


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): Wells Fargo Bank, National Association, as administrative agent		<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: Wells Fargo 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 Bank - 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.
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: <u>Natalie Anderson, Natalie Anderson, Vice President</u> 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.		FOR COURT USE ONLY  OPUS WEST 00404

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
WELLS FARGO BANK, NATIONAL ASSOCIATION**

1. Wells Fargo Bank, National Association ("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"). This Proof of Claim is being filed by the Creditor in its capacity as the administrative agent for itself and certain other Lenders as more fully described below.

I. BASIS OF CLAIM

2. The claim asserted in this Proof of Claim arises out of (i) that certain Payment and Completion Guarantee Agreement dated August 15, 2008, attached hereto as **Exhibit A** (the "Payment and Completion Guarantee"), and (ii) that certain Repayment Guaranty dated August 13, 2008, attached hereto as **Exhibit B** (the "Repayment Guaranty"), and collectively with the Payment and Construction Guarantee, the "Guarantees"), executed by the Debtor, as guarantor, for the repayment of the obligations of Arch Road Limited Partnership (the "Borrower").

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).

3. The Borrower is a party to that certain Construction Loan Agreement dated August 15, 2008 (the "Loan Agreement") by and between the Borrower and Creditor, as administrative agent for itself and certain other lenders (collectively, the "Lenders") providing a construction loan to the Borrower for the construction of a single-story industrial building containing approximately 388,000 net rentable square feet, and one industrial building containing approximately 735,980 net rentable square feet on that certain parcel of real property owned by the Borrower of approximately 58 gross acres located in Stockton, California (the "Property"). Concurrent with the execution of the Loan Agreement, the Borrower executed that certain Note Secured by Deed of Trust dated August 15, 2008, in the original principal amount of \$48,700,000 (the "Note") in favor of Creditor. A copy of the Loan Agreement is attached hereto as **Exhibit C** and a copy of the Note is attached hereto as **Exhibit D**. Part and parcel to this loan transaction the Borrower and Creditor also entered that certain ISDA Master Agreement dated August 13, 2008, attached hereto as **Exhibit E** (the "ISDA Agreement"). The Loan Agreement, the Note, the ISDA Agreement, the Guarantees, and along with all other amendments, modifications, agreements and supporting documents related thereto are collectively referred to as the "Loan Documents"².

4. Borrower's obligations under the Loan Documents are secured by, *inter alia*, a lien on the Property pursuant to that Construction Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement Fixture Filing dated August 15, 2008 (the "Deed of Trust"). The lien was perfected by the recording of the Deed of Trust in the San Joaquin County Clerk's Office under the document number 2008-134389 on August 15, 2008.

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.

5. As additional security for payment of the Borrower's obligations under the Loan Documents, the Debtor executed the Guarantees. As set forth in full detail in the Guarantees, the Debtor irrevocably and unconditionally guaranteed the Lenders and their successors, assigns and affiliates the timely payment and performance of the liabilities and obligations of the Borrower 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].

II. AMOUNT AND NATURE OF CLAIM

8. Pursuant to the Guarantees, the Debtor is obligated to the Lenders for all amounts and obligations owing by the Borrower to the Lenders 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 \$38,998,769.00, plus interest, fees, charges and attorneys fees as provided under the Loan Documents.

10. Accordingly, subject to the reservation of rights outlined below, Creditor hereby asserts a claim against the Debtor pursuant to the Guarantees in an amount of any outstanding principal plus all 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:

Wells Fargo Bank, National Association
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

PAYMENT AND COMPLETION GUARANTEE AGREEMENT

THIS PAYMENT AND COMPLETION GUARANTEE AGREEMENT (the "Guarantee Agreement"), made by OPUS WEST CORPORATION, a Minnesota corporation and affiliate of "Borrower" (as such term is defined below) ("Opus West"), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Wells Fargo"), as administrative agent ("Administrative Agent") for each of the "Lenders" under the "Loan Agreement" (as the latter term is defined below), is dated and shall be effective as of the 15th day of August, 2008.

RECITALS

A. The Lenders have made or agreed to make a construction loan to Arch Road Limited Partnership, a Delaware limited partnership ("Borrower") in the maximum principal amount of up to Forty-Eight Million Seven Hundred Thousand and 00/100ths Dollars (\$48,700,000.00) (the "Loan"). The Loan is evidenced by one or more Promissory Notes (collectively, and as the same may be amended, modified, supplemented, extended or restated from time to time, the "Note") dated as of even date herewith, from Borrower to Lenders, and is made pursuant to the terms of a Construction Loan Agreement (as the same may be amended, modified, supplemented, extended or restated from time to time, the "Loan Agreement") of even date with the Note, executed by Borrower, Administrative Agent and the Lenders and respecting the construction of certain "Improvements," as such term is defined in the Loan Agreement.

B. Borrower has by that certain Construction Deed of Trust With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (as the same may be amended, modified, supplemented, extended or restated from time to time, the "Deed of Trust") of even date with the Note, encumbered its interest in certain real estate, improvements, personal property and other rights, privileges, tenements, hereditaments and appurtenances relating or incidental thereto more fully described in the Deed of Trust, to secure the Note. The Loan Agreement, Note, Deed of Trust and any other instrument, agreement or document executed and delivered to or for the benefit of Administrative Agent or the Lenders in connection with the Loan are hereinafter referred to as the "Loan Documents."

C. Opus West is an affiliate of Borrower and will derive substantial benefit from the execution and delivery of the Loan Agreement and from the advances to be made by Lenders thereunder. In partial consideration of such benefits, Opus West has agreed concurrently herewith to execute this Guarantee Agreement.

D. The Lenders have made or agreed to make the Loan, to enter into the Loan Agreement and to make the initial advance thereunder, as provided in the Loan Agreement, upon the inducement and representation that Opus West would guarantee payment and performance of the obligations to Administrative Agent and the Lenders under the Loan Documents and/or

arising in connection with the Loan, as provided herein, and the obligations of Opus West herein shall be with full recourse to Opus West, notwithstanding limitations on recourse to Borrower, if any, as provided in the Note, the Loan Agreement or the other Loan Documents.

NOW, THEREFORE, in consideration of the making of the Loan by the Lenders to Borrower, Opus West agrees with Administrative Agent and the Lenders as follows:

I. Certain Definitions. The following terms as used herein shall have the following meanings (and capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement):

Adjusted Net Worth: Shall mean the sum, at any given time, of Opus West's Tangible Net Worth at such time plus its Subordinated Affiliate Debt outstanding at such time; provided however, that no more than Ten Million Dollars (\$10,000,000) of Opus West's Tangible Net Worth shall consist of Affiliate Equity.

Affiliate: Shall mean, with respect to any Person, any other Person directly or indirectly controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control a Person if such controlling Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person whether through the ownership of voting securities, common directors, trustees or others, by contract or otherwise. Opus West shall be deemed to control another Person or be controlled by such other Person for the purposes of this definition if Opus West, Opus Founder, his children, his grandchildren or other members of his family or the trustee of a trust or trusts for the benefit of Opus Founder, his children, grandchildren or other members of his family has such power.

Affiliate Equity: Equity capital contributions to Opus West from Opus Estates, L.L.C. or any other Affiliate of Opus West, made upon terms and conditions in all respects satisfactory to Administrative Agent.

Financial Covenant Total Liabilities: Shall consist of the following (without duplication): (a) all items which in accordance with GAAP would be included as "liabilities" on Opus West's balance sheet, including all secured and unsecured indebtedness, of Opus West for borrowed money or otherwise, excluding subordinated debt.

Fiscal Quarter: Each quarterly accounting period of Opus West ending on March 31, June 30, September 30 or December 31 of any Fiscal Year.

Fiscal Year: The annual accounting period of Opus West ending on December 31 of 2007 and each year thereafter.

Liquidity: Cash, cash equivalents and immediately available funds.

Material Adverse Occurrence: Any occurrence of whatsoever nature (including, without limitation, any adverse determination in any litigation, arbitration or governmental

investigation or proceeding) affecting Opus West, which materially adversely affects the financial condition or operations of Opus West, or which materially impairs the ability of Opus West to perform its obligations under this Guarantee Agreement or the other Loan Documents, or the ability of Administrative Agent to enforce its material rights or remedies, on behalf of the Lenders, under this Guarantee Agreement or the other Loan Documents to which Opus West is a party.

Opus Estates, L.L.C.: Opus Estates, L.L.C., a Minnesota limited liability company, and an Affiliate of Opus West.

Subordinated Affiliate Debt: Non-contingent Financial Covenant Total Liabilities owed solely to one or more Affiliates of Opus West, which Financial Covenant Total Liabilities (a) has been subordinated to the Loan and all other Loan Obligations and other obligations owed to Administrative Agent or the Lenders (including, without limitation, the Indebtedness and Obligations, as such terms are defined below) pursuant to one or more Administrative Agent-approved agreements entered into among Opus West, such Affiliate(s) and Administrative Agent and (b) is made upon terms and conditions in all respects satisfactory to Administrative Agent.

Tangible Assets: All cash, immediately available funds, accounts receivable, marketable securities and other assets (including, without duplication, Affiliate Equity), which would, in accordance with GAAP, be classified as a tangible asset, except deferred assets (other than prepaid insurance, prepaid taxes and land pursuit costs not to exceed fifty percent (50%) of all such costs), patents, copyrights, trademarks, trade names, franchises, goodwill, amounts due from Affiliates (except for funds of Opus West invested in prudent third-party investments, such as government securities, certificates of deposit and highly rated commercial paper, for Opus West's account and benefit by Opus or its investment subsidiary), any write up in the book value of any asset resulting from a revaluation thereof subsequent to December 31, 2007 and other similar intangible assets.

Tangible Net Worth: The net book value of the Tangible Assets of Opus West which would be shown on a balance sheet, minus the amount at which its liabilities (excluding its Subordinated Affiliate Debt) would be shown on such balance sheet, as determined in accordance with GAAP; provided, however, that (i) any incremental increase in depreciation reserves occurring after December 31, 2007 shall not be deducted and (ii) full deduction for depreciation and other valuation reserves for the period through and including December 31, 2007 shall be taken in accordance with GAAP.

2. Guaranteed Obligations.

(a) Guarantee. Opus West hereby absolutely and unconditionally guarantees:

(i) full and prompt payment to Administrative Agent or its order of (A) the Note whether at maturity, by acceleration or otherwise; (B) any other indebtedness or liability of the Borrower to Administrative Agent or the Lenders under or arising out of the Loan Documents, including without limitation, any and all amounts payable

pursuant to Section 6.2 or Section 8.2(a) of the Loan Agreement, and including as to (A) and (B) any extensions, renewals or reductions, or any compromise, indulgence, variation or modification thereof, and (C) the expenses referred to in Section 10 hereof;

(ii) the performance of any and all obligations of Borrower required by or under the Loan Documents which are permitted or required to be performed by the payment or deposit by Borrower of money;

(all of which liabilities described in Section 2(a)(i) and (ii) above, together with the expenses referred to in Section 10 hereof, are herein referred to as "Indebtedness");

(iii) the performance by Borrower of all the terms and provisions of the Loan Agreement pertaining to Borrower's obligations with respect to the construction of the Improvements, and, without limiting the generality of the foregoing, Opus West absolutely and unconditionally guarantees that: (A) construction of the Improvements shall commence and be completed within the time limits set forth in the Loan Agreement; (B) the Improvements shall be constructed and completed substantially in accordance with the Plans and Specifications and the other provisions of the Loan Documents, without substantial deviation therefrom unless approved by Administrative Agent; (C) the Improvements shall be constructed and completed free and clear of any mechanic's liens, materialman's liens and equitable liens (subject to any contest and bonding right as set forth in the Loan Agreement); (D) all costs of constructing the Improvements shall be paid when due; and (E) the Loan proceeds shall remain available for disbursement free and clear of any stop notices (all of which obligations described in this Section 2(a)(iii) are herein referred to as the "Completion Obligations");

This is a guarantee of payment and performance and not of collection only. The obligations of Opus West under this Guarantee Agreement with respect to the Indebtedness and the Completion Obligations are separate and distinct and independent of one another, and shall be enforceable independently by Administrative Agent, on behalf of Lenders, in any order and to the extent determined by Administrative Agent in its sole discretion.

(b) Lien Free Completion. Completion of the Improvements free and clear of liens shall be deemed to have occurred upon: (i)(x) Administrative Agent's receipt of a written statement or certificate executed by the Architect certifying, without qualification or exception, that the Improvements are completed, and (y) Administrative Agent's receipt of all required final occupancy permit(s) for all of the Improvements issued by the local government agency having jurisdiction and authority to issue same, and (z) the expiration of the statutory period(s) within which valid mechanic's liens, materialman's liens, equitable liens and/or stop notices may be recorded and/or served by reason of the construction of the Improvements, or, alternatively, Administrative Agent's receipt of valid, unconditional releases thereof from all persons entitled to record said liens or serve said stop notices; or (ii) Administrative Agent's receipt of such other evidence of lien-free completion as Administrative Agent deems satisfactory in its sole discretion. Nothing contained herein shall in any way limit the obligations of Borrower or Opus West, as applicable, to correct any defects or deficiencies in the construction of the

Improvements, whether discovered before or after any of the events contemplated by the immediately preceding sentence.

(c) Obligations of Opus West Upon Default by Borrower. If construction of the Improvements is not commenced and completed in the manner and within the time required by the Loan Agreement (including the Construction Schedule), or if, prior to the expiration of the time limits for said completion set forth in the Loan Agreement, construction of the Improvements should cease or be halted prior to completion and such cessation or halt constitutes a Default (as defined in the Loan Agreement), Opus West shall, promptly upon demand of Administrative Agent: (i) diligently proceed to complete construction of the Improvements at Opus West's sole cost and expense, within the time limits for said completion set forth in the Loan Agreement or the Construction Schedule and otherwise in compliance with the Plans and Specifications and other requirements of the Loan Agreement; (ii) fully pay and discharge all claims for labor performed and material and services furnished in connection with the construction of the Improvements; (iii) release and discharge all claims of stop notices, mechanic's liens, materialman's liens and equitable liens that may arise in connection with the construction of the Improvements; and (iv) pay to Administrative Agent the amount of any loss or damage incurred by Administrative Agent or the Lenders as a result of any delay in the completion of construction of the Improvements beyond the time specified in the Loan Agreement for such completion, which amount shall include, but not be limited to (x) interest on the principal amount outstanding under the Loan for any period of such delay which precedes the transfer of title to the Project to Administrative Agent, and (y) the reasonable rental value of the completed Improvements during any period of the delay in completion that Administrative Agent is the fee owner of the Project. Without in any way limiting the above obligations of Opus West, in the event of such demand by Administrative Agent, Administrative Agent shall cause the Lenders to make the undisbursed Loan funds available to Opus West (pursuant to the terms and conditions of the Loan Documents) for the purposes of completing the Improvements and fulfilling Opus West's other obligations under this Guarantee Agreement; provided, however, that the obligation of Lenders to make such undisbursed Loan funds available to Opus West is expressly conditioned upon there being no continuing default by Opus West under this Guarantee Agreement, and upon Borrower (and/or Opus West) having provided the any Balancing Payment and any other funds required under the Loan Agreement as conditions to disbursement.

(d) Remedies. If Opus West fails to promptly perform the Completion Obligations, in addition to the other remedies Administrative Agent may have hereunder, at law or otherwise, Administrative Agent shall have the following remedies:

(i) At Administrative Agent's option, and without any obligation to do so, to proceed to perform on behalf of Opus West any or all of the Completion Obligations hereunder, and Opus West shall, upon demand and whether or not construction is actually completed by Administrative Agent, pay to Administrative Agent all sums expended by Administrative Agent or the Lenders in performing such Completion Obligations hereunder together with interest thereon at the highest rate applicable to the Note; and

(ii) From time to time and without first requiring performance by Borrower or exhausting any or all security for the Loan, to bring any action at law or in equity or both to compel Opus West to perform the Completion Obligations hereunder, and to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by Administrative Agent or the Lenders as a direct or indirect consequence of the failure of Opus West to perform the Completion Obligations, together with interest thereon at the rate of interest applicable to the principal balance of the Note.

(e) Rights of Administrative Agent. Opus West authorizes Administrative Agent, without giving notice to Opus West or obtaining Opus West's consent and without affecting the liability of Opus West, from time to time to: (i) approve modifications to the Plans and Specifications so long as such modifications do not materially increase the cost of constructing the Improvements nor materially increase the time necessary to complete the Improvements; (ii) change the terms or conditions of disbursement of the Loan so long as such changes do not materially interfere with Borrower's ability to construct the Improvements as and when required under the Loan Agreement; (iii) otherwise modify the Loan Documents, including, without limitation, making changes in the terms of repayment of the Loan or modifying, extending or renewing payment dates; releasing or subordinating security in whole or in part; changing the interest rate; or advancing additional funds in its discretion for purposes related to the purposes specified in the Loan Agreement; or (iv) assign this Guarantee Agreement in whole or in part.

All of the alternative remedies set forth in this Guarantee Agreement and/or provided by the Loan Documents or law or equity shall be equally available to Administrative Agent and the choice by Administrative Agent of one alternative over another shall not be subject to question or challenge by Opus West or any other person, nor shall any such choice be asserted as a defense, setoff or failure to mitigate damages in any action, proceeding or counteraction by Administrative Agent to recover damages or seeking any other remedy under this Guarantee Agreement, provided, that, with respect to the Indebtedness and Completion Obligations, the existence of alternative remedies shall not entitle Administrative Agent to obtain an aggregate remedy in excess of the total recovery permitted by this Guarantee Agreement. The parties have agreed to the alternative remedies specified herein in part because they recognize that the choice of remedies in the event of a default hereunder will necessarily be and should properly be a matter of business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Administrative Agent at the lowest costs to Borrower and/or Opus West. It is the intention of the parties that such choice by Administrative Agent be given conclusive effect, regardless of subsequent developments or the apparent correctness or incorrectness of such choice.

Opus West's obligations under this Section 2 shall survive: (i) any judicial or nonjudicial foreclosure under the Deed of Trust, or transfer of the Project in lieu thereof; (ii) the release and reconveyance or cancellation of the Deed of Trust; and (iii) the satisfaction of all of Borrower's obligations under the Loan Documents.

3. No Inquiry. Administrative Agent need not inquire into the power of Borrower or Opus West or the authority of the officers, directors or agents acting or purporting to act in their behalf.

4. Alteration of Obligations. Administrative Agent, for the benefit of the Lenders, may make advances from time to time under the Loan Agreement at the request of Borrower, and Indebtedness may become due and payable, without further notice or authorization from Opus West, by reason of this Guarantee Agreement. Further, upon such terms and at such times as it deems best and without further notice to Opus West, Administrative Agent may (a) alter, compromise, modify, accelerate, extend or change the time or manner for payment of the Indebtedness or the performance of any of the Completion Obligations by agreement with the Borrower, (b) increase or reduce the rate of interest or amount of principal payable on the Note or other Indebtedness by agreement with the Borrower, (c) release or discharge the Borrower, by acceptance of a deed or assignment in lieu of foreclosure or otherwise, as to all or any portion of the Indebtedness or the Completion Obligations, (d) release, substitute or add any one or more guarantors or endorsers, accept additional or substituted security for payment of the Indebtedness or performance of any Completion Obligations, or release or subordinate any security therefor, and (e) resort to Opus West for payment of all or any portion of the Indebtedness or for the performance of any Completion Obligation, whether or not Administrative Agent shall have resorted to any property securing the Indebtedness or Completion Obligations or shall have proceeded against Borrower or any party primarily or secondarily liable for the Indebtedness or Completion Obligations. No exercise, delay in exercise or non-exercise by Administrative Agent of any right hereby given it, no dealing by Administrative Agent with Borrower, Opus West or any other guarantor, endorser or other person, no change, impairment or suspension of any right or remedy of Administrative Agent, and no act or thing which but for this provision could act as a release or exoneration of the liabilities of Opus West hereunder, shall in any way affect, decrease, diminish or impair any of the obligations of Opus West hereunder or give Opus West or any other person or entity any recourse or defense against Administrative Agent or any Lender.

5. Waivers. Opus West hereby waives and agrees not to assert or take advantage of (a) any right to require Administrative Agent or Lenders to proceed against or exhaust its recourse against Borrower under the Loan Documents or any security or collateral held by Administrative Agent or Lenders at any time or to pursue any other remedy in its power before being entitled to payment from Opus West of the Indebtedness and to performance of any Completion Obligation; (b) the defense of the statute of limitations in any action hereunder or for the collection of any Indebtedness or the performance of any Completion Obligation; (c) any defense that may arise by reason of (i) any legal disability or other defense of Borrower or other Person, or by reason of the cessation or limitation of the liability of Borrower from any cause other than full payment and performance of the Indebtedness and Completion Obligations, (ii) any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower, (iii) the application by Borrower of the proceeds of the Loan for purposes other than the purposes represented by Borrower to Administrative Agent and Lenders or intended or understood by Administrative Agent and Lenders, (iv) the revocation or repudiation hereof by Opus West or the revocation or

repudiation of any of the Loan Documents by Borrower or any other Person, (v) the failure of Administrative Agent or Lenders to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (vi) the unenforceability in whole or in part of the Loan Documents or any other instrument, document or agreement referred to herein, (vii) the election by Administrative Agent or any Lender, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, or (viii) any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code; (d) presentment, demand for payment, protest, notice of discharge, notice of acceptance of this Guarantee Agreement, and indulgence and notices of any other kind whatsoever; (e) any and all rights and defenses arising out of an election of remedies by Administrative Agent or Lenders, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Opus West's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise; (f) any defense based upon Administrative Agent's or Lenders' failure to disclose to Opus West any information concerning Borrower's financial condition or any other circumstances bearing on Borrower's ability to pay and perform its obligations under the Note or any of the other Loan Documents; (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (h) any defense based upon any taking, modification or release of any collateral or guarantees for any indebtedness of Borrower to Administrative Agent or Lenders, or any failure to perfect any security interest in, or the taking of or failure to take any other action with respect to any collateral securing payment of the Indebtedness or performance of the Completion Obligations; (i) any rights or defenses based upon an offset by Opus West against any obligation now or hereafter owed to Opus West by Borrower, it being the intention hereof that Opus West shall remain liable as principal, to the extent set forth herein, until the full payment of the Indebtedness and full performance of all the Completion Obligations notwithstanding any act, omission or thing, which might otherwise operate as a legal or equitable discharge of Opus West; (j) any right of subrogation, any right to enforce any remedy which Administrative Agent or Lenders may have against Borrower and any right to participate in, or benefit from, any security for the Note or the other Loan Documents now or hereafter held by Administrative Agent or Lenders; or (k) the benefits of any statutory provision limiting the liability of a surety. Opus West further waives any and all rights and defenses that Opus West may have because Borrower's debt is secured by real property; this means, among other things, that: (1) Administrative Agent or any Lender may collect from Opus West without first foreclosing on any real or personal property collateral pledged by Borrower; (2) if Administrative Agent or any Lender forecloses on any real property collateral pledged by Borrower, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Administrative Agent and Lenders may collect from Opus West even if Administrative Agent and Lenders, by foreclosing on the real property collateral, has destroyed any right Opus West may have to collect from Borrower. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Opus West may have because Borrower's debt is secured by real property. These rights and defenses being waived by Opus West include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d or 726 of the California Code of Civil Procedure. Without limiting the generality of the

foregoing or any other provision hereof, Opus West further expressly waives to the extent permitted by law any and all rights and defenses, including without limitation any rights of subrogation, reimbursement, indemnification and contribution, which might otherwise be available to Opus West under California Civil Code Sections 2787 to 2855, inclusive, 2899 and 3433, or under California Code of Civil Procedure Sections 580a, 580b, 580d and 726, or any of such sections, and the benefits of A.R.S. Section 12 1641, et seq. and any similar provisions of the law of other states, to the extent applicable to rights and remedies of Opus West, Administrative Agent and the Lenders hereunder. Finally, Opus West agrees that the performance of any act or any payment which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Opus West's liability hereunder.

6. Subordination.

(a) Any indebtedness (including, without limitation, interest obligations) of Borrower to Opus West now or hereafter existing shall be, and such indebtedness hereby is, deferred, postponed and subordinated to the Indebtedness and the Completion Obligations. Opus West hereby waives all rights of subrogation to any collateral for the Indebtedness or the Completion Obligations and all rights against Borrower, whether under the Deed of Trust or otherwise, until the Indebtedness shall have been fully paid and the Completion Obligations fully performed.

(b) Any lien, charge or claim on or to the Project, the personal property located thereon, any rights therein and thereto, or on the revenue and/or income to be realized therefrom, which Opus West may have or obtain as security for any loans, advances or costs in connection with the construction and completion of the Project or otherwise shall be, and any such lien, claim or charge hereby is, subordinated to the lien of the Deed of Trust and any security interest granted to Administrative Agent or the Lenders by Borrower and to the payment of the Indebtedness and performance of the Completion Obligations.

7. Claims in Bankruptcy. Opus West will file all claims against Borrower in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law upon any indebtedness of Borrower to Opus West or claim against Borrower by Opus West and will assign to Administrative Agent all rights of Opus West thereunder. If Opus West does not file any such claim, Administrative Agent, as attorney-in-fact for Opus West, is hereby authorized to do so in the name of Opus West or, in Administrative Agent's discretion, to assign the claim and to cause proof of claim to be filed in the name of Administrative Agent's nominee. Administrative Agent or its nominee shall have the sole right to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Administrative Agent for the benefit of the Lenders the amount payable on such claim and, to the full extent necessary for that purpose, Opus West hereby assigns to Administrative Agent for the benefit of the Lenders all of the rights of Opus West to any such payments or distributions to which Opus West would otherwise be entitled, provided, however, that the obligations of Opus West hereunder shall not be satisfied

except to the extent that Administrative Agent receives cash by reason of any such payment or distribution. If Administrative Agent receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guarantee Agreement. Upon the full payment of the Indebtedness and the full performance of the Completion Obligations, Opus West's obligation to assign such payments or distributions shall terminate, and, to the extent it is not prohibited by law or court order from doing so, Administrative Agent shall reassign to Opus West such right to payments or distributions. In the event that, by reason of such assignment of the claim of Opus West, Administrative Agent receives an amount in excess of the Indebtedness (including all costs and expenses incurred in the collection of such amount) and to the extent it is not prohibited by law or court order from doing so, Administrative Agent shall pay over such excess amounts to Opus West and any other guarantors of the Indebtedness whose claim had been assigned, by joint check or otherwise as all such guarantors shall direct in writing.

8. Representations and Warranties. Opus West makes the following representations and warranties which shall be deemed to be continuing representations and warranties until payment in full of the Indebtedness and performance in full of the Completion Obligations:

(a) Power and Authority; Ownership. Opus West (and the person or entity executing this Guarantee Agreement on behalf of Opus West, if any) has the requisite power, authority, capacity and legal right to execute and deliver (and in the case of Opus West, perform) this Guarantee Agreement and all other documents required to be executed and delivered hereunder. Opus Corporation, a Minnesota corporation ("Opus") owns, and shall continue to own, one hundred percent (100%) of the fully authorized and validly issued capital shares of Opus West, provided that key employees of Opus West and/or Opus may at any time hereafter own in the aggregate not more than ten percent (10%) of the fully authorized and validly issued capital shares of Opus West (the "Employee-Owned Shares"). At all times while the Loan Documents are in force and effect, (i) the Employee-Owned Shares shall be owned solely by key employees of Opus West and/or Opus and neither Opus West, Opus nor any of such key employees (nor Opus Founder (or entities in which Opus Founder holds a majority interest) shall transfer or be allowed to transfer any of such Employee-Owned Shares to any other Person (other than to a key employee of Opus West or Opus) without the prior written consent of Administrative Agent, which approval may be withheld in the sole and absolute judgment and discretion of Administrative Agent, and (ii) the Employee-Owned Shares shall not exceed ten percent (10%) of the fully authorized and validly issued capital shares of Opus West. All of the capital shares of Opus West are validly issued and paid for, are nonassessable by Opus West and are free from preemptive or other rights to subscribe for or purchase such shares. Guarantor is the sole member of ODP Stockton, L.L.C. ("ODP"), owning one hundred percent (100%) of all membership interests in ODP. ODP is the sole member of Stockton GP, L.L.C. ("Stockton GP"), owning one hundred percent (100%) of all membership interests in Stockton GP. Stockton GP is the sole general partner of Borrower, and ODP is the sole limited partner of Borrower.

(b) Formation and Authorization; No Conflict; Enforceability. Opus West is a corporation duly incorporated, validly existing and in good standing under the laws of the

State of Minnesota and is duly authorized to do business in the State of California. Opus West has provided to Administrative Agent true and complete copies of the organizational documents of Opus West, including all amendments thereto. Opus West has full power and authority to conduct its business as presently conducted, to enter into this Guarantee Agreement and to perform all of its duties and obligations under this Guarantee Agreement and under the other Loan Documents. The execution, delivery and performance by Opus West of this Guarantee Agreement and the other Loan Documents (i) have been duly authorized by all necessary corporate and shareholder action; and (ii) as of the Effective Date, do not require any filing or registration with or approval or consent of any Governmental Authority or any approval or consent of any other Person which has not already been obtained, and all such additional consents or approvals which become necessary or are required after the Effective Date will be obtained on a timely basis. Neither the execution and delivery of this Guarantee Agreement nor the consummation of the transactions contemplated hereby will, with or without notice and/or lapse of time:

(i) constitute a breach of any of the terms and provisions of, or constitute a default under, any note, contract, document, instrument, agreement or undertaking, whether written or oral, to which Opus West is a party or to which the property of Opus West is subject;

(ii) accelerate or constitute an event entitling the holder of any indebtedness of Opus West to accelerate the maturity of any such indebtedness;

(iii) conflict with or result in a breach of any writ, order, injunction or decree against Opus West of any court or governmental agency or instrumentality, whether national, state, local or other; or

(iv) conflict with or be prohibited by any federal, state, local or other governmental law, statute, rule or regulation.

There are no legal proceedings, material claims, or demands pending against, or to the knowledge of Opus West, threatened in writing against Opus West, Borrower or their respective properties. This Guarantee Agreement and the other Loan Documents (other than those to which Opus West is not a party), are or will be, when executed and delivered hereunder, the legal, valid and binding obligations of Opus West enforceable in accordance with their respective terms, except, as to enforcement of the remedies of Administrative Agent or the Lenders, as may be limited by applicable bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and to general equitable principles.

(c) **Financial Statements.** Opus West has furnished to Administrative Agent the audited financial statements of Opus West for the Fiscal Year ending December 31, 2007, true and correct copies of which have been delivered to Administrative Agent. Such financial statements were prepared in accordance with GAAP, and such financial

statements fairly summarize Opus West's assets, liabilities and financial condition as of the date thereof; there are no omissions which are or may be material or make the statements contained therein misleading. No Material Adverse Occurrence in the business, assets, management, operations, financial condition or prospects of Opus West has occurred since December 31, 2007.

(d) Litigation. Except as disclosed in the most recent financial statements referred to in Section 8(c) hereof, no litigation or proceedings are now pending or, to the best of Opus West's knowledge, after diligent inquiry, threatened against Opus West which could adversely affect (i) the validity or priority of the Lien of the Deed of Trust or other security interests granted Administrative Agent or the Lenders under the Loan Documents, (ii) the ability of Opus West to perform its obligations pursuant to and as contemplated by the terms and provisions of the Loan Documents, or (iii) the operations or financial condition of Opus West.

(e) Taxes. There have been filed all federal, state and local tax returns with respect to Opus West and its direct and indirect business operations which are required to be filed. Opus West has paid or caused to be paid to the respective taxing authorities all taxes as shown on such returns or on any assessments received by it to the extent that such taxes have become due. Opus West knows of no proposed material tax assessment against it, except those (if any) for which provision has been made on the financial statements delivered pursuant to Section 8(c) hereof, and is not obligated by any other agreement, tax treaty, instrument or otherwise to contribute to the payment of taxes owed by any other Person. All material tax liabilities are adequately provided for or reserved against on the books of Opus West in accordance with GAAP, except as may be identified on the financial statements delivered pursuant to Section 8(c) hereof.

(f) Environmental Matters. Except where any of the matters described in this Section 8(f) would not, individually or in the aggregate, result in a Material Adverse Occurrence as to Opus West, as of the date hereof (and for the purposes of this Section 8(f), references to Opus West shall include entities in which Opus West holds a controlling interest) to its knowledge after reasonable inquiry, (i) the operations of Opus West materially comply with all applicable Environmental Laws; (ii) Opus West has obtained all Environmental Permits necessary for its operation, as presently conducted, and all such permits are in good standing and Opus West is in compliance with all terms and conditions of such Permits; (iii) neither Opus West nor Opus West's operations are subject to any order from or agreement with any Governmental Authority or private party respecting (A) any Environmental Law, (B) any Remedial Action or (C) any Liabilities and Costs arising from the Release or threatened Release of a Contaminant into the environment; (iv) none of the operations of Opus West is subject to any judicial or administrative proceeding alleging a violation of any Environmental Law; (v) none of the present or past operations of Opus West is the subject of any investigation by any Governmental Authority evaluating whether any Remedial Action is needed to respond to a Release or threatened Release of a Contaminant into the environment; (vi) Opus West has no knowledge of any violation of any Environmental Law or indicating the past or

present treatment, storage or disposal of a Contaminant; (vii) Opus West has not filed any notice under any applicable Environmental Law reporting a Release of a Contaminant into the environment; (viii) Opus West has not entered into any negotiations or agreements with any Person relating to any Remedial Action or environmentally related claim; and (ix) Opus West has not received any notice or claim from any Governmental Authority to the effect that it is or may be liable to any Person as a result of the Release or threatened Release of a Contaminant into the environment.

(g) Securities Matters. Opus West has not: (a) issued any unregistered securities in violation of the registration requirements of Section 5 of the Securities Act of 1933, as amended, or any other law; or (b) violated any rule, regulation or requirement under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in either case where the effect of such violation would be a Material Adverse Occurrence as to Opus West.

(h) Material Adverse Occurrence. Opus West is not a party to any agreement or instrument or subject to any restriction which constitutes or would constitute a Material Adverse Occurrence as to Opus West. Opus West is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which Opus West is a party, the effect of which default would constitute a Material Adverse Occurrence as to Opus West.

(i) ERISA. (i) Each employee benefit plan of Opus West (each a "Plan") covered by Title IV of the Employee Retirement Income Security Act of 1974 (as the same may from time to time be amended, together with the rules and regulations promulgated thereunder by any governmental agency or authority as from time to time in effect, "ERISA"), whether now in existence or hereafter instituted, is in compliance in all material respects with all applicable provisions of ERISA and the Internal Revenue Code of 1986 (as amended from time to time, the "Code"); (ii) the aggregate present value of all accrued vested benefits under all Plans (calculated on the basis of the actuarial assumptions specified in the most recent actuarial valuation for such Plans) did not exceed the fair market value of the assets of such Plans allocable to such benefits; (iii) Opus West is not aware of any information since the date of such valuations which would materially affect the information contained therein; (iv) no Plan which is subject to Part 3 of Subtitle B of Title I of ERISA or Section 412 of the Code has incurred an accumulated funding deficiency as that term is defined in Section 302 of ERISA or Section 412 of the Code (whether or not waived); (v) no liability to the PBGC, other than required premiums which have become due and payable (all of which have been paid), has been incurred with respect to any Plan, and there has not been any Reportable Event which presents a material risk of termination of any Plan by the PBGC; and (vi) neither (A) Opus West nor (B) any trade or business (whether or not incorporated) which is a member of a group of which Opus West is a member and which is under common control within the meaning of Section 414 of the Code (each an "ERISA Affiliate"), has knowingly engaged in a transaction which would subject it to any material tax, penalty or liability for prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Code.

(j) Truth and Completeness. Neither this Guarantee Agreement nor any other statement furnished by Opus West to Administrative Agent or the Lenders in connection with the transactions contemplated hereby contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein true and not misleading.

(k) Subordinated Affiliated Debt. As of the date hereof, Opus West has no Subordinated Affiliate Debt outstanding.

9. Financial and Other Covenants; Cure Periods. Opus West shall satisfy the following financial covenants and reporting requirements:

(a) Minimum Adjusted Net Worth. Opus West shall maintain at all times a minimum Adjusted Net Worth of One Hundred Million Dollars (\$100,000,000).

(b) Financial Covenant; GAAP Leverage. Beginning with the Fiscal Quarter ending June 30, 2008, the ratio, calculated quarterly on the earlier of each date of delivery of the financial statements required under clause (f) below or forty-five (45) days after the end of each Fiscal Quarter, of (i) the total Financial Covenant Total Liabilities of Opus West on the last day of each Fiscal Quarter to (ii) the Tangible Net Worth of Opus West as of the last day of each Fiscal Quarter, shall not exceed 6.0:1.

(c) [Intentionally Omitted.]

(d) Minimum Liquidity. Opus West shall maintain at all times a minimum Liquidity of not less than Three Million Dollars (\$3,000,000).

(e) Annual Financial Statements and Reports. Within one hundred and twenty (120) days after the close of each of its Fiscal Years, Opus West shall deliver to Administrative Agent: (i) financial statements (together with all supporting schedules and other supporting documentation) for Opus West prepared in accordance with GAAP and audited by an accounting firm acceptable to Administrative Agent, including the balance sheet and income statement as of the end of such period, the related statements of operations, stockholder's equity and cash flow for such Fiscal Year and such additional documentation as is reasonably requested by Administrative Agent.

(f) Interim Financial Statements. Within forty-five (45) days after the close of each Fiscal Quarter (other than the final Fiscal Quarter of each Fiscal Year), Opus West shall deliver to Administrative Agent unaudited financial statements (together with all supporting schedules and other supporting documentation) for Opus West prepared in accordance with GAAP, and on a basis consistent with Sections 4.1(c) and 5.1(a) of the Loan Agreement (respecting the condition and delivery of Borrower's financial statements) and including an unaudited balance sheet as of the close of each such Fiscal

Quarter and the related statements of operations, which financial statements shall reflect all Financial Covenant Total Liabilities of Opus West.

(g) Compliance Certificate. Together with each of the financial statements required under clauses (e) and (f) above, Opus West shall furnish a compliance certificate signed by Opus West's principal financial officer in substantially the form attached as Exhibit A hereto and (i) setting forth the calculation of each of the financial covenants set forth in clauses (a), (b) and (d) above (including a statement of the amount of Affiliate Equity and Subordinated Affiliate Debt); (ii) stating that, to the best of his or her knowledge after diligent inquiry, no Default or Event of Default exists under any Loan Document, including without limitation the Loan Agreement or the Guarantee Agreement, or if any such Default or Event of Default exists, stating the nature and status thereof; and (iii) certifying that the financial statements required under clauses (e) and/or (f) above were prepared in accordance with GAAP consistently applied and fairly and accurately present the financial condition of Opus West to which they relate.

(h) Maintenance of Existence. Opus West shall maintain itself in existence as an entity with corporate authority to own, manage, operate, construct, lease and sell real estate, and all purposes incidental to any of the aforementioned, including the guarantee of Indebtedness and Completion Obligations made pursuant hereto. Opus West will not, without the Administrative Agent's prior written consent, amend, modify, restate or supplement its articles of incorporation or by-laws, or cause or consent to any such change in its articles of incorporation or by-laws, or merge into or consolidate with any other Person.

(i) ERISA Compliance. Opus West shall not (a) knowingly permit or suffer any Plan to engage in any transaction which results in a material liability of/to Opus West or any of its ERISA Affiliates under Section 502(i) of ERISA or Section 4975 of the Code; (b) permit or suffer any such Plan to incur any "accumulated funding deficiency" (within the meaning of Section 302 of ERISA and Section 412 of the Code); (c) terminate or suffer to be terminated, in other than a standard termination under Section 4041(b) of ERISA, any Plan to which Opus is liable under Title IV of ERISA; (d) permit or suffer to exist a condition under which PBGC may terminate any such Plan pursuant to Section 4042(a) of ERISA.

