


B 10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT		PROOF OF CLAIM
Name of Debtor Opus West Corporation		Case Number 09-34356 (hdh)
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) U.S. Bank National Association		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim
Name and address where notices should be sent See attached Addendum		Court Claim Number: _____ (If known)
Telephone number _____		Filed on _____
Name and address where payment should be sent (if different from above)		<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.
Telephone number _____		<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: Not less than \$20,330,559 13 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)(____)
2. Basis for Claim: _____ Tempe Gateway Project See attached Addendum (See instruction #2 on reverse side)		Amount entitled to priority: \$ _____ <small>*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</small>
3. Last four digits of any number by which creditor identifies debtor: _____ 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 type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
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: 11-5-09 Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. 2. L. Amra ZIND W. AMRA VICEDIRECTOR U.S. BANK N.A.		FOR COURT USE ONLY OPUS WEST  00541

Josiah M. Daniel, III, SBT #05358500
Angela B. Degeyter, SBT # 24059669
VINSON & ELKINS L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, Texas 75201-2975
Tel: (214) 220-7700
Fax: (214) 220-7716

And

Thomas O. Kelly, III
DORSEY & WHITNEY LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Tel: (612) 340-2600
Fax: (612) 340-2868

**COUNSEL FOR U.S. BANK
NATIONAL ASSOCIATION**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:)	Chapter 11
)	
OPUS WEST CORPORATION, et al.,)	Case No. 09-34356 (hdh)
)	
Debtors.)	Jointly Administered
)	

ADDENDUM TO PROOF OF CLAIM

U.S. Bank National Association, in its capacity as Administrative Bank (in such capacity, "U.S. Bank" or the "Administrative Bank"), by and through its undersigned counsel, hereby files this *Addendum to Proof of Claim* (this "Proof of Claim"). As described herein, U.S. Bank is asserting claims against Opus West Corporation ("Opus West"), Case No. 09-34356 (Opus West its affiliates, which are being jointly administered in this case are collectively referred to herein as the "Debtors"). This Proof of Claim is filed to preserve U.S. Bank's rights and remedies, of every nature, pursuant to those certain notes, contracts, and agreements more fully discussed herein.

I. FACTUAL BACKGROUND

1. On July 6, 2009 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of title 11 of the Bankruptcy Code commencing the chapter 11 cases.

2. The Debtors continue in possession of their property and are operating and managing their businesses as debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

3. No request has been made for the appointment of a trustee or examiner in these cases.

The Tempe Gateway Project

4. The Administrative Bank is the agent for a group of lenders (the "Tempe Banks") to Tempe Gateway, L.L.C. (a nondebtor) (the "Borrower") in connection with a "Construction Loan" dated February 29, 2008 for the construction of an office and retail complex in Tempe, Arizona (the "Tempe Gateway Project"). The terms and conditions of the Construction Loan are set forth in the "Construction Loan Agreement" dated February 29, 2008 and executed by the Borrower and U.S. Bank.¹

5. The original maximum amount of the Construction Loan was \$68,960,000.00, which was evidenced by, among other things: (i) a Promissory Note Secured by Deed of Trust (Construction Loan), dated as of February 29, 2008 and executed by Borrower in favor of Regions Bank in the original maximum principal amount of \$25,000,000.00; (ii) a Promissory Note Secured by Deed of Trust (Construction Loan), dated as of February 29, 2008 and executed by Borrower in favor of Guaranty Bank and Trust Company in the original maximum principal amount of \$15,000,000.00; and (iii) a Promissory Note Secured by Deed of Trust (Construction

¹ A true and correct copy of the Construction Loan Agreement is attached hereto as **Exhibit A**.

Loan), dated as of February 29, 2008 and executed by Borrower in favor of U.S. Bank in the original maximum principal amount of \$28,960,000.00.

6. The loan is secured by, among other things:

- (a) a Construction Deed of Trust, with Assignment of Rents, Security Agreement, and Fixture Filing (the "Deed of Trust") dated February 29, 2008 and executed by Borrower, as trustor, for the benefit of U.S. Bank, as beneficiary;²
- (b) an Assignment of Contracts, Plans and Specifications ("Assignment of Contracts") dated February 29, 2008 and executed by Borrower in favor of U.S. Bank, individually and as agent for the other Tempe Banks party to the Tempe Loan Agreement;
- (c) an "Assignment of Development Agreement" dated February 29, 2008 and executed by Borrower in favor of U.S. Bank, individually and as agent for the other Tempe Banks party to the Tempe Loan Agreement; and
- (d) an Assignment of Permits Licenses, and Approvals ("Assignment of Permits"), dated February 29, 2008 and executed by Borrower in favor of U.S. Bank, individually and as agent for the other Tempe Banks party to the Tempe Loan Agreement.³

7. The lead Debtor in these above-captioned consolidated bankruptcy cases, Opus West, agreed to unconditionally guarantee to U.S. Bank the full and prompt payment of all of Borrower's obligations under the Tempe Loan Documents.⁴ On the Petition Date, both Borrower and Opus West, as guarantor, were in default of their obligations under the terms of the

² A true and correct copy of the Deed of Trust for the Tempe Gateway Project is attached hereto as Exhibit B. Pursuant to the Deed of Trust, Borrower granted Lender a security interest in, among other things, the Borrower's Property, as that term is defined in the Deed of Trust, which includes, but is not limited to: (1) certain real property located in Maricopa County, Arizona; (2) the Improvements, as that term is defined in the Deed of Trust; (3) the Fixtures, as that term is defined in the Deed of Trust; (4) the Leases, as that term is defined in the Deed of Trust; (5) the Rents, as that term is defined in the Deed of Trust; (6) the Books and Records, as that term is defined in the Deed of Trust; (7) Borrower's accounts, (8) Borrower's commercial tort claims; (9) Borrower's right to payment of monies which arise from or relate to construction on Real Property (collectively, the "Collateral"). U.S. Bank properly perfected its security interest in the Collateral.

