

<b>UNITED STATES BANKRUPTCY COURT</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Opus West Corporation, a Minnesota Corporation</b>		Case Number: <b>09-34356-hdh11</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Arrowhead Central Credit Union</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: <b>Arrowhead Central Credit Union</b> <b>Attn: Steve Skaggs</b> <b>P.O. Box 735</b> <b>San Bernardino, CA 92402</b> Telephone number: (909) 881-3355		
Name and address where payment should be sent (if different from above): <div style="text-align: center;"> <b>RECEIVED</b>  <b>SEP 25 2009</b>  <b>TAMARA C. MARSHALL, CLERK</b>  <b>U.S. BANKRUPTCY COURT</b>  <b>NORTHERN DISTRICT OF TEXAS</b> </div> Telephone number: <b>BMC GROUP</b>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> <u>\$ 20,285.00</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)( _____ ).  <b>Amount entitled to priority:</b> \$ _____
<b>2. Basis for Claim:</b> <u>Shopping Center Lease</u> <u>Deposit and Expenses</u> (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> <u>N/A</u>  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:  Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		
Date: <u>9/16/2009</u>	<b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <b>Haydee D. Garbero, Attorney for Creditor</b> Moore, Brewer, Jones, Tyler & North, 4180 La Jolla Village Drive, Suite 540, San Diego, CA (858) 626-2880	



**EXHIBIT A**

**THE COMMONS AT CHINO HILLS  
SHOPPING CENTER LEASE**

**BETWEEN**

**OPUS WEST CORPORATION,  
a Minnesota corporation**

**("LANDLORD")**

**AND**

**ARROWHEAD CENTRAL CREDIT UNION,  
a California corporation**

**("TENANT")**

**Arrowhead Credit Union  
(TENANT'S TRADE NAME)**

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**SHOPPING CENTER LEASE  
FOR THE COMMONS AT CHINO HILLS**

**BASIC LEASE PROVISIONS**

1. **TENANT:** Arrowhead Central Credit Union, a California corporation
2. **LANDLORD:** Opus West Corporation, a Minnesota corporation
3. **TENANT'S TRADE NAME:** Arrowhead Credit Union
4. **SHOPPING CENTER:** The Commons at Chino Hills ("Shopping Center") Location: City of Chino Hills, County of San Bernardino, State of California as more fully described on Exhibit "A". The Shopping Center, along with all improvements located thereon, is hereinafter referred to as the "Shopping Center Tract."
5. **PREMISES:** A portion of Shop Building S10 designated on Exhibit "A-1" ("Site Plan") having the street address 4721 Chino Hills Parkway, Chino Hills, California.
6. **LEASABLE AREA:** Approximately 3,500 leasable square feet as depicted on Exhibit "A-1". The exact leasable square footage of the Premises shall be calculated and certified by Landlord's architect upon completion of the Leasehold Improvements (as herein defined). If the actual leasable square footage as calculated by Landlord's architect is more or less than 3,500 square feet of floor area, appropriate adjustments shall be made to Annual Minimum Rent and Tenant's proportionate share (for purposes of allocating Operating Expenses and Taxes (as defined below) and other purposes in this Lease) to reflect the actual leasable square footage and such adjustment shall be set forth in the Commencement Date Memorandum (as herein defined). The aforesaid space leased to Tenant is hereinafter referred to as the "Premises." In no event shall Tenant's Annual Minimum Rent or proportionate share of Operating Expenses and Taxes increase by more than 3% as a result of the measurement described above.
7. **LEASE TERM:**

Basic Term: Five (5) years, computed from the first day of the first calendar month on or after the Rent Commencement Date (the "Term" or "Lease Term").

Renewal Options: Tenant shall have three (3) options to renew the Lease for five (5) years, exercisable pursuant to the terms of this Lease.
8. **KEY DATES:**

Opening Date: One hundred fifty (150) days after Substantial Completion (defined below) of the Premises ("Opening Date").

Rent Commencement Date: The earlier of (a) the date Tenant initially opens for business or (b) ninety (90) days after Substantial Completion of the Premises ("Rent Commencement Date" or "Commencement Date").

Delivery of Premises: Upon delivery of written notice to Tenant of Substantial Completion of the Premises ("Delivery Date").
9. **ANNUAL MINIMUM RENT:**

	<u>Years</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>	<u>Rent P.S.F.</u>
Basic Term:	1 - 5	\$147,000.00	\$12,250.00	\$3.50
Renewal Terms:	6 - 10	\$161,700.00	\$13,475.00	\$3.85
	11 - 15	\$178,500.00	\$14,875.00	\$4.25
	16 - 20	\$196,560.00	\$16,380.00	\$4.68
10. **PERCENTAGE RATE (FOR PERCENTAGE RENT):** N/A
11. **GUARANTOR:** N/A

12. **USE OF PREMISES:** The Premises shall be occupied and used by Tenant for the sole purpose of operating a full service credit union, including two (2) storefront ATMs, as well as related products and services, along with Tenant's wholly owned subsidiary companies offering financial services that are customarily offered in a majority of other Arrowhead Credit Union branches, all subject to **Exhibit "D"**, and for no other use or purpose ("**Permitted Use**").
13. **SECURITY DEPOSIT:** None.
14. **LATE CHARGE:** Five percent (5%) of amount due.
15. **BROKERS:** CB Richard Ellis representing Landlord. Cushman & Wakefield representing Tenant.
16. **ADDRESSES FOR NOTICES:**
- LANDLORD: Opus West Corporation  
2050 Main Street, Suite 800  
Irvine, CA 92614  
Attn: Division President, Southern California  
Telephone No.: (949) 622-1950
- With a copy to: Opus West Corporation  
2555 East Camelback Road, Suite 800  
Phoenix, AZ 85016-9267  
Attn: Legal Department  
Telephone No.: (602) 468-7000
- Opus West Management Corporation  
2050 Main Street, Suite 800  
Irvine, CA 92614  
Attn: Property Manager - The Commons at Chino Hills  
Telephone: (949) 622-1950  
Facsimile: (949) 622-1951
- If prior to the Opening Date, with a copy to:
- Luce, Forward, Hamilton & Scripps LLP  
2050 Main Street, Suite 600  
Irvine, CA 92614  
Attn: Joseph S. Stuart, Esq.  
Telephone: (949) 732-3711
- TENANT: Arrowhead Central Credit Union  
1814 Commercenter West, Suite I  
San Bernardino CA 92402  
Attn: Steve Skaggs, VP-Corporate Real Estate  
Telephone: (909) 379-6684
17. **ADDRESS FOR RENT PAYMENTS:** Opus West Management Corporation  
2555 East Camelback Road, Suite 840  
Phoenix, AZ 85016-9267  
Attn: Accounts Receivable-The Commons at Chino Hills  
Telephone No.: (602) 468-7000
18. **GRAND OPENING PROMOTIONAL FEE:** N/A.

The foregoing provisions ("**Basic Lease Provisions**") are intended to supplement and/or summarize the provisions set forth in the balance of this Lease. If there is any conflict between any of the Basic Lease Provisions and the balance of this Lease, the balance of this Lease shall control.

## SHOPPING CENTER LEASE

### FOR THE COMMONS AT CHINO HILLS

THIS LEASE AGREEMENT (the "Lease"), is entered into as of <sup>October</sup> ~~September~~ 13, 2008 ("Effective Date"), by and between OPUS WEST CORPORATION, a Minnesota corporation ("Landlord"), and ARROWHEAD CENTRAL CREDIT UNION, a California corporation ("Tenant").

#### ARTICLE 1 RENT

1.1 Annual Minimum Rent. Tenant covenants and agrees to pay to Landlord, without offset, deduction, notice or demand Annual Minimum Rent as set forth in **Section 9** of the Basic Lease Provisions.

1.2 Payment of Annual Minimum Rent. Upon execution of this Lease, Tenant shall pay Landlord an amount equal to the first monthly installment of Annual Minimum Rent to be applied to the first full calendar month of the Term. Commencing on the Rent Commencement Date, Tenant shall pay the monthly installments of Annual Minimum Rent on or before the first day of each month, in advance. Should the Term of this Lease commence or terminate on a day other than the first day of a calendar month, then the Rent for such partial month shall be equal to the product obtained by multiplying the number of days of the Term included in the partial month by a fraction, the numerator of which is the Annual Minimum Rent and the denominator of which is 365. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord shall accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy available to Landlord under this Lease or at law or in equity. The Annual Minimum Rent set forth in **Section 1.1** shall be subject to adjustment pursuant to **Section 6** of the Basic Lease Provisions.

1.3 Additional Rent. In addition to the Annual Minimum Rent payable by Tenant under the provisions of this **Article 1**, Tenant shall pay, as additional rent ("Additional Rent"), all other charges, sums or amounts permitted to be imposed against it under any other Article of this Lease. Payments of Additional Rent shall be made concurrently with the next succeeding installment of Annual Minimum Rent following notice of the same, unless a different time for such payment is specified in this Lease. If any such amounts or charges are not paid at the time provided in the Lease, they shall nevertheless be collectible as Additional Rent with the next installment of Annual Minimum Rent falling due; however, nothing herein contained shall be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable hereunder, or limit any other remedy of Landlord. Annual Minimum Rent and Additional Rent are collectively referred to as "Rent". Rent shall be payable, without deduction, offset, prior notice or demand, in lawful money of the United States. All payments received by Landlord from Tenant shall be applied to the oldest payment obligation owed by Tenant to Landlord. No designation by Tenant, either in a separate writing or in a check or money order, shall modify this clause or have any force or effect.

1.4 Grand Opening Promotional Fee. N/A.

1.5 Place of Payment. Tenant shall pay Rent to Landlord at the address specified in **Section 17** of the Basic Lease Provisions or to such other address and/or person as Landlord may from time to time designate in writing to Tenant.

#### ARTICLE 2 GROSS SALES AND RECORDS

Intentionally Omitted.

#### ARTICLE 3 LEASE YEAR

The term "Lease Year" shall mean, in the case of the first Lease Year, that period from the Commencement Date to the first succeeding December 31; thereafter, "Lease Year" shall mean each successive twelve (12) calendar month period following the expiration of the first Lease Year, except that in the event of the termination of this Lease on any day other than on December 31, then the last Lease Year shall be the period from the end of the preceding Lease Year to such date of termination. Notwithstanding anything set forth elsewhere in this Lease to the contrary, the Term shall commence on the Commencement Date and continue during the period specified in the Basic Lease Provisions, unless sooner terminated in any manner set forth hereinafter.

#### ARTICLE 4 TAXES AND OTHER FORMS OF ADDITIONAL RENT

4.1 Definition of Taxes. Tenant shall pay to Landlord during the Term of this Lease as Additional Rent its proportionate share of all Taxes. The term "Taxes" shall include taxes and assessments against the land, buildings or improvements comprising the Shopping Center Tract that are levied or assessed by any

lawful authority during each calendar year, including without limitation all personal property taxes of Landlord relating to Landlord's personal property located on the Shopping Center Tract and used in connection with the operation and maintenance thereof, and all other governmental charges, general and special, ordinary and extraordinary, foreseen, as well as unforeseen, of any kind and nature whatsoever, or other tax, however described, which is levied or assessed by the United States of America or the state in which the Shopping Center Tract is located or any city, municipality or political subdivision thereof, against Landlord or all or any part of the Shopping Center Tract excluding however any net income tax, estate tax, transfer tax or inheritance tax of Landlord. The term "Taxes" shall also include (a) all charges, fees, license fees, business license fees, commercial rent taxes, levies, penalties and assessments which are levied by any authority having the direct or indirect power to tax, including any city, county, state, or federal government, or any school, agriculture, lighting, drainage, or other improvement district thereof with respect to the Shopping Center Tract and any improvements, fixtures, equipment, and property of Landlord, real or personal, located in or on the Shopping Center Tract or used in connection with the operation of the Shopping Center Tract, (b) any tax, surcharge, assessment, or service or other fee which shall be levied or collected in addition to or in lieu of real estate or personal property taxes, other than taxes levied directly on Tenant for Tenant's personal property, (c) any excise, sales, transaction, privilege, or other tax or levy, however denominated, imposed upon or measured by the Rent reserved under this Lease, Landlord's business of operating the Shopping Center Tract, or revenues derived therefrom or on the parking spaces in the Shopping Center Tract, (d) any tax or charge for fire protection, streets, sidewalks, road maintenance, refuse or other services provided to the Premises by any governmental entities, (e) any tax imposed upon the transaction or based upon a reassessment of the Premises due to a change in ownership or transfer of all or part of Landlord's interest in the Premises, (f) any charge, fee, levy or tax replacing any tax previously included within the definition of Taxes, it being acknowledged by Landlord and Tenant that Proposition 13 was adopted by the voters of the State of California in the June 1978 election and that assessments, taxes, fees, levies and charges may be imposed by governmental agencies for such services as fire protection, street sidewalk and road maintenance, refuse removal and for other governmental services formerly provided without charge to property owners or occupants and (g) any and all costs (including, without limitation, the fees of experts, tax consultants and attorneys) incurred by Landlord should Landlord elect to negotiate or contest the amount of any Taxes in formal or informal proceedings before the taxing governmental agency. The Taxes to be paid by Tenant under this Lease shall be the Taxes assessed for a particular year notwithstanding that such Taxes may be payable in a subsequent year. Taxes for any partial calendar year during the Term shall be prorated based upon the portion of such calendar year which is within the Term. For the calendar years in which this Lease commences and terminates, the provisions of this Article shall apply, and Tenant's liability for its share of the Taxes for such years shall be subject to a pro rata adjustment based on the number of days of said calendar year during which the Term of this Lease is in effect. In no event shall Taxes include any interest charges or penalties imposed for Landlord's failure to make payments on account of Taxes in a timely manner unless such failure is due to Tenant's failure to pay its share of Taxes in the manner provided in this Article 4 or Landlord's federal or state income, franchise, inheritance or estate taxes.

4.2 Tenant's Pro Rata Share of Taxes. Tenant's share of Taxes shall be equal to the product obtained by multiplying the Taxes by a fraction, the numerator of which shall be the number of leasable square feet of the floor area of the Premises and the denominator of which shall be the number of leasable square feet of floor area of all buildings in the Shopping Center owned by Landlord. Tenant's share of the Taxes shall be paid in monthly installments on or before the first day of each calendar month, in advance, in an amount estimated by Landlord; provided, that in the event Landlord is required under any mortgage covering the Shopping Center Tract to escrow Taxes, Landlord may, but shall not be obligated to, use the amount required to be so escrowed as a basis for its estimate of the monthly installments due from Tenant hereunder. Upon receipt of all tax bills and assessment bills attributable to any calendar year during the Term hereof, Landlord shall furnish Tenant with a written statement of the actual amount of Tenant's share of the Taxes for such calendar year. In the event the total amount of monthly installments paid by Tenant pursuant to this Article does not equal the sum due from Tenant as shown on such statement, then Tenant shall pay to Landlord the deficiency within thirty (30) days of receipt of such statement, or Landlord shall issue to Tenant at the time the statement is furnished, a credit invoice for such excess, as the case may be. A copy of a tax bill or assessment bill submitted by Landlord to Tenant shall at all times be sufficient evidence of the amount of Taxes against the property to which such bill relates. Prior to or at the commencement of the Term of this Lease and from time to time thereafter throughout the Term hereof, Landlord shall notify Tenant in writing of Landlord's estimate of Tenant's monthly installments due hereunder. Landlord's and Tenant's obligations under this Article shall survive the expiration of this Lease.

4.3 Protest of Taxes. Landlord shall also have the right, but not the obligation, to contest the amount or validity, in whole or in part, of any Taxes by appropriate proceedings conducted in the name of Landlord or in the name of Landlord and Tenant. Notwithstanding anything in this Article to the contrary, all costs and expenses incurred by Landlord during negotiations for or contests of the amount of Taxes shall be included within the term "Taxes". In the event a refund is obtained, Landlord shall issue a credit invoice for same, such portion to be based upon the percentage of the original Taxes paid by Tenant from which the refund was derived. Tenant hereby waives any right it may have by statute or otherwise to protest Taxes.

4.4 Taxes and Assessments on Rent. In addition to the foregoing, Tenant shall pay as Additional Rent, all other sums and charges required to be paid by Tenant under this Lease, and any tax or excise on rents, all other sums and charges required to be paid by Tenant under this Lease, and gross receipts tax, transaction privilege tax or other tax, however described, which is levied or assessed by the United States of America, the state in which the Shopping Center Tract is located or any city, municipality or political subdivision thereof against Landlord in respect to the Rent or other charges reserved under this Lease or as a

result of Landlord's receipt of such rents or other charges accruing under this Lease; provided, however, Tenant shall have no obligation to pay net income taxes of Landlord.

4.5 Miscellaneous Taxes. In addition to the foregoing, Tenant at all times shall be responsible for and shall pay, prior to delinquency, all taxes assessed or levied upon its occupancy of the Premises, and/or leasehold improvements, upon the trade fixtures, furnishings, equipment, and all other personal property of Tenant located in or about the Premises and when possible, Tenant shall cause such leasehold improvements, trade fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the property of Landlord. In the event any or all of Tenant's leasehold improvements, trade fixtures, furnishings, equipment or other personal property, or Tenant's occupancy of the Premises, shall be assessed and taxed with the property of Landlord, Tenant shall pay to Landlord its share of such taxes within thirty (30) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's personal property. Landlord shall determine the basis of prorating and dividing any of those assessments and its determination shall be binding. No taxes, assessments, fees or charges referred to in this Section shall be considered Taxes under the provisions of Section 4.1.

4.6 Changes to Taxes. Landlord and Tenant recognize the possibility of changes and/or limitations on the amount of taxes which can be assessed on land, buildings and improvements, including the Shopping Center Tract. Landlord and Tenant further recognize and acknowledge that as a result of any such changes in structure or limitations on amount, the amount of Taxes of the type which have appeared on assessor's tax statements prior to the date hereof may decrease. Landlord and Tenant further recognize that there may be imposed new forms of taxes, assessments, charges, levies or fees, or there may be an increase in certain existing taxes, assessments, charges, levies or fees placed on, or levied in connection with the ownership, leasing, occupancy or operation of the Shopping Center or the Premises. All such new or increased taxes, assessments, charges, levies or fees which are in lieu of, or imposed or increased as a result of, or arising out of any change in the structure of, the current tax system, or for the purpose of funding special assessment districts theretofore funded by taxes, shall also be included within the meaning of Taxes.

4.7 Community Facilities Districts. The Shopping Center is subject to the lien of (and Taxes will include) special taxes of City of Chino Hills Community Facilities District No. 5.

## ARTICLE 5 COMMON AREA AND OPERATING EXPENSES

5.1 Common Area. The term "Common Area" means the entire area designated from time to time by Landlord for the common use or benefit of the occupants of the Shopping Center and other persons entitled to use the same, including, without limitation, parking lots (permanent and temporary), landscaped and vacant areas, passages for trucks and automobiles, area-ways, roads, walks, roof, curbs, corridors, courts and arcades, together with facilities such as washrooms, comfort rooms, lounges, drinking fountains, toilets, stairs, ramps, shelters, community rooms, porches and bus stations, with facilities appurtenant to each, and common utility facilities, water filtration and treatment facilities (including, but not limited to, treatment plants and settling ponds), whether located within or outside of the Shopping Center (provided, however, the costs and expenses of such facilities included within Section 5.2 below shall include only those related to the operation, maintenance, repair or replacement of the Shopping Center).

5.1.1 Maintenance and Use of Common Area. The Common Area shall be maintained in accordance with the requirements set forth in the Declarations (defined below). The use and occupancy by Tenant of the Premises shall include the non-exclusive use of the Common Area (except areas used in the maintenance or operation of the Shopping Center) in common with Landlord and other tenants of the Shopping Center and their customers and invitees to the extent provided in the Declarations. Any such use shall be subject to the Declarations and those provisions contained in the rules and regulations set forth in Exhibit "B" concerning the use of the Common Area, established by Landlord from time to time ("Rules and Regulations"). Landlord shall operate and maintain the Common Area or shall cause the same to be operated and maintained in a manner deemed by Landlord reasonable or appropriate for the Shopping Center. Subject to the Declarations and the Rules and Regulations and subject to the rights of other tenants, licensees and concessionaires already or to be granted therein, the Common Area is hereby made available to Tenant and its employees, agents, customers and invitees for their reasonable nonexclusive use in common with others, including other tenants and their employees, agents, customers, invitees, and Landlord for the purposes for which constructed.

