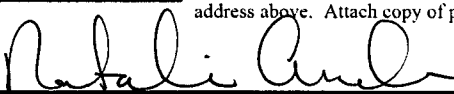



UNITED STATES BANKRUPTCY COURT Northern District of Texas		PROOF OF CLAIM
Name of Debtor: Opus West Corporation		Case Number: 09-34356
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative 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): Wachovia Bank, National Association		<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: Wachovia Bank, National Association, c/o Sidley Austin, LLP 1501 K Street, N.W., Washington D.C. 20005, Attn: David Kuney		
Telephone number: (202) 736-8000		
Name and address where payment should be sent (if different from above): Wells Fargo - Special Situations Group 5400 LBJ Freeway, Ste. 1000, Dallas, TX 75240, Attn: Natalie Anderson		<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.
Telephone number: (972) 364-1013		
1. Amount of Claim as of Date Case Filed: \$ <u>See Attached Schedule</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 checked="" 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.		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. 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)(____). Amount entitled to priority: \$ _____ *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: <u>See Attached Schedule</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>N/A</u> 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (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 checked="" type="checkbox"/> Other Describe: <u>See Attached Schedule</u> 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: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of 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>11/5/09</u> Signature: 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.  Natalie Anderson, Vice President		FOR COURT USE ONLY  OPUS WEST 00390

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re:

OPUS WEST CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 09-34356-hdh-11

Jointly Administered

**SCHEDULE TO PROOF OF CLAIM OF
WACHOVIA BANK, NATIONAL ASSOCIATION**

1. Wachovia Bank, National Association (the "Creditor") hereby files this schedule (the "Schedule") to the proof of claim asserted against Opus West Corporation [Case No. 09-34356] (the "Debtor"). This Schedule shall be deemed a part of, and incorporated by reference in, the attached proof of claim (together with this Schedule, the "Proof of Claim") filed by the Creditor.

I. BASIS OF CLAIM

2. The Proof of Claim arises out of that certain Unconditional Guaranty dated August 30, 2007, attached hereto as **Exhibit A** (the "Guaranty"), provided by the Debtor, as guarantor for the repayment of that certain Promissory Note, dated August 30, 2007, attached hereto as **Exhibit B**, (the "Note") by and between Creditor and Broadstone Woodbridge, L.P. (the "Borrower"), and that certain Construction Loan Agreement dated August 30, 2007, attached hereto as **Exhibit C** (the "Loan Agreement") by and between Creditor and Borrower. The Guaranty, the Note, the Loan Agreement and all other amendments, modifications,

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Opus West Corporation (1533); Opus West Construction Corporation (5917); Opus West LP (5535); Opus West Partners, Inc. (5537); and O.W. Commercial, Inc. (9134).

agreements and supporting documents related to are collectively referred to as the "Loan Documents"².

3. Under the terms of the Loan Documents, the Creditor agreed to provide the Borrower with a loan in the original principal amount of \$25,800,000.00 to be used for the development of a 303-unit garden apartment project on a 20.5 acre parcel of land located south of the southwest corner of FM 544 and Country Club Drive in Wylie, Texas (the "Property").

4. In order to secure payment and performance of the of the obligations under the Loan Documents, on or about August 30, 2007, among other things, the Borrower executed and delivered a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, granting a lien in the Property. The Deed of Trust was recorded on August 31, 2007 in the Recording Office of Collin County, Texas under document number 20070831001217270.

5. As additional security for payment of the Note, the Debtor executed the Guaranty. As set forth in full detail in the Guaranty, pursuant to the Guaranty, the Debtor irrevocably and unconditionally guaranteed the Creditor and its successor, assigns and affiliates the timely payment and performance of the liabilities and obligations of the Borrower to the Creditor or any of its affiliates under the Loan Documents.

6. On July 6, 2009 (the "Petition Date") the Debtor and certain of its affiliates filed voluntary petitions under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Bankruptcy Court").

7. On July 15, 2009, the Official Committee of Unsecured Creditors was appointed [Docket No. 89].

² Due to the voluminous nature of the Loan Documents, not all of the Loan Documents are attached to this Proof of Claim. Copies of the Loan Documents not attached hereto will be provided upon request to the Creditor.

II. AMOUNT AND NATURE OF CLAIM

8. Pursuant to the Guaranty, the Debtor is obligated to pay the Creditor for all amounts and obligations owing by the Borrower to the Creditor under the Loan Documents.

9. As of the date of the filing of this Proof of Claim, the principal amount outstanding under the Note is \$22,995,150.43 plus interest, fees, charges and attorneys fees as provided under the Loan Documents.

10. Accordingly, subject to the reservation of rights outlined below, the Creditor hereby asserts a claim against the Debtor pursuant to the Guaranty in an amount of any outstanding principal and accrued interest, all reasonable costs, fees and expenses (including legal and other professional expenses), and any other amounts not presently ascertainable in connection with, and provided for under the Loan Documents and under applicable law. The exact amount of the claim is not determinable as of the date of the filing of this Proof of Claim and Creditor reserves the right to amend this Proof of Claim with any such amendments to relate back to the date of the filing of this Proof of Claim.

11. To the extent necessary, this Proof of Claim shall serve as notice and a demand of the amounts owing by the Debtor to the Creditor, and no further notice or demand shall be required.

12. Without limiting any of the foregoing, the Creditor reserves all of its rights to assert claims for interest, fees, costs, charges, expenses, disbursements, liabilities, losses, damages, indemnification, reimbursement and/or contribution, and other amounts, including, without limitation, legal fees and expenses (including, without limitation, in connection with the preparation, filing and prosecution of the Proof of Claim), that exist or arise as of or after the date of the filing of the Proof of Claim, whether prior to, on or subsequent to the Petition Date, in

each case to the extent and/or as may be permitted, provided and/or contemplated in the supporting documentation and under applicable law.

III. COURT JUDGMENT, SECURED CLAIM AND CREDITS

13. As of the date hereof, no judgment has been rendered on the claim asserted herein.

14. The Creditor hereby asserts any and all rights of setoff, recoupment and/or netting it may have in respect of the claim asserted herein, including, without limitation, the right to setoff, recoup and/or net its claims against any claims that Debtor (or any successor, assignee or person claiming through Debtor) may assert against it. The claim asserted herein is filed as a secured claim to the extent of any rights of setoff securing the claim and as a general unsecured claim to the extent that the amount of the claim exceeds the value of any setoff rights.

15. The amount of all payments on the claim asserted herein has been credited and deducted for purposes of making this Proof of Claim.

IV. RESERVATION OF RIGHTS

16. In filing this Proof of Claim, the Creditor expressly reserves all of its rights and causes of action, including, without limitation, contingent or unliquidated rights that it may have against the Debtor. The description of the claim and the classification thereof herein by the Creditor is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of the Creditor. Furthermore, the Creditor expressly reserves all rights to amend, clarify, modify and/or supplement the Proof of Claim at any time and for any reason, in any respect, including, without limitation to: (a) correct, increase or amend the amounts referred to herein; (b) add or amend documents and other information, or to describe further, the claims asserted herein; (c) file proofs of claim that may be duplicative in respect of

the relevant and applicable documents or any other indebtedness, obligations or liability of any of the Debtors to the Creditor; (d) add or include any other entity which may become a debtor or debtor in possession in the Debtor's chapter 11 case and add or amend categories of payments or liabilities; (e) assert a further priority, security interest or similar right with respect to the claims asserted herein; (f) file an amended proof of claim for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein; (g) file additional proofs of claim for additional claims, including, without limitation, claims for interest, fees and related expenses that are not ascertainable at this time, or to file a request for payment of administrative expenses in accordance with 11 U.S.C. §§ 503 and 507, including, without limitation, for expenses included in this claim; or (h) file additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligations whatsoever of the Debtor to the Creditor.

17. In executing and filing this claim, the Creditor does not submit itself to the jurisdiction of the Bankruptcy Court for any purpose other than with respect to this claim against the Debtor and does not waive or release: (a) its rights, claims, defenses and remedies, whether under applicable law, the relevant and applicable documents, or otherwise, against the Debtor or any other person or entity that may be liable for all or part of the claim set forth herein, whether an affiliate or subsidiary of the Debtor, an assignee, guarantor, or otherwise, including any rights that the Creditor may have with respect to any property held by any Debtor or other entity in an actual, constructive, or other trust or similar relationship for the benefit of the Creditor; (b) any obligation owed to it, or any right to any security in connection with the claims; (c) any past, present or future defaults (or events of default) by the Debtor or others in connection with the relevant and applicable documents or otherwise; or (d) any right to the subordination, in favor of the Creditor, of indebtedness or liens held by other creditors of the Debtors.

18. Nothing contained in the Proof of Claim nor subsequent appearance, pleading, claim or suit is intended to be: (a) a consent to a jury trial in the Bankruptcy Court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy or proceeding related hereto pursuant to 28 U.S.C. § 157(e) or otherwise; (b) an election of remedies or limitation of rights or remedies; or (c) an admission that any property received by the Creditor under the relevant and applicable documents or held by the Debtor or other entity constitutes property of any Debtor's estate.

19. Nothing contained in the Proof of Claim nor subsequent appearance, pleading, claim or suit is intended to be a waiver or release of: (a) the right of the Creditor to have final orders in non-core matters entered only after de novo review by a district court judge; (b) the right of the Creditor to a jury trial in any proceeding so triable herein or, in any case, any controversy or proceeding related hereto, notwithstanding any designation of such matters as "core proceedings" pursuant to 28 U.S.C. § 157(b)(2), and whether such jury trial is pursuant to statute or the United States Constitution; (c) the right of the Creditor to seek to have the reference withdrawn in any matter subject to mandatory or discretionary withdrawal, or otherwise to challenge the jurisdiction of the Bankruptcy Court, with respect to the subject matter of this Proof of Claim, any objection hereto, or any other proceeding commenced in this case against or otherwise involving the Creditor, or to assert that the reference has already been withdrawn with respect to the subject matter of this Proof of Claim, any objection hereto, or any other proceeding commenced in this case against or otherwise involving the Creditor; (d) the right of the Creditor to have any unliquidated portions of its Proof of Claim determined by applicable state courts; or (e) any ownership, lien, or other property rights, any rights to setoff, recoupment, or counterclaim, or any other right, rights of action, causes of action, claims, or

defenses, whether existing now or hereinafter arising to which the Creditor is or may be entitled under agreements, documents, or instruments, in law or equity, against the Debtor or any other person or persons (including any affiliate of the Debtor).