³ The Notes, Loan Agreement, Commitment Fee Letter (as defined in the Loan Agreement), Indemnity Agreement (as defined in the Loan Agreement), Deed of Trust, Assignment of Contracts, Assignment of Development Agreement, Assignment of Permits, and all other guarantees, instruments, and/or documents evidencing, relating to, or securing the Loan are referred to collectively herein as the "Tempe Loan Documents."

⁴ See Payment and Performance Guaranty dated February 29, 2008 and executed by Opus West in favor of U.S. Bank, a true and correct copy of which is attached as Exhibit C.

Tempe Loan Agreement and the other Tempe Loan Documents. By letters dated May 6, 2009⁵ and July 2, 2009,⁶ U.S. Bank informed Borrower and Opus West that the defaults had occurred and, by letter dated June 19, 2009,⁷ U.S. Bank accelerated the Construction Loan and demanded payment for the full outstanding amounts due under the Tempe Loan Documents. As of the Petition Date, the principal due and owing under the Tempe Loan Documents was no less than \$47,603,977.30, plus accrued interest of not less than \$474,937.86, plus attorneys' fees of not less than \$51,643.97, plus and costs, plus all other sums due under the Tempe Loan Documents.⁸

8. Due to the numerous defaults existing under the Tempe Loan Documents, on July 17, 2009, the Administrative Bank filed a Verified Complaint for (1) Breach of Loan Documents and (2) Appointment of a Receiver (the "Receivership Action") against the Borrower in the Superior Court for the State of Arizona in and for the County of Maricopa (the "State Court").⁹ The State Court entered a stipulated order appointing a receiver of the Tempe Gateway Project.¹⁰

9. Although the state-court receiver is in place for the Tempe Gateway Project, the foreclosure sale has not yet occurred. A recent appraisal performed at the request of U.S. Bank placed the current market value of Tempe Gateway at \$27,800,000.00, given the state of the project and current market conditions.¹¹ As such, U.S. Bank estimates that its resulting claim against Opus West with regard to the Tempe Gateway Project will likely amount to *at least* \$20,330,559.13, plus the costs of foreclosure.

⁵ A true and correct copy of the May 6, 2009 letter is attached hereto as Exhibit D.

⁶ A true and correct copy of the July 2, 2009 letter is attached hereto as Exhibit E.

⁷ A true and correct copy of the June 19, 2009 letter is attached hereto as Exhibit F.

⁸ See Loan Obligation Summary, attached hereto as Exhibit G.

⁹ A true and correct copy of the Complaint in the Receivership Action is attached hereto as Exhibit H.

¹⁰ On August 7, 2009, the Court approved the agreement of U.S. Bank and Opus West Construction to grant U.S. Bank relief from the automatic stay for the limited purpose of providing notice to the subcontractors currently under contract with Opus West Construction, as the Design Builder on the Tempe Gateway Project, to continue to perform under the terms of their applicable subcontracts for the benefit of the Administrative Bank and the receiver appointed in the State Court, as such relief was permitted in the Tempe Loan Documents [Dkt. No. 251].

¹¹ See Self Contained Appraisal Report, Executive Summary (a copy of the full appraisal will be made available upon request), a true and correct copy of which is attached hereto as Exhibit I.

10. Additionally, certain liens have been filed by subcontractors against the Tempe Gateway property. U.S. Bank is currently in the process of investigating these liens and the alleged underlying obligations giving rise to the liens. In the event the Administrative Bank determines any of the liens filed against the Tempe Gateway Project to represent valid obligations that must be satisfied prior to foreclosure, U.S. Bank may be required to resolve these liens on the Borrower's behalf. In that event, U.S. Bank specifically reserves the right to amend this Proof of Claim to assert a corresponding claim against Opus West based on its guaranty of the Borrower's obligations under the Tempe Loan Documents.

II. AMOUNTS DUE TO U.S. BANK

11. U.S. Bank asserts a claim against Opus West based on its guarantee of Tempe Gateway, L.L.C.'s obligations under the Tempe Loan Documents in an amount not less than \$20,330,559.13, plus any and all other fees, expenses, costs, additional accrued interest, charges, and any and all other debts or obligations of Borrower or Opus West to the Administrative Bank pursuant to applicable law, whether incurred pre or postpetition, whether contract, tort or statutory, and pursuant to the Tempe Loan Documents.

III. DOCUMENTATION

12. U.S. Bank's claim against Opus West is evidenced by the above-described Exhibits "A" through "I" attached hereto.

IV. DEBTORS' ASSETS SECURING THE OBLIGATION

13. None of the Debtors' assets are available as security for the obligations due to U.S. Bank.

V. AMENDMENTS AND MODIFICATIONS

14. This Proof of Claim is filed under compulsion of claims bar date in the Debtors' cases and U.S. Bank reserves the right to amend, modify, or supplement this Proof of Claim, or

state additional or related claims, at any time hereafter, particularly with regard to the amount of U.S. Bank's claim after the foreclosure sale occurs. The filing of this Proof of Claim shall not be deemed to be an election or waiver of remedies.

VI. NO WAIVER

15. Nothing contained herein shall be deemed or construed as a waiver of any rights of U.S. Bank as to any claims, defenses, actions, set offs or recoupments to which U.S. Bank may be entitled, all of which are expressly reserved.

VII. PAYMENTS

16. All payments in connection with this Proof of Claim shall be mailed to:

Ziad W. Amra
Vice President, Special Assets Group
U.S. Bancorp Center
BC-MN-H22A
800 Nicollet Mall, 22nd Floor
Minneapolis, MN 55402

VIII. NOTICES

17. All notices regarding this Proof of Claim shall be mailed to:

Ziad W. Amra
Vice President, Special Assets Group
U.S. Bancorp Center
BC-MN-H22A
800 Nicollet Mall, 22nd Floor
Minneapolis, MN 55402
Tel.: 612.303.4517
Fax: 612.303.4660

with copy to:

Thomas O. Kelly
DORSEY & WHITNEY LLP
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Tel: 612.340.2600
Fax: 612.340.2868

And

Josiah M. Daniel, III
Angela B. Degeyter
VINSON & ELKINS L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, TX 75201
Tel.: 214.220.7766
Fax: 214.220.7716

CONSTRUCTION LOAN AGREEMENT

This Construction Loan Agreement (the "Agreement") is dated for reference purposes as of February 29, 2008, between **TEMPE GATEWAY, L.L.C.**, a Delaware limited liability company (the "Borrower") and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, individually and as a lender and Agent, and each of the lending institutions listed on the Schedule of Lenders, as such may be modified from time to time (Agent, as a lender, and each such lending institution, and their respective successors and assigns, referred to individually or collectively, as the context shall infer, the "Lender").

