## SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: ATM Machine Installation at the County Services Building
DEPARTMENT: Fiscal Services DIVISION: Administration AUTHORIZED BY: Ray Hooper p CONTACT: EXT. 7111

Agenda Date $\quad 8 / 12 / 03$ Regular $\square$ Consent $\boxtimes$ Work Session $\square$ Briefing $\square$ Public Hearing - 1:30 $\square$ Public Hearing - 7:00 $\square$

## MOTION/RECOMMENDATION:

Authorize and approve the agreement for an ATM machine to be installed in the County Services Building.

## BACKGROUND:

Fairwinds Credit Union has agreed to install an ATM to be located in the Resource Center at the County Services Building for the convenience of Seminole County Government employees. The use of this service will be free to Fairwinds Credit Union members and a small access fee determined by Fairwinds Credit Union will be charged to non-members. The lease agreement contained in the backup has been approved by the County Attorneys Office and is no cost to the County. Either party can terminate the lease agreement for any reason without any liability or cost.

Fiscal Services/Purchasing and Contracts Division recommend the Board to approve the agreement and authorize the Chairman to execute the agreement.


## LEASE AGREEMENT

This Lease is made this the $\qquad$ day of $\qquad$ 2003, by and between Seminole County Services ("Landlord") and Fairwinds Credit Union ("Tenant"). 2003, by and between Seminole County Services

1. DEMISED PREMISES. The Landlord does hereby demise, let and lease to Tenant a space (the "Leased Premises") within the Seminole County Services building located at $\qquad$ (the "Building"); the Leased Premises are further described as "ATM" in Exhibit "A" attached hereto and incorporated herein by reference.
2. TERM. The initial term of this lease shall be one (1) year commencing on the Commencement Date as hereinafter defined. The Commencement Date shall be the first day of the month following the month in which Tenant begins operations at the Leased Premises.

Landiord or Tenant shall have the option of renewing this Lease upon the same terms and conditions as are herein set forth for additional one (1) year periods by giving written notice of the intent to renew at least thirty (30) days prior to the expiration of the then current term.
3. USE AND OCCUPANCY, Tenant shall use the Leased Premises for the purpose of operating an automated teller machine ("ATM"), an ATM being a decorative and self-contained, prefabricated structure which allows a member or customer to electronically conduct transactions with a financial institution including dispensing cash in connection with a credit, deposit, checking, or convenience account. The term does not include devices used solely to facilitate check guarantees or check authorizations or which are used in connection with the acceptance or dispensing of cash on a person-to-person basis, such as by a store cashier.
4. INSTALLATION AND SITE PREPARATION. All expenses of installation of the ATM shall be the responsibility of the Tenant, and all expenses of preparing the Leased Premises for installation of the ATM, including, but without limitation, the cost of installing electric lines, shall be the sole responsibility of the Landlord.
5. RENT. In lieu of any monthly or yearly rental charge the Parties agree that the mutual benefits contained and derived herein are acceptable consideration.

The Parties agree after installation the monthly expenses will be paid by Tenant. The Parties also expressly agree that nothing contained herein shall prevent the Tenant from charging a transaction surcharge to some of its ATM users.
6. QUIET POSSESSION. Landlord shall place Tenant in the peaceful undisputed possession of the Leased Premises, and Landlord shall secure to Tenant during the initial term and any renewal terms hereof the quiet and peaceful possession of the Leased Premises and the free and unrestricted access of Tenant's members/customers to and from the Leased Premises.
7. UTILITIES. Landlord shall furnish all utilities, except monthly telephone service, which shall be paid by Tenant, including all electricity, and electrical service furnished by Landlord shall be sufficient to operate the equipment that Tenant will use on the Leased Premises.

