



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
September 26, 2009**

DATE: September 1, 2009

SUBJECTS: Approval of Two Amendments to License Agreement between The County Board of Arlington County, VA ("Licensor") and Arlington Community Federal Credit Union ("Licensee") as follows: (1) Second Amendment to ATM License Agreement at 1425 N. Courthouse Road, RPC 17015011, and (2) Second Amendment to ATM License Agreement at 2100 Clarendon Blvd., RPC 18004065.

C. M. RECOMMENDATIONS:

1. Approve the attached agreements between The County Board of Arlington County, VA ("Licensor") and Arlington Community Federal Credit Union ("Licensee"):
 - A. Second Amendment to ATM License Agreement at 1425 N. Courthouse Road, RPC 17015011, and
 - B. Second Amendment to ATM License Agreement at 2100 Clarendon Blvd., RPC 18004065.

2. Authorize the Real Estate Bureau Chief, or his designee, to execute and deliver on behalf of the County Board, each of the above referenced Second Amendments, and all related documents, subject to approval as to form by the County Attorney.

ISSUE: As a part of the license process, the County Board is being requested to approve and authorize the execution of the two Second Amendments to two existing License Agreements for ATM machines.

SUMMARY: By approving the Second Amendments, the AVFCU will continue to operate and maintain its ATMs, for the general public's use, which are located at: (1) Courthouse Building, 1425 N. Courthouse Road; and, (2) Courthouse Plaza, 2100 Clarendon Blvd.

BACKGROUND: The Licensee requested Second Amendments to the License Agreements, to extend the term and to amend other terms of the License Agreements, for ATMs located at: (1) first floor lobby level of the Courthouse Building, 1425 N. Courthouse Road; and, (2) first floor level of the Courthouse Plaza office building, 2100 Clarendon Blvd. The original License

County Manager: _____

County Attorney: _____

Staff: Linda DePersis, DES-Real Estate Bureau

Agreement for Courthouse Plaza, and for the Courthouse Building are each dated January 1, 2004 and the First Amendment are each dated October 30, 2006.

DISCUSSION: The attached Second Amendments to the ATM License Agreements have been structured to provide a commercially viable agreement to protect the County's rights and needs as a local government. Some of the pertinent provisions are as follows:

Second Amendment to ATM License Agreement for 1425 N. Courthouse Road

- The term of the Second Renewal Period is for five (5) years.
- AVFCU shall have an option to renew this License, as Amended, upon the same terms and conditions, for three (3) additional terms of five (5) years.
- Commencing on January 1, 2010, the Base Use Fee for the Licensed Premises shall be \$46.90 per month.
- The Annual Base Use Fee increases, after the first year, by five percent (5%) per annum.
- The number of days for the Termination Right, for either party to terminate the License, for any reason, at any time, is increased from sixty (60) days to ninety (90) days.
- The License, as Amended, will expire on December 31, 2014.

Second Amendment to License Agreement for 2100 Clarendon Blvd.

- In order to make the Second Amendment to License Agreement coterminous with the Courthouse Building License, the term of the Second Renewal Period is for five (5) years and ninety-two (92) days. The License, as Amended, will expire on December 31, 2014.
- AVFCU shall have an option to renew this License, as Amended, upon the same terms and conditions, for three (3) additional terms of five (5) years.
- Commencing on January 1, 2010, the Base Use Fee for the Licensed Premises shall be \$46.90 per month.
- The Annual Base Use Fee increases, beginning on January 1, 2011, by five percent (5%) per annum.
- The number of days for the Termination Right, for either party to terminate the License, for any reason, at any time, is increased from sixty (60) days to ninety (90) days.

FISCAL IMPACT: If the attached Second Amendments are approved by the County Board, and executed on behalf of the County Board, then the County shall collect the total of \$6,938.46 for revenue during the renewal terms. Since the revenue is currently included in the FY 2010 budget, as general funds, for both of these agreements, there is no material impact on the budgeted revenue for FY 2010. Revenue for both these agreements will be included in future budgets, as general funds.

SECOND AMENDMENT TO ATM LICENSE AGREEMENT

THIS SECOND AMENDMENT TO ATM LICENSE AGREEMENT (the "Second Amendment") is made this ____ day of _____, 2009, by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic ("Licensor" or "County Board") and the **ARLINGTON COMMUNITY FEDERAL CREDIT UNION**, a non-profit corporation in the Commonwealth of Virginia ("Licensee" or "Credit Union"), (jointly "Parties").