Unless defined elsewhere in this Agreement, defined terms used herein have the meanings given them in the Definitions Section hereof.

Factual Background

A. Lender has agreed to make a construction loan (the "Loan") to Borrower in the principal amount of Sixty-Eight Million Nine Hundred Sixty Thousand and No/100 Dollars (\$68,960,000.00) (the "Loan Amount"). Borrower will use the Loan to construct certain Improvements on real property (the "Land") owned by Borrower and located in the City of Tempe, Maricopa County, Arizona, as described in Exhibit A. Borrower will also use the Loan to pay other costs and expenses related to the development of the Land. Borrower intends to complete construction of the Improvements on or before July 1, 2009 (the "Completion Date").

B. The Improvements are described in plans and specifications (the "Plans and Specifications") which were prepared by the Architect under the Architecture Contract. It is anticipated that the Improvements will be constructed by the Contractor in accordance with the Construction Contract. ~~When completed, the Improvements will consist of an eight story office building containing approximately 259,365 square feet of rentable space, and a parking garage containing approximately 1,107 parking spaces, as shown in the Plans and Specifications.~~ Borrower has engaged the Architect in connection with the design and/or construction of the Improvements pursuant to the terms of the Architecture Contract. Borrower has agreed to pledge and assign to Agent, for the benefit of Lender, and create a first-priority security interest in favor of Agent, for the benefit of Lender, in and to Borrower's rights and interests in, among other things: (1) the Construction Contract, (2) the Architecture Contract, (3) the Plans and Specifications, and (4) all other agreements now or hereafter entered into by Borrower with any contractor, architect, engineer, or other consultant or third party in connection with the design, engineering, construction of or on the Property, or the management, maintenance, operation, marketing, leasing of the Property, or any development of or improvement to the Property, in accordance with the Assignment of Contracts. The contracting parties under each contract being assigned shall consent to the Assignment of Contracts and the pledge and assignment by Borrower thereunder. Borrower has also agreed to pledge and assign to Agent, for the benefit of Lender, and create a first-priority security interest in favor of Agent, for the benefit of Lender, in and to Borrower's rights and interests in all permits, licenses, and approvals (including, without limitation, all building permits) heretofore or hereafter issued to Borrower from time to time with respect to the Property in accordance with the Assignment of Permits. Borrower has also agreed to pledge and assign to Agent, for the benefit of Lender, and create a first-priority security interest in favor of Agent, for the benefit of Lender, in and to Borrower's rights and interests in the Development Agreement in accordance with the Assignment of Development Agreement.

C. Borrower is executing one or more Notes evidencing the Loan. The Loan is secured by a Construction Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing (the "Deed of Trust") covering all of Borrower's right, title, and interest in and to the Land, the Improvements, and certain other property. In this Agreement, the "Property" means all or any part of the property affected by

the Deed of Trust, or any interest in all or any part of it, as the context requires, and "Project" means the project consisting of the Land and all improvements existing or to be constructed thereon, including the Improvements.

D. The Loan is due and payable on **March 1, 2010** (the "Maturity Date"). However, if prior to the Maturity Date, Borrower satisfies all Conditions to Extend, the Maturity Date of the Loan will be extended upon the terms and conditions as more fully set forth in this Agreement and the Note(s).

E. **OPUS WEST CORPORATION**, a Minnesota corporation ("OWC," also the "Guarantor"), has agreed to guaranty all or certain of Borrower's obligations to Lender in accordance with a Guaranty, and is also executing a Third Party Indemnity Agreement, wherein it agrees to indemnify Agent and each Lender and certain other Indemnified Parties against liability arising from certain environmental and other risks which may result from Lender making the Loan to Borrower.

F. This Agreement, the Note(s), and the Deed of Trust, together with all of their exhibits, and all other documents which evidence, guaranty, secure, or otherwise pertain to the Loan collectively constitute the "Loan Documents."

THEREFORE, Borrower, Agent, and Lender agree as follows:

Agreement

Definitions: The following capitalized words and terms shall have the meanings set forth in the "Factual Background" section above, or if not defined therein, shall have the following meanings when used in this Agreement. All references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. The term "Guarantor" as used in this Agreement and the other Loan Documents shall apply only if any such party exists, and should be ignored if inapplicable.

"1998 Building Code Covenant" has the meaning set forth in **Section 3.32(d)**

"2008 Building Code Covenant" has the meaning set forth in **Section 3.32(d)**

"50% Leasing Test" has the meaning set forth in **Section 2.8(b)**.

"Accelerating Transfer" has the meaning set forth in the Deed of Trust.

"Account" means Borrower's checking account at Agent, in the name of Borrower and designated by Borrower as the operating account for the Project.

"Affiliate of" or "affiliated with" means in control of, controlled by or under common control with.

"Agent" means **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent selected pursuant to the terms of this Agreement.

"Agreement" means this Construction Loan Agreement between Borrower and Agent.

"Allowed Transfer" means a transfer of any interest in Borrower to any person or entity that is an Affiliate of or with any of the following, provided that Borrower has given Agent written notice of such transfer: (i) Opus West Corporation, Opus Corporation, Opus, L.L.C., or (ii) the founder of Opus Corporation, his children,

West Corporation, Opus Corporation, Opus, L.L.C., or (ii) the founder of Opus Corporation, his children, his grandchildren or other members of his family, or (iii) the trustee of a trust or trusts for the benefit of the founder of Opus Corporation, his children, his grandchildren or other members of his family, so long as (1) Tempe Gateway, L.L.C. remains fully obligated for the Borrower's obligations with respect to the Loan and Opus West Corporation remains the Guarantor under the Guaranty, and (2) Opus West Corporation or one of the other entities listed in subsections (i), (ii) or (iii) immediately above, shall at all times maintain, directly or indirectly, ownership at least ten percent (10%) of the voting stock in the Borrower.