(j) Loans and Investments. Opus West shall not make or permit to exist any loans or advances to, or investments in, any Person or accept any evidence of indebtedness from any Person or make or permit to exist any commitments to do any of the foregoing, except in the ordinary course of Opus West's operating business, provided, however, that Opus West shall comply, at all times, with the covenants contained in Sections 9(a), (b) and (d) and, provided that Opus West does not otherwise violate the terms hereof.

Any breach or failure to satisfy any of the financial or other covenants set forth in Sections 9(a) through 9(j) hereof shall not constitute a default hereunder if Opus West cures such

breach or failure within thirty (30) days after the violation of the covenant occurs. Any failure in the performance, maintenance or satisfaction of (i) any covenants, agreements and obligations involving monetary payments for principal and interest due under the Note or this Guarantee Agreement shall not constitute a default hereunder if Opus West cures such breach or failure within ten (10) days after receipt of notice (which may be written or oral) from Administrative Agent to Opus West; and (ii) any other covenants, agreements and obligations hereunder (other than those contained in Sections 9(a) through 9(j)) shall not constitute a default hereunder if Opus West cures such breach or failure within thirty (30) days after receipt of the notice of violation of the covenant occurs; provided, however, the time limit for curing non-monetary covenants, agreements and obligations (other than those contained in Sections 9(a) through 9(j)) shall be extended for a period of not more than an additional forty-five (45) days, if the ability to cure the subject default within the specified time limit is not within the reasonable control of Opus West, and provided Opus West promptly and in good faith undertakes the curing of such default and diligently thereafter in good faith pursues the curing thereof to completion.

10. Expenses. Opus West agrees that if a default or event of default occurs hereunder or under any of the Loan Documents, Opus West will reimburse Administrative Agent, for the benefit of Lenders, for (and the Indebtedness shall be deemed to include) all costs and expenses (including without limitation, reasonable attorneys' fees) incurred by Administrative Agent or the Lenders, whether or not suit is instituted in enforcing or exercising any rights, powers, privileges or remedies granted to Administrative Agent or the Lenders under this Guarantee Agreement, and/or the Loan Documents and in realizing upon any security for the Indebtedness or Obligations, and for all costs and expenses of Administrative Agent or the Lenders incurred in connection with the administration and enforcement of this Guarantee Agreement and/or the Loan Documents, together with interest thereon from the date of demand for payment by Administrative Agent or any Lender, at the then applicable rate under the Notes.

11. Remedies Cumulative. The amount and/or extent of liability of Opus West, and all rights, powers and remedies of Administrative Agent or the Lenders hereunder and under any other agreement now or at any time hereafter in force between Administrative Agent or the Lenders, or both, and Opus West relating to the Indebtedness or Completion Obligations or any other indebtedness or obligations of Borrower to Administrative Agent or the Lenders shall be cumulative and not alternative and such rights, powers and remedies shall be in addition to all rights, powers and remedies given to Administrative Agent or the Lenders by law.

12. Several Liability. Successive Actions or Exercise of Rights; Counterparts. The agreements, obligations, warranties and representations of Opus West and any other guarantor of the Indebtedness and Completion Obligations are several and are independent of the obligations of Borrower, and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against Opus West whether or not Borrower or any other guarantor is joined therein or a separate action or actions is brought against Borrower or any other guarantor. Administrative Agent may maintain successive actions for other defaults. The rights of Administrative Agent and the Lenders hereunder shall not be exhausted by its exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless the Indebtedness indefeasibly has been paid in full and the Completion Obligations

performed in full. This Guarantee Agreement may be executed in counterparts, and each such counterpart for all purposes shall be deemed an original and all such counterparts together shall constitute but one and the same agreement. This Guarantee Agreement is not secured and shall not be deemed to be secured by any security instrument unless such security instrument expressly recites that it secures this Guarantee Agreement.

13. Separability. Should any one or more provisions of this Guarantee Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

14. Successors and Assigns. This Guarantee Agreement shall inure to the benefit of the Administrative Agent for the benefit of the Lenders, its successors and assigns, including the assignees of any Indebtedness or of the benefit of the Completion Obligations and shall bind the heirs, executors, administrators, successors and assigns of Opus West. All rights under this Guarantee Agreement are assignable by Administrative Agent and/or each Lender with respect to all or any portion of the Indebtedness or Completion Obligations, and when so assigned, Opus West shall be liable to the assignees under this Guarantee Agreement without in any manner affecting the liability of Opus West hereunder with respect to any of the Indebtedness or Completion Obligations retained by Administrative Agent or the Lenders. Each reference herein to powers or rights of the Administrative Agent or the Lenders shall also be deemed a reference to the same power or right of such assignees, to the extent of the interest assigned to them.

15. Governing Law; Choice of Forum; Service of Process. This Guarantee Agreement shall be construed and interpreted in accordance with and shall be governed by, the internal laws of the State of California, except to the extent preempted by United States federal law. Administrative Agent may bring any action or proceeding to enforce this Guarantee Agreement, or arising out of this Guarantee Agreement, in any court of competent jurisdiction. If Administrative Agent commences such an action in a state or federal court located in the State of California, Opus West hereby agrees that it will submit and does hereby irrevocably submit to the personal jurisdiction of such courts and will not attempt to have such action dismissed, abated, or transferred on the ground of forum non conveniens or similar grounds; provided, however, that nothing contained herein shall prohibit Opus West from seeking, by appropriate motion, to remove an action brought in a California state court or the United States District Court located in the district where such state court is located. If such action is so removed, however, Opus West shall not seek to transfer such action to any other district, nor shall Opus West seek to transfer to any other district any action which Administrative Agent originally commences in such federal court. Any action or proceeding brought by Opus West arising out of this Guarantee Agreement shall be brought solely in a court of competent jurisdiction located in the State of California.

16. Bankruptcy. So long as any Indebtedness shall be owing to Administrative Agent or any Lender or Completion Obligations shall be unperformed, Opus West shall not, without the prior consent of Administrative Agent, commence or join with any other person in commencing any bankruptcy, reorganization or insolvency proceedings of or against Borrower. The obligations of Opus West under this Guarantee Agreement shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Borrower or by any defense which

Borrower may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Opus West acknowledges and agrees that any interest on the Indebtedness which accrues after the commencement of any such proceeding (or, if interest on any portion of the Indebtedness ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on any such portion of the Indebtedness if said proceedings had not been commenced) shall be included in the Indebtedness, since it is the intention of the parties that the amount of the Indebtedness which is guaranteed by Opus West pursuant to this Guarantee Agreement, should be determined without regard to any rule of law or order which may relieve Borrower of any portion of such Indebtedness, but Opus West will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Administrative Agent, or allow the claim of Administrative Agent in respect of, any such interest accruing after the date on which such proceeding is commenced. In the event that all or any portion of the Indebtedness or the Completion Obligations is paid or performed by Borrower, the obligations of Opus West hereunder shall continue and remain in full force and effect in the event that all or any part of such payment(s) or performance(s) is avoided or recovered directly or indirectly from Administrative Agent as a preference, fraudulent transfer or otherwise in such proceeding.

17. Enforceability. Opus West hereby acknowledges that: (a) the obligations undertaken by Opus West in this Guarantee Agreement are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Administrative Agent's and Lenders' consideration for entering into this transaction, Administrative Agent and each Lender have specifically bargained for the waiver and relinquishment by Opus West of all such defenses, and (d) Opus West has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Opus West does hereby represent and confirm that Opus West is fully informed regarding, and that Opus West does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Opus West, and (iv) the legal consequences to Opus West of waiving such defenses. Opus West acknowledges that Opus West makes this Guarantee Agreement with the intent that this Guarantee Agreement and all of the informed waivers herein shall each and all be fully enforceable by Administrative Agent and Lenders, and that Administrative Agent and Lenders are induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

18. [Intentionally Omitted.]

19. Entire Agreement; No Waiver; Articles; Notices.

(a) This Guarantee Agreement and the other Loan Documents constitute the entire agreement among Administrative Agent, Lenders and Opus West relating to the Indebtedness and Completion Obligations and the other matters addressed herein and supersede as of the date hereof all prior undertakings and agreements among Administrative Agent, Lenders and Opus West relating thereto.

(b) No provision of this Guarantee Agreement or right of Administrative Agent or the Lenders hereunder can be waived, nor can Opus West be released or exonerated from its obligations hereunder, except by a writing duly executed by two authorized officers of Administrative Agent. No such waiver shall be applicable except in the specific instance for which given. The captions of this Guarantee Agreement are inserted for convenience only and shall have no effect upon the construction or interpretation hereof.

(c) Wherever in this Guarantee Agreement the context so requires, reference to the neuter, masculine or feminine shall be deemed to include each of the other, and reference to either the singular or the plural shall be deemed to include the other.

(d) All notices or other communications required or permitted to be given pursuant to the provisions of this Guarantee Agreement shall be in writing and shall be considered as properly given if (i) hand delivered or transmitted by facsimile (effective upon delivery or confirmation of successful facsimile transmission) or (ii) if mailed (effective three (3) Business Days after deposit thereof at any main or branch United States Post Office) by United States registered, or certified mail, postage prepaid, return receipt requested, or (iii), if forwarded by overnight delivery service, the next Business Day, addressed as follows:

If to Opus West:

Opus West Corporation
Suite 800
2555 East Camelback Road
Phoenix, Arizona 85016-9256
Attn: Senior Vice President of Real Estate Finance and Sales
Telephone: (602) 468-7000
Facsimile: (602) 468-7045

With a copy to:

Opus West Corporation
Suite 800
2555 East Camelback Road
Phoenix, Arizona 85016-9256

Attn: Legal Department

With a copy to:

Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, Arizona 85016
Attn: Gregory L. Mast
Telephone: (602) 530-8000
Facsimile: (602) 530-8500

If to Administrative Agent:

Wells Fargo Bank, National Association
2030 Main Street
Suite 800
Irvine, California 92614
Attn: Ben Singh
Telephone: (949) 251-4429
Facsimile: (949) 851-9728

With a copy to:

Wells Fargo Bank, National Association
2030 Main Street
Suite 800
Irvine, California 92614
Attn: Jeri Gehrer
Telephone: (949) 251-4330
Facsimile: (949) 851-9728

provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other party in the manner set forth hereinabove. Notwithstanding anything herein to the contrary, any notice given to Opus West pursuant to any of the Loan Documents shall satisfy the notice requirements hereof with respect to the matters dealt with in such notice and no additional notice to Opus West shall be required hereunder.

20. Subrogation. To the extent Opus West pays any of the Indebtedness or performs any of the Completion Obligations, Opus West shall be subrogated to the rights of Administrative Agent under the Note, this Guarantee Agreement and the Loan Documents; provided however, that none of the rights of subrogation of Opus West hereunder or under law or otherwise may be exercised until all of the Indebtedness is paid to Administrative Agent and all the Completion Obligations are performed.

21. Time is of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Opus West under this Agreement.

22. Covenant re Borrower. Opus West shall not, and Opus West shall cause all other Affiliates of Opus West not to, approve or consent to any transfer or change of control or any other event, in each case whether direct or indirect, affecting the identity or control of the constituent partners of Borrower, to the extent such approval or consent is required under the Borrower's Organizational Documents (as defined below) or applicable law, in each case without obtaining the prior written approval of all Lenders, unless such transfer or change of control or other event is permitted by the Loan Agreement. For purposes of this Section 22, "Borrower's Organizational Documents" shall mean that certain Limited Partnership Agreement of Arch Road Limited Partnership, dated as of June 26, 2007, together with all other documents relating to the formation and organization of the Borrower.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Guarantee Agreement has been duly executed under seal
by Opus West as of the first date above written.

OPUS WEST:

OPUS WEST CORPORATION, a
Minnesota corporation

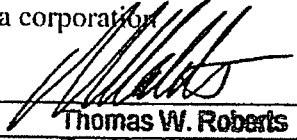
By: 
Name: Thomas W. Roberts
Its: President

EXHIBIT A

COMPLIANCE CERTIFICATE

This Compliance Certificate is delivered pursuant to the Guarantee Agreement dated as of _____, 2008 (as amended, supplemented and restated from time to time, the "Agreement"), by the undersigned in favor of Administrative Agent (as defined therein). All capitalized terms used herein shall have the meanings ascribed such terms in the Agreement.

1. The undersigned hereby certifies that the undersigned has made a diligent review of the terms of the Agreement and of the transactions consummated by and financial condition of Opus West (during the accounting period covered by the financial statements being delivered to Administrative Agent along with this Compliance Certificate or the most recent accounting period for which information is available) and, to the best knowledge of the undersigned after such inquiry:

(a) Such review has not disclosed the existence during such accounting period, and the undersigned does not have knowledge of the existence as of the date hereof, of any condition or event which constitutes a default or an event which with the passage of time or giving of notice might become a default under the Agreement (except as set forth in paragraph (b) hereof).

(b) The nature of the condition(s) or event(s) which constitute a default or such event is (are) as follows:

(c) Borrower or Opus West (is taking) (is planning to take) the following action with respect to the conditions(s) or event(s) set forth in paragraph (b) above:

(d) The representations and warranties in the Agreement are true and correct in all material respects as of the date hereof.

(e) Opus West is in compliance with the covenants in the Agreement in all material respects as of the date hereof.

2. The calculations attached are true and correct.

3. The financial statements attached were prepared in accordance with GAAP consistently applied and fairly and accurately present the financial condition of Opus West.

4. As of the end of the _____ accounting period:

(a) Net Worth: Opus West's Adjusted Net Worth is _____. (Opus shall maintain a minimum Adjusted Net Worth of One Hundred Million Dollars (\$100,000,000))

(Signature Page to Payment and Completion Guarantee)

- (b) GAAP Leverage: The (i) total Financial Covenant Liabilities of Opus West on the last day of the applicable Fiscal Quarter is _____ Dollars (\$ _____), and the (ii) Tangible Net Worth of Opus West as of the last day of such Fiscal Quarter is _____ Dollars (\$ _____). The ratio of (i) to (ii) is _____. (Such ratio shall not exceed 6.0:1.)
- (c) Minimum Liquidity: The Liquidity as of the date hereof is _____ (\$ _____), and has at no time since the execution of the Agreement been less than _____ (\$ _____). (Opus West shall maintain a minimum liquidity of Three Million Dollars (\$3,000,000).)

IN WITNESS WHEREOF, this Compliance Certificate has been duly executed by Opus West as of the first date above written.

OPUS WEST:

OPUS WEST CORPORATION, a
Minnesota corporation

By: _____
Name: _____
Its: _____

(Signature Page to Payment and Completion Guarantee)

EXHIBIT B

REPAYMENT GUARANTY

THIS REPAYMENT GUARANTY ("Guaranty") is made as of August 13, 2008 by Opus West Corporation, a Minnesota corporation (referred to herein as "Guarantor") in favor of Wells Fargo Bank, N.A. ("Party A").

RECITALS

A: Party A and Arch Road Limited Partnership, a Delaware limited partnership (defined herein as "Party B") are parties to an ISDA Master Agreement ("Agreement"), dated as of August 13, 2008. As a condition to entering into the Agreement, Party A has required that Guarantor guaranty to Party A the due and timely payment and performance of all obligations of Party B to Party A arising under the Agreement.

NOW, THEREFORE, to induce Party A to enter into the Agreement and Transactions, as defined in the Agreement, thereunder, and in consideration thereof, Guarantor unconditionally guarantees and agrees as follows:

1. **GUARANTY.** Guarantor hereby guarantees (i) the full and timely payment to Party A of, and Guarantor hereby promises to pay to Party A, any and all amounts payable by Party B under the Agreement, as and when those amounts become payable (whether at their scheduled due dates, upon early termination or otherwise, including without limitation amounts which, but for the operation of any stay or injunction, would be due), strictly in accordance with the provisions of the Agreement and (ii) the due and punctual performance of all other obligations of the Party B under the Agreement. Guarantor hereby irrevocably and unconditionally covenants and agrees that Guarantor is liable for the payment of such indebtedness as a primary obligor. The liability and obligation of Guarantor to Party A under this Guaranty shall not be reduced, discharged or released because or by reason of any existing or future offset, claim or defense of Party B or any other party against Party A or against payment of such indebtedness, whether such offset, claim or defense arises in connection with the Agreement or otherwise.

All payments under this Guaranty shall be made without any deduction or withholding for or on account of any Tax, as defined in the Agreement, unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If Guarantor is so required to deduct or withhold, then Guarantor will (i) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by Guarantor to Party A under this section promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Party A, and in any event before penalties attach thereto or interest accrues thereon, and (ii) promptly forward to Party A an official receipt (or a certified copy), or other documentation reasonably acceptable to Party A, evidencing such payment to such authorities.

2. **REMEDIES.** If Guarantor fails to promptly perform its obligations under this Guaranty, Party A may from time to time, and without first requiring performance by Party B, or exhausting any or all security for the Agreement, bring any action at law or in equity or both to compel Guarantor to perform its obligations hereunder, and to collect in any such action compensation for all loss, cost, damage, injury and expense sustained or incurred by Party A as a direct or indirect consequence of the failure of Guarantor to perform its obligations hereunder.
3. **RIGHTS OF PARTY A.** Guarantor authorizes Party A, without giving notice to Guarantor or obtaining Guarantor's consent and without affecting the liability of Guarantor, from time to time to: (a) renew or extend all or any portion of Party B's obligations under the Agreement; (b) make non-material changes in the dates specified for payments of any sums payable under the Agreement; (c) otherwise modify the terms of the Agreement; (d) take and hold security for the performance of Party B's obligations under the Agreement and exchange, enforce, waive and release any such security; (e) apply such security and direct the order or

manner of sale thereof as Party A in its discretion may determine; (f) release, substitute or add any one or more endorsers of the Agreement or guarantors of Party B's obligations under the Agreement; (g) apply payments received by Party A from Party B to any obligations of Party B to Party A, in such order as Party A shall determine in its sole discretion, whether or not any such obligations are covered by this Guaranty; and (h) assign this Guaranty in whole or in part; and (j) assign, transfer or negotiate all or any part of the indebtedness guaranteed by this Guaranty.

4. **GUARANTOR'S WAIVERS.** Guarantor waives: (a) any defense based upon any legal disability or other defense of Party B, any other guarantor or other person, or by reason of the cessation or limitation of the liability of Party B from any cause other than full payment of all sums payable under the Agreement; (b) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Party B or any principal of Party B or any defect in the formation of Party B or any principal of Party B; (c) any defense based upon the application by Party B of the proceeds of the Interest Rate Swap for purposes other than the purposes represented by Party B to Party A or intended or understood by Party A or Guarantor; (d) any and all rights and defenses arising out of an election of remedies by Party A, even though that election of remedies may adversely affect Guarantor's rights of subrogation and reimbursement against the principal; (e) any defense based upon Party A's failure to disclose to Guarantor any information concerning Party B's financial condition or any other circumstances bearing on Party B's ability to pay all sums payable under the Agreement; (f) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in any other respects more burdensome than that of a principal; (g) any defense based upon Party A's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (h) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; (i) any right of subrogation, any right to enforce any remedy which Party A may have against Party B and any right to participate in, or benefit from, any security for the Agreement now or hereafter held by Party A; (j) presentment, demand, protest and notice of any kind; (k) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof; (l) any right to require Party A to institute suit or exhaust remedies against Party B or others liable for any of such indebtedness, to enforce Party A's rights against any collateral which shall have been given to secure the Interest Rate Swap to enforce Party A's rights against any other guarantors of such indebtedness, to join Party B or any others liable on such indebtedness in any action seeking to enforce this Guaranty, to resort to any other means of obtaining payment of such indebtedness; (m) notices of disbursement of proceeds, acceptance hereof, proof of non-payment, default under any document, notices and demands of any kind; and (n) the invalidity, illegality or unenforceability of all or any portion of the indebtedness guaranteed hereby or any of the Agreement for any reason whatsoever, including that interest on such indebtedness violates applicable usury laws, that Party B or others liable for all or a portion thereof have valid defenses, claims or offsets to all or a portion of such indebtedness, or that the Agreement have been forged or otherwise are irregular or not genuine or authentic (it being agreed that Guarantor shall remain liable under this Guaranty regardless of whether Party B or any other person shall be found not liable for repayment of all or a portion of such indebtedness). Guarantor further waives any and all rights and defenses that Guarantor may have because Party B's debt is secured by real property; this means, among other things, that: (1) Party A may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Party B; (2) if Party A forecloses on any real property collateral pledged by Party B, then (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price, and (B) Party A may collect from Guarantor even if Party A, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Party B. The foregoing sentence is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Party B's debt is secured by real property. Without limiting the generality of the foregoing or any other provision hereof, Guarantor further expressly waives to the extent permitted by law any and all rights and defenses. Finally, Guarantor agrees that the performance of any act or any payment

which tolls any statute of limitations applicable to the Agreement shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

5. **GUARANTOR'S WARRANTIES.** Guarantor warrants and acknowledges that: (a) Party A would not enter into the Agreement but for this Guaranty; (b) there are no conditions precedent to the effectiveness of this Guaranty and this Guaranty shall be in full force and effect and binding on Guarantor regardless of whether Party A obtains other collateral or any guaranties from others or takes any other action contemplated by Guarantor; (c) Guarantor has established adequate means of obtaining from sources other than Party A, on a continuing basis, financial and other information pertaining to Party B's financial condition, and the status of Party B's performance of obligations imposed by the Agreement, and Guarantor agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Guarantor's risks hereunder and Party A has made no representation to Guarantor as to any such matters; (d) the most recent financial statements of Guarantor previously delivered to Party A are true and correct in all respects, have been prepared in accordance with generally accepted accounting principles consistently applied (or other principles acceptable to Party A) and fairly present the financial condition of Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial condition of Guarantor since the respective dates thereof; and (e) Guarantor has not and will not, without the prior written consent of Party A, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein, other than in the ordinary course of Guarantor's business.
6. **SUBORDINATION.** Guarantor subordinates all present and future indebtedness owing by Party B to Guarantor to the obligations at any time owing by Party B to Party A under the Agreement. Guarantor agrees to make no claim for such indebtedness until all obligations of Party B under the Agreement have been fully discharged. Guarantor further agrees not to assign all or any part of such indebtedness unless Party A is given prior notice and such assignment is expressly made subject to the terms of this Guaranty.
7. **BANKRUPTCY OF PARTY B.** In any bankruptcy or other proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Party B relating to any indebtedness of Party B to Guarantor and shall assign to Party A all rights of Guarantor thereunder. If Guarantor does not file any such claim, Party A, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Party A's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Party A's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Party A or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such proceeding and to take any other action which a party filing a claim is entitled to do. In all such cases, whether in administration, bankruptcy or otherwise, the person or persons authorized to pay such claim shall pay to Party A the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Party A all of Guarantor's rights to any such payments or distributions; provided, however, Guarantor's obligations hereunder shall not be satisfied except to the extent that Party A receives cash by reason of any such payment or distribution. If Party A receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, the obligations of Guarantor hereunder shall continue and shall remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from Party A as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or other similar laws, irrespective of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of the indebtedness and obligations evidenced and secured by the Agreement.
8. **ADDITIONAL, INDEPENDENT AND UNSECURED OBLIGATIONS.** This Guaranty is a continuing guaranty of payment and not of collection and cannot be revoked by Guarantor and shall continue to be effective with respect to any indebtedness referenced in Section 1 hereof arising or created after any attempted

revocation hereof or after the death of Guarantor (if Guarantor is a natural person, in which event this Guaranty shall be binding upon Guarantor's estate and Guarantor's legal representatives and heirs). The obligations of Guarantor hereunder shall be in addition to and shall not limit or in any way affect the obligations of Guarantor under any other existing or future guaranties unless said other guaranties are expressly modified or revoked in writing. This Guaranty is independent of the obligations of Party B under any note, the deed of trust and other documents. Party A may bring a separate action to enforce the provisions hereof against Guarantor without taking action against Party B or any other party or joining Party B or any other party as a party to such action. Except as otherwise provided in this Guaranty, this Guaranty is not secured and shall not be deemed to be secured by any security instrument unless such security instrument expressly recites that it secures this Guaranty.

9. **ATTORNEYS' FEES; ENFORCEMENT.** If any attorney is engaged by Party A to enforce or defend any provision of this Guaranty, or the Agreement, or as a consequence of any default under the Agreement, with or without the filing of any legal action or proceeding, Guarantor shall pay to Party A, immediately upon demand all attorneys' fees and costs incurred by Party A in connection therewith, together with interest thereon from the date of such demand until paid.
10. **RULES OF CONSTRUCTION.** The word "Party B" as used herein shall include both the named Party B and any other person at any time assuming or otherwise becoming primarily liable for all or any part of the obligations of the named Party B under the Agreement. The term "person" as used herein shall include any individual, company, trust or other legal entity of any kind whatsoever. If this Guaranty is executed by more than one person, the term "Guarantor" shall include all such persons. When the context and construction so require, all words used in the singular herein shall be deemed to have been used in the plural and vice versa. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.
11. **CREDIT REPORTS.** Each legal entity and individual obligated on this Guaranty hereby authorizes Party A to order and obtain, from a credit reporting agency of Party A's choice, a third party credit report on such legal entity and individual.
12. **GOVERNING LAW.** This Guaranty shall be governed by, and construed in accordance with, the laws of the New York, except to the extent preempted by federal laws. Guarantor and all persons and entities in any manner obligated to Party A under this Guaranty consent to the jurisdiction of any federal or state court within the State of New York having proper venue and also consent to service of process by any means authorized by New York or federal law.
13. **MISCELLANEOUS.** The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, nominees, successors and assigns of Guarantor and Party A. The liability of all persons and entities who are in any manner obligated hereunder shall be joint and several. If any provision of this Guaranty shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed from this Guaranty and the remaining parts shall remain in full force as though the invalid, illegal or unenforceable portion had never been part of this Guaranty.
14. **ENFORCEABILITY.** Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, and (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Party A's consideration for entering into this transaction, Party A has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses, and (d) Guarantor has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein. Given all of the above, Guarantor does hereby represent and confirm to Party A that Guarantor is fully informed

regarding, and that Guarantor does thoroughly understand: (i) the nature of all such possible defenses, and (ii) the circumstances under which such defenses may arise, and (iii) the benefits which such defenses might confer upon Guarantor, and (iv) the legal consequences to Guarantor of waiving such defenses. Guarantor acknowledges that Guarantor makes this Guaranty with the intent that this Guaranty and all of the informed waivers herein shall each and all be fully enforceable by Party A, and that Party A is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

15. **WAIVER OF RIGHT TO TRIAL BY JURY.** EACH PARTY TO THIS GUARANTY, AND BY ITS ACCEPTANCE HEREOF, PARTY A, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING UNDER THE AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (b) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE AGREEMENT (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING; AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY AND PARTY A HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS GUARANTY AND PARTY A MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO AND PARTY A TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

16. **NOTICES.** All notices, demands, or other communications under this Guaranty shall be in writing and shall be delivered to the appropriate party at the address set forth on the signature page of this Guaranty (subject to change from time to time by written notice to Party A and all other parties to this Guaranty). All communications shall be deemed served upon delivery of same, or if mailed, upon the first to occur of receipt or the expiration of three (3) days after the deposit in the United States Postal Service mail, postage prepaid and addressed to the address of Guarantor or Party A at the address specified herein; provided, however, that non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication. Party A's and Guarantor's address are as follows:

Wells Fargo Bank, N.A.
Financial Products
550 California Street, 12th Floor
MAC A112-121
San Francisco, CA 94104
Attention: Documentation Group

17. **INTEGRATION.** THIS GUARANTY REPRESENTS 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. THIS INSTRUMENT MAY BE AMENDED ONLY BY AN INSTRUMENT IN WRITING EXECUTED BY THE PARTIES HERETO.

18. **COUNTERPARTS.** This Guaranty may be executed in any number of counterparts and by each party hereto on separate counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date appearing on the first page of this Guaranty.

"GUARANTOR"

Opus West Corporation,
a Minnesota corporation

By: 

Name: Thomas W. Roberts

Its: President

Guarantors Address:

EXHIBIT C

CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (as the same may be amended, modified, supplemented, extended or restated from time to time, the "Agreement") is made as of this 15th day of August, 2008 ("Effective Date") by and between ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership ("Borrower") and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Wells Fargo"), as administrative agent ("Administrative Agent") for Wells Fargo, and for each of the "Lenders," if any, that execute a counterpart signature page or an Assignment and Assumption pursuant to the syndication, assignment or participation of the "Loan" (as such terms are defined below).

RECITALS:

A. Borrower is the owner of 100% of the fee simple interest in that certain parcel of real estate containing approximately fifty-eight (58) gross acres located in Stockton, California, which parcel is legally described on Exhibit A attached hereto (the "Land").

B. Borrower plans to construct one single-story industrial building containing approximately three hundred eighty-eight thousand (388,000) net rentable square feet (together with the portion of the Land on which such building is located, "Building 3") and one industrial building containing approximately seven hundred thirty-five thousand nine hundred eighty (735,980) net rentable square feet (together with the portion of the Land on which such building is located, "Building 8" and together with Building 3, the "Buildings") on the Land, together with certain other improvements (collectively, the "Improvements") all as described or to be described in the "Plans and Specifications" (as defined below).

C. Borrower has applied for a loan in the maximum amount of the Loan Availability (as defined below) to finance the Construction of the Improvements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I DEFINITIONS; INCORPORATION

1.1 Certain Definitions. The following terms as used herein shall have the following meanings:

Advance or Advances: Disbursements or advances of proceeds of the Loan made by Lenders pursuant to or as authorized under the terms of this Agreement. It is hereby understood and agreed, subject to the other terms, provisions and restrictions hereof, that any draw of Loan proceeds made by Borrower in accordance with the terms of this Agreement may be split into one or more Advances, either at the time of the draw or thereafter on termination of any applicable Interest Period.

Affiliate: With respect to any Person, any other Person directly or indirectly controlled by or under direct or indirect common control with such Person. A Person shall be deemed to control a Person if such controlling Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management and policies of the second Person whether through the ownership of voting securities, common directors, trustees or others, by contract or otherwise. Borrower shall be deemed to control another Person or be controlled by such other Person for the purposes of this definition if Borrower, Opus Founder, his children, his grandchildren or other members of his family or the trustee of a trust or trusts for the benefit of Opus Founder, his children, grandchildren or other members of his family has such power.

Appraisal: A written appraisal of the Project (or portion thereof, as applicable), hereafter required by Administrative Agent and approved by Administrative Agent, prepared by an independent MAI appraiser selected and engaged by Administrative Agent.

Appraisal Debt Service Coverage Ratio: The fraction, expressed as a percentage, of (a) the projected annual stabilized net operating income for the Project (or, with respect to the determination under Section 2.23(e) hereof, the portion of the Project which shall remain encumbered by the Deed of Trust), as determined pursuant to the most recent Appraisal approved by Administrative Agent, divided by (b) the product of (i) the maximum principal amount of Loan Availability and (ii) the greatest of (A) eight percent (8%), (B) the sum of LIBOR, at the time of determination, for an Interest Period of one month plus the Interest Margin and (C) a debt constant calculated by using the then-prevailing 10-year Treasury Note rate plus one and seventy-five hundredths percent (1.75%) and a 30-year amortization schedule.

Appraised Value: The prospective stabilized value of the Project (or portion thereof, as applicable), upon the prospective stabilization date, as reflected in the then most recent Appraisal of the Project (or portion thereof, as applicable), as the same may have been adjusted by Administrative Agent based upon its internal review of such Appraisal, which review shall be completed prior to acceptance of such Appraisal by Administrative Agent.

Approved Lease: Any Lease that has been approved by Administrative Agent in writing, which approval Administrative Agent may grant or withhold in its reasonable discretion.

Architects: Ware Malcomb, as to Building 3, and Opus Architects & Engineers, Inc., as to Building 8, or such other Architect for the Project as is approved by Administrative Agent in writing.

Architect Contracts: The agreements between Contractor and the Architects relating to the Construction, as amended or modified from time to time with the prior written approval of Administrative Agent.

Assignment and Assumption: An instrument in the form of Exhibit E, duly completed and executed and delivered.

Base Rate: On any day, the higher of (a) the base rate of interest per annum established from time to time by Wells Fargo at its principal office, and designated as its prime rate and in effect on such day and (b) the Federal Funds Rate in effect on such day plus one half of one percent (0.5%) per annum. Each change in the Base Rate shall become effective automatically as of the opening of business on the date of such change in the Base Rate, without prior written notice to Borrower.

Base Rate Loans: Those Advances bearing interest at the Base Rate.

Borrower's Fees: The total of all Construction Costs which are to be paid to Borrower or any Affiliate of Borrower as general contractor's fees, developer's fees, overhead or other compensation, to the extent the same have been approved by Administrative Agent in writing at the time the Budget and Disbursement Schedule is approved.

Budget and Disbursement Schedule: The budget specifying all Construction Costs incurred or to be incurred by Borrower in the Construction of the Project, a copy of which is attached hereto as Exhibit B, as such Budget and Disbursement Schedule may be amended from time to time with the written approval of Administrative Agent.

Business Day: Any day on which banking institutions are not required or authorized to close in the State of California (and if the applicable Business Day relates to a LIBOR Loan (as set forth in the Note), then a day on which dealings are conducted on the London interbank market) or such other locations as Administrative Agent may determine, from time to time, but excluding in any event a Saturday, Sunday or legal holiday.

Collateral: The Land, Improvements and any personal property or other collateral with respect to which a Lien or security interest was granted to Administrative Agent, for the benefit of Lenders, pursuant to the Loan Documents.

Commitment: With respect to any Lender, such dollar amount set forth beside such Lender's name below, subject to adjustment, in the case of any Lender, from time to time by assignment pursuant to Section 10.17 and by the terms of this Agreement.

<u>Lender</u>	<u>Commitment</u>
Wells Fargo Bank	\$48,700,000

Construction: The construction of the Improvements pursuant to the Plans and Specifications.

Construction Agreement: The Agreements between Borrower and Contractor relating to the Construction, as amended or modified from time to time with the prior written approval of Administrative Agent.

Construction Costs: All costs of Construction and all costs and expenses incurred by Borrower in connection with the acquisition and Construction of the Project, which are set forth in the Budget and Disbursement Schedule attached as Exhibit B hereto, and which shall include (a) the market value of the Land, (b) all costs of labor and materials used in the Construction of the Improvements ("Hard Construction Costs"), (c) all so-called "soft costs," including Borrower's Fees, fees and charges of the Architects, Engineers and all other architects, engineers and other consultants engaged by Borrower or Contractor, and the costs and fees incurred in connection with the procurement of all approvals, licenses and Permits necessary to make the Project ready for use and occupancy, and (d) all amounts reserved in the Budget and Disbursement Schedule for interest accrued on the Loan, and all real estate taxes, insurance premiums, leasing, maintenance and operation costs and other carrying costs for the Project which accrue or become payable during the period beginning on the Effective Date and ending upon the date the Improvements are completed and the Completion Conditions satisfied.

Construction Draw Request Form: The Construction Draw Request Form attached hereto as Exhibit C or such other form as Administrative Agent may require or may deem acceptable from time to time.

Construction Schedule: The Construction Schedule approved by Administrative Agent in writing pursuant to Section 2.4(p) hereof, as such Construction Schedule may be amended from time to time with the written approval of Administrative Agent.

Consulting Architect: The consulting architect or architects engaged by Administrative Agent to review the Plans and Specifications to assure that Construction is proceeding in accordance therewith and to inspect all Construction and the progress of the same, and to perform such other services as Administrative Agent requests from time to time.

Contaminant: Any pollutant, hazardous substance, hazardous chemical, toxic substance, hazardous waste or special waste (as those terms are defined in any Environmental Law applicable to the Project), radioactive material, petroleum, crude oil, any petroleum-derived substance, product or waste, including polychlorinated biphenyls and asbestos, other than any of the foregoing which are commonly used in the development of projects similar to the Project, and the quantities of which, and handling by Borrower of which, are in compliance with all Environmental Laws applicable to the Project.

Contractor: Opus West Construction Corporation, a Minnesota corporation.

Debt Service Coverage Ratio: The fraction, expressed as a percentage, of (a) the product of (i) Net Operating Income from the Project for the Fiscal Quarter most recently preceding the date of calculation and (ii) four (4), divided by (b) the product of (i) the maximum principal amount of Loan Availability and (ii) the greatest of (A) eight percent (8%), (B) the sum of LIBOR, at the time of determination, for an Interest Period of one month plus the Interest Margin and (C) a debt constant calculated by using the then-prevailing 10-year Treasury Note rate plus one and seventy-five hundredths percent (1.75%) and a 30-year amortization schedule.

Default: Any event or failure which, if it were to continue uncured, would, with notice or lapse of time or both, constitute an Event of Default.

Defaulting Lender: Any Lender who for any reason shall fail or refuse to abide by its obligations under the Loan Documents or this Agreement within the time periods specified for performance of such obligation or, if no time frame is specified, if such failure or refusal continues for a period of five (5) Business Days after notice from the Administrative Agent, and shall include any Lender which shall become a Defaulting Lender pursuant to Section 9.4.

Eligible Assignee: Any Person that is: (a) an existing Lender; (b) a commercial bank, trust company, savings and loan association, savings bank, insurance company, investment bank or pension fund organized under the laws of the United States of America, any state thereof or the District of Columbia, and having total assets in excess of \$5,000,000,000; or (c) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Co-operation and Development, or a political subdivision of any such country, and having total assets in excess of \$10,000,000,000, provided that such bank is acting through a branch or agency located in the United States of America. If such entity is not currently a Lender, such entity's (or in the case of a bank which is a subsidiary, such bank's parent's) senior unsecured long term indebtedness must be rated BBB or higher by S&P, Baa2 or higher by Moody's Investor Service or the equivalent or higher of either such rating by another rating agency acceptable to Administrative Agent.

Engineers: G.C. Wallace of California, Inc., as to Building 3, and Kier & Wright Civil Engineers & Surveyors, Inc., as to Building 8.

Engineer Contracts: The agreement between Contractor and the Engineers relating to the Construction, as amended or modified from time to time with the prior written approval of Administrative Agent.

Environmental Laws: All applicable statutes, rules, codes, regulations, ordinances and other laws, whether local, state or federal, relating to or addressing the environment, health or safety, including the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act, the Mine Safety and Health Act and the Safe Drinking Water Act, all as amended from time to time.

Environmental Lien: A Lien in favor of any Governmental Authority for any liability under any Environmental Laws or for damages arising from or costs incurred by such Governmental Authority in response to the disposal, Release or threatened Release of a Contaminant into the environment.

Environmental Permits: All permits, licenses and approvals required by any Governmental Authority under applicable Environmental Law relating to or affecting the Project.

Extension Certificate: A certificate, in form reasonably acceptable to Administrative Agent and duly executed by Borrower, stating as of the date of such certificate that the representations and warranties contained in the Loan Documents are true and correct in all material respects, that the Loan Documents continue to remain in effect, that the security interests granted by the Loan Documents remain in effect to secure the Loan as extended, and that no Default or Event of Default has occurred and is continuing.

Extension Fee: An amount equal to twenty-five one-hundredths percent (0.25%) of the greater of (i) Loan Availability on the initial Loan Maturity Date and (ii) the outstanding principal amount of the Loan on the initial Loan Maturity Date.

Federal Funds Rate: For any period, a fluctuating interest rate per annum equal, for each day during such period, to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Administrative Agent from three federal funds brokers of recognized standing selected by Administrative Agent.

Federal Reserve Board: The Board of Governors of the Federal Reserve System or any governmental authority succeeding to its functions.

Fiscal Quarter: Each quarterly accounting period of Borrower ending on March 31, June 30, September 30 or December 31 of any Fiscal Year.

Fiscal Year: The annual accounting period of Borrower ending on December 31 of 2007 and each year thereafter.

Fixed Rate Notice: A notice in the form attached as Exhibit D hereto.

GAAP: Generally accepted accounting principles consistently applied, as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

Governmental Authority: Any nation or government, any federal, state, local or other political subdivision thereto and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government having jurisdiction over the Project or Borrower.

Guarantor: Opus West.

including: Including, but not limited to.

