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Doc#: 0620026112 Fee: \$34.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 07/19/2006 12:15 PM Pg: 1 of 6

**Exclusive Automatic Teller Machine
("ATM") Lease Agreement
and Exhibit A**

Parties: By and between Qualtex Corp
("Company"), an Illinois corporation,
and THE GENERATOR
("Customer")

Property Address: 306 N HALSTED
CHICAGO IL 60661

PIN: 17-08-418-006-0000

Description: THE NORTH 60 FT OF LOTS 13 AND 14 IN BLOCK 18 IN
CARPENTE'S ADDITION TO CHICAGO, A SUBDIVISION IN SECTION 8
TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN,
IN COOK COUNTY, IN ILLINOIS.

Exclusive Automatic Teller Machine ("ATM") Lease Agreement and Exhibit A

Cook County Recorder, please record the attached document, Thank you.

Mail to: Brad Zerman
Qualtex Corp
1229 W Washington, 4th Floor
Chicago, IL 60607

FROM :

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PHONE NO. : 7732331982

Jan. 10 2000 12:17AM P1

EXCLUSIVE AUTOMATIC TELLER MACHINE ("ATM") LEASE AGREEMENT

This Exclusive ATM Lease Agreement (hereinafter referred to as the "Lease Agreement"), is made and entered into this ___ day of ___, 19___, by and between MIDWEST BANCARD CORPORATION, an Illinois corporation (hereinafter referred to as the "Company") and _____ (hereinafter referred to as "Customer") for the property located at _____, (hereinafter referred to as "Premises").

Customer specifically acknowledges, understands and agrees that (i) the property of the Company, including its public ATMs and any equipment related or incident thereto (hereinafter referred to as "ATM [s]"), shall be affixed to the Premises of Customer and that the Company and said ATMs will physically occupy a portion of the Premises (the "Leased Premises"), and (ii) the Leased Premises is being leased to the Company in the form of a tenancy and possessory interest in and to real property.

In consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Company and Customer hereby agree as follows:

1. The Company, shall have and is hereby granted the sole and exclusive right to install, maintain and operate public ATMs or point of sale cash back device [s] and any equipment related or incident thereto on the Premises and, in addition, at or on any other business premises of Customer, and, except as otherwise provided herein, to provide all service and maintenance with regard to said ATMs. In addition, the Company shall have the sole and exclusive right to place signs and advertisements at or on the Premises in order to advertise and market the fact that there is an ATM located on the Premises. Company shall also have the sole and exclusive right to sell or market on-screen advertising on the ATM's monitors or screens and to sell or market advertising affixed to the ATM. Any revenue or monies generated from said advertising whether on-screen or affixed to the ATMs shall be the sole property of Company and not be subject to the rent or rent schedule attached hereto.
2. The Company agrees to pay expenses of installation except after initial installation of the ATMs, any relocation of the same shall be at Customer's sole expense. The Company also agrees to pay to Customer, as rent for the Leased Premises and in exchange for the Company's right to physically possess and occupy the Premises and operate its ATMs on the Premises pursuant to this Lease Agreement, the amounts listed in Exhibit "A" attached hereto, less related charges, tariffs, taxes, and other expenses incurred by the Company.
3. Customer agrees to (i) provide reasonable and sufficient space to the Company in order to allow the Company to install, operate and maintain the ATMs pursuant to this Lease Agreement, and to (ii) provide, at Customer's own expense, any and all electricity required and necessary for the operation of said ATMs, and to promptly notify the Company in writing of any requests for service or maintenance on the ATMs. Customer's failure to notify the Company in writing, regarding any service requests or maintenance for the Company's ATMs located at the Premises, shall be conclusive evidence that, at all relevant times, the Company's ATMs were in good working order and condition and properly maintained by the Company. Customer agrees to use its best efforts to promote the public use of the ATMs and not to remove or tamper with, or permit any individual or entity other than the Company or the Company's duly authorized agents to remove, or tamper with, the ATMs or the contents hereof.
4. Customer hereby irrevocably assigns and grants to the Company all rights and privileges consistent with this Lease Agreement in and to the Premises, including, but not limited to, providing the Company access to the Premises during business and non-business hours as reasonably required and necessary to install, repair or maintain the ATMs, and Customer acknowledges, understands and agrees that neither Customer nor any other individual or entity shall install, operate, manage, allow or maintain any other ATMs, point of sale cash back device[s] or related equipment on the Premises other than the ATMs of the Company as provided herein.

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5. At all times, all ATMs located on or about the Premises, and the contents contained therein, and related equipment, wiring and accessories shall be and remain the sole and exclusive property of the Company. Upon termination of this Lease Agreement whether by lapse of time or otherwise, the Company shall have the right to remove its ATMs or other property installed on or attached to the Premises.