"Applicable Rate" means (i) the Prime-Based Rate as to all Prime Rate Loans, and (ii) the LIBOR-Based Rate as to all LIBOR Rate Loans.

"Appraisal" means an MAI certified appraisal of the Project, performed in accordance with FIRREA and Agent's appraisal requirements by an appraiser selected and retained by Agent, in form and content acceptable to Agent.

"Approved Manager" means (a) Borrower; (b) Opus West Management Corporation, an Arizona corporation, or (b) subject to the prior approval of Agent not to be unreasonably withheld, conditioned, or delayed, any other reputable and creditworthy property manager.

"Architect" means **OPUS ARCHITECTS & ENGINEERS, INC.**, a Minnesota corporation, a licensed architect, acting as the architect in connection with the design and/or construction of the Improvements.

"Architecture Contract" means that certain contract entitled, **"Project Agreement Form,"** dated August 21, 2007, executed by and between Borrower and Architect, 2007, covering certain services of the Architect in connection with the design and construction of the Improvements, as revised September 25, 2007.

"Assignment and Assumption" means an Assignment and Assumption substantially in the form of **Exhibit D.**

"Assignment of Contracts" means the assignment from Borrower to Agent, for the benefit of Lender, of all of Borrower's right, title, and interest in and to the Construction Contract, the Architecture Contract, the Plans and Specifications, and all contracts related to the construction, design, management, and operation of the Improvements and the Property, together with such written consents of Borrower's contract parties under such contracts as Agent may require.

"Assignment of Development Agreement" means the assignment from Borrower to Agent, for the benefit of Lender, of all of Borrower's right, title, and interest in and to (a) the Development Agreement, and (b) any and all present and future amendments, modifications, supplements, change orders, and addenda to the Development Agreement.

"Assignment of Permits" means the assignment from Borrower to Agent, for the benefit of Lender, of all of Borrower's right, title, and interest in and to (a) all permits, licenses, and approvals (including, without limitation, all building permits) heretofore or hereafter issued to Borrower from time to time with respect to the Property, and (b) any and all present and future amendments, modifications, supplements and addenda to any such permits, licenses, and approvals.

"AWHC" means **AMERICA WEST HOLDINGS CORPORATION**, a Delaware Corporation.

"Banking Day" means a day, other than a Saturday or Sunday, on which Agent is open for business for all banking functions in Phoenix, Arizona.

"Borrower" has the meaning set forth in the introductory paragraph to this Agreement.

"Borrower's Funds" means all funds on deposit in the Borrower's Funds Account.

"Borrower's Funds Account" means an interest-bearing account at Agent in the name of Borrower on and subject to such terms and conditions, and at such interest rates, as Agent may offer to Borrower. Funds held in the Borrower's Funds Account shall be and remain in the exclusive control of Agent, subject to the terms of this Agreement and any borrower's funds agreement entered into between Borrower and Agent.

"Borrower's Indemnity" means, collectively, all of Borrower's obligations under each indemnity by Borrower in favor of Agent, as Agent for the Lenders, and/or the Indemnified Parties relating to Hazardous Substances, including but not limited to Borrower's covenants, warranties, and indemnification obligations set forth in (a) any Hazardous Substances section or provisions set forth in this Agreement or the other Loan Documents, and/or (b) any separate secured or unsecured indemnity agreement executed by Borrower in connection with the Loan, specifically including all of Borrower's obligations contained in that certain Indemnity Agreement dated of even date herewith executed by Borrower in favor of Agent, as Agent for the Lenders.

"Change in Control" means (i) any transaction or series of transactions that result in any transfer, direct or indirect, of fifty percent (50%) or more of the voting power of Borrower or Guarantor, or other power to direct or cause the direction of the management and policies of Borrower or Guarantor, as the case may be, or fifty percent (50%) or more of the direct or indirect beneficial ownership of Borrower or Guarantor, as the case may be, or (ii) any transaction or series of transactions that result in OWC owning less than fifty percent (50%) of the membership interests in Borrower; provided, however, that any Allowed Transfer shall not constitute a "Change of Control" hereunder so long as Borrower promptly provides Agent notice of such Allowed Transfer.

"City" means **THE CITY OF TEMPE**, a municipal corporation and a political subdivision of the State of Arizona.

"Closing Date" means the date of recordation of the Deed of Trust.

"Commitment" means the maximum amount each Lender has agreed to lend to Borrower as part of the Loan (which amounts are set forth in Exhibit E attached hereto), subject to modification by each Assignment and Assumption.

"Compliance Certificate" has the meaning set forth in Section 3.11.

"Completion Date" has the meaning set forth in Recital A above.

"Completion Event" means the date Agent has received evidence acceptable to Agent in its reasonable discretion that the Improvements have been completed in accordance with the requirements set forth in Section 3.1(b) below.

"Conditions to Extend" means those conditions to Lender's obligation to extend the term of the Loan set forth in Section 2.9 below (each, a "Condition to Extend").

"Construction Contract" means that certain contract entitled, "Design/Build Construction Contract (Cost Plus/Guaranteed Maximum Price," dated as of July 11, 2007, covering certain services of the Contractor in connection with the construction and/or rehabilitation of the Improvements.

"Construction Schedule" means a written construction schedule, including completion timeline, for the Project. The Construction Schedule shall be consistent with any Pro Forma Schedule described in this Agreement, and any other timelines, reports, and/or schedules delivered by Borrower to Agent.

"Contractor" means **OPUS WEST CONSTRUCTION CORPORATION**, a Minnesota corporation, a licensed general contractor, acting as the contractor in connection with the construction and/or rehabilitation of the Improvements.