Indebtedness: Shall consist of the following (without duplication): (a) all items which in accordance with GAAP would be included as "liabilities" on Borrower's balance sheet, including all indebtedness, obligations or liabilities of Borrower for borrowed money or otherwise, whether or not subordinated, (b) all indebtedness, obligations or liabilities for which Borrower or Borrower's properties may be or become liable or obligated on a contingent basis, as a guarantor, surety, endorser, co-maker or otherwise, including all reimbursement obligations and other liabilities of Borrower with respect to outstanding letters of credit, and (c) all obligations of Borrower under capital leases and otherwise to pay the deferred purchase price of property.

Indemnitor: Opus West.

Interest Margin: Two and twenty-five hundredths percent (2.25%).

Interest Period: Relative to any LIBOR Loans, the period beginning on (and including) the date on which such LIBOR Loans are made as, or Base Rate Loans converted into, LIBOR Loans, and shall end on (but exclude) the day which numerically corresponds to such date one (1), two (2), three (3) or six (6) months thereafter (or, if such month has no numerically corresponding day, on the last Business Day of such month), in either case as Borrower may select in its Fixed Rate Notice; provided, however, that:

(a) each such selection shall be irrevocable for the period so selected;

(b) if such Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next following Business Day (unless such next following Business Day is the first Business Day of a calendar month, in which case such Interest Period shall end on the Business Day next preceding such numerically corresponding day);

(c) no Interest Period may end later than the Loan Maturity Date; and

(d) the Interest Period selected from time to time for any LIBOR Loan shall apply to the full amount of such LIBOR Loan.

Notwithstanding the foregoing, in the event the last day of any Interest Period expires on the commencement date of the next succeeding Interest Period, Borrower shall only be charged interest once with respect to such overlapping Interest Periods.

Leases: Any and all leases, subleases, licenses or agreements providing for the use or occupancy of the Project or any portion thereof, all side letters or side agreements relating thereto and any amendments, modifications, supplements or assignments of any of the foregoing.

Legal Requirements: (a) Any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates or ordinances of any Governmental Authority in any way applicable to Borrower or the Project, including the ownership, use,

construction, marketing, sale, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, including the Americans with Disabilities Act, 42 U.S.C. §§12101, et. seq., as hereafter amended or modified; (b) any and all covenants, conditions and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that relate in any way or are applicable to the Project or the ownership, use or occupancy thereof; (c) Borrower's presently or subsequently effective organizational documents; and (d) any and all Leases and other contracts (written or oral) of any nature that relate, in any way, to the Project and to which Borrower may be bound.

Lenders: Wells Fargo and any other bank, finance company, insurance or other financial institution which is or, pursuant to Section 10.17 hereof, becomes a party to this Agreement by execution of a counterpart signature page hereto or an Assignment and Assumption, as assignee provided that with respect to matters requiring the consent to or approval of Requisite Lenders or all Lenders at any given time, all then existing Defaulting Lenders will be disregarded and excluded, and for voting purposes only, "all Lenders" shall be deemed to mean "all Lenders other than Defaulting Lenders" and "Requisite Lenders" shall be computed without inclusion of the Defaulting Lenders. At all times that there are no Lenders other than Wells Fargo, the terms "Lenders" and "Requisite Lenders" mean Wells Fargo in its individual capacity.

Liabilities and Costs: All liabilities, obligations, responsibilities, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including attorney, expert and consulting fees and costs of investigation and feasibility studies), fines, penalties and monetary sanctions, interest, direct or indirect, known or unknown, absolute or contingent, past, present or future, and all costs and expenses for the enforcement and collection of the Loan and the maintenance, operation, development and disposition of the collateral securing the Loan.

LIBOR: Relative to any Interest Period for any LIBOR Loan included in any Advance, the rate of interest determined by Administrative Agent (whose determination shall be conclusive absent manifest error, which shall not include any lower determination by any other banks) equal to the rates (rounded upwards, if necessary, to the nearest one-sixteenth of one percent (.0625%) per annum) reported by Wells Fargo at which Dollar deposits in immediately available funds are offered by Wells Fargo to leading banks in the Eurodollar interbank market at or about 9:00 A.M. California time two (2) Business Days prior to the beginning of such Interest Period for delivery on the first day of such Interest Period for a period approximately equal to such Interest Period and in an amount equal or comparable to the LIBOR Loan to which such interest period relates.

LIBOR Loans: Those Advances bearing interest, at all times during an Interest Period applicable to such Loan, at a fixed rate of interest determined by reference to LIBOR and subject to the Interest Margin described above.

LIBOR Office: The office of Administrative Agent at Los Angeles Loan Center, 2120 East Park Place, Suite 100, El Segundo, California 90245, Telephone (310/335-9511),

Telecopy (310/615-1014), or such other office of Administrative Agent as designated from time to time by notice from Administrative Agent, whether or not outside the United States, which shall be making or maintaining LIBOR Loans.

LIBOR Reserve Percentage: Relative to any Interest Period for LIBOR Loans made by any Lender, the reserve percentage (expressed as a decimal) equal to the actual aggregate reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transactional adjustments or other scheduled changes in reserve requirements) applicable to such Lender specified under regulations issued from time to time by the Federal Reserve Board and then applicable to assets or liabilities consisting of and including "Eurocurrency Liabilities," as currently defined in Regulation D of the Federal Reserve Board.

Lien: Any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, encumbrance for the payment of money, lien (statutory or other), preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement naming the owner of the asset to which such Lien relates as debtor, under the Uniform Commercial Code or other comparable law of any jurisdiction.

Loan: The loan made pursuant to this Agreement and the other Loan Documents.

Loan Documents: This Agreement and the documents and instruments listed in Section 2.4 hereof, as the same may be amended, modified, supplemented, extended or restated from time to time.

Loan Obligations: The Loan and all other Obligations of Borrower arising under or in connection with this Agreement, the Note, the other Loan Documents and all other documents, instruments and agreements executed in connection herewith and therewith.

Loan Opening Date: The date upon which the first disbursement is made pursuant to this Agreement.

Loan to Cost Ratio: The fraction, expressed as a percentage, of (a) the sum of the outstanding amount of the Loan Obligations and the amount, if any, subject to future disbursement hereunder at the time of determination, divided by (b) the Construction Costs incurred as of the date of determination plus the budgeted amount of all Construction Costs which are projected to be incurred in order to complete Construction of the Project.

Loan to Value Ratio: The fraction, expressed as a percentage, of (a) the sum of the outstanding amount of the Loan Obligations and the amount, if any, subject to future disbursement under the Loan at the time of determination, divided by (b) the Appraised Value of

the Project at the time of determination, as determined by an Appraisal accepted by Administrative Agent.

Material Adverse Occurrence: Any occurrence of whatsoever nature (including any adverse determination in any litigation, arbitration or governmental investigation or proceeding) affecting Borrower or Opus West, as applicable, which materially adversely affects the financial condition or operations of Borrower or Opus West, as applicable, or materially impairs the ability of Borrower or Opus West, as applicable, to perform its obligations under the Loan Documents or the ability of Administrative Agent to enforce its material rights or remedies under the Loan Documents on behalf of Lenders.

Material Lease: Any lease, sublease, license or agreement providing for the use or occupancy of more than forty thousand (40,000) square feet of the Project, all side letters, side agreements and other documents relating thereto and any amendments, modifications, supplements or assignments of any of the foregoing.

Monetary Event of Default: The failure by Borrower to pay when due any principal, interest or other amounts, sums of money, payments, equity contributions or premiums due under or secured by the Notes and the other Loan Documents, and the failure by Borrower to cure such failure within the applicable notice and cure period, if any.

Net Operating Income: The aggregate operating income for the Project for any applicable period generated by tenants under Approved Leases plus other normal revenue from the Project less the aggregate operating expenses for the Project and determined on a GAAP basis for such period, such expenses to include management fees for the Project in an amount equal to the greater of (a) management fees actually incurred and (b) the pro forma management fees reflected in the Appraisal accepted by Lender as of the Effective Date, all as determined by Administrative Agent in its reasonable discretion; provided, however, that (i) any income from Leases which are in Payment Default shall be excluded from the calculation of Net Operating Income, (ii) any income from Leases which (a) have been executed and delivered and (b) have no condition for effectiveness other than completion of tenant improvements shall be included on a pro-forma basis in a manner reasonably acceptable to Administrative Agent, and (iii) any expenses shall be adjusted on a pro-forma basis in a manner reasonably acceptable to Administrative Agent to reflect the effect of any adjustment made pursuant to clause (i) or (ii) above.

Non-Pro Rata Advance: A Protective Advance or a disbursement under the Loan with respect to which fewer than all Lenders have funded their respective Pro Rata Shares in breach of their obligations under this Agreement.

Obligations: All loans, advances, debts, liabilities, obligations, covenants and duties owing to Administrative Agent and Lenders by Borrower, of any kind or nature, whether present or future, whether evidenced by any note, guaranty or other instrument, whether arising under this Agreement, the Note, any of the other Loan Documents, whether for the payment of money, including interest, charges, expenses, fees, protective advances and attorney's fees,

whether arising by reason of an extension of credit, loan, guaranty, indemnification, interest rate contract, opening of a letter of credit, guaranty of any obligations with respect to any letter of credit or in any other manner and whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired.

Opus: Opus Corporation, a Minnesota corporation.

Opus West: Opus West Corporation, a Minnesota corporation.

Opus Founder: The principal founder of Opus.

Opus Logistics Property: Other than the Collateral, the Borrower's land located in Stockton, California, whether currently owned, acquired in the future or previously owned and sold, and the improvements thereon, commonly known as "Opus Logistics Center," and personal property incidental to the ownership and operation thereof.

Payment Default: With respect to any Lease, a default by the tenant under such Lease in the payment of any amounts due thereunder, which default has been in existence for at least thirty (30) days, whether or not such default has been waived.

PBGC: The Pension Benefit Guaranty Corporation and any successor board, authority, agency, officer or official of the United States administering the principal functions assigned on the Effective Date to the PBGC under ERISA.

Permits: Any permit, approval, authorization, license, variance, or permission required from a Government Authority under an applicable Legal Requirement.

Permitted Exceptions: Those matters listed in the pro forma Title Policy provided by the Title Insurer and approved by Administrative Agent immediately prior to the Effective Date to which the interest of Borrower in the Real Estate may be subject at the Loan Opening Date and thereafter and any such other title exceptions, if any, as Administrative Agent may approve in writing.

Person(s): An individual, corporation, partnership, joint venture, limited liability company, trust or unincorporated organization, or a government or any agency or political subdivision thereof.

Plans and Specifications: The plans and specifications approved in writing by Administrative Agent pursuant to Section 2.4(p) hereof, including any working or shop drawings made in furtherance of such plans and specifications. Except as otherwise provided in this Agreement, Borrower shall not make any changes to the Plans and Specifications without Administrative Agent's prior written consent (or Requisite Lenders' consent, if required pursuant to Section 10.3) if such change: (i) constitutes a material change in the building material or equipment specifications, or in the architectural or structural design, value or quality of any of the

improvements; (ii) would result in an increase of Construction cost in excess of Two Hundred Fifty Thousand and NO/100ths Dollars (\$250,000) for any single change or in excess of One Million and NO/100ths Dollars (\$1,000,000) for all such changes; or (iii) would affect the structural integrity, quality of building materials, or overall efficiency of operating systems of the improvements. Without limiting the above, Lenders agree that Borrower may make minor changes in the Plans and Specifications without Administrative Agent's prior written consent, provided that such changes do not violate any of the conditions specified herein.

Pro Rata Share: With respect to any Lender, a fraction, (expressed as a percentage), the numerator of which shall be the amount of such Lender's Commitment and the denominator of which shall be the aggregate amount of all of Lenders' Commitments.

Project: The Land together with the Improvements and all structures and other improvements located or to be located on the Land or off-site, and all rights, privileges, easements, hereditaments and appurtenances, thereunto relating or appertaining and all fixtures, machinery, equipment and articles of personal property required for the use, maintenance, ownership or operation thereof.

Protective Advances: Any amount advanced or expended by Administrative Agent to preserve or protect any collateral securing the Loan, including expenses for taxes, insurance, utilities, maintenance, and repairs for the Project (including amounts expended to make the Project comply with legal requirements or to avoid or satisfy any Lien on the Project).

Real Estate: That portion of the Project constituting realty including the Land.

Release: The release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the environment.

Remedial Action: Any action required to (i) clean up, remove or treat Contaminants in the environment; (ii) prevent a Release or threat of Release or minimize the further Release of Contaminants into the environment so they do not migrate to, endanger or threaten to endanger public health or the environment; (iii) perform preremedial studies and investigations and post-remedial monitoring and care with respect to any portion of the Project that is (or was) affected by any Contaminants; or (iv) cure a violation of any Environmental Law.

Requisite Lenders: As of any date, Lenders (which must include the Lender then acting as Administrative Agent) having at least 66-2/3% of the aggregate amount of the Commitments, or, if the Commitments have been terminated or reduced to zero, Lenders holding at least 66-2/3% of the principal amount outstanding under the Loan, provided that (a) in determining such percentage at any given time, all then existing Defaulting Lenders will be disregarded and excluded and the Pro Rata Shares of the Loan of Lenders shall be redetermined, for voting purposes only, to exclude the Pro Rata Shares of the Loan of such Defaulting Lenders, and (b) at all times when two or more Lenders are party to this Agreement, the term "Requisite Lenders" shall in no event mean less than two Lenders.

Scheduled Completion Date: November 15, 2009.

Single-Purpose Entity: A Person, other than a natural person, which (a) is formed or organized solely for the purpose of holding a direct ownership interest in the Collateral and the Opus Logistics Property, (b) does not engage in any business other than the construction, ownership, leasing, selling, management and operation of the Collateral and the Opus Logistics Property, (c) does not have any (i) assets other than its interest in the Collateral and the Opus Logistics Property or (ii) Indebtedness other than that expressly permitted by this Agreement or related to the Opus Logistics Property, (d) maintains books and records, and keeps accounts, separate and distinct from the books and records and accounts of any other Person, (e) is subject to all of the limitations on powers set forth in the organizational documents of Borrower in effect on the date of this Agreement, (f) holds itself out as being a Person and a legal entity separate and distinct from any other Person, (g) does not make any loans or advances to any other Person, (h) files separate tax returns, and (i) maintains adequate capital for the normal obligations reasonably foreseeable in a business of its size and character.

Taxes: All federal, state, local and foreign income and gross receipts taxes.

Tenant Improvements: Such tenant improvements not described in the Plans and Specifications to which Administrative Agent may give its consent pursuant to the terms hereof.

Title Insurer: Chicago Title Insurance Company, or such other title insurance company licensed in California as may be approved by Administrative Agent.

Total Project Costs: The total project costs set forth in the Budget and Disbursement Schedule attached as Exhibit B hereto.

Unavoidable Delay: Any happening or event not the result of any act or neglect of Borrower and beyond its reasonable control, excepting any exercise by Administrative Agent of any of its rights and remedies hereunder or under the other Loan Documents as a result of or in connection with any Default or Event of Default, which directly delays the performance of Construction and completion of the Improvements beyond the date set forth herein for such completion; provided, that (i) Borrower gives Administrative Agent written notice of such delay within ten (10) days after the occurrence of the happening or event giving rise to such delay, specifying the nature and extent of such happening or event and its effect on the Construction Schedule, (ii) such happening or event shall extend the date of completion of Construction only by the number of days such happening or event directly delays such completion beyond the date set forth herein for such completion, (iii) in no event shall the time for completion of the Improvements be extended beyond Loan Maturity Date or more than forty-five (45) days beyond the Scheduled Completion Date, and (iv) no such delay shall result in a breach by any tenant under any Material Lease, or excuse or defer performance by any tenant under any Material Lease.

Wetlands Regulations: Any Legal Requirement in connection with the regulation, preservation, maintenance or creation of wetlands areas, including 33 U.S.C.A. §1344, 33

U.S.C.A. §1319, 33 C.F.R. 320.1 et. seq., 33 C.F.R. 323.1 et. seq., 33 C.F.R. 363.1 et. seq., 40 C.F.R. 231.1 et. seq. and 40 C.F.R. 230.1 et. seq., as the foregoing statutes may be modified, revised or amended from time to time.

1.2 Other Definitions. Each of the following terms shall have the meanings given it in the Section set forth opposite such term below:

<u>Term</u>	<u>Section</u>
Administrative Agent	Preamble
Balancing Payment	Section 3.5
Borrower	Preamble
Breakage Costs	Section 2.21
Building 3	Recitals
Building 8	Recitals
Buildings	Recitals
Casualty	Section 5.2(u)
Code	Section 4.1(x)
Completion Conditions	Section 5.2(a)
Construction Loan Date Down Endorsement	Section 3.3(e)
Construction Agreements	Section 2.4(d)
Deed of Trust	Section 2.4(b)
Default Rate	Section 2.14
Effective Date	Preamble
Employee-Owned Shares	Section 4.1(a)
Environmental Indemnity	Section 2.4(h)
Environmental Report	Section 4.1(m)
ERISA	Section 4.1(x)
ERISA Affiliate	Section 4.1(x)
Event of Default	Section 8.1
Funding Date	Section 2.9(a)
Guarantee	Section 2.4(h)
Hard Construction Costs	In the definition of "Construction Costs" in Section 1.1
Improvements	Recitals
Indemnitees	Section 6.1
Land	Recitals
Loan Availability	Section 2.1
Loan Maturity Date	Section 2.3
Note	Section 2.4(a)
Option to Extend	Section 2.3(b)
Plan	Section 4.1(x)
Post-Foreclosure Plan	Section 9.8
Price Adjustment Date	Section 2.21
Reconstruction	Section 5.2(u)

Required Equity	Section 2.4(w)
Retainage	Section 3.1
Subordination Agreement	Section 2.4(v)
Taking	Section 5.2(u)
Title Policy	Section 2.4(i)
Transfer	Section 7.2
Wells Fargo	Preamble

1.3 Incorporation of Exhibits. The following Exhibits and Schedules attached hereto are incorporated herein and expressly made a part of this Agreement:

<u>Exhibit A</u>	Legal Description of Land;
<u>Exhibit B</u>	Budget and Disbursement Schedule;
<u>Exhibit C</u>	Construction Draw Request Form;
<u>Exhibit D</u>	Fixed Rate Notice;
<u>Exhibit E</u>	Assignment and Assumption;
<u>Exhibit F</u>	Payment and Notice Instructions;
<u>Exhibit G</u>	Environmental Report;
<u>Exhibit H</u>	Transfer Authorizer Designation; and
<u>Schedule 2.6</u>	Loan Fees and Expenses.

1.4 Incorporation of Recitals. The Recitals above are incorporated herein and expressly made a part of this Agreement.

ARTICLE II LOAN AND LOAN DOCUMENTS

2.1 Agreement to Borrow and Lend.

Subject to the terms and conditions set forth in this Agreement, including Article III hereof, Lenders hereby agree to make Loans to Borrower from time to time during the period from the Effective Date to the date which is one (1) day prior to the Loan Maturity Date. All Loans under this Agreement shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that no Lender shall be responsible for any failure by any other Lender to perform its obligation to make a Loan hereunder and that the Commitment of any Lender shall not be increased or decreased as a result of the failure by any other Lender to perform its obligation to make a Loan. The Loans shall be in a maximum principal amount (the "Loan Availability") from time to time equal to the least of (i) an amount such that the Loan to Cost Ratio shall be seventy-five percent (75%), (ii) an amount such that the Loan to Value Ratio shall be seventy percent (70%), (iii) an amount such that the Appraisal Debt Service Coverage Ratio shall be one hundred twelve and one-half percent (112.5%) and (iv) the aggregate amount of all Lenders' Commitments.

In determining Loan Availability, Administrative Agent shall not require an Appraisal to be performed for the Project more frequently than once per year after the Effective Date unless (i) such Appraisal is required under banking laws and regulations, or by any Governmental Authority having jurisdiction over Administrative Agent or its Affiliates, or (ii) any other material adverse change occurs with respect to the condition, Construction, or operation of the Project or a Material Adverse Occurrence occurs with respect to Borrower. In the event the outstanding principal balance of the Loan is at any time in excess of the Loan Availability, Borrower shall immediately repay to Administrative Agent for the benefit of Lenders an amount equal to such excess together with all unpaid interest accrued thereon and any other amount owed with respect to such payment under the terms of the Note, including any Breakage Costs.

2.2 Interest Rate. The Loan will bear interest at the rates set forth in Sections 2.11 and 2.14 hereof. Upon an Event of Default, the interest rate on the Loan and all other Loan Obligations shall be the Default Rate.

2.3 Term of the Loan.

(a) The unpaid principal balance, all accrued and unpaid interest and all other sums due and payable under the Note or other Loan Documents, if not sooner paid or payable by reason of acceleration or otherwise, shall be paid in full on August 15, 2010 (the "Loan Maturity Date").

(b) If (i) on the date of delivery of the notice described in clause (A) below and on the last day of the initial term of the Loan, no Default or Event of Default exists which has not been cured to the satisfaction of Administrative Agent and the Lenders, (ii) on the date of delivery of the notice described in clause (A) below and on the last day of the initial term of the Loan, no Material Adverse Occurrence has occurred that has not been cured and (iii) the Completion Conditions have been satisfied, then Borrower shall have the option to extend the Loan Maturity Date (the "Extension Option") to August 15, 2011 provided that on the last day of the initial term of the Loan, Administrative Agent shall have received an Extension Certificate dated such date and that not less than forty-five (45) days nor more than one hundred twenty (120) days prior to the initial Loan Maturity Date, Borrower shall have delivered to Administrative Agent:

- (A) written notice of its intention to exercise such Extension Option;
- (B) the Extension Fee (which is deemed fully earned when paid and is not refundable or proratable);
- (C) evidence reasonably satisfactory to Administrative Agent that not less than fifty percent (50%) of the net rentable space in the Project is leased under Approved Leases providing for an aggregate, weighted average rent not less than ninety-five percent (95%) of the pro forma rent

determined in the then most-recent Appraisal (including any appraisal obtained pursuant to Section 2.3(b)(E));

(D) evidence reasonably satisfactory to Administrative Agent that the Debt Service Coverage Ratio is at least one hundred percent (100%); and

(E) if Administrative Agent elects in its sole discretion to obtain a new Appraisal of the Project, on or before the Loan Maturity Date, payment, in accordance with the terms and conditions of the Loan Documents, of the Loan Obligations (if any) sufficient to reduce the Loan to Value Ratio (determined using such new Appraisal) to seventy percent (70%).

2.4 Loan Documents and Deliveries. On the Effective Date, Borrower shall execute and/or deliver to Administrative Agent the following documents and instruments in form and substance acceptable to Administrative Agent.

(a) Promissory notes from Borrower (as the same may be amended, modified, supplemented, extended or restated from time to time, collectively, the "Note") payable to the order of each Lender in the aggregate original principal amount of \$48,700,000.

(b) A Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (as the same may be amended, modified, supplemented, extended or restated from time to time, the "Deed of Trust") executed by Borrower, as Trustor, to American Securities Company, as trustee, for the benefit of Administrative Agent (on behalf of Lenders), granting a first lien on the Project securing the Note, subject only to the Permitted Exceptions, including granting Administrative Agent (on behalf of Lenders) a security interest in all construction materials, fixtures, furniture, furnishings and equipment and any other personal property now or hereafter owned by Borrower and located in or used in connection with the operation of the Project.

(c) [Intentionally Omitted]

(d) Uniform Commercial Code financing statement naming Borrower, as debtor, and Administrative Agent, as secured party.

(e) A collateral assignment to Administrative Agent (on behalf of Lenders) of all of Borrower's or Contractor's, as applicable, right, title and interest in and to (i) the Architect Contracts, (ii) the Engineer Contracts, (iii) all contracts and agreements executed by Borrower or Contractor relating to the Construction and operation of the Project, including all construction contracts and subcontracts, agreements and purchase orders for materials and supplies, and all mechanical and structural engineering contracts, (iv) all building permits and other Permits, licenses and authorizations issued from time to time in connection with the Construction or the operation of the Project, (v) the Plans and Specifications, (vi) all security and guarantees relevant to the foregoing (items (i)-(vi))

collectively, the "Construction Agreements"), (vii) all management agreements and leasing agreements, all of which shall be subordinated to the Loan, (viii) such maintenance and service contracts entered into in connection with the operation of the Project as Administrative Agent may require, and (ix) all trademarks, trade names, logos and other materials used to identify or advertise the Project.

(f) Consents to the assignments of the Construction Agreements by all third parties thereto and consents to the other Collateral assignments required hereunder as Administrative Agent may require; provided, however, that if Administrative Agent does not require other consents on the Effective Date, Borrower will furnish Administrative Agent, promptly after a request by Administrative Agent, such other consents to the other foregoing collateral assignments as Administrative Agent may require.

(g) To the extent not previously delivered to Administrative Agent, copies of the Architect Contracts, Engineer Contracts, Construction Agreement and such other Construction Agreements as Administrative Agent shall request, and of all Leases and leasing and management agreements then in effect.

(h) A guarantee by Guarantor of the completion of the Project, full repayment of the Loan Obligations and certain other matters (the "Guarantee").

(i) An indemnity by Indemnitor for the benefit of Administrative Agent and Lenders respecting certain environmental liabilities in connection with the Project (the "Environmental Indemnity").

(j) A 2006 LP-10 ALTA Lender's Policy of Title Insurance (the "Title Policy") in an amount equal to the full aggregate amount of the Loan, issued by the Title Insurer, insuring the Deed of Trust as a valid and subsisting first deed of trust encumbering the Real Estate and all appurtenant easements as reasonably required by Administrative Agent, subject only to the Permitted Exceptions, and including such endorsements as Administrative Agent may require. Borrower agrees to deliver to the Title Insurer such other papers, instructions and documents as the Title Insurer may require for the issuance of the Title Policy and (as and if applicable) the issuance of Construction Loan Date Down Endorsements and interim certifications relating to Construction payouts as provided in Article III hereof, and other endorsements required hereunder.

(k) A Survey of the Real Estate prepared by a licensed California surveyor approved by Administrative Agent, with a Surveyor's Certificate in form and substance reasonably acceptable to Administrative Agent, which survey shall be certified to Administrative Agent and the Title Insurer, containing a certified legal description of the Land and otherwise prepared in compliance with California and ALTA standards, showing the outline of the Land, all easements, set back requirements, all buildings, structures and other improvements thereon, and all paving, driveways and fences in place,

if any, certification regarding flood zone status and such other information as Administrative Agent or the Title Insurer may require.

(l) Current searches of all Uniform Commercial Code financing statements filed with the Secretary of State of Delaware against Borrower, as debtor, showing that no Uniform Commercial Code financing statements are filed or recorded against Borrower in which the collateral is described as personal property or fixtures located on the Project or used in connection with the Project.

(m) Duplicate original insurance policies or copies of same for which the premiums have been fully prepaid evidencing the existence of the insurance coverages required under this Agreement, including certificates evidencing professional liability insurance covering the Architects, Engineers and all other architects and engineers performing services in connection with the design and Construction of the Project. All insurance shall be in amount, form and substance satisfactory to Administrative Agent.

(n) An opinion from counsel to each of Borrower and Opus West addressing such matters as Administrative Agent may request, including that each of Borrower and Opus West, as applicable, is duly organized, validly existing, in good standing in their respective states of organization and authorized to do business in the State of California, and that the Loan Documents have been duly executed and constitute legal, valid and binding obligations of Borrower and Opus West, as applicable, enforceable in accordance with their terms, except as such enforcement may be limited by applicable bankruptcy laws. Administrative Agent agrees that any such legal opinion required hereunder may be rendered, in part, by the in-house counsel of Borrower and Opus West, as applicable, with respect to certain of the foregoing matters and, in part, by the special or outside counsel of Borrower or Opus West, as applicable, with respect to certain of the foregoing matters.

(o) Evidence satisfactory to Administrative Agent, including certified resolutions of Opus West and Borrower (or its general partner) that the Persons executing this Agreement and the Loan Documents on behalf of Borrower and Opus West, as applicable, have been duly authorized to do so by all appropriate action. Borrower and Opus West shall also furnish Administrative Agent with (i) an incumbency certificate showing specimen signatures for all authorized signatories executing the applicable Loan Documents, (ii) certified copies of their respective formation and organizational documents, (iii) certificate of good standing in their respective states of organization, and (iv) certificates of authorization to do business as a foreign entity in good standing in California.

(p) Complete plans and specifications ("Plans and Specifications") for the Construction of the Improvements, together with a certification from the Architects, addressing such matters as Administrative Agent may request, including that the Plans and Specifications are all that are necessary to complete the Project and that they comply with all building codes and other Legal Requirements, including requirements under the Americans with Disabilities Act.

(q) A detailed Construction schedule (the "Construction Schedule") showing completion of the Improvements occurring on or before the Scheduled Completion Date.

(r) Evidence that the Land is properly zoned for the Construction and operation of the Project and that, when completed and operating, the Project does not, or, when completed and operating, will not, violate any zoning, subdivision or similar land use laws and ordinances, and that all Permits, licenses and approvals required for the Construction and the operation of the Project have been obtained by Borrower, including copies of all building permits and all filings by or with Governmental Authorities.

(s) Evidence that the Project is benefited by such easements or other rights as may be necessary for the Construction, vehicular and pedestrian ingress and egress, the installation and maintenance of utilities, parking and other site improvements, and the operation of the Project, including any reciprocal easement and/or operating agreement for the Project.

(t) Environmental and soil test reports which are less than one (1) year old and satisfactory to Administrative Agent and contain results and conclusions acceptable to Administrative Agent.

(u) An Appraisal of the Project approved by Administrative Agent and prepared by an independent appraiser selected by Administrative Agent.

(v) Due diligence by Administrative Agent with respect to the Project, Budget and Disbursement Schedule, Plans and Specifications and such other matters as Administrative Agent may deem appropriate.

(w) Evidence acceptable to Administrative Agent that Borrower shall have made an equity investment in the Project (the "Required Equity") consisting of the sum of (i) the Land, valued at fair market value (determined in a manner acceptable to Administrative Agent), (ii) cash, invested in the Project by Borrower, and (iii) Borrower's developer's and/or general contractor's fees deferred pursuant to the Subordination Agreement of even date herewith (the "Subordination Agreement") until the Loan has been repaid (provided that the developer's and general contractor's fees included in the Required Equity shall not exceed \$3,970,330), which sum shall, on the Effective Date, be not less than \$19,078,203.

(x) Evidence acceptable to Administrative Agent that any Indebtedness secured by the Project has been fully paid and all Liens securing such Indebtedness have been released.

(y) A copy of each Lease executed on or before the Effective Date and financial statements for the tenants thereunder.

(z) An estoppel and a subordination, non-disturbance and attornment agreement from each tenant that has entered into a Material Lease on or before the Effective Date, in form and substance acceptable to Administrative Agent.

(aa) Evidence acceptable to Administrative Agent that Borrower has entered into an interest rate swap agreement or other interest rate agreement providing for an interest rate not to exceed six and one-half percent (6.5%) for a period ending not earlier than eighteen (18) months after the Effective Date and otherwise on terms and conditions acceptable to Administrative Agent.

(bb) Such other papers, documents and instruments as may from time to time be required by this Agreement or as Administrative Agent may reasonably require to more fully secure the rights and benefits granted herein.

2.5 Termination. If the Loan Opening Date shall not have occurred on or before the date which is thirty (30) days after the Effective Date, then Administrative Agent may terminate this Agreement.

2.6 Loan Fee and Closing Expenses. In consideration for the execution of this Agreement and Lenders' commitment to lend subject and pursuant to the terms and conditions hereof, and without limiting any other term or provision of the Loan Documents, Borrower shall pay to Wells Fargo the fees and expenses described in Schedule 2.6 attached hereto. Borrower acknowledges and agrees such fees have been fully earned whether or not the Loan is disbursed in whole or in part. Borrower hereby authorizes Administrative Agent to deduct the amount of all fees and expenses reflected on Schedule 2.6 from the initial disbursement of the Loan proceeds and such amount shall be considered a portion of the outstanding principal balance of the Loan as of the Loan Opening Date.

2.7 Loan Expenses. Borrower agrees upon demand to pay, or reimburse Administrative Agent for, all of Administrative Agent's reasonable external audit, legal, appraisal, valuation and investigation expenses and for all other reasonable out-of-pocket costs and expenses of every type and nature associated with underwriting, closing, funding, monitoring and administration of the Loan, including all recording charges, title insurance charges, word processing and photocopying expenses, costs of surveys, costs for certified copies of instruments, lien searches and fees, expenses and charges of Administrative Agent's counsel, auditors, accountants, appraisers, environmental advisers, and other consultants, including the Consulting Architect, and including all costs and expenses incurred by Administrative Agent prior to or after the Effective Date in connection with (i) the negotiation, preparation and execution of this Agreement and the other Loan Documents and the creation, perfection and protection of the Liens in favor of or benefiting Administrative Agent contemplated by the Loan Documents, (ii) the appraisal of the Land and the Project, (iii) environmental and other site assessments of the Project, (iv) the inspection and review of the Construction, the Plans and Specifications, the Construction Agreements, the Project or requests for disbursements of Loan proceeds hereunder, (v) the review of financial statements and other statements, certificates and documents delivered to Administrative Agent pursuant to this Agreement, (vi) requests or inquiries from Borrower

with respect to the Project, the Loan or the Loan Documents, including requests by Borrower that Administrative Agent or Lenders grant any consents or approvals under, or amendments, extensions, substitutions or any other modifications of, this Agreement or any of the other Loan Documents, (vii) determinations regarding compliance by Borrower with this Agreement or the applicable Loan Documents, and satisfaction of any conditions precedent to the obligations of Administrative Agent hereunder or thereunder, (viii) consultations with legal counsel and other consultants regarding any of the matters set forth above, and advice and representation with respect to the Project, the Loan Documents and the Loan and the administration thereof, including preparation, negotiation and review of subordination agreements, agreements concerning tenancies and other documents and agreements, and (ix) syndication fees and expenses payable to Administrative Agent, if applicable. Notwithstanding the foregoing, in the event that Administrative Agent undertakes to perform internally any of the services described in this Section 2.7 which would customarily be performed by third parties, Borrower shall pay or reimburse Administrative Agent, at the prevailing market rates for such services, for all costs and expenses for such services performed by Administrative Agent.

2.8 Expenses and Advances Secured by Loan Documents. Any and all advances or payments made by Administrative Agent or any Lender under this Agreement from time to time, and any amounts expended by Administrative Agent or any Lender in connection with this Agreement, including any amounts expended pursuant to any of Sections 2.7, 5.2(d), 5.2(f), 5.2(g), 5.2(k), 5.2(s), 8.2, 10.9 or any other provision of this Agreement or of the other Loan Documents shall, as and when advanced or incurred by Administrative Agent or any Lender, constitute additional Loan Obligations evidenced by the Note and shall bear interest at the rates set forth therein and be secured by the Deed of Trust and the other Liens granted to or for the benefit of Administrative Agent and Lenders under the Loan Documents to the same extent and effect as if the terms and provisions of this Agreement were set forth therein, whether or not the aggregate of such indebtedness shall exceed the aggregate face amount of the Note.

2.9 Fixed Rate Notice/Selection of Applicable Rate.

(a) Whenever Borrower desires for Lenders to make an Advance or continue, or convert a Base Rate Loan to, a LIBOR Loan under this Agreement, Borrower, in addition to providing all other items and fulfilling and satisfying all other conditions to and requirements and provisions respecting the disbursement of Loan proceeds set forth in this Agreement, shall give Administrative Agent, at Los Angeles Loan Center, 2120 East Park Place, Suite 100, El Segundo, California 90245, or such other address as Administrative Agent shall designate in writing prior to such notice, an original or facsimile Fixed Rate Notice, and setting forth any and all of the relevant information described in this Section 2.9 and provided for in Exhibit D hereof, and otherwise complying with the criteria set forth in this Section 2.9, including the applicable date and time restrictions contained herein. In the case of a new Advance under this Agreement, the Fixed Rate Notice shall be given to Administrative Agent no later than 10:00 a.m. (California time), not less than three (3) nor more than seven (7) Business Days prior to the proposed funding date set forth in such Fixed Rate Notice ("Funding Date"). Each Fixed Rate Notice shall specify: (i) the proposed Funding Date (which shall be a Business

Day) in respect of the Advance; (ii) the amount of the proposed Advance; (iii) subject to Administrative Agent's discretion under this Agreement, the account of Borrower to which funds are to be directed. In addition, Borrower may elect: (A) to convert Base Rate Loans or any portion thereof to LIBOR Loans; (B) to convert LIBOR Loans or any portion thereof to Base Rate Loans; or (C) to continue any LIBOR Loans or any portion thereof for an additional Interest Period. The applicable Interest Period for the continuation of any LIBOR Loan shall commence on the day on which the immediately preceding Interest Period expires. Each such election shall be made by giving Administrative Agent written notice thereof by 10:00 a.m. (California time) on the date of a conversion to a Base Rate Loan, or by 10:00 a.m. (California time) not less than three (3) nor more than seven (7) Business Days prior to the date of a conversion to or continuation of a LIBOR Loan, specifying, in each case: (I) whether a conversion or continuation is to occur; (II) the amount of the conversion or continuation; (III) the Interest Period therefor, in the case of a conversion to or continuation of a LIBOR Loan; and (IV) the date of the conversion or continuation (which date shall be a Business Day). Administrative Agent shall promptly deliver copies of the Fixed Rate Notice to Lenders. Notwithstanding anything to the contrary contained herein and subject to the Default Rate provisions contained herein, if an Event of Default occurs and so long as such Event of Default continues, all LIBOR Loans will convert to Base Rate Loans upon the expiration of the applicable Interest Periods therefor or the date on which the Loan becomes due, whichever occurs first. Except as provided above, the conversion of a LIBOR Loan to a Base Rate Loan shall only occur on the last Business Day of the Interest Period relating to such LIBOR Loan. If Borrower either elects to have a Loan bear interest at the Base Rate or has not so advised Administrative Agent of Borrower's selection of an applicable rate or Interest Period as aforesaid (or if Lenders shall make an Advance other than pursuant to a Fixed Rate Notice in accordance with the terms of this Agreement), Borrower shall be deemed to have selected the Base Rate as the applicable rate for such Advance. Administrative Agent is authorized to rely upon the telephonic request and acceptance of Charles Vogel and Vickie Sixta as Borrower's duly authorized agents for the purpose of delivering Fixed Rate Notices, or such additional authorized agents as Borrower shall designate in writing to Administrative Agent. Borrower's telephonic notices, requests and acceptances shall be directed to such officers of Administrative Agent as Administrative Agent may from time to time designate.

(b) For each LIBOR Loan, Borrower may elect to have the LIBOR rate be applicable to such Advance after the expiration of the then current Interest Period by giving notice of such election to Administrative Agent at least three (3) Business Days before the end of the immediately preceding Interest Period, which election must specify the duration of the next Interest Period for such LIBOR rate. If Administrative Agent does not receive such a notice of election of the LIBOR rate and the Interest Period as to such Advance by such time, Borrower shall be deemed to have elected to convert such LIBOR Loan to a Base Rate Loan at the expiration of the then current Interest Period.

(c) All elections by Borrower hereunder of interest options, rates and periods shall be irrevocable.

(d) In no event shall Borrower have more than five (5) fixed rate contracts outstanding at any one time and each such contract shall be in a minimum amount of One Million and No/100 Dollars (\$1,000,000.00) and in minimum increments of One Hundred Thousand and No/100 Dollars (\$100,000.00) in excess thereof.

(e) If Borrower elects to have a Base Rate Loan, Borrower shall deliver notice thereof to Administrative Agent at the address provided in Section 2.9(a) by delivery of a form of notice specified by Administrative Agent not less than one (1) Business Day in advance of the proposed date of disbursement thereof.

2.10. Agreements Relating to Interest Accruing at the LIBOR Rate.

(a) If any Lender shall reasonably determine (which determination shall, upon notice thereof to Borrower, be conclusive and binding on the parties hereto) that the introduction of or any change in or in the interpretation of any law makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, for such Lender to make or maintain any Advances as a LIBOR Loan; (i) the obligations of Lenders to make or maintain any Advances as LIBOR Loans shall, upon such determination, forthwith be suspended until Administrative Agent shall notify Borrower that the circumstances causing such suspension no longer exist; and (ii) if required by such law or assertion, the LIBOR Loans made by Lenders to Borrower shall automatically convert into Base Rate Loans.