20. Nothing herein shall be deemed to waive, estop or derogate from any rights of the Creditor, including, without limitation, the Creditor's rights under the relevant and applicable documents, or otherwise. The Proof of Claim also is without prejudice to any and all of the Creditor's rights, claims and defenses in conjunction with the relevant and applicable documents, the Bankruptcy Code, and otherwise.

21. The descriptions in the Proof of Claim of the relevant and applicable documents are qualified in their entirety by reference to the applicable provisions of such documents, and such documents are incorporated herein by reference. Each reference to any Debtor as obligor, guarantor, or pledgor, or any other signatory or party to the relevant and applicable documents or any other document is qualified in its entirety by reference to the applicable provisions of such documents. In the event of any inconsistency between the Proof of Claim and such documents, the documents shall control.

22. The Creditor expressly reserves all procedural and substantive rights, claims and defenses with respect to any claim that has been or may be asserted against the Creditor by the Debtor, any trustee for its estate, any other party in interest in the chapter 11 case, or any other person or entity whatsoever.

V. NAME AND ADDRESS OF WHERE NOTICES SHOULD BE SENT

23. All communications in connection with this Proof of Claim should be sent

to:

Wachovia Bank, National Association
c/o Wells Fargo
5400 LBJ Freeway, Suite 1000
Dallas, TX 75240
Attention: Natalie Anderson
Facsimile: 972-490-0067
Email: natalie.anderson@wellsfargo.com

with a copy to:

Sidley Austin, LLP
1501 K Street, N.W.
Washington D.C. 20005
Attention: David Kuney
Facsimile: 202-736-8711
Email: dkuney@sidley.com

- and -

Warner Stevens, LLP
301 Commerce Street, Suite 1700
Fort Worth, TX 76102
Attention: Emily S. Chou
Facsimile: 817-810-5255
Email: echou@warnerstevens.com

EXHIBIT A

GUARANTY

August 30, 2007

Broadstone Woodbridge, L.P.
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
(Hereinafter referred to as "Borrower")

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attention: Legal Department
(Hereinafter referred to as "Guarantor")

Wachovia Bank, N.A.
Real Estate Financial Services
Mail Code AZ-1400
16435 North Scottsdale Road, Suite 200
Scottsdale, AZ 85254
(Hereinafter referred to as "Bank")

1. GUARANTY.

(a) To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of the liabilities and obligations of Borrower to Bank and its affiliates, under the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

(b) Guarantor hereby further unconditionally and irrevocably guarantees to Bank and its successors, endorsees and assigns that: (a) Borrower shall construct, equip and complete the Project substantially in accordance with the Plans and Specifications and substantially in accordance with the provisions relating to the construction, equipment and completion of the Project contained in that certain Construction Loan Agreement between Bank and Borrower of even date herewith, as modified from time to time (the "Loan Agreement"); (b) Borrower shall fully and punctually pay and discharge any and all costs, expenses and liabilities for or in connection with the construction, equipment and completion of the Project as

the same may become immediately due and payable, and also pay and discharge all proper claims and demands for labor and materials and services used for or in connection with the construction, equipment and completion of the Project; (c) the Property and the Project shall be and remain free and clear of all liens from any and all persons, firms, corporations or other entities furnishing materials, labor or services in the construction, equipment or completion of the Project pursuant to the terms of the Loan Agreement (collectively, the "Construction Obligations").

(c) In the event that the Construction Obligations are not complied with by Borrower, (a) Guarantor agrees to fully indemnify Bank and save Bank harmless from all costs and damages that Bank may suffer in connection with third party claims brought by reason thereof; (b) in the event that Bank shall (i) cause any construction or equipment of the Project to be done substantially in accordance with the Plans and Specifications, (ii) pay any third party costs in connection with the construction or equipment of the Project substantially in accordance with the Plans and Specifications, or (iii) cause any third party lien, claim or demand arising from the construction or equipping of the Project substantially in accordance with the Plans and Specifications to be released or paid, then Guarantor agrees to reimburse Bank for all sums paid and all costs and expenses incurred by it in connection therewith; and (c) Guarantor agrees, if requested by Bank, to complete or cause the completion of the construction and equipment of the Project substantially in accordance with the Loan Agreement and the Plans and Specifications. In the event Bank elects to require Guarantor to complete or cause the completion of the construction and equipment of the Project, Bank shall make available to Guarantor any undisbursed loan proceeds which are not subject to legal impairment to disbursement and which have been designated in Schedule A of the Loan Agreement for the payment of Project costs directly related to the construction and equipment of the Project. Such funds shall be disbursed to Guarantor only upon satisfaction of all requirements for disbursement set forth in the Loan Agreement and in accordance with the disbursement procedures set forth in the Loan Agreement.

(d) Guarantor consents that, (i) prior to foreclosure of the Security Instrument or transfer of the Premises, the Plans and Specifications and the terms, covenants, and provisions contained in any of the Loan Documents may be altered, extended, released, modified or cancelled, all with Borrower's consent in accordance with the Loan Agreement and without any further consent of Guarantor; and (ii) after the foreclosure of the Security Instrument or transfer of the Premises, the Plans and Specifications may be altered or modified without any further consent of Guarantor in order to (a) correct deficiencies, the correction of which is necessary to comply with applicable law, and (b) correct defects in the Plans and Specifications, and Guarantor agrees that this Guaranty shall in no way be affected, diminished or released by any such alteration, extension, modification, release or cancellation.

Guarantor further covenants and agrees:

2. **GUARANTOR'S LIABILITY.** This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of

the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede, replace or supplement any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank solely with respect to the Guaranteed Obligations.

3. **TERMINATION OF GUARANTY.** Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than fifteen (15) days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the fifteen (15) day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

4. **CONSENT TO MODIFICATIONS.** Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

5. **WAIVERS AND ACKNOWLEDGMENTS.** Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any

property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Arizona Revised Statutes Section 12-1691, et seq., and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; and (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral.

6. **FINANCIAL CONDITION.** Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) all financial statements ("Financial Statements") of Guarantor furnished to Bank are correct in all material respects; (b) since the date of such Financial Statements, there has not occurred a material adverse change in the financial condition of Guarantor such that Guarantor would not be able to fulfill its obligations hereunder; and (c) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or, to Guarantor's knowledge, threatened against Guarantor, and Guarantor is not in material default or claimed material default under any agreement binding on Guarantor.

7. **INTEREST AND APPLICATION OF PAYMENTS.** Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

8. **[INTENTIONALLY OMITTED.]**

9. **ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION.** Guarantor shall pay all of Bank's and its affiliates' reasonable third party expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, reasonable third party paralegals' and attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

10. **SUBORDINATION OF OTHER DEBTS.** Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

11. **MISCELLANEOUS.**

(a) **Assignment.** This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. Upon a transfer of the Loan Documents contemplated by Section 10.8 of the Loan Agreement, this Guaranty shall, without any further action, be affirmed.

(b) **Organization; Powers.** Guarantor (i) is a corporation duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized

to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party.

(c) **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and construed under the laws of the state of Arizona without regard to conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control.

(d) **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's accounts with Bank and its affiliates.

(e) **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state of Arizona.

(f) **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents.

(g) **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, N.A., Real Estate Financial Services, Mail Code AZ-1400, 16435 North Scottsdale Road, Suite 200, Scottsdale, Arizona 85254, Attention: S. Todd Jarman, or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid.

(h) **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents.

(i) **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty.

(j) **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor

any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively.

(k) **[Intentionally Deleted.]**

(l) **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time).

(m) **Defined Terms.** Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement.

(n) **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE.

(o) **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

12. **NEGATIVE COVENANTS.** Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not:

(a) **Change of Control.** Make or suffer a change of ownership that effectively changes control of Guarantor from current ownership.

(b) **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired.

(c) **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due Guarantor which is not discharged or execution is not stayed within thirty (30) days of entry, and the entry, filing, or issuance of which materially and adversely effects the ability of Guarantor to perform any of Guarantor's obligations under this Guaranty.

(d) **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

13. **ANNUAL FINANCIAL STATEMENTS.** Guarantor shall deliver to Bank, within one hundred twenty (120) days after the close of each fiscal year, audited financial statements for Guarantor reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules; all in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year.

14. **PERIODIC COLLATERAL VALUE STATEMENTS.** Guarantor shall deliver to Bank, within sixty (60) days after the close of each fiscal quarter, unaudited management-prepared financial statements for Guarantor reflecting its operations during such fiscal quarter, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules; all in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding quarter. All such statements shall be certified as to their correctness by a principal financial officer of Guarantor

15. **[INTENTIONALLY OMITTED.]**

16. **ARBITRATION.** Upon demand of any party hereto, whether made before or after institution of any judicial proceeding, any claim or controversy arising out of or relating to the Loan Documents between parties hereto (a "Dispute") shall be resolved by binding arbitration conducted under and governed by the Commercial Financial Disputes Arbitration Rules (the "Arbitration Rules") of the American Arbitration Association (the "AAA") and the Federal Arbitration Act. Disputes may include, without limitation, tort claims, counterclaims, a dispute as to whether a matter is subject to arbitration, claims brought as class actions, or claims arising from documents executed in the future. A judgment upon the award may be entered in any court having jurisdiction. Notwithstanding the foregoing, this arbitration provision does not apply to disputes under or related to swap agreements.

(a) **Special Rules.** All arbitration hearings shall be conducted in the city named in the address of Bank first stated above. A hearing shall begin within ninety (90) days of demand for arbitration and all hearings shall conclude within one hundred twenty (120) days of

demand for arbitration. These time limitations may not be extended unless a party shows cause for extension and then for no more than a total of sixty (60) days. The expedited procedures set forth in Rule 51 et seq. of the Arbitration Rules shall be applicable to claims of less than \$1,000,000.00. Arbitrators shall be licensed attorneys selected from the Commercial Financial Dispute Arbitration Panel of the AAA. The parties do not waive applicable Federal or state substantive law except as provided herein.