FIVE \$ AM/M

6. **Term/Damages for Early Termination.** The initial term of this Lease Agreement shall be ~~ten (10)~~ years from the date hereof and same shall automatically renew and remain in full force and effect for like successive terms unless canceled in writing by Customer, sent registered U.S. mail, with restricted delivery requested, addressed to the Company at the above listed address, no more than sixty (60) nor less than thirty (30) days prior to the expiration of any term hereof. In the event of early termination of this Agreement, Customer shall be liable for liquidated damages which will be computed by the following formula: the number of months remaining in the contract at the time of early termination multiplied by the average number of withdrawals processed by the ATM throughout the most recent three (3) months at the time of early termination of the Agreement multiplied by the Surcharge amount of each withdrawal at the ATM. Additionally, there will be a Disconnection Fee of \$2500.00. Notwithstanding the foregoing, in the event that the revenue generated from the ATMs located on the Leased Premises is not satisfactory to the Company, at any time, the Company shall have the unconditional right to terminate this Lease Agreement upon written notice to Customer. The Company's right to receive its liquidated damages hereunder shall not impede its right to injunctive relief under this Lease Agreement, but shall be in addition to the same.

7. Customer represents, warrants and guarantees to the Company that Customer and the undersigned have all requisite power and authority to enter into and to perform this Lease Agreement as a binding transaction upon Customer, and that this Lease Agreement does not, and will not, violate or conflict with Customer's governing instruments or any other contract, lease or agreement to which Customer is bound or a party. Specifically, Customer covenants, represents and warrants that he/she is not bound by any other exclusive ATM, or related agreement which would prohibit him/her from entering into this Lease Agreement. Customer's signature below covenants, represents and warrants that he/she is fully authorized and empowered to act on behalf of and to bind Customer to this Lease Agreement.

8. Customer acknowledges that, pursuant to the Lease Agreement, the Company has the physical right to possess the Leased Premises and Customer acknowledges that same shall constitute a possessory interest in real property vested in the Company. Customer further acknowledges that any violation of any of the representations, warranties or covenants contained in this Lease Agreement would cause immediate, immeasurable and irreparable harm, and loss and damage to the Company not adequately compensable by a monetary award. Accordingly, Customer agrees, without limiting any of the other remedies available to the Company, that any violation of this Lease Agreement or of said covenants, representations, or warranties, by Customer may be enjoined or restrained by any court of competent jurisdiction, and that any temporary restraining order or emergency, preliminary or final injunctions may be issued by any court of competent jurisdiction, without notice and without bond. In the event any proceedings are commenced by the Company against Customer for any actual or threatened violation of any of said covenants, Customer shall be liable to the Company for, and shall pay to the Company, all costs and expenses of any kind, including attorneys' fees, which the Company may incur in connection with such proceedings, regardless of whether the Company shall ultimately prevail, so long as the Company had a good faith basis for commencing such proceedings. In any such litigation, Customer shall stipulate to the facts acknowledged in this Lease Agreement.

9. This Lease Agreement contains the entire understanding and Agreement between the Company and Customer and there are no prior oral or written Agreements not contained herein. This Lease Agreement may not be modified unless in writing signed by both the Company and Customer.

10. Customer hereby covenants, represents, warrants and guarantees to the Company that in the event of any sale or transfer of Customer's business or the Premises, Customer shall disclose in writing, the existence of this Lease Agreement to said Purchaser or Transferee and obtain a written acknowledgment from said Purchaser or Transferee that said Purchaser or Transferee will be bound by this Lease Agreement and the terms contained herein and, accordingly, this Lease Agreement shall survive any sale, assignment or other transfer of Customer's business or the Premises. Whenever possible, each of the

provisions of this Lease Agreement shall be construed and interpreted in such a manner as to be effective and valid under applicable law. If any provisions of this Lease Agreement or the application of any provision of this Lease Agreement to any party or circumstance shall be prohibited by, or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision, any other provision of this Lease Agreement, or the application of such provision to other parties or circumstances.

11. Customer shall promptly notify the Company, in writing, of any closure or relocation of Customer's business at the Leased Premises, at least twenty-one days in advance of such closure or relocation.

12. Both the Company and Customer acknowledge, understand and agree that at the time this Lease Agreement was entered into, it was difficult if not impossible to ascertain what the Company's damages would be in the event of a breach of this Lease Agreement by Customer, and that both the Company and Customer have made a reasonable attempt to forecast what the Company's damages might be in the event of a breach of this Lease Agreement by Customer. Accordingly, in the event of any breach of this Lease Agreement by Customer, the Company shall be entitled to, as and for liquidated damages and not a penalty, a sum equal to the Company's gross monthly receipts from its ATMs located on or about Customer's Premises multiplied by the number of months remaining under the term of this Lease Agreement.

13. Any claim made by Customer pursuant to this Lease Agreement must be in writing, must set forth the facts upon which it is based, and must be received by the Company within one (1) year of (i) the occurrence of event which gave rise to such claim or (ii) the expiration of this Lease Agreement, whichever is earlier. In the event that the Company or any of its officers, directors, agents or employees are held to be liable to Customer or to any person or party claiming to be, through or under Customer, such liability shall be limited to, and shall not exceed 20% of the gross surcharge revenue collected by the Company from the ATMs located on the Premises for the prior calendar year. In no event shall the Company be liable for special, incidental or consequential damages, including, but not limited to loss of revenue, profits, or goodwill, use of capital or property, or for claims by third persons against Customer, or damages for any other loss whether based on contracts, tort, strict liability, breach of warranty or other cause of action.