(b) If Administrative Agent shall have determined in good faith that adequate means do not exist for ascertaining the interest rate applicable hereunder to LIBOR Loans, then, upon notice from Administrative Agent to Borrower, the obligations of Lenders to make or maintain Loans as LIBOR Loans shall forthwith be suspended until Administrative Agent shall notify Borrower that the circumstances causing such suspension no longer exist. Administrative Agent will give such notice when it determines, in good faith, that such circumstances no longer exist; provided, however, that Administrative Agent shall not have any liability to any Person with respect to any delay in giving such notice.

(c) Without limiting the provisions of Section 2.21 below, in the event any Lender shall incur any loss or expense (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to make or maintain any portion of any Advance as a LIBOR Loan) as a result of: (i) any continuance or conversion of the principal amount of any LIBOR Loans for any reason whatsoever on a date other than the scheduled last day of the Interest Period applicable thereto; or (ii) any Advances not being made as LIBOR Loans in accordance with the Fixed Rate Notice therefor, other than as a result of such Lender's breach of its obligation to fund such Advances in accordance with the terms hereof; then, upon the written notice of such Lender to Borrower (with a copy to Administrative Agent), Borrower shall reimburse such Lender for such loss or reasonable expense. Such written notice (which

shall include such Lender's calculations of such loss or expense in reasonable detail) shall be conclusive and binding on the parties hereto.

(d) Borrower shall pay Administrative Agent and any Lender, so long as and to the extent Administrative Agent or such Lender shall be required under regulations of the Board of Governors of the Federal Reserve System to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency Liabilities (as defined above in the definition of LIBOR Reserve Percentage) and performance by Administrative Agent or such Lender under this Agreement or the Note shall have given rise to additional reserve requirements for Administrative Agent or such Lender hereunder, under the Note or any of the other Loan Documents, additional interest on the unpaid principal amount of each Advance constituting a LIBOR Loan of Administrative Agent or such Lender made to Borrower, from the date of such Loan until such principal amount is paid in full, at an interest rate per annum equal at all times to the remainder obtained by subtracting (i) LIBOR for the applicable Interest Period for such LIBOR Loan from (ii) the rate obtained by dividing LIBOR by a percentage equal to one hundred percent (100%) minus the LIBOR Reserve Percentage as in effect from time to time during such Interest Period, payable on each date on which interest is payable on such LIBOR Loan. Administrative Agent or such Lender shall, as soon as practicable, but not later than the last day of the applicable Interest Period, provide notice to Borrower of any such additional interest arising in connection with such LIBOR Loans and the certification of Administrative Agent or such Lender that the additional amount is due and that the additional reserve requirement is applicable to such LIBOR Loans. Such additional interest shall be payable directly to Administrative Agent or such Lender on the dates specified for payment of interest for the Loan.

(e) Any and all payments by Borrower hereunder, under the Note or any of the other Loan Documents shall be made free and clear of and without deduction for Taxes, including any and all present or future taxes, levies, imposts, deductions, charges or withholdings and all liabilities with respect thereto, including those arising after the Effective Date as a result of the adoption of or any change in any law, treaty, rule, regulation, guideline or determination of a Governmental Authority, but excluding such taxes (including net income taxes, franchise taxes and branch profit taxes) as are presently or hereafter imposed on or measured by net income or profits of Administrative Agent or any Lender by the United States of America (or any political subdivision thereof) or any Governmental Authority of the jurisdiction under the laws of which Administrative Agent or any Lender is organized or maintains a lending office or conducts business.

2.11 Payments of Principal and Interest During the Term of the Loan. The principal sum and interest thereon shall be paid as follows:

(a) During such periods as an Advance is a Base Rate Loan, interest upon the outstanding principal balance of each such Base Rate Loan shall accrue, prior to the occurrence of an Event of Default, at the fluctuating rate per annum equal to the Base

Rate in effect from time to time, which rate shall change when and as such Base Rate shall change and such interest shall be payable on the first Business Day of each calendar month.

(b) During such periods as an Advance is a LIBOR Loan, interest upon the outstanding principal balance of each such LIBOR Loan shall accrue, prior to the occurrence of an Event of Default, at the rate per annum during each Interest Period for such Advances equal to the sum of LIBOR for such Interest Period plus the Interest Margin, and such interest shall be payable on the first Business Day of each calendar month.

(c) Borrower shall also pay Administrative Agent and each Lender for each LIBOR Loan, the cost of complying, in connection with such LIBOR rate of interest during such Interest Period, with any reserve, special deposit or similar requirements (including reserve requirements under Federal Reserve Regulation D) imposed or deemed applicable by any United States Governmental Authority charged with the administration of such requirements against any assets held by or deposits or accounts in or with or credit extended by Administrative Agent or such Lender, or any assignee or participant of any Lender, or their respective principal offices in London for LIBOR Loans. The costs (including reserves) under this Section 2.11(c) will be charged by Administrative Agent or such Lender on the basis of the number of days Administrative Agent or such Lender is in a reserve position, if such calculations are readily available. To the extent such costs are incurred, they will be added to the interest payable hereunder or be billed separately on a monthly basis. Participants and/or assignees, if any, of the Loan will be required to submit appropriate certification as to their reserve position based on the actual number of days they are in a reserve position. It shall be assumed for purposes of computing cost pursuant to the above provision that the making and maintaining of each LIBOR Loan has been approved and made by Administrative Agent or such Lender, or any assignee or participant, through the principal office of Administrative Agent or such Lender, or such assignee or participant, in London.

2.12 Prepayments. Subject to Section 2.10(c) above, and provided that Borrower promptly pays any Breakage Costs associated with any LIBOR Loans, Borrower may, upon not less than two (2) Business Days prior written notice to Administrative Agent, at any time and from time to time, prepay any Advance or the Loan in whole or in part, without payment of penalty or premium. Any such prepayment made pursuant to this Section 2.12 shall be a permanent repayment and not subject to re-borrowing and shall reduce the Commitments by the amount thereof. Any notice of prepayment given to Administrative Agent under this Section 2.12 shall specify the date of the prepayment and the aggregate principal amount of the prepayment and shall state that Borrower has no further right to reborrow such prepayment.

2.13 Manner and Time of Payment.

(a) General. All payments of principal, interest and fees under the Note and this Agreement, payable to Administrative Agent for the benefit of Lenders, shall be

made without condition or reservation of right and free of setoff or counterclaim, in Dollars and by wire transfer (pursuant to Administrative Agent's written wire transfer instructions) of immediately available funds, delivered to Administrative Agent not later than 11:00 a.m. (California time) on the date due; and funds received by Administrative Agent after that time and date shall be deemed to have been paid on the next succeeding Business Day.

(b) Payments on Non-Business Days. Whenever any payment to be made by Borrower hereunder shall be stated to be due on a day which is not a Business Day, payments shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder and of any of the fees specified herein or in the Note, as the case may be.

2.14 Default Rate. Notwithstanding the rates of interest and the payment dates specified herein or in the Note, effective immediately upon the occurrence and during the continuance of any Event of Default, the principal balance of the Loan then outstanding and, to the extent permitted by applicable law, any interest payments on the Loan not paid when due, shall, in lieu of interest which would otherwise accrue under the Note or hereunder, bear interest payable upon demand therefor at a rate which is five percent (5.0%) per annum in excess of the rate of interest otherwise payable on such Loans under this Agreement or the Note ("Default Rate"). All other amounts due Administrative Agent on behalf of itself or any Lender (whether directly or for reimbursement) under the Note, this Agreement or any of the other Loan Documents, if not paid when due after the expiration of any cure period, or if no time period is expressed, if not paid within five (5) days after the date of a written notice from Administrative Agent to Borrower notifying Borrower that such payment is due, shall bear interest from and after the date of such notice or the expiration of such cure period at the Default Rate. Administrative Agent or Requisite Lenders may waive application of the Default Rate as provided in Section 10.3.

2.15 Late Fee. Borrower acknowledges that late payment to Administrative Agent will cause Administrative Agent and Lenders to incur costs not contemplated by this Agreement. Such costs include, without limitation, processing and accounting charges. Therefore, if Borrower fails timely to pay any sums due and payable hereunder or under the Note or any other Loan Document through the Loan Maturity Date, unless waived by Administrative Agent or Requisite Lenders as provided in Section 10.3 below, a late charge of four cents (\$.04) for each Dollar of any payment, interest or other charge due thereon (other than principal due on the Maturity Date) and which is not paid within fifteen (15) days after such payment is due, shall be charged by Administrative Agent for the benefit of Lenders and paid by Borrower for the purpose of defraying the expenses incident to handling such delinquent payment; provided, however, that no late charges shall be assessed with respect to any period for which Borrower is obligated to pay interest at the Default Rate; provided, further, that in no event shall Administrative Agent be required to refund any late fees paid by Borrower, notwithstanding the preceding proviso. Borrower and Administrative Agent agree that this late charge represents a reasonable sum considering all of the circumstances existing on the date hereof and represents a fair and reasonable estimate of the costs that Administrative Agent and Lenders will incur by

reason of late payment. Borrower and Administrative Agent further agree that proof of actual damages would be costly and inconvenient. Acceptance of any late charge shall not constitute a waiver of the Default or Event of Default with respect to the overdue installment, and shall not prevent Administrative Agent from exercising any of the other rights available hereunder or any other Loan Document. Such late charge shall be paid without prejudice to any other rights of Administrative Agent.

2.16 Computation of Interest. Interest and fees shall be computed on the basis of the actual number of days elapsed in the period during which interest or fees accrue and a year of three hundred sixty (360) days. In computing interest on any Advance, the date of the making of the Advance shall be included and the date of payment shall be excluded; provided, however, that if an Advance is repaid on the same day on which it is made, one (1) day's interest shall be paid on that Advance. Notwithstanding anything contained herein or in the Note to the contrary, interest in respect of any Advance shall not exceed the maximum rate permitted by applicable law.

2.17 Changes: Legal Restriction. In the event that after the date hereof, the adoption of or any change in any law, treaty, rule, regulation, guideline or determination of a court or Governmental Authority or any change in the interpretation or application thereof by a court or Governmental Authority, or compliance by Administrative Agent or any Lender with any request or directive made or issued after the date hereof (whether or not having the force of law and whether or not the failure to comply therewith would be unlawful) from any central bank or other Governmental Authority or quasi-governmental authority:

(a) subjects Administrative Agent or any Lender to any tax, duty or other charge of any kind with respect to the Loan, the Note, this Agreement or any of the other Loan Documents, including the Deed of Trust, or changes the basis of taxation of payments to Administrative Agent or any Lender of principal, fees, interest or any other amount payable hereunder, except for net income, gross receipts, gross profits or franchise taxes imposed by any jurisdiction and not specifically based upon loan transactions; or

(b) imposes, modifies or holds applicable, any reserve, special deposit, compulsory loan, FDIC insurance, capital allocation or similar requirement against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any Lender or Administrative Agent or any applicable lending office (except to the extent that the reserve and FDIC insurance requirements are reflected in the Base Rate);

and the result of any of the foregoing is to increase the cost to Administrative Agent or such Lender of making, renewing, maintaining or participating in the Loan or to reduce any amount receivable thereunder; then, in any such case, Borrower shall promptly pay to Administrative Agent or such Lender, upon demand, such amount or amounts (based upon a reasonable allocation thereof by Administrative Agent or such Lender to the financing transactions contemplated by this Agreement and affected by this Section 2.17.), as may be necessary to

compensate Administrative Agent or such Lender for any such additional cost incurred or reduced amounts received; provided, however, that if the payment of such compensation may not be legally made whether by modification of the applicable interest rate or otherwise, then the affected Lender shall have no further obligation to make Advances that cause such Lender to incur such increased cost, and all affected Advances shall become due and payable by Borrower within thirty (30) days after the date of the adoption, change, determination or compliance described in this Section 2.17. Administrative Agent or such Lender shall deliver to Borrower a written statement of the claimed additional costs incurred or reduced amounts received and the basis therefor as soon as reasonably practicable after Administrative Agent or such Lender obtains knowledge thereof.

2.18 Capital Adequacy If any Lender, assignee or participant in the Loan, or any of them, determines in good faith that compliance with any law or regulation or with any guideline or request from any central bank or other governmental agency (whether or not having the force of law) affects or would affect the amount of capital required or expected to be maintained by such Lender, assignee or participant, or any corporation controlling such Lender, assignee or participant, as a consequence of, or with reference to, such Lender's, assignee's or participant's or such corporation's commitments or its making or maintaining advances below the rate which such Lender, assignee or participant or such corporation controlling such Lender, assignee or participant could have achieved but for such compliance (taking into account the policies of such Lender, assignee or participant or corporation with regard to capital), then Borrower shall, from time to time, within thirty (30) calendar days after written demand by such Lender, assignee or participant pay to such Lender, assignee or participant additional amounts sufficient to compensate such Lender, assignee or participant or such corporation controlling such Lender, assignee or participant to the extent that such Lender, assignee or participant determines such increase in capital is allocable to its obligations hereunder. A certificate as to such amounts, submitted to Borrower by such Lender, assignee or participant shall be conclusive and binding for all purposes, absent manifest error.

2.19 Waiver. Borrower waives presentment for payment, notice of dishonor, protest and notice of protest in connection with amounts due and payable under this Agreement, the Note or the other Loan Documents.

2.20 Administrative Agent's Accounting. Administrative Agent shall maintain books and records pertaining to the Loan according to Administrative Agent's customary accounting practices as in effect from time to time. From time to time as is customary with Administrative Agent's practice, Administrative Agent will render a statement of Borrower's loan account to Borrower. Each such statement shall be deemed final, binding and conclusive upon Borrower in all respects as to all matters reflected therein (absent demonstrable error).

2.21 Prepayment Indemnification. Borrower acknowledges that prepayment or acceleration of a LIBOR Loan on a date which is not the last day of an Interest Period may result in Lenders' incurring additional costs, expenses and/or liabilities and that it is extremely difficult and impractical to ascertain the extent of such costs, expenses and/or liabilities. Therefore, on the date all or any part of a LIBOR Loan is prepaid or the date all sums payable hereunder

become due and payable, by acceleration or otherwise ("Price Adjustment Date"), Borrower will pay to Administrative Agent, for the account of each Lender (in addition to all other sums then owing to Lenders) an amount ("Breakage Costs") equal to the then present value of (i) the amount of interest that would have accrued on the LIBOR Loan for the remainder of the Interest Period at the applicable rate thereunder, less (ii) the amount of interest that would accrue on the same LIBOR Loan for the same period if the LIBOR rate were set on the Price Adjustment Date at the LIBOR rate in effect on the Price Adjustment Date, plus the Interest Margin. The present value shall be calculated by using as a discount rate the LIBOR Rate quoted on the Price Adjustment Date.

By initialing this provision where indicated below, Borrower confirms that Lenders' agreement to make the Loan at the interest rates and on the other terms set forth herein and in the other Loan Documents constitutes adequate and valuable consideration, given individual weight by Borrower, for this agreement:

BORROWER INITIALS: _____

Nothing in this Section 2.21 shall authorize a prepayment when such prepayment is not permitted by the terms of Section 2.12 hereof.

2.22 Purchase, Sale and Matching of Funds. Borrower understands, agrees and acknowledges the following: (a) Lenders have no obligation to purchase, sell and/or match funds in connection with the use of a LIBOR Rate as a basis for calculating interest under a LIBOR Loan or Breakage Costs; (b) a LIBOR Rate is used merely as a reference in determining interest under a LIBOR Loan or Breakage Costs; and (c) Borrower has accepted a LIBOR Rate as a reasonable and fair basis for calculating interest under a LIBOR Loan or Breakage Costs. Borrower further agrees to pay Breakage Costs, Taxes and all other sums payable to Administrative Agent and Lenders hereunder, if any, whether or not any Lender elects to purchase, sell and/or match funds.

2.23 Partial Reconveyance of Buildings. At any time prior to the Loan Maturity Date, so long as no Default or Event of Default has occurred and is continuing, Administrative Agent shall, at Borrower's request, issue partial reconveyances from the lien of the Deed of Trust for either, but not both, of the Buildings; provided, however, that prior to or simultaneously with such partial reconveyance all of the following conditions shall be satisfied:

(a) Administrative Agent shall have received any and all sums then due and owing under the Loan Documents together with all escrow, closing and recording costs, the costs of preparing and delivering such partial reconveyance pertaining to such Building and the cost of any title insurance endorsements reasonably required by Administrative Agent, including CLTA 116.3, 116.7 and 111 endorsements;

(b) Administrative Agent shall have received evidence satisfactory to Administrative Agent that: (i) the portion of the Project to be reconveyed and the portion of the Project which shall remain encumbered by the Deed of Trust are each legal parcels or separate legal interests lawfully created in compliance with all subdivision laws and

in Lenders' incurring additional costs, expenses and/or liabilities and that it is extremely difficult and impractical to ascertain the extent of such costs, expenses and/or liabilities. Therefore, on the date all or any part of a LIBOR Loan is prepaid or the date all sums payable hereunder become due and payable, by acceleration or otherwise ("Price Adjustment Date"), Borrower will pay to Administrative Agent, for the account of each Lender (in addition to all other sums then owing to Lenders) an amount ("Breakage Costs") equal to the then present value of (i) the amount of interest that would have accrued on the LIBOR Loan for the remainder of the Interest Period at the applicable rate thereunder, less (ii) the amount of interest that would accrue on the same LIBOR Loan for the same period if the LIBOR rate were set on the Price Adjustment Date at the LIBOR rate in effect on the Price Adjustment Date, plus the Interest Margin. The present value shall be calculated by using as a discount rate the LIBOR Rate quoted on the Price Adjustment Date.

By initialing this provision where indicated below, Borrower confirms that Lenders' agreement to make the Loan at the interest rates and on the other terms set forth herein and in the other Loan Documents constitutes adequate and valuable consideration, given individual weight by Borrower, for this agreement:

BORROWER INITIALS: _____

Nothing in this Section 2.21 shall authorize a prepayment when such prepayment is not permitted by the terms of Section 2.12 hereof.

2.22 Purchase, Sale and Matching of Funds. Borrower understands, agrees and acknowledges the following: (a) Lenders have no obligation to purchase, sell and/or match funds in connection with the use of a LIBOR Rate as a basis for calculating interest under a LIBOR Loan or Breakage Costs; (b) a LIBOR Rate is used merely as a reference in determining interest under a LIBOR Loan or Breakage Costs; and (c) Borrower has accepted a LIBOR Rate as a reasonable and fair basis for calculating interest under a LIBOR Loan or Breakage Costs. Borrower further agrees to pay Breakage Costs, Taxes and all other sums payable to Administrative Agent and Lenders hereunder, if any, whether or not any Lender elects to purchase, sell and/or match funds.

2.23 Partial Reconveyance of Buildings. At any time prior to the Loan Maturity Date, so long as no Default or Event of Default has occurred and is continuing, Administrative Agent shall, at Borrower's request, issue partial reconveyances from the lien of the Deed of Trust for either, but not both, of the Buildings; provided, however, that prior to or simultaneously with such partial reconveyance all of the following conditions shall be satisfied:

(a) Administrative Agent shall have received any and all sums then due and owing under the Loan Documents together with all escrow, closing and recording costs, the costs of preparing and delivering such partial reconveyance pertaining to such Building and the cost of any title insurance endorsements reasonably required by Administrative Agent, including CLTA 116.3, 116.7 and 111 endorsements;

ordinances and, at Borrower's sole cost, Administrative Agent shall have received any title insurance endorsements to that effect requested by Administrative Agent; and (ii) the portion of the Project which shall remain encumbered by the Deed of Trust has the benefit of all utilities, easements, public and/or private streets, covenants, conditions and restrictions as may be necessary, in Administrative Agent's sole opinion, for the anticipated development and improvement thereof;

(c) Administrative Agent shall have received a release price equal to (i) Sixteen Million Seven Hundred Eighty-Nine Thousand Five Hundred Seven and NO/100 Dollars \$(16,789,507.00) for the partial reconveyance of Building 3 or (ii) Thirty-One Million Nine Hundred Ten Thousand Four Hundred Ninety-Three and NO/100 Dollars \$(31,910,493.00) for the partial reconveyance of Building 8. The release price shall be applied to reduce the outstanding principal balance of the Loan;

(d) Administrative Agent shall have received evidence satisfactory to Administrative Agent that any tax, bond or assessment, including without limitation under the Mello-Roos Community Facilities Act of 1982, which constitutes a lien against the Project has been properly allocated between the portion of the Project to be reconveyed and the portion of the Project which shall remain encumbered by the Deed of Trust; and

(e) Administrative Agent shall have received payment, in accordance with the terms and conditions of the Loan Documents, of the Loan Obligations (if any) sufficient to (i) reduce the Loan to Value Ratio to sixty-five percent (65%) and (ii) cause the Appraisal Debt Service Coverage Ratio to be at least one hundred twenty percent (120%). For purposes of this Section 2.23(e), the determination of Loan to Value Ratio and Appraisal Debt Service Coverage Ratio may be based on either (x) the then most recent Appraisal approved by Administrative Agent, or (y) if Administrative Agent elects in its sole discretion to obtain a new Appraisal of the portion of the Project which shall remain encumbered by the Deed of Trust, such new Appraisal.

Neither the acceptance of any payment nor the issuance of any partial reconveyance by Administrative Agent shall affect Borrower's obligation to repay all amounts owing under the Loan Documents or under the lien of the Deed of Trust on the remainder of the Project which is not reconveyed, nor shall it constitute or be construed as a waiver by Administrative Agent of any breach or default under this Agreement.

ARTICLE III DISBURSEMENT PROVISIONS AND CONDITIONS

3.1 Disbursements.

(a) Disbursements of Loan proceeds shall be made in accordance with the Budget and Disbursement Schedule attached as Exhibit B hereto. Any such disbursement shall be made only on a Business Day and no more frequently than once in each calendar

month. Administrative Agent may, at its option, make disbursements either (a) by Administrative Agent's check drawn on Administrative Agent's disbursement account and delivered to Borrower, (b) by depositing the amount of the disbursement to Borrower's account in a bank approved by Administrative Agent, (c) by direct or joint check payment to any or all Persons entitled to payment for work performed, materials delivered or services provided for Construction of the Improvements, or (d) by any other method Administrative Agent shall from time to time elect. Administrative Agent shall not be obligated to: (i) make any disbursements of Loan proceeds unless and until the conditions precedent set forth in Sections 3.2 and 3.3 shall have been satisfied; (ii) make any disbursements of Loan proceeds if any of the events described in Section 3.4 hereof shall have occurred; (iii) disburse any proceeds of the Loan in excess of an amount equal to the product of the then current total Loan Availability (inclusive of all past disbursements of Loan proceeds) multiplied by the then current percentage of completion of the Construction of the Improvements as certified in the current Construction Draw Request Form and reviewed and accepted by Consulting Architect after inspection of the Project, at Borrower's cost and expense; (iv) disburse any amount for any category of costs set forth as a line item of the Budget and Disbursement Schedule which is greater than the amount set forth for such category in the applicable line item of the Budget and Disbursement Schedule; or (v) make any disbursements for Borrower's Fees unless the payment of the applicable Borrower's Fee is permitted by the Subordination Agreement. For each disbursement of Loan proceeds hereunder, Administrative Agent shall retain a sum sufficient such that ten percent (10%) of the total Construction Costs then incurred (or a greater percentage, if permitted or required by any Legal Requirement) shall be withheld from the total of all Loan disbursements (the "Retainage"); provided, however, that no Retainage shall be withheld for (x) any completed work that is approved by Agent in accordance with this Article III and satisfactory to Borrower and (y) any of the following work by the applicable subcontractor that is fifty percent (50%) complete and approved by Agent in accordance with this Article III and satisfactory to Borrower: structural steel. The Retainage shall be disbursed, subject to the provisions of Section 3.3 hereof and of clauses (ii) through (v) of this Section 3.1, within five (5) Business Days after Borrower's written request made not less than thirty (30) days after completion of the Improvements and satisfaction of all Completion Conditions (or a period longer than thirty (30) days if during such longer period a Lien or claim could be lawfully filed against the Real Estate by anyone performing work or services, or furnishing materials or goods, during Construction of the Improvements); provided that Retainage for structural steel work shall be disbursed within five (5) Business Days after Borrower's written request following completion of all primary field welding and bolting activities and resolution of all major inspection items to the extent they relate to structural steel. It is expressly acknowledged and agreed (I) that the Retainage shall not be deemed advanced hereunder until such funds are actually disbursed, and (II) that if Administrative Agent has waived a particular condition precedent or other provision or requirement for the first or any subsequent disbursement of the Loan as set forth in any of this Section 3.1 or Sections 3.2, 3.3 or 3.4 hereof, Administrative Agent reserves the right to require compliance with such condition precedent or other provision or requirement prior to any subsequent disbursement of the Loan (including the Retainage). Administrative Agent

further reserves the right to disburse from time to time portions of the Retainage to one or more subcontractors subject to the disbursement procedures specified in their respective subcontracts, if their contracts are fully completed in accordance with the Plans and Specifications and all Legal Requirements, all as determined by Administrative Agent in its sole discretion. Notwithstanding any other term of this Agreement to the contrary, no Lender shall be required to make any Advance if, immediately after the making of such Advance, the aggregate principal amount of all outstanding Advances would exceed the Loan Availability.

(b) Borrower hereby authorizes Administrative Agent to disburse the proceeds of the Loan made by Lenders or their affiliates pursuant to the Loan Documents as requested by an authorized representative of the Borrower to any of the accounts designated in Exhibit H. Borrower agrees to be bound by any transfer request (i) authorized or transmitted by Borrower or (ii) made in Borrower's name and accepted by Administrative Agent in good faith and in compliance with these transfer instructions, even if not properly authorized by Borrower. Borrower further agrees and acknowledges that Administrative Agent may rely solely on any bank routing number or identifying bank account number or name provided by Borrower to effect a wire or funds transfer even if the information provided by Borrower identifies a different bank or account holder than named by Borrower. Administrative Agent is not obligated or required in any way to take any actions to detect errors in information provided by Borrower. If Administrative Agent takes any actions in an attempt to detect errors in the transmission or content of transfer or requests or takes any actions in an attempt to detect unauthorized funds transfer requests, Borrower agrees that no matter how many times Administrative Agent takes these actions Administrative Agent will not in any situation be liable for failing to take or correctly perform these actions in the future and such actions shall not become any part of the transfer disbursement procedures authorized under this provision, the Loan Documents, or any agreement between Administrative Agent and Borrower. Borrower agrees to notify Administrative Agent of any errors in the transfer of any funds or of any unauthorized or improperly authorized transfer requests within fourteen (14) days after Administrative Agent's confirmation to Borrower of such transfer. Administrative Agent will, in its sole discretion, determine the funds transfer system and the means by which each transfer will be made. Administrative Agent may delay or refuse to accept a funds transfer request if the transfer would: (i) violate the terms of this authorization; (ii) require use of a bank unacceptable to Administrative Agent or prohibited by government authority; (iii) cause Administrative Agent to violate any Federal Reserve or other regulatory risk control program or guideline; or (iv) otherwise cause Administrative Agent to violate any applicable law or regulation. Administrative Agent shall not be liable to Borrower or any other parties for (i) errors, acts or failures to act of others, including other entities, banks, communications carriers or clearinghouses, through which Borrower's transfers may be made or information received or transmitted, and no such entity shall be deemed an agent of the Administrative Agent, (ii) any loss, liability or delay caused by fires, earthquakes, wars, civil disturbances, power surges or failures, acts of government, labor disputes, failures in communications networks, legal constraints or other events beyond Administrative Agent's control, or (iii) any special,

consequential, indirect or punitive damages, whether or not (a) any claim for these damages is based on tort or contract or (b) Administrative Agent or Borrower knew or should have known the likelihood of these damages in any situation. Administrative Agent makes no representations or warranties other than those expressly made in this Agreement.

3.2 Documents to be Furnished Prior to Loan Opening Date. It shall be a condition precedent to the first disbursement of Loan proceeds that Borrower shall furnish or cause to be furnished to Administrative Agent in sufficient time for review by Administrative Agent prior to the Loan Opening Date, the documents described in this Section 3.2, all in form and substance satisfactory to and approved by Administrative Agent in writing:

(a) Such documents as Administrative Agent may require (i) in connection with applications for disbursements of the Loan and (ii) to establish the identity and power and authority of any Person or Persons who may be authorized by Borrower to execute such documents.

3.3 Documents to Be Furnished for Each Disbursement. It shall be a condition precedent to each disbursement of the Loan proceeds that Borrower shall furnish or cause to be furnished to Administrative Agent in sufficient time for review by Administrative Agent, but in no event less than five (5) Business Days prior to each Funding Date, the following documents covering each disbursement, in form and substance satisfactory to Administrative Agent (and Administrative Agent will deliver a copy of the document described in clause (a) below to Lenders):

(a) A Construction Draw Request Form executed by Borrower and, if Administrative Agent requests, the applicable Architect and the Consulting Architect, accompanied by such supporting detail as Administrative Agent may require, certifying (i) the total Construction Costs incurred by Borrower to date and the remaining Construction Costs to be paid, (ii) the percentage of completion of the Construction of the Improvements and the conformance of such Construction to the Plans and Specifications and all Legal Requirements, (iii) that the sum requested under the current Construction Draw Request Form represents an amount consistent with the percentage of completion described pursuant to clause (ii) of this Section 3.3(a), and (iv) to the extent the requested disbursement includes Hard Construction Costs, that the work and materials for which payment is requested have been performed and incorporated into the Improvements in accordance with the Plans and Specifications (no disbursements shall be permitted for costs of goods, materials, supplies, fixtures or other work in process stored on-site or off-site unless and until the same have been incorporated into the Improvements, unless otherwise approved by Administrative Agent in its sole discretion).

(b) If requested by Administrative Agent, bills, invoices, statements, including sworn statements and affidavits, receipts and any other documents evidencing the Construction Costs in an amount equal to or in excess of Fifty Thousand and NO/100 Dollars (\$50,000.00) incurred for which payment is or has been requested.

(c) A waiver of liens from Contractor with respect to all amounts to be paid to Contractor from the proceeds of such disbursement.

(d) With respect to Liens, claims for Liens or stop notice claims pertaining to amounts equal to or in excess of Fifty Thousand and NO/100 Dollars (\$50,000.00), contractor's and subcontractors' waivers of liens, stop notice claims and all other statements and forms required for compliance with the mechanics' lien laws of the State of California, including valid, recorded Notices of Completion for the Improvements or any portions of the Improvements for which a Notice of Completion may be recorded under California law.

(e) To the extent required by Administrative Agent, an endorsement to the Title Policy extending the coverage to the date of and to include the amount of the requested disbursement, without exception for any matter not previously approved by Administrative Agent in writing (the "Construction Loan Date Down Endorsement"), the first such endorsement after completion of the foundations reflecting no encroachments caused by Construction of the Improvements, and accompanied by an update of the survey required under Section 2.4(k) hereof showing the location of the foundation of the Improvements and showing no encroachment.

(f) To the extent required by Administrative Agent, copies of all Construction Agreements not previously delivered to Administrative Agent.

(g) To the extent the requested disbursement includes costs for Tenant Improvements, Administrative Agent shall have previously approved the Lease(s) to which such Tenant Improvements relate, and Borrower shall have provided Administrative Agent with fully executed copies of such Lease(s) and evidence that the tenant(s) thereunder have paid any contributions toward Tenant Improvements and tenant finish work which, by the terms of the Lease(s), are due and payable on or before the date of the requested disbursement.

3.4 Discontinuance of Obligation to Disburse. Notwithstanding anything to the contrary contained in or inferable from this Agreement, Administrative Agent shall not be required to make any disbursements of Loan proceeds hereunder if, at the time of the requested disbursement, any of the following shall have occurred or exist:

(a) Any Default or Event of Default shall have occurred and be continuing, or Borrower shall have failed to perform or comply with all of Borrower's covenants, agreements and obligations under this Agreement (including those under Section 2.4 hereof) which by their terms are required to have been complied with and performed by Borrower at or prior to the time of such disbursement.

(b) The Loan is "out of balance" as described in Section 3.5 below, and Borrower shall have failed to pay to Administrative Agent for the benefit of Lenders the Balancing Payment required under Section 3.5.

(c) In the good faith judgment of Administrative Agent, completion of the Improvements will not occur on or before the Scheduled Completion Date, subject to extension for no more than forty-five (45) days for Unavoidable Delay, or Construction of the Improvements shall have ceased prior to completion of the Improvements for a continuous period of fifteen (15) days or more for causes other than Unavoidable Delay.

(d) The Project is demolished or substantially destroyed, or condemnation or eminent domain proceedings are commenced or threatened against the Project.

(e) Any change in the status of title to the Land or the Improvements has occurred subsequent to the Effective Date without Administrative Agent's prior written consent.

(f) Any event has occurred which has or could give rise to a lien claim of equal or superior rank to the Liens in favor of or benefiting Administrative Agent for the benefit of Lenders intended to be created by the Deed of Trust and other Loan Documents, other than lien claims for which Title Insurer has provided Administrative Agent with insurance coverage under the Title Policy pursuant to a Construction Loan Date Down Endorsement or other endorsement in form and substance acceptable to Administrative Agent.

(g) Any litigation of the type described in Section 4.1(d) of this Agreement shall be pending, or an order or decree in any court of competent jurisdiction exists enjoining the Construction or operation of the Improvements or enjoining or prohibiting Borrower or Administrative Agent from performing their respective obligations under this Agreement.

(h) Any material deviation exists in the Construction of the Improvements from the Plans and Specifications without the prior written approval of Requisite Lenders, or it appears to Administrative Agent that there are material defects in the workmanship or materials.

(i) Any encroachment on or off the Land exists which has occurred after the date hereof without the approval of Administrative Agent.

3.5 Balancing. If, in the good faith judgment of Administrative Agent, it appears at any time or from time to time that the unadvanced portion of the Loan (consisting of the Loan Availability less the aggregate of all previous disbursements of Loan proceeds) will be insufficient to pay all then remaining unpaid Construction Costs and complete the Construction of the Improvements in accordance with the Plans and Specifications and all Legal Requirements, the Loan shall be deemed "out of balance" and Borrower shall immediately pay to

Administrative Agent for the benefit of Lenders an amount equal to such deficiency (the "Balancing Payment"), and Administrative Agent shall not be obligated to disburse the Loan unless and until Borrower has made such Balancing Payment. The Balancing Payment may be retained by Administrative Agent in an interest bearing account, if available, but otherwise in a non-interest bearing account and need not be segregated from any of Administrative Agent's other funds. Administrative Agent shall disburse up to an amount equal to the Balancing Payment received by it from Borrower prior to making any further disbursements of Loan proceeds hereunder and in the same manner and subject to the same terms and conditions as Loan proceeds are disbursed hereunder.

As additional security for the Loan Obligations and Borrower's performance under the Loan Documents, Borrower hereby irrevocably pledges and assigns to Administrative Agent for the benefit of Lenders all right, title and interest of Borrower in all Balancing Payments.

3.6 Optional Method for Payment of Interest. Administrative Agent may disburse the Loan proceeds and any Balancing Payments, at Administrative Agent's election, and Borrower hereby authorizes and directs Administrative Agent to disburse Loan proceeds and any Balancing Payments at Administrative Agent's election, to Administrative Agent's own account for interest under the Loan, notwithstanding the lack of any request by Borrower for such disbursement or the satisfaction or failure to satisfy any of the conditions, requirements or provisions set forth in Sections 3.1, 3.2, 3.3, 3.4 or 3.5 above with respect to such disbursement. Administrative Agent shall provide Borrower with a monthly interest statement. Depletion of the interest reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents including payment of all accrued and due interest.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Borrower. To induce Administrative Agent and Lenders to execute this Agreement and perform the obligations of Administrative Agent and Lenders hereunder, Borrower hereby represents and warrants to Administrative Agent and Lenders as follows:

(a) On the Effective Date and continuously thereafter, Borrower will have good and merchantable fee simple title to the Real Estate and any and all easement rights which are necessary or required for the Construction and operation of the Project, subject only to the Permitted Exceptions and Liens in favor of Administrative Agent and Lenders, except as may be permitted pursuant to the terms of Section 5.2(e) hereof. Opus owns and shall continue to own one-hundred percent (100%) of the fully authorized and validly issued capital shares of Opus West, provided that key employees of Opus West and Opus may at any time hereafter own in the aggregate not more than ten percent (10%) of the fully authorized and validly issued capital shares of Opus West ("Employee-Owned Shares"). Stockton GP, L.L.C. shall be on the Effective Date and shall continue thereafter to be the sole general partner of Borrower. ODP Stockton, L.L.C. shall be on

the Effective Date and shall continue thereafter to be the sole limited partner of Borrower and the sole member of Stockton GP, L.L.C. Opus West shall be on the Effective Date and shall thereafter continue to be the sole member and the sole manager of ODP Stockton, L.L.C. At all times while the Loan Documents are in force and effect, the Employee Owned Shares shall continue to be owned solely by such employees of Opus West or Opus, and none of Opus West or Opus, nor any of such employees (nor Opus Founder (or entities in which Opus Founder holds a majority interest)) shall transfer or be allowed to transfer any of such Employee Owned Shares to any other Person (other than to a key employee of Opus West or Opus) without the prior written consent of Requisite Lenders, which approval may be withheld in their sole and absolute judgment and discretion. Each of (i) the partnership interests of Borrower and (ii) the capital stock of Opus West are validly issued, nonassessable and free from preemptive or other rights to subscribe for or purchase such interest.

(b) Borrower is a limited partnership duly formed, validly existing and in good standing under the laws of the State of Delaware, has its principal place of business in Minnetonka, Minnesota, and is duly authorized to do business in the State of California. Borrower has full limited partnership power and authority to conduct its business as presently conducted, to own, develop, market, lease and sell the Project, to enter into this Agreement and to perform all of its duties and obligations under this Agreement and under the other Loan Documents. The execution, delivery and performance by Borrower of this Agreement and the other Loan Documents (i) have been duly authorized by all necessary partnership and partner action; (ii) as of the Effective Date, do not require any filing or registration with or approval or consent of any Governmental Authority or any approval or consent of any other Person which has not already been obtained, and all such additional consents or approvals which become necessary or are required after the Effective Date will be obtained on a timely basis; (iii) do not and will not conflict with, result in any violation of, or constitute any default under any provision of (A) Borrower's limited partnership agreement, (B) any Legal Requirements applicable to Borrower, the Project or any of Borrower's other properties, (C) any indenture, agreement or other document binding upon or applicable to Borrower, the Project or any of Borrower's other properties, or (D) to the best of Borrower's knowledge, after diligent inquiry, any decree, order, writ, judgment, rule or regulation of any court, arbitrator or other Governmental Authority applicable to Borrower, the Project or any of Borrower's other properties; and (iv) will not result in or require the creation or imposition of any Lien upon the Project or any of Borrower's other properties pursuant to the provisions of any agreement or other document binding upon or applicable to any of Borrower, the Project or any other of Borrower's properties, except Liens granted to Administrative Agent and Lenders pursuant to the Loan Documents. This Agreement and the other Loan Documents (other than those to which Borrower is not a party), are or will be, when executed and delivered hereunder, the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, except, as to enforcement of Administrative Agent's remedies, as may be limited by applicable bankruptcy, insolvency or other similar laws affecting the rights of creditors generally and to general equitable principles.

(c) Borrower has furnished to Administrative Agent a true and correct copy of the audited financial statements of Guarantor for the period ending December 31, 2007. Such financial statements were prepared in accordance with GAAP, and such financial statements fairly summarize Guarantor's assets, liabilities and financial condition as of the date thereof; there are no omissions which are or may be material or make the statements contained therein misleading. No Material Adverse Occurrence in the business, assets, management, operations, financial condition or prospects of Guarantor has occurred since December 31, 2007.