5.1.2 Control of and Changes to Common Area. Notwithstanding anything to the contrary herein, Tenant acknowledges and agrees that Landlord may develop the area illustrated on Exhibit "A-1" as "Future Development Area" in any manner in Landlord's sole and absolute discretion. Subject to the prior sentence, Landlord shall have sole and exclusive control of the Common Area, as well as the right to make changes to the Common Area so long as said changes do not unreasonably interfere with Tenant's use and enjoyment of the Premises pursuant to this Lease. Landlord's rights shall include, but not be limited to, the right to (a) restrain the use of the Common Area by unauthorized persons; (b) utilize from time to time any portion of the Common Area for promotional, entertainment and related matters; (c) place permanent or temporary kiosks, displays, carts or stands in the Common Area and to lease same to Tenants; (d) temporarily close any portion of the Common Area for repairs, improvements or alterations, to discourage noncustomer use, to prevent dedication or an easement by prescription, or for any other reason deemed sufficient in Landlord's judgment; (e) change the shape and size of the Common Area, add, eliminate or change the location of improvements to the Common Area, including, without limitation, buildings, parking

areas, roadways and curb cuts, and construct buildings on the Common Area; (f) construct surface or elevated parking areas and facilities; (g) establish and change the level of parking surfaces; (h) close all or any portion of the Common Area to such extent as may, in the opinion of Landlord's counsel, be necessary to prevent a dedication thereof or the accrual of any rights to any person or to the public therein or to make repairs or alterations; to close temporarily any or all portions of the Common Area, and (i) do and perform such other acts in and to said area and improvements as, in the exercise of good business judgment, Landlord shall determine to be advisable with a view to the improvement of the convenience and use thereof by tenants and their agents, contractors, employees, licensees, customers and, business invitees. Tenant shall not solicit business or display merchandise within the Common Area, or distribute handbills thereon, or take any action which would interfere with the rights of other persons to use the Common Area without the prior written consent of the Landlord.

5.1.3 Employee Parking. In order to discourage non-customer parking in the Common Area, Landlord may designate what portions of the Common Area, if any, shall be used for automobile or other parking by Tenants and their employees, concessionaires, subtenants and licensees. Tenant shall require its employees, concessionaires, subtenants and licensees to park in such designated areas. In addition to all other rights and remedies available hereunder, Landlord shall be entitled to enforce this provision by requiring the payment by Tenant of such amount per automobile as may be determined to be appropriate by Landlord from time to time for each day per automobile an automobile driven by an employee of Tenant, Tenant's agent, occupant, concessionaire or licensee is found parked within the Common Area but outside of the specified area.

5.1.4 Declarations. The term "Declarations" means any "declaration of covenants, conditions and restrictions and grant of easements", any "restrictive easement agreement", any "parking lot maintenance agreement" or any similar document affecting all or any part of the Shopping Center, whether recorded as of the date of execution of this Lease, or recorded thereafter, including, without limitation, (i) that certain Easements, Covenants, Conditions and Restrictions of the Commons, recorded in the Official Records of San Bernardino County, California on October 12, 2007, as Document No. 2007-0577234, and the Supplementary Declaration to Easements, Covenants, Conditions and Restrictions of the Commons recorded in the Official Records of San Bernardino County, California on October 12, 2007 as Document No. 2007-0577237 (collectively, the "Commons Declaration") and (ii) that certain Junior Declaration of Covenants, Conditions and Restrictions for the Commons at Chino Hills to be recorded in the Official Records of San Bernardino County (the "Junior Declaration"). Landlord has provided to Tenant with a copy of the Commons Declaration and a copy of the Junior Declaration. Tenant will have the right to approve any material change to the Junior Declarations, which approval will not be unreasonably withheld and will be deemed given if Tenant does not deliver written notice of disapproval within twenty (20) days after delivery of any revised Junior Declaration. Tenant may not withhold such approval unless the proposed change would materially and adversely affect the Permitted Use of the Premises by Tenant as provided in Section 12 of the Basic Lease Provisions. If Tenant disapproves of any Declaration or any such change, Landlord may elect to revise the Declaration or withdraw the proposed change. Landlord's right to modify the Declarations shall continue after recordation thereof.

5.1.5 Reserved Parking. Subject to the Declarations and Specific Plan for the Shopping Center, Tenant shall have the exclusive right to use the four (4) parking spaces illustrated on **Exhibit "A-1"** for Tenant's customer parking (the "Reserved Parking"). Landlord shall, at Landlord's cost, install signs at the Reserved Parking indicating "20 Minute Parking Only"; however, Landlord shall not be obligated to enforce such parking regulation.

5.2 Operating Expenses. Tenant shall pay, as Additional Rent, to Landlord during the Term its proportionate share of the costs and expenses of operating, maintaining, repairing and replacing the Common Area ("Operating Expenses"). Subject to Section 5.2.3, Tenant's proportionate share of Operating Expenses shall be equal to the product obtained by multiplying the total of such Operating Expenses by a fraction, the numerator of which shall be the number of leasable square feet of the floor area of the Premises, and the denominator of which shall be the number of leasable square feet of floor area of all buildings in the Shopping Center, as the same may vary from time to time (hereinafter "Total Floor Area").

5.2.1 Definition of Operating Expenses. The term "Operating Expenses" shall mean and include, without limitation, all expenses, costs and amounts of every kind and nature that Landlord pays or incurs during the Lease Year because of or in connection with the ownership, operation, management, maintenance, repair, replacement or restoration of the Common Area, all assessments and other charges under the Declarations, all sums expended in connection with the Common Area for operating, maintaining, repairing, lighting, cleaning, sealing, striping, heating, air conditioning, ventilating, inspecting, painting (including painting of the exterior of buildings of the Shopping Center), and insuring (including liability insurance for personal injury, death, and property damage and contractual liability, fidelity bonds for personnel, insurance against fire, theft or other casualties, rent loss, workmen's compensation and employer's liability, and including any "deductible" cost incurred in connection with any covered loss, all costs and expenses of service and maintenance contracts, including but not limited to, HVAC, windows and general cleaning, removing of snow, ice, debris and surface water, security police, electronic intrusion and fire control and telephone alert system, machinery and equipment depreciation, all costs and expenses for inspecting, repairing and maintaining machinery and equipment used in the operation of the Common Area, all costs and expenses of inspecting, maintaining, repairing and replacing storm and sanitary drainage systems, sprinklers and other fire protection systems, and electrical, gas, water, telephone and irrigation systems, all costs and expenses for operating, maintaining, repairing and replacing off-site improvements (including costs of

operating, maintaining, repairing and replacing off-site detention areas and utility costs for traffic signals), all costs and expenses of traffic regulation, directional signs and traffic consultants, fees for permits, program services, and loudspeaker systems, all costs and expenses of planting and replacing flowers, shrubbery and planters, all costs and expenses (other than those of a capital nature) of replacement of, and repairing, paving, curbs, sidewalks, walkways, roadways, loading docks, roof, parking surfaces, landscaping, drainage, utilities, lighting facilities, and signage, costs and assessments of any property owners association covering the Shopping Center, all costs of uniforms, supplies and materials used in connection with the operation and maintenance of the Shopping Center, all salaries and other compensation and benefits of all persons engaged in the operation, maintenance or security of the Common Area, together with other fringe benefits including employer's social security taxes, unemployment taxes, insurance and other compensation, benefits and payments and any other expense imposed on Landlord, its contractors or subcontractors, pursuant to law or pursuant to any collective bargaining agreement covering employees engaged in the management of the Shopping Center or the operation, maintenance, repair or replacement of the Common Area, and administrative and overhead costs equal to 10% of the foregoing Common Area costs and expenses, any fees, charges and other costs including management fees not to exceed 5% of all Rents collected (or amounts in lieu of such fees), consulting fees, legal fees and accounting fees of all persons engaged by Landlord or otherwise reasonably incurred by Landlord in connection with the operation, maintenance, management and repair of the Shopping Center and Common Area. The Operating Expenses shall not include (a) any capital improvement to the Shopping Center, except as described below, (b) repairs, restoration or other work to the extent Landlord receives insurance proceeds, (c) expenses incurred in leasing or procuring tenants, leasing commissions, advertising expenses, (d) expenses for renovating space for new tenants, (e) legal expenses incident to enforcement by Landlord of the terms of any lease, (f) interest or principal payments on any mortgage or other indebtedness of Landlord, (g) depreciation of buildings, (h) any penalties incurred due to Landlord's violation of any governmental rule or authority (but the costs of compliance therewith, if such cost is chargeable to Tenant pursuant to this Lease may be included within Operating Expenses, (i) expenses associated with the operation of the business of Landlord such as personnel costs of employees not involved in management or operation of the Shopping Center, (j) amounts for which recover is obtained under warranties or insurance coverage, or (k) costs of providing improvements to the interior of any premises of any other tenants in the Shopping Center. Notwithstanding the foregoing, if Landlord installs equipment in or makes improvements or alterations to the Shopping Center that would be considered capital expenditures and that are for the purpose of reducing energy costs, maintenance costs or other Operating Expenses or are replacements for existing improvements or are required under any governmental laws, regulations, or ordinances (including any accessibility statute) that were not required at the date permits for construction of the Shopping Center were obtained, Landlord may include in Operating Expenses the cost of such equipment and such improvements and alterations, including reasonable charges for interest on such investment and reasonable charges for depreciation on the same so as to amortize such investment over the reasonable life of such equipment, improvement or alteration as reasonably determined by Landlord.

5.2.2 Payment of Operating Expenses. Tenant's proportionate share of the Operating Expenses for each Lease Year shall be paid in monthly installments on the first day of each calendar month, in advance, in an amount estimated by Landlord from time to time. If, for any reason, Landlord is unable to provide to Tenant the estimate of any of such charges prior to the commencement of any calendar year, then Tenant shall continue to pay monthly the same amount of such charges as was applicable for the previous month until receipt of such estimate, at which time, Tenant shall commence paying as of the first day of the calendar month after delivery of such new estimate, the new estimated amounts and the difference between the previous charges and the new estimated amounts. Within approximately ninety (90) days after the end of each Lease Year, Landlord shall furnish Tenant with a statement of the actual amount of Tenant's proportionate share of the Operating Expenses for such period. If the total of Tenant's monthly installments for any Lease Year does not equal Tenant's proportionate share as shown on such statement, then Tenant shall promptly pay Landlord any deficiency, or Landlord, upon receipt of such annual statement, shall issue to Tenant a credit invoice for such excess which shall be credited against Tenant's future payments of Operating Expenses, as the case may be.

5.2.3 Recalculation of Tenant's Pro Rata Share. Notwithstanding anything to the contrary in this Lease, Landlord may elect, from time to time, to have other tenants or owners ("**Maintaining Parties**") operate and maintain the Common Area located in the portion of the Shopping Center owned or leased by such Maintaining Parties, in which event such Maintaining Parties (and not Landlord) shall be responsible for the operation and maintenance of such portion of the Common Area. If Landlord elects to have any Maintaining Parties operate and maintain any portion of the Common Area, Tenant's proportionate share of Operating Expenses shall be calculated by (i) excluding from all the Operating Expenses the costs and expenses incurred by Maintaining Parties to maintain their own portion of the Common Area, and (ii) including in the denominator of the fraction determining Tenant's share thereof only the number of leasable square feet of floor area of all buildings owned or leased by parties other than the Maintaining Parties.

5.2.4 Tenant's Inspection and Audit Rights. If Tenant desires to audit Landlord's determination of the actual Tenant's proportionate share of the Operating Expenses for each Lease Year, Tenant must deliver to Landlord written notice of Tenant's election to audit within six months after Landlord's delivery of the statement of such amount under **Section 5.2.2**. If such notice is timely delivered, and provided that no Event of Default (as such term is defined herein) then exists under this Lease, Tenant (but not any subtenant or assignee) may, at Tenant's sole cost and expense, cause a reputable, certified public accountant to audit Landlord's records relating to such amounts, on a non-contingency basis. Such audit will take place during regular business hours at a time and place reasonably acceptable to Landlord (which may

be the location within the State of California where Landlord or property manager maintains the applicable records). Tenant's election to audit Landlord's determination of Tenant's proportionate share of the Operating Expenses is deemed withdrawn unless Tenant completes and delivers the audit report to Landlord within 90 days after the date of the audit. If the audit report shows that the amount Landlord charged Tenant for Tenant's proportionate share of the Operating Expenses was greater than the amount this **Article 5** obligates Tenant to pay, unless Landlord reasonably contests the audit, Landlord will refund the excess amount to Tenant, within 30 days after Landlord receives a copy of the audit report. Landlord shall also promptly reimburse Tenant for the cost of the certified public accountant performing the audit (not to exceed \$2,500), if the overcharge is greater than five percent (5%) of the actual amount of Tenant's proportionate share of the Operating Expenses. If the audit report shows that the amount Landlord charged Tenant for Tenant's proportionate share of the Operating Expenses was less than the amount this **Article 5** obligates Tenant to pay, Tenant will pay to Landlord, as Additional Rent, the difference between the amount Tenant paid and the amount determined in the audit. Pending resolution of any audit under this Section, Tenant will continue to pay to Landlord all estimated amounts of Tenant's proportionate share of the Operating Expenses due under this Lease. Tenant must keep all information it obtains in any audit strictly confidential and may only use such information for the limited purpose this Section describes and for Tenant's own account.

## **ARTICLE 6 TENANT'S CONDUCT OF BUSINESS**

6.1 **Permitted Use.** Subject to the provisions of this Article, the Premises shall be used and occupied solely for the use set forth in **Section 12** of the Basic Lease Provision and for no other use or purpose whatsoever (the "**Permitted Use**").

6.2 **Trade Name.** Tenant shall use in the transaction of business in the Premises the trade name, if any, set forth in **Section 3** of the Basic Lease Provisions; provided, however, if Tenant is transacting business in the majority of its stores engaged in the Permitted Use, or any portion of such use, in the metropolitan area in which the Shopping Center is located under a different trade name, Tenant shall transact business in the Premises under the same trade name as used in the majority of such stores.

6.3 **Operating Covenants.** Tenant agrees to open the Premises to the public on or before the Opening Date. Tenant shall not at any time leave the Premises vacant, but shall in good faith continuously throughout the term of this Lease conduct and carry on in the entire Premises the Permitted Use. Tenant shall: (a) comply with the Rules and Regulations of Landlord as such may be amended from time to time; (b) secure and maintain a business license and all other applicable governmental approvals; (c) operate continuously and uninterruptedly in the entire Premises the business which it is permitted to operate under the provisions of this Lease; (d) keep the Premises and interior and exterior portions of windows, doors and all other glass or plate glass fixtures in a neat, clean, sanitary and safe condition; (e) warehouse, store or stock only such supplies and merchandise as Tenant intends to offer for sale at retail; (f) use for office space or other non-selling purposes only such space as is reasonably required for Tenant's business; (g) keep sidewalks adjacent to the Premises clean from visible trash, papers, oil, gum and other debris

6.4 **Hours of Business.** Tenant shall, except during reasonable periods of repairing, cleaning and decorating, not to exceed seven (7) consecutive days, keep the Premises open to the public for business with adequate and competent personnel in attendance on all days and during all hours (including evening) as is customary in Tenant's other traditional branch locations. Tenant further agrees to have its window displays, exterior signs and exterior advertising displays adequately illuminated continuously during all hours on all days that the Shopping Center is open for business to the public, as determined in Landlord's sole discretion.

6.5 **Compliance With Exclusive Use Provisions.** Tenant acknowledges that various tenants or occupants of the Shopping Center have been or will be granted exclusive uses within the Shopping Center, and no part of the Premises shall be used for any purpose or in any way that violates any of the provisions set forth on **Exhibit "D"** attached hereto or any provision hereafter deemed to be an additional provision of **Exhibit "D"** pursuant to this **Section 6.5**. If there is any conflict between the Permitted Use and the provisions set forth in **Exhibit "D"** and/or the Declarations, the provisions of **Exhibit "D"** and the Declarations will govern and control. Tenant agrees that neither it nor any successor, assign, concessionaire, subtenant or assignee shall use the Premises, or any part thereof, in any way that would violate any of the prohibited uses listed on **Exhibit "D"** or hereafter deemed to be an additional provision thereof, and notwithstanding the provisions of **Article 18**, Tenant shall be in immediate default under this Lease if Tenant violates the provisions of this **Section 6.5**. Tenant acknowledges that Landlord may hereafter grant other exclusive uses to other tenants or occupants of the Shopping Center or other prohibited uses for the benefit of such other tenant or occupant, and Tenant agrees that neither it nor any successor, assign, concessionaire, subtenant or assignee shall use the Premises, or any part thereof, in any way that would violate any such exclusive or prohibited use hereafter granted of which Tenant has received written notice, so long as such exclusive or prohibited use does not prohibit the use of the Premises for the Permitted Use. Upon receipt by Tenant of written notice of any such exclusive or prohibited use hereafter granted, such exclusive or prohibited use shall automatically be deemed to be an additional provision of **Exhibit "D"**, so long as such exclusive or prohibited use does not prohibit the use of the Premises for the Permitted Use. Tenant covenants and agrees that it will not withhold or delay its written acknowledgment of the addition of any such additional exclusive or prohibited use to **Exhibit "D"** if such acknowledgment is requested in writing by Landlord, and if Tenant fails to furnish such written acknowledgment of such addition within fifteen (15) days after Tenant's receipt of Landlord's written request therefor, Tenant shall be deemed to have given such written acknowledgment as of the expiration of such 15-day period.

6.6 Increase in Insurance. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will, in any way, materially increase the existing rate of, invalidate, or affect in any other way any fire or other insurance carried on the Premises and/or the Shopping Center Tract or any of its contents, or cause a cancellation of any insurance policy covering the Shopping Center Tract or any part thereof or any of its contents. Notwithstanding anything to the contrary contained herein, Tenant shall promptly, upon demand, reimburse Landlord for the full amount of any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this **Section 6.6**, it being understood that such demand for reimbursement shall not be Landlord's exclusive remedy.

6.7 Hazardous Materials. With the exception of small amounts typically used in credit union office business, in compliance with Applicable Laws, Tenant shall not cause or permit any Hazardous Materials (defined below) to be brought upon, kept or used in or about the Premises or Shopping Center by Tenant, its agents, employees, contractors or invitees, and shall not conduct or authorize the use, generation, transportation, storage, treatment or disposal at the Premises or the Shopping Center of any Hazardous Materials other than those expressly permitted, in writing, by Landlord. If Tenant breaches the obligation stated above, or if the presence of Hazardous Materials on the Premises, or Shopping Center caused or permitted by Tenant (including Hazardous Materials specifically permitted and identified below) results in contamination to the Premises, or Shopping Center, or any portion of the real property surrounding the Project (the "**Adjacent Property**"), or if contamination of the Premises, or Shopping Center, or Adjacent Property by Hazardous Materials otherwise occurs for which Tenant is legally liable to Landlord for damages resulting therefrom, then Tenant shall be liable and responsible for, without limitation, (i) removal from the Premises, or Shopping Center, or Adjacent Property of any Hazardous Materials and the cost of such removal; (ii) damages to persons or property in or on the Premises, or Shopping Center, or Adjacent Property; (iii) claims resulting therefrom; (iv) fines imposed by any governmental agency; and (v) any other liability as provided by law. In addition to the foregoing, Tenant shall indemnify, protect, defend and hold Landlord, its agents and contractors harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities and losses (including, without limitation, diminution in value of the Premises, or Shopping Center, or Adjacent Property), damages for the loss or restriction on use of leasable or usable space or of any amenity of the Premises, or Shopping Center, or Adjacent Property, damages arising from any adverse impact on marketing of space in the Shopping Center or the Adjacent Property, and sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, which arise during or after the Lease Term as a result of such contamination. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Materials present in the soil or ground water on or under the Shopping Center and arising out of breach of Tenant's obligation under this **Section 6.7**. Without limiting the foregoing, if the presence of any Hazardous Materials within the Shopping Center caused or permitted by Tenant results in any contamination of the Premises, or Shopping Center, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the Premises, or Shopping Center to the condition existing prior to the introduction of any such Hazardous Material, provided that Landlord's approval of such action shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long term or short term effect on the Shopping Center or the Adjacent Property and are permitted by any lender of Landlord having a first priority lien on the Shopping Center. Landlord shall, at Landlord's expense, indemnify, defend and hold harmless Tenant with respect to all Claims arising out of or resulting from any Hazardous Materials to the extent introduced by Landlord or parties in Landlord's control, in the Shopping Center after the Commencement Date of the Lease in violation of any Applicable Law.