The Landlord agrees to use its best efforts to maintain a minimum temperature of not less than 50 degrees Fahrenheit and a maximum temperature not to exceed 85 degrees Fahrenheit in the Leased Premises twenty-four (24) hours per day and seven (7) days per week during the term of this Lease. The Landlord, however, shall not be responsible for failure of utilities or inability to maintain the required temperature due to conditions beyond its control.
8. INSURANCE. Landlord shall obtain and keep in full force and effect during any and all terms of this Lease fire insurance on the Building including, without limitation, the Leased Premises, exclusive of the ATM, and Tenant shall obtain and keep in full force and effect during any and all terms of this Lease fire and vandalism insurance on the ATM. Landlord shall procure and maintain throughout the term of this Lease a policy or policies of liability insurance, insuring against all claims, demands or actions arising out of or in connection with:
(1) the Building and contiguous sidewalks and parking lots;
(2) the condition of the Building, contiguous sidewalks and parking lots;
(3) Landlord's operations in and use of the Building and contiguous sidewalks and parking lots;
(4) the limits of such policy or policies to be in the amount of One Million U.S. Dollars $(\$ 1,000,000)$ of "Each Event" Coverage; and together with a General Aggregate amount of not less than One Million U.S. Dollars ( $\$ 1,000,000$ ).

Landlord will supply Tenant with verification of the foregoing insurance policies. Tenant shall obtain and keep in full force and effect reasonably sufficient general public liability insurance against claims of personal injuries, theft or property damage for which Tenant is liable under the terms of the Lease.
9. REPAIRS AND MAINTENANCE. Landlord shall maintain in good repair and safe condition the Leased Premises, the Building and contiguous sidewalks and parking lots during the initial term and any and all renewal terms of this Lease, and Landlord shall keep the Leased Premises and exterior of the ATM clean and free from dirt, debris, rubbish, and other foreign matter. Tenant shall maintain the ATM in good repair and safe condition.