(b) **Preservation and Limitation of Remedies.** Notwithstanding the preceding binding arbitration provisions, the parties agree to preserve, without diminution, certain remedies that any party may exercise before or after an arbitration proceeding is brought. The parties shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale or under applicable law by judicial foreclosure including a proceeding to confirm the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding; and (iv) when applicable, a judgment by confession of judgment. Any claim or controversy with regard to any party's entitlement to such remedies is a Dispute.

(c) **Waiver of Jury Trial.** THE PARTIES ACKNOWLEDGE THAT BY AGREEING TO BINDING ARBITRATION THEY HAVE IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO JURY TRIAL WITH REGARD TO A DISPUTE AS TO WHICH BINDING ARBITRATION HAS BEEN DEMANDED.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Guaranty to be executed.

OPUS WEST CORPORATION, a Minnesota corporation

By: Charles Vogel
Name: Charles Vogel
Title: Senior Vice President

EXHIBIT B

PROMISSORY NOTE

\$25,800,000.00

August 30, 2007

Broadstone Woodbridge, L.P.
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
(Hereinafter referred to as "Borrower")

Wachovia Bank, N.A.
Real Estate Financial Services
Mail Code AZ-1400
16435 North Scottsdale Road, Suite 200
Scottsdale, Arizona 85254
(Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America, at its office indicated above or wherever else Bank may specify, the sum of Twenty-Five Million Eight Hundred Thousand and No/100 Dollars (\$25,800,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

1. **LOAN AGREEMENT.** This Note is subject to the provisions of that certain Construction Loan Agreement between Bank and Borrower of even date herewith, as modified from time to time (the "Loan Agreement"). Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Loan Agreement.

2. **NON-REVOLVING CONSTRUCTION LINE OF CREDIT.** Borrower may borrow, and, upon the request of Borrower, Bank shall advance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in the Loan Agreement. Bank's obligation to make Advances under this Note shall terminate during such time a Default has occurred and is continuing. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true in all material respects as of such date. Advances, once repaid, may not be reborrowed.

3. **USE OF PROCEEDS.** Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: development of a 303-unit garden apartment project on a 20.5 acre parcel of land located south of the southwest corner of FM 544 and Country Club Drive in Wylie, Texas.

4. **SECURITY.** Borrower has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, real and personal property

collateral described in that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing of even date herewith.

5. **INTEREST RATE.** Interest shall accrue on the disbursed and unpaid principal balance of this Note during each Interest Period from the date hereof at a rate per annum equal to 1-month LIBOR plus 1.50% ("Interest Rate"). Interest for each Interest Period shall accrue each day during such Interest Period, commencing on and including the first day to but excluding the last day. "Interest Period" means each period commencing on the first day of the calendar month and ending on the first day of the next succeeding calendar month; provided (i) the first Interest Period shall commence on the date hereof and (ii) any Interest Period that would otherwise extend past the maturity date of this Note shall end on the maturity date of this Note. "LIBOR" means, with respect to each Interest Period, the rate for U.S. dollar deposits with a maturity equal to the number of months specified above, as reported on Telerate page 3750 as of 11:00 a.m., London time, on the second London business day before such Interest Period begins, or, in the case of the first Interest Period, the second London business day before the first day of the calendar month during which such Interest Period begins (or if not so reported, then as determined by the Bank from another recognized source or interbank quotation).

6. **INDEMNIFICATION.** Borrower shall indemnify Bank against Bank's loss or expense as a consequence of (a) Borrower's failure to make any payment within ten (10) days of the date when due under this Note, (b) any payment, prepayment or conversion of any loan on a day other than the last day of the Interest Period, or (c) any failure to make a borrowing or conversion after giving notice thereof ("Indemnified Loss or Expense"). The amount of such Indemnified Loss or Expense shall be determined by Bank based upon the assumption that Bank funded one hundred percent (100%) of that portion of the loan in the London interbank market.

7. **DEFAULT RATE.** In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and continues, all disbursed and outstanding Obligations past due, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the disbursed and outstanding Obligations that are past due or any judgment thereon is paid in full.

8. **INTEREST AND FEE(S) COMPUTATION (ACTUAL/360).** Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective interest rate exceeding the nominal rate.

9. **REPAYMENT TERMS.** This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on October 5, 2007, and continuing on the same day of each month thereafter (each, a "Monthly Payment Date") until fully paid. In any event, all principal and accrued interest shall be due and payable on March 5, 2010 (the "Maturity Date"), as the same may be extended pursuant to the terms and conditions of this Note.

10. **EXTENSION OPTIONS.**

(a) **FIRST EXTENSION OPTION.** Bank shall grant a request by Borrower to extend the Maturity Date of this Note to March 5, 2011 (the "First Extended Maturity Date," and such extended term, the "First Extended Term"), upon and subject to the following terms and conditions:

(i) Bank shall have received written notice from Borrower of its intention to extend not less than sixty (60) days prior to the Maturity Date;

(ii) At the time of the request, and at the time of the extension, there shall not exist and be continuing any Default, nor any condition or state of facts that with notice and/or passage of time would constitute a Default;

(iii) The Project shall be substantially complete and a permanent certificate of occupancy shall have been issued by the appropriate governmental authorities;

(iv) Eighty percent (80%) of the Project shall be occupied by tenants under executed tenant leases on Borrower's standard form of lease;

(v) The Net Operating Income (defined below) of the Project shall be sufficient to satisfy a Debt Service Coverage Ratio (defined below) of not less than 1.00 to 1.00;

(vi) Not later than the Maturity Date, Borrower shall have paid to Bank an extension fee in an amount equal to Thirty-Two Thousand Two Hundred Fifty and No/100 Dollars (\$32,250.00); and

(vii) During the First Extended Term, Borrower shall make, on each Monthly Payment Date, payments in a cumulative amount equal to all accrued, unpaid interest, with one (1) final "balloon" payment of all accrued unpaid interest, principal, and all other amounts payable by Borrower to Bank on the First Extended Maturity Date.

If all of the foregoing conditions are not satisfied strictly in accordance with their terms or waived in writing by Bank, the extension shall not become effective; provided, however, in the event Borrower is unable to qualify for the extension to the First Extended Maturity Date solely because of its failure to satisfy subsection (v) above, Borrower may reduce the principal amount of this Note to at or below the principal amount necessary to satisfy such requirement.

(b) **SECOND EXTENSION OPTION.** Bank shall grant a request by Borrower to extend the First Extended Maturity Date to March 5, 2012 (the "Second Extended Maturity Date," and such extended term, the "Second Extended Term"), upon and subject to the following terms and conditions:

(i) Bank shall have received written notice from Borrower of its intention to extend not less than sixty (60) days prior to the First Extended Maturity Date;

(ii) At the time of the request, and at the time of the extension, there shall not exist and be continuing any Default, nor any condition or state of facts that with notice and/or passage of time would constitute a Default;

(iii) Ninety percent (90%) of the Project shall be occupied by tenants under executed tenant leases on Borrower's standard form of lease;

(iv) The Net Operating Income (defined below) of the Project is sufficient to satisfy a Debt Service Coverage Ratio (defined below) of not less than 1.20 to 1.00;

(v) Not later than the First Extended Maturity Date, Borrower shall have paid to Bank an extension fee in an amount equal to Thirty-Two Thousand Two Hundred Fifty and No/100 Dollars (\$32,250.00); and

(vi) During the Second Extended Term, Borrower shall, on each Monthly Payment Date, make payments in an amount equal to the sum of (A) all accrued, unpaid interest, plus (B) principal in the amount of Twenty-One Thousand Eight Hundred and No/100 Dollars (\$21,800.00), with one (1) final "balloon" payment of all accrued unpaid interest, principal, and all other amounts payable by Borrower to Bank on the Second Extended Maturity Date.

If all of the foregoing conditions are not satisfied strictly in accordance with their terms or waived in writing by Bank, the extension shall not become effective; provided, however, in the event Borrower is unable to qualify for the extension to the Second Extended Maturity Date solely because of its failure to satisfy subsection (iv) above, Borrower may reduce the principal amount of this Note to at or below the principal amount necessary to satisfy such requirement.

11. APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. After the occurrence and during the continuance of a Default, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

12. DEFINITIONS.

(a) **Loan Documents.** The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which

this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time).

(b) **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed.

(c) **Net Operating Income.** The term "Net Operating Income" shall mean all cash collected from rents and other operations of the Project as may be approved by Bank, less the greater of: (i) actual expenses of operating the Project, including anticipated property taxes and insurance if not yet paid during the period measured, plus a three percent (3.0%) management fee and \$150.00 per unit replacement reserve; or (ii) \$4,650/unit per year.

(d) **Debt Service Coverage Ratio.** The term "Debt Service Coverage Ratio" shall mean the ratio of (a) the annualized Net Operating Income of the Project based upon actual income from tenants in occupancy during the prior ninety (90) consecutive day period and pro forma rent from tenants not yet in occupancy under executed tenant leases on Borrower's standard form of lease, divided by (b) Minimum Debt Service.

(e) **Minimum Debt Service.** The term "Minimum Debt Service" shall mean the annualized scheduled payments of principal and interest necessary to fully amortize the principal amount of the Note over a period of thirty (30) years utilizing an interest rate equal to the greater of (a) seven percent (7.0%) per annum, or (b) the weekly average yield on United States Treasury Securities-Constant Maturity Series issued by the United States Government for a term of ten (10) years, as most recently published prior to the date in question by The Board of Governors of the Federal Reserve System in Federal Reserve Statistical Release H.15(519) plus one and eight-tenths percent (1.80%) per annum.

(f) **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

13. **LATE CHARGE.** If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to five percent (5%) of each payment past due for fifteen (15) or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

14. **ATTORNEYS' FEES AND OTHER COLLECTION COSTS.** Borrower shall pay all of Bank's reasonable out of pocket third party expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

15. **USURY.** If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

16. **GRACE/CURE PERIOD.**

(a) **Grace Period.** The failure of timely payment of the Obligations shall not be a Default until ten (10) days after receipt of written notice that such payment is past due.