"Cost Breakdown" means a detailed breakdown of construction, financing, and other development costs related to the Land and Improvements, as more fully described in Exhibit B attached hereto.

"Covered by Insurance" is when defense of a lawsuit has been tendered to the applicable insurance carrier under a valid insurance policy that provides coverage with respect to the claim and has a deductible amount of less than One Hundred Thousand and No/100 Dollars (\$100,000.00), such insurance carrier has accepted such tender of defense, and such insurance carrier proceeds with such defense without denying liability for any part of such claim which could result in liability of One Hundred Thousand and No/100 Dollars (\$100,000.00) or more to Borrower or any Guarantor, as the case may be; provided, however, that if any insurance company accepts defense of a claim with a reservation of rights, such claim shall be deemed "Covered by Insurance" until denied.

"Deed of Trust" has the meaning set forth in Recital C above.

"Default" means, with respect to any Loan Document where "Events of Default" are not defined, any breach or default, subject to any applicable notice and cure periods, under such Loan Document.

"Default Rate" means the rate which is five percent (5%) above the Applicable Rate, as it may thereafter change pursuant to the terms of this Agreement; provided, however, that if more than one Applicable Rate applies, the "Default Rate" shall mean a per annum interest rate of five percent (5%) in excess of the highest Applicable Rate.

"Deferred Contractor Fees" means monies earned or to be earned by the Contractor pursuant to the terms and conditions of the Construction Contract for construction work performed by Contractor related to the Project at Borrower's sole cost and expense, which will be deferred until the Loan has been paid and performed in full and thereafter paid from Borrower's own funds, and not paid with Loan funds.

"Deferred Developer Fees" means monies earned or to be earned by OWC and/or its Affiliates for work related to the Project performed by or on behalf of OWC and/or its Affiliates, which will be deferred until the Loan has been paid and performed in full and thereafter paid from Borrower's own funds, and not paid with Loan funds.

"Delinquent Lender" has the meaning set forth in Section 10.21.

"Development Agreement" means the Original Development Agreement as such has been modified and amended pursuant to (a) the Development Agreement First Amendment, and (b) the Development Agreement Second Amendment, and as may be further modified and amended pursuant to (1) the Development Agreement Supplement in form and substance approved in writing by Agent in its reasonable discretion, and (2) any future material modifications or amendments to the Development Agreement in form and substance approved in writing by Agent in its reasonable discretion.

"Development Agreement First Amendment" means that certain First Amendment to Development Agreement [America West Airlines Corporate Headquarters] [97-250(A)] by and between the City and AWHC, dated as of September 12, 2002, recorded September 24, 2002, 1998, as Instrument Number 2002-0978976, in the Official Records of Maricopa County, Arizona relating to and/or encumbering all or a portion of the Property. The Development Agreement First Amendment has been reviewed, and is hereby approved, by Agent.

"Development Agreement Second Amendment" means that certain Second Amendment to Development Agreement [America West Airlines Corporate Headquarters] [97-250(B)] by and between the City and AWHC, dated as of June 23, 2004, recorded July 2, 2004, as Instrument Number 2004-0764287, in the Official Records of Maricopa County, Arizona relating to and/or encumbering all or a portion of the Property. The Development Agreement Second Amendment has been reviewed, and is hereby approved, by Agent.

"Development Agreement Supplement" means a third amendment to Original Development Agreement, as such has been previously amended prior to the Closing Date, which anticipated to be recorded in the Official Records of Maricopa County, Arizona, relating to and/or encumbering all or a portion of the Property. The Development Agreement Supplement shall be in form and substance acceptable to Agent in its reasonable discretion and therefore is subject to the review and written approval of Agent in its reasonable discretion prior to the execution thereof and recording thereof in the Official Records of Maricopa County, Arizona.

"Draw Request" means a written request signed by Borrower, together with such documentation and information as Agent may require and meeting the requirements set forth in this Agreement and the other Loan Documents, provided that such Draw Request may be submitted as a telefax or electronic mail request as allowed pursuant to the terms of this Agreement.

"Draw Request Certification" means a draw request certification in the form attached hereto as Exhibit F.

"Easement" has the meaning set forth in Section 3.33.

"Eligible Assignee" means any Lender or any Affiliate of a Lender or any commercial bank, insurance company, financial institution, or institutional lender approved by Agent in writing and, so long as there exists no Event of Default or Unmatured Event of Default, approved by Borrower in writing, which approval shall not be unreasonably withheld.

"Events of Default" means those events of default set forth in Section 7.1 (each, an "Event of Default").

"Funding Deficiency" means the amount of any requested disbursement which Borrower is entitled to in accordance with the terms of this Agreement (i.e. Borrower has satisfied all applicable conditions to disbursement set forth in the Loan Documents, unless any such unsatisfied condition has been waived in writing by Agent) that is not properly funded hereunder by Agent.

"GAAP" means generally accepted accounting principles.

"GPLET Fee Conveyance" means the conveyance by Borrower of the Borrower's fee interest in the Land and Improvements to the City, which GPLET Fee Conveyance must occur concurrently with the execution and effectiveness of the GPLET Ground Lease

"GPLET Ground Lease" means that certain ground lease covering the Land and Improvements that may be entered into between Borrower and the City after the Closing Date as part of the GPLET Transaction; provided, however, that such GPLET Ground Lease shall (1) be substantially in the form attached as Exhibit B to the Development Agreement, with all material terms set forth therein acceptable to Agent, (2) be reviewed and approved in writing by Agent prior to the execution thereof, (3) be effective concurrently with the GPLET Fee Conveyance, and (4) be subject to the lien of the Deed of Trust as more particularly described in Section 3.32.

"GPLET Statutes" means A.R.S. §42-6201 through §42-6209, under Arizona Revised Statutes Title 42 Taxation, Chapter 6 Local Excise Taxes, Article 5 Government Property Lease Excise Tax, as amended, recodified, and in effect from time to time.