6.7.1 Definition of Hazardous Materials. As used herein, the term "**Hazardous Materials**" or "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. Hazardous Materials include, without limitation, any material or substance which is or becomes (i) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presly-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance" or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum or petroleum product or fraction thereof, (vi) asbestos, (vii) listed under **Section 6.7** and defined as hazardous or extremely hazardous pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (viii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ix) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et. seq. (42 U.S.C. Section 6903), or (x) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 601 et. seq. (42 U.S.C. Section 9601). The term "Hazardous Materials" also includes, without limitation, any material or substance which is (a) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under any other environmental law; (b) polychlorinated biphenyl; (c) flammable explosives; (d) urea formaldehyde; and/or (e) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the

intent of the parties hereto to construe the terms "Hazardous Materials" and "environmental law" in their broadest sense.

6.7.2 Assignment and Subletting. If (i) any anticipated use of the Premises by any proposed assignee or subtenant involves the generation, storage, use, treatment or disposal of Hazardous Materials, or (ii) the proposed assignee or subtenant has been required by any prior landlord, lender or governmental authority to take remedial action in connection with Hazardous Materials contaminating a property and the contamination resulted from such party's action or use of the property in question, it shall not be unreasonable for Landlord to withhold its consent to an assignment or subletting to such proposed assignee or subtenant. Landlord may require that the proposed assignee or subtenant provide information and/or a certification executed by an authorized corporate officer with respect to the foregoing matters.

6.8 Compliance with Laws and Other Requirements. Tenant shall cause the Premises to comply in all material respects with all laws, ordinances, regulations and directives of any governmental authority having jurisdiction including, without limitation, any certificate of occupancy and any law, ordinance, regulation, covenant, condition or restriction affecting the building or Shopping Center which is applicable to the Premises (collectively "**Applicable Laws**"). Tenant shall not use the Premises or permit the Premises to be used in any manner which (i) violates any Applicable Laws, (ii) causes or is reasonably likely to cause damage to the Premises or Shopping Center, (iii) violates a requirement or condition of any fire and extended insurance policy covering the Premises and/or Shopping Center or increases the cost of such policy, (iv) constitutes or is reasonably likely to constitute a nuisance, annoyance or inconvenience to other tenants or occupants of the Shopping Center or its equipment, facilities or systems, (v) interferes with, or is reasonably likely to interfere with, the transmission or reception of microwave, television, radio, telephone or other communications signals by antenna or other facilities located in the Shopping Center, or (vi) violates the Declarations or any of the Rules and Regulations for the Shopping Center. Tenant shall also comply with all laws, ordinances and regulations regarding the disclosure of the presence or danger of Hazardous Materials.

6.9 Prohibited Uses. Tenant shall not (i) conduct within the Premises any fire, auction, bankruptcy or liquidation (whether of merchandise only or of the entire business of Tenant) sales, (ii) advertise that Tenant is "going out of business", (iii) permit any objectionable or unpleasant odors or noises to emanate from the Premises, (iv) with the exception of the outdoors ATMs, place or permit any radio, television, loud-speaker, amplifier or other sound broadcasting system on the roof or outside the Premises or where the same can be seen or heard from outside the building or in the Common Area, (v) place an antenna, awning or other projection on the exterior of the Premises, (vi) operate or permit the operation of any amusement or arcade type games in the Premises, (vii) use, or permit to be used, the malls or sidewalks adjacent to the Premises, or any other premises outside such space for the sale or display of any merchandise or for any other business, occupation, or undertaking except as permitted below, or (viii) take any other action which in the exclusive judgment of Landlord exercised in good faith would constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or interfere with their use of their respective premises, or which would tend to injure the reputation of the Shopping Center. Sidewalk sales or other outside activities of Tenant shall be prohibited, unless expressly permitted by the Declarations and Landlord.

6.10 Advertising. Tenant shall not affix upon the Premises any sign, advertising placard, name, insignia, trademark, descriptive material or other like item unless approved in writing by Landlord in advance. No advertising medium shall be utilized by Tenant within the Premises which can be heard or seen outside the Premises, including without limitation, flashing lights, searchlights, loudspeakers, phonographs, radios or televisions. Tenant shall not display, paint or place any handbill, bumper sticker or other advertising devices on any vehicle parked in the Common Area. Tenant shall not distribute any handbills or other advertising matter in the Shopping Center.

6.11 Shopping Center Name. Tenant shall use the name of the Shopping Center in its advertising as the address reference for the Premises only and not for any other purpose. Landlord reserves the right, in its sole discretion, to change the name and logo of the Shopping Center at any time.

## ARTICLE 7 UTILITY SERVICES

7.1 Gas, Electricity and Water. Landlord agrees to cause to be provided as part of the Leasehold Improvements mains, conduits and other facilities which are capable of supplying electricity, gas, water and sewer service to the Premises in substantial accordance with the specifications attached hereto as **Exhibit "F"**. Tenant hereby acknowledges the limits of the design standard of the electrical service to be furnished to the Premises as reflected on the specifications attached hereto as **Exhibit "F"** and, if additional capacity or wiring is required by Tenant, Tenant, after obtaining Landlord's approval with respect to the same, shall install such additional capacity or wiring at Tenant's own expense, provided it is permitted under State and local code. Tenant shall pay for all electricity, water and sewer service provided to the Premises and all such utilities shall be separately metered to the Premises. Without limiting the generality of the foregoing, Tenant shall pay at its sole cost and expense for any charges associated with the hook-up or "tap fees" and any governmental fees for any and all such utilities.

7.2 Heating and Air Conditioning. As more particularly described in **Exhibit "F"**, Landlord shall install the heating, air conditioning and ventilation units on the Premises, and thereafter, Tenant shall pay the cost for all heating, air conditioning and ventilation service provided to the Premises, including the cost of

maintenance, repair and replacement of same. Tenant will contract with a licensed HVAC Contractor and supply Landlord with copy of contract which Landlord, at its sole discretion, shall reasonably approve. In the event that Tenant does not maintain the HVAC in a professional manner, Landlord, at its sole option, may arrange for a preventative regularly-scheduled maintenance contract for the HVAC units; provided, however, Landlord shall provide Tenant thirty (30) days prior written notice of its intent to so arrange for a preventive maintenance contract for the HVAC units. The costs for such a maintenance contract will become a part of the Operating Expenses. Notwithstanding anything to the contrary in this Section, Tenant shall not be required to pay for the repair and replacement of the HVAC units, to the extent the manufacturer or installer of the HVAC unit pays such costs pursuant to any warranties issued by such manufacturer and installer.

7.3 Payment Terms for Landlord Supplied Utilities. Notwithstanding anything to the contrary contained herein, Landlord may, if it so elects, furnish one or more utility services to Tenant, and in such event Tenant shall purchase the use of such services as are tendered by Landlord, and shall pay within thirty (30) days from receipt of invoice as Additional Rent the rates established therefor by Landlord, which shall not exceed the rates which would be charged for the same service if furnished directly by the local public utility companies. All said billings shall be based upon Tenant's actual consumption of such utility services. Landlord may at any time upon forty-five (45) days notice to Tenant discontinue furnishing any such service without obligation to Tenant other than to connect the Premises to the public utility, if any, furnishing such service. If Tenant fails to pay any charges referred to in this Article when due, Landlord may pay the charge, and Tenant agrees to reimburse Landlord for any amount paid by Landlord plus interest thereon at the Interest Rate specified in **Section 9.1**.

7.4 Tenant Supplied Utilities. Landlord reserves the right, from time to time, to make reasonable and non-discriminatory modifications to the above standards for utilities and services. Tenant agrees to make all arrangements for and to be solely responsible for the direct payment of all separately metered or separately charged utility services, including, without limitation, all utility hook-up connection charges, fees and taxes, supplied to Tenant for Tenant's use in or about the Premises (including without limitation electric, natural gas, telephone, cable television and any other special utility requirements of Tenant), if any, to the Premises or to the Tenant and shall make such payments to the respective utility companies prior to delinquency. Such amounts shall not be included as Operating Expenses.

7.5 Waiver of Liability. No interruption in, or temporary stoppage of, any of the aforesaid services caused by repairs, renewals, improvements, alterations, strikes, lockouts, labor controversy, accidents, inability to obtain fuel or supplies, or other causes shall be deemed an eviction or disturbance of Tenant's use and possession, or render Landlord liable for damages, by abatement of Rent or otherwise or relieve Tenant from any obligation herein set forth. Furthermore, Landlord shall not be liable under any circumstances for loss of, or injury to, property or for injury to, or interference with, Tenant's business including, without limitation, loss of profits or consequential damages, however occurring, through or in connection with or incidental to (a) any failure to supply any heat, air conditioning, elevator, cleaning, lighting, security or other service Landlord has agreed to supply, (b) any surges or interruptions in electricity, or (c) the breakage or failure of any telephone lines, wires or cables in the Premises or Shopping Center, whether or not caused by any negligence of Landlord or by Landlord's installation of, maintenance of or failure to maintain any of the foregoing. In no event shall Landlord be required to provide any heat, air conditioning, electricity or other service in excess of that permitted by voluntary or involuntary guidelines or laws, ordinances or regulations of any governmental authority.

## ARTICLE 8 CONSTRUCTION OF LEASEHOLD IMPROVEMENTS AND DELIVERY OF POSSESSION OF THE PREMISES

8.1 Leasehold Improvements. Landlord shall construct and install interior improvements in the Premises (hereinafter referred to as "**Leasehold Improvements**") for the use and benefit of Tenant, subject to the following terms and conditions:

8.2 Landlord's Construction Obligations. Landlord agrees to construct the Leasehold Improvements in substantial accordance with the construction outline specifications attached hereto and made a part hereof as **Exhibit "F" ("Outline Specifications")**.

8.3 Landlord's Obligations. Landlord agrees to cause final plans and specifications for the Leasehold improvements to be prepared substantially in accordance with the Outline Specifications and the applicable building code as it is presently interpreted and enforced by the governmental bodies having jurisdiction thereof. After Tenant initially submits plans and specifications to Landlord for Tenant's work in the Premises, thereafter, if Landlord requests Tenant to specify additional details or layouts, Tenant shall specify same, subject to the provisions of the Outline Specifications, within ten (10) days after Landlord's request and so as not to delay the completion of the Leasehold Improvements. If Tenant causes such a delay pursuant to this Section 8.3, then the Termination Date (defined below) shall be concurrently extended, and Tenant shall pay to Landlord all increased costs or damages incurred by Landlord directly attributable to such delays caused by Tenant, and Tenant shall be responsible for lost rent, if any, arising out of delay in completion of the Leasehold Improvements that is directly caused by Tenant's delay.

8.4 Change Requests. If Tenant requests changes to the Leasehold Improvements (or the Outline Specifications) that increase the cost of constructing the Leasehold Improvements, and Tenant approves of that increase in costs instead of withdrawing the request for changes, then such additional cost

shall be paid by Tenant to Landlord within thirty (30) days from the date the Leasehold Improvements are Substantially Completed and Landlord has submitted a written statement to Tenant requesting such payment. In the event any portion of the Leasehold Improvements for which an allowance is provided is less than the amount allowed, there shall be no cash or other refund.

8.5 Delivery of Possession. Landlord shall give Tenant at least thirty (30) days prior written notice of the approximate date of Substantial Completion and delivery of possession of the Premises ("**Delivery of the Premises**"); provided, however, Landlord's failure to deliver such prior notice will not constitute a breach of this Lease or delay the actual Commencement Date or Rent Commencement Date. If the Premises is delivered and Tenant accepts possession of the Premises on a date earlier than the date of Substantial Completion of the Leasehold Improvements, all covenants, agreements and obligations (other than Rent and the obligation to operate) shall commence on such earlier date, and the Rent reserved herein and the Term shall commence on the Rent Commencement Date. If Substantial Completion does not occur on or before the "Termination Date" (defined below), then Tenant may terminate this Lease by delivering written notice of termination to Landlord not later than 30 days after the Termination Date. If Tenant timely delivers such notice of termination, then this Lease will terminate and the parties will have no further rights or obligations hereunder; provided, however, if Substantial Completion occurs within 10 days after Landlord receives Tenant's termination notice, then this Lease will remain in full force and effect. In the event of termination under this Section, Landlord will return all deposits to Tenant and reimburse Tenant for any out of pocket amounts spent for architectural drawings and engineering by Tenant up to \$25,000, with reasonable proof of expenditures. Any failure by Tenant to deliver such termination notice to Landlord on or before 30 days after the Termination Date will constitute a waiver of Tenant's right to terminate this Lease pursuant to this section, and this Lease will remain in full force and effect. The Termination Date will each be extended by reason of Tenant Delay or Force Majeure. Tenant's rights under this section will be Tenant's sole and exclusive rights and remedies against Landlord for any delay in achieving Substantial Completion of the Premises. As used herein, "**Termination Date**" means the date that is ten (10) months after (i) the Effective Date of this Lease, and (ii) the full execution and delivery of a lease agreement for the approximately 3,500 leasable square feet that is adjoining the Premises.

8.6 Substantial Completion. For purposes of this Lease, the phrase "**Substantial Completion**" or "**Substantially Completed**" shall mean that the Leasehold Improvements have been constructed and installed by Landlord substantially in accordance with the Outline Specifications and issuance of a temporary certificate of occupancy (or its equivalent) or other signoff by the City of Chino Hills sufficient for Tenant to commence its work within the Premises. If on the date the Leasehold Improvements are Substantially Complete there should remain items of construction or finishing work to be completed which do not materially interfere with Tenant's use, occupancy or enjoyment of the Premises, Landlord and Tenant shall within thirty (30) business days from the date the Leasehold Improvements are Substantially Completed prepare a written list (the "**Punch List**") of such uncompleted items. Landlord agrees to complete the Punch List item(s) within that time period which is reasonable for completion of such items. In the event of any dispute as to work performed or required to be performed by Landlord or the existence of any Punch List items or the completion thereof in accordance with the terms of the Lease, Landlord and Tenant shall appoint a mutually acceptable, neutral architect to decide the matter, and the parties will abide by the decision of that neutral architect.

8.7 Acceptance of Premises. Subject to Section 8.6, the acceptance of possession by Tenant shall be deemed conclusively to establish that the Premises and all other improvements of the Shopping Center required to be constructed by Landlord for use thereof by Tenant hereunder have been completed unless Tenant notifies Landlord in writing within thirty (30) days after the Commencement Date. Tenant waives any claim as to matters not listed in said notice.

8.8 Opening Date. Tenant shall open the Premises to the public for business no later than the Opening Date and shall thereafter continuously hold the Premises open for business in accordance with Article 6 hereof.

8.9 Certificates. Within ten (10) business days after Landlord's request therefor, but in no event earlier than the Opening Date, Tenant shall deliver to Landlord (a) an executed copy of the Commencement Date Memorandum (in the form attached hereto as Exhibit "G", and (b) the Certificate of Occupancy for the Premises issued by the appropriate governmental agency.

8.10 Tenant's Work and Signage. Upon Substantial Completion and Delivery of the Premises to Tenant, Tenant shall proceed with due diligence to cause Tenant's improvements to be performed, and to install Tenant's exterior signage (which shall be installed no later than the Rent Commencement Date), furniture, fixtures and equipment.

8.11 Tenant Improvement Allowance. Tenant shall be entitled to a reimbursement in the maximum amount of Nineteen and 39/100 Dollars (\$19.39) per leasable square foot of the Premises ("**Tenant Improvement Allowance**") for amounts spent by Tenant for (a) Tenant's work that is (i) directly related to the improvement of the Premises and (ii) necessary for Tenant to open for business as a credit union office, and/or (b) Tenant's Signage. Provided Tenant is not in default hereunder beyond any applicable cure period, Landlord shall pay the Tenant Improvement Allowance to Tenant within thirty (30) days after Tenant (i) has opened for business, (ii) paid its first installment of Annual Minimum Rent, and (iii) delivered to Landlord the following items:

- (a) A copy of the "Certificate of Occupancy" issued by the City of Chino Hills building department;
- (b) A copy of Tenant's recorded, valid "Notice of Completion", if applicable;
- (c) All mechanic's lien releases or other lien releases on account of Tenant's Work; and
- (d) Reasonable proof of Tenant's expenditures.

No portion of the Tenant Improvement Allowance shall be paid to Tenant for any uses other than those set forth in this Section, including, without limitation, the purchase of inventory for Tenant's business or any other items relating to the operation of Tenant's business. The cost of any work performed by Landlord in addition to Leasehold Improvements and/or which is performed by Landlord at Tenant's request, shall be deducted from the Tenant Improvement Allowance before the Tenant Improvement Allowance is paid to Tenant.

8.12 Tenant's Obligations. As more fully set forth in **Exhibit "F"**, Tenant agrees to cause preliminary drawings and final working drawings for Tenant's improvements to the Premises to be prepared in accordance with the applicable building code as it is presently interpreted and enforced by the governmental bodies having jurisdiction thereof, and Tenant shall submit the same to Landlord for its approval. Landlord agrees that it will not withhold its approval except for just and reasonable cause and will not act in an arbitrary or capricious manner with respect to the approval of the final plans and specifications. The final working drawings shall be approved by Landlord and Tenant by affixing thereon the signature or initials of an authorized officer or employee. Tenant must comply with the terms and conditions of **Article 13** in connection with construction of the Tenant's Improvements.

8.13 Automated Teller Machines. Subject to the Declarations, Landlord and Tenant hereby agree that Tenant shall be entitled, during the Lease Term (and any Option Term, if applicable) at its sole cost and expense and subject to the terms and conditions of this Section, to install, maintain and operate two (2) automated teller machines ("ATM"), together with related equipment and accessories (collectively, the "ATM Equipment") at the location on the exterior of the Premises approved by Landlord and Tenant pursuant to **Exhibit "F"** attached hereto. Tenant's installation of the ATM and ATM Equipment shall comply with all the terms and conditions of this Lease, the ATM and ATM Equipment shall be considered part of the Tenant Improvements. In connection with Tenant's installation, maintenance and operation of the ATM and ATM Equipment, Tenant shall, at its sole cost and expense (i) obtain all necessary federal, state, and local permits, licenses, and approvals; (ii) comply with all laws applicable to the installation, use and operation of the ATM and ATM Equipment, including, without limitation any provisions of the Americans with Disabilities Act; (iii) maintain the ATM and ATM Equipment, and the area in the vicinity thereof in clean and working condition and service the ATM and fill the ATM with cash and supplies (such services shall be performed before or after the normal business hours of the Project, except as deemed reasonably necessary by Tenant); (iv) provide all security measures that are customary for similar facilities in comparable buildings in the vicinity of the Project including, without limitation, mirrors, surveillance cameras, door locks, adequate lighting, card entry systems, and warning signage and Tenant shall review such security measures at least annually and revise same to reflect then customary security measures; (v) pay all real, personal property, or other taxes or fees assessed or imposed on the ATM or ATM Equipment; (vi) remove, upon the expiration or earlier termination of the Lease the ATM and ATM Equipment, including any ATM Signage (as that term is defined below) and repair any damage to the Project caused by such removal; and (vii) arrange with, and pay directly to, the applicable utilities, as the case may be, for furnishing such utilities and installing and maintaining of all telecommunications lines, services, and equipment as may be required by Tenant for the operation of the ATM and ATM Equipment and, in connection therewith, Tenant shall not modify or disturb any telecommunications lines, services and/or equipment in the Project without Landlord's prior written consent. Further, subject to Landlord's prior approval (which approval shall not be unreasonably withheld to the extent that such signage is required by applicable law), Tenant shall be permitted, at Tenant's sole cost and expense, to install signage and any other advertising material or displays at the ATM ("ATM Signage"), which ATM Signage shall identify Tenant and/or any automated teller network operated by Tenant and/or any shared automatic teller networks with which the ATM is affiliated. Tenant shall be responsible, at its sole cost and expense, for obtaining any permits or governmental approvals required for the ATM Signage and for the maintenance and repair of the ATM Signage. Landlord shall have no responsibility whatsoever for the ATM or ATM Equipment and shall not be liable for any damage or disruption to same however caused, including without limitation, due to a disruption in electrical or telecommunication service. Landlord makes no representations as to the suitability of the Project for an ATM, whether or not an ATM may be installed in the Project under applicable zoning ordinances or other laws, or as to the safety or security of the Project. The ATM and surrounding area shall be deemed to constitute a portion of the Premises for purposes of Tenant's maintenance, insurance and liability under this Lease.