(b) **Cure Period.** Except as provided below, any Default, other than non-payment, may be cured within thirty (30) days after receipt of written notice by Borrower by Bank provided, however, that if such failure cannot reasonably be cured within such 30-day period and Borrower commences to cure such failure during such 30-day period and is diligently and in good faith attempting to effect such cure, such 30-day period shall be extended for thirty (30) additional days. Borrower's right to cure shall be applicable only to curable defaults and shall not apply, without limitation, to Defaults based upon False Warranty or Cessation; Bankruptcy. Bank shall not exercise its remedies to collect the Obligations except as Bank reasonably deems necessary to protect its interest in collateral securing the Obligations during a cure period.

17. **DEFAULT.** If any of the following occurs, a default ("Default") under this Note shall exist:

(a) **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents and the expiration of any applicable cure or grace periods specified for such Default therein.

(b) **False Warranty.** A warranty or representation made or deemed made in the Loan Documents proves materially false, or if of a continuing nature, becomes materially false.

(c) **[Intentionally Deleted.]**

(d) **Cessation; Bankruptcy.** The dissolution of, termination of existence of, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, or its Subsidiaries, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents, which remains undismissed or unstayed for a period of sixty (60) days.

(e) **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, not to be unreasonably withheld, conditioned, or delayed, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries; (ii) except as otherwise permitted in connection with and pursuant to Section 10.8 of the Loan Agreement, the sale of substantially all of the business or assets of Borrower, or any of Borrower's Subsidiaries, or any guarantor, or the sale or transfer of more than fifty (50%) of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than fifty (50%) of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation; or (v) except as otherwise set forth or permitted in the Loan Agreement, the occurrence of change of ownership that effectively changes control of Borrower from current ownership.

(f) **Material Adverse Change.** Bank determines in good faith, in its reasonable discretion, a material adverse change in the business or prospects of Borrower, financial or otherwise, has occurred such that Borrower can no longer meet its obligations under the Loan Documents.

18. **REMEDIES UPON DEFAULT.** If a Default occurs and is continuing under this Note or any Loan Documents, Bank may at any time during the continuance thereof, take the following actions:

(a) **Bank Lien.** Foreclose its security interest or lien against Borrower's accounts without notice.

(b) **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable.

(c) **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

19. **FINANCIAL AND OTHER INFORMATION.** Borrower shall deliver to Bank such information pertaining to Borrower's financial condition pursuant to Article 8 of the Loan Agreement.

20. **WAIVERS AND AMENDMENTS.** No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in

exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower.

21. MISCELLANEOUS PROVISIONS.

(a) **Assignment.** This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Subject to Section 10.8 of the Loan Agreement, Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Without the prior written consent of Bank, any assignment shall not release Borrower from the Obligations.

(b) **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and construed under the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control.

(c) **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's accounts with Bank and any of its affiliates.

(d) **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement.

(e) **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the State of Arizona.

(f) **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document.

(g) **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, N.A., Real Estate Financial Services, Mail Code AZ-1400, 16435 N. Scottsdale Rd., Suite 200, Scottsdale, Arizona 85254, Attention: S. Todd Jarman, or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid.

(h) **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents.

(i) **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof.

(j) **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day.

(k) **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated.

(l) **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time.

(m) **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR

CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE.

(n) **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts.

(o) **FINAL AGREEMENT.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

(p) **PREPAYMENT.** Borrower may prepay the Loan, in whole or in part, without penalty or premium.

22. **ARBITRATION.** Upon demand of any party hereto, whether made before or after institution of any judicial proceeding, any claim or controversy arising out of or relating to the Loan Documents between parties hereto (a "Dispute") shall be resolved by binding arbitration conducted under and governed by the Commercial Financial Disputes Arbitration Rules (the "Arbitration Rules") of the American Arbitration Association (the "AAA") and the Federal Arbitration Act. Disputes may include, without limitation, tort claims, counterclaims, a dispute as to whether a matter is subject to arbitration, claims brought as class actions, or claims arising from documents executed in the future. A judgment upon the award may be entered in any court having jurisdiction. Notwithstanding the foregoing, this arbitration provision does not apply to disputes under or related to swap agreements.

(a) **Special Rules.** All arbitration hearings shall be conducted in Phoenix, Arizona or such other place as may be determined by AAA. A hearing shall begin within ninety (90) days of demand for arbitration and all hearings shall conclude within one hundred twenty (120) days of demand for arbitration. These time limitations may not be extended unless a party shows cause for extension and then for no more than a total of sixty (60) days. The expedited procedures set forth in Rule 51 et seq. of the Arbitration Rules shall be applicable to claims of less than \$1,000,000.00. Arbitrators shall be licensed attorneys selected from the Commercial Financial Dispute Arbitration Panel of the AAA. The parties do not waive applicable Federal or state substantive law except as provided herein.

(b) **Preservation and Limitation of Remedies.** Notwithstanding the preceding binding arbitration provisions, the parties agree to preserve, without diminution, certain remedies that any party may exercise before or after an arbitration proceeding is brought. The parties shall have the right to proceed in any court of proper jurisdiction or by self-help to exercise or prosecute the following remedies, as applicable: (i) all rights to foreclose against any real or personal property or other security by exercising a power of sale or under applicable law

by judicial foreclosure including a proceeding to confirm the sale; (ii) all rights of self-help including peaceful occupation of real property and collection of rents, set-off, and peaceful possession of personal property; (iii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment, attachment, appointment of receiver and filing an involuntary bankruptcy proceeding; and (iv) when applicable, a judgment by confession of judgment. Any claim or controversy with regard to any party's entitlement to such remedies is a Dispute.

(c) **Waiver of Jury Trial.** THE PARTIES ACKNOWLEDGE THAT BY AGREEING TO BINDING ARBITRATION THEY HAVE IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO JURY TRIAL WITH REGARD TO A DISPUTE AS TO WHICH BINDING ARBITRATION HAS BEEN DEMANDED.

IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be executed.

BROADSTONE WOODBRIDGE, L.P., a Delaware limited partnership

By: OWR Woodbridge, Inc., a Delaware corporation, General Partner

By: Charles Vogel
Name: Charles Vogel
Title: Vice President

"BORROWER"

EXHIBIT C

CONSTRUCTION LOAN AGREEMENT

Wachovia Bank, N.A.
Real Estate Financial Services
Mail Code AZ-1400
16435 North Scottsdale Road, Suite 200
Scottsdale, Arizona 85254
(Hereinafter referred to as the "Bank")

Broadstone Woodbridge, L.P.
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
(Hereinafter referred to as "Borrower")

This Construction Loan Agreement ("Agreement") is entered into August 30, 2007, by and between Bank and Borrower.

This Agreement applies to the loan or loans (individually and collectively, the "Loan") evidenced by one or more promissory notes dated August 30, 2007, or other notes subject hereto, as modified from time to time (whether one or more, the "Note") and all Loan Documents. The terms "Loan Documents" and "Obligations," as used in this Agreement, are defined in the Note. The term "Security Instrument" means the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Property and securing the Loan.

Relying upon the covenants, agreements, representations and warranties contained in this Agreement, Bank is willing to extend credit to Borrower upon the terms and subject to the conditions set forth herein, and Bank and Borrower agree as follows:

ARTICLE 1 CONSTRUCTION LOAN

Bank will make a Construction Loan in the principal amount of \$25,800,00.00. The Loan proceeds are to be used by Borrower solely for the construction of a 303-unit garden apartment project (the "Project") upon the land described in the Security Instrument (the "Property") substantially in accordance with the plans and specifications approved by Bank (as same may be modified from time to time with the written approval of Bank, the "Plans and Specifications").

ARTICLE 2 CONSTRUCTION LOAN TERMS

Section 2.1 Construction Budget. Subject to compliance by Borrower with the terms and conditions of this Agreement, Bank shall make advances of the Loan to Borrower for hard construction costs incurred by Borrower in connection with the construction of the Project ("Hard Costs") and for all other costs, other than Hard Costs, incurred by Borrower in connection with the Loan or the construction of the Project ("Soft Costs"), in accordance with the sources and uses provided to Bank, a copy of which is attached hereto as Schedule A (as same may be

revised from time to time with the written approval of Bank, which approval shall not be unreasonably withheld, conditioned or delayed, the "Construction Budget"); provided, however, that in no event shall Bank be obligated to make disbursements of the Loan in excess of Verified Project Costs (as hereafter defined). Notwithstanding any provision herein or in any other Loan Document, Borrower may reallocate Loan proceeds among line items comprising the Construction Budget without the prior approval of Bank so long as (i) prior to completion of the Project and ninety percent (90%) of the Project being occupied by tenants under executed tenant leases on Borrower's standard form of lease, no reallocation may be made to reduce the Interest Reserve (as defined below) and (ii) no reallocation shall be made to the "general contractor fee" or "developer fee" line items; provided that the remaining undisbursed Loan proceeds allocated to such line item shall be sufficient to pay for all unfinished work relating to such line item and Borrower provides Bank with written notice of such reallocation.

Section 2.2 Verified Project Costs. As used in this Agreement, "Verified Project Costs" means the aggregate, from time to time, of (i) Soft Costs actually incurred by Borrower and approved for funding by Bank, and (ii) Hard Costs actually incurred by Borrower for work in place as part of the Project, as certified by Bank's Inspector (as hereinafter defined) pursuant to the provisions of this Agreement, minus a sum equal to the aggregate of (i) the portion of the Equity Requirement which Borrower is required to have invested in the Project pursuant to this Agreement, and (ii) the Retainage, if any.

