

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT (this "Agreement") between **VyStar Credit Union** ("VyStar"), a credit union chartered under Florida Law whose address is 76 S. Laura Street, Jacksonville, Florida 32202, and **City of Jacksonville**, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida ("Lessor"), whose address is 117 West Duval Street, Jacksonville, FL 32202, is made this \_\_\_\_ day of \_\_\_\_\_, 2021.

### **RECITALS**

**WHEREAS**, Lessor owns certain real property and improvements including a building ("**Building**") located at 117 West Duval Street, Jacksonville, Florida, and which is further depicted on **Exhibit A** attached hereto and incorporated herein.

**WHEREAS**, pursuant to that certain Lease Agreement between VyStar and Lessor dated May 8, 2019 (the "**Prior Agreement**"), VyStar installed a full service automated teller machine (the "**ATM**") in the location shown on **Exhibit A** containing approximately 72 square feet of space (the "**Premises**");

**WHEREAS**, the Prior Agreement expires as of May 31, 2021; and

**WHEREAS**, Lessor desires to permit VyStar to continue to operate and maintain the ATM on the terms and conditions herein stated.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants herein contained, the parties hereby agree as follows:

1. **Recitals**. The recitals set forth above are true and correct and are incorporated herein by this reference.
2. **Equipment**. Lessor hereby grants to VyStar the exclusive right to operate, maintain, replace and remove the ATM for the use and benefit of the public. VyStar and its customers shall also have the non-exclusive right to use the exterior walkways adjacent to the Premises for ingress and egress to and from the that portion of the ATM that is located on the exterior face of the Building, in common with Lessor and other tenants and occupants of the Building. All required security and data communication lines necessary for the operation of the ATM shall be procured and maintained by VyStar at its own expense, provided that, Lessor agrees to provide the data connections for the ATM in the Building. Lessor shall provide dedicated electrical lines to serve the electrical power needs of the ATM and shall furnish and pay the cost of all electrical power required to operate the ATM. Lessor shall not be liable for any losses resulting from any interruption in electrical or data communication service.
3. **Maintenance**. VyStar shall be responsible for and shall pay the cost of all required maintenance, repair, replacement, supplies, and service of the ATM, and all costs, operating expenses and utilities (other than electrical power, which will be provided by Lessor) to keep the ATM in reasonable working order to ensure maximum up-time. VyStar reserves the right to

schedule reasonable downtime to accomplish necessary maintenance or system improvements. In the event of any ATM failure, damage or other problem requiring repair, replacement, adjustment or maintenance, Lessor shall notify VyStar or a person designated by VyStar within twenty-four (24) hours of first becoming aware of such failure or problem. Lessor shall not permit anyone, other than an authorized representative or designee of VyStar, to perform any service or repair work on the ATM. Upon reasonable advance notice to Lessor, Lessor shall permit VyStar, its agents and contractors (including, without limitation, its current ATM service contractors, Brinks, Stanley Security and Diebold, but subject to change of contractors from time to time on reasonable advance notice to Lessor), ingress, egress and access to the Building during normal business hours for the purpose of installing, monitoring, servicing, repairing, maintaining, and replacing the ATM. VyStar shall be responsible for the cost of repair of any damage to the Premises and Building to the extent caused by the acts or omissions of VyStar or its agents, employees or contractors, and VyStar shall deliver the Premises to Lessor at the expiration of this Lease, in substantially the same condition in which the Premises were on the commencement date of the Prior Agreement, subject to reasonable wear and tear.

4. Compliance with Laws. VyStar shall procure at its own expense all permits and licenses required for, and shall comply with all laws, regulations, ordinances and other legal requirements applicable to, the operation and maintenance of the ATM and the transaction of its business in connection with the ATM.

5. ATM Fees. All ATM transactions may be subject to a transaction fee; provided however that no ATM transaction fees will be charged to a VyStar member using a VyStar ATM card. All transaction fees from the operation of the ATM shall belong to VyStar. VyStar reserves the right to change the amount of its ATM transaction fees at any time, in its sole discretion, provided however that the fees payable at the ATM located on the face of the Building shall not be higher than fees payable at other VyStar ATMs. VyStar shall be responsible for any damage to the ATM unless such damage is caused by the willful or negligent act or omission of Lessor or its agents, employees or contractors.