(d) No litigation or proceedings are now pending or, to the best of Borrower's knowledge, after diligent inquiry, threatened in writing against Borrower which could materially adversely affect (i) the validity or priority of the Lien of the Deed of Trust or other security interests granted Administrative Agent and Lenders under the Loan Documents, (ii) the ability of Borrower to perform its obligations pursuant to and as contemplated by the terms and provisions of the Loan Documents, or (iii) the operations or financial condition of Borrower. Without limitation of the foregoing, there are no pending proceedings or actions to revoke, attack, invalidate, rescind, or modify the zoning of the Project or any part thereof, or any building or other Permits heretofore issued with respect thereto, or asserting that such zoning or Permits do not, or did not, permit the Construction of the Project.

(e) There have been filed all federal, state and local tax returns with respect to Borrower and its direct and indirect business operations which are required to be filed. Borrower has paid or caused to be paid to the respective taxing authorities all taxes as shown on such returns or on any assessments received by it to the extent that such taxes have become due. Borrower knows of no proposed material tax assessment against it, except those (if any) for which provision has been made on the financial statements delivered pursuant to Section 4.1(c) hereof, and is not obligated by any other agreement, tax treaty, instrument or otherwise to contribute to the payment of taxes owed by any other Person. All material tax liabilities are adequately provided for or reserved against on the books of Borrower in accordance with GAAP, except as may be identified on the financial statements delivered pursuant to Section 4.1(c) hereof.

(f) As of the Effective Date, Borrower has not entered into any Leases, concession agreements or other arrangements for occupancy of space within the Project.

(g) As of the Effective Date (i) no condemnation of any portion of the Project, (ii) no condemnation or relocation of any roadways abutting the Project and (iii) no denial of access to the Project from any point of existing pedestrian or vehicular access to the Project, has commenced or, to the best of Borrower's knowledge, is contemplated by any Governmental Authority.

(h) The amounts set forth in the Budget and Disbursement Schedule present a full, complete and accurate representation of all Construction Costs which Borrower has

paid and expects to pay or anticipates becoming obligated to pay to complete the Construction of the Improvements.

(i) All information and documentation furnished by Borrower or any Affiliate of Borrower to Administrative Agent in connection with the Loan, including any lease, contract, agreement, or other instrument, is true, complete and correct in all material respects, and no such information contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

(j) To the actual knowledge of Borrower and its Affiliates, after reasonable inquiry, (i) the Project is not in violation of, and is not subject to any unsatisfied requirements of, any Wetlands Regulations (Administrative Agent acknowledges that the inquiries Borrower has made and disclosed to Administrative Agent and Lenders pursuant to Section 4.1(m) are reasonable as of the Effective Date) and (ii) the Real Estate has not been designated a "border zone property" under the provisions of California Health and Safety Code, Section 25220 *et seq.* and there has been no occurrence or condition on any real property adjoining the Real Estate that could cause the Real Estate or any part thereof to be designated as "border zone property."

(k) Borrower has received all requisite building permits and approvals required for the Construction of the Project in accordance with the Plans and Specifications, and (ii) complied with all Legal Requirements relating to the Construction of the Project.

(l) [Intentionally Omitted.]

(m) As of the Loan Opening Date, to the best of Borrower's knowledge without duty of inquiry and except as set forth in (and without incorporating by reference any document not explicitly incorporated therein) the environmental reports and other documents described on Exhibit G attached hereto (collectively, "Environmental Report") (i) the operations of Borrower materially comply with all applicable Environmental Laws; (ii) Borrower has obtained all Environmental Permits necessary for its operation, as presently conducted, and all such permits are in good standing and Borrower is in material compliance with all terms and conditions of such Permits; (iii) neither Borrower, the Project nor Borrower's operations are subject to any order from or agreement with any Governmental Authority or private party, other than agreements with consultants and other professionals reviewing or advising Borrower regarding potential environmental liabilities, or as disclosed in writing to Administrative Agent prior to the Effective Date, respecting (A) any Environmental Law, (B) any Remedial Action or (C) any Liabilities and Costs arising from the Release or threatened Release of a Contaminant into the environment; (iv) none of the operations of Borrower is subject to any judicial or administrative proceeding alleging a violation of any Environmental Law; (v) none of the present or past operations of Borrower is the subject of any investigation by any Governmental Authority evaluating whether any Remedial Action is needed to respond to

a Release or threatened Release of a Contaminant into the environment; (vi) there is no material violation of any Environmental Law or indication of any past or present treatment, storage or disposal of a material amount of any Contaminant at the Project; (vii) Borrower has not filed any notice under any applicable Environmental Law reporting a Release of a Contaminant into the environment; (viii) there is not now, nor has there ever been, on or in the Project any generation, treatment, recycling, storage or disposal of any material amount of any Contaminant, or any underground storage tanks or surface impoundments; (ix) Borrower has not entered into any negotiations or agreements with any Person relating to any Remedial Action or environmentally related claim; (x) Borrower has not received any notice or claim from any Governmental Authority to the effect that it is or may be liable to any Person as a result of the Release or threatened Release of a Contaminant into the environment; and (xi) no Environmental Lien has attached to the Project.

(n) The Project has access to water, gas and electrical supply, storm and sanitary sewage facilities, other required public utilities, fire and police protection, and means of access between the Project and public roads and highways.

(o) No brokerage fees or commissions are payable by or to any Person in connection with this Agreement or the Loan to be disbursed hereunder.

(p) As of the Effective Date, no default exists under any Construction Agreement.

(q) The Plans and Specifications are complete and correct in all material respects, and the Plans and Specifications contain all detail requisite for Construction of the Improvements.

(r) The Project will be completed in accordance with the Plans and Specifications, and no Improvement, Tenant Improvement or building in the Project encroaches upon, or will upon completion thereof, encroach upon any building line, setback line, or side yard line, and there is not, and, upon completion of the Project and Tenant Improvements, if any, will not be any violation of any recorded or unrecorded (whether or not visible) easement with respect to or affecting the Project.

(s) Each of Building 3 and Building 8 is a separate legal parcel, properly subdivided in compliance with all applicable Laws and able to mortgaged, conveyed and otherwise dealt with as a separate legal parcel.

(t) No part of the proceeds of the Loan hereunder will be used to purchase or carry any "margin security" as defined in Regulation G of the Board of Governors of the Federal Reserve System of the United States or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any margin security or for any other purpose which might constitute this transaction a "purpose credit" within the meaning of said Regulation G. Borrower is not engaged in the business of extending

credit for the purpose of purchasing or carrying any "margin stock" as defined in Regulation U of said Board of Governors. No part of the proceeds of the Loan hereunder will be used for any purpose that violates, or which is inconsistent with, the provisions of Regulation X or any other regulation of said Board of Governors. Borrower is not an "investment company," or an "affiliated person" of, or a "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended. The making of the Loan, the application of the proceeds and repayment thereof by Borrower and the performance of the transactions contemplated by this Agreement will not violate any provision of said Act, or any rule, regulation or order issued by the Securities and Exchange Commission thereunder. Borrower has not: (a) issued any unregistered securities in violation of the registration requirements of Section 5 of the Securities Act of 1933, as amended, or any other law; or (b) violated any rule, regulation or requirement under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in either case where the effect of such violation would be a Material Adverse Occurrence as to Borrower.

(u) Borrower has received no written notice and has no knowledge of any written notice or citation alleging that the Project, or any part thereof, is in violation of any building, zoning, fire, health or other Legal Requirement.

(v) Borrower and the Project are in compliance with all covenants, agreements and other instruments constituting Permitted Exceptions or otherwise affecting the Project.

(w) Borrower is not a party to any agreement or instrument or subject to any restriction which constitutes or would constitute a Material Adverse Occurrence as to Borrower. Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which Borrower is a party, the effect of which default would constitute a Material Adverse Occurrence as to Borrower.

(x) (i) Each employee benefit plan of Borrower (each a "Plan") covered by Title IV of the Employee Retirement Income Security Act of 1974 (as the same may from time to time be amended, together with the rules and regulations promulgated thereunder by any governmental agency or authority as from time to time in effect, "ERISA"), whether now in existence or hereafter instituted, is in compliance in all material respects with all applicable provisions of ERISA and the Internal Revenue Code of 1986 (as amended from time to time, the "Code"); (ii) the aggregate present value of all accrued vested benefits under all Plans (calculated on the basis of the actuarial assumptions specified in the most recent actuarial valuation for such Plans) did not exceed the fair market value of the assets of such Plans allocable to such benefits; (iii) Borrower is not aware of any information since the date of such valuations which would materially affect the information contained therein; (iv) no Plan which is subject to Part 3 of Subtitle B of Title I of ERISA or Section 412 of the Code has incurred an accumulated funding deficiency as that term is defined in Section 302 of ERISA or Section 412 of the Code

(whether or not waived); (v) no liability to the PBGC, other than required premiums which have become due and payable (all of which have been paid), has been incurred with respect to any Plan, and there has not been any Reportable Event which presents a material risk of termination of any Plan by the PBGC; and (vi) neither (A) Borrower nor (B) any trade or business (whether or not incorporated) which is a member of a group of which Borrower is a member and which is under common control within the meaning of Section 414 of the Code (each an "ERISA Affiliate"), has knowingly engaged in a transaction which would subject it to any material tax, penalty or liability for prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Code.

(y) At all times since its formation, Borrower has been a duly formed and existing Single-Purpose Entity.

4.2 Reaffirmation and Survival. Borrower agrees that all of its representations and warranties set forth in Section 4.1 hereof and elsewhere in this Agreement will be true and correct at the Loan Opening Date. Each request for disbursement hereunder shall constitute a reaffirmation of the representations and warranties set forth in Section 4.1 (except these which, by their terms, are limited to a specific date or time period) hereof and elsewhere in this Agreement and it shall be a condition to each such disbursement that each of the representations and warranties set forth in Section 4.1 and elsewhere in this Agreement shall be true and correct as of the date of such disbursement. All representations and warranties of Borrower set forth in Section 4.1 and elsewhere in this Agreement shall survive the execution and delivery of this Agreement, the disbursement of Loan proceeds and any other event or action now existing or hereafter occurring, and any investigation, enforcement of rights and remedies or other action taken from time to time by or on behalf of Administrative Agent or Lenders shall not diminish Administrative Agent's and Lenders' rights to rely on such representations and warranties.

ARTICLE V BORROWER'S COVENANTS AND AGREEMENTS

5.1 Borrower shall satisfy the following covenants and requirements:

(a) Compliance Certificate. Together with each of the financial statements required under Section 5.1(d) and (e) below, Borrower shall deliver to Administrative Agent a Compliance Certificate signed by an officer of Stockton GP, L.L.C. (as general partner of Borrower) on behalf of Borrower (i) stating that, to the best of his or her knowledge after diligent inquiry, no Default or Event of Default exists, or if any Default or Event of Default exists, stating the nature and status thereof; and (ii) certifying that the financial statements required under Sections 5.1(d) and/or (e) below were prepared in accordance with GAAP consistently applied and fairly and accurately present the financial condition of Borrower to which they relate.

(b) Rent Rolls/Leasing Status Reports. On the first day of each calendar quarter (or within fifteen (15) Business Days thereafter), following completion of Construction, Borrower shall deliver to Administrative Agent a complete rent roll and a

leasing status report for the Project certified by an officer of Stockton GP, L.L.C. (as general partner of Borrower) as complete and accurate in all material respects and in form reasonably acceptable to Administrative Agent (i) identifying all Leases (together with all amendments, supplements, extensions and guarantees relating thereto), (ii) designating each tenant under each Lease, the space occupied by such tenant under such Lease and the rentable area of the leased premises, (iii) setting forth the commencement and termination dates of each Lease, together with any renewal or extension options, (iv) setting forth the current monthly rent payments and summarizing the rent escalation and additional rent provisions, (v) identifying those Leases that are in Payment Default, (vi) setting forth any rent abatements and other tenant allowances and concessions, (vii) identifying any expansion options and rights of first offer or refusal to lease and confirming that there are no purchase options or rights of first offer or refusal to purchase the Project or any portion thereof, (viii) summarizing all material issues concerning property management and (ix) setting forth all commitments to enter into a lease.

(c) Operating Statements. On the first day of each Fiscal Quarter (or within fifteen (15) Business Days thereafter), following completion of Construction, Borrower shall deliver to Administrative Agent an operating statement certified by an officer of Stockton GP, L.L.C. (as general partner of Borrower) as complete and accurate in all material respects and in form reasonably acceptable to Administrative Agent which shows in detail (i) the amounts and sources of operating income received by or on behalf of Borrower with respect to the Project for such month, including any and all amounts, payments, fees, rentals, additional rentals, expense reimbursements (including all reimbursements by tenants, licensees and other users of the Project) and other income directly or indirectly received by or on behalf of or credited to Borrower from any Person with respect to Borrower's ownership, use, development, operations, leasing, franchising, marketing or licensing of the Project, and (ii) the amounts and purposes of operating expenses paid by or on behalf of Borrower with respect to the Project for such month, including taxes and assessments imposed upon the Project and paid for by Borrower, insurance premiums for casualty and liability insurance fairly allocable to the Project, and expenses incurred by Borrower for the management, operation, leasing, maintenance and repair of the Project. Operating income and expenses shall be computed on a cash basis and each quarterly operating statement shall include all amounts actually received and expended in the month to which it relates.

(d) Annual Financial Statements. Within one hundred twenty (120) days after the close of each of its Fiscal Years, Borrower shall deliver to Administrative Agent audited financial statements (together with all supporting schedules and other supporting documentation) for Borrower prepared in accordance with GAAP and consisting of the balance sheet and income statement as of the end of such period and such additional documentation as is reasonably requested by Administrative Agent.

(e) Interim Financial Statements. Within forty-five (45) days after the close of each Fiscal Quarter (other than the final Fiscal Quarter of each Fiscal Year), Borrower shall deliver to Administrative Agent internally prepared, unaudited financial statements

(together with all supporting schedules and other supporting documentation) for Borrower prepared in accordance with GAAP and on a basis consistent with the statements required under Section 5.1(a) hereof, including an unaudited balance sheet as of the close of each such Fiscal Quarter and the related statements of operations, which financial statements shall reflect all Indebtedness of Borrower.

(f) Guarantor's Financial Statements. Borrower shall cause Guarantor to deliver the financial statements and compliance certificates required under the Guarantee in accordance with the terms and conditions thereof.

(g) Other Information. Borrower shall promptly provide to Administrative Agent such other information concerning Borrower or the Property, as Administrative Agent shall reasonably request.

5.2 Further Covenants. Borrower further covenants and agrees as follows:

(a) Construction. Borrower shall complete the Construction of the Improvements and the Tenant Improvements, if any, in a good and workmanlike manner with materials of high quality, free of defects and Liens unless insured over as provided herein, and the Project shall be equipped with fixtures and equipment of high quality, all in accordance with the Plans and Specifications and all Legal Requirements, including all requirements and conditions set forth in all Permits, licenses and other governmental approvals which have been obtained or are required to be obtained for the Construction and operation of the Project. Borrower shall, subject only to Unavoidable Delay, (i) diligently perform the Construction of the Improvements and the Tenant Improvements, if any, without interruption or cessation of work, and (ii) on or prior to the Scheduled Completion Date, complete Construction of the Improvements such that all of the following conditions (the "Completion Conditions") shall be satisfied:

(1) The Improvements shall be completed substantially in accordance with the Plans and Specifications and all Legal Requirements, and Borrower shall have delivered to Administrative Agent a certification to such effect executed by Borrower, the applicable Architect and, if requested by Administrative Agent, the Consulting Architect, together with such other evidence of such completion and compliance with the Plans and Specifications and Legal Requirements as Administrative Agent may require.

(2) Borrower shall have furnished Administrative Agent with a copy of the permanent certificate of occupancy or its functional equivalent with respect to the Improvements and copies of all other licenses, approvals and Permits required under applicable Legal Requirements or otherwise necessary for the use, occupancy and operation of the Project.

(3) Borrower shall have furnished Administrative Agent with copies of final waivers of liens and stop notice claims from all contractors, subcontractors

and material suppliers and valid, recorded notices of completion for the Improvements.

(4) Borrower shall have furnished Administrative Agent with the final Plans and Specifications for the Improvements, showing all changes from the Plans and Specifications previously approved by Administrative Agent or Requisite Lenders, as applicable, and an "as built" survey for the Project prepared by a licensed California surveyor approved by Administrative Agent, certified to Administrative Agent and the Title Insurer and containing a certified legal description of the Land and otherwise prepared in compliance with California and American Land Title Association standards, showing the completed Improvements with the dimensions thereof and distances to the property lines, utilities, easements, parking areas and spaces, as well as any set-back requirements or violations of the same, and encroachments by the Improvements on easement areas and adjoining property and encroachments on the Project; any encroachments or violations must be acceptable to Administrative Agent.

(5) Borrower shall have furnished Administrative Agent a so-called comprehensive endorsement to the Title Policy and a zoning letter from the relevant municipality in form and substance acceptable to Administrative Agent.

(6) All fixtures, furniture, furnishings, equipment and other property contemplated under the Budget and Disbursement Schedule and Plans and Specifications to be incorporated into or installed in the Project shall have been incorporated or installed free and clear of all Liens other than the Permitted Exceptions, and Borrower shall have furnished Administrative Agent with current searches of all Uniform Commercial Code financing statements filed with the Secretary of State of Delaware, against Borrower, as debtor, showing that no Uniform Commercial Code financing statements are filed or recorded against Borrower in which the collateral is described as personal property or fixtures located on the Project or used in connection with the Project.

(7) Borrower shall have furnished evidence reasonably satisfactory to Administrative Agent that the Project as completed has adequate water, gas and electrical supply, storm and sanitary sewage facilities and other required utilities, and adequate means of vehicular and pedestrian ingress and egress to public streets.

(8) The Project shall be undamaged by fire or other cause, or if damaged, shall have been fully repaired and restored and there shall be no condemnation or eminent domain proceedings pending or threatened against the Project.

(9) The Construction shall include no Tenant Improvements other than those undertaken pursuant to a Lease approved pursuant to Section 5.2(o) hereof.

Administrative Agent's consent thereto may be conditioned upon the receipt or execution of such documents as Administrative Agent may require, including evidence that funds are available to Borrower for such Tenant Improvements, that such Tenant Improvements would comply with all Legal Requirements, and such title insurance endorsements as Administrative Agent may require.

(b) Correction of Defects. Borrower will proceed with diligence to investigate and correct all defects in the Project and any material departure from the Plans and Specifications which have not been approved by Administrative Agent. The disbursement of any Loan proceeds shall not constitute a waiver of Administrative Agent's right to require compliance with this covenant with respect to any such defect or departure from the Plans and Specifications or any other requirements of this Agreement.

(c) Line Reallocations; Overruns. Without the prior written approval of Administrative Agent, which approval shall not be unreasonably withheld, Borrower shall make no line reallocation in the Budget and Disbursement Schedule which exceeds Two Hundred Fifty Thousand and NO/100th Dollars (\$250,000) for any individual change or One Million and NO/100ths Dollars (\$1,000,000.00) for all such changes. Without the prior written approval of Requisite Lenders, which approval shall not be unreasonably withheld, Borrower shall make no line reallocation in the Budget and Disbursement Schedule which exceeds Two Hundred Fifty Thousand and NO/100th Dollars (\$250,000) for any individual change or One Million and NO/100ths Dollars (\$1,000,000.00) for all such changes. Borrower shall make no changes in the Budget and Disbursement Schedule with respect to cost overruns without the prior written approval of Administrative Agent in each instance, which approval shall not be unreasonably withheld; provided, that cost overruns which, individually or in the aggregate, either (i) exceed One Million and NO/100ths Dollars (\$1,000,000.00), or (ii) are not covered by contingency line items, shall not be made without the consent of the Requisite Lenders.

(d) Inspection by Administrative Agent. Administrative Agent and its Consulting Architect and representatives shall have the right at all reasonable times and at Borrower's expense: (i) to enter upon and inspect the Project and the Construction to determine that it is in conformity with the Plans and Specifications, all the requirements hereof and the Legal Requirements; and (ii) to examine, copy and make extracts of the books, records, accounting data and other documents of Borrower that relate in any way to the Project, all of which shall be made available to Administrative Agent promptly upon written demand therefor; and, at the request of Administrative Agent, Borrower shall furnish Administrative Agent with convenient facilities for the foregoing purposes. All Construction Agreements let or amended by Borrower or its contractors and subcontractors after the Effective Date relating to Construction of the Improvements shall require agreement to the foregoing inspection rights, except where such rights have been waived by Administrative Agent in writing. It is expressly understood and agreed that Administrative Agent shall have no duty to supervise or to inspect the Construction of the Improvements or any books and records, and that any such inspection shall be for the sole purposes of determining whether or not the obligations of Borrower under this Agreement

are being properly discharged and of preserving Administrative Agent's rights hereunder. If Administrative Agent, or the Consulting Architect acting on behalf of Administrative Agent, should inspect the Construction of the Improvements or any books and records, Administrative Agent and the Consulting Architect shall have no liability or obligation to Borrower or any third party arising out of such inspection except for liability arising out of the gross negligence or willful misconduct of Administrative Agent or the Consulting Architect. An inspection not followed by notice of default shall not constitute a waiver of any Default then existing; nor shall it constitute an acknowledgment or representation by Administrative Agent and the Consulting Architect that there has been or will be compliance with the Plans and Specifications and Legal Requirements or that the Construction is free from defective materials or workmanship or waiver of Administrative Agent's right thereafter to insist that the Improvements be constructed in accordance with the Plans and Specifications and Legal Requirements. Administrative Agent's failure to inspect the Improvements, the Construction of the Improvements or any part thereof or any books and records shall not constitute a waiver of any of Administrative Agent's rights hereunder. Neither Borrower nor any third party shall be entitled to rely upon any such inspection or review. Administrative Agent and the Consulting Architect owe no duty of care to Borrower or any third person to protect against, or inform Borrower or any third person of the existence of, negligent, faulty, inadequate or defective design or Construction of the Improvements.

(e) Mechanics' Liens and Contest Thereof. Borrower will not suffer or permit any mechanics' or materialmen's liens, claims of lien, stop orders or other Liens or claims of lien to be filed or otherwise asserted against (i) the Project and not bonded to the satisfaction of Administrative Agent with evidence satisfactory to Administrative Agent provided to Administrative Agent that the same has been paid within thirty (30) days or (ii) any funds due any party under any of the Construction Agreements; provided, however, that Borrower shall have the right to contest in good faith and with due diligence the validity of any such Lien or claim upon satisfaction of the following conditions to Administrative Agent's satisfaction:

(i) Borrower shall give prompt notice to Administrative Agent of any such Lien and Borrower's intention to contest the same;

(ii) Borrower shall furnish to the Title Insurer such security or indemnity as the Title Insurer may require to induce the Title Insurer to issue an endorsement to its Title Policy insuring Administrative Agent and Lenders against all such claims, Liens or proceedings;

(iii) Borrower shall diligently prosecute the contest of such Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Project, and shall permit Administrative Agent to be represented in, or review and approve the steps taken by Borrower in, any such contest and shall pay all expenses incurred by Administrative Agent in so doing, including

fees and expenses of Administrative Agent's counsel (all of which shall constitute Loan Obligations accruing interest at the Default Rate until paid); and

(iv) Borrower shall pay and cause the release and discharge of such Lien and all interest and penalties thereon (A) if and to the extent that such Lien shall be determined adversely to Borrower, or (B) forthwith upon demand by Administrative Agent if, in the opinion of Administrative Agent and notwithstanding any such contest, the Project shall be in jeopardy or in danger of being forfeited or foreclosed.

(f) Settlement of Mechanics' Lien claims. If Borrower shall fail promptly to discharge any mechanics' or other similar claim of Lien filed or otherwise asserted or to contest any such claims and give security or indemnity or other assurance in the manner and in satisfaction of the conditions to such contest provided in Section 5.2(e) hereof, or, having commenced to contest the same, and having given such security or indemnity or other assurance, shall thereafter fail to prosecute such contest in good faith or with due diligence, or fail to maintain such indemnity or security so required by the Title Insurer for its full amount, or, upon adverse conclusion of any such contest, shall fail to cause any judgment or decree to be satisfied and Lien to be released, then, and in any such event, Administrative Agent may at its election (but shall not be required to), (i) procure the release and discharge of any such claim and any judgment or decree thereon, without inquiring into or investigating the amount, validity or enforceability of such Lien or claim and (ii) effect any settlement or compromise of the same, or may furnish such security or indemnity to the Title Insurer, and any amounts so expended by Administrative Agent, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute disbursements of the Loan proceeds hereunder and shall constitute Loan Obligations immediately payable by Borrower.

(g) Insurance. Borrower shall maintain and keep in full force and effect the following policies of insurance (which, in the case of insurance on the Project during the time of Construction, may be in builder's risk form and which shall include terrorism and earthquake coverage and all insurance required to be carried by Borrower, as "owner," under the provisions of all Construction Agreements and Leases) with companies and in form and amounts and with coverages and endorsements satisfactory to Administrative Agent and with a mortgagee's clause attached naming Administrative Agent, for the benefit of the Lenders, as mortgagee, additional insured and loss payee: (i) insurance covering the Project, including all materials in storage and while in transit during the Construction period, against loss or damage by fire or other casualty (including insurance against loss or damage from earthquake and from terrorism), with extended coverage and with coverage in so-called "all risk" form for such hazards; (ii) flood hazard insurance as required by applicable governmental regulations, or as deemed necessary by Administrative Agent; (iii) comprehensive general liability insurance (including contractual liability), with liability insurance limits satisfactory to Administrative Agent; (iv) workers' compensation coverage; (v) [intentionally omitted]; (vi) upon completion of the Construction of the Improvements, rent and rental value/extra expense insurance in

amounts sufficient to pay during any period in which the Improvements may be damaged or destroyed, on a gross rents basis for a period of twelve (12) months or such greater time as Administrative Agent may deem appropriate: (A) all rents derived from the Improvements; and (B) all amounts (including all taxes, assessments, charges, impositions, liens, utility charges and insurance premiums) required to be paid by Borrower or by tenants of the Improvements; and (vii) such other insurance with respect to the Project, in such amounts as Administrative Agent may request. All policies required under this Agreement shall provide that the insurance evidenced thereby shall not be canceled or modified without at least ten (10) days' prior written notice from the insurance carrier to Administrative Agent. Further, Borrower shall deliver renewal certificates and policies of all insurance required under this Agreement, together with written evidence of full payment of the premiums for one year therefor at least ten (10) days prior to the expiration of the existing insurance. In the event of Borrower's failure to obtain and maintain the insurance required hereunder, Administrative Agent shall have the right (but not the obligation) to place and maintain such insurance, and the amounts expended therefor shall constitute disbursements of Loan proceeds and additional Loan Obligations immediately payable by Borrower.

(h) Payment of Taxes and Charges. Borrower shall pay prior to delinquency all real estate and personal property taxes and special and other assessments of every kind upon the Project. Borrower shall pay prior to delinquency all obligations to Governmental Authorities, service districts, and utilities with jurisdiction over or service to the Project, including mitigation fees and sewer permit charges.

(i) Personal Property. Borrower shall (i) keep and maintain all of the personal property, fixtures, furnishings, furniture, attachments and equipment delivered upon, attached to, used or to be used in connection with the Construction, and all of Borrower's personal property, fixtures, furnishings, furniture, attachments and equipment located on or used in connection with the operation of the Project free and clear of all chattel mortgages, conditional vendor's liens and all other Liens, encumbrances and security interests, (ii) be the absolute owner of said personal property, fixtures, attachments and equipment, and from time to time furnish Administrative Agent with evidence of such ownership satisfactory to Administrative Agent, including searches of applicable public records, and (iii) keep said personal property, fixtures, attachments and equipment located at the Project.

(j) Proceedings to Enjoin or Prevent Construction. If any proceedings are filed seeking to enjoin or otherwise prevent or declare unlawful the Construction or the occupancy, maintenance, marketing, sale or operation of the Project or any portion thereof, Borrower shall at its sole expense (i) cause such proceedings to be vigorously contested in good faith and (ii) in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom. Without limiting the generality of the foregoing, Borrower shall resist the entry or seek the stay of any temporary or permanent injunction that may be entered and use its best efforts to bring about a favorable and speedy disposition of all

such proceedings, as well as any other proceedings of the nature described in Section 4.1(d) hereof.

(k) Attorneys' Fees and Expenses. In case of any Default under this Agreement or any of the other Loan Documents, Borrower shall pay all of the attorneys' and paralegals' fees and expenses arising from such services, and accountants' fees and expenses arising from such services, and expenses of Administrative Agent and Lenders in connection with the enforcement of this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, in case of any Default if at any time hereafter prior to repayment of the Loan in full, Administrative Agent or any Lender employs counsel for advice or other representation (whether or not any suit has been or shall be filed and whether or not other legal proceedings have been or shall be instituted) with respect to the Project or any part thereof, the Construction, this Agreement, or any of the other Loan Documents, or to protect, collect, lease, sell, take possession of, or liquidate the Project or any part thereof, or to attempt to enforce any Lien in the Project or any part thereof, or to enforce any rights of Administrative Agent or any Lender or any of Borrower's obligations hereunder or those of any other Person, firm or corporation which may be obligated to Administrative Agent or any Lender by virtue of this Agreement or any other agreement, instrument or document heretofore or hereafter delivered to Administrative Agent or any Lender by or for the benefit of Borrower, or (whether or not a Default has occurred hereunder) to evaluate or respond to requests or inquiries from Borrower concerning the Loan, the Agreement or the other Loan Documents including the review and/or approval of requests to amend, modify or supplement the Agreement or any of the other Loan Documents, then, in any such event, all of the attorneys' and paralegals' fees and expenses arising from such services, and all reasonable expenses, costs and charges relating thereto, shall constitute additional Loan Obligations immediately payable by Borrower.

(l) Administrative Agent's Action for Its Own Protection Only. Borrower acknowledges and agrees that the authority herein conferred upon Administrative Agent, and any action taken by Administrative Agent, to inspect the Project, to procure waivers or sworn statements, to approve contracts, subcontracts and purchase orders, and to approve Plans and Specifications, will be exercised and taken by Administrative Agent and by the Consulting Architect for their own protection only and may not be relied upon by Borrower or any third party for any purposes whatever; and neither Administrative Agent, nor the Consulting Architect shall be deemed to have assumed any responsibility to Borrower with respect to any such action herein authorized or taken by Administrative Agent, or the Consulting Architect or with respect to the proper Construction of Improvements on the Project, performance of contracts, subcontracts or purchase orders by any contractor, subcontractor or material supplier, or prevention of mechanics' liens from being claimed or asserted against any portion of the Project. Any review, investigation or inspection conducted by Administrative Agent, the Consulting Architect, any architectural, engineering or other consultants retained by Administrative Agent, or any agent or representative of Administrative Agent in order to verify independently Borrower's satisfaction of any conditions precedent to Loan disbursements under this

Agreement, Borrower's performance of any of the covenants, agreements and obligations of Borrower under this Agreement, or the validity of any representations and warranties made by Borrower hereunder (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Administrative Agent of) (i) any of Borrower's representations and warranties under this Agreement or the other Loan Documents, or Administrative Agent's reliance thereon or (ii) Administrative Agent's reliance upon any certifications of Borrower or the Architects required under this Agreement or any of the other Loan Documents, or any other facts, information or reports furnished to Administrative Agent by Borrower hereunder.

(m) Documents of Further Assurance. Borrower shall, from time to time, upon Administrative Agent's request, execute, deliver, record and furnish such documents as Administrative Agent may, in its reasonable discretion, deem necessary or desirable to (i) perfect and maintain perfected as valid Liens upon the Project, the Liens granted by Borrower to or for the benefit of Administrative Agent and Lenders under the Deed of Trust and the collateral assignments and other security interests under the other Loan Documents as contemplated by this Agreement, (ii) correct any errors of a typographical nature which may be contained in any of the Loan Documents, and (iii) consummate fully the transaction contemplated under this Agreement and the other Loan Documents.

(n) Furnishing Reports. Borrower shall provide Administrative Agent with copies of all material inspections, reports and test results received by Borrower from time to time from its employees, agents, representatives, architects, engineers and any other parties involved in the Construction, the design, development or operation of the Project which in any way relate in any material respect to the Project or the Construction, or any part thereof and as requested by Administrative Agent, and any other information of the type heretofore described.

(o) Leasing And Operation of Project. Borrower shall operate the Project as an industrial buildings. Borrower shall not enter into any Lease of the Project unless such Lease is an Approved Lease. Borrower shall not amend, modify or agree to the assignment or termination of any Lease or any subletting thereunder without Administrative Agent's prior written approval, which approval may be given subject to such reasonable modifications to the terms and conditions of such proposed agreement as Administrative Agent may require, including a requirement, at Administrative Agent's option, that the tenant under any Lease deliver an estoppel certificate and enter into a subordination, non-disturbance and attornment agreement with Administrative Agent, each in form satisfactory to Administrative Agent. Borrower shall fully and faithfully perform all covenants, agreements and obligations under the Leases.

(p) Furnishing Notices. Borrower shall deliver to Administrative Agent notice in writing, within five (5) days of Borrower's learning thereof, of any Default or Event of

Default hereunder. Borrower shall deliver to Administrative Agent copies of all notices of default, or notices which are of an adverse nature, received or given by Borrower (or its agents or representatives) under any of the Leases, within five (5) days after such notice is given or received, as the case may be. Borrower shall also provide Administrative Agent with copies of all notices of a material nature pertaining to the Project, or any part thereof received by Borrower (or its agents or representatives) from any Governmental Authority or from any insurance company providing insurance on any of the Project, within five (5) days after such notice is received.

(q) Hold Disbursements in Trust. Borrower shall receive for the sole benefit of Administrative Agent for the benefit of Lenders (and not for the benefit of any other Person, including any contractors or subcontractors) all advances made hereunder directly to Borrower, for the purpose of paying costs of Construction in accordance with the Budget and Disbursement Schedule. Borrower shall use the proceeds of the Loan solely for the payment or reimbursement of Construction Costs as specified in each Construction Draw Request Form. Administrative Agent shall have no obligation to monitor or determine Borrower's use or application of Loan proceeds.

(r) Storage. Borrower will store all items in its possession to be incorporated into or installed at the Improvements (not as yet incorporated or installed in the Improvements) either (i) in such bonded warehouse or warehouses, which provide sufficient security against damage or pilferage, as may be selected by Borrower and approved by Administrative Agent, all charges for such storage to be paid by Borrower promptly when due so that such items will not at any time become subject to any lien for such storage charges therefor, or (ii) at the Project, or other locations reasonably satisfactory to Administrative Agent, in a manner so as to provide security against damage or pilferage which shall be reasonably satisfactory to Administrative Agent and, at Administrative Agent's election, the Consulting Architect. Administrative Agent and its representatives and the Consulting Architect will be permitted access to such warehouse(s) and other locations(s) at all reasonable times on reasonable notice to inspect all such items. Administrative Agent shall receive satisfactory evidence that the insurance required to be obtained hereunder protects Administrative Agent from loss or damage to such items occurring while stored at any such location.

(s) Environmental Compliance. Borrower shall comply in all material respects with any and all Environmental Laws, shall not permit the occurrence of any material release of any Contaminants, shall conduct any Remedial Action required by any Governmental Authority in response to any such unpermitted release or otherwise (which shall not restrict Borrower's rights to appeal), shall pay immediately when due the costs of any such Remedial Action, and shall keep the Project free of any Environmental Lien. Upon the violation of any of the provisions of this Section 5.2(s), Administrative Agent may, upon Borrower's failure to cure any such violation within ninety (90) days after receipt of written notice from Administrative Agent (provided, however, the time limit for curing such violation shall be extended for a period of not more than an additional sixty (60) days if the ability to cure such violation within the initial ninety day period is

not within the reasonable control of Borrower, and provided Borrower promptly and in good faith undertakes the curing of such violation and diligently thereafter in good faith pursues the curing thereof to completion), cause the Project to be freed from the Contaminant (provided, however, that if multiple methods exist to free the Project from the Contaminant with the same level of efficacy, Administrative Agent shall select the most cost effective method) with the cost of the removal added to the Loan Obligations and immediately payable by Borrower, or declare an Event of Default under this Agreement. Borrower shall notify Administrative Agent in writing, promptly upon Borrower's learning thereof, of any: (i) notice that the Project or Borrower is subject to an Environmental Lien; (ii) notice of violation to Borrower or awareness by Borrower of a condition which might reasonably result in a notice of violation of any Environmental Law; (iii) discovery of any Contaminants on, under or about the Property and Improvements; (iv) discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property or any part thereof to be designated as Border Zone Property; and (v) commencement or threat of commencement of any litigation or legal proceeding relating to a violation of Environmental Laws received by Borrower (or its agents or representatives) from any Governmental Authority or from any insurance company providing environmental insurance on any of the Project, within ten (10) business days after such notice is received. **BORROWER HEREBY AGREES TO DEFEND INDEMNIFY AND HOLD HARMLESS EACH INDEMNITEE FROM AND AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, CLAIMS, ACTIONS, JUDGMENTS, COURT COSTS AND LEGAL OR OTHER EXPENSES (INCLUDING ATTORNEYS FEES AND EXPENSES) WHICH SUCH PARTIES MAY OCCUR AS A DIRECT OR INDIRECT CONSEQUENCE OF THE USE, GENERATION, MANUFACTURE, STORAGE, DISPOSAL, THREATENED DISPOSAL, TRANSPORTATION OR PRESENCE OF CONTAMINANTS IN, ON, UNDER OR ABOUT THE PROJECT (COLLECTIVELY, THE "INDEMNIFIED MATTERS"). BORROWER SHALL PAY TO ADMINISTRATIVE AGENT, WITHIN THIRTY (30) DAYS AFTER NOTICE FROM ADMINISTRATIVE AGENT ITEMIZING THE AMOUNTS INCURRED TO THE DATE OF SUCH NOTICE, INCLUDING REASONABLE DOCUMENTATION THEREFOR, ANY AMOUNTS OWING UNDER THIS SECTION.** Notwithstanding anything to the contrary herein contained, Borrower shall not be liable for the Indemnified Matters described above in the event that such Indemnified Matters are caused by Lenders' gross negligence or willful misconduct or by a purchaser or transferee pursuant to a judicial or non judicial foreclosure under the Deed of Trust, or transfer of the property in lieu thereof. It is expressly understood that Borrower's duty to indemnify Administrative Agent and Lenders and the other Indemnitees under this Paragraph shall survive: (A) any judicial or non judicial foreclosure under the Deed of Trust, or transfer of the Project in lieu thereof; (B) the release and reconveyance or cancellation of the Deed of Trust; and (C) the satisfaction of all of Borrower's obligations under the Loan Documents, but shall terminate (other than for claims for which Indemnitor has received prior written notice) on the later to occur of the date which is (i) five (5) years after the date of full payment of

the Loan Obligations or (ii) five (5) years after the date of a consummated foreclosure (or recordation of a deed in lieu of foreclosure).

(t) Maintenance of Existence. Borrower shall maintain itself in existence as an entity with limited partnership authority to own, manage, operate, construct, lease, market and sell real estate, and all purposes incidental to any of the aforementioned. Borrower will not, without Administrative Agent's prior written consent, amend, modify, restate or supplement its organizational documents, or cause or consent to any such change in such documents, or merge into or consolidate with any other Person.