Landlord herein expressly agrees to ensure that the access area surrounding the installed ATM complies with the requirements of Florida Statutes section 655.960, 655.961 and 655.962 et sequence, applicable under Florida Law and agrees to indemnify and hold Tenant harmless from any loss, damage, liability or expense for such failure to comply. Florida Statutes section 655.964 states the provisions herein section 655.961 and 655.962 does not apply to any ATM installations located inside of a building.
10. SIGNS. Tenant may install and maintain at any and all locations mutually agreed upon between the Parties one or more signs as approved by the Landlord, including without limitation, electric signs or other signs capable of being illuminated, advertising Tenant's business on the premises. Tenant shall obtain the necessary permits from the appropriate governmental authorities for the erection and maintenance of said signs.
11. GROSS LEASE. It is the intent of the Parties hereto Landlord will bear all expenses relating to the Building and the Leased Premises except as expressly set forth herein, including but not limited to, taxes, insurance, repairs, assessments, utilities and any other charges arising from the ownership, maintenance, operation and use of the Leased Premises and the Building.
12. EVENTS OF DEFAULT. Each of the following shall constitute an event of default:
(1) The failure of either Party to pay at the time and place when and where due any installment of rent or other fee due under this Lease, such failure continuing unremedied for ten (10) days after written notice as provided herein; or
(2) The abandonment or vacating (except as may be permitted elsewhere in this Lease) of the Leased Premises by Tenant or the Building by Landlord for a period of ten (10) consecutive days; or
(3) The violation by Tenant or Landlord of any other term, covenant or provision in this Lease binding upon either Party and the failure of the breaching Party to remedy such violation for a period of sixty (60) days after written notice thereof by one Party to the other Party, or if such violation cannot be remedied within such sixty ( 60 ) day period, the failure of that Party to commence within the sixty (60) day period and thereafter diligently to prosecute to completion all steps necessary to remedy such violation.
13. REMEDIES. Upon the occurrence of any Event of Default, the non-breaching Party shall have the right to terminate this Lease by giving ten (10) days' prior written notice to the breaching Party of the non-breaching Party's election to terminate. Such termination shall be effective upon the expiration of ten (10) days from the date such notice is received or in any event within fourteen (14) days from the mailing of such notice and no further rents or subsidies shall be due thereafter, except such as may have theretofore been accrued but unpaid.
14. CONDEMNATION. If, during the initial term or any renewal term of this Lease, any part of the Building or of the Leased Premises, or any right appurtenant thereto, including without limitation, the right of convenient and direct access to streets, shall be taken for public or semi-public use under the right of eminent domain or by any conveyance
in lieu thereof to the extent that Tenant shall be adversely affected in Tenant's use and occupancy of the Leased Premises, then Tenant, at Tenant's option, may by written notice to Landlord, elect to:
(1) immediately terminate and cancel this Lease, in which event the rental obligation hereunder shall be
terminated, or
(2) relocate the ATM to another location within the Building.
15. DESTRUCTION. If, during the initial term or any renewal term of this Lease, the Building or any substantial part of the Building is damaged or destroyed by fire or other cause, the Landlord or Tenant shall have the right to terminate this Lease upon three (3) days notice to the other Party, in which event the rental obligation hereunder shall be terminated, or to repair or rebuild the Building so damaged or destroyed within twelve (12) months of the date of destruction. If, during the initial term or any renewal term of this Lease, less than a substantial part of the Building or the Building is damaged or destroyed by fire or other cause, Landlord may promptly proceed to repair the property damaged or destroyed and, in such event, shall diligently prosecute the same to completion within six (6) months from the date of destruction. In the event Landlord elects not to repair such damage or destruction of less than a substantial portion of the Building, the Tenant may delete the location so damaged or destroyed from Exhibit "A". If during the initial term or any renewal term of this Lease, the ATM is totally or partially destroyed by fire or other cause, the Tenant shall have the right to delete the location or locations where such ATM is located from Exhibit "A" upon three (3) days' notice to the Landlord, or to replace the ATM so destroyed within six (6) months of the date of destruction or such other reasonable time at its discretion.
16. TENANT'S PROPERTY, FIXTURES, ETC. The ATM and other articles of movable personal property owned by Tenant and now or hereafter located in the Leased Premises shall be and shall remain the property of Tenant. Tenant may place or install in and on the Leased Premises such fixtures, improvements and equipment as it shall deem desirable for the conduct of its business therein, and all such fixtures, improvements and equipment heretofore or hereafter placed by Tenant in or on the Leased Premises shall not become party of the realty, even if nailed, screwed or otherwise fastened to the Leased Premises, but shall retain their status as personalty. Any damage caused to the Leased Premises by the removal of such property shall be repaired by the Tenant at its expense within a reasonable period of time.
17. PROPERTY OF TENANT'S MEMBERS/CUSTOMERS. Nothing contained in this Lease shall in any way affect the right, title or interest of any property owned by Tenant's members/customers located on or about the Leased Premises, and no such property shall be subject to any claim or lien arising in connection with this Lease in favor of the Landlord or any other Party claiming an interest hereunder.
18. WAIVER OF SUBROGATION. Each of the Parties hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of any subrogation or otherwise for any loss or damage to property caused by fire or any other extended coverage casualty, even if such fire or other casualty shall have been caused by the fault or negligence of the other Party, or anyone for whom such Party may be responsible; provided, however, that this release shall be applicable and in force and effect only with respect to loss or damage occurring during such a time as the releasers insurance policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said insurance policies or prejudice the right of the releaser to recover thereunder.
19. INDEMNIFICATION. Tennant shall indemnify and hold harmless the county, its officers, agents, and employees from and against any claim, demand or cause of action of whatsoever kind or nature to the extent arising out of, allegedly arising out of or related to the negligent performance of services under this Agreement by the Tennant, its officers, agents or employees. Landlord shaill indemnify and hold harmless Tenant from all loss, damage, liability, or expense, including reasonable attorneys' fees, resulting from any injury to any person or any loss of or negligence of the Landlord or any officer, employee, agent, contractor, invitee or visitor of Landlord in or about the Leased Premises or the Building or contiguous sidewalks or parking lots. Landlord shall indemnify and hold harmless Tenant from all loss, damage, liability, or expense, including reasonable attorney's resulting from any injury to any person directly resulting from the physical presence of said ATM.
20. CONTINUOUS OPERATION. In the event the Landlord fails to continuously operate the Building during the initial term and any and all renewal terms of this Lease with no material changes in the nature of the Landlord's business conducted at the Building, or in the event Landlord abandons or vacates the Building during such time, Tenant shall have the option to delete the location which is not so continuously operated or which is so abandoned.
21. ADVERTISING AND PROMOTION. Tenant may, at its expense, advertise the existence and location of the ATM within the Building and the services offered thereby in such media and in such manner as Tenant deems desirable. Landlord shall also have the right to advertise the existence of the ATM within the Building with the prior express written approval from Tenant, which approval shall not be unreasonably withheld. Any name or mark used by Landlord in such advertising to identify the ATM shall not conflict with or be different from the name or mark used by Tenant, unless Landlord has obtained Tenant's prior written approval.