8.14 Shared ATM. If Tenant's initial installation of improvements in the Premises, which were approved by Landlord, included sharing any ATM Equipment or other areas (the "Shared Areas") with a credit union operator that has leased the space adjoining the Premise (the "Adjoining Lease"), then in addition to the requirements of **Section 17.1** below, Tenant shall, on or before the last day of the Term of this Lease or the Adjoining Lease, or the date of sooner termination of this Lease or the Adjoining Lease, at Tenant's sole cost and expense, complete the "Demising Work." As used herein, "Demising Work" means all permits, demolition and construction necessary to properly convert the Shared Areas back to separate

areas. All terms and conditions of **Article 13** regarding alterations to the Premises, shall be applicable to the Demising Work.

#### **ARTICLE 9 OVERDUE AMOUNTS - SECURITY DEPOSIT**

9.1 Interest on Past Due Obligations. Any installment of Rent, or other charges to be paid by Tenant accruing under the provisions of this Lease, which is not paid when due, shall bear interest at the rate of Prime plus two percent (2%) per annum from the date when the same is due until the same shall be paid, but if such rate exceeds the maximum interest rate permitted by law, such rate shall be reduced to the highest rate allowed by law under the circumstances (the "Interest Rate"). For purposes of this Lease, the term "Prime" shall mean the rate announced from time to time by Bank of America, N.A., as its prime or reference rate. If Bank of America shall cease to announce its prime or reference rate, then Landlord shall select the rate of another financial institution to be substituted therefor. Tenant's covenants to pay the Rent are independent of any other covenant, condition, provision or agreement herein or elsewhere contained.

9.2 Late Charge. Tenant hereby acknowledges that the late payment by Tenant to Landlord of Rent or other charges to be paid by Tenant accruing under the provisions of this Lease, will cause Landlord to incur unanticipated costs, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges and late charges which may be imposed on Landlord by the terms of any encumbrance covering the Shopping Center. Accordingly, if any installment of Rent or other charges to be paid by Tenant accruing under the provisions of this Lease shall not be received by Landlord or Landlord's designee within ten (10) days after the date due, Tenant shall pay to Landlord a late charge equal to five percent (5%) of the overdue amount. The parties agree that the amount of such late charge represents a fair and reasonable estimate of the costs and expenses that would be incurred by Landlord by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor shall such acceptance prevent Landlord from exercising any of the other rights and remedies granted hereunder or by law to Landlord.

9.3 Security Deposit. N/A.

#### **ARTICLE 10 CARE OF THE PREMISES; SIGNS AND STOREFRONT; USE OF ROOF**

10.1 Tenant's Maintenance Obligations. Tenant will (a) keep the inside and outside of all glass in the doors and windows of the Premises clean; (b) keep all exterior store front surfaces of the Premises clean; replace promptly, at its expense, any broken door closers and any cracked or broken glass of the Premises with glass of like kind and quality; (c) maintain the Premises and the loading dock contiguous thereto, if any, at its expense in a clean, orderly and sanitary condition and free of insects, rodents, vermin and other pests; (d) keep any garbage, trash, rubbish or refuse removed at its expense on a regular basis and temporarily stored in the Premises in accordance with local codes or, if in Landlord's sole judgment it provides trash removal service for all tenants, Tenant shall participate in and pay Landlord for such service; if Landlord shall install compactors within the Shopping Center in lieu of providing trash pick-up, Tenant shall use said compactor service as designated by Landlord in such times and in such manner as Landlord shall direct, and for the use of said compactor service, Tenant agrees to pay as Additional Rent, a reasonable monthly charge as determined by Landlord, which may be adjusted by Landlord as of the first day of each Lease Year to reflect any increase or decrease in the rates for said service; (e) keep all mechanical apparatus free of vibration and noise which may be transmitted beyond the Premises; (f) comply with all laws, ordinances, rules and regulations of governmental authorities, including without limitation, the Act (as herein defined), and all recommendations of the insurance services office and/or Landlord's insurance carrier now or hereafter in effect relative to the use and occupancy of the Premises and the transaction of the business of Tenant in the Premises; and (g) light the show windows of the Premises and exterior signs until one-half hour after the closing of the Shopping Center and replace promptly all light bulbs and tubes when no longer serviceable. Tenant will not, without the written consent of Landlord, place or maintain any merchandise or other articles outside of the Premises (with the exception of ATMs); use or permit the use of any loudspeakers, phonographs, public address systems, flashing, moving and/or rotating lights, sound amplifiers, radio or broadcasts within the Premises which are in any manner audible or visible outside the Premises; cause or permit odors to emanate or be dispelled from the Premises; solicit business or distribute advertising material within the Shopping Center except within the Premises; or with the exception of armor car service, permit the parking of delivery vehicles so as to unreasonably interfere with the use of any driveway, walk, parking area, mall or other portion of the Common Area in the Shopping Center. Except as otherwise provided in this Article, the Premises shall at all times be kept in good order, condition and repair, reasonable wear and tear excepted, of equal quality with the original work by Landlord and Tenant at Tenant's own cost and expense and in accordance with the Declarations, the Rules and Regulations of the Shopping Center, all laws, directions, rules and regulations of regulatory bodies or officials having jurisdiction in that regard.

10.2 Landlord's Maintenance Obligations. Subject to including the costs thereof in Operating Expenses pursuant to **Article 5** hereof, Landlord shall keep or cause to be kept the foundations, the four outer walls, roof, downspouts and gutters of the building of which the Premises are a part and, to the extent Tenant or other tenants are not obligated to maintain the same, all utility systems, lines, conduits and appurtenances thereto located within the Shopping Center Tract in good repair, ordinary wear and tear excepted; provided, however, if the need for such repair is attributable to or result from the business activity

being conducted within the Premises, or if any repairs or replacements are necessitated by the negligence or willful misconduct of Tenant or anyone claiming under Tenant or by reason of Tenant's failure to observe or perform any conditions or agreements contained in this Lease or caused by alterations, additions or improvements made by Tenant, or anyone claiming under Tenant, then, in such case, the cost thereof shall be the sole responsibility of Tenant and Tenant agrees to reimburse Landlord for any costs and expenses incurred by Landlord with respect to such repair. Subject to the foregoing, it is agreed and understood that Tenant shall only be responsible for keeping in good repair the utility systems, lines, conduits and appurtenances thereto located within the Premises and solely and exclusively serving the Premises. Landlord shall commence repairs it is required to do hereunder within ten (10) days after receiving written notice from Tenant of the necessity of such repairs, but in no event shall Landlord be required to make any other repairs, subject to the provisions of **Articles 15 and 16** herein and Landlord shall have no liability for any damage or injury arising out of any condition or occurrence causing a need for such repairs. Since this Section 10.2 and the Lease, in general, contain the rights and obligations regarding repairs, and since the following statutes customarily apply to residential property, Tenant waives the provisions of Sections 1941 and 1942 of the Civil Code of the State of California, or any superseding statute, and of any other law permitting Tenant to make repairs at Landlord's expense.

10.3 **Storefront Modifications.** Tenant shall not, without Landlord's prior written consent, (i) make any changes to or paint the store front; or (ii) install any exterior lighting with the exception of ATM mandated lighting requirements by government jurisdictions, decorations, banners or temporary or portable signs; or (iii) affix signs, advertisements, banners, or other material to the outside of store windows nor to the exterior of any doors, nor to any exterior columns or storefront walls.

10.4 **Signage.** Subject to City approval and cooperation of the adjoining tenant in Shop Building S10, Tenant may install signs on all four (4) sides of Shop Building S10. All of Tenant's signage shall be subject to Landlord's prior written approval, which will not be unreasonably withheld, and must comply with the Declarations all applicable laws, rules, regulations, or ordinances and the Sign Criteria for the Shopping Center, attached hereto as **Exhibit "E-1"** and incorporated herein by reference. Tenant shall maintain its signage in good condition and repair during the Lease Term. All of Tenant's signage must be tastefully and professionally done and the use of hand-scribed signs of any kind is expressly prohibited. Landlord reserves the right to remove unauthorized signage. Tenant agrees to have erected and/or installed and fully operative on or before the Commencement Date all signs in accordance with Landlord's Sign Criteria. Tenant, upon vacation of the Premises, or the removal or alteration of its sign for any reason, shall be responsible for the repair, painting and/or replacement of the building fascia surface where signs are attached. Any signs or letterings shall be paid for by Tenant. Landlord will also use reasonable efforts to obtain approval from the appropriate governmental authorities of pylon signs and monument signs for the Shopping Center. Subject to governmental approval, Tenant shall have the right to use one particular panel position on the pylon or monument as described on **Exhibit "E-2."** Tenant shall fabricate and install all of its sign panels at its sole cost and expense. Such pylon signs and/or such monument signs, if any, will be erected at Landlord's sole expense; provided, however, Tenant shall reimburse Landlord for its proportionate share (based on the square footage of its sign panel compared to the total square footage of all tenant sign panels on such sign) of the cost to design and erect such pylon sign and/or such monument sign. In addition, Tenant shall pay, as Additional Rent, Tenant's proportionate share of the cost to maintain and repair such pylon sign.

10.5 **Tenant's Repair Obligations.** Tenant will repair promptly, at its expense, any damage to the Premises or any other improvements within the Shopping Center Tract (i) caused by Tenant or anyone claiming by or through Tenant or (ii) caused by the installation or removal of Tenant's property, regardless of fault or by whom such damage shall be caused, unless caused by Landlord, its agents, contractors, employees or licensees.

10.6 **Landlord's Rights to Exterior of Premises.** Landlord shall have the exclusive right to use all or any part of the roof of the Premises for any purpose, and to erect temporary scaffolds and other aids to construction on the exterior of the Premises, provided that access to the Premises shall not be denied; and to install, maintain, use, repair and replace within the Premises pipes, ducts, conduits, wires and all other mechanical equipment serving other parts of the Shopping Center Tract. Landlord may make any use it desires of the side or rear walls of the Premises, provided that such use shall not encroach on the interior of the Premises.

10.7 **Landlord's Right of Entry.** Landlord, its agents, contractors and employees, may enter the Premises after at least 24 hours notice (but at all reasonable times during an emergency), and following the reasonable and customary security procedures which Tenant, as a credit union, has instituted and made the applicable entering parties aware of, to: (a) examine the Premises; (b) perform any obligation to, or exercise any right or remedy of, Landlord under this Lease; (c) make repairs, alterations, improvements or additions to the Premises or to other portions of the Shopping Center as Landlord deems necessary or desirable; (d) perform work necessary to comply with laws, ordinances, rules or regulations of any public authority or of any insurance underwriter; (e) serve, post or keep posted any notices required or allowed under the provisions of this Lease, including, but not limited to, notices of non-responsibility for alterations, and (f) perform work that Landlord deems necessary to prevent waste or deterioration in connection with the Premises. Tenant shall not be entitled to an abatement or reduction of Annual Minimum Rent or Additional Rent if Landlord exercises any rights reserved in this Section. Landlord shall conduct its activities on the Premises hereunder in a manner that will minimize any inconvenience, annoyance or disturbance to Tenant. Landlord shall not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance, or other damage arising

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out of Landlord's entry on the Premises as provided in this Section, except damages resulting from the negligent acts or omissions of Landlord, or its authorized representatives.

#### ARTICLE 11 INSURANCE

11.1 Landlord's Property Insurance Obligations. Landlord shall maintain (or cause to be maintained) a policy of insurance equivalent to ISO special form coverage insuring the portion of the Shopping Center Tract owned by Landlord for the benefit of Landlord in an amount equal to the full replacement cost thereof without coinsurance (excluding foundation, grading and excavation costs) against:

(a) Loss or damage by fire; and

(b) Such other risk or risks of a similar or dissimilar nature as determined by Landlord, including, but without limiting the generality of the foregoing, windstorms, hail, explosion, vandalism, malicious mischief, civil commotion, earthquake and flood and such other coverage as may be deemed appropriate by Landlord, provided such additional coverage is obtainable and is required by Landlord's lender or is customarily obtained in comparable class "A" shopping centers owned by institutional owners.

Except as otherwise expressly provided in this Lease, Landlord's insurance obligations shall in no way limit or modify any of the obligations of Tenant under any provision of this Lease. Tenant shall be obligated to pay the Rent or other charges to be paid for by Tenant as called for hereunder in the event of damage to or destruction of the Premises or the Shopping Center Tract if such damage or destruction is occasioned by the willful act or omission of Tenant or its agents or employees. Insurance premiums paid by Landlord for insurance coverage required under this Article 11 shall be a portion of the "Operating Expenses" described in Article 5 hereof.

11.2 Tenant's Property Insurance Obligations. Tenant shall maintain at its sole expense a policy of insurance equivalent to ISO special form coverage insuring all of its machinery, equipment, furniture, fixtures, all leasehold improvements and alterations, personal property (including also property under the care, custody, or control of Tenant, except the Landlord's property) and business interests that may be located in, upon or about the Premises insured for the benefit of Tenant in an amount equal to the full replacement cost thereof without coinsurance against:

(a) Loss or damage by fire; and

(b) Such other risk or risks of a similar or dissimilar nature as are now, or may in the future be, customarily covered with respect to a tenant's machinery, equipment, furniture, fixtures, all leasehold improvements and alterations, personal property and business located in a building similar in connection, general location, use, occupancy and design to the Shopping Center Tract, including, but without limiting the generality of the foregoing, windstorms, hail, explosions, vandalism, theft, malicious mischief, civil commotion, water damage of any type, including sprinkler leakage, bursting of pipes, or explosion in an amount not less than the replacement cost thereof and such other coverage as Tenant or Landlord may deem appropriate or necessary.

The proceeds of such insurance shall be used for the repair or replacement of the property so insured, except that any insurance proceeds for the leasehold improvements that were included in "Landlord's Work" or paid for with the "Tenant Improvement Allowance" shall be paid to Landlord and Landlord shall be named as a loss payee in such insurance policy with respect to any such proceeds. Since the intent is to look to insurance for this risk, Tenant waives, releases and discharges Landlord from all claims or demands whatsoever which Tenant may have or acquire arising out of damage to or destruction of the machinery, equipment, furniture, fixtures, personal property and business of Tenant occasioned by fire or other cause, whether such claim or demand may arise because of the negligence or fault of Landlord and its agents, contractors, employees, licensees or otherwise, and Tenant agrees to look to the insurance coverage only in the event of such loss.

11.3 Landlord's Liability Insurance Obligations. Landlord shall, as a portion of the Operating Expenses defined in Article 5, maintain or caused to be maintained, for its benefit and the benefit of its managing agent, commercial general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Shopping Center Tract, such insurance to afford protection to Landlord and its managing agent.

11.4 Tenant's Liability Insurance Obligations. Tenant shall, at Tenant's sole cost and expense but for the mutual benefit of Landlord, its managing agent and Tenant, maintain commercial general liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Premises (including so-called "Dram Shop" or liquor liability coverage if the Premises are permitted to be used for serving or dispensing alcoholic beverages; provided, however, nothing herein contained shall be deemed as permitting such use without the consent of Landlord, in its sole and absolute discretion), such insurance to afford protection to Landlord, its managing agent and Tenant with a combined single limit per occurrence of not less than Five Million and No/00 Dollars (\$5,000,000.00) per occurrence and general aggregate. Such policies of insurance shall be written in companies reasonably satisfactory to Landlord, naming Landlord, its managing agent and any other parties designated by Landlord as additional insureds thereunder, and such policies, or a memorandum or certificate of such insurance, including an additional

insured endorsement and any other endorsements required by Landlord shall be delivered to Landlord endorsed "Premium Paid" by the company or agency issuing the policy or accompanied by other evidence satisfactory to Landlord that the premium has been paid. All policies shall indicate they may not be canceled or modified without thirty (30) days prior written notice to Landlord. At such time as insurance limits required of tenants in shopping centers comparable to the Shopping Center in the area in which the Shopping Center is located are generally increased to greater amounts, Landlord shall have the right to reasonably require such greater limits as may then be customary. Tenant agrees to include in such policy the contractual liability coverage insuring Tenant's indemnification obligations provided for herein. Any such coverage shall be indicated in the policy as primary to any liability coverage secured by Landlord. Such insurance shall also afford coverage for all claims based upon acts, omissions, injury or damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

11.5 Additional Insurance Obligations of Tenant. In addition to the other insurance obligations of Tenant as set forth in this **Article 11**, Tenant agrees throughout this Lease Term to maintain in full force and effect (i) plate glass insurance covering all plate glass on the Premises at full replacement value, and (ii) worker's compensation insurance as required by law and employer's liability insurance in the amount of One Million Dollars (\$1,000,000.00).

11.6 Indemnification.

11.6.1 Tenant's Indemnity. Tenant shall indemnify, protect, defend and hold Landlord and Landlord's directors, officers, shareholders, affiliates, employees, agents, lenders, managing agent, successors and assigns (collectively "**Landlord Parties**") harmless from and against any and all claims, actions, damages, penalties, liens, liability, loss, cost or expense, including, without limitation, attorneys' fees and costs (including those incurred in enforcing this provision) that may arise from a third party claim that (i) arises from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease; (ii) arises out of any bodily injury, personal injury or property damage occurring to such third party at the Premises, even if resulting from the negligent act or omissions of Landlord or of Landlord Parties; or (iii) is caused by Tenant or Tenant's employees, representatives, agents, contractors, or licensees. In case any action or proceeding is brought against Landlord or Landlord Parties and such a claim is a claim from which Tenant is obligated to indemnify Landlord pursuant to this Section, Tenant, upon notice from Landlord, shall resist and defend the action or proceeding by counsel reasonably satisfactory to Landlord. Tenant's indemnity and defense obligations will be triggered by the mere assertion of a claim, without regard to whether or not the claim has merit or whether or not it is alleged that the claim was caused by Tenant's negligence or wrongful act.

11.6.2 Landlord's Indemnity. Subject to Tenant's waivers, releases and agreements in this Lease, Landlord will indemnify, protect, defend and hold harmless Tenant against any claims and actions brought against Tenant by third parties which (a) arise out of any bodily injury, death or property damage occurring to such third parties with the portion of the Shopping Center Tract owned by Landlord (other than within the Premises), (b) are not caused in whole or in part by Tenant, and (c) are caused solely by Landlord's negligence or willful misconduct.

11.7 Waiver. Notwithstanding anything to the contrary contained in this Lease, neither party, nor its officers, directors, shareholders, employees, agents, nor invitees, nor, in the case of Tenant, its subtenants, shall be liable to the other party or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property, when such loss is caused by any of the perils which are or could be insured against under a standard ISO special form coverage policy, even though the loss or damage might have been caused by the negligence of such party, its employees and agents, but excluding any loss or damage caused by intentionally wrongful actions or omissions. If, by reason of the foregoing waiver, either party is unable to obtain the insurance required under this **Article 11**, the waiver shall be deemed not to have been made by that party. If either party is unable to obtain the insurance required under this **Article 11** without the payment of any additional premium therefor, then unless the party claiming the benefit of the waiver agrees to pay the other party for the cost of the additional premium within thirty (30) days after notice setting forth the requirement and the amount of the additional premium, the waiver will be of no force and effect between the other party and the claiming party. Each party shall use reasonable efforts to obtain the insurance required under this **Article 11** from a company that does not charge an additional premium or, if that is not possible, from a company that charges the lowest additional premium. Each party shall give the other party notice at any time when it is unable to obtain insurance with such a waiver of subrogation without the payment of an additional premium, and the foregoing waiver shall be effective until thirty (30) days after notice is given. Each party represents that its current insurance policies allow such waiver.

