



ARLINGTON COUNTY, VIRGINIA

<p style="text-align: center;">County Board Agenda Item February 21, 2009</p>
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DATE: January 16, 2009

SUBJECT: Approval of the First Amendment to the Deed of Lease between the County Board of Arlington County, Virginia, Landlord, and Arlington Virginia Federal Credit Union, Tenant, for Suite 11, in a Building on the County's real property located at 1435 North Courthouse Road, Arlington, VA (RPC #17015006, 17015007, 17015008, 17015009 and 17015010).

C. M. RECOMMENDATIONS:

1. Approve the First Amendment to the Deed of Lease between the County Board of Arlington County, Virginia, Landlord, and Arlington Virginia Federal Credit Union, Tenant, in Suite 11, in a Building on the County's real property located at 1435 North Courthouse Road, Arlington, VA (RPC #17015006, 17015007, 17015008, 17015009 and 17015010).
2. Authorize the Real Estate Bureau Chief, or his designee, to execute, on behalf of the County Board, the First Amendment to the Deed of Lease ("First Amendment") and all related documents, subject to approval as to form by the County Attorney.

ISSUE: As a part of the lease renewal process, the County Board is being requested to approve and authorize the execution of the First Amendment to extend the existing three year term of the Lease for a period of five years.

SUMMARY: By the County Board approving the First Amendment, and after it has been executed, Arlington Virginia Federal Credit Union ("AVFCU") may continue to occupy its leased premises, consisting of 600 rentable square feet, more or less, of retail space (Suite 11), on the plaza level of the County's Judicial/Detention Center.

BACKGROUND: The County entered into a Deed of Lease, dated March 28, 2006 ("Lease"), with AVFCU for 600 square feet of retail space for a satellite banking services at 1435 N. Courthouse Road, Suite 11 ("Premises"). The existing Lease expires on March 31, 2009. Under the terms of the existing Lease, the Tenant has an automatic right to extend the Lease for three years. However, AVFCU proposed that its automatic right to extend the lease include an early termination right for the Tenant, without penalty, upon six months prior written notice from the Tenant to the County. Staff has negotiated and recommends, and the Tenant agrees with, a five

<p>County Manager: _____</p>

<p>County Attorney: _____</p>

<p>Staff: Linda DePersis, DES-Real Estate Bureau</p>
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year lease extension, with an early termination by Tenant, without penalty, upon six months prior written notice from the Tenant to the County.

DISCUSSION: Some of the pertinent provisions of the proposed First Amendment are as follows:

- The Lease extension commences on April 1, 2009, for a term of five years.
- AVFCU has the right for an early termination, without penalty, upon six months prior written notice to the County.
- Base Annual Rent for the Premises is \$35.02 per square foot, which equates to \$1,751 per month.
- Annual Base Rent shall be increased by 3% per annum.
- The insurance provisions of the Lease have been revised for clarity and ease of understanding.
- After the Lease is amended, it will expire on March 31, 2014.

AVFCU is required to handle and absorb all costs associated with maintenance for the Premises and AVFCU shall pay all utility costs for the Premises, as required by the County Board in the existing Lease.

FISCAL IMPACT: If the attached proposed First Amendment is approved by the County Board and executed on behalf of the County Board, then the County will collect \$111,556 as revenue during the extended term of the Lease. Lease revenue for this property is currently included in the FY 2009 budget. Lease rental revenue for all County based facilities is budgeted in the general fund and this new lease does not materially impact the budgeted revenue for FY2009 and proposed FY2010.

**EXHIBIT A
FIRST AMENDMENT TO DEED OF LEASE**

THIS FIRST AMENDMENT TO DEED OF LEASE ("First Amendment"), made and entered into this ____ day of _____, 2009, by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body corporate, with an address of 2100 Clarendon Boulevard, Arlington, Virginia 22201, hereinafter referred to as "Landlord" or "County Board," and **ARLINGTON VIRGINIA FEDERAL CREDIT UNION**, a non-profit corporation in the Commonwealth of Virginia, hereinafter referred to as "Tenant, " (jointly "Parties").