Section 2.3 Equity Requirements. Except with regard to the deferred general contractor, construction management, and development fees set forth in Section 2.10(d), prior to the initial loan advance, Borrower shall invest an amount from Borrower's own funds for construction of the Project in the amount by which the aggregate of the Hard Costs and Soft Costs set forth in the Construction Budget exceeds the amount of the Loan (the "Equity Requirement"). If at any time Bank and Bank's Inspector determine in their reasonable discretion that based on revised or actual costs for the Project additional equity is required, Bank may, prior to any loan advances, require that additional funds be invested in the Project by Borrower to satisfy the Equity Requirement. The Equity Requirement shall remain invested in the Project and Borrower agrees that no portion of the Equity Requirement will be reimbursed directly or indirectly without Bank's prior written consent, which consent shall not be unreasonably withheld or delayed.

Section 2.4 Retainage. Bank shall retain from each advance of Loan proceeds an amount equal to the lesser of (i) 10.00% of Hard Costs actually incurred by Borrower for work in place as part of the Project, as certified from time to time by Bank's Inspector, or (ii) the amount actually held back by Borrower from the general contractor and each subcontractor and supplier engaged in the construction of the Project (the "Retainage"). The Retainage shall not be released until the Project is completed as evidenced by satisfaction of all of the conditions set forth in the Final Advance/Conversion Section; provided however, that upon completion of 100% of the work with respect to any trade (including any trade performed by the general contractor) or the delivery of materials pursuant to a purchase order, Bank shall release the Retainage with respect to such trade or order, as the case may be, to be disbursed to Borrower upon evidence reasonably satisfactory to Bank of the completion of such trade or payment of such order. Notwithstanding the foregoing, there shall be no Retainage with respect to amounts drawn for general conditions, general contractor's fee or purchases of materials under the general contract; windows, floor and

roof trusses and components thereof and appliances purchased by the general contractor; and lumber, drywall, interior trim materials and electrical light fixtures purchased by subcontractors.

Section 2.5 Deficiency in Loan Amount. If at any time it reasonably appears that the actual cost to complete construction of the Project, in the reasonable opinion of Bank or Bank's Inspector, exceeds the undisbursed balance of the Loan (the amount by which such cost exceeds the Loan balance hereinafter referred to as the "Deficiency"), Bank may require Borrower to deposit with Bank (and Borrower shall deposit within seven (7) days after receipt of written notice from Bank) funds in the amount of the Deficiency ("Deficiency Deposit"). At Bank's option, no Loan advances shall be made until Borrower has fully complied with this requirement. All such deposited funds shall be additional security for the Obligations. Bank may, at its option, use the Deficiency Deposit to pay costs to complete construction of the Project before any further Loan advances.

Section 2.6 Contingency Reserve. Advances from that portion of the Loan proceeds allocated to Contingency (the "Contingency Reserve") on the Construction Budget shall be disbursed in Bank's reasonable discretion for payment of Hard Costs or Soft Costs as documented by paid receipts and otherwise as provided herein.

Section 2.7 Interest Reserve. Borrower acknowledges that the Loan amount includes a reserve for interest due on the Loan (the "Interest Reserve") in the amount set forth on the Construction Budget. Subject to the limitations below, Bank shall disburse and charge the Interest Reserve for interest due under the Note as advances are requested from Borrower. Bank shall also have the right, but not the obligation, to fund such interest from the Interest Reserve even if no draw request has been submitted to or approved by Bank. It is understood and agreed that (i) Bank shall not be obligated to disburse any portion of the Interest Reserve at any time when all conditions to disbursement are not satisfied and (ii) all payments received by Borrower under leases for any portion of the Project, except during the continuance of a Default (as hereinafter defined), shall be applied first to the approved operating expenses of the Property and then to interest due on the Loan, with only the balance of interest due funded out of the Interest Reserve. So long as funds remain available for funding under the Interest Reserve, Borrower may be required to submit to Bank on the first day of each month, a management certified income and expense report, in form and substance reasonably satisfactory to Bank, for the immediately preceding month. In the event Bank is not obligated to disburse out of the Interest Reserve as aforesaid, Borrower shall be responsible for the current payment of interest on the Loan from Borrower's own funds.

Section 2.8 Funding for Stored Materials. Bank shall not be required to make disbursements of the Loan for costs incurred by Borrower with respect to materials stored on or off the Property unless such materials have been delivered to the Property or stored with an insured warehouseman, with reasonable evidence of insurance, both during storage and transit, and suitable storage.

Section 2.9 Bank's Inspector. Bank shall have the right to retain, at Borrower's expense a third party inspector ("Bank's Inspector") to review and advise Bank with respect to all Plans and Specifications, construction, architectural and other design professional contracts, change orders, governmental permits and approvals, and other matters related to the design,

construction, operation and use of the Project, to monitor the progress of construction and to review on behalf of Bank all requests for Loan advances submitted by Borrower. The reasonable fees and expenses of Bank's Inspector, including all such fees and expenses incurred and unpaid to the date hereof, shall be due and payable by Borrower as provided for herein or otherwise on demand. Bank shall provide copies of each report or other document prepared by Bank's Inspector to Borrower. Borrower acknowledges that (i) Bank's Inspector has been retained by Bank to act as a consultant, and only as a consultant, to Bank in connection with the construction of the Project, (ii) Bank's Inspector shall in no event have any power or authority to make any decision or to give any approval or consent or to do any other thing which is binding upon Bank, and any such purported decision, approval, consent or act by Bank's Inspector on behalf of Bank shall be void and of no force or effect, (iii) Bank reserves the right to make any and all decisions required to be made by Bank under this Agreement, in its reasonable discretion, and without in any instance being bound or limited in any manner whatsoever by any opinion expressed or not expressed by Bank's Inspector to Bank or any other person with respect thereto, and (iv) Bank reserves the right in its sole and absolute discretion to replace Bank's Inspector with another inspector at any time and without prior notice to or approval by Borrower. All inspections by or on behalf of Bank shall be solely for the benefit of Bank, and Borrower shall have no right to claim any loss or damage against Bank or Bank's Inspector (whether or not an employee of the Bank) arising from any alleged (i) negligence or failure to perform such inspections, (ii) failure to monitor loan disbursements or the progress or quality of construction, or (iii) failure to otherwise properly administer the construction aspects of the Loan; provided, however, that Bank's Inspector shall be solely liable for any damages to the Property as a result of its gross negligence or willful misconduct in connection with any such inspections.

Section 2.10 Initial Closing Conditions. Bank will have no obligations to Close the Loan (as hereinafter defined) unless it has received the following from Borrower or any guarantors, as applicable (if not expressly waived by Bank), all in form and substance satisfactory to Bank:

- (a) each of the Loan Documents duly executed by Borrower or any guarantors, as the case may be;
- (b) an assignment to Lender of the completion guaranty from the general contractor to Borrower, which completion guarantees completion of the Project by the general contractor;
- (c) any applicable title, appraisal, survey, environmental, soils tests or insurance requirements as set forth in the Loan Documents or otherwise requested by Bank, which shall be, unless expressly waived by Bank, in accordance with Bank's minimum standards in effect at closing (copies of such standards shall be provided to Borrower upon request);
- (d) evidence satisfactory to Bank in Bank's sole discretion that Borrower and the general contractor, as applicable, have agreed to defer until the earlier of (i) the Completion Date, as defined in Section 4.2, or (ii) the Project achieving substantial completion, as reasonably determined by Bank based upon Bank's approval of completed work required under the general contract and Bank's receipt of any applicable unconditional certificates of occupancy required in connection with the construction of the Project, the payments of: (A) a general contractor fee in

the amount of Nine Hundred Seventy-Six Thousand and No/100 Dollars (\$976,000.00) otherwise payable to the general contractor in connection with the Project, (B) a construction management fee in the amount of Three Hundred Ninety Thousand and No/100 Dollars (\$390,000.00) otherwise payable to Borrower in connection with the Project, and (C) a development fee in the amount of One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) otherwise payable to Borrower in connection with the Project;

(e) a copy of the fully executed fixed-price construction contract between Borrower and the general contractor pursuant to Section 4.19; and

(f) each of the other documents, certificates, affidavits, releases, agreements, counsel opinions, or other closing items required by Bank as a condition to making the Loan.

"Close" or "Closing" shall mean Bank's agreement to the terms and conditions of the Loan by execution of the Loan Documents and the initial funding of the Loan (which may occur later than the effective date of the Loan Documents).

Section 2.11 Construction Loan Fee. A non-refundable loan fee in the amount of One Hundred Sixty-One Thousand Two Hundred Fifty and No/100 Dollars (\$161,250.00) shall be due and payable on the date the Loan Closes. Bank may deduct the loan fee from the proceeds of the closing disbursement.

Section 2.12 Other Fees and Expenses. Borrower shall be obligated to reimburse Bank for reasonable fees and expenses Bank incurs in connection with the issuance, closing and administration of the loan. Such amounts will include, but are not limited to, the services of Bank's outside counsel, an appraiser and the Bank's Inspector, if required.

ARTICLE 3 PROCEDURES AND CONDITIONS FOR ADVANCES

Section 3.1 Frequency of Advances. Unless otherwise agreed, Bank shall not be obligated to make advances of the Loan more frequently than once every thirty (30) days.

Section 3.2 Request for Advance. For each request for an advance of the Loan, Borrower shall submit to Bank, at least five (5) business days prior to the requested date of disbursement, a completed written disbursement request (each, a "Request for Advance") in such form and detail as reasonably required by Bank. Each Request for Advance shall certify and contain in detail reasonably acceptable to Bank: (i) the cost of the labor that has been performed, (ii) the materials that have been incorporated into the Project, and (iii) as required by Bank, invoices for Soft Costs in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00) incurred since the date of the previous advance.

Section 3.3 Accompanying Materials. The Request for Advance shall be accompanied by such supporting data as Bank may reasonably require, including, without limitation, invoices for payments in excess of Twenty-Five Thousand and No/100 Dollars (\$25,000.00), waivers of mechanic's and materialmen's liens, with respect to contracts in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00), and AIA Forms G702 and G703 certified by the general contractor for the Project, as applicable.