"GPLET Tax Abatement" means abatement of tax for government property improvements in single central business district available pursuant to A.R.S. §42-6209, which tax abatement is available for a limited period beginning when the certificate of occupancy is issued and ending eight years after the certificate of occupancy is issued on a government property improvement that is constructed either before or after July 20, 1996 and that meets the requirements set forth in A.R.S. §42-6209.

"GPLET Transaction" means the sale/leaseback transaction between Borrower (or US Air and/or AWHC as Borrower's predecessor in interest) and the City contemplated pursuant to the Development Agreement, specifically including the Development Agreement Supplement in a form approved by Agent, wherein pursuant to the Development Agreement, on or before Borrower obtains the certificate of occupancy for the Project, the Borrower will convey the fee simple interest in the Land and in the Improvements to the City, who will then ground lease the Land and Improvements back to Borrower pursuant to the GPLET Ground Lease. The GPLET Transaction is to enable Borrower to utilize the benefits of the GPLET Statutes, including but not limited to the GPLET Tax Abatement.

"Guarantor" means each person or entity guaranteeing all or any portion of Borrower's obligations under the Loan Documents, or all or any portion of any other party's obligations under the Loan Documents, pursuant to a Guaranty, including that party described in Recital E above (collectively, the "Guarantor" or "Guarantors"). "Guarantor" also means any indemnitor under any indemnity agreement.

"Guaranty" means, each guaranty executed or required to be executed in favor of Agent, as Agent for the Lenders, in connection with the Loan, or in connection with the construction or rehabilitation of Improvements, including each continuing guaranty, payment guaranty, payment and performance guaranty, completion guaranty, or completion agreement, or other guaranty or indemnity agreement (collectively, the "Guaranty" or "Guaranties").

"Hard Costs" means all materials and labor related to construction and/or rehabilitation of the Improvements and similar costs (specifically excluding all Soft Costs), as determined by Agent.

"Hazardous Substance" means and includes any substance, material, or waste, including asbestos, petroleum, and petroleum products (including crude oil), that is or becomes designated, classified, or regulated as "toxic" or "hazardous" or a "pollutant," or that is or becomes similarly designated, classified, or regulated, under any federal, state, or local law, regulation, or ordinance, but does not include any such substance that is a customary and ordinary household, cleaning, or office product used on the Property by Borrower or any tenant or agent of Borrower, or customary construction materials used during the course of construction of Improvements on the Property by Borrower or Contractor, provided such use is in accordance with applicable hazardous materials laws and regulations.

"Improvements" means those buildings and other improvements to the Land as shown on the Plans and Specifications.

"In Balance" or "in balance" has the meaning set forth in Section 2.2.

"Indemnified Costs" means all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs, expenses, fines, penalties and losses (including sums paid in settlement of claims and all consultant, expert and legal fees and expenses of Agent's, and, if applicable, Lenders' counsel), including those incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or

restoration work (whether of the Property or any other property), or any resulting damages, harm, or injuries to the person or property of any third parties or to any natural resources, excepting those to the extent arising out of, or resulting, from the applicable Indemnified Party's gross negligence or willful misconduct.

"Indemnified Parties," means each Lender, including Agent as a Lender and acting in its capacity as administrative agent for the Lenders, and each of their parents, subsidiaries, and any affiliated companies, any assignees of any of each such Lender's interest in the Loan or the Loan Documents, any owners of participation or other interests in the Loan or the Loan Documents, any purchasers of all or any portion of the Property at any foreclosure sale or from any Lender or any of its affiliates, and the officers, directors, employees, and agents of each of them (each individually, an "Indemnified Party").

"Insolvency Payments" means all monetary obligations incurred or accrued during the pendency of any Insolvency Proceeding regardless of whether allowed or allowable in such proceeding.

"Insolvency Proceeding" means any bankruptcy, receivership, or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships.

"Interest Differential" has the meaning set forth in Section 2.8(b).

"Interest Reserve" means any reserve or hold back of Loan funds allocated to pay Loan interest, which may be set forth in the Cost Breakdown or as otherwise approved by Agent.

"Land" has the meaning set forth in Recital A above.

"Lender" has the meaning set forth in the introductory paragraph to this Agreement, and includes any other commercial bank, insurance company, financial institution or lender that is or later becomes a party to this Agreement and any and all Eligible Assignees who acquire an interest in the Loan from any Lender as set forth in Section 10 (collectively, the "Lender" or "Lenders" as the context may require.) The term "Lender" as used in this Agreement and the other Loan Documents, unless otherwise specifically set forth herein, means all Lenders collectively, as the context may require, and includes each Lender that is or becomes a Lender pursuant to the terms of this Agreement.

"LIBOR-Based Rate" has the meaning set forth in Section 2.8(b).

"LIBOR Rate" has the meaning set forth in Section 2.8(b).

"LIBOR Rate Loan" has the meaning set forth in Section 2.8(b).

"LIBOR Rate Margin" has the meaning set forth in Section 2.8(b).

"Loan" means the loan being made available by Lender to Borrower pursuant to the terms of this Agreement as described in Recital A above.

"Loan Amount" has the meaning set forth in Recital A above.

"Loan Budget" is shown on the Cost Breakdown attached as Exhibit B, is broken down by line items, and shows all uses of Loan funds related to the Land and the construction and/or rehabilitation of the Improvements.

"Loan Documents" has the meaning set forth in Recital F above.

"Loan Fee" has the meaning set forth in that certain fee letter agreement of even date herewith being executed by Borrower in connection with the Loan.

"Loan Period" has the meaning set forth in Section 2.8(b).

"Major Subcontract" means any individual subcontract which provides for work or materials with a cost in excess of One Hundred Thousand and No/100 Dollars (\$100,000.00); provided that multiple subcontracts with the same subcontractor shall be treated collectively as one subcontract for purposes of this definition of Major Subcontract.

"Major Subcontractor" means any subcontractor under a Major Subcontract.

"Material Adverse Effect" means: (a) a material adverse change in, or a material adverse effect upon, the Project, or the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Borrower, Guarantor, Borrower and its Subsidiaries taken as a whole, or Guarantor and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any party to the Loan Documents to perform its obligations under any such Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any party to the Loan Documents of any such document or agreement to which it is a party.