WHEREAS, the County Board is the owner of the Courthouse Building located at 1425 North Courthouse Road, Arlington, Virginia 22201, RPC 17015011 ("Building"). (A Vicinity Map is attached hereto and incorporated herein by reference as Exhibit A);

WHEREAS, by the ATM License Agreement, between the Parties, dated January 1, 2004 ("License Agreement"), the Credit Union installed, and began maintaining, an Automatic Teller Machine ("ATM") on the first floor lobby of the Building, as shown on Exhibit 1 ("Licensed Premises"). By the First Amendment to ATM License between the Parties, dated October 30, 2006 ("First Amendment"), certain provisions of the License Agreement were amended and the term was extended by three (3) years ("First Renewal Period"). The First Renewal Period expires on December 31, 2009; however, the Licensee has another right to extend the term of the First Amendment by three (3) years. The License Agreement and First Amendment are jointly referred to hereinafter as "License, as Amended."

WHEREAS, the Parties now desire to amend certain terms and conditions of the License, as Amended, by means of this Second Amendment; and,

WHEREAS, the Clerk of the Circuit Court of Arlington County, Virginia, has advised the Licensor that the Chief Judge of the Circuit Court of Arlington County, Virginia, has approved the continued use of the ATM within the Licensed Premises.

NOW, THEREFORE, the Parties hereto agree as follows:

For and in consideration of the amount of One Dollar (\$1.00), the covenants and agreements set forth hereinafter, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties amend the License, as Amended, as set forth in this Second Amendment:

1. Term. Section 1 of the License, as Amended, is hereby amended by deleting the entire section and adding in its stead:

“A. The Term of the License, as Amended, is hereby extended for a period of five (5) years (the "Second Renewal Period") such that the Second Renewal Period shall commence on January 1, 2010 (the "Second Renewal Date") and shall expire at 12:00 midnight on December 31, 2014.

B. Licensee shall have the option to renew this License, as Amended, for three (3) additional terms of five (5) years ("Sequential Extended Term(s)") upon the same terms and conditions contained in the License, as Amended, as further amended by this Second Amendment, subject, however, to a five percent (5%) annual increase in the Annual Base Use Fee. This option shall be exercised by Licensee by giving written notice to Licensor, which notice must be received by Licensor not later than ninety (90) days prior to the expiration of the Second Renewal Period and any Sequential Extended Term(s) thereof.”

2. Monthly Fee. As of the Second Renewal Date, Section 4 of the License, as Amended, is hereby deleted in its entirety, and the following is substituted in lieu thereof:

“Commencing on January 1, 2010, the Monthly Fee for the Licensed Premises shall be payable by the Licensee in monthly installments pursuant to the following schedule:

License Period	Annual Base Use Fee	Monthly Base Use Fee
January 1, 2010 – December 31, 2010	\$562.84	\$46.90
January 1, 2011 – December 31, 2011	\$590.98	\$49.25
January 1, 2012 – December 31, 2012	\$620.53	\$51.71
January 1, 2013 – December 31, 2013	\$651.56	\$54.30
January 1, 2014 – December 31, 2014	\$684.14	\$57.01

Payments are to be made by check payable to Treasurer, Arlington County and delivered to: ACG Real Estate Bureau, 2100 Clarendon Blvd, Ste 800, Arlington, VA 22201.

Payments received in the Real Estate Bureau after the fifth calendar day of any month (including those payments made late due to addressing errors by Licensee) will include a late charge of 5%.”

3. Notices. Section 15 of the License, as Amended is hereby amended by replacing the notice addresses with the following:

“To Licensor: Arlington County Manager
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201

With a copy to: Real Estate Bureau Chief
ACG Real Estate Bureau
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201”

“To Licensee: Arlington Community Federal Credit Union
5666 Columbia Pike
Falls Church, VA 22041
Attn: Director, Project Management”

4. Termination Right. Section 23 of the License, as Amended, is hereby deleted, and the following is substituted in lieu thereof: “Either party shall have the right to terminate this License, for any reason, at any time, without further obligation or liability whatsoever, except outstanding obligations existing on the effective date of such termination, by serving a ninety (90) day prior written notice to the non-terminating party.”

5. Effect of Second Amendment on License. Except as modified herein, all other terms and conditions of the License, as Amended, remain in full force and effect. In the event the terms and conditions of this Second Amendment conflict with the terms of the License, as Amended, the terms and conditions of this Second Amendment shall prevail and be controlling.

6. Third Parties. The License, as Amended, as further amended by this Second Amendment, shall inure to the benefit of and bind the successors and (subject to the provisions of the License) the assigns of the respective parties.

7. Full Force and Effect. Licensor and Licensee each represents and warrants to the other that the License, as Amended, as further amended by this Second Amendment, is in full force and effect and has not been assigned, modified, supplemented or further amended in any way.