(u) Insurance and Condemnation Proceeds. Borrower shall promptly notify Administrative Agent of any damage or destruction to the Project (each a "Casualty"), and any taking of any interest in the Project or any part thereof in or by condemnation or other eminent domain proceedings (each, a "Taking") or any threatened Taking or the commencement of any proceedings for any Taking. Borrower shall and hereby does direct all insurers under policies of property damage, boiler and machinery and business interruption insurance to pay all proceeds payable thereunder directly to Administrative Agent, all such proceeds being hereby assigned to Administrative Agent. All proceeds and any award or payment in respect of any Taking are hereby assigned to Administrative Agent and Lenders and shall be paid to Administrative Agent, and Borrower shall take all steps necessary to notify the condemning authority of such assignment, and any award or payment in respect of any such Taking or any claim arising out of such Taking shall be paid directly to Administrative Agent. Borrower irrevocably makes, constitutes and appoints Administrative Agent and any Person whom Administrative Agent may from time to time designate as its true and lawful attorney (and agent-in-fact) for the purpose of making, settling and adjusting claims under policies of insurance on account of any Casualty and claims arising out of any Taking, endorsing the name of Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and for making all determinations and decisions with respect to such policies of insurance in respect of any such Casualty and awards, payments and claims respecting any such Taking. Administrative Agent shall apply the proceeds of any such insurance claim or settlement or Taking received by Administrative Agent, after deducting for Administrative Agent's account the amount of any expenses incurred by Administrative Agent in litigating, arbitrating, compromising or settling such claims, at Administrative Agent's option either (i) to the repayment of the principal balance and/or accrued interest on the Loan and/or other amounts due and owing under this Agreement and the other Loan Documents, in such manner and order as Administrative Agent shall determine in its discretion, or (ii) make such net proceeds available to Borrower for the purpose of restoring, replacing or rebuilding the property so damaged or destroyed or subject to such Taking pursuant to the terms and conditions of this Section 5.2(u) (the "Reconstruction"); provided, however, that Administrative Agent shall hold the balance of any proceeds actually received by Administrative Agent to be used to reimburse Borrower for the costs of Reconstruction if all of the following conditions are satisfied within thirty (30) days from the date of the damage or destruction or Taking, provided, that if Borrower is in good faith unable to obtain plans and specifications required pursuant to the contract

required by item (3) below within such period, Borrower shall have an additional thirty (30) days to obtain such plans and specifications:

- (1) Borrower satisfies Administrative Agent that after the Reconstruction is completed, the Appraised Value of the Project upon completion of the Construction will be not less than the Appraised Value of the Project on the Effective Date on a completed basis, as determined by Administrative Agent.
- (2) In Administrative Agent's reasonable opinion, the undisbursed portion of the Loan, after deposit of such insurance or Taking proceeds actually received (as adjusted for the costs of Administrative Agent set forth herein), is sufficient to pay all costs of Reconstruction of the Project and to complete Construction. If the undisbursed portion of the Loan is not sufficient, Administrative Agent will permit Borrower either to (i) demonstrate its ability to provide additional funds to the satisfaction of Administrative Agent or (ii) deposit additional funds to make up such insufficiency.
- (3) Borrower has delivered to Administrative Agent a construction contract for the work of the Reconstruction in form and substance acceptable to Administrative Agent with a contractor acceptable to Administrative Agent or Contractor shall be the general contractor for all work of Reconstruction.
- (4) Administrative Agent in its reasonable discretion has determined that after the Reconstruction is completed, the Project, upon completion of the Construction, will produce income sufficient to pay all costs of operations and maintenance of the Project with a reasonable reserve for repairs, and service all debts secured by the Project.
- (5) Administrative Agent has determined, in its reasonable discretion, that the Reconstruction will be completed prior to the Loan Maturity Date.
- (6) No Default or Event of Default exists which has not been cured to the satisfaction of Administrative Agent.

If the insurance or Taking proceeds are held by Administrative Agent to reimburse Borrower for the cost of Reconstruction of the Project, (a) the Project shall be promptly and diligently restored by Borrower to the equivalent of its condition immediately prior to the damage or destruction in accordance with the original Plans and Specifications or to such other conditions as Administrative Agent may approve in writing, and (b) disbursements of such insurance proceeds shall be in accordance with disbursement procedures acceptable to Administrative Agent.

(v) Sign. If Lender so elects, Borrower shall use commercially reasonable efforts to state on its sign at the Project that refinancing or construction financing for the Improvements, as applicable, has been furnished by Administrative Agent and Lenders.

Any additional cost for including such statement shall be paid by Administrative Agent and Lenders.

(w) Subordination of Construction Agreements. Borrower shall either cause each Construction Agreement to contain a provision specifically subordinating any lien right against the Project to the Deed of Trust and other Liens granted to or for the benefit of Administrative Agent or Lenders under the Loan Documents, or cause the other party thereto to execute any and all instruments, acceptable in form and substance to Administrative Agent, to accomplish the same.

(x) ERISA Compliance. Borrower shall not (a) knowingly permit or suffer any Plan to engage in any transaction which results in a material liability of/to Borrower or any of its ERISA Affiliates under Section 502(i) of ERISA or Section 4975 of the Code; (b) permit or suffer any such Plan to incur any "accumulated funding deficiency" (within the meaning of Section 302 of ERISA and Section 412 of the Code); (c) terminate or suffer to be terminated, in other than a standard termination under Section 4041(b) of ERISA, any Plan to which Borrower is liable under Title IV of ERISA; (d) permit or suffer to exist a condition under which PBGC may terminate any such Plan pursuant to Section 4042(a) of ERISA.

(y) Loans and Investments. Borrower shall not make or permit to exist any loans or advances to, or investments in, any Person or accept any evidence of indebtedness from any Person or make or permit to exist any commitments to do any of the foregoing.

(z) Management and Leasing Agreements. Except with Requisite Lenders' prior written consent, Borrower shall not (and shall cause Opus West not to) enter into any property or asset management or leasing agreement for the Project except with an Affiliate of Opus West, nor amend or modify any such approved agreement except with Requisite Lenders' prior written consent, which consent may be withheld in Requisite Lenders' sole discretion.

(aa) Ownership of Contractor. Opus West shall at all times own one hundred percent (100%) of the securities issued by Contractor.

(bb) Distributions. Borrower shall apply all income from the Project to the payment of principal, interest, fees and other amounts due and payable under the Loan Documents prior to permitting distribution of any of such income to its partners.

(cc) General Partner. Stockton GP, L.L.C. shall at all times be the sole general partner of Borrower.

(dd) Single-Purpose Entity. Borrower shall at all times be and remain a Single-Purpose Entity.

(ee) Indebtedness. Other than the Loan, indebtedness related to the Opus Logistics Property (so long as no Lien securing such indebtedness affects any portion of the Collateral) and trade debt incurred in the ordinary course of business (for example, debt to parties involved in the construction of the Improvements), Borrower shall neither incur, nor be subject to, any Indebtedness.

ARTICLE VI INDEMNIFICATION

6.1 Indemnification for Failure to Complete Project. Except for matters caused by the gross negligence or willful misconduct of an Indemnatee, Borrower shall indemnify, hold harmless and upon request defend Administrative Agent and each Lender, all of the assignees and participants of Administrative Agent and each Lender, Affiliates of Administrative Agent and each Lender and any such assignees and participants, the directors, officers, agents, servants, employees and shareholders of Administrative Agent and each Lender and any such assignees and participants and any Affiliates thereof, and the successors and assigns of all of the foregoing (collectively, the "Indemnitees") from and against any and all Liabilities and Costs incurred by any of the Indemnitees, and any and all claims or demands, of whatever kind or nature, by any Person or entity, for any actual or alleged Liabilities and Costs, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, permit, ordinance, regulation, common law or otherwise, made against any of the Indemnitees, of whatever kind or nature, in any way relating to or arising out of the following matters:

(a) Borrower's failure to pay all Construction Costs when due and to complete Construction of the Improvements (i) for a total of Construction Costs not greater than that set forth in the Budget and Disbursement Schedule, (ii) on or before the Scheduled Completion Date, (iii) in accordance with the Plans and Specifications, all Legal Requirements and the other provisions of this Agreement and the other Loan Documents, and (iv) free and clear of all Liens of any and all Persons furnishing materials, labor or services in constructing, equipping or completing the Improvements; and

(b) Any and all faults, inadequacies or defects in the Project or its design and Construction, including defective workmanship or materials employed or used in Construction of the Improvements, and any departure from the Plans and Specifications which has not been approved by Requisite Lenders.

Borrower's duty to indemnify Administrative Agent and the other Indemnitees under this Section 6.1 shall survive: (A) any judicial or non-judicial foreclosure under the Deed of Trust, or transfer of the Project in lieu thereof; (B) the release and reconveyance or cancellation of the Deed of Trust; and (C) the satisfaction of all of Borrower's obligations under the Loan Documents. Notwithstanding the foregoing, Borrower's duty to indemnify any Indemnatee other than Lenders, Lenders' Affiliates, Administrative Agent, Administrative Agent's Affiliates and the assignees and participants of Administrative Agent or Lenders under this Agreement, which Indemnatee becomes an Indemnatee through judicial or non-judicial foreclosure under the Deed of Trust or transfer of the Project in lieu thereof, for matters under

this Section 6.1 (other than Section 6.1(a)(iv)), shall survive for a period of one (1) year after the date on which such other Indemnitee (other than Lenders, Lenders' Affiliates, Administrative Agent, Administrative Agent's Affiliates and the assignees and participants of Administrative Agent or Lenders under this Agreement) takes title to the Project; provided that such duty shall continue for any claims for which Borrower has received written notice prior to the expiration of such period.

6.2 Additional Indemnification. Without limiting the foregoing, except for matters covered specifically elsewhere, caused by the gross negligence or willful misconduct of the indemnified Person, Borrower shall additionally indemnify, hold harmless and upon request defend Administrative Agent and the other Indemnitees from and against any and all Liabilities and Costs incurred by any of the Indemnitees, and any and all claims or demands, of whatever kind or nature, by any Person or entity, for any actual or alleged Liabilities and Costs, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, permit, ordinance, regulation, common law or otherwise, made against any of the Indemnitees, of whatever kind or nature (other than environmental matters), in any way relating to or arising out of the following matters: (a) the Construction or other work contemplated herein; (b) the leasing, marketing, sale, operation and maintenance of the Project; (c) the purpose to which Borrower applies the Loan proceeds; (d) the failure of Borrower to perform any Loan Obligations as and when required by this Agreement or any of the other Loan Documents; (e) any failure at any time of any of Borrower's representations or warranties to be true and correct; (f) any act or omission by Borrower, any contractor, subcontractor or material supplier, engineer, architect or other person or entity with respect to the Project; and (g) any other action or inaction by, or matter which is the responsibility of Borrower.

Borrower's duty to indemnify Administrative Agent and the other Indemnitees under this Section 6.2 shall survive: (i) any judicial or non-judicial foreclosure under the Deed of Trust, or transfer of the Project in lieu thereof; (ii) the release and reconveyance or cancellation of the Deed of Trust; and (iii) the satisfaction of all of Borrower's obligations under the Loan Documents.

6.3 General. Borrower shall pay to Administrative Agent, within ten (10) days after demand, any amounts owing under this Article VI, together (i) for the first thirty (30) days after such demand, interest thereon accruing at a per annum rate equal to the Base Rate, and (ii) after such thirty (30) day period, interest accruing thereon at a per annum rate equal to the Base Rate plus four percent (4%). To the extent that the undertaking to indemnify under this Article VI may be unenforceable because it is violative of any law or public policy, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law.

ARTICLE VII TRANSFERS AND ASSIGNMENTS

7.1 Lender's Right to Assign.

(a) Subject to the provisions of Section 10.17 hereof, each Lender shall have the right to assign, transfer, sell, participate, negotiate, pledge or otherwise hypothecate this Agreement (or any portion thereof) and any of its rights (or any portion thereof) and security hereunder, including the Note, Deed of Trust, and any other Loan Documents to any bank, participant or other financial institution on such terms and conditions as Lender shall, in its sole discretion elect.

(b) Borrower acknowledges and agrees that each Lender may provide to any assignees, participants or transferees, originals or copies of the Deed of Trust, all Loan Documents and all other documents, instruments, certificates, opinions, insurance policies, letters of credit, reports, requisitions and other materials and information of every nature or description, and may communicate all oral information, at any time submitted by or on behalf of Borrower or received by such Lender in connection with the Loan, Borrower, or any tenant under any of the Leases.

7.2 Prohibition on Transfer. Borrower shall not, without the prior written consent of Administrative Agent: (i) except as otherwise allowed pursuant to Section 5.2(o), encumber, pledge, mortgage, grant a security interest in, assign, sell, lease or otherwise transfer, directly, indirectly, by operation of law, or otherwise, all or any portion of the Project, or (ii) except as otherwise allowed pursuant to Section 4.1(a), permit any interest (direct or indirect) in Borrower or any interest of Opus in Opus West to be sold, pledged, hypothecated, levied upon, encumbered, transferred or assigned, directly, indirectly, by operation of law, or otherwise (collectively a "Transfer"). The term "Transfer" shall include the agreement to do any of the foregoing or the execution of any installment land sale contract or similar instrument affecting all or any part of the Project. The term "Transfer" shall also include the direct or indirect pledge, hypothecation, levy, encumbrance, transfer, sale or assignment of any partnership interest (or other ownership interest) or voting control in Borrower, or the issuance of any new partnership interest (or other ownership interest) in Borrower. Notwithstanding the foregoing, Borrower may transfer the Project, or any portion thereof, to any person or entity that is controlled by, controlling or under common control of or with (a) Opus West Corporation, Opus Corporation, Opus, L.L.C., (b) Opus Founder, his children, his grandchildren or other members of his family, or (c) the trustee of a trust or trust for the benefit of Opus Founder, his children, his grandchildren or other members of his family, and in each instance such transfer shall be permitted hereunder without Administrative Agent's or Lenders' prior written consent so long as (i) Borrower provides Administrative Agent with at least fifteen (15) days' prior written notice of such transfer of the Project, or any portion thereof; (ii) prior to such transfer, such transferee assumes all of the Obligations in a written instrument in form and substance reasonably acceptable to Administrative Agent, (ii) Opus West Corporation remains fully obligated for the payment of the Obligations as a guarantor and confirms such obligation in a written instrument in form and substance reasonably acceptable to Administrative Agent.

7.3 Successors and Assigns. Subject to the foregoing restrictions on transfer and assignment contained in this Article VII, this Agreement shall inure to the benefit of and shall be binding on the parties hereto and their respective successors and assigns.

ARTICLE VIII
EVENTS OF DEFAULT AND REMEDIES

8.1 The occurrence of any one or more of the following shall constitute an "Event of Default," as such term is used herein:

(a) Borrower's failure to make any payment under the Note or any of the other Loan Documents when the same is due, including all payments due upon the Loan Maturity Date or earlier acceleration of the Loan, and such failure shall not be cured by Borrower within five (5) days after receipt of written notice thereof given by Administrative Agent, provided, however, that no such cure period shall be applied to, or required in connection with, payments due on the Loan Maturity Date.

(b)

(i) Any representation or warranty made by Borrower or its Affiliates or Guarantor to Administrative Agent under or in connection with this Agreement or the other Loan Documents, (including the Guarantee or the Environmental Indemnity), or any report, certificate, financial statement or other instrument prepared by Borrower or its Affiliates or Guarantor in connection with this Agreement or the other Loan Documents (including the Guarantee or the Environmental Indemnity), shall be false or misleading in any material respect as of the date on which made, or

(ii) any representation or warranty made in any report, certificate, financial statement or other instrument prepared by any Person not an Affiliate of Borrower and relating to the Project or prepared pursuant to the Loan Documents shall, to the best knowledge of Borrower, be false or misleading in any material respect as of the date on which made.

(c) The breach of any of the provisions of Sections 5.1(d) or 5.1(e) of this Agreement, or the breach of any of the provisions of Section 5.2(s) of this Agreement; provided, that, with respect to Section 5.2(s) only, Borrower shall have the period provided in Section 5.2(s) from the date of a Release, noncompliance with Environmental Laws or such other breach as described in Section 5.2(s) to cure such breach to the satisfaction of Administrative Agent, in Administrative Agent's sole discretion.

(d) The occurrence of (i) a Material Adverse Occurrence as to Borrower or Guarantor or (ii) any breach beyond applicable notice and cure periods by Borrower or its Affiliates or Guarantor or Indemnitor, or modification (such modification without the consent of Administrative Agent in its sole discretion) of, or failure of conditions under (A) the Guarantee, (B) the Environmental Indemnity or (C) any Material Lease.

(e) Borrower or Guarantor shall (i) have an order for relief entered with respect to it under the United States Bankruptcy Code, (ii) admit in writing its inability to pay its debts generally as they become due, (iii) become insolvent, cease business

operations, make an assignment for the benefit of creditors or call a meeting of creditors for the composition of debts, (iv) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its property, (v) institute any proceeding seeking an order for relief under the United States Bankruptcy Code or seeking to adjudicate it as a bankrupt or insolvent Person, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) take any action to authorize or effect any of the foregoing actions set forth in this clause (e), or (vii) fail to contest in good faith any appointment or proceeding described in Section 8.1(f) below.

(f) A receiver, trustee, examiner, liquidator or similar official shall be appointed for Borrower or Guarantor or any substantial part of their respective properties, or a proceeding described in Section 8.1(e) above shall be instituted against Borrower or Guarantor, and such appointment shall continue undischarged or such proceeding shall continue undismissed or unstayed for a period of sixty (60) consecutive days, or all or any substantial part of the assets of Borrower or Guarantor shall be attached, subjected to a writ or distress warrant or levied upon, which attachment, writ or warrant is not dismissed, stayed or lifted within sixty (60) days.

(g) Any judgments, writs, warrants of attachment, executions or similar process (not covered by insurance) shall be issued or levied against Borrower or Guarantor or their respective assets in an aggregate amount that exceeds Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate for Borrower and Seven Hundred Fifty Thousand Dollars (\$750,000) in the aggregate for Guarantor and such judgments, writs, warrants of attachment, executions or similar process shall not be stayed, released, vacated or fully bonded prior to any sale and in any event within sixty (60) days after its issue or levy.

(h) Any of the following shall occur and there shall result from such occurrence a claimed liability of Borrower or any of its ERISA Affiliates to PBGC or the Internal Revenue Service that exceeds Two Hundred Fifty Thousand and NO/100ths Dollars (\$250,000.00) in the aggregate for all such occurrences: (i) a Reportable Event described in Section 4043 of ERISA and the regulations issued thereunder (other than a Reportable Event not subject to the provision for thirty (30)-day notice to the PBGC under such regulations); (ii) the withdrawal of Borrower or any ERISA Affiliate from a Plan during a plan year in which it was a "substantial employer" as defined in Section 4001(a)(2) of ERISA; (iii) the filing of a notice of intent to terminate a Plan or the treatment of a Plan amendment as a termination under Section 4041 of ERISA; (iv) the institution of proceedings to terminate a Plan by the PBGC under Section 4042 of ERISA; or (v) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan.

(i) Borrower shall (i) fail to place and maintain the insurance required under Section 5.2(g) hereof, or (ii) fail to pay real estate and personal property taxes and assessments for the Project as and when required under Section 5.2(h) hereof; provided that, with respect to clause (ii) hereof only, Borrower shall have thirty (30) days to cure such failure of payment.

(j) The occurrence of any Transfer to which Administrative Agent has not previously consented in writing.

(k) Any failure in the performance, maintenance or satisfaction of any of Borrower's other covenants, agreements and obligations under this Agreement or any of the Loan Documents (excluding those which are the subject of Sections 8.1(a) – (j) above and those for which specific cure periods are set forth in this Agreement), which failure is not cured within ten (10) days after notice from Administrative Agent to Borrower (which notice may be written or oral) with respect to covenants, agreements and obligations involving monetary payments (other than for principal and interest due under the Note) under this Agreement and the other Loan Documents, or for a period of thirty (30) days after written notice of such failure from Administrative Agent with respect to non-monetary covenants, agreements and obligations, as the case may be; provided, however, the time limit for curing non-monetary covenants, agreements and obligations, excluding those set forth in Section 5.2(cc), shall be extended for a period of not more than an additional forty-five (45) days, if the ability to cure the subject Default within the specified time limit is not within the reasonable control of Borrower, and provided Borrower promptly and in good faith undertakes the curing of such Default and diligently thereafter in good faith pursues the curing thereof to completion; provided, further, that it shall not be a default under this Section 8.1(k) if such failure by Borrower is solely the result of Lenders' failure to disburse Loan funds in accordance with the terms and conditions of this Agreement.

(l) The occurrence of a default by Borrower under that certain ISDA Master Agreement dated August 13, 2008 or that certain ISDA Rate Confirmation Agreement dated August 13, 2008, each by and between Borrower and Wells Fargo.

8.2 Remedies. If any Event of Default occurs under Sections 8.1(e), (f) or (g), then the obligation of Administrative Agent and Lenders to make any further disbursement of the Loan shall terminate and the Loan shall immediately become due and payable without election or action on the part of Administrative Agent, without presentment, demand, protest or notice of any kind, all of which Borrower hereby expressly waives. If any other Event of Default occurs, the obligation of Administrative Agent and Lenders to make any further disbursement of the Loan shall terminate and Administrative Agent may, or at the direction of the Requisite Lenders shall, declare the Loan and all other outstanding Loan Obligations to be due and payable, whereupon the Loan shall become immediately due and payable without presentment, demand, protest or notice of any kind, all of which Borrower hereby expressly waives. In addition to and without limiting the foregoing, upon and after the occurrence of any Event of Default,

Administrative Agent may, or at the direction of the Requisite Lenders shall, pursue any or all of the rights and remedies available to Administrative Agent by law or as provided in the Loan Documents, all of which remedies shall be cumulative and non-exclusive, and shall include, without limitation, the following:

(a) Complete the Construction and take any other action whatever which, in Administrative Agent's sole judgment, is necessary to fulfill the covenants, agreements and obligations of Borrower under this Agreement and the other Loan Documents, including the right to (i) avail itself of and procure performance of existing Construction Agreements, and (ii) let any contracts with the same contractors and subcontractors or others and employ watchmen to protect the Project from injury. Without restricting the generality of the foregoing, and for the purpose aforesaid, Borrower hereby appoints and constitutes Administrative Agent its lawful attorney in fact with full power of substitution in the Project, and agrees that Administrative Agent shall be entitled to: (A) complete the Construction; (B) use any Balancing Payments or unadvanced funds remaining in the Loan or which may be reserved, escrowed or set aside for any purpose whatever at any time, to complete the Construction; (C) advance funds in excess of the face amount of the Note to complete the Construction; (D) make changes in the Plans and Specifications which shall be necessary or desirable to complete the Construction in substantially the manner contemplated by the Plans and Specifications; (E) retain or employ such new general contractors, contractors, subcontractors, architects, engineers and inspectors as may be required for said purposes; (F) pay, settle or compromise all existing bills and claims, the nonpayment of which might result in Liens or security interests on the Project, or prevent such bills and claims from resulting in Liens against the Project or security interests against fixtures, furnishing, furniture or equipment or other property, or as may be necessary or desirable for the completion of the Construction and equipping and furnishing of the Project or for the clearance of title; (G) execute all applications and certificates which may be required by any of the Loan Documents; (H) prosecute and defend all actions or proceedings connected with or relating to the Project; (I) take such action and require such performance as Administrative Agent deems necessary under any of the payment and performance bonds, if any, furnished under this Agreement, and make settlements and compromises with the surety or sureties thereunder, and, in connection therewith, execute instruments of release and satisfaction; (J) take possession of and operate the Project; and (K) do any and every act which Borrower might do in its own behalf, it being understood and agreed that the foregoing power of attorney shall be a power coupled with an interest and cannot be revoked.

(b) Use and apply any monies deposited by Borrower with Administrative Agent, regardless of the purpose for which the same was deposited, to cure any Default or Event of Default or to apply on account of any indebtedness under this Agreement which is due and owing to Administrative Agent or Lenders.

(c) The right to temporary and permanent injunctive relief. Borrower recognizes that, in the event it fails to perform, observe or discharge any of its obligations or liabilities under this Agreement or the other Loan Documents, any remedy of law may

prove to be inadequate relief to Administrative Agent or Lenders; therefore, Borrower agrees that Administrative Agent, if it so requests, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

8.3 Non-Waiver of Remedies. No waiver of any breach or default hereunder or under any existing Loan Documents shall constitute or be construed as a waiver by Administrative Agent or Lenders of any subsequent breach or default or of any breach or default of any other provision of this Agreement.

8.4 Taxes and Insurance Escrow. Upon Administrative Agent's request upon the occurrence and during the continuance of a Default or an Event of Default, Borrower shall pay monthly an amount ("Escrowed Sums") equal to one-twelfth (1/12) of the sum of (a) the annual taxes, charges or assessments (estimated by Administrative Agent, wherever necessary) to become due for the tax year during which such payment is so directed and (b) the insurance premiums for the same year for those insurance policies as are required hereunder. If Administrative Agent determines that any amounts theretofore deposited by Borrower are insufficient for the payment in full of such taxes, charges or assessments and insurance premiums, Administrative Agent shall notify Borrower of the increased amounts required to provide a sufficient fund, whereupon Borrower shall deposit to Administrative Agent within thirty (30) days thereafter the additional amount as stated in Administrative Agent's notice. The Escrowed Sums shall be placed in a non-interest bearing account controlled by Administrative Agent and pledged to Administrative Agent for the benefit of the Lenders pursuant to a deposit account pledge agreement in form and substance satisfactory to Administrative Agent. Upon appointment of a successor Administrative Agent in accordance with the provisions of Section 9.1, Administrative Agent shall have the right to pay over the balance of the Escrowed Sums then in its possession to such successor Administrative Agent whereupon the Administrative Agent shall then become completely released from all liability with respect thereto. On the date which is ninety-five (95) days after the full payment of the Loan Obligations (other than a full payment of the Loan Obligations as a consequence of a foreclosure or conveyance in lieu of foreclosure of the liens and security interests securing the Loan Obligations) or at such earlier time as Administrative Agent may elect, the balance of the Escrowed Sums in its possession shall be paid over to Borrower and no other party shall have any right or claim thereto. If no Default or Event of Default shall be continuing hereunder, Administrative Agent shall release the Escrowed Sums to Borrower. If a Default or Event of Default shall be continuing hereunder, however, Administrative Agent shall have the additional option of crediting the full amount of the Escrowed Sums against the Loan Obligations.

ARTICLE IX THE AGENT; INTERCREDITOR PROVISIONS

9.1 Appointment and Authorization.

(a) Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement and the other Loan Documents as are specifically delegated to the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents for the benefit of the Lenders.

(b) Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this Agreement and the other Loan Documents, and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders.

(c) Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms "Administrative Agent", "Agent", "agent" and similar terms in the Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(d) The Administrative Agent shall deliver to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Section 5.1. The Administrative Agent will also furnish to any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative Agent by Borrower, Guarantor or any Affiliate thereof, pursuant to this Agreement or any other Loan Document not already delivered to such Lender pursuant to the terms of this Agreement or any such other Loan Document.

(e) As to any matters not expressly provided for by the Loan Documents (including enforcement or collection of any of Borrower's obligations hereunder), Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the obligations of Borrower; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Legal Requirements. Not in limitation of the foregoing, the Administrative Agent shall exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. Without limiting the

foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or the other Loan Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all the Lenders.

9.2 Wells Fargo as Lender. Wells Fargo, as a Lender, shall have the same rights and powers under this Agreement and any other Loan Document as any other Lender and may exercise the same as though it were not the Administrative Agent; and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated, include Wells Fargo in each case in its individual capacity. Wells Fargo and its affiliates may each accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with Borrower, Guarantor or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the other Lenders. Further, the Administrative Agent and any Affiliate may accept fees and other consideration from Borrower for services in connection with this Agreement and otherwise without having to account for the same to the other Lenders. The Lenders acknowledge that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding Borrower, Guarantor and other Affiliates thereof (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

9.3 Loan Disbursements.

(a) Following receipt of a complete Construction Draw Request Form, Administrative Agent shall send a copy thereof by facsimile to each other Lender and shall otherwise notify each Lender of the proposed disbursement date and Funding Date. Each Lender shall make available to Administrative Agent (or the funding bank or entity designated by Administrative Agent), the amount of such Lender's Pro Rata Share of such disbursement in immediately available funds not later than the times designated in Section 9.3(b). Unless Administrative Agent shall have been notified by any Lender not later than the close of business (San Francisco time) on the Business Day immediately preceding the Funding Date in respect of any disbursement that such Lender does not intend to make available to Administrative Agent such Lender's Pro Rata Share of such disbursement, Administrative Agent may assume that such Lender shall make such amount available to Administrative Agent. If any Lender does not notify Administrative Agent of its intention not to make available its Pro Rata Share of such disbursement as described above, but does not for any reason make available to Administrative Agent such Lender's Pro Rata Share of such disbursement, such Lender shall pay to Administrative Agent forthwith on demand such amount, together with interest thereon at the Federal Funds Rate. In any case where a Lender does not for any reason make available to Administrative Agent such Lender's Pro Rata Share of such disbursement, Administrative Agent, in its sole discretion, may, but shall not be obligated to, fund to Borrower such Lender's Pro Rata Share of such disbursement. If Administrative Agent funds to Borrower such Lender's Pro Rata Share of such disbursement and if such Lender subsequently pays to Administrative Agent such corresponding amount, such amount so paid shall constitute such Lender's Pro Rata Share of

such disbursement. Nothing in this Section 9.3(a) shall alter the respective rights and obligations of the parties hereunder in respect of a Defaulting Lender or a Non-Pro Rata Advance.

(b) Requests by Administrative Agent for funding by Lenders of disbursements will be made by telecopy. Each Lender shall make the amount of its disbursement available to Administrative Agent in Dollars and in immediately available funds, to such bank and account, in El Segundo, California (to such bank and account in such other place) as Administrative Agent may designate, not later than 9:00 A.M. (San Francisco time) on the Funding Date designated by Administrative Agent with respect to such disbursement, but in no event earlier than two (2) Business Days following Lender's receipt of the applicable Construction Draw Request Form.

(c) Nothing in this Section 9.3 shall be deemed to relieve any Lender of its obligation hereunder to make its Pro Rata Share of disbursements on any Funding Date, nor shall Administrative Agent or any Lender be responsible for the failure of any other Lender to perform its obligations to make any disbursement hereunder, and the Commitment of any Lender shall not be increased or decreased as a result of the failure by any other Lender to perform its obligation to make a disbursement.

9.4 Distribution and Apportionment of Payments; Defaulting Lenders.

(a) Subject to Section 9.4(b) below, payments actually received by Administrative Agent for the account of Lenders shall be paid to them promptly after receipt thereof by Administrative Agent, but in any event within two (2) Business Days, provided that Administrative Agent shall pay to Lenders interest thereon, at the lesser of (i) the Federal Funds Rate and (ii) the rate of interest applicable to the Loan, from the Business Day following receipt of such funds by Administrative Agent until such funds are paid in immediately available funds to Lenders. All payments of principal, interest, and other payments under the Loan Documents shall be allocated among such of Lenders as are entitled thereto, in proportion to their respective Pro Rata Shares in the Loan or otherwise as provided herein or as separately agreed by Administrative Agent and any Lender. Administrative Agent shall promptly distribute, but in any event within two (2) Business Days, to each Lender at its primary address set forth on the appropriate signature page hereof or on the Assignment and Assumption Agreement, or at such other address as a Lender may request in writing, such funds as it may be entitled to receive, provided that Administrative Agent shall in any event not be bound to inquire into or determine the validity, scope or priority of any interest or entitlement of any Lender and may suspend all payments and seek appropriate relief (including instructions from Requisite Lenders or all Lenders, as applicable, or an action in the nature of interpleader) in the event of any doubt or dispute as to any apportionment or distribution contemplated hereby. The order of priority herein is set forth solely to determine the rights and priorities of Lenders as among themselves and may at any time or from time to time be changed by Lenders as they may elect, in writing in accordance with this Agreement, without necessity of notice to or consent of or approval by Borrower or any other Person. All payments or other sums received by Administrative Agent for the account of Lenders shall not constitute property or assets of the Administrative Agent and

shall be held by Administrative Agent, solely in its capacity as agent for itself and the other Lenders, subject to the Loan Documents.

(b) Notwithstanding any provision hereof to the contrary, until such time as a Defaulting Lender has funded its Pro Rata Share of a Protective Advance or prior Loan disbursements which was previously a Non-Pro Rata Advance, or all other Lenders have received payment in full (whether by repayment or prepayment) of the amounts due in respect of such Non-Pro Rata Advance, all of the indebtedness and obligations owing to such Defaulting Lender hereunder shall be subordinated in right of payment, as provided in the following sentence, to the prior payment in full of all principal, interest and fees in respect of all Non-Pro Rata Advances in which the Defaulting Lender has not funded its Pro Rata Share (such principal, interest and fees being referred to as "Senior Loans"). All amounts paid by Borrower and otherwise due to be applied to the indebtedness and obligations owing to the Defaulting Lender pursuant to the terms hereof shall be distributed by Administrative Agent to the other Lenders in accordance with their respective Pro Rata Shares of the Loan (recalculated for purposes hereof to exclude the Defaulting Lender's Pro Rata Share of the Loan), until all Senior Loans have been paid in full. This provision governs only the relationship among Administrative Agent, each Defaulting Lender, and the other Lenders; nothing hereunder shall limit the obligations of Borrower under this Agreement. The provisions of this section shall apply and be effective regardless of whether a Default occurs and is then continuing, and notwithstanding (a) any other provision of this Agreement to the contrary, (b) any instruction of Borrower as to its desired application of payments or (c) the suspension of such Defaulting Lender's right to vote on matters which are subject to the consent or approval of Requisite Lenders or all Lenders. Administrative Agent shall be entitled to (i) withhold or setoff, and to apply to the payment of the defaulted amount and any related interest, any amounts to be paid to such Defaulting Lender under this Agreement, and (ii) bring an action or suit against such Defaulting Lender in a court of competent jurisdiction to recover the defaulted amount and any related interest. In addition, the Defaulting Lender shall indemnify, defend and hold Administrative Agent and each of the other Lenders harmless from and against any and all liabilities and costs, plus interest thereon at the Default Rate as set forth in the Notes, which they may sustain or incur by reason of or as a direct consequence of the Defaulting Lender's failure or refusal to perform its obligations under this Agreement.

(c) Any Lender desiring to make a claim for costs payable by Borrower pursuant to the terms of this Agreement or the other Loan Documents shall deliver a certificate to Borrower, with a copy to Administrative Agent, setting forth the basis and calculation thereof. Except as provided in the Loan Documents, each Lender shall be responsible for any taxes payable by it in respect of amounts paid hereunder. All payments made by Administrative Agent to Lenders shall be made without withholding for taxes, charges or levies, except as may be required by law. Each Lender shall on demand from Administrative Agent provide completed and signed copies of certificates required to show exemption of such Lender from United States withholding taxes.

9.5 Pro Rata Treatment. Except to the extent otherwise provided herein: (a) each borrowing from Lenders shall be made from the Lenders, each payment of the fees shall be made for the account of the Lenders, and each termination or reduction of the amount of the

Commitments pursuant to this Agreement shall be applied to the respective Commitments of the Lenders, pro rata according to the amounts of their respective Commitments; (b) each payment or prepayment of principal of the Loan by Borrower shall be made for the account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loan held by them, provided that if immediately prior to giving effect to any such payment in respect of the Loan the outstanding principal amount of the Loan shall not be held by the Lenders pro rata in accordance with their respective Commitments in effect at the time the Loan was made, then such payment shall be applied to the Loan in such manner as shall result, as nearly as is practicable, in the outstanding principal amount of the Loan being held by the Lenders pro rata in accordance with their respective Commitments; and (c) each payment of interest on the Loan by Borrower shall be made for the account of the Lenders pro rata in accordance with the amounts of interest on the Loan then due and payable to the respective Lenders.

9.6 Sharing of Payments, etc. Lenders agree among themselves that (i) with respect to all amounts received by them which are applicable to the payment of the obligations of Borrower or Guarantor under the Loan, equitable adjustment will be made so that, in effect, all such amounts will be shared among them ratably in accordance with their Pro Rata Shares in the Loan, whether received by voluntary payment, by counterclaim or cross action or by the enforcement of any or all of such obligations, (ii) if any of them shall by voluntary payment or by the exercise of any right of counterclaim or otherwise, receive payment of a proportion of the aggregate amount of such obligations held by it which is greater than its Pro Rata Share in the Loan of the payments on account of such obligations, the one receiving such excess payment shall purchase, without recourse or warranty, an undivided interest and participation (which it shall be deemed to have done simultaneously upon the receipt of such payment) in such obligations owed to the others so that all such recoveries with respect to such obligations shall be applied ratably in accordance with such Pro Rata Shares; provided, that if all or part of such excess payment received by the purchasing party is thereafter recovered from it, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to that party to the extent necessary to adjust for such recovery, but without interest except to the extent the purchasing party is required to pay interest in connection with such recovery. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 9.6 may, to the fullest extent permitted by law, exercise all its rights of payment with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation.

9.7 Collateral Matters: Protective Advances.

(a) Each Lender hereby authorizes the Administrative Agent, without the necessity of any notice to or further consent from any Lender, from time to time prior to a Default, to take any action with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to any of the Loan Documents.

(b) The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release any Lien granted to or held by the Administrative Agent upon any

Collateral (i) upon termination of the Commitments and indefeasible payment and satisfaction in full of all of obligations of Borrower hereunder; (ii) as expressly permitted by, but only in accordance with, the terms of the applicable Loan Document; and (iii) if approved, authorized or ratified in writing by the Requisite Lenders (or such greater number of Lenders as this Agreement or any other Loan Document may expressly provide). Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section.

(c) Upon any sale and transfer of Collateral which is expressly permitted pursuant to the terms of this Agreement, and upon at least five (5) Business Days' prior written request by Borrower, the Administrative Agent shall (and is hereby irrevocably authorized by the Lenders to) execute such documents as may be necessary to evidence the release of the Liens granted to the Administrative Agent for the benefit of the Lenders herein or pursuant hereto upon the Collateral that was sold or transferred; provided, however, that (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent's opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect or impair the obligations of Borrower or any Liens upon (or obligations of Borrower or Guarantor in respect of) all interests retained by Borrower, including (without limitation) the proceeds of such sale or transfer, all of which shall continue to constitute part of the Collateral. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, the Administrative Agent shall be authorized to deduct all of the expenses reasonably incurred by the Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(d) The Administrative Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by Borrower or is cared for, protected or insured or that the Liens granted to the Administrative Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Administrative Agent in this Section or in any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, given the Administrative Agent's own interest in the Collateral as one of the Lenders and that the Administrative Agent shall have no duty or liability whatsoever to the Lenders, except to the extent resulting from its gross negligence or willful misconduct.

(e) The Administrative Agent may make, and shall be reimbursed by the Lenders (in accordance with their Pro Rata Shares) to the extent not reimbursed by Borrower for, Protective Advances during any one calendar year with respect to any Collateral up to the sum of (i) amounts expended to pay real estate taxes, assessments and governmental charges or levies imposed upon such Collateral; (ii) amounts expended to pay insurance premiums for policies of insurance related to the Collateral; and (iii) \$150,000. Protective Advances in excess of said sum

during any calendar year for any Collateral shall require the consent of the Requisite Lenders. Borrower agrees to pay on demand all Protective Advances.

(f) Each Lender agrees that it will not take any action, nor institute any actions or proceedings, against Borrower or any other obligor hereunder under the Loan Documents with respect to exercising claims against or rights in the Collateral without the written consent of Requisite Lenders.

9.8 Post-Foreclosure Plans. If all or any portion of the Collateral is acquired by the Administrative Agent as a result of a foreclosure or the acceptance of a deed or assignment in lieu of foreclosure, or is retained in satisfaction of all or any part of the obligations of Borrower hereunder, the title to any such Collateral, or any portion thereof, shall be held in the name of the Administrative Agent or a nominee or subsidiary of the Administrative Agent, as agent, for the ratable benefit of all Lenders. The Administrative Agent shall prepare a recommended course of action for such Collateral (a "Post-Foreclosure Plan"), which shall be subject to the approval of the Requisite Lenders. In accordance with the approved Post-Foreclosure Plan, the Administrative Agent shall manage, operate, repair, administer, complete, construct, restore, lease, market, sell or otherwise deal with the Collateral acquired, and shall administer all transactions relating thereto, including employing a management agent, leasing agent and other agents, contractors and employees, including agents for the sale of such Collateral, and the collecting of rents and other sums from such Collateral and paying the expenses of such Collateral. Actions taken by the Administrative Agent with respect to the Collateral, which are not specifically provided for in the approved Post-Foreclosure Plan or reasonably incidental thereto, shall require the written consent of the Requisite Lenders by way of supplement to such Post-Foreclosure Plan. Upon demand therefor from time to time, each Lender will contribute its share (based on its Pro Rata Share) of all reasonable costs and expenses incurred by the Administrative Agent pursuant to the approved Post-Foreclosure Plan in connection with the construction, operation, management, maintenance, leasing and sale of such Collateral. In addition, the Administrative Agent shall render or cause to be rendered to each Lender, on a monthly basis, an income and expense statement for such Collateral, and each Lender shall promptly contribute its Pro Rata Share of any operating loss for such Collateral, and such other expenses and operating reserves as the Administrative Agent shall deem reasonably necessary pursuant to and in accordance with the approved Post-Foreclosure Plan. To the extent there is net operating income from such Collateral, the Administrative Agent shall, in accordance with the approved Post-Foreclosure Plan, determine the amount and timing of distributions to the Lenders. All such distributions shall be made to the Lenders in accordance with their respective Pro Rata Shares. The Lenders acknowledge and agree that if title to any Collateral is obtained by the Administrative Agent or its nominee, such Collateral will not be held as a permanent investment but will be liquidated as soon as practicable. The Administrative Agent shall undertake to sell such Collateral, at such price and upon such terms and conditions as the Requisite Lenders reasonably shall determine to be most advantageous to the Lenders. Any purchase money mortgage or deed of trust taken in connection with the disposition of such Collateral in accordance with the immediately preceding sentence shall name the Administrative Agent, as agent for the Lenders, as the beneficiary or mortgagee. In such case, the Administrative Agent and the Lenders shall enter into an agreement with respect to such

purchase money mortgage or deed of trust defining the rights of the Lenders in the same Pro Rata Shares as provided hereunder, which agreement shall be in all material respects similar to this Article insofar as the same is appropriate or applicable.