6. Indemnity. VyStar shall (and shall require all contractors and subcontractors of any tier to) hold harmless, indemnify, and defend Lessor and its parent, subsidiaries, and affiliates and their respective directors, officers, officials, board members, committee members, members, employees and agents (collectively the "Indemnified Parties") from and against any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature (including, but not limited to, court, investigation and defense costs, and reasonable expert and attorney's fees), which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties arising (directly or indirectly) out of (a) the violation of any federal, state, or municipal laws, statutes, resolutions, rules or regulations, by VyStar or its parent, subsidiaries or affiliates or their respective employees, agents, contractors, invitees or those under their control (collectively, the "Indemnifying Parties"); (b) any breach of any representation, warranty, covenant or obligation set forth in this Agreement or made by any of the Indemnifying Parties in connection with this Agreement and (c) the negligence, gross negligence or willful misconduct of any of the Indemnifying Parties.

7. Insurance.

7.1 Property Insurance. During the Term (defined below) of this Agreement, VyStar shall maintain Special Peril Property Insurance that covers the ATM on a replacement cost basis. Lessor shall maintain insurance on the ATM and personal property on a replacement cost basis.

7.2 Workers' Compensation/Employer's Liability. During the Term, Vystar shall maintain Workers' Compensation and Employer's Liability Insurance. Such insurance shall cover Vystar (and, to the extent they are not otherwise insured, its contractors and subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). The applicable limits of liability shall be no less than:

<b>Worker's Compensation Employer's Liability</b>	Florida Statutory Coverage \$ 1,000,000 Each Accident \$ 1,000,000 Disease Policy Limit \$ 1,000,000 Each Employee/Disease
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7.3 Liability Insurance. During the Term, VyStar shall maintain Commercial General Liability insurance ("CGL Insurance") with limits of liability of not less than:

\$2,000,000 Per occurrence
\$2,000,000 Personal/Advertising Injury
\$2,000,000 Products and Completed Operations Aggregate

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the Licensor's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

7.4 Additional Insurance Provisions. VyStar's Insurance policies shall contain the following provisions or be endorsed as follows:

- (i) Additional Insured. The Commercial General Liability insurance shall be endorsed to name the City of Jacksonville and the City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010.

- (ii) Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.
- (iii) VyStar's Insurance Primary. The insurance provided by VyStar shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
- (iv) Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured VyStar. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- (v) VyStar's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of VyStar or its Subcontractors, employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- (vi) Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by VyStar shall relieve VyStar of VyStar's full responsibility to provide insurance as required under this Agreement.
- (vii) Certificates of Insurance. VyStar shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- (viii) Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- (ix) Notice. VyStar shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, VyStar, shall provide said a thirty (30) days' written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

- (x) Survival. Anything to the contrary notwithstanding, the liabilities of the VyStar under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- (xi) Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the Licensor may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the Licensor also be named as an additional insured.

7.5 Insurance – City of Jacksonville. During the Term of this Agreement, City of Jacksonville shall maintain a program of self-insurance authorized pursuant to Section 768.28(16), Florida Statutes, which provisions are not expanded, altered or waived.

8. Property of VyStar. The ATM shall be and at all times shall remain the sole property of VyStar, whether or not the same is attached to the Building.

9. Term of Lease. The term (“Initial Term”) of this Agreement shall commence on June 1, 2021 (the “Commencement Date”) and shall end on May 31, 2024, subject to renewal or earlier termination as set forth below. VyStar shall have the right to extend this Agreement for up to two (2) additional terms of three (3) years each (the “Renewal Terms”; the Initial Term together with the Renewal Terms shall sometimes be referred to herein as the “Term”). If VyStar desires to extend the term of this Agreement, it shall give written notice to Lessor at least 180 days prior to the expiration of the current Term. The extension is subject to satisfactory performance, continued need and mutually agreeable terms and conditions by both parties. Notwithstanding the foregoing, VyStar maintains the right to terminate this Agreement and remove the ATM at any time at its expense and without cause by providing notice in writing at least 120 days prior to the desired termination date, and VyStar shall repair any damage to the Building caused by such removal. Lessor maintains the right to terminate this Agreement at any time by providing notice in writing, at least 120 days prior to the desired termination date, without cause and without expense to Lessor. Upon termination of this Agreement for any reason, VyStar shall have thirty (30) days in which to remove the ATM from the Building.