8. Entire Agreement. The License, as Amended, as further amended by this Second 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 the License, as Amended, as further amended by this Second Amendment, shall be of any force and effect. The License, as Amended, as further amended by this Second 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 hereto.

9. Counterparts. The Second 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.

10. Ratification and Confirmation of License. Except as otherwise set forth herein, the License, as Amended, as further amended by this Second Amendment, is hereby ratified and reconfirmed in its entirety.

11. Incorporation of Recitals. The foregoing recitals are fully incorporated into the Second Amendment by this reference.

IN WITNESS WHEREOF, the Parties hereto have caused multiple counterparts of this Second Amendment to be signed in their respective names by their respective authorized officers, effective as of the later of the dates set forth below.

LICENSOR: **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA,
a body politic**

By: _____
Uri Arkin, Real Estate Bureau Chief

Date: _____

Approved as to form:

County Attorney

STATE OF _____:

CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 2009, by _____ as _____ on behalf of THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA.

Notary Public

My commission expires: _____

LICENSEE: **ARLINGTON COMMUNITY FEDERAL CREDIT UNION,**
a non-profit corporation in the Commonwealth of Virginia

By: William T. Maher
Printed Name: WILLIAM T. MAHER
Title: VICE PRESIDENT, FINANCE
Date: 8.31.09

STATE OF Virginia :
CITY/COUNTY OF Arlington :

The foregoing instrument was acknowledged before me this 31st day of August, 2009, by William T. Maher as Vice president, Finance of ARLINGTON COMMUNITY FEDERAL CREDIT UNION.