9.9 Approvals of Lenders. All communications from the Administrative Agent to any Lender requesting such Lender's determination, consent, approval or disapproval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, approval, consent or disapproval is requested, or shall advise such Lender where information, if any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved, (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials and a summary of all oral information provided to the Administrative Agent by Borrower in respect of the matter or issue to be resolved, and (d) shall include the Administrative Agent's recommended course of action or determination in respect thereof. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the recommendation or determination of the Administrative Agent (together with a reasonable written explanation of the reasons behind such objection) within ten (10) Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents) of receipt of such communication, such Lender shall be deemed to have conclusively approved of or consented to such recommendation or determination.

9.10 Notices of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default unless the Administrative Agent has received notice from a Lender or Borrower referring to this Agreement, describing with reasonable specificity such Default or Event of Default and stating that such notice is a "notice of default". If any Lender (excluding the Lender which is also serving as the Administrative Agent) becomes aware of any Default or Event of Default, it shall promptly send to the Administrative Agent such a "notice of default". Further, if the Administrative Agent receives such a "notice of default," the Administrative Agent shall give prompt notice thereof to the Lenders.

9.11 Administrative Agent's Reliance, etc. Notwithstanding any other provisions of this Agreement or any other Loan Documents, neither the Administrative Agent nor any of its directors, officers, agents, employees or counsel shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein. Without limiting the generality of the foregoing, the Administrative Agent: may consult with legal counsel (including its own counsel or counsel for Borrower or Guarantor), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Neither the Administrative Agent nor any of its directors, officers, agents, employees or counsel: (a) makes any warranty or representation to any Lender or any other Person and shall be responsible to any Lender or any other Person for any statement, warranty or representation made or deemed made by Borrower, Guarantor or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any

duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of Borrower or other Persons or inspect the property, books or records of Borrower or any other Person; (c) shall be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any Collateral covered thereby or the perfection or priority of any Lien in favor of the Administrative Agent on behalf of the Lenders in any such Collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; and (e) shall incur any liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, telecopy or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties. The Administrative Agent may execute any of its duties under the Loan Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

9.12 Indemnification of Administrative Agent. Regardless of whether the transactions contemplated by this Agreement and the other Loan Documents are consummated, each Lender agrees to indemnify the Administrative Agent (to the extent not reimbursed by Borrower and without limiting the obligation of Borrower to do so) pro rata in accordance with such Lender's respective Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by, or asserted against the Administrative Agent (in its capacity as Administrative Agent but not as a "Lender") in any way relating to or arising out of the Loan Documents, any transaction contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under the Loan Documents (collectively, "Indemnifiable Amounts"); provided, however, that no Lender shall be liable for any portion of such Indemnifiable Amounts to the extent resulting from the Administrative Agent's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment provided, however, that no action taken in accordance with the directions of the Requisite Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limiting the generality of the foregoing, each Lender agrees to reimburse the Administrative Agent (to the extent not reimbursed by Borrower and without limiting the obligation of Borrower to do so) promptly upon demand for its ratable share of any out-of-pocket expenses (including the reasonable fees and expenses of the counsel to the Administrative Agent) incurred by the Administrative Agent in connection with the preparation, negotiation, execution, administration, or enforcement (whether through negotiations, legal proceedings, or otherwise) of, or legal advice with respect to the rights or responsibilities of the parties under, the Loan Documents, any suit or action brought by the Administrative Agent to enforce the terms of the Loan Documents and/or collect any obligation of Borrower hereunder, any "lender liability" suit or claim brought against the Administrative Agent and/or the Lenders, and any claim or suit brought against the

Administrative Agent and/or the Lenders arising under any Environmental Laws. Such out-of-pocket expenses (including counsel fees) shall be advanced by the Lenders on the request of the Administrative Agent notwithstanding any claim or assertion that the Administrative Agent is not entitled to indemnification hereunder upon receipt of an undertaking by the Administrative Agent that the Administrative Agent will reimburse the Lenders if it is actually and finally determined by a court of competent jurisdiction that the Administrative Agent is not so entitled to indemnification. The agreements in this Section shall survive the payment of the Loan and all other amounts payable hereunder or under the other Loan Documents and the termination of this Agreement. If Borrower shall reimburse the Administrative Agent for any Indemnifiable Amount following payment by any Lender to the Administrative Agent in respect of such Indemnifiable Amount pursuant to this Section, the Administrative Agent shall share such reimbursement on a ratable basis with each Lender making any such payment.

9.13 Lender Credit Decision, etc. Each Lender expressly acknowledges and agrees that neither the Administrative Agent nor any of its officers, directors, employees, agents, counsel, attorneys-in-fact or other affiliates has made any representations or warranties to such Lender and that no act by the Administrative Agent hereafter taken, including any review of the affairs of Borrower, Guarantor or any Affiliate thereof, shall be deemed to constitute any such representation or warranty by the Administrative Agent to any Lender. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent, or any of their respective officers, directors, employees, agents or counsel, and based on the financial statements of Borrower, Guarantor or any Affiliate thereof, and inquiries of such Persons, its independent due diligence of the business and affairs of Borrower, Guarantor and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate, made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent or any of their respective officers, directors, employees and agents, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by Borrower or Guarantor of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, Borrower or Guarantor. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent under this Agreement, any of the other Loan Documents, the Administrative Agent shall have no duty or responsibility to provide any Lender with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of Borrower, Guarantor or any Affiliate thereof which may come into possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or other Affiliates. Each Lender acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to such Lender.

9.14 Successor Administrative Agent. Administrative Agent may resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and Borrower. Upon any such resignation, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Default or Event of Default exists, be subject to Borrower's approval, which approval shall not be unreasonably withheld or delayed (except that Borrower shall, in all events, be deemed to have approved each Lender and any of its Affiliates as a successor Administrative Agent). If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within thirty (30) days after the current Administrative Agent's giving of notice of resignation, then the current Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be an Eligible Assignee. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After any Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article IX shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents to any of its Affiliates by giving Borrower and each Lender prior written notice.

9.15 No Set-Offs. Each Lender hereby acknowledges that the exercise by any Lender of offset, set-off, banker's lien or similar rights against any deposit account or other property or asset of Borrower, whether or not located in California, could result under certain laws in significant impairment of the ability of all Lenders to recover any further amounts in respect of the Loan. Therefore, each Lender agrees not to charge or offset any amount owed to it by Borrower against any of the accounts, property or assets of Borrower or any of its affiliates held by such Lender without the prior written approval of Administrative Agent and Requisite Lenders.

9.16 Option to Replace Defaulting Lender. Provided there does not exist any Event of Default under the Loan Documents, Borrower may designate another financial institution (such financial institution being herein called a "Replacement Lender") acceptable to Administrative Agent and otherwise fulfilling the requirements of Section 10.17 (which acceptance will not be unreasonably withheld) and which is not an Affiliate of Borrower, to purchase Defaulting Lender's right, title and interest in and to the Loan, all without recourse to or representation or warranty (except as to title of such Defaulting Lender's portion of the Loan and as to the authority of such Defaulting Lender to transfer the same) by, or expense to, such Defaulting Lender, for a purchase price equal to the principal of and accrued and unpaid interest on the Loans made by the Defaulting Lender hereunder, and upon such assumption, purchase and substitution, and subject to the execution and delivery to Administrative Agent by the Replacement Lender of documentation reasonably satisfactory to Administrative Agent (pursuant

to which such Replacement Lender shall assume the obligations of such Defaulting Lender under the Loan and this Agreement from and after the date of such transfer), the Replacement Lender shall succeed to the rights and obligations of such Defaulting Lender under the Loan and hereunder. The remedies of Borrower under this Section 9.16 shall be cumulative of any other remedies Borrower may have against a Defaulting Lender under this Agreement or at law or in equity.

ARTICLE X GENERAL PROVISIONS

10.1 Captions, etc. The captions and headings of various Articles and Sections of this Agreement and Exhibits pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions hereof. Whenever the context of this Agreement so requires, the singular shall include the plural and conversely in each case.

10.2 Notices.

a) Generally. Except as provided in Section 10.2(b) below, any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given if (a) hand delivered or transmitted by facsimile (effective upon delivery or confirmation of successful facsimile transmission) or (b) mailed (effective three (3) Business Days after deposit thereof at any main or branch United States Post Office) by United States registered, or certified mail, postage prepaid, return receipt requested, or (c) forwarded by overnight delivery service, the next Business Day, addressed as follows:

If to Borrower:

Arch Road Limited Partnership
c/o Opus West Corporation
Suite 800
2555 East Camelback Road
Phoenix, Arizona 85016-9256
Attn: Senior Vice President of Real Estate Finance and Sales
Telephone: (602) 468-7000
Facsimile: (602) 468-7045

With a copy to:

Opus West Corporation
Suite 800
2555 East Camelback Road
Phoenix, Arizona 85016-9256
Attn: Legal Department

With a copy to:

Gallagher & Kennedy, P.A.
2575 E. Camelback Road
Phoenix, Arizona 85016
Attn: Brian Zavislak
Telephone: (602) 530-8000
Facsimile: (602) 530-8500

If to Administrative Agent:

Wells Fargo Bank, National Association
2030 Main Street
Suite 800
Irvine, California 92614
Attn: Ben Singh
Telephone: (949) 251-4429
Facsimile: (949) 851-9728

With a copy to:

Wells Fargo Bank, National Association
2030 Main Street
Suite 800
Irvine, California 92614
Attn: Jeri Gehrler
Telephone: (949) 251-4330
Facsimile: (949) 851-9728

With a copy to:

GoodSmith Gregg & Unruh LLP
150 S. Wacker Drive
Suite 3150
Chicago, Illinois 60606
Attn: Kenneth D. Crews
Telephone: (312) 322-1981
Facsimile: (312) 322-0056

If to any Lender:

at the address set forth on Exhibit F

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

(b) Electronic Document Delivery. Documents required to be delivered pursuant to the Loan Documents may be delivered by electronic communication and delivery, including, the Internet, e-mail or intranet websites to which the Administrative Agent and each Lender have access (including a commercial, third-party website or a website sponsored or hosted by the Administrative Agent or the Borrower) provided that (A) the foregoing shall not apply to notices to any Lender pursuant to Article II and (B) the Lender has not notified the Administrative Agent or Borrower that it cannot or does not want to receive electronic communications. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic delivery pursuant to procedures approved by it for all or particular notices or communications. Documents or notices delivered electronically shall be deemed to have been delivered twenty-four (24) hours after the date and time on which the Administrative Agent or Borrower posts such documents or the documents become available on a commercial website and the Administrative Agent or Borrower notifies each Lender of said posting and provides a link thereto provided if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 9:00 a.m. on the opening of business on the next business day for the recipient. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the certificate required by Section 9(g) of the Guarantee to the Administrative Agent and shall deliver paper copies of any documents to the Administrative Agent or to any Lender that requests such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. Except for the certificates required by Section 9(g) of the Guarantee, the Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery. Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents.

10.3 Amendments and Waivers.

(a) Generally. Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or in any Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document (other than any fee letter solely between the Borrower and Wells Fargo) may be amended, (iii) the performance or observance by the Borrower or Guarantor of any terms of this Agreement or such other Loan Document (other than any fee letter solely between the Borrower and Wells Fargo) may be waived, and (iv) the continuance of any Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (or Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of Borrower or Guarantor, as applicable, which is party thereto. Notwithstanding the previous sentence, Administrative Agent, shall be authorized on behalf of

all the Lenders, without the necessity of any notice to, or further consent from, any Lender, to waive the imposition of the late fees provided in Section 2.15, up to a maximum of 3 times per calendar year or the accrual of interest at the Default Rate as provided in Section 2.14 hereof for a period not to exceed thirty (30) days in the aggregate within any period of twelve (12) consecutive months.

(b) Unanimous Consent. Notwithstanding the foregoing, no amendment, waiver or consent shall, unless in writing, and signed by all of the Lenders (or the Administrative Agent at the written direction of the Lenders), do any of the following:

- (i) increase the Commitments of the Lenders (excluding any increase as a result of an assignment of Commitments permitted under Section 10.17) or subject the Lenders to any additional obligations;
- (ii) reduce the principal of, or interest rates that have accrued or that will be charged on the outstanding principal amount of, the Loan;
- (iii) reduce the amount of any fees payable to the Lenders hereunder;
- (iv) postpone any date fixed for any payment of principal of, or interest on, the Loan (including the Loan Maturity Date or extension thereof pursuant to Section 2.3 hereof) or for the payment of fees or any other obligations of Borrower or Guarantor;
- (v) change the Pro Rata Shares (excluding any change as a result of an assignment of Commitments permitted under Section 10.17);
- (vi) amend this Section 10.3 or amend the definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section 10.3;
- (vii) release Guarantor from its obligations under the Guarantee.
- (viii) modify the definition of the term "Requisite Lenders" or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof;
- (ix) waive a Default or Event of Default under Section 8.1(a);
- (x) release or dispose of any Collateral unless released or disposed of as permitted by, and in accordance with, Section 9.7; or
- (xi) release any guarantor of any obligation from its obligations under such guaranty.

(c) Amendment of Administrative Agent's Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement or any of the other Loan Documents. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as such Event of Default is waived in writing in accordance with the terms of this Section 10.3, notwithstanding any attempted cure or other action by the Borrower, Guarantor or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon the Borrower shall entitle the Borrower to other or further notice or demand in similar or other circumstances.

10.4 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of California, except to the extent preempted by federal laws. Borrower and all persons and entities in any manner obligated to Administrative Agent or any Lender under the Loan Documents consent to the jurisdiction of any federal or state court within the State of California having proper venue and also consent to service of process by any means authorized by California or federal law.

10.5 [Intentionally Omitted.]

10.6 Reimbursement for Loan Expenses. Administrative Agent is hereby authorized, without any specific request or direction by Borrower, to make disbursements from time to time in payment of or to reimburse Administrative Agent or any Lender for all expenses and fees payable under the Loan Documents.

10.7 Acquiescence Not to Constitute Waiver of Administrative Agent's Requirements. To the extent that Administrative Agent may have acquiesced in any noncompliance with any conditions precedent to the Opening Date or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Administrative Agent of such requirements with respect to any future disbursements of Loan proceeds.

10.8 Disclaimer by Administrative Agent. Administrative Agent shall not be liable to any contractor, subcontractor, supplier, laborer, architect, engineer, tenant or other party for services performed or materials supplied in connection with the Construction. Administrative Agent shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the Project. Borrower is not and shall not be an agent of Administrative Agent for any purposes. Administrative Agent, by making the Loan or any action taken pursuant to any of the Loan Documents, shall not be deemed to be a partner or a joint venturer with Borrower. Administrative Agent shall not be deemed to be in privity of contract

with any contractor or provider of services to the Project, nor shall any payment of funds directly to a contractor or subcontractor or provider of services be deemed to create any third party beneficiary status or recognition of same by Administrative Agent. Borrower hereby agrees to, and does hereby, hold Administrative Agent harmless from any of the damages and expenses resulting from such a construction of the relationship of the parties or any assertion thereof.

10.9 Right of Administrative Agent to Make Advances to Cure Borrower's Defaults. If Borrower shall fail to perform any of Borrower's covenants, agreements or obligations contained in this Agreement or any of the other Loan Documents, Administrative Agent may (but shall not be required to) perform any of such covenants, agreements and obligations, and any amounts expended by Administrative Agent in so doing shall constitute additional Loan Obligations immediately payable by Borrower.

10.10 Time Is of The Essence. Time is hereby declared to be of the essence of this Agreement, the other Loan Documents and of every part hereof and thereof.

10.11 Description of Documents. The description or characterization of this Agreement or any other Loan Document or any other document or instrument contained in this Agreement or in any other Loan Document is solely for the purpose of identification and such description or characterization shall not be used for the purpose of, and shall not otherwise affect, the construction or interpretation of this Agreement or any other Loan Document or other document or instrument so described or characterized. In the event of any conflict between any such description or characterization and any of the terms of this Agreement or any other Loan Document or other document or instrument, the terms of this Agreement shall control.

10.12 Severability. The parties hereto intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Agreement is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, or Legal Requirement, and if such court should declare such portion, provision or provisions of this Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of the parties under the remainder of this Agreement shall continue in full force and effect. All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to Administrative Agent and Lenders for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable usury laws. If, from any circumstances whatsoever, fulfillment of any provision hereof at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, *ipso facto*, the obligation to be fulfilled

shall be reduced to the limit of such validity and if from any circumstance Administrative Agent and Lenders shall ever receive as interest an amount which is determined to exceed the highest lawful rate, such amount which is excessive interest shall, upon such determination, at the option of Administrative Agent and Lenders, be either immediately returned to Borrower or applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest.

10.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but all of which when taken together shall constitute but one agreement.

10.14. Entire Agreement. This Agreement and the other Loan Documents constitute the entire agreement among Administrative Agent, Lenders, and Borrower relating to the Loan and the other matters addressed herein and supersede as of the Effective Date all prior undertakings and agreements among Administrative Agent, Lenders, and Borrower relating thereto.

10.15. No Third Parties Benefited. No Person other than Administrative Agent, Lenders and Borrower and their permitted successors and assigns shall have any right of action under any of the Loan Documents.

10.16. Relationship of Parties. The relationship of Borrower and Administrative Agent and Lenders under the Loan Documents is, and shall at all times remain, solely that of borrower and lender, and Administrative Agent and Lenders neither undertake nor assume any responsibility or duty to Borrower or to any third party with respect to the Project or the Improvements, except as expressly provided in this Agreement and the other Loan Documents.

10.17 Successors and Assigns.

(a) Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Borrower may not assign or otherwise transfer any of its rights under this Agreement without the prior written consent of all the Lenders (and any such assignment or transfer to which all of the Lenders have not consented shall be void).

(b) Participations. Any Lender may at any time grant to an affiliate of such Lender, or one or more banks or other financial institutions (each a "Participant") participating interests in its Commitment or the obligations owing to such Lender hereunder. No Participant shall have any rights or benefits under this Agreement or any other Loan Document. In the event of any such grant by a Lender of a participating interest to a Participant, such Lender shall remain responsible for the performance of its obligations hereunder, and the Borrower and Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which any Lender may grant such a participating interest shall provide that such Lender shall retain the sole right and responsibility to enforce the obligations of the Borrower hereunder including the right

to approve any amendment, modification or waiver of any provision of this Agreement; provided however, such Lender may agree with the Participant that it will not, without the consent of the Participant, agree to (i) increase such Lender's Commitment, (ii) extend the date fixed for the payment of principal on the Loan or a portion thereof owing to such Lender, or (iii) reduce the rate at which interest is payable thereon. An assignment or other transfer which is not permitted by subsection (c) below shall be given effect for purposes of this Agreement only to the extent of a participating interest granted in accordance with this subsection (b).

(c) Assignments. Any Lender may with the prior written consent of Administrative Agent and the Borrower (which consent, in each case, shall not be unreasonably withheld) at any time assign to one or more Eligible Assignees (each an "Assignee") all or a portion of its rights and obligations under this Agreement and the Notes; provided, however, (i) no such consent by the Borrower shall be required (x) if a Default or Event of Default shall exist or (y) in the case of an assignment to another Lender or an affiliate of another Lender; (ii) any partial assignment shall be in an amount at least equal to Five Million and NO/100 Dollars (\$5,000,000) and after giving effect to such assignment the assigning Lender (including if that assigning Lender is Administrative Agent) retains a Commitment, or if the Commitments have been terminated, holds a Note having an outstanding principal balance, of at least Ten Million and NO/100 Dollars (\$10,000,000), and (iii) each such assignment shall be effected by means of an Assignment and Assumption. Upon execution and delivery of such instrument and payment by such Assignee to such transferor Lender of an amount equal to the purchase price agreed between such transferor Lender and such Assignee, such Assignee shall be deemed to be a Lender party to this Agreement and shall have all the rights and obligations of a Lender with a Commitment as set forth in such Assignment and Assumption, and the transferor Lender shall be released from its obligations hereunder to a corresponding extent, and no further consent or action by any party shall be required. Upon the consummation of any assignment pursuant to this subsection (c), the transferor Lender, Administrative Agent and the Borrower shall make appropriate arrangement so the new Notes are issued to the Assignee and such transferor Lender, as appropriate. In connection with any such assignment, the transferor Lender shall pay to Administrative Agent an administrative fee for processing such assignment in the amount of \$3,500. Anything in this Section 10.17 to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan held by it hereunder to the Borrower or any Affiliates thereof.

(d) Tax Withholding. At least five (5) Business Days prior to the first day on which interest or fees are payable hereunder for the account of any Lender, each Lender that is not incorporated under the laws of the United States of America, or a state thereof, shall furnish Administrative Agent and Borrower with a properly completed executed copy of either Internal Revenue Service Form W-8ECI or Internal Revenue Service Form W-8BEN and either Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9 and any additional form (or such other form) as is necessary to claim complete exemption from United States withholding taxes on all payments

hereunder. At all times each Lender shall own or beneficially own a Note, such Lender shall (i) promptly provide to Administrative Agent and Borrower a new Internal Revenue Service Form W-8ECI or Internal Revenue Service Form W-8BEN and Internal Revenue Service Form W-8 or Internal Revenue Service Form W-9 and any additional form (or such other form) (or any successor form or forms) upon the expiration or obsolescence of any previously delivered form and comparable statements in accordance with applicable United States laws and regulations and amendments duly executed and completed by such Lender, and (ii) comply at all times with all applicable United States laws and regulations, including all provisions of any applicable tax treaty, with regard to any withholding tax exemption claimed with respect to any payments on the Loan. If any Lender cannot deliver such form, then Borrower may withhold from payments due under the Loan Documents such amounts as Borrower is able to determine from accurate information provided by such Lender are required by the Internal Revenue Code.

(e) Federal Reserve Bank Assignments. In addition to the assignments and participations permitted under the foregoing provisions of this Section 10.17, and without the need to comply with any of the formal or procedural requirements of this Section, any Lender may at any time and from time to time, pledge and assign all or any portion of its rights under all or any of the Loan Documents to a Federal Reserve Bank; provided that no such pledge of assignment shall release such Lender from its obligation thereunder.

(f) Information to Assignee. Etc. A Lender may furnish any information concerning the Borrower or any Affiliate thereof in the possession of such Lender from time to time to Assignees and Participants (including prospective Assignees and Participants). In connection with such negotiation, execution and delivery, Borrower authorizes Administrative Agent and Lenders to communicate all information and documentation related to the Loan (whether to Borrower or to any Participant, Assignee, legal counsel, appraiser or other necessary party) directly by e-mail, fax, or other electronic means used to transmit information.

10.18 Note Replacement. Upon receipt of an affidavit of an officer of Administrative Agent (or the applicable Lender), along with an indemnity from such Lender or Administrative Agent (as the case may be), as to the loss, theft, destruction or mutilation of a Note or any other security document which is not of public record, and in the case of any such loss, theft, destruction, or mutilation, upon surrender and cancellation of such Note or other security document (if available), Borrower will issue, in lieu thereof, a replacement Note or other security document in the same principal amount thereof and otherwise of like tenor.

10.18 USA PATRIOT ACT NOTICE. COMPLIANCE. The USA Patriot Act of 2001 (Public Law 107-56) and federal regulations issued with respect thereto require all financial institutions to obtain, verify and record certain information that identifies individuals or business entities which open an "account" with such financial institution. Consequently, Wells Fargo (for itself and/or as Administrative Agent for all Lenders hereunder) may from time-to-time request, and Borrower shall provide to Wells Fargo, Borrower's name, address, tax

identification number and/or such other identification information as shall be necessary for Wells Fargo to comply with federal law. An "account" for this purpose may include, without limitation, a deposit account, cash management service, a transaction or asset account, a credit account, a loan or other extension of credit, and/or other financial services product.

10.20 Limited Recourse. Except as expressly set forth below, in any action brought to enforce any or all of the obligations of Borrower hereunder, under the Loan Documents or under any certificate, indemnity or other agreement delivered pursuant to the terms of the Loan Documents, Administrative Agent's and Lenders' recourse shall be limited to all of the assets of Borrower. Further, no partner of Borrower, and no officer, director, shareholder, agent or employee of Borrower or a partner of Borrower, shall have any personal liability for the payment of any judgment under or with respect to this Agreement, any certificates, agreements or indemnities delivered pursuant to the Loan Documents, the Loans or any of the Loan Documents, or the performance of any obligations hereunder or thereunder (and Lenders shall not name any officer, director, shareholder, agent, employee or partner of Borrower in any action unless any such party is a necessary party to the action under applicable law), except that nothing in this Section 10.20 shall (i) limit the availability of remedies against the Borrower, including without limitation the remedy of specific performance, or (ii) exculpate any such partner from being personally liable to Administrative Agent or Lenders to the extent Administrative Agent or Lenders incur damages as a result of (a) the fraud of such partner or a misrepresentation by such partner with intent to mislead or defraud, (b) transfers of properties to such partner that are fraudulent conveyances or preferential transfers under the Federal Bankruptcy Code or similar state laws, and (c) distributions made to such partner which are unlawful under the Delaware Revised Uniform Limited Partnership Act or any successor provisions thereof (or if the Borrower is organized under the laws of a state other than Delaware or under any other organizational statute, under any similar law of such other state or such organizational statute). Nothing contained herein shall limit the rights of Administrative Agent or Lenders pursuant to the Guarantee or the Environmental Indemnity.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

BORROWER:

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

By: Stockton GP, L.L.C., a Delaware limited liability company, its general partner

By: _____
Name: THOMAS W. ROBERTS
Its: Vice President

ADMINISTRATIVE AGENT AND LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent and a Lender

By: _____
Name: _____
Its: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

BORROWER:

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

By: Stockton GP, L.L.C., a Delaware limited liability company, its general partner

By: _____
Name: _____
Its: _____

ADMINISTRATIVE AGENT AND LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent and a Lender

By: BPS/K
Name: BEN SINGH
Its: VICE PRESIDENT

EXHIBIT A

LEGAL DESCRIPTION OF LAND

(attached hereto)

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF STOCKTON, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING PORTIONS OF THOSE CERTAIN PARCELS OF LAND CONTAINING 135.000 ACRES GROSS AND 22.06 ACRES GROSS AS SHOWN ON THAT CERTAIN RECORD OF SURVEY FILED FOR RECORD ON FEBRUARY 5, 1969, IN BOOK 18 OF SURVEYS, PAGE 126, OFFICIAL RECORDS SAN JOAQUIN COUNTY, BEING SITUATE IN NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF NEWCASTLE ROAD AND THE MONUMENT LINE OF ARCH ROAD, SAID POINT BEING THE SOUTHWEST CORNER OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, AS SHOWN ON SAID MAP;

THENCE NORTHERLY ALONG SAID CENTERLINE, NORTH 0° 21' 46" WEST, 568.23 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE CONTINUING ALONG SAID CENTERLINE, NORTH 0° 21' 46" WEST, 1278.55 FEET;

THENCE LEAVING SAID CENTERLINE, NORTH 89° 38' 14" EAST, 1654.47 FEET;

THENCE SOUTH 0° 21' 46" EAST, 843.40 FEET TO A POINT THAT BEARS NORTH 89° 38' 14" EAST, 36.00 FEET, AND NORTH 74° 35' 18" EAST, 1675.95 FEET FROM THE POINT OF BEGINNING OF THIS DESCRIPTION;

THENCE SOUTH 74° 35' 18" WEST, 1675.95 FEET;

THENCE SOUTH 89° 38' 14" WEST, 36.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,763,186 SQUARE FEET OR 40.4772 ACRES, MORE OR LESS.

THE BEARING OF NORTH 0° 21' 46" WEST TAKEN ON THE CENTER LINE OF NEWCASTLE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005, IN BOOK 23 OF PARCEL MAPS AT PAGE 118, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY WAS TAKEN AS THE BASIS FOR ALL BEARINGS SHOWN HEREON.

Parcel 1A:

A non-exclusive easement, appurtenant to Parcel 1 hereinabove, as reserved by Arch Road Limited Partnership, a Delaware limited partnership, pursuant to Section 2.3.3(b) of that certain Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Arch Road Logistics Center, executed by Arch Road Limited Partnership, a Delaware limited partnership, recorded May 14, 2008, Instrument No. 2008-079802, in the Office of the Recorder of San Joaquin County, California, within that portion of "Adjusted Parcel 3" (as defined and described in such Agreement) described in Exhibit "D" to such Declaration for the placement and use of a private storm drain.

Parcel 1B:

Easements, appurtenant to Parcel 1 hereinabove, as granted to Arch Road Limited Partnership, a Delaware limited partnership, pursuant to the following sections that certain Shared Access and Improvement Easement and Cost Sharing Agreement, by and between Arch Road Limited Partnership, a Delaware limited partnership, and First American Trust, FSB, Trustee of The Arch Road Trust, Trust No. 1082-0291-00, recorded May 14, 2008, Instrument No. 2008-079804, in the Office of the Recorder of San Joaquin County, within those portions of "Adjusted Parcel 3" (as defined and described in such Agreement) described in such sections and for the purposes set forth therein:

Pursuant to Section 2.2 thereof, a non-exclusive, temporary easement to perform Work (as defined in such

Agreement) within the Shared Area (as defined in such Agreement), as more particularly set forth therein.

Pursuant to Section 3.2 thereof, non-exclusive easement on, over, under, through and across the Shared Access Roadway (as defined in such Agreement) for vehicular and pedestrian ingress, egress and access, as more particularly set forth therein.

Pursuant to Section 3.3 thereof, non-exclusive easements for water drainage and use of bioswales and storm drainage improvements within such Shared Area, as more particularly set forth therein.

A Portion of APN's: 181-100-12 AND 181-100-02

Parcel 2:

Being a portion of Parcel One, as shown on that certain parcel map filed for record on May 24, 2005 in Book 23 of Parcel Maps at page 118, San Joaquin County Records, and being more particularly described as follows:

Beginning at a point in the Westerly line of Newcastle Road, said point being the southeasterly corner of Parcel One as shown on said map;

Thence North 89° 55' 02" West, 1106.63 feet to the southwest corner of Parcel One;

Thence, along the Westerly line of Parcel One North 0° 04' 58" East, 749.14 feet;

Thence, South 89° 56' 32" East 1100.80 feet to a point on said westerly line of Newcastle Road;

Thence, along said Westerly Line of Newcastle Road South 0° 21' 46" East, 749.64 feet to the Point of Beginning

APN: 181-110-24

STOCKTON		\$48,700,000 CONSTRUCTION LOAN # 1000241			
Opus West Corporation					
Stockton, CA					
Building # 3: 388,000 SF					
Building # 8: 735,980 SF					
		TOTAL NRSF 1,123,980			
DEVELOPMENT BUDGET					
DESCRIPTION	TOTAL COST	EQUITY \$	LOAN BUDGET	COST/ NRSF	% OF TOTAL COST
LAND					
Land Cost	\$9,677,778	\$9,677,778	\$0	\$8.61	14.3%
TOTAL LAND	\$9,677,778	\$9,677,778	\$0	\$8.61	14.3%
HARD COSTS					
Base Building-Building # 3	\$12,445,283	\$5,430,095	\$7,015,188	\$6.24	25.6%
Base Building-Building # 8	\$21,732,240		\$21,732,240	\$19.34	44.6%
Design-Building #3	\$39,000		\$39,000	\$0.03	0.1%
Design-Building #8	\$73,598		\$73,598	\$0.07	0.2%
Tenant Improvements-Building # 3	1,164,000	-	\$1,164,000	1.04	2.4%
Tenant Improvements-Building # 8	2,207,940		\$2,207,940	1.96	4.5%
TOTAL HARD COSTS	\$37,662,061	\$5,430,095	\$32,231,966	\$33.51	55.6%
SOFT COSTS					
General Contractor Fee-Building # 3	\$746,717	\$746,717	\$0	\$0.66	1.5%
General Contractor Fee-Building # 8	\$1,303,934	\$1,303,934		\$1.16	2.7%
Government Charges-Building # 3	2,716,000	-	\$2,716,000	\$2.42	5.6%
Government Charges-Building # 8	4,415,880		\$4,415,880	\$3.93	9.1%
Leasing Commissions-Building # 3	776,000	-	\$776,000	\$0.69	1.6%
Leasing Commissions-Building # 8	1,368,923		\$1,368,923	\$1.22	2.8%
Legal & Other Loan Expenses	1,361,937	-	\$1,361,937	\$1.21	2.8%
Marketing	50,000	-	\$50,000	\$0.04	0.1%
Real Estate Taxes	132,000	-	\$132,000	\$0.12	0.3%
Development Fee-Building # 3	686,749	686,749	\$0	\$0.61	1.4%
Development Fee-Building # 8	1,232,930	1,232,930	\$0	\$1.10	2.5%
Interest Reserve	4,147,294	-	\$4,147,294	\$3.69	8.5%
Soft Cost Contingency-Building # 3	500,000		\$500,000	\$0.44	1.0%
Soft Cost Contingency-Building # 8	1,000,000		\$1,000,000	\$0.89	2.1%
TOTAL SOFT COST	\$20,438,364	\$3,970,330	\$16,468,034	\$18.18	30.2%
TOTAL DEVELOPMENT COSTS	\$67,778,203	\$19,078,203	\$48,700,000	\$60.30	100.0%
PERCENT OF TOTAL COSTS	100%	28%	71.9%		
LOAN PER SQUARE FOOT			43.33		

EXHIBIT C

CONSTRUCTION DRAW REQUEST FORM

(attached hereto)

WELLS FARGO BANK, N.A.
CONSTRUCTION DRAW REQUEST (Exhibit C to Loan #1000241)

Page 1 of 2

Request No.: _____ Date of Request: _____

Period Covered: _____ to _____

Borrower: Arch Road Limited Partnership

Loan Agreement Date: _____ Loan No.: 1000241

A request is hereby made for payment of the sum indicated below which we believe to be payable in accordance with the Construction Loan Agreement referred to above between Borrower and Lender. Following is a summary of the payment requested with additional detail provided in the attached Contractor's PROGRESS CERTIFICATE and REQUEST FOR PAYMENT.

TOTAL LOAN AMOUNT: \$ 48,700,000.00

TOTAL LOAN TO DATE: \$ _____

TOTAL PROJECT COSTS TO DATE: \$ _____

PAYMENT REQUESTED

TOTAL OF THIS REQUEST: \$ _____

PREVIOUSLY DISBURSED: \$ _____

TOTAL UNDISBURSED LOAN: \$ _____

EXPRESS MAIL TO:

With Enclosures:

Wells Fargo Real Estate Group
Disbursement Department
2120 E. Park Place, Suite 100
El Segundo, CA 90245
Attn: Shirley Floresca

Wells Fargo Bank, N.A.
Real Estate Technical Services Group
707 Wilshire Blvd., 11th floor
Los Angeles, CA 90071
Attn: Gus Avila

Without Enclosures:

Wells Fargo Bank, N.A.
2030 Main Street, Suite 800
Irvine, CA 92614
Attn: Ben Singh

Borrower represents and warrants that:

- (1) Construction of the improvements to the date of this request have been performed in accordance with the Plans and Specifications submitted to Lender;
- (2) There have been no change orders or budget re-allocations, whether such change or reallocation increases or decreases the total cost of the Improvements, which require the consent of Lender;
- (3) There is no Default or Event of Default under the Construction Loan Agreement or the Construction Agreement;
- (4) All governmental licenses and permits required by the Construction Loan Agreement have been obtained and still are effective;
- (5) For value received, the undersigned hereby waives all rights to and claims for a lien on the land described in the Construction Loan Agreement and warrants that all payments required by reason of the work referred to above and due to subcontractors, laborers and materialmen and any others having mechanic's lien rights have been made or will be made upon receipt of the requested funds, and each of them have waived, or will waive, their lien rights for the period covered by this application for payment except amounts retained pursuant to the terms of the Construction Agreement and only as to any amount as is specifically noted in the Progress Certificate (Contractor's AIA document).
- (6) The amount requested for non-construction and construction items represents the actual dollar amounts expended or to be expended as soon as possible after receipt of this disbursement for the items indicated, and
- (7) All amounts previously disbursed for non-construction and construction items have been paid by Borrower for the items indicated in previous disbursement requests. All amounts previously recognized as equity and loan proceeds have been paid to the parties entitled thereto.

BORROWER:

Arch Road Limited Partnership, a Delaware limited partnership

By: Stockton GP, L.L.C., a Delaware limited liability company, its
general partner

By: _____
Name: _____
Its: _____

EXHIBIT D
FIXED RATE NOTICE

(attached hereto)

TODAY'S DATE: _____ LOAN MATURITY DATE: August 15, 2010

TO: WELLS FARGO BANK, N.A.
DISBURSEMENT AND OPERATIONS CENTER
FAX # (310) 615-1014 or (310) 615-1016
ATTENTION: RATE OPTION DESK

LOAN ADMINISTRATOR: Jeri Gehrler

RELATIONSHIP
MANAGER: Ben Singh

BORROWER INTEREST RATE OPTION REQUEST
Rate Quote Line (888) 293-2362 x:472 Use One Form Per Transaction

LOAN #: 1000241 BORROWER NAME: Arch Road Limited Partnership

RATE SET DATE: _____ FIXED RATE COMMENCEMENT DATE: _____ (1350)
FIXED RATE PERIOD (TERM): _____ (i.e. 1, 2, 3 months, etc. as allowed per Note)

INDEX: LIBO RATE: % + 2.25% = #s% (1350)
Quote Spread Applicable Rate

FIXED RATE PORTION EXPIRING ON: _____ \$ _____

1. AMOUNT ROLLING OVER \$ _____ FROM OBLGN#: _____
2. ADD: AMT TRANSFERRED FROM
VARIABLE RATE PORTION \$ _____ FROM OBLGN#: (5522) TO OBLGN#: (5020)
3. ADD: AMT TRANSFERRED FROM
OTHER FIXED RATE PORTION \$ _____ FROM OBLGN#: (5522) TO OBLGN#: (5020)
- ADD: AMT TRANSFERRED FROM
OTHER FIXED RATE PORTION \$ _____ FROM OBLGN#: (5522) TO OBLGN#: (5020)
4. LESS: AMT TRANSFERRED TO
VARIABLE RATE PORTION \$ _____ FROM OBLGN#: (5522) TO OBLGN#: (5020)
- TOTAL FIXED RATE PORTION: \$ _____

ADMINISTRATION FEE DUE: \$0.00
CHARGE FEES TO DDA#: _____ YES, charge DDA DDA#: _____
_____ NO, to be remitted PLEASE REMIT FEE TO: Los Angeles Loan Center
2120 E. Park Place, Suite 100
El Segundo, CA 90245

Borrower confirms, represents and warrants to Lender, (a) that this selection of a Fixed Rate is subject to the terms and conditions of the Note, Fixed Rate Agreement and Loan Documents (as applicable), and (b) that terms, words and phrases used but not defined in this Notice have the meanings attributed thereto in the Note, Fixed Rate Agreement and Loan Documents (as applicable), and (c) that no breach, failure of condition, or Default has occurred or exists, or would exist after notice or passage of time or both, under the Note or the Loan Documents.