10. Lease Fee. On or before the Commencement Date and on the first (1<sup>st</sup>) day of each month thereafter during the Term, VyStar shall pay Lessor a Lease fee (the “Lease Fee”) in the amount of as set forth on the Lease Fee Schedule in Exhibit “B” for the time periods shown therein. If the Commencement Date is other than the first (1st) day of a calendar month, the prepaid Lease Fee for such partial month shall be prorated in the proportion that the number of days this Lease is in effect during such partial month bears to the total number of days in the calendar month. The Lease Fee shall be paid to Lessor at the following address: Public Works Dept., c/o Real Estate Division, 214 N. Hogan Street, 10<sup>th</sup> Floor, Jacksonville, FL 32202, or as to such other address as the Lessor may direct by written notice forwarded to VyStar by certified mail.

11. VyStar Default. The following shall be deemed to be events of default by VyStar under this Agreement: (1) failure to pay any Lease Fee or other amount required pursuant to this Lease; (2) VyStar shall file or suffer filing of a petition or be adjudged bankrupt or insolvent, under any

applicable federal or state bankruptcy or insolvency law or admit that it cannot meet its financial obligations as they become due, or a receiver or trustee shall be appointed for all or substantially all of the assets of VyStar, and in the case of an involuntary filing or appointment, the same shall not be lifted or stayed within sixty (60) days after the filing or appointment; (3) VyStar shall make a transfer in fraud of creditors or shall make an assignment for the benefit of creditors; or (4) VyStar shall fail to perform or observe any other term, provision or covenant of this Agreement, other than those specified in clauses (1), (2) or (3) above, and such failure is not cured within thirty (30) days after receipt by VyStar of written notice thereof from Lessor.

Upon the occurrence of any event of default by VyStar, Lessor shall have the option to pursue any one or more of the following remedies or otherwise available at law or in equity without any additional notice or demand:

(a) Without declaring the Lease terminated, and after obtaining the appropriate judicial order, Lessor may enter upon the Premises and do whatever VyStar is obligated to do under the terms of this Lease. VyStar agrees to reimburse Lessor on demand for any expenses which Lessor may incur in effecting compliance with VyStar's obligations under this Lease.

(b) Lessor may terminate this Lease, in which event VyStar shall immediately surrender the Premises to Lessor, and if VyStar fails to surrender the Premises, Lessor may, without prejudice to any other remedy which it may have for possession or arrearage in rent, enter upon and take possession of the Premises, and expel or remove VyStar and any other person who may be occupying all or any part of the Premises. VyStar agrees to pay on demand the present value of the amount of all loss and damage which Lessor may suffer for any reason due to the termination of this Lease under this Section, including loss and damage due to the failure of VyStar to maintain and/or repair the Premises as required hereunder and/or due to the inability of Lessor to relet the Premises on satisfactory terms or otherwise.

12. Notices. All notices, requests, demands and other communications hereunder shall be deemed given if personally delivered, or mailed via certified mail, return receipt requested, or delivered by a nationally recognized overnight courier service providing a confirmation of delivery, to the following addresses or at such other addresses as either party may direct:

If to Lessor:                   Public Buildings Division  
  Department of Public Works  
  555 West 44<sup>th</sup> Street  
  Jacksonville, FL 32202  
  Attn: Chief of Public Buildings

With copy to:                   Real Estate Division  
  Department of Public Works  
  214 N. Hogan Street, 10<sup>th</sup> Floor  
  Jacksonville, FL 32202  
  Attn: Chief of Real Estate

If to VyStar: VyStar Credit Union  
P.O. Box 45085  
Jacksonville, FL 32232-5085  
[for courier delivery: 4949 Blanding  
Boulevard Jacksonville, FL 32210]  
(904) 908-2297  
Attn: Asset Manager

13. Title and Quiet Enjoyment. Lessor has full right, power, and authority to execute this Lease. Vystar shall have the quiet enjoyment of the Premises during the Term of this Lease.

14. No Sales Tax. VyStar's Employer Identification Number is (EIN) 59-0690965. VyStar is a cooperative nonprofit association organized under the Florida Credit Union Act. VyStar represents to Lessor that it applied for and received a certificate of authorization to transact general credit union business in the state of Florida from the Office of the Comptroller and Commissioner of Banking on December 31, 2001. VyStar pays a semiannual assessment to the state of Florida that is based on asset size. In accordance with Florida Statutes §213.12, Vystar represents to Lessor that it is exempt from state and local taxation.

15. Assignment; Sublease. VyStar shall not have any right to assign this Lease or sublet the Premises, in whole or in part, .