"Maturity Date" has the meaning set forth in Recital D above.

"Maximum Loan-to-Value Ratio" means the ratio of the Loan Amount to the Property Value.

"Money Markets" has the meaning set forth in Section 2.8(b).

"Net Monthly Cash Income" means all actual cash income received from the Property during a calendar month less the actual operating expenses incurred for or attributable to the Property, excluding amounts payable under the Note.

"New York Banking Day" has the meaning set forth in Section 2.8(b).

"Non-U.S. Lender" means each Lender (or substituted Lender) that is organized under the laws of a jurisdiction other than the United States, any State thereof or the District of Columbia.

"Note" or "Notes" means, collectively, promissory notes, aggregating the Loan Amount, executed by Borrower and payable to the order of each Lender, in the amount of its respective Commitment, evidencing the Loan, together with such other replacement notes as may be issued from time to time pursuant to Section 2.8, as such may be amended, renewed, restated, or replaced from time to time (each, individually, a "Note," as the context may require).

"Other Sums" has the meaning set forth in Section 2.8(e).

"Original Development Agreement" means that certain Development Agreement [America West Airlines Corporate Headquarters] [97-250] by and between the City and AWHC, dated as of February 18, 1998, recorded February 26, 1998, as Instrument Number 98-0147245, in the Official Records of Maricopa County, Arizona relating to and/or encumbering all or a portion of the Property, which Original Development Agreement was partially assigned by AWHC, as Assignor, to FLY (CD) LLC, a Delaware limited liability company, and AWHQ, LLC, an Arizona limited liability company, as tenants in common, as Assignee, pursuant to that certain Partial Assignment of Development Agreement With Estoppel and

Consent of City of Tempe dated as of February 18, 1998. The Original Development Agreement has been reviewed, and is hereby approved, by Agent.

"Out of Balance" occurs when Agent in good faith determines that the funds (including all undisbursed Loan funds and any sums provided and to be provided by Borrower or any other party) are insufficient to pay for all costs and expenses of the Property and sums payable under the Loan Documents.

"OWC" has the meaning set forth in Recital E above.

"Permitted Title Exceptions" has the meaning set forth in Section 5.1(a) of the Deed of Trust.

"Plans and Specifications" has the meaning set forth in Recital B above.

"Post-Foreclosure Plan" has the meaning set forth in Section 10.22.

"Prime-Based Rate" has the meaning set forth in Section 2.8(b).

"Prime Rate Loan" has the meaning set forth in Section 2.8(b).

"Pro Forma Schedule" has the meaning set forth in Section 4.1.

"Project" has the meaning set forth in Recital C above.

"Project CC&R's" means that certain Declaration of Covenants, Conditions, Restrictions, and Easements for Tempe Gateway by and between Borrower and the Phase One Owner dated as of November 7, 2007 to be recorded [prior to or concurrently with the recording of the Deed of Trust] in the Official Records of Maricopa County, Arizona relating to and/or encumbering all or a portion of the Property. The Project CC&Rs shall be in form and substance acceptable to Agent in its reasonable discretion and therefore is subject to the review and written approval of Agent in its reasonable discretion prior to the execution thereof and recording thereof in the Official Records of Maricopa County, Arizona. An unexecuted copy of the Project CC&R's delivered to Agent electronically by Borrower's counsel on December 18, 2007 has been reviewed, and is hereby approved, by Agent, however, Agent reserves the right to review and approve any material modifications or amendments thereto.

"Property" has the meaning set forth in Recital C above.

"Property Management Agreement" means each management agreement or operating agreement relating Project, the Land, or the Improvements, or any part thereof.

"Property Value" means the discounted value of the Project at stabilized occupancy as set forth in the Appraisal obtained prior to the Closing Date, or an Updated Appraisal, as the case may be, which shall be determined using the Prospective Stabilization Date.

"Proportionate Share" means, as to any Lender, the percentage identified for such Lender on the Schedule of Lenders, as such percentage may be modified in connection with any assignments made by Lenders in accordance with the provisions of this Agreement. Agent is authorized to unilaterally amend and replace the Schedule of Lenders from time to time to account for any such assignments.

"Prospective Stabilization Date" The prospective stabilization date set forth in the Appraisal or Updated Appraisal, as the case may be, of the Project approved by Agent, or such other date agreed to in writing by Agent.

"Protective Advance" means all sums expended as determined by Agent to be necessary (a) to protect the priority, validity and enforceability of the Loan and the documents evidencing or securing the Loan, (b) to protect the value or the security of any of the collateral for the Loan, (c) to satisfy any liens that encumber all or any portion of the Property or any other collateral for the Loan (unless Borrower has bonded around or is properly contesting such lien in accordance with the Loan Documents), and (d) if the Property or any portion of the Property is acquired by Lender, or by Agent, for the benefit of Lender, amounts expended in accordance with the Post-Foreclosure Plan to complete the Improvements to the Project or operate the Project or any other collateral for the Loan acquired by Lender or Agent for the benefit of Lender.

"Required Lenders" means Lenders whose Proportionate Shares of the Loan total in the aggregate a percentage equal to or greater than sixty-six and two-thirds percent (66.67%) (but excluding from such calculation the Proportionate Share of any Delinquent Lender).

"Requirements" has the meaning set forth in Section 3.9.

"Schedule of Lenders" means the schedule of Lenders set forth on Exhibit E attached hereto, as such may be amended or modified from time to time in accordance the terms of this Agreement.

"Soft Costs" means all costs set forth in the Cost Breakdown for developer fees and/or overhead, contractor fees and/or overhead, architects' and engineers' fees, legal and other professional fees and costs, and other similar fees and costs (specifically excluding Hard Costs), as determined by Agent.

"Stored Materials" means building materials or furnishings that are not yet incorporated into the Improvements.

"Stored Materials Advance Limit" means Three Hundred Thousand and No/100 Dollars (\$300,000.00).