Section 3.4 Conditions To Advance. Bank will have no obligation to make any advance if a Default (as defined in the Loan Documents) exists and is continuing or event which, with the giving of notice or the passage of time, or both, would constitute a Default under any of the Loan Documents has occurred and is continuing, and unless it has received from the Borrower (if not expressly waived by Bank), in form and substance reasonably satisfactory to Bank: (i) evidence of any updated title search and/or endorsement to the title policy required by Bank, as applicable, which shall be, unless expressly waived by Bank, in compliance with Bank's minimum standards in effect at the time of such advance; and if any title policy contains a pending disbursement clause, the amount of the policy shall increase by the Loan advance being made in connection therewith; and (ii) if applicable, satisfactory evidence that Borrower has invested the required portion of the equity requirement of the Project.

Section 3.5 Inspection. If required by Bank upon receiving a Request for Advance, Bank's Inspector may determine prior to any advance (a) whether the work completed to the date of such Request for Advance has been done substantially in accordance with the Plans and Specifications, (b) the percentage of construction of the Project completed as of the date of such Request for Advance, (c) the Hard Costs (as applicable) actually incurred for work in place as part of the Project as of the date of such Request for Advance, (d) the actual sum necessary to complete construction of the Project substantially in accordance with the Plans and Specifications, and (e) the amount of time from the date of such Request for Advance which will be required to complete construction of the Project substantially in accordance with the Plans and Specifications and/or the Construction Budget. Bank shall use reasonable efforts to ensure that each required inspection is completed in a timely manner in order to permit Bank to fund each Request for Advance within the time period set forth in Section 3.2.

Section 3.6 Disbursement of Advance. During the occurrence and continuation of a Default, at its option, Bank may make advances of the Loan directly into a separate construction disbursement account or other Borrower account with Bank, to Borrower directly, to a title insurance company or other third party, or directly to the general contractor, subcontractor, materialmen or other suppliers providing labor, services or materials in connection with the Project. Bank shall have no obligation after making Loan disbursements in a particular manner to continue to make Loan disbursements in that manner. Notwithstanding the foregoing, Bank's records of any advance made pursuant to this Agreement shall, in the absence of manifest error, be deemed correct and acceptable and binding upon Borrower.

Section 3.7 Use of Advance Proceeds. The proceeds of each advance shall be used by Borrower solely to pay or as reimbursement for the obligations for which the advance is sought.

Section 3.8 Final Advance. Bank will have no obligation to make the final advance of the Loan, unless it has received the following from Borrower, all in form and substance reasonably satisfactory to Bank: (a) unless waived by Bank, any final endorsement to a title policy; (b) if required by Bank, the final certified "as-built" survey showing the completed Project and any flood hazard area in accordance with Bank's minimum standards in effect at the time of the final advance or loan conversion, as applicable; (c) evidence that Borrower's builder's risk insurance has been converted to an "all-risk" fire and extended coverage hazard insurance policy in accordance with the requirements of the Security Instrument; (d) the final Request for

Advance shall have been approved by Bank's Inspector if required, and completion of the Project shall have been certified by the construction architect, engineer, and/or Bank's Inspector, as applicable and required by Bank; (e) an unconditional permanent certificate of occupancy or comparable written approval, if applicable, shall have been issued by the appropriate governmental authorities; (f) if required by Bank and subject to Section 2.4, full and complete lien releases from all contractors and/or suppliers with contracts for work or materials in excess of \$100,000.00 or other evidence reasonably satisfactory to Bank confirming that final payment has been made for all materials supplied and labor furnished in connection with the Project; and (g) the Project is ready for use and occupancy (as applicable), and shall have been accepted by Borrower.

ARTICLE 4 CONSTRUCTION COVENANTS

Section 4.1 Construction of Project. Unless otherwise expressly agreed to by Bank, (i) construction of the Project, including delivery of materials or performance of lienable work, shall not commence before recording of the Security Instrument; (ii) construction of the Project shall commence within thirty (30) days from the date of this Agreement and be carried on diligently and without delay or interruption for more than thirty (30) consecutive days (which 30 day period shall be extended as a result of Force Majeure [as hereinafter defined]); and (iii) the Project shall be constructed in a good and workmanlike manner, substantially in accordance with the Plans and Specifications, the other Construction Documents (as hereinafter defined) and/or the Construction Budget submitted to Bank, and in compliance with all applicable statutes, Ordinances, codes, regulations and restrictions. "Construction Documents" shall mean all construction contracts, contracts with architects, engineers or other design professionals, Plans and Specifications, drawings, budgets, and other agreements pertaining to construction of the Project, all engineering, soil and other reports and studies and all surveys pertaining thereto and or reasonably required by Bank's Inspector, together with all modifications and additions thereto. "Force Majeure" shall mean a delay, not to exceed a total of thirty (30) consecutive days, caused by unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, earthquake or other acts of God, strikes, lockouts, acts of public enemy, riots or insurrections or any other unforeseen circumstances or events beyond the control of Borrower (except financial circumstances or events or matters which may be resolved by the payment of money), and as to which Borrower notifies Lender in writing within fifteen (15) days after such occurrence; provided, however, no Force Majeure event shall suspend or abate any obligation of Borrower or any Guarantor or any other person to pay any money.

Section 4.2 Completion of Project. Borrower shall complete construction of the Project by no later than August 30, 2009 ("Completion Date").

Section 4.3 Change Orders. No amendment shall be made to the Plans and Specifications or the other Construction Documents, nor shall any change orders be made thereunder without the prior written consent of Bank, not to be unreasonably conditioned, withheld or delayed, provided, however, that Bank's consent shall not be required for (but Bank shall promptly receive copies of) any change orders which do not involve a material adverse change in the scope of the Project or a reduction in the value thereof and such change order does not (a) materially and adversely change the operational systems, structure, square footage,

layout, parking, or quality of materials; (b) extend the Completion Date, or; (c) involve an individual expenditure in excess of \$50,000.00 or an expenditure that when aggregated with all other change orders exceeds \$250,000.00.

Section 4.4 Liens and Lien Waivers. Borrower shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Property released or transferred to bond or endorsed over by the title company (in form and substance satisfactory to Bank in Bank's sole discretion) within twenty (20) days of the date Borrower receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, no Loan advances will be made until it is removed and a copy of the recorded release thereof is received by Bank and accepted by the title insurance company or such lien or encumbrance is bonded or endorsed over. Borrower shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

Section 4.5 Title. Unless otherwise expressly waived by Bank, Borrower shall ensure that the Security Instrument is and remains a valid first lien on the Property, and the Property is and remains free and clear of all liens, defects, or other encumbrances.

Section 4.6 Surveys. From and after the Closing of the Loan, to the extent that in connection with the construction of the Improvements (as defined in the Deed of Trust) Bank or Bank's Inspector reasonably determines that the survey received and approved by Bank prior to the Closing of the Loan contains errors or omissions which adversely affect Bank's security interest in and lien upon the Project, then Bank may request, in Bank's reasonable discretion, and Borrower shall deliver, an updated survey within thirty (30) days after such request. Any change in the state of facts shown in any updated survey shall be subject to the reasonable approval by Bank and Bank's Inspector. The Project shall be constructed entirely on the Property and will not encroach upon or overhang any easement, right of way, or any other land, and shall be construed wholly within applicable building setback restrictions.

Section 4.7 Compliance with Laws and Restrictions. All construction shall be performed strictly in accordance with all applicable statutes, ordinances, codes, regulations and restrictions. The Project shall be constructed entirely on the Property and will not encroach upon or overhang any easement, right of way, or any other land, and shall be constructed wholly within applicable building setback restrictions. All contractors, subcontractors, mechanics or laborers and other persons providing labor or material in construction of the Project shall have or be covered by worker's compensation insurance, if required by applicable law.

Section 4.8 Soil, Concrete and Other Tests. Prior to the Closing of the Loan, Borrower shall, at Borrower's expense cause to be made a soils test, which test shall be in form and substance and from a testing company satisfactory to Bank.

Section 4.9 Insurance. In addition to the insurance requirements set forth in the Security Instrument, borrower shall maintain during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming

Bank as mortgage and loss payee, and endorsed to provide that occupancy by any person shall not void such coverage. Borrower shall provide evidence of insurance if required by Bank. All contractors, subcontractors, mechanics or laborers and other person providing labor or material in construction of the Project shall have or be covered by worker's compensation insurance, if required by applicable law.

Section 4.10 Assignment of Construction Documents. As additional security for the obligations of Borrower under this Agreement and the other Loan Documents, Borrower hereby collaterally assigns, transfers and grants a security interest in all of Borrower's right, title, interest and benefits in or under the Construction Documents.

Section 4.11 Contractors. If requested by Bank, Borrower shall deliver a fully executed copy of any or all agreements between Borrower and the general contractor, or between any general contractor and its subcontractors with subcontracts for work or materials in excess of \$250,000, each of which shall be in form and substance reasonably satisfactory to Bank.

Section 4.12 Leases. Borrower will comply with the terms and conditions of, and deliver leased premises at the time and in the condition required by Borrower's standard form of lease. Borrower will not enter into, amend or renew any non-residential leases or other non-residential occupancy agreements affecting the Property without Bank's prior written consent, not to be unreasonably withheld, conditioned, or delayed; provided, however, Bank's consent may be conditioned upon receipt of such documents and agreements, including without limitation subordination and attornment agreements and tenant estoppel certificates, as Bank may reasonably require.

Section 4.13 Management and Leasing Agreements. All future management and non-residential leasing agreements shall be subject to prior review and approval by Bank, which approval shall not be unreasonably withheld, conditioned or delayed, and shall provide that Bank shall have the right to terminate such agreements in the event Bank acquires title to the project.