16. Miscellaneous.

(a) This Agreement constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements with respect to the subject matters hereof. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties.

(b) This Agreement shall be governed by the laws of the state of Florida.

(c) If any provision of this Agreement or the application thereto to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to the other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(d) This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed an original; such counterparts together shall constitute one agreement. In the event that any signature is delivered by facsimile transmission or electronic means, such signature shall create a valid and binding obligation of the party whose signature is electronically transmitted, with the same force and effect as if such signature page were an original.

(e) The captions and headings used in this Agreement are for convenience only and do not in any way limit, amplify or otherwise modify the provisions of this Agreement.

(f) If Tenant does not vacate the Premises upon the expiration or earlier termination of this Lease, Tenant's occupancy of the Premises shall be a month-to-month tenancy, subject to all of the terms of this Lease applicable to a month-to-month tenancy, except that the Lease Fee then in effect shall be increased by one hundred and fifty percent (150%). Any such month-to-month tenancy may be terminated by either party upon thirty (30) days prior written notice to the other.

(g) Reservation of Rights. Pursuant to Section 122.428(g), Ordinance Code, the City reserves the right to terminate this Lease under any circumstances that threaten the public health or safety, or where the Lease creates an adverse impact on the City's tax-exempt bond status.

(h) No Warranty by Lessor. Pursuant to Section 122.428(h), Ordinance Code, nothing contained in this Lease shall constitute a warranty or representation by the City as to the feasibility of Vystar's use of the Premises or the current or ongoing quality or conditions of the Premises or their suitability for Vystar's purposes, the competence or qualifications of any third party furnishing services, labor or materials whether or not Lessor has approved the contract for third party activities, or any other form of warranty or indemnity, including any indemnity for attorneys' fees. By executing this Lease, Vystar acknowledges that Vystar has not relied and will not rely upon any experience, awareness or expertise of the Lessor, or Lessor's employees, agents or contractors and shall acknowledge that the Lessor's only responsibility under the provisions of this Lease is to provide quiet enjoyment. Lessor shall not be liable to Vystar for any damages arising from Vystar's use of the Premises, whether economic, noneconomic, general or special, incidental or consequential, statutory, or otherwise, arising out of the presence or operation of Vystar's activities on City-owned real property.

(i) Timeliness. If the deadline or date of performance for any act under the provisions of this Agreement falls on a Saturday, Sunday, or City legal holiday, the date shall be extended to the next business day.

(j) City Oversight. The Department of Public Works shall provide oversight of the management and administration of this Lease on behalf of the Lessor.

(k) LESSOR AND LESSEE DO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, OR UNDER OR IN CONNECTION WITH THIS LEASE. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO AND ACCEPT THIS LEASE AND SHALL SURVIVE THE CLOSING OR TERMINATION OF THIS LEASE.

[Remainder of this page intentionally left blank. Signature page to immediately follow]



IN WITNESS WHEREOF the undersigned have executed this Agreement this \_\_\_ day of \_\_\_\_\_, 2021.

<p>Attested:</p> <p>By: _____ James R. McCain, Jr. as Corporation Secretary</p>	<p><b>LESSOR:</b></p> <p><b>CITY OF JACKSONVILLE</b>, a consolidated political subdivision and municipal corporation existing under the laws of the state of Florida</p> <p>By: _____ Lenny Curry as Mayor</p>
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Form Approved (as to City):