REQUESTED BY (as allowed per documents): _____ TELEPHONE #: ()
PRINT NAME: _____ FAX #: ()

EXHIBIT E

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is dated as of _____, 20____, between _____ ("Assignor") and _____ ("Assignee").

RECITALS:

Assignor is a Lender under that certain Construction Loan Agreement dated as of _____ (as amended, supplemented or restated from time to time, the "Loan Agreement") by Arch Road Limited Partnership ("Borrower"), Lenders that are parties thereto, and Wells Fargo Bank, National Association, as Administrative Agent. Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to such terms in the Loan Agreement. Assignor desires to assign to Assignee and Assignee desires to accept and assume [a **portion of**] the rights and obligations of Assignor under this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

1. **Assignment.** Effective on the Assignment Effective Date (as defined in Section 3 below), Assignor hereby assigns to Assignee an Assigned Share (as defined below) of all of Assignor's rights, title, interest and obligations under this Agreement, including without limitation, those relating to the Loan without representation (except as provided herein) or recourse. The Assigned Share of all such rights, title, interest and obligations is referred to collectively as the "Assigned Rights and Obligations".

The "Assigned Share" means a \$ _____ portion of the Loan. The percentage of the Loan represented by the Assigned Share shall equal the quotient of the above portion of the Loan divided by \$ _____ expressed as a percentage rounded to eight decimal places.

2. **Assumption.** Effective on the Assignment Effective Date, Assignee hereby accepts the foregoing assignment of, and hereby assumes from Assignor, the Assigned Rights and Obligations.

3. **Effectiveness.** This Agreement shall become effective on a date (the "Assignment Effective Date") selected by Assignor, which shall be on or as soon as practicable after the execution and delivery of counterparts of this Agreement by Assignor, Assignee, Administrative Agent and Borrower. Assignor shall promptly notify Assignee, Administrative Agent and Borrower in writing of the Assignment Effective Date.

4. **Payments on Assignment Effective Date.** In consideration of the assignment by Assignor to and the assumption by Assignee of the Assigned Rights and Obligations, on the

Assignment Effective Date (a) Assignee shall pay to Assignor such amounts as are specified in any written agreement or exchange of letters between them, and (b) Assignee shall pay to Administrative Agent an assignment processing fee of Three Thousand Five Hundred and NO/100ths Dollars (\$3,500.00).

5. Allocation and Payment of Interest and Fees.

(a) Administrative Agent shall pay to Assignee all principal, interest, and other amounts that are paid by or on behalf of Borrower pursuant to the Loan Documents and are attributable to the Assigned Rights and Obligations ("Borrower Amounts"), that accrue on and after the Assignment Effective Date. If Assignor receives or collects any such Borrower Amounts, Assignor shall promptly pay them to Assignee.

(b) Administrative Agent shall pay to Assignor all Borrower Amounts that accrue before the Assignment Effective Date when and as the same are paid by Administrative Agent to the other Lenders. If Assignee receives or collects any such Borrower Amounts, Assignee shall promptly pay such amounts to Assignor.

(c) Unless specifically assumed by Assignee, Assignor shall be responsible and liable for all reimbursable liabilities and costs and indemnification obligations which accrue prior to the Assignment Effective Date, and such liability shall survive the Assignment Effective Date.

(d) Administrative Agent shall not be liable for any allocation or payment to either Assignor or Assignee subsequently determined to be erroneous, unless resulting from Administrative Agent's willful misconduct or gross negligence.

6. Representations and Warranties.

(a) Each of Assignor and Assignee represents and warrants to the other and Administrative Agent as follows:

(i) It has full power and authority, and has taken all action necessary, to execute and deliver this Agreement and to fulfill its obligations under, and to consummate the transactions contemplated by this Agreement;

(ii) The making and performance of this Agreement and all documents required to be executed and delivered by it hereunder do not and will not violate any law or regulation applicable to it;

(iii) This Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable in accordance with its terms; and

(iv) All approvals, authorizations or other actions by, or filings with, any governmental authority necessary for the validity or enforceability of its obligations under this Agreement have been made or obtained.

(b) Assignor represents and warrants to Assignee that Assignor owns the Assigned Rights and Obligations, free and clear of any lien or other encumbrance.

(c) Assignee represents and warrants to Assignor as follows:

(i) Assignee has made and shall continue to make its own independent investigation of the financial condition, affairs and creditworthiness of Borrower and any other person or entity obligated under the Loan Documents (collectively, "Credit Parties"), and the value of any Project now or hereafter securing any of the Obligations; and

(ii) Assignee has received a copy of those Loan Documents and such other documents, financial statements and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement.

7. No Assignor Responsibility. Assignor makes no representation or warranty and assumes no responsibility to Assignee for:

(a) the execution (by any party other than Assignor), effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of the Loan Documents or for any representations, warranties, recitals or statements made in the Loan Documents or in any financial or other written or oral statement, instrument, report, certificate or any other document made or furnished or made available by Assignor to Assignee or by or on behalf of any Credit Party to Assignor or Assignee in connection with the Loan Documents and the transactions contemplated thereby;

(b) the performance or observance of any of the terms, covenants or agreements contained in any of the Loan Documents or as to the existence or possible existence of any Event of Default under the Loan Documents; or

(c) the accuracy or completeness of any information provided to Assignee, whether by Assignor or by or on behalf of any Credit Party.

Assignor shall have no initial or continuing duty or responsibility to make any investigation of the financial condition, affairs or creditworthiness of any of the Credit Parties, or the value of any Project, in connection with the assignment of the Assigned Rights and Obligations or to provide Assignee with any credit or other information with respect thereto whether coming into its possession before the date hereof or at any time or times thereafter.

8. Assignee Bound By Loan Agreement. Effective on the Assignment Effective Date, Assignee (a) shall be deemed to be a party to this Agreement, (b) agrees to be bound by this

Agreement as it would have been if it had been an original lender thereunder, and (c) agrees to perform in accordance with their respective terms all of the obligations which are required under the Loan Documents to be performed by it as a Lender. Assignee appoints and authorizes Administrative Agent to take such actions as agent on its behalf and to exercise such powers under the Loan Documents as are delegated to Administrative Agent by the terms thereof, together with such powers as are reasonably incidental thereto.

9. Assignor Released From Loan Agreement. Effective on the Assignment Effective Date, Assignor shall be released from the Assigned Rights and Obligations; provided, however, that Assignor shall retain all of its rights to indemnification under this Agreement and the other Loan Documents for any events, acts or omissions occurring before the Assignment Effective Date, and to the extent not assumed by Assignee, Assignor shall continue to be responsible for the liabilities and obligations described in Section 5(c) hereof.

10. New Notes. On or promptly after the Assignment Effective Date, Borrower, Administrative Agent, Assignor and Assignee shall make appropriate arrangements so that new Notes executed by Borrower, dated the Assignment Effective Date and in the amount of the [respective] commitment[s] of [Assignor and] Assignee, after giving effect to this Agreement, are issued to [Assignor and] Assignee, in exchange for the surrender by Assignor [and Assignee] to Borrower of any applicable outstanding Note[s].

11. General.

(a) No term or provision of this Agreement may be amended, waived or terminated orally, but only by an instrument signed by the parties hereto.

(b) This Agreement may be executed in one or more counterparts. Each set of executed counterparts shall be an original. Executed counterparts may be delivered by facsimile transmission.

(c) If Assignor has not assigned its entire remaining commitment of the Loan to Assignee, Assignor may at any time and from time to time grant to others pursuant to this Agreement assignments of or participations in all or part of Assignor's remaining Loan or Commitment.

(d) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither Assignor nor Assignee may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Administrative Agent and Borrower pursuant to Section 10.17 of the Loan Agreement. The preceding sentence shall not limit the right of Assignee to grant to others assignment of or participation in all or part of the Assigned Rights and Obligations to the extent permitted by the terms of this Agreement.

(e) All payments to Assignor or Assignee hereunder shall, unless otherwise specified by the party entitled thereto, be made in U.S. Dollars, in immediately available funds,

and to the address or account specified on the signature pages of this Agreement. The address of Assignee for notice purposes under this Agreement shall be as specified on the signature pages of this Agreement.

(f) If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions hereof will not be affected or impaired in any way.

(g) Each party shall bear its owns expenses in connection with the preparation and execution of this Agreement.

(h) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, excluding its choice of law provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

ASSIGNOR:

By: _____

Name: _____

Title: _____

[CORPORATE SEAL]

ASSIGNEE:

By: _____

Name: _____

Title: _____

[CORPORATE SEAL]

ACKNOWLEDGED AND AGREED:

BORROWER:

ARCH ROAD LIMITED PARTNERSHIP, a
Delaware limited partnership

By: Stockton GP, L.L.C., a Delaware limited liability
company, its general partner

By: _____

Name: _____

Title: _____

AGENT:

WELLS FARGO BANK, NATIONAL
ASSOCIATION, a national banking association

By: _____

Name: _____

Title: _____

EXHIBIT F

Payment and Notice Instructions

Notices

To Administrative Agent and Wells Fargo:

Wells Fargo Bank, National Association
2030 Main Street
Suite 800
Irvine, California 92614
Attn: Ben Singh
Telephone: (949) 251-4429
Facsimile: (949) 851-9728

with a copy to:

Wells Fargo Bank, National Association
2030 Main Street
Suite 800
Irvine, California 92614
Attn: Jeri Gehrer
Telephone: (949) 251-4330
Facsimile: (949) 851-9728

WIRE INSTRUCTIONS

For Administrative Agent and Wells Fargo:

INSTRUCTION FOR PAYMENT (Paydowns/Payoffs/Disbursements)

Wells Fargo requires payment to be made by wire transfer only. Alternative methods of payments, i.e., check, Lender draft, cashier's check, etc., are not acceptable unless prior approval has been given by the Payoff Department.

Please wire all funds through the Federal Reserve Lender, ABA 12100024-8 as follows:

BNF - WELLS FARGO BANK REG DISBURSEMENT CENTER/AC293450720
OBI - Name of Borrower: Arch Road Limited Partnership
Project Name: Stockton
Loan Number: 1000241
Attention: Shirley Floresca

For Libor Disbursements/Payments:
2120 East Park Place
El Segundo, California 90245
Attention: Disbursement Administrator
Reference: Stockton
Loan Number: 1000241
Advise/phone: Shirley Floresca 310/335-9440

For all other Disbursement/Payment Matters:
2120 East Park Place
El Segundo, California 90245
Attention: Disbursement Administrator
Reference: Stockton
Loan Number: 1000241
Advise/phone: Shirley Floresca 310/335-9440

EXHIBIT G

ENVIRONMENTAL REPORT

Phase I and Screening Level Phase II Environmental Site Assessment prepared
by GeoTrans, Inc., dated July 2007.

EXHIBIT H

TRANSFER AUTHORIZATION NOTICE

TRANSFER AUTHORIZER DESIGNATION

(For Disbursement of Loan Proceeds by Funds Transfer)

☐ NEW ☐ REPLACE PREVIOUS DESIGNATION ☐ ADD ☐ CHANGE ☐ DELETE LINE NUMBER ____
☐ INITIAL LOAN DISBURSEMENT

The following representatives of Arch Road Limited Partnership ("Borrower") are authorized to request the disbursement of Loan Proceeds and initiate funds transfers for Loan Number 1000241 dated _____, 2008 between Wells Fargo Bank, National Association ("Lender") and Borrower. Lender is authorized to rely on this Transfer Authorizer Designation until it has received a new Transfer Authorizer Designation signed by Borrower, even in the event that any or all of the foregoing information may have changed.

	Name	Title	Maximum Wire Amount ¹
1.			
2.			
3.			
4.			
5.			

Initial Loan Disbursement Authorization ☐ Not Applicable ☐ Applicable — Lender is hereby authorized to accept wire transfer instructions from _____ (ie. specify title company escrow) to be delivered, via fax, email, letter or other method, to Lender for title/escrow # _____ and/or loan # 1000241. Said instructions shall include the title/escrow company's Receiving Party Account Name, city and state, Receiving Party Account Number, Receiving Lender's (ABA) Routing Number, Maximum Transfer Amount required, Borrower's name, title order/escrow number to which Lender shall fund the Initial Loan Disbursement under the loan number referenced above. The amount of said transfer shall not exceed \$ _____. Borrower acknowledges and agrees that the acceptance of and wire transfer of funds by Lender in accordance with the title/escrow company instructions shall be governed by this Transfer Authorizer Designation form and any other Loan Documents dated _____ by and between Lender and Borrower. Lender shall not be further required to confirm said wiring instructions received from title/escrow company with Borrower. This Initial Loan Disbursement Authorization is in effect until _____, 2008 after which time a new authorization request shall be required. Borrower shall instruct title/escrow company via a separate letter, to deliver said wiring instructions in writing, directly to Lender at its address. Borrower also hereby authorizes Lender to attach a copy of the title/escrow company's written wire instructions to this Transfer Authorizer Designation form upon receipt of said instructions.

Beneficiary Bank and Account Holder Information

1.

Transfer Funds to (Receiving Party Account Name):

Receiving Party Account Number:

Receiving Bank Name, City and State:	Receiving Bank Routing (ABA) Number
Maximum Transfer Amount:	
Further Credit Information/Instructions:	

2.

Transfer Funds to (Receiving Party Account Name):	
Receiving Party Account Number:	
Receiving Bank Name, City and State:	Receiving Bank Routing (ABA) Number
Maximum Transfer Amount:	
Further Credit Information/Instructions:	

3.

Transfer Funds to (Receiving Party Account Name):	
Receiving Party Account Number:	
Receiving Bank Name, City and State:	Receiving Bank Routing (ABA) Number
Maximum Transfer Amount:	
Further Credit Information/Instructions:	

1 Maximum Wire Amount may not exceed the Loan Amount.

Date: _____, 2008

"BORROWER"

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

By: Stockton GP, L.L.C., a Delaware limited liability company, its general partner

By: _____
Name: _____
Its: _____

SCHEDULE 2.6

LOAN FEES AND EXPENSES

Appraisal Fee	\$8,100.00
Costing Report Fee	\$3,100.00
Environmental Fee	\$640.00
Flood Certificate Fee	\$10.00
Tax Reporting Service Fee	\$240.00
Legal Fees	\$24,245.70
Loan Fee	\$243,500.00
TOTAL	\$279,835.70

EXHIBIT D

NOTE SECURED BY DEED OF TRUST

\$48,700,000

August 15, 2008

FOR VALUE RECEIVED, ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership ("Borrower"), HEREBY PROMISES TO PAY to the order of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender") the principal sum of FORTY-EIGHT MILLION SEVEN HUNDRED THOUSAND AND NO/100THS DOLLARS (\$48,700,000.00) or if less, the aggregate unpaid principal amount of all "Advances" disbursed by Lender pursuant to the terms and provisions of that certain Construction Loan Agreement, dated as of even date herewith (as the same may be amended, supplemented, extended, restated or modified from time to time, the "Loan Agreement"), among Borrower, Administrative Agent, and Lenders, together with interest on the unpaid principal balance of the Loan at the rates set forth in the Loan Agreement from the date any such Advances are made until payment in full thereof. Any capitalized term used herein, unless otherwise defined herein, shall have the meaning ascribed to such term in the Loan Agreement.

Borrower further promises to pay interest on the unpaid principal amount of the Loan from the date on which any Advances are made until the principal amount of the Loan is paid in full, at such interest rates (which shall not exceed the maximum rate permitted by applicable law), and at such times, as are specified in the Loan Documents.

In addition to the interest charges described in the Loan Documents, the Loan Documents provide for the payment by Borrower of various other charges and fees as set forth more fully in the Loan Documents. All payments in respect of this Note shall be made to Lender in lawful money of the United States of America in same day funds for the account of Lender in accordance with the terms of the Loan Documents.

This Note is the Note referred to in, is executed and delivered pursuant to, and is entitled to the benefits of, the Loan Agreement, to which Loan Agreement reference is hereby made for a statement of the terms and conditions under which this Note may be prepaid or the Loan Obligations accelerated or extended. The terms and conditions of the Loan Documents are hereby incorporated in their entirety herein by reference as though fully set forth herein. Upon the occurrence of certain Events of Default as more particularly described in the Loan Agreement, the unpaid principal amount evidenced by this Note shall become, and upon the occurrence and during the continuance of certain other Events of Default, such unpaid principal amount may be declared to be, due and payable in the manner, upon the conditions and with the effect provided in the Loan Agreement.

As provided in the Loan Agreement, the principal amount of this Note will be due and payable, if not sooner paid, on the earlier of (i) the Loan Maturity Date (as extended pursuant to the Loan Agreement, if applicable), and (ii) the acceleration of the Loan pursuant to Section 8.2 or any other applicable section of the Loan Agreement. As further provided in the Loan Agreement, Borrower may make voluntary prepayments of all or a portion of this Note, upon not

less than five (5) Business Days' prior written notice, pursuant to the provisions of Section 2.12 of the Loan Agreement.

Borrower hereby agrees to the interest rates required hereunder and under the Loan Documents, including without limitation the additional interest rates, fees and charges required hereunder and under the Loan Documents, and including without limitation any fees, charges or amounts adjudged or declared by a governmental entity to constitute interest. It is the intent of Lender and Borrower in the execution and delivery of this Note by Borrower and all other instruments now or hereafter securing this Note to contract in strict compliance with applicable usury law. In furtherance thereof, Lender and Borrower stipulate and agree that none of the terms and provisions contained in this Note, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, at a rate in excess of the maximum interest rate permitted to be charged by applicable law. Neither Borrower nor any guarantors, endorsers or other parties now or hereafter becoming liable for payment of this Note shall ever be obligated or required to pay interest on this Note at a rate or in an amount in excess of the maximum interest that may be lawfully charged under applicable law, and the provisions of this paragraph shall control over all other provisions regarding usury contained in this Note and the provisions regarding usury contained in any other instruments now or hereafter executed in connection herewith which may be in apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of this Note is accelerated pursuant to the terms and provisions of the Loan Documents. If the maturity of this Note shall be accelerated for any reason or if the principal of this Note is paid prior to the end of the term of the Loan, and as a result thereof the interest received for the actual period of existence of the Loan evidenced by this Note exceeds the amount of interest that would have accrued at the applicable maximum lawful rate, Lender or other holder of this Note shall, at its option, either refund to Borrower the amount of such excess or credit the amount of such excess against the principal balance of this Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Lender or any other holder of this Note shall contract for, charge or receive any amount and/or any other thing of value which is determined to constitute interest and which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, all such sums determined to constitute interest in excess of interest at the lawful rate shall, upon such determination, at the option of Lender or other holder of this Note, be either immediately returned to Borrower or credited against the principal balance of this Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Note, Borrower acknowledges that it believes the Loan evidenced by this Note to be non-usurious and agrees that if, at any time, Borrower should have reason to believe that such Loan is in fact usurious, it will give Lender or other holder of this Note notice of such condition and Borrower agrees that Lender or other holder shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such condition exists.

This Note is secured by certain Liens and security interests granted pursuant to the Loan Agreement and other Loan Documents and reference is made to the Loan Agreement and such other Loan Documents for the terms and conditions governing the collateral security for the obligations of Borrower hereunder.

Demand, presentment, protest and notice of nonpayment and protest, notice of intention to accelerate maturity, notice of acceleration of maturity and notice of dishonor are hereby waived by Borrower. Subject to the terms and provisions of the Loan Documents, Lender may extend the time of payment of this Note, postpone the enforcement hereof, grant any indulgences, release any party primarily or secondarily liable hereon or agree to any substitution, subordination, exchange or release of security without affecting or diminishing such Lender's right of recourse against Borrower, which right is hereby expressly reserved.

This Note has been delivered and accepted at Irvine, California and shall be governed by, and construed and enforced in accordance with the laws of the State of California, except to the extent preempted by federal laws.

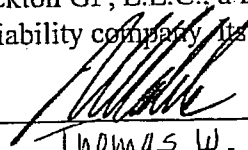
Whenever possible each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

[Signature Page Follows]

IN WITNESS WHEREOF, Borrower executed this Note as of the date appearing on the first page of this Note.

ARCH ROAD LIMITED PARTNERSHIP, a
Delaware limited partnership

By: Stockton GP, L.L.C., a Delaware
limited liability company, its general partner

By: 
Name: THOMAS W. ROBERTS
Its: VICE PRESIDENT

(Note)

EXHIBIT E

(Multicurrency – Cross Border)

ISDA®

International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of August 13, 2008

WELLS FARGO BANK, N.A.

and

ARCH ROAD LIMITED PARTNERSHIP,
a Delaware limited partnership

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

(a) *Definitions.* The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.

(b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) General Conditions.

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting.* If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(i) to be accurate and true unless such failure would not have occurred but for (i) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (ii) a Change in Tax Law.

(ii) *Liability. If: -*

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(c) *Default Interest; Other Amounts.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. *Representations*

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) *Basic Representations.*

(i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) *Absence of Certain Events.* No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) *Absence of Litigation.* There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) *Accuracy of Specified Information.* All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) *Payer Tax Representation.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) *Payee Tax Representations.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) *Furnish Specified Information.* It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) *Maintain Authorisations.* It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) *Comply with Laws.* It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) *Tax Agreement.* It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(c) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. **Events of Default and Termination Events**

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) *Bankruptcy*. The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) *Merger Without Assumption*. The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events*. The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) *Illegality*. Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any

court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) *Tax Event.* Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) *Tax Event Upon Merger.* The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5 (a)(viii);

(iv) *Credit Event Upon Merger.* If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) *Additional Termination Event.* If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) *Event of Default and Illegality.* If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate. If:—**

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(c) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(c).

(d) *Calculations.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(c) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(c)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) *Payment Date.* An amount calculated as being due in respect of any Early Termination Date under Section 6(c) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) *Events of Default.* If the Early Termination Date results from an Event of Default:—

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that

amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities.* To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) *Amendments.* No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and

privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. **Offices; Multibranch Parties**

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. **Expenses**

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. **Notices**

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) *Waiver of Immunities.* Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient.

(including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and "lawful" and "unlawful" will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was, absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the

Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meaning specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

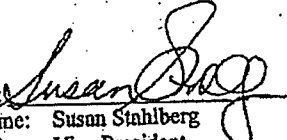
"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

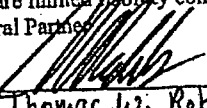
IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

WELLS FARGO BANK, N.A.

By: 
Name: Susan Stahlberg
Title: Vice President

ARCH ROAD LIMITED PARTNERSHIP,
a Delaware limited partnership

By: Stockton GP, LLC,
a Delaware limited liability company
its General Partner

By: 
Name: Thomas W. Roberts
Its: Vice President

SCHEDULE

to the

ISDA MASTER AGREEMENT

This is the Schedule to that certain ISDA Master Agreement dated as of August 13, 2008, between WELLS FARGO BANK, N.A. ("Party A") and ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership ("Party B").

PART 1

Termination Provisions

In this Agreement:

(A) "Specified Entity" means "Affiliates" in relation to Party B, and "not applicable" in relation to Party A.

(B) "Specified Transaction" will have the meaning specified in Section 14 of this Agreement. In addition, Specified Transaction shall also include any agreements or obligations between Party A (or any Affiliate of Party A) and Party B, including, without limitation, any loan, lines of credit, credit agreement, reimbursement agreement, security agreement or other similar agreement.

(C) The "Cross-Default" provisions of Section 5(a)(vi) of this Agreement will apply to Party A and to Party B.

"Specified Indebtedness" will have the meaning specified in Section 14; provided it shall include any amount due and payable in respect of any Specified Transaction (except that, for this purpose only, the words "and any other entity" shall be substituted for the words "and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party)" where they appear in the definition of Specified Transaction); and with respect to Party A such term shall not include obligations in respect of deposits received in the ordinary course of Party A's banking business.

"Threshold Amount" means with respect to Party A, an amount equal to 3% of the Shareholders Equity (as hereinafter defined) of Party A and with respect to Party B, any Specified Entity of Party B and any Credit Support Provider of Party B, zero.

For purposes of the foregoing, the term "Shareholders Equity" shall mean an amount equal to the greater of (x) zero and (y) an amount equal to such party's total assets *minus* its total liabilities, as reflected on such party's most recent audited financial statements, or if such party does not have audited financial statements, then its most recent quarterly financial statements.

(D) The "Credit Event Upon Merger" provisions of Section 5(b)(iv) of this Agreement will apply to Party A and to Party B.

(E) The "Automatic Early Termination" provision of Section 6(a) of this Agreement will not apply to Party A or to Party B.

(F) Payments on Early Termination. For the purpose of Section 6(e) of this Agreement: (i) Loss will apply, and (ii) Second Method will apply.

(G) "Termination Currency" means United States Dollars.

(H) Additional Termination Event will apply. Each of the following shall constitute an Additional Termination Event:

(i) Any promissory note, loan agreement, credit agreement reimbursement agreement or other document or instrument, whether now existing or entered into hereafter, evidencing a credit extension from Party A (or any Affiliate of Party A) to Party B, is terminated, cancelled, voided, breached or amended in any manner which would affect Party's B ability to perform its obligations under this Agreement, determined by Party A in its sole discretion. Upon the occurrence of such event, Party B shall be deemed to be the sole Affected Party and all Transactions shall be deemed to be Affected Transactions;

(ii) All amounts owed with respect to any promissory note, loan agreement, credit agreement reimbursement agreement, or any other document or instrument evidencing a credit extension from Party A to Party B are paid by Party B prior to the time scheduled for the payment of amounts due under such agreement(s) (the "Prepaid Agreement(s)"). Upon the occurrence of such event, Party B shall be deemed to be the sole Affected Party and only those Transactions which are related to the Prepaid Agreement(s) shall be deemed to be Affected Transactions; or

(iii) All obligations under in the Credit Agreement (as defined below) shall be paid and satisfied and all commitments by Party A to extend further credit shall be terminated. Upon the occurrence of such event, Party B shall be deemed to be the sole Affected Party and all Transactions shall be deemed to be Affected Transactions.

"Credit Agreement": For purposes of this ISDA Master Agreement, "Credit Agreement" means that certain Loan Agreement between Party B as Borrower and Party A as Administrative Agent for itself and for each of the Lenders if any dated on or about August 15, 2008, as such agreement may be amended, supplemented, restated, renewed, refinanced, replaced, extended, or otherwise modified, as the case may be, from time to time.

PART 2

Tax Representations

(A) Payer Representations. For the purpose of Section 3(e) of this Agreement, each party makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, *provided* that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(B) Payee Representations.

(i) For the purpose of Section 3(f) of this Agreement, Party A represents that it is a national banking association established under the laws of the United States of America.

(ii) For the purpose of Section 3(f) of this Agreement, Party B represents that it is a limited partnership established under the laws of the State of Delaware.

PART 3

Agreement to Deliver Documents

For the purposes of Section 4(a)(i) and (ii) of this Agreement, the parties agree that the following documents will be delivered:

Party Required to Deliver Document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party B	Satisfactory evidence of its capacity and ability to enter into this Agreement and any Transaction hereunder	Upon execution of this Agreement and upon request	Yes
Party B	Certified evidence of the authority, incumbency and specimen signature of each person executing any document on its behalf in connection with this Agreement	Upon execution of this Agreement and upon request	Yes
Party B	The Credit Support document(s), if any, listed in Part 4, Section (F)	Concurrent with the execution of this Agreement	Yes
Party B	IRS Form W-9, or any successor form thereto	Concurrent with the execution of this Agreement, promptly upon reasonable demand by Party A and promptly upon learning that any such form previously provided by Party B has become obsolete or incorrect.	Yes

PART 4

Miscellaneous

(A) Addresses for Notices. For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party B:

Address: Arch Road Limited Partnership
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016-9267
Attention: Chuck Vogel
Telephone: (602) 468-7011
Telecopier: (602) 468-7045
Electronic Mail: chuck.vogel@opuswest.com

Address for all notices or communications to Party A:

Address: Wells Fargo Bank, N.A.
550 California Street, 12th Floor
MAC A0112-121
San Francisco, California 94104
Facsimile: (415) 986-2604
Attention: Derivatives Documentation Manager

Additional Address for notices or communications for operational purposes (payments and settlements):

Address: Wells Fargo Bank, N. A.
550 California Street, 12th Floor
MAC A0112-121
San Francisco, California 94104
Facsimile No.: (415) 646-9208
Attention: Back Office Operations - Settlements

(B) Process Agent. For the purpose of Section 13(c) of this Agreement, neither Party A nor Party B will appoint a Process Agent.

(C) Offices. The provisions of Section 10(a) will apply to this Agreement.

(D) Multibranch Party. For the purpose of Section 10(c) of this Agreement:

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.

(E) Calculation Agent. The Calculation Agent is Party A.

(F) Credit Support Document.

Credit Support Document means, in relation to Party A: None.

Credit Support Document means, in relation to Party B, individually and collectively, without limitation, each of the following, and each amendment, supplement, modification, renewal, replacement, consolidation, substitution, and extension thereto:

- (i) The "Loan Documents", as defined in the Credit Agreement;
- (ii) That certain Repayment Guaranty by Opus West Corporation, a Minnesota corporation dated as of an even date herewith in favor of Party A; and
- (iii) each other document or instrument entered into or executed from time to time pursuant to the terms of the Credit Agreement, between Party A (or any Affiliate of Party A) and Party B, or any Credit Support Provider of Party B, which by its terms, secures, guarantees or otherwise supports Party B's obligations under this Agreement whether or not this Agreement (or any Transaction entered into hereunder) is specifically referenced in such document or instrument.

(G) Credit Support Provider.

Credit Support Provider means in relation to Party A: None.

Credit Support Provider means in relation to Party B:

- (i) Opus West Corporation, a Minnesota corporation; and
- (ii) Any person or entity (other than Party B), that now or hereafter secures, guarantees or otherwise provides assurance of payment or performance of any existing or future obligation of Party B under this Agreement or any Credit Support Document.

(H) Governing Law and Jurisdiction. This Agreement and each Confirmation will be governed by and construed in accordance with the laws of the State of New York, other than any principles therein of conflicts of laws (other than Section 5-1401 of the General Obligations Law of New York, which shall apply hereto and thereto). Section 13(b) is hereby amended by: (1) deleting "non-" from the second line of clause (i); (2) adding the following language at the end of clause (i) "; provided, however, that any judgment received in a Proceeding shall be enforceable in any court of competent jurisdiction and (3) deleting the final paragraph.

(I) Netting of Payments. Subparagraph (ii) of Section 2(c) of this Agreement will apply to each Transaction, provided however that if Party A and Party B enter into multiple Transactions that are either (a) Commodity Derivatives or (b) Foreign Exchange Transactions, subparagraph (ii) of Section 2(c) shall not apply to all Transactions across such Transaction categories.

(J) "Affiliate" will have the meaning specified in Section 14 of this Agreement and shall exclude any broker/dealer affiliates with respect to Party A.

PART 5

Other Provisions

(A) Confirmations. Notwithstanding anything to the contrary in this Agreement:

(i) The parties hereto agree that with respect to each Transaction hereunder a legally binding agreement shall exist from the moment that the parties hereto agree on the essential terms of such Transaction, which the parties anticipate will occur by telephone.

(ii) For each Transaction Party A and Party B agree to enter into hereunder, Party A shall promptly send to Party B a Confirmation setting forth the terms of such Transaction. Party B shall execute and return the Confirmation to Party A or request correction of any error within three Business Days of receipt. Failure of Party B to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation of such terms.

(B) ISDA Definitions. Unless otherwise specified in a Confirmation, this Agreement, each Confirmation, and each Transaction are subject to and governed by the 2000 ISDA Definitions ("2000 Definitions") and the 2005 ISDA Commodity Derivatives Definitions ("Commodity Definitions"), in each case published by the International Swaps and Derivatives Association, Inc. ("ISDA") as each has been or may be amended, supplemented, updated, or restated. The provisions of the 2000 Definitions and the Commodity Definitions are incorporated by reference in and made part of this Agreement and each Confirmation as if set forth in full in this Agreement and each Confirmation.

In the event of any inconsistency between the definitions or provisions in any of the following documents, the relevant document first listed below shall govern: (i) a Confirmation; (ii) the Schedule to the ISDA Master Agreement; (iii) the ISDA Master Agreement; (iv) the Commodity Definitions; and (v) the 2000 Definitions. For purposes of this Agreement, all references in the Definitions to "Swap Transactions" shall be deemed references to any Transaction under this Agreement.

(C) Additional Representations. Section 3 of this Agreement is hereby amended by adding at the end thereof the following subsections (g) through (l), which representations shall be deemed continuing and repeated on each date on which a Transaction is entered into and until this Agreement is terminated:

"(g) Eligible Contract Participant. It is either an "eligible contract participant" as that term is defined in Section 1a(12) of the Commodity Exchange Act (7 U.S.C. 1a(12)), as amended by the Commodity Futures Modernization Act of 2000, and was not formed solely for the purposes of constituting an "eligible contract participant, or if it is not an eligible contract participant, this Agreement (including each Transaction) is undertaken in conjunction with its line of business (including financial intermediation services) or the financing of its business."

"(h) *No Agency.* It is entering into this Agreement, any Credit Support Document to which it is a party, each Transaction and any other documentation relating to this Agreement or any Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise)."

"(i) *Creditworthiness.* The economic terms of this Agreement, and any Credit Support Documents to which it is a party, and each Transaction have been individually tailored and negotiated by it, and the creditworthiness of the other party was a material consideration in its entering into or determining the terms of this Agreement, such Credit Support document, and such Transaction."

"(j) *Individual Negotiation.* This Agreement (including each Transaction) has been subject to individual negotiation by the parties, including individualized creditworthiness determinations."

"(k) *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of this Agreement and each Transaction hereunder. It is also capable of assuming, and assumes, the risks of this Agreement and each Transaction hereunder."

"(l) *Non-Reliance.* It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into a Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee of the expected results of that Transaction."

"(m) *Non-Speculative Purpose.* Party B hereby represents to Party A that it is entering into this Agreement (and the Transactions hereunder) in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred by it hereinafter, and not for the purposes of investment or speculation."

(D) Right of Setoff. Section 6 of this Agreement is amended by adding the following new Section 6(f):

"(f) *Set-off.* Any amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) issued or executed by one party to or in favour of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section shall be without prejudice and in addition to any right of set-off, combination of

accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

(E) Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. The parties hereto shall endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.

(F) WAIVER OF JURY TRIAL. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY TRIAL OR LITIGATION ARISING OUT OF OR IN CONNECTION WITH ANY TRANSACTION OR THIS AGREEMENT.

(G) RISK DISCLOSURE. PARTY B HEREBY ACKNOWLEDGES AND AGREES THAT IT HAS: (X) READ THE RISK DISCLOSURE SET FORTH ON EXHIBIT A; (Y) UNDERSTANDS SUCH RISK DISCLOSURE; AND (Z) HAD AN ADEQUATE OPPORTUNITY TO DISCUSS ANY QUESTIONS OR COMMENTS THAT IT MAY HAVE HAD WITH RESPECT TO SUCH RISK DISCLOSURE PRIOR TO THE EXECUTION OF THIS AGREEMENT.

(H) Consent to Recording. Each party (i) consents to the recording of the telephone conversations of trading and marketing personnel of the parties in connection with this Agreement or any potential Transaction, and (ii) agrees to obtain any necessary consents of and give notice of such recording to its personnel, and (iii) consents to the submission of any such tape recording in evidence in any Proceedings.

(I) Events of Default. Section 5 of this Agreement is hereby amended as follows:

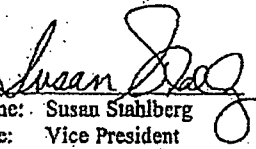
(i) Credit Support Default. Section 5(a)(iii) of this Agreement is hereby amended by the addition of "or if there is no applicable grace period, one Local Business Day after notice of such failure is given to the party or Credit Support Provider (as the case may be)" after "elapsed" in the fourth line thereof.

(ii) Default under Specified Transaction. Section 5(a)(v) of this Agreement is hereby amended by the substitution of "(or such default continues for at least one Local Business Day if there is no applicable notice requirement or grace period)" for the parenthetical clause in the seventh and eighth lines thereof.

IN WITNESS WHEREOF the parties have executed this document with effect from the date specified on the first page of this document.

"PARTY A"

WELLS FARGO BANK, N.A.

By: 
Name: Susan Stahlberg
Title: Vice President

"PARTY B"

ARCH ROAD LIMITED PARTNERSHIP,
a Delaware limited partnership

By: Stockton GP, LLC,
a Delaware limited liability company
its General Partner

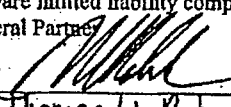
By: 
Name: Thomas W. Roberts
Its: Vice President

EXHIBIT A

RISK DISCLOSURE

AS IS COMMON WITH MANY OTHER FINANCIAL INSTRUMENTS AND TRANSACTIONS, OVER-THE-COUNTER SWAPS, OPTIONS, FORWARDS, FOREIGN EXCHANGE TRANSACTIONS AND OTHER SIMILAR DERIVATIVES AND RELATED PRODUCTS (EACH, A "FINANCIAL PRODUCTS TRANSACTION") MAY INVOLVE A VARIETY OF SIGNIFICANT RISKS. BEFORE ENTERING INTO ANY FINANCIAL PRODUCTS TRANSACTION, YOU SHOULD CAREFULLY CONSIDER WHETHER THE TRANSACTION IS APPROPRIATE FOR YOU IN LIGHT OF YOUR OBJECTIVES, EXPERIENCE, FINANCIAL AND OPERATIONAL RESOURCES, AND OTHER RELEVANT CIRCUMSTANCES. YOU SHOULD ALSO ENSURE THAT YOU FULLY UNDERSTAND THE NATURE AND EXTENT OF YOUR EXPOSURE TO RISK OF LOSS, IF ANY, WHICH IN SOME CIRCUMSTANCES MAY SIGNIFICANTLY EXCEED THE AMOUNT OF ANY INITIAL PAYMENT MADE BY OR TO YOU.

THE SPECIFIC RISKS PRESENTED BY A PARTICULAR FINANCIAL PRODUCTS TRANSACTION NECESSARILY DEPEND UPON THE TERMS OF THAT TRANSACTION AND THE CIRCUMSTANCES. COMMON TO ALL, HOWEVER, IS THEIR NATURE AS LEGALLY BINDING CONTRACTUAL COMMITMENTS, WHICH, ONCE AGREED TO, CANNOT BE ALTERED OTHER THAN BY TERMINATION OR MODIFICATION UPON WRITTEN AGREEMENT BY THE PARTIES. YOU SHOULD UNDERSTAND THAT SUCH TERMINATION AND/OR MODIFICATION MAY, IN CERTAIN CIRCUMSTANCES, RESULT IN SIGNIFICANT LOSSES TO YOU AND MAY INCLUDE ADDITIONAL AMOUNTS REQUIRED TO COVER THE RELEVANT COSTS.

IN ENTERING INTO ANY FINANCIAL PRODUCTS TRANSACTION WITH, OR ARRANGED BY, US, WELLS FARGO BANK, N.A., OR, AS MAY BE APPLICABLE, OUR AUTHORIZED SUBSIDIARIES OR AFFILIATES (EACH SUCH ENTITY, "WELLS FARGO"), YOU SHOULD ALSO UNDERSTAND THAT WELLS FARGO IS ACTING SOLELY IN THE CAPACITY OF AN ARM'S LENGTH CONTRACTUAL COUNTERPARTY AND NOT IN THE CAPACITY OF YOUR FINANCIAL ADVISOR OR FIDUCIARY UNLESS OTHERWISE EXPLICITLY AGREED IN WRITING AND THEN ONLY TO THE EXTENT SO PROVIDED.

THIS BRIEF STATEMENT DOES NOT PURPORT TO DISCLOSE ALL OF THE RISKS OR OTHER RELEVANT CONSIDERATIONS OF ENTERING INTO FINANCIAL PRODUCTS TRANSACTIONS.