11.8 Tenant's Waiver. Tenant agrees, to the extent permitted by law, that Landlord or Landlord Parties shall not be liable, and Tenant waives all claims, for damage to property and business sustained during the term of this Lease by Tenant occurring in or about the Shopping Center, resulting directly or indirectly from any existing or future condition, defect, matter or thing in the Premises, the Shopping Center or any part thereof, or from equipment or appurtenances becoming out of repair, or from accidents or from any occurrence or act or omission of Landlord or Landlord Parties or any tenant or occupant of the Shopping Center or any other person. This Section shall apply especially, but not exclusively, to damage caused as aforesaid or by the flooding of basements or other subsurface areas, or by refrigerators, sprinkling devices, air conditioning apparatus, water, snow, frost, steam, excessive heat or cold, falling plaster, broken glass, sewage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, and shall apply equally,

whether any such damage results from the act or omission of other tenants or occupants in the Shopping Center or any other persons, and whether such damage be caused by or result from any of the aforesaid, or shall be caused by or result from other circumstances of a similar or dissimilar nature. The foregoing waiver shall not apply to damage that is covered by Landlord's insurance required to be carried under this **Article 11**.

11.9 **Deductible.** Anything herein to the contrary notwithstanding, in the event any damage to the Shopping Center Tract results from any act or omission of Tenant or its agents, contractors, employees, invitees, customers or licensees, and all or any portion of Landlord's loss is deductible, Tenant shall pay to Landlord the amount of such deductible loss (not to exceed \$2,500 per event).

11.10 **Tenant's Property.** All property in the Shopping Center or within the Premises belonging to Tenant or its agents, contractors, employees, licensees, customers or invitees shall be at the risk of Tenant only. Landlord shall not be liable for damage thereto or theft, misappropriation or loss of such property, and Tenant agrees to defend and hold Landlord Parties harmless and indemnify them against claims and liability for injuries to such property. The foregoing limitation on liability shall not apply to damage or loss that is covered by Landlord's insurance required to be carried under this **Article 11**. In addition, Tenant acknowledges and understands that safety and security devices, services and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in any given instance prevent theft or other criminal acts, or ensure safety of persons or property and that any risk that any safety or security device, service or program may not be effective, or may malfunction, or may be circumvented by a criminal, is assumed by Tenant and that Landlord shall not have any responsibility or liability for providing or failing to provide any of the foregoing.

11.11 **Blanket Insurance Policy.** Anything herein to the contrary notwithstanding, Tenant shall not be precluded from taking out insurance of the kind and in the amount provided for in this Article under a blanket insurance policy or policies (certificates thereof reasonably satisfactory to Landlord shall be delivered to Landlord) which may cover other properties owned or operated by Tenant as well as the Premises; provided, however, that such policies of blanket insurance shall, as respects the Premises, contain the various provisions required of such an insurance policy by the foregoing provisions of this Article and, for liability insurance, must be made specifically applicable to the Premises and this Lease on a "per location" basis and, for property insurance, must include "agreed amount, no coinsurance" provisions.

11.12 **Commencement of Insurance Obligations.** Commencing as of the Delivery Date or Tenant's earliest possession of the Premises and continuing during the Term, Tenant shall, at its sole cost and expense, procure, pay for and keep in full force and effect all of the types of insurance required under this **Article 11**, in at least the amounts and in the form specified herein.

11.13 **Increased Premiums Due to Use of Premises.** Tenant shall not do any act in or about the Premises which will increase the insurance rates upon the building of which the Premises are a part. Tenant agrees to pay to Landlord upon demand the amount of any increase in premiums for insurance resulting from Tenant's use of the Premises, whether or not Landlord shall have consented to the act on the part of Tenant.

11.14 **Failure to Provide Evidence of Insurance.** In the event Tenant fails to provide Landlord with evidence of insurance required under this Article, Landlord may, but shall not be obligated to, without further demand upon Tenant, and without waiving or releasing Tenant from any obligation contained in this Lease, obtain such insurance and Tenant agrees to repay, upon demand all such sums incurred by Landlord in effecting such insurance. All such sums shall become a part of the Additional Rent payable hereunder, but no such payment by Landlord shall relieve Tenant from any default under this Lease.

## **ARTICLE 12 CERTAIN RIGHTS RESERVED BY LANDLORD**

Landlord reserves the following rights exercisable without notice and without liability to Tenant (including but not limited to a right of entry to effectuate the following rights) and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession, or giving rise to any claim for setoff or abatement of rent:

12.1 **Regulate Heavy Equipment.** To approve the weight, size and location of safes and other heavy equipment and articles in and about the Premises and the Shopping Center and to require all such items to be moved into and out of the Shopping Center and the Premises only at such times and in such manner as Landlord shall direct in writing.

12.2 **Exclusive Businesses.** To grant to anyone the exclusive right to conduct any particular business or undertaking in the Shopping Center.

12.3 **Emergency Entry.** Landlord and its agents may enter the Premises at any time in case of emergency and shall have the right to use any and all means which Landlord may deem proper to open such doors during an emergency in order to obtain entry to the Premises. Any entry to the Premises obtained by Landlord in the event of an emergency shall not, under any circumstances, be construed or deemed to be a forcible or unlawful entry into, or detainer of, the Premises, or to be an eviction of Tenant from the Premises or any portion thereof.



12.4 Exhibition of Premises. Subject to Tenant's security concerns and potential procedures described in **Section 10.7**, Tenant shall permit Landlord and its agents, upon notice, to enter and pass through the Premises or any part thereof at reasonable times during normal business hours to: (a) post notices of non-responsibility; (b) exhibit the Premises to holders of encumbrances on the interest of Landlord under this Lease and to prospective purchasers, mortgagees or Tenants of the Building; and (c) during the period of six (6) months prior to the expiration of the Lease Term or upon the termination of this Lease or Tenant's vacation or abandonment of the Premises, exhibit the Premises to prospective Tenants thereof. In addition to the foregoing, during the last 6 months of term, Landlord may post customary "For Sale" or "For Lease" signs on the Premises. If during the last month of the Lease Term, Tenant shall have removed substantially all of Tenant's property and personnel from the Premises, Landlord may enter the Premises and repair, alter, and redecorate the same, without abatement of Rent and without liability to Tenant; and such acts shall have no effect on this Lease.

12.5 Right of Landlord to Perform. All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Rent due Landlord, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder, including, but not limited to, the failure to commence and complete maintenance or repairs promptly and adequately, and the failure to remove any liens or otherwise to perform any act or fulfill any obligation required of Tenant under this Lease, Landlord may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant---after providing Tenant with written notice and five (5) day opportunity to cure and Tenant has failed to cure, or if the cure cannot reasonably be completed within such five (5) day period Tenant has failed to commence the cure within such five (5) day period and thereafter to continuously work to complete the cure---make any such payment or perform any such other act on Tenant's part to be made or performed as required by this Lease. In connection with the foregoing, all costs and expenses incurred by Landlord, plus an administrative charge equal to ten percent (10%) of such costs and expenses, plus interest at the Interest Rate specified in Article 9 accruing from the date incurred until repaid by Tenant, shall be payable to Landlord by Tenant as Rent, upon demand. Landlord shall have (in addition to any other right or remedy of Landlord) the same rights and remedies in the event of Tenant's nonpayment of such sums, as in the case of default by Tenant in the payment of Rent to Landlord.

### ARTICLE 13 ALTERATIONS AND IMPROVEMENTS

13.1 Procedure For Tenant's Improvements. Tenant shall not make any modifications, improvements, alterations, additions or installations in or to the Premises, (hereinafter referred to as the "Work") without Landlord's prior written consent, which consent may not be unreasonably withheld by Landlord. Along with any request for Landlord's consent and before commencement of the Work or delivery of any materials to be used in the Work to the Premises or into the Shopping Center, Tenant shall furnish Landlord with plans and specifications, names and addresses of contractors, copies of contracts, necessary permits and licenses, insurance certificates, and such other information concerning the Work as Landlord may reasonably request. Tenant agrees to defend and hold Landlord forever harmless from any and all claims and liabilities of any kind and description which may arise out of or be connected in any way with said modifications, improvements, alterations, additions or installations. All Work shall be done only by contractors or mechanics approved by Landlord, which approval shall not be unreasonably withheld. All Work done by Tenant, its agents, employees, or contractors shall be done in such a manner as to avoid labor disputes. Tenant shall pay the cost of all such modifications, improvements, alterations, additions or installations, and also the cost of painting, restoring, or repairing the Premises and the Shopping Center occasioned by such modifications, improvements, alterations, additions or installations. Except in connection with the initial work of improvements Tenant performs in the Premises, Tenant shall also pay the costs of any third party architect, engineer or consultant that Landlord may hire in connection with the Work and Landlord's rights related thereto. Upon completion of the Work, Tenant shall furnish Landlord with contractor's affidavits or unconditional lien releases and full and final waivers of liens, and receipted bills covering all labor and materials expended and used. The Work shall comply with all insurance requirements and all laws, ordinances, rules and regulations of all governmental authorities including without limitation the Act (as herein defined) and shall be constructed in a good and workmanlike manner. Tenant shall permit Landlord to inspect construction operations in connection with the Work at any reasonable time. Landlord shall have the right to immediately cease construction operations if Tenant fails to meet the requirements of this Article. Tenant shall not be allowed to make any alterations, modifications, improvements, additions, or installations if such action results or would result in a labor dispute or otherwise would materially interfere with Landlord's operation of the Shopping Center. Landlord, by written notice to Tenant given at or prior to termination of this Lease, may require Tenant to remove any improvements, additions or installation installed by Tenant in the Premises at Tenant's sole cost and expense, and repair or restore any damage caused by the installation and removal of such improvements, additions, or installations; provided, however, the only improvements, additions or installations which Tenant shall remove shall be those specified in such notice. Notwithstanding anything to the contrary contained herein, Tenant shall be permitted to perform Work not affecting the exterior of the Premises or the structural or substantially affects the HVAC, electrical, plumbing and fire safety systems of the Premises or the Shopping Center, which does not in the aggregate cost more than \$50,000.00 in any twelve (12) month period (but subject to all the other terms of this Article other than (i) the requirements set forth in the second sentence of this Article and (ii) furnishing Landlord with contractors' affidavits and lien waivers if requested by Landlord), provided Tenant notifies Landlord at least ten (10) days prior to the commencement of such Work and delivers to Landlord a copy of the plans for such work, if Tenant has arranged to have plans prepared therefor.

13.2 Bond Requirements. Intentionally omitted.

13.3 Written Notification Required. Tenant will notify Landlord in writing fifteen (15) days prior to commencing any alterations, additions or improvements to the Premises so that Landlord shall have the right to record and post notices of non-responsibility on the Premises.

13.4 Freedom From Liens. Tenant shall keep the Premises, all other property therein and the Shopping Center free from any liens arising out of any Work performed, material furnished or obligations incurred by Tenant, and Tenant shall indemnify, protect, defend and hold Landlord harmless from any liens and encumbrances arising out of any Work performed or material furnished by or at the direction of Tenant. In the event that Tenant shall not, within ten (10) days following the imposition of any such lien, cause such lien to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of and/or defense against the claim giving rise to such lien. All such sums paid by Landlord and all expenses incurred by it in connection therewith, including attorneys' fees and costs, shall be payable as Additional Rent to Landlord by Tenant on demand with interest at the rate specified in **Article 9** accruing from the date paid or incurred by Landlord until reimbursed to Landlord by Tenant.

13.5 Alterations Part of Premises. Any additions to, or alterations of, the Premises, except as specified in Tenant's notice to Landlord, shall become at once a part of the Premises and belong to Landlord without compensation to Tenant provided, however, that notwithstanding the foregoing, Landlord shall have the right, prior to the expiration or sooner termination of this Lease to require Tenant to remove, at Tenant's sole cost and expense any alterations installed by Tenant and Tenant shall promptly complete such removal, repairing any damage caused thereby to the reasonable satisfaction of Landlord.

#### ARTICLE 14 ASSIGNMENT AND SUBLETTING

14.1 Restriction. Without the prior written consent of Landlord, which shall not be unreasonably withheld, Tenant shall not, either voluntarily or by operation of law, assign, encumber, or otherwise transfer this Lease or any interest herein, or sublet the Premises or any part thereof, or permit the Premises to be occupied by anyone other than Tenant or Tenant's employees (any such assignment, encumbrance, subletting, occupation or transfer is hereinafter referred to as a "Transfer"). For purposes of this Lease, the term "Transfer" shall also include (a) if Tenant is a partnership, the withdrawal or change voluntarily, involuntarily or by operation of law, of a majority of the partners, or a transfer of a majority of partnership interests, within a twelve month period, or the dissolution of the partnership, and (b) if Tenant is a closely held corporation (i.e., whose stock is not publicly held and not traded through an exchange or over the counter) or a limited liability company, the dissolution, merger, consolidation, division, liquidation or other reorganization of Tenant, or within a twelve month period: (i) the sale or other transfer of more than an aggregate of 50% of the voting securities of Tenant (other than to immediate family members by reason of gift or death) or (ii) the sale, mortgage, hypothecation or pledge of more than an aggregate of 50% of Tenant's net assets. A Transfer in violation of the foregoing shall be void and, at Landlord's option, shall constitute a material breach of this Lease.

14.2 Notice to Landlord. If Tenant desires to assign this Lease or any interest herein, or to sublet all or any part of the Premises, then at least thirty (30) days but not more than one hundred eighty (180) days prior to the effective date of the proposed assignment or subletting, Tenant shall submit to Landlord in connection with Tenant's request for Landlord's consent:

(a) A statement containing (i) the name and address of the proposed assignee or subtenant; (ii) such financial information with respect to the proposed assignee or subtenant as Landlord shall reasonably require; (iii) the type of use proposed for the Premises; and (iv) all of the principal terms of the proposed assignment or subletting; and

(b) Four (4) originals of the assignment and assumption or sublease on a form approved by Landlord.

14.3 Landlord's Recapture Rights. At any time within twenty (20) business days after Landlord's receipt of all (but not less than all) of the information and documents described in **Section 14.2** above, Landlord may, at its option by written notice to Tenant, elect to: (a) sublease the Premises or the portion thereof proposed to be sublet by Tenant upon the same terms as those offered to the proposed subtenant; (b) take an assignment of this Lease upon the same terms as those offered to the proposed assignee; or (c) terminate this Lease in its entirety or as to the portion of the Premises proposed to be assigned or sublet, with a proportionate adjustment in the Rent payable hereunder if this Lease is terminated as to less than all of the Premises. If Landlord does not exercise any of the options described in the preceding sentence, then, during the above-described twenty (20) business day period, Landlord shall either consent or deny its consent to the proposed assignment or subletting.

14.4 Landlord's Consent Standards. In determining whether to grant its consent to the Tenant's sublet or assignment request, Landlord may consider any reasonable factor. Landlord and Tenant agree that failure to satisfy any one of the following factors, or any other reasonable factor, will be reasonable grounds for denying Tenant's request:

(a) financial strength of the proposed subtenant/assignee, as evidenced by audited financial statements certified by an independent public accountant, must show that proposed subtenant/Assignee is sufficient to support the obligations of this Lease;

(b) business reputation of the proposed subtenant/assignee must be satisfactory to Landlord;

(c) use of the Premises by the proposed subtenant/assignee (i) will not violate or create any potential violation of any laws and will be for only the Permitted Use; (ii) will not violate any other agreements affecting the Premises, Landlord or other tenants at the Shopping Center including but not limited to exclusive agreements entered into between Landlord and other tenants or owners at the Shopping Center and the Declarations; (iii) will complement Landlord's tenant mix at the Shopping Center; and (iv) will not constitute a nuisance or would disturb or endanger other tenants of the Shopping Center or interfere with their use of their respective premises, or which would tend to injure the reputation of the Shopping Center; and

14.5 Additional Rent. If Landlord consents to any such assignment or subletting, one-half (1/2) of the amount by which all sums or other economic consideration received by Tenant in connection with such assignment or subletting, whether denominated as Rent or otherwise, exceeds, in the aggregate, the total sum which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to less than all of the Premises under a sublease) shall be paid to Landlord promptly after receipt as Additional Rent under the Lease without affecting or reducing any other obligation of Tenant hereunder.

14.6 Landlord's Costs. If Tenant shall Transfer this Lease or all or any part of the Premises or shall request the consent of Landlord to any Transfer, Tenant shall pay to Landlord as Additional Rent all reasonable attorneys' fees and costs which Landlord incurs as a result of Tenant's proposed Transfer, not to exceed Two Thousand Five Hundred Dollars (\$2,500).

14.7 Continuing Liability of Tenant. Notwithstanding any Transfer, Tenant shall remain as fully and primarily liable for the payment of Rent and for the performance of all other obligations of Tenant contained in this Lease to the same extent as if the Transfer had not occurred; provided, however, that any act or omission of any transferee, other than Landlord, that violates the terms of this Lease shall be deemed a violation of this Lease by Tenant.

14.8 Non-Waiver. The consent by Landlord to any Transfer shall not relieve Tenant, or any person claiming through or by Tenant, of the obligation to obtain the consent of Landlord, pursuant to this Article 14, to any further Transfer. In the event of an assignment or subletting, Landlord may collect Rent from the assignee or the subtenant without waiving any rights hereunder and collection of the Rent from a person other than Tenant shall not be deemed a waiver of any of Landlord's rights under this Article 14, an acceptance of assignee or subtenant as Tenant, or a release of Tenant from the performance of Tenant's obligations under this Lease. If Tenant shall default under this Lease and fail to cure within the time permitted, Landlord is irrevocably authorized, as Tenant's agent and attorney-in-fact, to direct any transferee to make all payments under or in connection with the Transfer directly to Landlord (which Landlord shall apply towards Tenant's obligations under this Lease) until such default is cured.

14.9 Transfer to Affiliates. Nothing in this Section 14.9 shall limit Tenant's rights to have wholly-owned subsidiaries offer ancillary financial services in the Premises, as described in the Permitted Use in the Basic Lease Provisions. Provided that no Event of Default exists under this Lease, Tenant may, without Landlord's consent, assign or sublet all or a portion of this Lease or the Premises to an Affiliate if (a) Tenant notifies Landlord at least 30 days prior to such Transfer; (b) Tenant delivers to Landlord, at the time of Tenant's notice, current financial statements of the proposed transferee; and (c) Tenant delivers to Landlord, not later than the effective date of the Transfer, a written agreement reasonably acceptable to Landlord under which the transferee assumes and agrees to perform Tenant's obligations under this Lease and to observe all terms and conditions of this Lease. Tenant will also promptly provide Landlord with copies of any documents reasonably requested by Landlord to document the status and relationship between Tenant and its Affiliate. A Transfer to an Affiliate does not release Tenant from any liability or obligation under this Lease. Landlord's rights under this Lease to recapture or share in any profit Tenant receives from a Transfer do not apply to any Transfer this Section permits. "Affiliate" means any person or entity that, directly or indirectly, controls, is controlled by or is under common control with Tenant. For purposes of this definition, "control" means possessing the power to direct or cause the direction of the management and policies of the entity by the ownership of a majority of the voting securities of the entity.

## ARTICLE 15 DAMAGE BY FIRE OR OTHER CASUALTY

15.1 Tenantable Within 180 Days. If fire or other casualty shall render the whole or any material portion of the Premises untenable, and the Premises can reasonably be expected to be made tenantable within one hundred eighty (180) days from the date of such event, and Landlord receives insurance proceeds adequate to make the repair (but no shortfall in proceeds shall be a qualification to Landlord's obligation to repair if such shortfall was caused by Landlord's failure to maintain the insurance coverage required by this Lease), then Landlord shall repair and restore the Premises and the Shopping Center Tract to as near their condition prior to the fire or other casualty as is reasonably possible within such one hundred eighty (180) day period (subject to delays or causes beyond Landlord's reasonable control) and notify Tenant that it will be doing so, such notice to be mailed within sixty (60) days from the date of such damage or destruction, and this Lease shall remain in full force and effect, but the Rent for the period during which the Premises are

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untenantable shall be abated pro rata (based upon the portion of the Premises which is untenantable). If Landlord does not commence repairs within ninety (90) days, Tenant shall have the right to terminate this lease effective as of the date of such damage or destruction.