Any promotion, advertising or publicity developed solely by Tenant or Landlord shall be the property of and belong exclusively to the Party developing the same.
22. TERMINATION BY REASON OF REGULATION. Either Party may terminate this Agreement or curtail or restrict its operation hereunder at any time or times upon sixty $(60)$ days written notice to the other Party, all without liability or cost owing by such Party to the other Party (except for any costs of removal as provided herein) on the issuance of any order, rule or regulation of any regulatory agency or administrative body or the decision or order of any court of competent jurisdiction that is controlling or binding on such Party prohibiting the operation and/or use of all or any of the ATM by either Tenant or Landlord, or in such order, rule or regulation so restricts the use of all or any of the ATM so as to make their continued operation undesirable to the terminating party.
23. TENANT'S AGREEMENT AND SUBLETTING. Tenant may, with the prior written consent of Landlord (which written consent shall not be unreasonably withheld), from time to time assign or transfer this Lease or may sublet the Leased Premises or any portion thereof, provided that, consent of the Landlord is not required for the assignment, transfer or sublease of the Leased Premises or any portion thereof by the Tenant to any present or future affiliate of Tenant, and provided further that, Tenant shall have the option to terminate this Lease upon Landlord's withholding of its consent to any total assignment, transfer or sublease for which Landlord's consent is required hereunder.
24. LANDLORD'S ASSIGNMENT. Landlord may, from time to time, assign or transfer this Lease, provided that, Tenant shall have the option to terminate this Lease upon such assignment or transfer.
25. HOLDOVER. Should Tenant continue to occupy the Leased Premises after termination of the Lease term, whether with or without the consent of Landlord, such tenancy shall be a tenancy at sufferance and in no event a tenancy from month to month, or from year to year.
26. NON-WAIVER. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future, of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by Landiord of rent or by Tenant of subsidy, with knowledge of such breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord or Tenant of any provisions hereof shall be deemed to have been made unless expressed in writing, and signed by the waiving party.
27. NOTICES. Any notice shall be conclusively deemed to have been received by a party hereto and be effective on the day on which delivered to such party at the address set forth below (or at such other address as such party shall specify to the other party in writing) or if sent by registered or certified mail, on the third business day after the day on which mailed, addressed to such party at said address:
(1) If to Landlord:

Seminole County Services
101 East First Street
Sanford, FL 32771
ATTN: Purchasing and Contracts Division

(2) If to Tenant: Fairwinds Credit Union<br>3075 N Alafaya Trail<br>Orlando, FL 32826<br>ATTN: Kathy Chonody

28. SUCCESSORS AND ASSIGNS. The covenants, conditions, and agreements in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective permitted successors and assigns.
29. MISCELLANEOUS. This Lease contains the entire agreement between the Parties hereto with respect to the subject matter hereof, and neither Party is bound by a representations or agreements of kind except as herein contained.

This Lease shall be governed by the laws of the State of Florida.
If any provision of this Lease or application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Lease or the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

The headings of the sections, paragraphs, and subdivisions of this Lease are for the convenience of reference only, and are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

Nothing contained herein nor the acts of the Parties shall be construed to create a partnership or joint venture between Landiord and Tenant.

IN WITNESS WHEREOF, each of the undersigned has caused this Lease to be executed in its name and on its behalf by a person or persons thereunto duly authorized, both as of the day and year first set forth above.

ATTEST:

## Secretary

## (Corporate Seal)

## ATTEST:

## Maryanne Morse

Clerk of the Board of County Commissioners of Seminole County, Florida

For the use and reliance of Seminole County only. Approved as to form and legal sufficiency.

## Fairwinds Credit Union

By: $\qquad$

Its: $\qquad$

Board of County Commisioners Seminole County, Florida

Daryl G. McClain, Chairmain
Date: $\qquad$

As authorized for execution by the Board of County Commisioners at their $\qquad$ 2003 regular meeting.