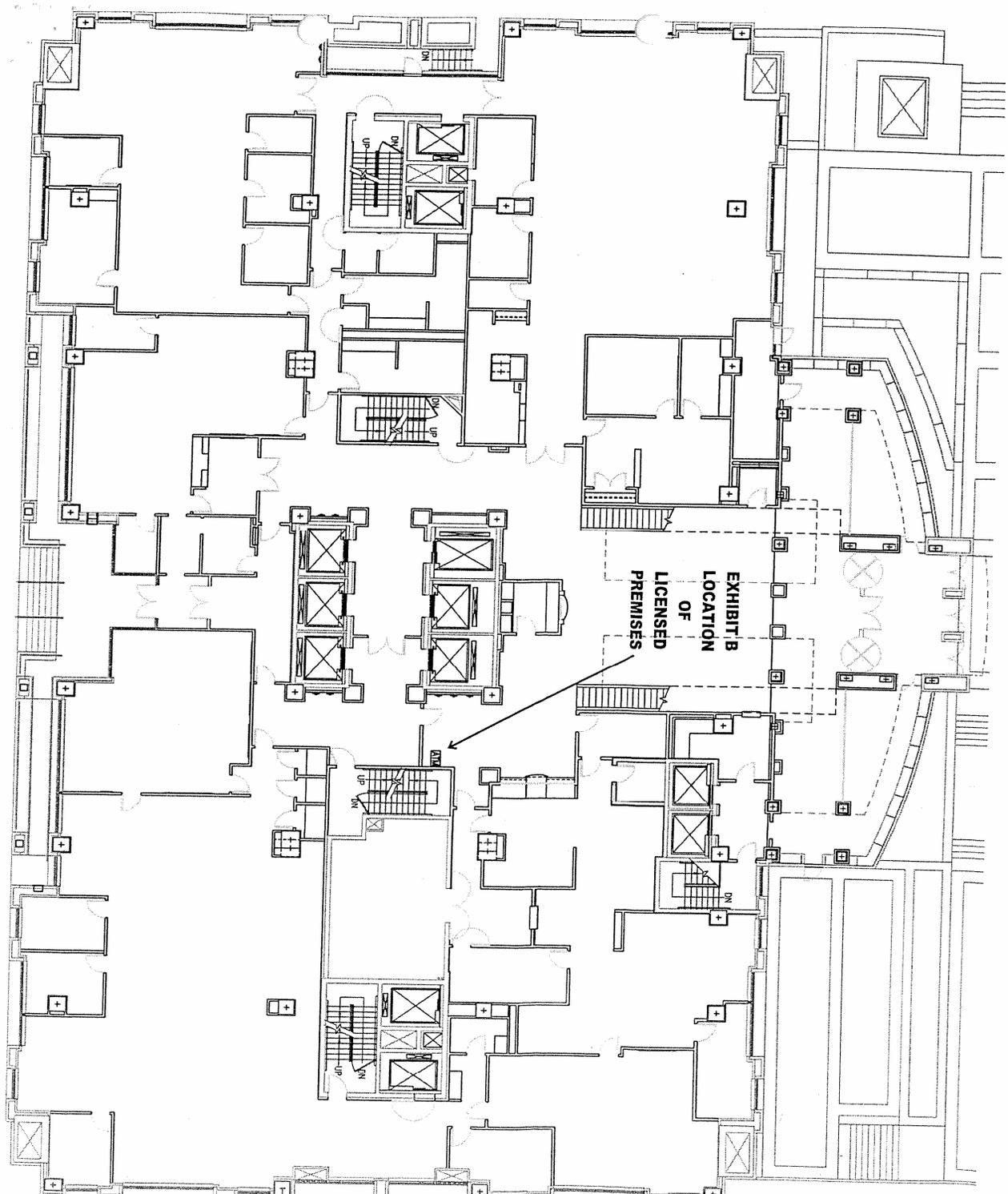
[Signature] 7048887

Notary Public

My commission expires: 01/31/2010



Exhibit 1
Licensed Premises
1425 North Courthouse Road



SECOND AMENDMENT TO LICENSE AGREEMENT

THIS SECOND AMENDMENT TO LICENSE AGREEMENT (the "Second Amendment") is made this _____ day of _____, 2009 by and between **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic ("Licensor" or "County Board") and the **ARLINGTON COMMUNITY FEDERAL CREDIT UNION**, a non-profit corporation in the Commonwealth of Virginia ("Licensee" or "Credit Union"), (jointly "Parties").

WHEREAS, the County Board owns the land beneath an office building and garage located at 2100 and 2200 Clarendon Boulevard, Arlington, Virginia ("Property"). The building and garage at 2100 Clarendon Boulevard are used for the Arlington County Government Center ("Demised Premises"). In 1987, the County Board entered into a long-term ground lease for the Property, RPC 18004065, with Courthouse Plaza Associates Limited Partnership. Also, in 1987 the County Board entered into the initial Lease for the Demised Premises. On October 23, 2002, the County Board executed an Amended and Restated Deed of Lease ("Lease") with VNO Courthouse I LLC, predecessor-in-interest to CESC One Courthouse Plaza, L.L.C. ("Landlord"), for the Demised Premises, commencing on November 1, 2003. A vicinity map is attached hereto and incorporated herein by reference as Exhibit A;

WHEREAS, on December 8, 1995, the County Board entered into a Sublease Agreement with the Credit Union to sublet nine (9) square feet of space on the first floor lobby of the Demised Premises ("Original Licensed Premises") for an Automatic Teller Machine ("ATM"). The Sublease Agreement expired on December 31, 2003;

WHEREAS, on January 1, 2004, the County Board entered into a License Agreement with the Credit Union to sublet Suite 506 located on the fifth (5th) floor and a portion of the lobby area on the first (1st) floor of the Demised Premises, for an ATM, for a period of three (3) years until 12:00 midnight on December 31, 2006, with the option to renew the License for one (1) additional term of three (3) years (the "Original License"). On October 30, 2006, the Parties entered into a First Amendment to ATM License Agreement ("First Amendment") to amend certain provisions and extend the term for a period of three (3) years until September 30, 2009 ("First Renewal Period");

WHEREAS, the Parties desire to amend certain terms and conditions of the Original License and First Amendment (collectively, the "License, as Amended") by means of this Second Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Term. Section 2 of the License, as Amended, is hereby amended by deleting the entire section and adding in its stead:

"A. The Term of the License, as Amended, is hereby extended for a period of five (5) years and ninety-two (92) days, commencing on October 1, 2009, and shall expire at 12:00 midnight on December 31, 2014 ("Second Renewal Term").

B. Licensee shall have the option to renew this License, as Amended, for three (3) sequential terms of five (5) years ("Sequential Extended Term(s)"), upon the same terms and conditions as contained in the License, as Amended, subject to a five percent (5%) annual increase in the Annual Base Use Fee. This option shall be exercised by Licensee not later than ninety (90) days prior to the expiration of the Second Renewal period and any Sequential Extended Term(s) thereof."

2. **Use.** Section 3 of the License, as Amended, is hereby amended by deleting the entire section and adding in its stead: “Licensee is permitted to use the Licensed Premises for the installation and maintenance of an ATM, as shown on Attachment 1, and for the use of said ATM by the general public. Licensee shall comply with all laws, rules, orders, ordinances and regulations any time issued or in force, applicable to the Licensed Premises, or to the Licensee's use thereof, promulgated or issued by the Licensor or by any applicable governmental or judicial authority.”