Section 4.14 Other Documents. If the Project involves a condominium, cooperative, subdivision, planned unit development or homeowner's association, all documents required in connection with the formation thereof shall be subject to Bank's prior review and approval, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 4.15 Ownership of Material and Fixtures. No materials, equipment or fixtures incorporated by Borrower into the Project shall be purchased or installed under any security agreement, conditional sales contract, lease, or other arrangement wherein the seller reserves title or any interest in such items or the right to remove or repossess such items or to consider them personal property after their incorporation into the Project, without the prior written consent of Bank, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 4.16 No Warranty by Bank; Indemnification. Nothing contained in this Agreement or any other Loan Document shall constitute or create any duty on or warranty by Bank regarding (i) the proper application by Borrower, general contractor or any subcontractor

of the Loan proceeds, (ii) the quality or condition of the Project, or (iii) the competence or qualifications of the general contractor or any other party furnishing labor or materials in connection with construction of the Project. Borrower (a) acknowledges that Borrower has not relied and will not rely upon any experience, awareness or expertise of Bank regarding such matters, and (b) shall indemnify, hold harmless, and defend Bank from any costs, expenses, damages, judgments, or liabilities, including without limitation, attorneys' fees, arbitration fees, and expert witness fees, arising from or connected with (i) such matters, (ii) payment or non-payment for labor or materials furnished for construction of the Project, (iii) any claims of mechanics or materialmen, or (iv) any action or inaction by Borrower with respect to the foregoing.

Section 4.17 Advertising. Bank shall have the right to erect, at its expense, one sign on the Property advertising its financing of the Project, the size and location of which shall be subject to the prior approval of Borrower, such approval not to be unreasonably withheld or delayed.

Section 4.18 Time is of the Essence. In all matters pertaining to this Agreement, time is of the essence.

Section 4.19 General Contract. The Project shall be constructed under a fixed-price contract with a qualified third-party general contractor, acceptable to Bank in Bank's reasonable discretion. Bank shall have the right to require payment and performance bonds of such general contractor, provided, however, that Bank shall waive such right if Alliance Residential Builders, LP, a Texas limited partnership, or Alliance Residential Builders, LLC, an Arizona limited liability company, shall be the general contractor.

ARTICLE 5 REPRESENTATIONS

Borrower represents that from the date of this Agreement and until final payment in full of the Obligations:

Section 5.1 Access and Utilities. The Property has, or will have upon completion of construction, (i) adequate legal vehicular and pedestrian access to public roads; (ii) sewer, water and all other appropriate utilities available at ordinary costs at the Property through public or unencumbered private easements, and in sufficient quantities to serve the Project; and (iii) if applicable, required written approvals of septic tanks or wells issued by all appropriate governmental authorities.

Section 5.2 Laws, Zoning and Approvals. (i) The Plans and Specifications (if applicable) and the anticipated use of the Property and the Project comply and shall comply with all applicable restrictive covenants, zoning ordinances, building laws and codes, and other applicable laws, regulations and requirements (including without limitation, the Americans with Disabilities Act, as amended); (ii) the current zoning classification of the Property and any covenants and restrictions affecting the Property permit the construction and intended use of the Project; and (iii) Borrower has obtained all permits and approvals of any type required to construct the Project, and all such permits and approvals are final and unappealable and remain

in full force and effect without restriction or modification or, if the current state of construction of the Project does not allow the issuance of all such permits and approvals, then as construction progresses Borrower will obtain such permits and approvals as and when they become available; and (iv) all public improvements included in the Project have been fully authorized by appropriate ordinance or municipal action, and Borrower has satisfied all conditions imposed by any governmental authority in connection with any grant of subdivision or land development approval, or, if the current stage of construction of the Project does not allow such the authorizations and approvals, then as construction progresses Borrower will obtain such authorizations and approvals when they become available.

Section 5.3 Construction Documents. Borrower has furnished to Bank as required full and complete copies of all Construction Documents, and there are no other oral or written agreements pertaining to the construction of the Project.

Section 5.4 Condemnation. No notice of taking by eminent domain or condemnation of any part of the Property has been received, and Borrower has no knowledge that any such proceeding is contemplated.

Section 5.5 Casualty Damage. No part of the Property or the Project has been damaged as a result of any fire, explosion, accident, flood or other casualty which in not now fully restored or insured against in accordance with the Security Instrument.

Section 5.6 Corporate or Other Power. Borrower has the power and authority to execute and perform this Agreement, to borrow hereunder and to execute and deliver the Note, the Security Instrument and the other Loan Documents. Borrower's performance hereunder shall not constitute a breach of any agreement to which Borrower is a party.

Section 5.7 [Intentionally Deleted.]

Section 5.8 Litigation Disclosed. Borrower has no knowledge of any pending or threatened litigation that Borrower has not disclosed to Bank.

Section 5.9 Compliance with Laws. Borrower and any subsidiary of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, any federal or state laws relating to liquor (including 18 U.S.C. § 3617, et seq.) or narcotics (including 21 U.S.C. § 801, et seq.) and/or any commercial crimes; all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or, to Borrower's knowledge, any affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified

on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/sanctions/>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country to the extent subject to a sanctions program administered by OFAC.

Section 5.10 No Default. Borrower is not in default in any material respect in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or material instrument to which it is a party.

Section 5.11 Indemnity. Borrower will indemnify Bank and its affiliates from and against any losses, liabilities, claims, damages, penalties or fines imposed upon, asserted or assessed against or incurred by Bank arising out of the inaccuracy or breach of any of the representations contained in this Agreement or any other Loan Documents.

Section 5.12 Wetlands. No portion of the Property constitutes Wetlands, or if any portion of the Property does constitute Wetlands, then Borrower has obtained or will timely obtain all licenses, permits, approvals, and consents required for such portion. Borrower is and shall continue at all times to be in compliance with all licenses, permits, approvals and consents regarding Wetlands. As used herein, "Wetlands" shall mean areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, or any other real property designated pursuant to any environmental laws for regulation or protection on account of permanent or temporary presence therein or thereon of water or of plant or animal life associated with hydric conditions.

ARTICLE 6 AFFIRMATIVE COVENANTS

Borrower agrees that from the date hereof and until final payment in full of the Obligations, unless Bank shall otherwise consent in writing, Borrower will:

Section 6.1 Access to Books and Records. Allow Bank, or its agents, during normal business hours, upon reasonable notice, access to the books, records and such other documents of Borrower as Bank shall reasonably require, and allow Bank to inspect and examine the same and to make extracts therefrom and to make copies thereof.

Section 6.2 Business Continuity. Conduct its business in substantially the same manner as such business is now and has previously been conducted.

Section 6.3 Compliance with Other Agreements. Comply with all terms and conditions contained in this Agreement, and any other Loan Documents, and swap agreements, if applicable, as defined in the 11 U.S.C. § 101, as in effect from time to time.

Section 6.4 Estoppel Certificate. Furnish, within 15 days after request by Bank, a written statement duly acknowledged of the amount due under the Loan and whether offsets or defenses exist against the Obligations.

Section 6.5 Insurance. Maintain insurance coverages as required pursuant to the Security Instrument.

Section 6.6 Maintain Properties. Maintain, preserve and keep its property in good repair, working order and condition, except for normal wear and tear, making all replacements, additions and improvements thereto reasonably necessary for the proper conduct of its business, unless prohibited by the Loan Documents.

Section 6.7 Notice of Default and Other Notices.

(a) **Notice of Default.** Furnish to Bank immediately upon becoming aware of the existence of any condition or event which constitutes a Default (as defined in the Loan Documents) or any event which, upon the giving of notice or lapse of time or both, may become a Default, written notice specifying the nature and period of existence thereof and the action which Borrower is taking or proposes to take with respect thereto.

(b) **Other Notices.** Promptly notify Bank in writing of (i) any material adverse change in its financial condition or its business; (ii) any default under any material agreement, contract or other instrument to which it is a party or by which any of its properties are bound, or any acceleration of the maturity of any indebtedness owing by Borrower; (iii) any material adverse claim against or affecting Borrower or any part of its properties; (iv) the commencement of, and any material determination in, any litigation with any third party or any proceeding before any governmental agency or unit that could reasonably be expected to have a material adverse effect on Borrower; and (v) at least 30 days prior thereto, any change in Borrower's name or address as shown above, and/or any change in Borrower's structure.

Section 6.8 Other Financial Information. Deliver promptly such other information regarding the operation, business affairs, and financial condition of Borrower which Bank may reasonably request; provided, however, that the information regarding financial condition of Borrower shall not extend to the direct or indirect members of Borrower.

Section 6.9 Payment of Debts. Pay and discharge when due, and before subject to penalty or further charge, and otherwise satisfy before maturity or delinquency, all obligations, debts, taxes, and liabilities of whatever nature or amount, except those which Borrower in good faith disputes.

**ARTICLE 7
NEGATIVE COVENANTS**

Borrower agrees that from the date hereof and until final payment in full of the Obligations, unless Bank shall otherwise consent in writing, Borrower will not:

Section 7.1 Change of Control. Subject to Section 10.8 below, make or suffer a change of ownership that effectively changes control of Borrower from current ownership.

Section 7.2 [Intentionally Deleted.]

Section 7.3 Default on Other Contracts or Obligations. Default in any material respect on any material contract with or obligation when due to a third party or default in any material respect in the performance of any obligation to a third party incurred for money borrowed in an amount in excess of \$250,000.00, except in any such case, to the extent Borrower is actively and in good faith pursuing a remedy thereunder. As used herein, "material" shall mean any contract or obligation in excess of \$250,000.00.

Section 7.4 Government Intervention. Permit the making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Borrower or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired that is not dismissed or stayed within 60 days thereof.

Section 7.5 Judgment Entered. Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due Borrower in an amount in excess of \$100,000.00 which is not discharged or execution is not stayed within thirty (30) days of entry.

Section 7.6 [Intentionally Deleted.]

Section 7.7 Loan-To-Value/Loan-To-Cost. Except as otherwise set forth below, at all times during the term of the Loan, the unpaid principal balance of the Loan shall not exceed (i) eighty percent (80%) of the appraised prospective market value of the Project upon stabilization, or (ii) ninety percent (90%) of Borrower's total cost for construction of the Project, each as determined by Bank in its reasonable discretion.

If for any reason the loan-to-value and/or loan-to-cost ratio exceeds the applicable percentage, then Borrower shall, upon Bank's demand, immediately reduce the unpaid principal balance of the Loan, or deposit sufficient sums with Bank to reduce the loan-to-value and/or the loan-to-cost ratio to at or below said percentage.