15.2 Not Tenantable Within 180 Days. If fire or other casualty shall render the whole or any material part of the Premises untenantable and the Premises cannot reasonably be expected to be made tenantable within one hundred eighty (180) days from the date of such event or Landlord does not receive or expect to receive insurance proceeds adequate to make the repair, then Landlord shall have the option to elect whether to repair or not repair, by providing written notice of such election to Tenant within ninety (90) days from the date of such damage or destruction; provided, however, Landlord may only elect not to repair if Landlord makes the same election for all other tenants in the Shopping Center that are similarly situated. If Landlord elects to repair, then this Lease shall remain in full force and effect with Rent prorated as provided in **Section 15.1** above, and if Landlord elects to terminate, then the Lease shall be terminated on the date set forth in Landlord's notice to Tenant which shall be not more than thirty (30) days after the date of the notice.

15.3 Shopping Center Substantially Damaged. In the event that more than fifty percent (50%) of the value of the Shopping Center Tract is damaged or destroyed by fire or other casualty and irrespective of whether such damage or destruction can be made tenantable within one hundred eighty (180) days thereafter, then at Landlord's option, by written notice to Tenant, mailed within ninety (90) days from the date of such damage or destruction, Landlord may terminate this Lease effective upon a date within ninety (90) days from the date of such notice to Tenant.

15.4 Landlord's Repair Obligations. If Landlord is required to or elects to repair as provided in this **Article 15**, then Landlord shall repair and restore the Premises and the Shopping Center with all due diligence and speed (subject to delays for causes beyond Landlord's reasonable control) and the Rent for the period during which the Premises are untenantable shall be abated pro rata (based upon the portion of the Premises which is untenantable). In no event shall Landlord be obligated to repair or restore any special equipment or improvements installed by Tenant at Tenant's expense.

15.5 Rent Apportionment. In the event of a termination of this Lease pursuant to this Article, Rent and other charges shall be apportioned and abated on a per diem basis and paid to the date of the fire or other casualty.

15.6 Waiver of California Statutes. Tenant acknowledges and agrees that the provisions of this **Article 15** shall govern the rights and obligations of Landlord and Tenant in the event of damage to or destruction of the Premises. Since **Article 15** outlines the parties' rights and obligations with particularity, Tenant waives the protection of any statute, code or judicial decision which grants a tenant the right to terminate a lease in the event of damage or destruction of the premises, including, but not limited to, the provisions of Sections 1932(2) and 1933(4) of the Civil Code or any successor statute or law.

## **ARTICLE 16 EMINENT DOMAIN**

16.1 Tenant's Termination. If the whole of or any substantial part of the Premises is taken by any public authority under the power of eminent domain, or taken in any manner for any public or quasi-public use, so as to render (in Tenant's reasonable judgment) the remaining portion of the Premises unsuitable for the purposes intended hereunder, the Term shall cease as of the day possession shall be taken by such public authority and Landlord shall make a pro rata refund of any prepaid Rent. All damages awarded for such taking under the power of eminent domain or any like proceedings shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord its interest, if any, in said award. If twenty five percent (25%) or more of the building area of the Shopping Center Tract or twenty-five percent (25%) or more of the value of the Shopping Center Tract or twenty-five percent (25%) of the Common Area is taken by public authority under the power of eminent domain, then, at Landlord's option, by written notice to Tenant, mailed within sixty (60) days from the date possession shall be taken by such public authority, Landlord may terminate this Lease effective upon a date within ninety (90) days from the date of such notice to Tenant. Tenant shall not have the right to terminate this Lease pursuant to the first sentence hereof unless (i) the business of Tenant conducted in the portion of the Premises taken cannot in Tenant's reasonable judgment be carried on with substantially the same utility and efficiency in the remainder of the Premises (or any substitute space securable by Tenant pursuant to clause (ii) hereof); and (ii) Tenant cannot secure substantially similar (in Tenant's reasonable judgment) alternate space upon the same terms and conditions as set forth in this Lease (including Rent from Landlord in the Shopping Center Tract). Any notice of termination shall specify a date no more than sixty (60) days after the giving of such notice as the date for such termination.

16.2 Tenant's Participation in Condemnation Award and Partial Condemnations. Anything in this **Article 16** to the contrary notwithstanding, Tenant shall have the right to prove in any condemnation proceedings and to receive any separate award which may be made for damages to or condemnation of Tenant's movable trade fixtures and equipment and for moving expenses; provided, however, Tenant shall in no event have any right to receive any award for its interest in this Lease or for loss of leasehold or any amount that would reduce the award payment to Landlord. Anything in this **Article 16** to the contrary notwithstanding, in the event of a partial condemnation of the Shopping Center Tract or the Premises and this Lease is not terminated, Landlord shall, at its sole cost and expense, restore the Premises and Shopping Center Tract to a complete architectural unit (but Landlord shall not be required to restore or improve the Premises with improvements in excess of the Leasehold Improvements, and the Annual Minimum Rent and

all other charges provided for herein during the period from and after the date of delivery of possession pursuant to such proceedings to the termination of this Lease shall be reduced to a sum equal to the product of the Annual Minimum Rent and all other charges provided for herein multiplied by a fraction, the numerator of which is the fair market rent of the Premises after such taking and after the same has been restored to a complete architectural unit, and the denominator of which is the fair market rent of the Premises prior to such taking. Tenant waives the protection of any statute, code or judicial decision which grants to Tenant a right to any other compensation, in the event of a taking, including, but not limited to California Code of Civil Procedure Sections 1265.130, 1265.150 or any successor statutes or laws.

#### ARTICLE 17 SURRENDER OF PREMISES

17.1 Surrender of Possession. On the last day of the Term of this Lease, or on the sooner termination thereof, Tenant shall peaceably surrender the Premises in good condition and repair consistent with Tenant's duty to make repairs as herein provided. On or before the last day of the Term or the date of sooner termination thereof, Tenant and Landlord shall arrange for a joint inspection of the Premises. On or before the last day of the Term of this Lease, or the date of sooner termination thereof, Tenant shall, at its sole cost and expense, remove all of its merchandise and trade fixtures and equipment from the Premises, and all property not removed shall be deemed abandoned. Tenant hereby appoints Landlord its agent to remove all property of Tenant from the Premises upon termination of this Lease and to cause its transportation and storage for Tenant's benefit, all at the sole cost and risk of Tenant, and Landlord shall not be liable for damage, theft, misappropriation or loss thereof and Landlord shall not be liable in any manner in respect thereto. Tenant shall pay all costs and expenses of such removal, transportation and storage. Tenant shall reimburse Landlord upon demand for any reasonable expenses incurred by Landlord with respect to removal, transportation, or storage of abandoned property and with respect to restoring said Premises to good order, condition and repair. All modifications, improvements, alterations, additions and fixtures, other than Tenant's trade fixtures and equipment, which have been made or installed by either Landlord or Tenant upon the Premises shall remain the property of Landlord and shall be surrendered with the Premises as a part thereof. If the Premises are not surrendered at the end of the Term or sooner termination thereof, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Premises, including, without limitation, claims made by any succeeding tenants founded on such delay and any attorneys' fees resulting therefrom. Tenant shall promptly surrender all keys for the Premises to Landlord at the place then fixed for the payment of Rent and shall inform Landlord of combinations on any vaults, locks and safes left on the Premises.

17.2 Tenant Retaining Possession. If Tenant remains in possession after expiration of this Lease and without the execution of a new Lease and without Landlord's written consent, Tenant shall be deemed to be occupying the Premises without claim of right, and Tenant shall pay Landlord for all costs arising out of loss or liability resulting from delay by Tenant in so surrendering the Premises as above provided and the Rent shall be escalated to one hundred twenty-five percent (125%) of the Rent payable by Tenant immediately prior to the expiration of this Lease.

#### ARTICLE 18 DEFAULT - REMEDIES

18.1 Covenants and Conditions. Tenant's performance of each of Tenant's obligations under this Lease is a condition as well as a covenant. Tenant's right to continue in possession of the Premises is conditioned upon such performance. Time is of the essence in the performance of all covenants and conditions.

18.2 Events of Default. The occurrence of any one or more of the following events (in this Article sometimes called "Event of Default") shall constitute a default and breach of this Lease by Tenant:

18.2.1 Failure to Pay. If Tenant fails to pay any Annual Minimum Rent, or Additional Rent payable under this Lease or fails to pay any obligation required to be paid by Tenant when and as the same shall become due and payable and such default continues for a period of five (5) business days after written notice from Landlord indicating such amount is due (which notice shall be deemed in lieu of and to satisfy the provisions of California Code of Civil Procedure Section 1161 or any successor statute);

18.2.2 Vacation or Abandonment. If Tenant abandons or vacates the Premises for 60 consecutive days;

18.2.3 Failure to Pay on Three Occasions. If Tenant on three (3) separate occasions in any one calendar year, when on such occasions Rent or any other charge required to be paid by Tenant becomes due, fails to pay such Rent or such charge as and when due, where such failure continues for five (5) days after written notice thereof by Landlord to Tenant whether or not such Rent or other charge is eventually paid;

18.2.4 Failure to Perform. If Tenant fails to perform any of Tenant's nonmonetary obligations under this Lease for a period of thirty (30) days after written notice from Landlord; provided that if more time is required to complete such performance, Tenant shall not be in default if Tenant commences such performance as soon as reasonably possible within the thirty (30)-day period and thereafter diligently pursues its completion within no later than sixty (60) days after the date of Landlord's notice. However, Landlord shall not be required to give such notice if Tenant's failure to perform constitutes a non-curable

breach of this Lease. The notice required by this subsection is intended to satisfy any and all notice requirements imposed by law on Landlord and is not in addition to any such requirement; or

18.2.5 Prohibited Transfer. If Tenant, by operation of law or otherwise, violates the provisions of **Article 14** hereof relating to assignment, sublease, mortgage or other transfer of Tenant's interest in this Lease or in the Premises or in the income arising therefrom.

18.2.6 Failure to Comply with Environmental Laws. Tenant, by operation of law or otherwise, violates the provisions of **Section 6.7** relating to compliance with environmental laws.

18.2.7 Other Defaults. (i) If Tenant makes a general assignment or general arrangement for the benefit of creditors; (ii) a petition for adjudication of bankruptcy or for reorganization or rearrangement is filed by or against Tenant and is not dismissed within thirty (30) days; (iii) if a trustee or receiver is appointed to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease and possession is not restored to Tenant within thirty (30) days; or (iv) if substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease is subjected to attachment, execution or other judicial or nonjudicial seizure which is not discharged within thirty (30) days. If a court of competent jurisdiction determines that any of the acts described in this subsection does not constitute an Event of Default and a trustee is appointed to take possession (or if Tenant remains a debtor in possession) and such trustee or Tenant transfers Tenant's interest hereunder, then Landlord shall receive, as Additional Rent, the difference between the Rent (or any other consideration) paid in connection with such assignment or sublease and the Rent payable by Tenant hereunder. As used in this subsection, the term "Tenant" shall also mean any guarantor of Tenant's Obligations under this Lease. If any such Event of Default shall occur, Landlord, at any time during the continuance of any such Event of Default, may give written notice to Tenant stating that this Lease shall expire and terminate on the date specified in such notice, and upon the date specified in such notice this Lease, and all rights of Tenant under this Lease, including all rights of renewal whether exercised or not, shall expire and terminate, or in the alternative or in addition to the foregoing remedy, Landlord may assert and have the benefit of any other remedy allowed herein, at law, or in equity.

18.3 Landlord's Remedies. On the occurrence of an Event of Default by Tenant, and at any time thereafter, with or without notice or demand and without limiting Landlord in the exercise of any right or remedy which Landlord may have, hereunder or under applicable law Landlord shall be entitled to the following rights and remedies set forth below.

18.3.1 Termination of Possession. Terminate Tenant's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Tenant shall immediately surrender possession of the Premises to Landlord. In such event Landlord shall have the immediate right to re-enter and remove all persons and property, and such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of Tenant, all without service of notice or resort to legal process and without being deemed guilty of trespass, or becoming liable for any loss or damage which may be occasioned thereby. In the event that Landlord shall elect to so terminate this Lease, then Landlord shall be entitled to recover from Tenant all damages incurred by Landlord by reason of Tenant's default, including:

(a) The worth at the time of award of any unpaid Rent which had been earned at the time of such termination; plus

(b) The worth at the time of award of the amount by which the unpaid Rent, which would have been earned after termination until the time of award, exceeds that portion of such Rent loss which Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss which Tenant proves could have been reasonably avoided; plus

(d) Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligation under this Lease or which in the ordinary course of things would be likely to result therefrom.

As used in **Subsections (a) and (b)** above, "worth at the time of award" shall be computed by allowing interest at the Interest Rate, as specified in **Article 9**. As used in **Subsection (c)** above, the "worth at the time of award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percentage point.

18.3.2 Re-Entry and Removal. Intentionally omitted

18.3.3 No Termination; Recovery of Rent. If Landlord does not elect to terminate this Lease as provided in this Article then Landlord may, from time to time, recover all Rent as it becomes due under this Lease. Because Tenant has the right to sublet or assign subject only to the reasonable limitations set forth in **Article 14**, Landlord has the remedy described in California Civil Code Section 1951.4 (Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). At any time thereafter, Landlord may elect to terminate this Lease and to recover damages to which Landlord is entitled.

18.3.4 Reletting the Premises. In the event that Landlord should elect to terminate this Lease and to relet the Premises, it may execute any new lease in its own name. Tenant hereunder shall have no right or authority whatsoever to collect any Rent from such tenant. The proceeds of any such reletting shall be applied as follows:

(a) First, to the payment of any indebtedness other than Rent due hereunder from Tenant to Landlord, including but not limited to storage charges or brokerage commissions owing from Tenant to Landlord as the result of such reletting;

(b) Second, to the payment of the costs and expenses of reletting the Premises, including alterations and repairs which Landlord, in its sole discretion, deems reasonably necessary and advisable and reasonable attorneys' fees incurred by Landlord in connection with the retaking of the said Premises and such reletting;

(c) Third, to the payment of Rent and other charges due and unpaid hereunder;

and

(d) Fourth, to the payment of future Rent and other damages payable by Tenant under this Lease.

18.3.5 Written Notice of Termination Required. Landlord shall not be deemed to have terminated this Lease and the Tenant's right to possession of the leasehold or the liability of Tenant to pay Rent thereafter to accrue or its liability for damages under any of the provisions hereof, unless Landlord shall have notified Tenant in writing that it has so elected to terminate this Lease. Tenant covenants that the service by Landlord of any notice pursuant to the unlawful detainer statutes of the State of California and the Tenant's surrender of possession pursuant to such notice shall not (unless Landlord elects to the contrary at the time of, or at any time subsequent to the service of, such notice, and such election be evidenced by a written notice to Tenant) be deemed to be a termination of this Lease or of Tenant's right to possession thereof.

18.3.6 Remedies Cumulative; No Waiver. All rights, options and remedies of Landlord contained in this Lease shall be construed and held to be cumulative, and no one of them shall be exclusive of the other, and Landlord shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law whether or not stated in this Lease. No waiver by Landlord of a breach of any of the terms, covenants or conditions of this Lease by Tenant shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition therein contained. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in said waiver. The consent or approval by Landlord to or of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar acts by Tenant.

18.4 Legal Costs. Tenant shall reimburse Landlord, upon demand, for any costs or expenses incurred by Landlord in connection with any breach or default of Tenant under this Lease, whether or not suit is commenced or judgment entered. Such costs shall include, but not be limited to: legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, if any action for breach of or to enforce the provisions of this Lease is commenced, the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and costs. Such attorneys' fees and costs shall be paid by the losing party in such action. Tenant shall also indemnify, defend and hold Landlord harmless from all costs, expenses, demands and liability incurred by Landlord if Landlord becomes or is made a party to any claim or action (a) instituted by Tenant, or by any third party against Tenant, or by or against any person holding any interest under or using the Premises by license of or agreement with Tenant; (b) for foreclosure of any lien for labor or material furnished to or for Tenant or such other person; (c) otherwise arising out of or resulting from any act or transaction of Tenant or such other person; or (d) necessary to protect Landlord's interest under this Lease in a bankruptcy proceeding, or other proceeding under Title 11 of the United States Code, as amended. Tenant shall defend Landlord against any such claim or action at Tenant's expense with counsel reasonably acceptable to Landlord or, at Landlord's election, Tenant shall reimburse Landlord for any legal fees or costs incurred by Landlord in any such claim or action.

18.5 Landlord's Consent. Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent in connection with any act which Tenant proposes to do and which requires Landlord's consent.

18.6 Waiver of Damages for Re-Entry. Tenant hereby waives all claims by Landlord's re-entering and taking possession of the Premises or removing and storing the property of Tenant as permitted under this Lease and will save Landlord harmless from all losses, costs or damages occasioned Landlord thereby. No such re-entry shall be considered or construed to be a forcible entry by Landlord.

18.7 Default By Landlord. Landlord's failure to perform or observe any of its obligations under this Lease shall constitute a default by Landlord under this Lease only if such failure shall continue for a period of thirty (30) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after Landlord receives written notice from Tenant specifying the default. The notice shall give in reasonable detail the nature and extent of the failure and shall identify the Lease provisions containing the

obligation or obligations. If Landlord shall default in the performance of any of its obligations under this Lease (after notice and an opportunity to cure as provided herein), Tenant may pursue any remedies available to it under law or this Lease, except that in no event shall Landlord be liable for punitive damages, lost profits, business interruption, speculative, consequential or other damages. In recognition of the fact that Landlord must receive timely payments of Rent and operate the Shopping Center, Tenant shall have no right of self-help to perform repairs or any other obligation of Landlord, and shall have no right to withhold, setoff or abate Rent.

## ARTICLE 19 SUBORDINATION

19.1 Lease Subordinate. This Lease shall be subject and subordinate to any mortgage, deed of trust or ground lease now or hereafter placed upon the Premises, the Shopping Center Tract, the Property, or any portion thereof by Landlord, its successors or assigns, and to amendments, replacements, renewals and extensions thereof. Tenant agrees at any time hereafter, upon demand, to execute and deliver any instruments, releases, or other documents that may be reasonably required for the purpose of subjecting and subordinating this Lease, as above provided, to the lien of any such mortgage, deed of trust or ground lease. In addition, upon request by Tenant and provided Tenant is not in default under this Lease, Landlord agrees to use diligent, commercially reasonable efforts to obtain a non-disturbance agreement from any such mortgage or deed of trust holder provided that if after exerting such diligent, commercially reasonable efforts Landlord is unable to obtain such agreement, Landlord shall have no further obligation to Tenant with respect thereto.

19.2 Attornment. The above subordination shall be effective without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination. Notwithstanding anything hereinabove contained in this Article 19, in the event the holder of any mortgage, deed of trust or ground lease shall at any time elect to have this Lease constitute a prior and superior lien to its mortgage, deed of trust or ground lease, then, and in such event, upon any such holder or Landlord notifying Tenant to that effect in writing, this Lease shall be deemed prior and superior in lien to such mortgage, deed of trust, ground lease, whether this Lease is dated prior to or subsequent to the date of such mortgage, deed of trust, ground lease and Tenant shall execute such attornment agreement or other document as may be reasonably requested by said holder.

19.3 Tenant's Notice of Default. Tenant agrees to give any mortgagees, ground lessor, and/or trust deed holders ("**Mortgagees**"), by registered or certified mail, a copy of any notice of default served upon Landlord simultaneously with the delivery of notice to Landlord, provided that prior to such notice Tenant has been notified, in writing of the address of such Mortgagees. Tenant further agrees that if Landlord shall have failed to cure said default within the time period prescribed in this Lease, then such Mortgagee shall have an additional twenty (20) day period to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary if within said 20-day period such Mortgagee has commenced and is diligently pursuing remedies to cure such default (including but not limited to commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so diligently pursued.

19.4 Declarations. Tenant agrees that: (a) as to its leasehold estate Tenant, and all persons in possession or holding under Tenant, will conform to and will not violate the terms of the Declarations; and (b) this Lease is and shall be subordinate to the Declarations and any amendments or modifications thereto now existing or, subject to Tenant's approval which shall not be unreasonably withheld, delayed or deferred, made in the future.