14. Company agrees that it will provide all cash inventory to the ATM. Additionally, Company shall provide cash replenishment services to and for Company's ATMs using Company's own funds. Customer acknowledges that all cash dispensed out of the ATMs will be that of Company's and not Customer's. Customer further agrees that it shall be responsible and pay for all necessary electricity or other utility service necessary to operate the ATMs, with the exception of the monthly telephone charges for the dedicated telephone line for the ATMs, which account shall be in the name of Company. Company agrees that it shall also be responsible to perform the services of refilling paper and other related supplies, as required and necessitated, into the ATMs for purposes of operating electronic journal and receipt printer [a].

15. All discussions, correspondence, understandings, and agreements heretofore had or made between the parties are superseded by and merged into this Lease Agreement, which alone fully and completely expresses the agreement between the parties, and the same is entered into with no party relying upon any statement or representation made by or on behalf of any party not embodied in this Lease Agreement. Any modification of this Lease Agreement may be made only by a written agreement signed by both of the parties to this Lease Agreement. Each party hereby agrees to cooperate with the other and to execute and deliver all such additional documents and instruments, and to take all such other action, as the other party may reasonably request from time to time to effectuate the provisions and purposes of this Lease Agreement. This Lease Agreement may not be assigned by Customer, whether by operation of law or otherwise, without the prior written consent of Company. Company or any successor of Company shall have the unconditional right to assign, at Company's sole discretion, without having first obtained consent of Customer, this Lease Agreement. Subject to the foregoing, this Lease Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legatees, devisees, personal and legal representatives, successors and assigns. No delay on the part of any party in the exercise of any right or remedy shall operate as a waiver thereof, and no single or partial exercise by any party of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. The waiver of any breach or condition of this Lease Agreement by either party shall not constitute a precedent in the future enforcement of any of the terms and conditions of this Lease Agreement. This

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Jan. 10 2000 12:21AM P4

Lease Agreement is deemed to have been drafted jointly by the parties, and any uncertainty or ambiguity shall not be construed for or against either party as an attribution of drafting to either party. Whenever the context so requires, the singular shall include the plural and vice versa. All words and phrases shall be construed as masculine, feminine or neuter gender, according to the context. Whenever possible, each provision of this Lease Agreement shall be construed and interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Lease Agreement or the application thereof to any party or circumstance shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition without invalidating the remainder of such provision or any other provision of this Lease Agreement or the application of such provision to other parties or circumstances. This Lease Agreement is being executed and delivered in the State of Illinois, and the validity, construction, and enforceability of this Lease Agreement shall be governed in all respects by the domestic laws of the State of Illinois applicable to agreements made and to be performed entirely within the State of Illinois, without regard to the conflicts of laws principles of the State of Illinois or any other state. The parties hereto consent to the jurisdiction of the courts of the State of Illinois. All disputes arising under this Agreement will be resolved in the State Court of Illinois, Cook County. This Lease Agreement may be executed in any one or more counterparts, each of which shall constitute an original, no other counterpart needing to be produced, and all of which, when taken together, shall constitute but one and the same instrument. The parties represent and warrant to each other that they have read this Lease Agreement in its entirety, that they understand the terms of this Lease Agreement and understand that the terms of this Lease Agreement are legally enforceable, that they have had ample opportunity to negotiate with each other with regard to all of its terms, that they have entered into this Lease Agreement freely and voluntarily, that they intend to and shall be legally bound by this Lease Agreement, and that they have full power, right, authority, and competence to enter into and execute this Lease Agreement. Customer acknowledges and agrees that the Company has advised Customer in writing to consult with a lawyer before signing this Lease Agreement.

16. Company and Customer hereby agree that nothing contained in this Lease Agreement shall be construed as making Company and Customer joint venturers, partners, or agents, with or for each other.

ACCEPTED AND AGREED TO as of this 9 day of January, ²⁰⁰⁰~~2000~~ by the undersigned parties.

MIDWEST BANCARD CORPORATION, an Illinois corporation,

By: [Signature]
Its Authorized Agent

CUSTOMER

By: [Signature]
As the Authorized Agent of Customer, and Individually

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Jan. 10 2000 12:22AM P5

EXHIBIT A

- I. For ATM withdrawals at the Premises for which Company collects a Surcharge, Company shall pay to Customer the amount of 2.5% of the Surcharge revenue collected by Company over and above the first \$400.00 monthly in Surcharge Revenue. However, each month, Company shall have no obligation to pay Customer any commission for any withdrawals until Company has received \$400.00 monthly in Surcharge Revenue.
- II. Company shall pay such commissions to Customer monthly in arrears.

ACCEPTED AND AGREED TO as of this 9 day of JAN, ²⁰⁰⁰19 by the undersigned parties.

MIDWEST BANCARD CORPORATION, an Illinois corporation,

By: [Signature]
Its Authorized Agent

CUSTOMER

By: [Signature]
As the Authorized Agent of Customer, and Individually

Property of Cook County Clerk's Office