Section 7.8 Stop Notices. Cause or permit any "stop notice" or similar notice to be filed or served on Bank with respect to the Property. Borrower shall defend, indemnify and hold Bank and its officers, directors, agents and employees harmless from and against all claims, damages, loss, liability, costs and expenses (including reasonable third party attorneys' fees) arising from or relating to any such stop notice, the compliance therewith and the defense thereof. Bank may require Borrower to provide a release bond for any stop notice, which bond shall be subject to Bank's review and approval, not to be unreasonably withheld or delayed, and/or may take such action with respect to any stop notice as Bank may reasonably deem appropriate and Bank may withhold such amounts from disbursement in connection with the Loan as Bank may elect in Bank's reasonable discretion, and whether or not Bank is obligated to withhold funds pursuant to applicable law or any demands made in connection with any stop notice.

(a) **Notices.** Borrower irrevocably appoints Bank as its attorney-in-fact, coupled with an interest and with full power of substitution, to file for record, at the Borrower's

cost and expense and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Bank reasonably considers necessary or desirable to protect its security.

(b) [Intentionally Deleted.]

(c) Demand. At any time, Bank shall be entitled to make written demand on any lien claimant relating to the Property, demanding that any such lien claimant serve a stop notice within thirty (30) days after such written demand by Bank.

(d) Loan Balancing. With respect to any Loan "balancing" set forth herein or in the Loan Documents, any Loan funds which are subject to any stop notice or which Bank has determined to withhold such funds from disbursement shall be excluded from any calculation of available Loan funds under the Loan.

ARTICLE 8 FINANCIAL REPORTING

Section 8.1 Annual Financial Statements. Borrower shall deliver to Bank, within ninety (90) days after the close of each fiscal year, unaudited management-prepared financial statements reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules; all on a consolidated basis with respect to Borrower and its subsidiaries, as applicable, and in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. If unaudited statements are required, such statements shall be certified as to their correctness in all material respects by a member or officer of Borrower's managing member.

Section 8.2 Property Reports. Borrower shall deliver to Bank, within ninety (90) days after the close of each fiscal year and, if requested by Bank, within sixty (60) days after the end of each fiscal quarter, unaudited management-prepared financial statements relating to the operation of the Project, including, without limitation, a balance sheet, income and expense statement and statement of cash flows, with supporting schedules; and summary of leases, as applicable; all in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year.

Section 8.3 Guarantor Financial Information. Borrower shall deliver or cause to be delivered to Bank all of the following:

(a) As soon as reasonably practicable and in any event within one hundred twenty (120) days after the end of each fiscal year, audited financial statements for Guarantor reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules; all in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year.

(b) As soon as reasonably practicable and in any event within sixty (60) days after the end of each fiscal quarter, unaudited management prepared financial statements for

Guarantor reflecting its operations during such fiscal quarter, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules; all in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding quarter. All such statements shall be certified as to their correctness by a principal financial officer of Guarantor.

As used herein, "Guarantor" shall mean Opus West Corporation, a Minnesota corporation.

ARTICLE 9 DEFAULTS AND REMEDIES

Section 9.1 If any of the following events occur and continue, a default ("Default") under this Agreement shall exist:

(a) Failure to pay any obligation under any Loan Document within ten (10) days of the date Borrower receives notice such payment is past due in accordance with the terms thereof;

(b) Failure to perform or cause to be performed any other material obligation or observe any other material condition, covenant, term, agreement or provision required to be performed or observed by Borrower under this Agreement not otherwise described in Section 9.1(a); provided, however, that if this Agreement does not provide for a specific grace, notice or cure period, and further provided that if such failure by its nature can be cured, then Borrower shall have a period (the "Cure Period") of thirty (30) days after Borrower receives written notice of such failure to cure the same and a Default shall not be deemed to exist during the Cure Period, provided further that if such failure cannot reasonably be cured within such Cure Period and provided further that Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days;

(c) A "Default" under any other Loan Document and the expiration of any applicable cure or grace periods specified for such Default therein;

(d) Failure to complete the Project substantially in accordance with the Plans and Specifications on or before the Completion Date except if caused by a Force Majeure delay; and

(e) The commencement of any bankruptcy or insolvency proceeding by or against the general contractor for the Project or the termination of the construction contract without the prior written consent of Bank, and the failure of Borrower to procure a contract with a new contractor reasonably satisfactory to Bank within thirty (30) days from the occurrence thereof.

Section 9.2 During the continuance of a Default, Bank may refuse to make any further advances hereunder and may terminate Bank's commitment to make the Loan. Thereupon, Bank shall have the right to declare immediately due and payable the outstanding principal balance of the Note, all accrued and unpaid interest thereon and all other sums due in connection therewith,

and Bank may exercise any right, power or remedy permitted by law or as set forth in any of the Loan Documents.

ARTICLE 10 MISCELLANEOUS

Section 10.1 No Third Party Beneficiary. The parties hereto do not intend the benefits of this Agreement to inure to any third party. Notwithstanding anything contained in this Agreement or any other Loan Document, or any course of conduct by any of the parties hereto, this Agreement shall not be construed as creating any rights, claims, or causes of action against Bank, or any of its officers, agents, or employees, in favor of any contractor, subcontractor, supplier of labor, materials or services, or any of their respective creditors, or any other person or entity other than Borrower.

Section 10.2 Applicable Law. This Agreement shall be governed by the laws of the State of Arizona, without regard to conflict of laws principles.

Section 10.3 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement shall in no way affect any other provision.

Section 10.4 Interpretation. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. Time is of the essence in the performance of this Agreement by Borrower. The exhibits to this Agreement are hereby incorporated in this Agreement.

Section 10.5 Amendments. This Agreement may not be modified or amended except by a written agreement signed by the parties.

Section 10.6 Counterparts. This Agreement and any attached consents or exhibits requiring signatures may be executed in counterparts, and all counterparts shall constitute but one and the same document.

Section 10.7 WAIVER OF TRIAL BY JURY. BORROWER AND BANK EACH (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND BANK THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 10.8 Permitted Transfer. Notwithstanding anything herein to the contrary, and so long as Opus West Corporation, a Minnesota corporation, remains fully obligated as a

guarantor for the payment and performance of Borrower's obligations under the Loan Documents, Borrower shall have the right to transfer any interest in Borrower to any person or entity that is controlled by, controlling or under common control of or with (a) Opus West Corporation, a Minnesota corporation, Opus Corporation, a Minnesota corporation, Opus, L.L.C., a Minnesota limited liability company, (b) the founder of Opus Corporation, a Minnesota corporation, his children, his grandchildren or other members of his family, or (c) the trustee of a trust or trusts for the benefit of the founder of Opus Corporation, a Minnesota corporation, his children, his grandchildren or other members of his family, without Lender's consent.

IN WITNESS WHEREOF, Borrower and Bank, on the day and year first written above, have caused this Agreement to be executed.

BROADSTONE WOODBRIDGE, L.P., a Delaware limited partnership

By: OWR Woodbridge, Inc., a Delaware corporation, General Partner

By: Charles Vogel
Name: Charles Vogel
Title: Vice President

"BORROWER"

WACHOVIA BANK, N.A., a national banking association

By: _____
S. Todd Jarman
Senior Vice President

"BANK"

guarantor for the payment and performance of Borrower's obligations under the Loan Documents, Borrower shall have the right to transfer any interest in Borrower to any person or entity that is controlled by, controlling or under common control of or with (a) Opus West Corporation, a Minnesota corporation, Opus Corporation, a Minnesota corporation, Opus, L.L.C., a Minnesota limited liability company, (b) the founder of Opus Corporation, a Minnesota corporation, his children, his grandchildren or other members of his family, or (c) the trustee of a trust or trusts for the benefit of the founder of Opus Corporation, a Minnesota corporation, his children, his grandchildren or other members of his family, without Lender's consent.

IN WITNESS WHEREOF, Borrower and Bank, on the day and year first written above, have caused this Agreement to be executed.

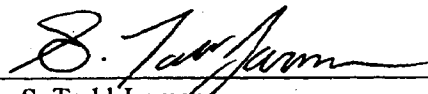
BROADSTONE WOODBRIDGE, L.P., a Delaware
limited partnership

By: OWR Woodbridge, Inc., a Delaware
corporation, General Partner

By: _____
Name: _____
Title: _____

"BORROWER"

WACHOVIA BANK, N.A., a national banking
association

By:  _____
S. Todd Jarman
Senior Vice President

"BANK"

SCHEDULE A TO CONSTRUCTION LOAN AGREEMENT

APPROVED BUDGET

COST BUDGET

Opus West/Alliance Residential
Broadstone Woodbridge

303 Units

<u>Hard Costs</u>	<u>Total Cost</u>	<u>Per Unit</u>	<u>Lender</u>	<u>Borrower</u>
Land	\$1,875,000	\$6,188	\$1,505,000	\$370,000
<u>Hard Costs</u>				
Construction Contract (includes contingency of 3%)	\$19,517,000	\$64,413	\$19,517,000	\$0
GC Fee	\$976,000	\$3,221		\$976,000
Sub-Total	\$20,493,000	\$67,634	\$19,517,000	\$976,000
<u>Soft Costs</u>				
A&E	\$650,000	\$2,145	\$650,000	
Municipal Fees, Permits & Mitigation	\$785,000	\$2,591	\$785,000	
Construction Management Fee	\$390,000	\$1,287		\$390,000
Financing Fees	\$179,000	\$591	\$179,000	
Operating Expenses	\$300,000	\$990	\$300,000	
Interest Reserve	\$1,826,000	\$6,026	\$1,826,000	
Partnership/Legal/Closing/Taxes	\$550,000	\$1,815	\$550,000	
Development Fee 3.84% of total cost	\$1,100,000	\$3,630		\$1,100,000
Contingency 2.38% of hard cost	\$488,000	\$1,611	\$488,000	
Sub-Total	\$6,268,000	\$20,686	\$4,778,000	\$1,490,000
Total Costs	\$28,636,000	\$94,508	\$25,800,000	\$2,836,000
<u>Sources</u>				
Borrower Equity	\$2,836,000	\$9,360/unit	9.90%	
Loan Proceeds	\$25,800,000	\$85,149/unit	90.10%	
Total	\$28,636,000	\$94,508/unit	100.00%	