## ARTICLE 20 BANKRUPTCY OR INSOLVENCY

20.1 Bankruptcy. Tenant or Tenant's guarantor, if any, shall not cause or give cause for the appointment of a trustee or a receiver of the assets of Tenant or Tenant's guarantor, if any, and shall not make any assignment for the benefit of creditors, or be adjudicated insolvent. The allowance of any petition under any insolvency law except under the Bankruptcy Code or the appointment of a trustee or receiver of Tenant or Tenant's guarantor, if any, or of the assets of either of them, shall be conclusive evidence of the petition unless the appointment of a trustee or receiver is vacated within thirty days after such an allowance or appointment. Landlord does, in addition, reserve any and all other remedies provided in this Lease or in the law.

20.2 Covenants Upon Bankruptcy Filing. Upon the filing of a petition by or against Tenant under the Bankruptcy Code, Tenant, as debtor and as debtor in possession, and any trustee who may be appointed, agree as follows: (i) to perform each and every obligation of Tenant under this Lease, including, but not limited to, the manner of "operations" as provided in Article 6 of this Lease until such time as this Lease is either rejected or assumed by order of the United States Bankruptcy Court; (ii) to pay monthly in advance on the first day of each month as reasonable compensation for use and occupancy of the Premises an amount equal to all Annual Minimum Rent and other charges otherwise due pursuant to this Lease; (iii) to reject or assume this Lease within sixty (60) days of the filing of such petition under Chapter 7 of the Bankruptcy Code or within one hundred twenty (120) days (or such shorter term as Landlord, in its sole discretion, may deem reasonable so long as notice of such period is given) of the filing of a petition under any other Chapter; (iv) to give Landlord at least forty-five (45) days prior written notice of any proceeding relating to any assumption of

this Lease; (v) to give at least thirty (30) days prior written notice of any abandonment of the Premises; any such abandonment to be deemed a rejection of this Lease; (vi) to do all other things of benefit to Landlord otherwise required under the Bankruptcy Code; (vii) to be deemed to have rejected this Lease in the event of the failure to comply with any of the above; and (viii) to have consented to the entry of an order by an appropriate United States Bankruptcy Court providing all of the above, waiving notice and hearing of the entry of same.

20.3 No Waiver of Default. No default of this Lease by Tenant, either prior to or subsequent to the filing of such a petition, shall be deemed to have been waived unless expressly done so in writing by Landlord.

20.4 Lease Under Bankruptcy Code. It is understood and agreed that this is a lease of real property in a shopping center as such a lease is described in Section 365(b)(3) of the Bankruptcy Code.

20.5 Conditions. Included within and in addition to any other conditions or obligations imposed upon Tenant or its successor in the event of assumption and/or assignment are the following: (i) the cure of any monetary defaults and the reimbursement of pecuniary loss within not more than thirty (30) days of assumption and/or assignment; and (ii) the Premises, at all times, remains a single store and no physical changes of any kind may be made to the Premises unless in compliance with the applicable provisions of this Lease.

## ARTICLE 21 RADIUS RESTRICTION

Intentionally Omitted.

## ARTICLE 22 OTHER PROVISIONS

The following are made a part hereof, with the same force and effect as if specifically set forth herein:

- (a) Shopping Center Legal Description - **Exhibit "A"**.
- (b) Illustration of Site Plan, Premises Location, Reserved Parking Spaces, and Future Development Area - **Exhibit "A-1"**.
- (c) Rules and Regulations - **Exhibit "B"**.
- (d) Intentionally Omitted - **Exhibit "C"**.
- (e) Shopping Center Use Restrictions and Existing Exclusives - **Exhibit "D"**.
- (f) Sign Criteria - **Exhibit "E-1"**.
- (g) Description of Tenant's Pylon/Monument Sign Panel - **Exhibit "E-2"**.
- (h) Outline Specifications - **Exhibit "F"**.
- (i) Commencement Date Memorandum - **Exhibit "G"**.

## ARTICLE 23 AMERICANS WITH DISABILITIES ACT

In the event that any alteration or repair to the Premises is undertaken by Tenant with or without Landlord's consent, or is undertaken by Landlord at Tenant's request during the term of this Lease or any extended term, such alteration or repair shall (i) be designed and constructed in full compliance with the American's With Disabilities Act, as amended from time to time (the "**Act**") if such alteration is undertaken by Tenant, and (ii) shall be designed by Tenant in full compliance with the Act if such alteration or repair is undertaken by Landlord at Tenant's request, and the cost of any such design, alteration or repair to the Premises or the Shopping Center shall be borne by Tenant, including without limitation (a) the cost of any such design, alteration or repair required as a result of (i) Tenant or an assignee or subtenant being deemed a "Public Accommodation" or the Premises being deemed a "Place of Public Accommodation" or (ii) such alteration or repair being deemed to affect an "Area of Primary Function" (as such terms are defined in the Act); and (b) the cost of the installation or implementation of any "Auxiliary Aid" required under the Act as a result of the operation of Tenant's (or any assignee's or subtenant's) business within the Premises. In addition, Tenant shall be responsible for all costs and expenses incurred in order to cause the Premises and the operation of Tenant's business within the Premises to comply with the Act, and, if Tenant fails to keep and maintain the Premises in compliance with the Act Landlord shall have the right but not the obligation, at Tenant's sole cost and expense, to enter the Premises and cause the Premises to be put into compliance with the Act; and Tenant shall indemnify, defend and hold Landlord harmless from and against any and all costs, claims and liabilities, including but not limited to the fees of counsel, arising out of or resulting from Tenant's failure to maintain and keep the Premises in compliance with the Act.

**ARTICLE 24  
MISCELLANEOUS**

24.1 Time is of the Essence. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor.

24.2 Memorandum of Lease. Neither this Lease nor any Memorandum of this Lease may be recorded by Tenant without the prior written consent of Landlord.

24.3 Joint and Several Liability. Intentionally omitted.

24.4 Broker. Except as may be specifically set forth in the Basic Lease Provisions, Tenant represents and warrants that it has not had any dealings with any realtors, brokers or agents in connection with the negotiation of this Lease and agrees to indemnify, protect, defend (with legal counsel acceptable to Landlord) and hold Landlord harmless from the failure to pay any realtors, brokers or agents and from any cost, expense or liability for any compensation, commission or charges claimed by any other realtors, brokers or agents claiming by, through or on behalf of it with respect to this Lease and/or the negotiation hereof. Landlord and Tenant agree that no broker shall be entitled to any commission in connection with any Renewal Term, as such term is hereinafter defined, or any expansion of the Premises.

24.5 Estoppel Certificates. Tenant agrees from time to time, upon not less than ten (10) business days prior written request by Landlord to deliver to Landlord a statement in writing certifying (i) this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and stating the modifications); (ii) the dates to which the Rent and other charges have been paid; (iii) Landlord is not in default in any provision of this Lease or, if in default, the nature thereof specified in detail; (iv) the amount of monthly Rent currently payable by Tenant; (v) the amount of any prepaid Rent, and (vi) such other matters as may be reasonably requested by Landlord or any mortgagee or prospective purchaser of the Shopping Center Tract. If Tenant fails to deliver such statement to Landlord within such ten (10) business day period, Landlord and any prospective purchaser or encumbrancer of the Premises or the Shopping Center may conclusively presume and rely upon the following facts: (i) the terms and provisions of this Lease have not been changed except as otherwise represented by Landlord; (ii) this Lease has not been canceled or terminated and is in full force and effect, except as otherwise represented by Landlord; (iii) the current amounts of the Annual Minimum Rent and Additional Rent are, as represented by Landlord; (iv) there have been no subleases or assignments of the Lease; (v) not more than one month's Annual Minimum Rent or Additional Rent or other charges have been paid in advance; and (vi) Landlord is not in default under the Lease. In such event, Landlord is entitled to sign a statement of such facts and Tenant shall be estopped from denying the truth of such facts.

24.6 Notices. Except as otherwise required by law, any notice, information, request or reply ("Notice") required or permitted to be given under the provisions of this Lease shall be in writing and shall be given or served either personally or by mail. If given or served by mail, such Notice shall be deemed sufficiently given if (a) deposited in the United States mail, certified mail, return receipt requested, postage prepaid, or (b) sent by express mail, or other similar overnight service, provided proof of service is available, addressed to the addresses of the parties specified in the Basic Lease Provisions, provided that a copy of any notice sent to Landlord shall also be sent to the address set forth in the Basic Lease Provisions for the payment of Rent and to any mortgagee(s) designated by Landlord. Any Notice given or served by certified or overnight mail shall be deemed given or served as of the date of deposit. Either party may, by written notice to the other in the manner specified herein, specify an address within the United States for Notices in lieu of the address specified in the Basic Lease Provisions.

24.7 Landlord's Agent. All rights and remedies of Landlord under this Lease or that may be provided by law may be executed by Landlord in its own name, individually, or in the name of its agent, and all legal proceedings for the enforcement of any such rights or remedies, including those set forth in **Article 18**, may be commenced and prosecuted to final judgment and execution by Landlord in its own name or in the name of its agent.

24.8 Possession. Landlord covenants and agrees that Tenant, upon paying the Rent and other charges herein provided for and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept and performed, shall lawfully hold, occupy and enjoy the Premises during the Term in accordance with and subject to the terms of this Lease.

24.9 Successors. Subject to the restrictions on assignment and subletting contained herein, all rights and obligations of Landlord and Tenant under this Lease shall extend to and bind the respective heirs, executors, administrators, and the permitted concessionaires, successors, subtenants and assignees of the parties. If there is more than one (1) Tenant or if Tenant is a partnership or other entity and the members of which are subject to personal liability, each shall be bound jointly and severally by the terms, covenants and agreements contained in this Lease.

24.10 Severability. If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law. This Lease shall be construed and enforced in accordance with the laws of the state in which the Premises are located.

24.11 Landlord's Liability. Notwithstanding anything to the contrary contained in this Lease, it is expressly understood and agreed by and between the parties hereto that: (i) the recourse of Tenant or its successors or assigns against Landlord with respect to any alleged breach by or on the part of Landlord of any representation, warranty, covenant, undertaking or agreement contained in this Lease or otherwise arising out of Tenant's use of the Premises or Shopping Center, or Landlord's gross negligence or willful misconduct (collectively "Landlord's Lease Undertakings") shall extend only to Landlord's interest in the real estate of which the Premises demised under the Lease are a part ("Landlord's Real Estate") and not to any other assets of Landlord or its beneficiaries; and (ii) except to the extent of Landlord's interest in Landlord's Real Estate, no personal liability or personal responsibility of any sort with respect to any of Landlord's Lease Undertakings or any alleged breach thereof is assumed by, or shall be asserted or enforceable against Landlord or any of Landlord's directors, officers, employees, agents, partners, beneficiaries, trustees or representatives.

24.12 Transfers by Landlord. The term "Landlord" as used in this Lease so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners of the Shopping Center Tract at the time in question, and in the event of any transfer or conveyance, the then grantor shall be automatically freed and released from all personal liability accruing from and after the date of such transfer or conveyance as respects the performance of any covenant or obligation on the part of Landlord contained in this Lease to be performed, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall be binding on the Landlord, its successors and assigns, only during and in respect to their respective successive periods of ownership. In the event of a sale or conveyance by Landlord of the Shopping Center Tract or any part of the Shopping Center Tract, the same shall operate to release Landlord from any future liability upon any of the covenants or conditions herein contained and in such event Tenant agrees to look solely to the responsibility of the successor in interest of Landlord in and to this Lease. This Lease shall not be affected by any such sale or conveyance, and Tenant agrees to attorn to the purchaser or grantee, which shall be personally obligated on this Lease only so long as it is the owner of Landlord's interest in and to this Lease.

24.13 Headings. The marginal or topical headings used in this Lease are for convenience only and do not define, limit or construe the contents of said Articles.

24.14 Entire Agreement. This Lease contains all the agreements and understandings relating to the leasing of the Premises and the obligations of Landlord and Tenant in connection with such leasing. Landlord has not made and Tenant is not relying upon any warranties, representations, promises or statements by Landlord or any agent of Landlord except as expressly set forth in this Lease. This Lease supersedes any and all prior agreements and understandings between Landlord and Tenant and alone expresses the agreement of the parties.

24.15 Modifications or Amendments. This Lease can only be modified or amended by an agreement in writing signed by the parties hereto. No receipt of money by Landlord from Tenant or any other person after termination of this Lease or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Premises shall reinstate, continue or extend the Term of this Lease or affect any such notice, demand or suit, or imply consent for any action for which Landlord's consent is required, unless specifically agreed to in writing by Landlord. Any amounts received by Landlord may be allocated to any specific amounts due from Tenant to Landlord as Landlord determines.

24.16 Landlord Control. Landlord shall have the right to close any portion of the building area or land area to the extent as may, in Landlord's reasonable opinion, be necessary to prevent a dedication thereof or the accrual of any rights to any person or the public therein. Landlord shall at all times have full control, management and direction of the Shopping Center Tract, subject to the rights of Tenant in the Premises, and Landlord reserves the right at any time and from time to time to reduce, increase, enclose or otherwise change the size, number and location of buildings, layout and nature of the Shopping Center, the Shopping Center Tract and the other tenancies, premises and buildings included in the Shopping Center Tract, to construct additional buildings and additions to any building, to lease to any parties acceptable to Landlord, and to create additional leasable areas through use, withdrawal of, and/or enclosure of the Common Area, or otherwise, to place signs on the Shopping Center Tract, to increase the land size of the Shopping Center Tract, and to change the name, address, number or designation by which the Shopping Center is commonly known. No implied easements are granted by this Lease. Landlord shall in no event be liable for any lack of security in respect to the Shopping Center.

24.17 Utility Easement. Tenant shall permit Landlord (or its designees) to erect, use, maintain, replace and repair pipes, cables, conduits, plumbing, vents, and telephone, electric and other wires or other items, in, to and through the Premises, as and to the extent that Landlord may now or hereafter deem necessary or appropriate for the proper operation and maintenance of the Shopping Center.

24.18 Not Binding Until Properly Executed. Employees or agents of Landlord have no authority to make or agree to make a lease or other agreement or undertaking in connection herewith. The submission of this document for examination does not constitute an offer to lease, or a reservation of, or option for, the Premises. This document until executed is not binding on either Landlord or Tenant and becomes effective and binding only upon the execution and delivery hereof by the proper officers of Landlord and by Tenant. Tenant confirms that Landlord and its agents have made no representations or promises with respect to the Premises or the making or for entry into this Lease except as in this Lease expressly set forth, and agrees that no claim or liability shall be asserted by Tenant against Landlord for, and Landlord shall not be liable by

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reason of, breach of any representations or promises not expressly stated in this Lease. This Lease, except for the Rules and Regulations of the Shopping Center Tract, in respect to which **Section 26.19** shall prevail, can be modified or altered only by agreement in writing between Landlord and Tenant, and no act or omission of any employee or agent of Landlord shall alter, change or modify any of the provisions hereof.

24.19 Building Rules and Regulations. Tenant shall perform, observe and comply with the Rules and Regulations of the Shopping Center Tract as set forth in **Exhibit "B"** attached hereto and incorporated herein by reference and as reasonably modified from time to time by Landlord, with respect to the safety, care and cleanliness of the Premises and the Shopping Center, and the preservation of good order thereon, and, upon written notice thereof to Tenant, Tenant shall perform, observe, and comply with any changes, amendments or additions thereto as from time to time shall be established and deemed advisable by Landlord for tenants of the Shopping Center Tract. Landlord shall not be liable to Tenant for any failure of any other tenant or tenants of the Shopping Center Tract to comply with such Building Rules and Regulations.

24.20 Tenant's Compliance. All rights and occupancy of Tenant herein shall be subject to all governmental laws, ordinances and regulations, and Tenant shall comply with the same, including without limitation compliance with the Act, and shall comply with the requirements of any fire insurance underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises. Tenant shall use the Premises and comply with any recorded covenants, conditions, and restrictions affecting the Premises in the Shopping Center Tract as of the commencement of the Lease or which are recorded during the Term.

24.21 Force Majeure. Landlord shall incur no liability to Tenant with respect to, and shall not be responsible for any failure to perform any of Landlord's obligations hereunder if such failure is caused by any reason beyond the control of Landlord including, but not limited to, strike, labor trouble, obtaining of permits or approvals, governmental rule, regulations, ordinances, statutes or interpretation, or by fire, earthquake, civil commotion, or failure or disruption of utility services. The amount of time for Landlord to perform any of Landlord's obligations shall be extended by the amount of time Landlord is delayed in performing such obligation by reason or any force majeure occurrence whether similar to or different from any of the foregoing types of occurrences.

24.22 Tenant Obligations Survive Termination. All obligations of Tenant hereunder not fully performed as of the expiration or earlier termination of the Term of this Lease shall, survive the expiration or earlier termination of the Term hereof, including, without limitation, all payment obligations with respect to Operating Expenses and Taxes all indemnity obligations, and all obligations concerning the condition of the Premises.

24.23 No Implication of Exclusive Use. Nothing contained in this Lease shall be deemed to give Tenant an express or implied exclusive right to operate any particular type of business in the Shopping Center.

24.24 Tenant's Waiver. Intentionally omitted.

24.25 Tenant Authorization. If Tenant is a corporation or partnership, each individual executing this Lease on behalf of the corporation or partnership represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of the corporation or partnership, and that this Lease is binding upon the corporation or partnership. If Tenant is a corporation, the person executing this Lease on behalf of Tenant hereby covenants and warrants that (a) Tenant is a duly qualified corporation and all steps have been taken prior to the date hereof to qualify Tenant to do business in the State where the Shopping Center is situated, (b) all franchise and corporate taxes have been paid to date, and (c) all future forms, reports, fees and other documents necessary to comply with applicable laws will be filed when due. Tenant shall furnish to Landlord promptly upon demand, a corporate resolution, proof of due authorization of partners, or other appropriate documentation reasonably requested by Landlord evidencing the due authorization of Tenant to enter into this Lease.

24.26 Laws of California to Govern. This Lease shall be governed by and construed in accordance with the internal laws of the State of California.

24.27 Rights Cumulative. Except as provided herein to the contrary, the rights and remedies of Landlord specified in this Lease shall be cumulative and in addition to any other rights and/or remedies otherwise available, whether or not specified in this Lease.

24.28 No Partnership or Joint Venture. This Lease shall not be deemed or construed to create or establish relationship or partnership or joint venture or similar relationship or arrangement between Landlord and Tenant hereunder.

24.29 Attorneys' Fees. In the event of any action or proceeding between Landlord and Tenant arising from or relating to the interpretation or enforcement of this lease or any default hereunder, the prevailing party in such action or proceeding shall be entitled to recover from the other party all of its attorneys' fees and costs incurred therein, including, without limitation, any attorneys' fees and costs incurred on any appeal from the action or proceeding.

24.30 Tenant's Financial Statements. Within 15 days after request therefor, Tenant shall deliver to Landlord the most current yearly copy of Tenant's financial statements (including, but not limited to, an balance sheet, and an income statement) prepared in accordance with generally accepted accounting principles consistently applied ("GAAP") for the prior fiscal year certified by an executive officer of Tenant, together with the financial statements of any then parent of Tenant, along with, if available, consolidated financial statements of the parent and its subsidiaries prepared in accordance with GAAP.

24.31 Shopping Center Expansion. At any time during the Lease Term, and from time to time, Landlord may expand, in any manner, the existing Shopping Center, which expansion may include the addition of shops and/or the addition of new buildings to the Shopping Center (collectively, the "Expanded Center"). If Landlord deems it necessary for construction personnel to enter the Premises in order to construct the Expanded Center, Landlord shall give Tenant no less than fifteen (15) days prior notice, and Tenant shall allow such entry. Landlord shall use reasonable efforts to complete the work affecting the Premises in an efficient manner so as not to interfere unreasonably with Tenants' business. Tenant shall not be entitled to any damages or to reduction in Annual Minimum Rent or Additional Rent for any interference or interruption of Tenant's business upon the Premises or for any inconvenience caused by such construction work. Landlord shall have the right to use a portion of the Premises to accommodate any structures required for the Expanded Center. If, as a result of Landlord utilizing a portion of Premises for such purpose, there is a permanent increase or decrease in the Leasable Area of the Premises of one percent (1%) or more, there shall be a proportionate adjustment of Annual Minimum Rent and all other charges based on Leasable Area. During the course of construction, Tenant shall continue to pay Annual Minimum Rent and Additional Rent.