RECITALS

WHEREAS, Landlord is the owner of that certain land, buildings and improvements, located at 1435 N. Courthouse Road, Arlington, Virginia 22201 [RPC 17015006, 17015007, 17015008, 17015009 and 17015010] as shown on Attachment 1 - Vicinity Map (jointly "Building"); and

WHEREAS, the Parties entered into a Deed of Lease, dated March 28, 2006 ("Original Lease"), pursuant to which Landlord leased to Lessee, Suite 11, consisting of 600 rentable square feet, more or less, of retail space, in the Building ("Premises");

WHEREAS, by this First Amendment, the Parties hereto desire to amend certain terms and conditions of the Original Lease; and,

WHEREAS, the Original Lease as amended by the First Amendment is hereinafter referred to collectively as the "Lease".

WITNESSETH:

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration and of the mutual agreements hereinafter set forth, it is hereby mutually agreed as follows:

1. TERM, RENEWAL AND EXPIRATION. As of the Effective Date, Section 2A of the Original Lease is deleted in its entirety and the following substitute paragraph is inserted in lieu thereof:

"2.A. The term of the Lease shall be for extended for five (5) years, commencing on April 1, 2009 ("Commencement Date") and shall expire at midnight on March 31, 2014 ("Expiration Date") (jointly, "Extended Term"). However, Tenant shall have the right to terminate this Lease early by giving not less than six (6) months prior written notice to the Landlord of Tenant's intention to quit the Premises ("Early Termination"). As used hereinafter in this Lease, the use of the word "Term" shall be deemed to refer to "Extended Term" as the context requires."

2. BASE RENT AND OTHER EXPENSES. As of the Effective Date, Section 3A of the Original Lease is deleted in its entirety and the following substitute paragraph is inserted in lieu thereof:

"3.A. Base Rent. The Tenant shall pay a base rent for the Premises ("Base Rent") in advance in equal monthly installments, without deduction or demand, on the first (1st) day of each month during the Extended Term. The payment shall be made by check, payable to the Treasurer Arlington County, Virginia, and delivered to the following address: Arlington County, Virginia, Department of Environmental Services, Engineering and Capital Projects Division, Capital Projects Division, 2100 Clarendon Boulevard, Suite 900, Arlington, Virginia 22201, Attention: Real Estate Bureau, or to Landlord at such other place as Landlord may from time to time designate, in writing.

Base Rent shall be increased, upon each subsequent anniversary of the Commencement Date, pursuant to the following schedule:

Extended Term Lease Year/Dates	Rate per SF per Annum	Annual Rent	Monthly Rent
1: 4/1/2009-3/31/2010	\$35.02	21,012.00	1,751.00
2: 4/1/2010-3/31/2011	\$36.07	21,642.36	1,803.53
3: 4/1/2011-3/31/2012	\$37.15	22,291.63	1,857.64
4: 4/1/2012-3/31/2013	\$38.27	22,960.38	1,913.36
5: 4/1/2013-3/31/2014	\$39.42	23,649.19	1,970.77

3. INSURANCE. As of the Effective Date, Section 21 of the Original Lease is deleted in its entirety and the following substitute paragraphs are inserted in lieu thereof:

"**21. INSURANCE.** If, in the reasonable opinion of the Landlord, the amount of coverage, required by this Section 21 is determined by the Landlord to be inadequate, then Tenant shall increase the insurance coverage as required by Landlord. The deductible(s) on any insurance policy required to be carried by the Tenant, or in the instance of real property insurance, carried by the Landlord, shall be the responsibility of the Tenant.

A. Commercial General Liability: During the Term, Tenant shall carry and at all times maintain, at its own expense, with a company acceptable to Landlord, commercial general liability insurance in the amount of at least two million and 00/100 Dollars (\$2,000,000) per occurrence. Tenant shall include Landlord, its elected and appointed officials, officers, employees and agents, as additional insureds on all policies of insurance. Prior to the beginning of the Term and each continuing term thereafter, Tenant shall provide Landlord with a certificate of insurance and a renewal certificate annually.

B. Property Insurance: Throughout the Term, Landlord shall maintain broad form property insurance or, alternatively, self-insure the Building. In either case, Tenant will pay its proportionate share of the Landlord's actual annual cost of real property insurance or self-insurance, as determined by the Landlord. The foregoing insurance policy and any other insurance or self-insurance carried by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control, and Tenant shall have no right or claim to any proceeds thereof or any other rights thereunder.

C. Leasehold Improvements: Tenant shall, at the times during the Term, maintain in effect policies of insurance covering the leasehold improvements (including any alterations, additions or improvements as may be made by Tenant and the Contractor(s), plate glass, trade fixtures, merchandise and other personal property from time to time in or on the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost, providing protection against all risks covered by the standard form of "Fire and Extended Coverage insurance," together with insurance against vandalism and malicious mischief. Tenant shall also cause the Contractor(s) to maintain at their sole cost and expense worker's compensation insurance providing Virginia statutory limits.