By: \_\_\_\_\_  
Office of General Counsel

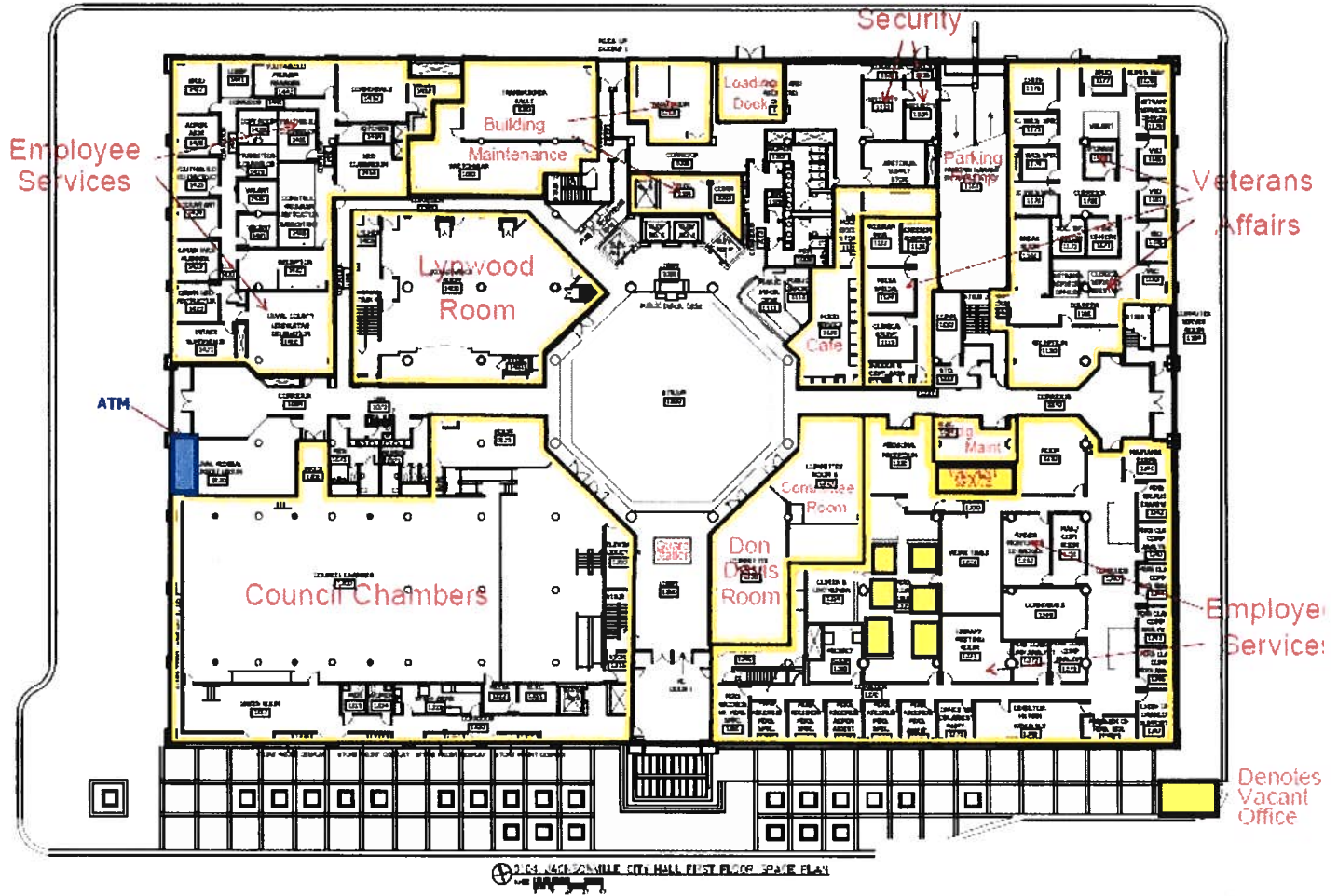
**VYSTAR:**

**VYSTAR CREDIT UNION**, a credit union chartered under Florida law

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**

**VYSTAR ATM @ ST JAMES BUILDING IN BLUE**



**Exhibit B**  
**Lease Fee Schedule**

Initial Term

Year	Square Foot Rate	Monthly Lease Fee	Annual Lease Fee
1	\$25.34	\$152.04	\$1,824.48
2	\$26.10	\$156.60	\$1,879.20
3	\$26.88	\$161.28	\$1,935.36

1<sup>st</sup> Renewal Term

Year	Square Foot Rate	Monthly Lease Fee	Annual Lease Fee
4	\$27.69	\$166.14	\$1,993.68
5	\$28.52	\$171.12	\$2,053.44
6	\$29.38	\$176.28	\$2,115.36

2<sup>nd</sup> Renewal Term

Year	Square Foot Rate	Monthly Lease Fee	Annual Lease Fee
7	\$30.26	\$181.56	\$2,178.72
8	\$31.17	\$187.02	\$2,244.24
9	\$32.10	\$192.60	\$2,311.20

**St. James Building Legal Description**



LOTS 1, 2, 3, 4, 5, AND 6, BLOCK 40, HARTS MAP OF JACKSONVILLE, OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA.

**APPROVED**  
DESCRIPTION AGREES  
WITH MAP  
CITY ENGINEERS OFFICE  
TOPO/SURVEY BRANCH  
By DW Date 5-4-21