24.32 No Representation. Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord, in the exercise of its sole business judgment, shall determine to best promote the interests of the Shopping Center. Tenant does not rely on the fact, nor does Landlord represent, that any specific tenant or number of tenants shall, during the Term of this Lease, occupy any space in the Shopping Center.

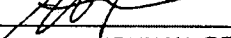
24.33 Option to Renew. Tenant is hereby granted the option to extend the term of this Lease for the Renewal Terms described in the Basic Lease Provisions by giving notice of exercise of the option ("Option Notice") to Landlord at least one hundred eighty (180) days, but not more than one (1) year, before the expiration of the Basic Term, or the then current Renewal Term, as the case may be; provided, however, that if Tenant is in default on the date of giving any such Option Notice, the Option Notice shall be totally ineffective, and provided further, that if an Event of Default exists on the date that the Renewal Term would otherwise commence, such Renewal Term at the election of Landlord shall not commence and this Lease shall expire at the end of the Basic Term, or at the end of the then current Renewal Term, as the case may be. Tenant shall have no other right to extend the term beyond the specific number of Renewal Terms described in the Basic Lease Provisions. During the Renewal Term(s), all of the terms and provisions contained herein shall apply, other than Annual Minimum Rent. Annual Minimum Rent for the Renewal Term(s) will be the amounts described in the Basic Lease Provisions.

24.34 Counterparts. This Lease may be executed in counterparts, all of which, when taken together, shall constitute a fully executed original.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

LANDLORD:


OPUS WEST CORPORATION,  
a Minnesota corporation

By:   
Name: JOHN W. GREER  
Title: EXECUTIVE VICE PRESIDENT

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

TENANT:

ARROWHEAD CENTRAL CREDIT UNION,  
a California corporation

By:   
Name: LARRY R. SHARP  
Title: PRES./CEO

By:   
Name: STEVE SKAGGS  
Title: VP-CORP. REAL ESTATE

9/29/08

**EXHIBIT "A"**

**SHOPPING CENTER LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF CHINO HILLS, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

**PARCEL I:**

PARCELS 1, 2, 3, 4, 5, 6, 7, AND 8 OF PARCEL MAP NO. 18236, RECORDED ON OCTOBER 12, 2007, IN BOOK 224, PAGES 14 THROUGH 22, INCLUSIVE, OF PARCEL MAPS OF SAN BERNARDINO COUNTY, CALIFORNIA.

**PARCEL II:**

NON-EXCLUSIVE, IRREVOCABLE AND PERPETUAL EASEMENTS FOR THE INGRESS AND EGRESS OF VEHICULAR AND PEDESTRIAN TRAFFIC AND ALL OTHER EASEMENTS AS GRANTED AND/OR RESERVED IN THAT CERTAIN "EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS OF THE COMMONS" RECORDED OCTOBER 12, 2007, AS INSTRUMENT NO. 2007-0577234 OF OFFICIAL RECORDS.

**EXHIBIT "A"**

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EXHIBIT "A-1"

ILLUSTRATION OF (1) SITE PLAN, (2) PREMISES LOCATION,  
(3) RESERVED PARKING SPACES, AND (4) FUTURE DEVELOPMENT AREA

[Note: The attached Site Plan of the Shopping Center is attached at this time for illustration purposes only. It has not been finalized or finally approved and is subject to change from time to time at Landlord's sole discretion; in addition, certain pad sites will be sold from time to time by Landlord.]

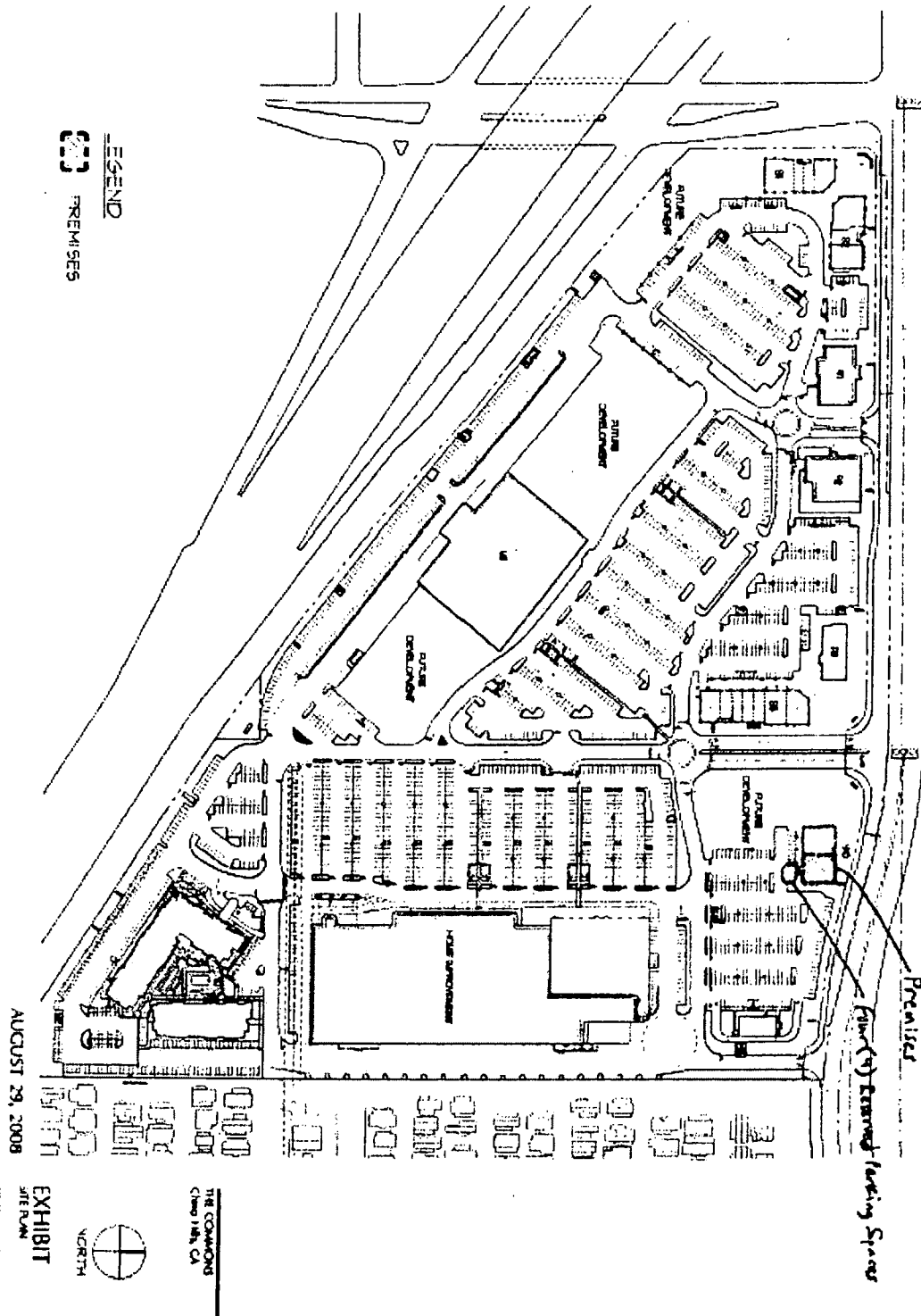


EXHIBIT "A-1"

Handwritten signature or initials.



**ARROWHEAD**  
**CREDIT UNION**

**OPERATING ACCOUNT**  
P O BOX 725 SAN BERNARDINO CALIFORNIA 92402  
1-800-743-7278

No. 03 ~~CONFIDENTIAL~~ 1726

100-8219  
 327

## Everything You Need Us To Be

P \*\*\* TWELVE THOUSAND TWO HUNDRED FIFTY DOLLARS AND 00 CENTS \*\*\*  
 A  
 Y \$12,250.00

**Not valid after 180 days**

10/06/08

**\$12,250.00**

**TO THE  
ORDER OF**

\*OPUS WEST MANAGEMENT CORP\*  
2555 E CAMELBACK RD, SUITE 840  
PHOENIX AZ 85016-9267

Second Signature required on checks over \$50,000

**AUTHORIZED SIGNATURE**

**PRESIDENT**

1726 12-2603 990000 1722

✓000 1 2 2 5000✓

Account 9900001    Serial 1021726    Amount 12250.00    Sequence 6004072    Transit/Routing 322282603    TranCode 22    Date 10-24-2008    EAF 0  
Member 0    SUFFIX 0

**WARNING** DO NOT CASH THIS CHECK WITHOUT NOTING SECURITY FEATURES, SEE BELOW

**ENDORSE HERE**

**NOTE** THE ABOVE LINES ARE COMPOSED OF MICROFILM CONTAINING THE WORDS "SAFE". CHECK WITH MAINFRAME

**DO NOT WRITE OR SIGN BELOW THIS LINE**

ADDITIONAL CASH IS  
CREDITED TO THE ACCT.  
OF WITHIN NOTED PAYEE  
BANK OF AMERICA

**WARNING:**

DO NOT CASH THIS CHECK WITHOUT MOTHER'S SIGNATURES ON FRONT AND REVERSE

# Social Psychology

•

### Benefits of Section 179

EARLY OF AMERICAN CH  
 111.4025 127 94 002  
 10/3/88  
 852044588

ARROWHEAD CREDIT UNION • PO BOX 735 • SAN BERNARDINO, CA 92408

No. [REDACTED] 1726

Invoice	Date	Amount	Discount	Payment	Balance
100608 OPUS WEST	10/06/08	12,250.00		12,250.00	0.00

[REDACTED] 1726

**CHECK DISBURSEMENT REQUEST****Prepared By:** Steve Skaggs on *Monday, October 6, 2008*

Make check payable to: Opus West Management Corporation

Mailing Address: 2555 East Camelback Road, Suite 840

City, State, Zip: Phoenix, AZ 85016-9267

Amount of Check: \$ 12250.00 Date needed: 10/6/2008  
(Allow 3 business days)

Purpose of Disbursement: First months rent on Parkway Branch

Attendees: \_\_\_\_\_

Approved in Budget?


☒ YesIf Capitalized enter Budget # NA☐ No

Under \$20,000

Approved By CEO or COO Signature \_\_\_\_\_ Date \_\_\_\_\_

\$20,000 and Over

Approved By Board at meeting held on \_\_\_\_\_

*Attach copy of meeting minutes* (Date)Requested By: Steve Skaggs Date: 10/6/2008Approved By:  Date: 10/6/2008  
(Signature)Approved By: Steve Skaggs Title: VP-Corp RE  
(Printed)Department: Facilities/Construction Phone: 6684GL Account: 251001 or prepaid 791000.32

Mail check to: \_\_\_\_\_

Return check to: Steve Skaggs, please call when ready 6684[Reset Form](#)[Print Form](#)

**EXHIBIT C**

VERIFY COMPLETE LIST OF SECURITY FEATURES LISTED ON BACK OF CHECK



**ARROWHEAD**  
CREDIT UNION

OPERATING ACCOUNT  
P.O. BOX 735 SAN BERNARDINO, CALIFORNIA 92402  
1-800-743-7226



Patent #5,772, No. 03 2693

90-9260  
3222

Everything You Need Us To Be

Not valid after 180 days

11/20/08

P \*\*\* EIGHT THOUSAND THIRTY FIVE DOLLARS AND 00 CENTS \*\*\*

\$8,035.00

TO THE  
ORDER OF

\*ARCHETYPE INTERNATIONAL\*  
ARCANTHUS CORP  
PO BOX 10339  
SANTA ANA CA 92711

Second Signature required on checks over \$50,000

*Larry R. Sharp*  
AUTHORIZED SIGNATURE PRESIDENT

"2693" 2603: 990000 11 22

"0000803500"

Account 9900001 Serial 1022693 Amount 8035.00 Sequence 1021054 Transit/Routing 322282603 TranCode 22 Date 01-05-2009 EAF 0  
Member 0 SUFFIX 0

**Security Features**

- 1) **Security Paper**
- 2) **Chemical Protection**
- 3) **Visible Fibers**
- 4) **Inside Fibers**
- 5) **Security Background**
- 6) **TamperSafe®**

**Benefit of Security Feature:**

- A true watermark paper with unique security images embedded into the paper; pattern can only be viewed by transillumination (light).
- When chemically altered, the security features appear as a brown or black color.
- Visible blue & red fibers are embedded into the paper on both sides.
- Fluorescent fibers which glow under a UV blacklight.
- The background is printed in a microscopic relief pattern.
- Security hologram with a microprint security area.
- Security hologram which glows at UV light angles; this four colored images look like word "SAFE" and "1022693".

**WARNING** DO NOT CASH THIS CHECK WITHOUT NOTING SECURITY FEATURES. SEE BELOW.

0001021054  
01/05/2009

FR NA ELM 01022693  
219 04120480027 1  
>1221-0527-8<  
266: 7 ESU 50

**WARNING** DO NOT CASH THIS CHECK WITHOUT NOTING SECURITY FEATURES. SEE BELOW.

ENDORSE ARCHETYPE International  
Wells Fargo Bank  
2519

**NOTE** THE ABOVE LINES ARE COMPOSED OF FACTO TYPE. CONTAINING THE WORDS "SAFE" CHECK WITH MAGNIFIER.

DO NOT WRITE OR SIGN BELOW THIS LINE

ARROWHEAD CREDIT UNION • PO BOX 735 • SAN BERNARDINO, CA 92408

No. **2693**

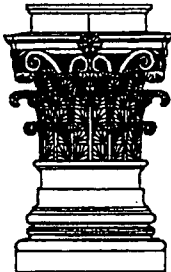
Customer: ARCHETYPE INTERNATIONAL

Invoice	Date	Amount	Discount	Payment	Balance
S28153	10/31/08	1,500.00		1,500.00	0.00
S28154	10/31/08	1,500.00		1,500.00	0.00
S28155	10/31/08	5,035.00		5,035.00	0.00

*af*

**2693**

**ARCHETYPE  
INTERNATIONAL**



**Invoice**

DATE	INVOICE #
10/31/2008	S28153

**BILL TO**

Arrowhead Credit Union  
Attn: Steve Skaggs  
1814 Commercenter West, Suite #1  
San Bernardino, CA 92402

**REMIT TO**

Archetype International  
PO Box 10339  
Santa Ana, CA 92711-0339

11/17/08  
OK/RK  
772900-32

TERMS	PROJECT
Due on receipt	AH-007 Chino Hills Space Plan Design

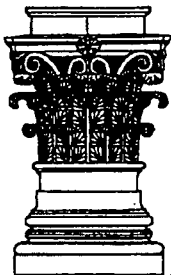
DESCRIPTION	AMOUNT
Professional Services for the month of October 2008 Space Plan	1,500.00
<p>APPROVED BY NOV 17 2008 STEVE SKAGGS</p>	
	<b>Total</b>
	\$1,500.00

714 . 564 . 0065

523-A N. GRAND AVENUE  
SANTA ANA, CA 92701

FACSIMILE 714 . 564 . 0034  
ARCHETYPE-INTL.COM

**ARCHETYPE  
INTERNATIONAL**



**Invoice**

DATE	INVOICE #
10/31/2008	S28154

**BILL TO**

Arrowhead Credit Union  
Attn: Steve Skaggs  
1814 Commercenter West, Suite #1  
San Bernardino, CA 92402

11/17/08  
OK/RK  
772900-28

**REMIT TO**

Archetype International  
PO Box 10339  
Santa Ana, CA 92711-0339

TERMS	PROJECT
Due on receipt	AH-008 Canyon Springs

DESCRIPTION	AMOUNT
Professional Services for the month of October 2008 Base and Space Plans and Drawings	2,305.00
Per Attached Timeslips - 17 hours	
Fec Adjustment	-805.00
<p>APPROVED BY NOV 17 2008 SS STEVE SKAGGS</p>	
<p><b>Total</b> \$1,500.00</p>	

714 . 564 . 0065

523-A N. GRAND AVENUE  
SANTA ANA, CA 92701

FACSIMILE 714 . 564 . 0034  
ARCHETYPE-INTL.COM

Invoice submitted to:  
Arrowhead Credit Union

November 12, 2008

AH-008: Canyon Springs

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
<u>October 2008</u>		
Proj. Admin. Correspondence/Documentation/Coordination Senior Designer - HL Schematic Space Design Phase	2.50 115.00/hr	287.50
Base Plan Draw Base Plan Drawing Senior Designer - HL Programming/Pre-Design Phase	1.00 115.00/hr	115.00
Space Plan Space Plan Senior Designer - HL Schematic Space Design Phase	6.50 115.00/hr	747.50
Proj. Admin. Correspondence/Documentation/Coordination Principal Architect - JS Construction Documents Phase	2.00 165.00/hr	330.00
Base Plan Draw Execution Of Base Plan For Use In Execution Of Project Requirements Principal Architect - JS Construction Documents Phase	1.00 165.00/hr	165.00
Prog/Data Related Inquiries, Clarifications And Directives For Execution Of Project Requirements Principal Architect - JS Construction Documents Phase	1.00 165.00/hr	165.00
Client Coord. Related Inquiries, Clarifications And Directives For Execution Of Project Requirements Principal Architect - JS Construction Documents Phase	1.00 165.00/hr	165.00
Space Plan Execution Of Space Plans For Use In Execution Of Project Requirements Principal Architect - JS	2.00 165.00/hr	330.00
SUBTOTAL:	[ 17.00	2,305.00]

Arrowhead Credit Union

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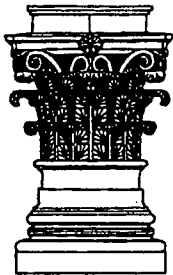
	<u>Hours</u>	<u>Amount</u>
For professional services rendered	17.00	\$2,305.00
Balance due		<u>\$2,305.00</u>

Terms: Due and Payable Upon Receipt

PLEASE REMIT TO:

Archetype International  
P.O. Box 10339  
Santa Ana, CA 92711-0339

**ARCHETYPE  
INTERNATIONAL**



**Invoice**

DATE	INVOICE #
10/31/2008	S28155

**BILL TO**

Arrowhead Credit Union  
Attn: Steve Skaggs  
1814 Commercenter West, Suite #1  
San Bernardino, CA 92402

**REMIT TO**

Archetype International  
PO Box 10339  
Santa Ana, CA 92711-0339

11/17/08  
OK/RK  
772900-32

TERMS	PROJECT
Due on receipt	AH-009 Chino Hills - CD's

DESCRIPTION	AMOUNT
Professional Services for the month of October 2008 Space Plan, Construction Documents, Project Administration  Per Attached Timeslips - 39 hours	5,035.00
<p>APPROVED BY NOV 17 2008 STEVE SKAGGS</p>	
	<b>Total</b> \$5,035.00

714 . 564 . 0065

523-A N. GRAND AVENUE  
SANTA ANA, CA 92701

FACSIMILE 714 . 564 . 0034  
ARCHETYPE-INTL.COM

Invoice submitted to:  
Arrowhead Credit Union

November 12, 2008

AH-009: Chino Hills - Construction Documents

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
<u>October 2008</u>		
Space Plan	2.00	230.00
Roof Plan	115.00/hr	
Senior Designer - HL		
Schematic Space Design Phase		
Schem. Des.	3.00	345.00
3D Plan	115.00/hr	
Senior Designer - HL		
Schematic Space Design Phase		
Con. Doc.	23.00	2,645.00
Construction Documents	115.00/hr	
Senior Designer - HL		
Construction Documents Phase		
Con. Doc.	8.00	1,320.00
Execution Of Construction Documents For Use In Execution Of Project Requirements	165.00/hr	
Principal Architect - JS		
Consult. Coord.	1.00	165.00
Coordination W/Other Consultants Providing Services To Other Elements Of The Project -	165.00/hr	
PM&E Engineers		
Principal Architect - JS		
Proj. Admin.	1.00	165.00
Correspondence/Documentation/Coordination	165.00/hr	
Principal Architect - JS		
Schematic Space Design Phase		
Client Coord.	1.00	165.00
Related Inquiries, Clarifications And Directives For Execution Of Project Requirements	165.00/hr	
Principal Architect - JS		
Schematic Space Design Phase		
SUBTOTAL:	[ 39.00	5,035.00]
For professional services rendered	39.00	\$5,035.00
Balance due		<u>\$5,035.00</u>

Arrowhead Credit Union

Page 2

Terms: Due and Payable Upon Receipt

PLEASE REMIT TO:

Archetype International  
P.O. Box 10339  
Santa Ana, CA 92711-0339