D. Tenant's Contractor(s): All insurance required to be carried by Tenant's contractors shall be issued by responsible insurance companies, qualified to do business in the Commonwealth of Virginia and reasonably acceptable to Landlord.

E. Fire Insurance: The Tenant shall not do or permit anything to be done in the Premises or on the Building or bring or keep anything therein, which shall in any way increase the rate of fire or other insurance in said Building, or on the property kept therein, or conflict with the fire laws or regulations, or with any insurance policy upon said Building or any part thereof, or with any self insurance requirement, statutes, rules or regulations enacted or established by the applicable governmental authority.

If the Building or any part thereof is partially damaged or totally destroyed by fire or other casualty, the Landlord shall repair or rebuild same or, in the event that Landlord reasonably determines the repair of such damage shall take more than one hundred eighty (180) days to complete, Landlord may terminate this Lease upon written notice to Tenant; in all cases of fire or other casualty which result in a partial or total destruction, the rent shall be equitably apportioned or abated.

All insurance policies required of Tenant hereunder shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, non-renewal, material change, or reduction in coverage until thirty (30) days prior written notice has been given to Arlington County, Virginia." Tenant shall provide Landlord with a certificate of insurance evidencing the coverage required within thirty (30) days after the date of this Lease and thereafter on an annual basis during the Lease Term.

Each policy shall name Landlord, and any other parties in interest designated in writing by Landlord as an additional insureds, and shall contain a provision that the same may not be canceled or reduced without providing Landlord not less than thirty (30) days prior written notice. Copies of all policies or certificates evidencing the existence and amounts of such insurance shall be delivered to Landlord no later than five (5) days prior to the Commencement Date, and renewals thereof shall be delivered to Landlord at least ten (10) days prior to the expiration of any such policy. Tenant's failure to provide and keep in force the insurance required under this section shall be regarded as a material default, entitling Landlord to exercise any or all of the remedies provided in this Lease. Any policy may be carried under so-called "blanket coverage" form of insurance policies."

4. EFFECT OF FIRST AMENDMENT ON ORIGINAL LEASE: Except as amended hereby, all other terms and conditions of the Original Lease remain in full force and effect. In the event the terms and conditions of this First Amendment conflict with the terms of the Original Lease, the terms and conditions of this First Amendment shall prevail and be controlling.

5. THIRD PARTIES: This First Amendment shall inure to the benefit of, and bind, the Parties' respective successors.

6. FULL FORCE AND EFFECT: The Parties each represent and warrant to the other that the Original Lease, as amended by this First Amendment, is in full force and effect and has not been assigned, modified, supplemented or further amended in any way, other than by this First Amendment.

7. ENTIRE AGREEMENT, AMENDMENT: The Original Lease, as amended by this First Amendment, contains the entire agreement of the Parties hereto with respect to the subject matter hereof. No representations, inducements, or agreements, oral or otherwise, between the Parties not contained in

this First Amendment shall be of any force and effect. This First Amendment may not be modified, changed or terminated, in whole or in part, in any manner other than by an agreement in writing signed by duly authorized representatives of the Parties.

8. COUNTERPARTS: This First Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

9. INCORPORATION OF RECITALS: The foregoing recitals are fully incorporated into this First Amendment by this reference.

10. EFFECTIVE DATE OF THIS FIRST AMENDMENT. This First Amendment shall not become effective unless and until the County Board approves the First Amendment and it is executed on behalf of the County Board. If this First Amendment is not approved by the County Board, then no liability whatsoever shall accrue and the Landlord and Tenant shall have no obligation whatsoever to each other with regard to this First Amendment, but the Original Lease shall continue to be in effect in accordance with its terms.

IN WITNESS WHEREOF, the Parties hereto have caused multiple counterparts of this First Amendment to be signed in their respective names by their respective authorized officers.

WITNESS:

**LANDLORD: THE COUNTY BOARD OF
ARLINGTON COUNTY, VIRGINIA**

BY: _____
Uri Arkin, Real Estate Bureau Chief

DATE: _____

WITNESS:

TENANT:

BY: _____

TITLE: _____

DATE: _____

Approved as to form:

County Attorney

ATTACHMENT 1
Vicinity Map

[RPC 17015006, 17015007, 17015008, 17015009 and 17015010]