3. **Monthly Fee.** Section 4 of the License, as Amended, is hereby amended by deleting the entire section and adding in its stead:

“Commencing on October 1, 2009, the Monthly Fee for the Licensed Premises shall be payable by the Licensee in monthly installments pursuant to the following schedule:

License Period	Annual Base Use Fee	Monthly Base Use Fee
October 1, 2009- December 31, 2009	\$562.84	\$46.90
January 1, 2010 – December 31, 2010	\$590.98	\$49.25
January 1, 2011 – December 31, 2011	\$620.53	\$51.71
January 1, 2012 – December 31, 2012	\$651.56	\$54.30
January 1, 2013 – December 31, 2013	\$684.14	\$57.01
January 1, 2014 – December 31, 2014	\$718.34	\$59.86

Payments are to be made by check payable to Treasurer, Arlington County and delivered to: ACG Real Estate Bureau, 2100 Clarendon Blvd, Ste 800, Arlington, VA 22201.

Payments received in the Real Estate Bureau after the fifth calendar day of any month (including those payments made late due to addressing errors by Licensee) will include a late charge of 5%.”

4. **Notices.** Section 15 of the License, as Amended, is hereby amended by replacing the notice addresses with the following:

“To Licensor: Arlington County Manager
2100 Clarendon Boulevard, Suite 302
Arlington, Virginia 22201

With a copy to: Real Estate Bureau Chief
ACG Real Estate Bureau
2100 Clarendon Boulevard, Suite 800
Arlington, Virginia 22201”

“To Licensee: Arlington Community Federal Credit Union
5666 Columbia Pike
Falls Church, VA 22041
Attn: Director, Project Management”

5. **Termination Right.** Section 23 of the License, as Amended, is hereby deleted and the following is substituted in lieu thereof: “Either party shall have the right to terminate this License, as Amended, for any reason, at any time, without further obligation or liability whatsoever, except outstanding existing obligations on

the effective date of such termination, by serving a ninety (90) day prior written notice to the non-terminating party.”

6. **Effect of Second Amendment on License.** Except as modified herein, all other terms and conditions of the License, as Amended, remain in full force and effect. In the event the terms and conditions of this Second Amendment conflict with the terms of the License, as Amended, the terms and conditions of this Second Amendment shall prevail and be controlling.

7. **Third Parties.** The License, as Amended, as further amended by this Second Amendment, shall inure to the benefit of and bind the successors and (subject to the provisions of the License) the assigns of the respective parties.

8. **Full Force and Effect.** Licensor and Licensee each represents and warrants to the other that the License, as Amended, as further amended by this Second Amendment, is in full force and effect and has not been assigned, modified, supplemented or further amended in any way.

9. **Entire Agreement.** The License, as Amended, as further amended by this Second 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 the License, as Amended, as further amended by this Second Amendment, shall be of any force and effect. The License, as Amended, as further amended by this Second 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 hereto.

10. **Counterparts.** This Second 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.

11. **Ratification and Confirmation of License.** Except as otherwise set forth herein the License, as Amended, as further amended by this Second Amendment, is hereby ratified and reconfirmed in its entirety.

12. **Incorporation of Recitals.** The foregoing recitals are fully incorporated into this Second Amendment by this reference.

IN WITNESS WHEREOF, Licensor and Licensee have caused this Second Amendment to be executed and delivered as their respective acts, intending to be legally bound by its terms.

LICENSOR: **THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA,
a body politic**

By: _____
Uri Arkin, Real Estate Bureau Chief

Date: _____

Approved as to form:

County Attorney
STATE OF _____
CITY/COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2009, by _____ as _____ on behalf of THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA.

Notary Public
My commission expires: _____

LICENSEE: **ARLINGTON COMMUNITY FEDERAL CREDIT UNION,**
a non-profit corporation in the Commonwealth of Virginia

By: William T. Maher
Printed Name: WILLIAM T. MAHER
Title: VICE PRESIDENT, FINANCE
Date: 8.31.2009

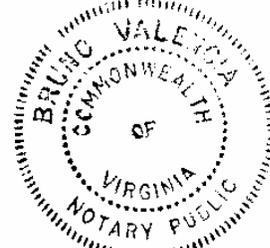
STATE OF Virginia
CITY/COUNTY OF Arlington

The foregoing instrument was acknowledged before me this 31st day of August, 2009, by William T. Maher as vice president, Finance of ARLINGTON COMMUNITY FEDERAL CREDIT UNION.

W. Maher 7049287

Notary Public

My commission expires: 06/31/2010



ATTACHMENT 1 LICENSED PREMISES



ATM

LOBBY OF 2100 CLARENDON BOULEVARD

