, regulation or order, to be engaged in the business of banking.

13.3 In the event of termination of this Lease for any reason, Provider shall, within thirty (30) days after the termination of this Lease, remove the ATM from the Leased Premises.

14. No Waiver

14.1 Neither the failure of DDA or Provider to insist upon strict performance of any of the covenants or conditions of this Lease to be performed by the other party, nor DDA's or Provider's failure to exercise any right, power or option conferred upon it hereunder shall be construed as a waiver or relinquishment of its right to require strict compliance thereafter by the other party with all the covenants, agreements and conditions hereof, or, of its right to exercise any such right, power or option or to declare this Lease terminated due to such breach.

15. No Assignment of Subletting

15.1 Neither of the parties hereto may assign its interest in this Lease without the written consent of the other. Any attempt or attempts to accomplish any of the acts forbidden by this Section shall be invalid, shall confer no rights on any third parties, and shall constitute a default under the terms and provisions hereof.

16. Promotion and Use of Service Marks

16.1 DDA and Provider agree that neither party shall use the name or service mark of the other party or name or service mark of any ATM network without express written consent of the other party.

17. Miscellaneous

17.1 The covenants, terms and conditions hereof shall be binding upon and inure to the benefit of the parties, and their successors and assigns, provided that this Lease or any modification or alterations thereof, shall not be binding upon either party unless and until executed by representatives of both parties hereto.

17.2 The terms and provisions of this Lease shall be deemed severable, and in the event any term or provision hereof is deemed or held to be invalid, illegal or unenforceable, the remaining terms and provisions hereof shall nevertheless continue and be deemed to be in full force and effect. The headings in this Lease are for convenience of reference only and shall not limit or otherwise effect the meaning hereof.

17.3 This Lease shall be construed and the rights and obligations arising hereunder shall be determined in accordance with the laws of the State of Michigan.

17.4 This Lease may be executed in several counterparts, each of which shall be deemed an original.

17.5 All notices requested or required under this Lease shall be in writing and if to DDA shall be sufficient in all respects if delivered in person or sent by registered or certified mail to:

City of Marquette Downtown Development Authority
Attn: Executive Director
337 W Washington St.
Marquette, MI 49855

and to Provider shall be sufficient in all respects if delivered to person or sent by registered or certified mail to:

Boricua Processing, LLC
127 W. Washington St, Ste C
Marquette, MI 49855

IN WITNESS WHEREOF, the Parties have executed this Lease Agreement as of the day and year first above written:


CITY OF MARQUETTE DOWNTOWN DEVELOPMENT AUTHORITY



By: Jodi Lanciani
Its: Acting Executive Director

5-12-2022

Date



By: Jerney Ottaway
Its: DDA Board Chair

5-12-2022

Date

BORICUA PROCESSING, LLC



By: Antonio Ruiz
Its: Member

05/13/22

Date