"Subject Party" means, for any and all financial covenants set for this Agreement, the subject party (i.e., Borrower, Guarantor, or other applicable party) or each subject party, as the context may require) with respect the particular covenant. For any Subject Party who does not have a separate fiscal year end for tax reporting purposes, the fiscal year will be deemed to be the calendar year.

"Subsidiary" means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned; or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries.

"Swap Contract" means, individually and collectively, as the context may require, any rate lock agreement or interest rate protection agreement, such as any rate lock agreement, interest rate swap agreement, International Swaps and Derivatives Association, Inc. Master Agreement, or similar agreement or arrangements now existing or hereafter entered into by Borrower and Agent in connection with the Loan evidenced by the Note, to hedge the risk of variable rate interest volatility or fluctuations in interest rates, as any such agreement or arrangement may be modified, supplemented and in effect from time to time.

"Swap Payments" has the meaning set forth in Section 6.1.

"Third Party Indemnity" means any indemnity agreement executed by a Guarantor or any other third party in favor of Agent individually and as a Lender and as Agent for the Lenders, including the indemnity in favor of Agent, as Agent for the Lenders, pursuant to those certain Third Party Indemnity Agreements being executed by each Guarantor in connection with the Loan.

"Unmatured Event of Default" means an event that, with notice or the passage of time, or both, could become an Event of Default.

"Unmatured Monetary Event of Default" means an event that, with notice or the passage of time, or both, could become an Event of Default with respect to monetary covenants, agreements, and obligations.

"US Air" means **US AIRWAYS, INC.**, a Delaware corporation, successor in interest and successor by merger to **AMERICA WEST HOLDINGS CORPORATION**, a Delaware corporation.

"US Air Development Agreement Assignment" means an assignment of the Development Agreement from US Air to Borrower, which may occur prior to or after the Closing Date and shall be in form and substance acceptable to Agent in its reasonable discretion.

1. Conditions Precedent to Closing and Disbursements.

1.1 Conditions to Closing. Before Agent becomes obligated to close the Loan herein contemplated or any Lender becomes obligated to make any disbursement under this Agreement, the following closing conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Agent in its sole and absolute discretion. No waiver of any closing condition is effective unless expressly made in writing by Agent.

(a) Financial Statements of Borrower and Other Financial Information. Borrower shall have delivered to Agent all financial statements and other financial information currently required under the Loan Documents, certified as being true, correct, and complete in all material respects by an authorized officer, manager, member, or general partner of Borrower or other applicable parties.

(b) Organizational Documents and Certificates. Borrower shall have delivered to Agent, for each party to each of the Loan Documents:

(i) All organization documents and evidence of due formation and good standing requested by Agent.

(ii) All resolutions, certificates of authority, incumbency certificates, or other evidence of authorization requested by Agent.

(iii) Evidence of such party's Federal Tax Identification Number.

(iv) An Article 9 Certificate in form and substance acceptable to Agent.

(c) Loan Documents and Other Items. Borrower shall have duly executed or obtained the due execution of, and delivered to Agent, all Loan Documents and other items required by Agent to be executed in connection with the Loan, including but not limited to this Agreement, the Note, the Deed of Trust, the Borrower's Indemnity, the Guaranty, the Third Party Indemnity, the Assignment of Contracts (with the written consents of such of Borrower's contract parties under the contracts assigned thereunder as Agent may require), the Assignment of Permits, the Assignment of Development Agreement, UCC-1 financing statements, and any and all other such documentation otherwise required by Agent to fulfill the purposes of this Agreement. Agent shall have received, reviewed, and approved current bankruptcy, federal tax lien and judgment searches, and searches of all Uniform Commercial Code financing statements filed in each place UCC financing statements are to be filed hereunder, demonstrating the absence of adverse claims.

(d) Security Interests Perfected. The Deed of Trust shall have been duly recorded in a first-priority lien position on the Property, subject only to such exceptions and conditions to title as Agent has approved in its sole and absolute discretion. Lender's security interest in all personal property and fixtures described in the Deed of Trust shall have been duly perfected in a first-priority lien position. Lender's security interest in all property pledged as collateral security for the Loan, as described in one or more security instruments executed by Borrower, and/or any third party pledgor, in favor of Agent individually and as a Lender and as Agent for the Lenders, shall have been duly perfected in a first-priority lien position.

(e) Title Insurance Commitment. Agent shall have received a commitment to issue an ALTA extended coverage lender's policy of title insurance underwritten by a title insurance company approved by Agent in its sole and absolute discretion in an amount not less than the Loan Amount and insuring the lien of the Deed of Trust to be a first-priority lien on the Property, subject only to such exceptions and conditions to title as Agent has approved in its sole and absolute discretion, and containing such endorsements as Agent may require, which may include zoning, survey, access, parcel contiguity, variable rate, environmental, tax parcel, and subdivision endorsements. In addition, if required by Agent, one or more other title insurance companies acceptable to Agent shall have issued such coinsurance and/or reinsurance as Agent may require. No title matter may be insured over by any title company without the express written consent of Agent. The final title insurance policy shall be delivered to Agent within a reasonable time following the issuance of the title insurance commitment.

(f) Survey. If requested by Agent, Borrower shall have delivered to Agent an ALTA/ACSM survey of the Land and any existing Improvements thereon certified to Agent and the title insurance company by a licensed land surveyor and showing the location of all boundary lines, easements, rights of way, and other matters affecting the Land. Such survey shall be certified by the land surveyor within ninety (90) days of the Loan Closing Date. Such survey shall be sufficient for the deletion of the survey exception, if any, from the Lender's title insurance policy.

(g) Flood Hazard Evidence and Insurance. Borrower shall have provided Agent with evidence as to whether or not the Land or any portion thereof is located in an area identified as having "special flood hazards" as such term is defined in the federal Flood Disaster Protection Act of 1973, as amended. If any part of the Improvements is in a special flood hazard area, Borrower shall have provided Agent with a flood insurance policy as part of the insurance requirements of this Agreement.

(h) Insurance. Borrower shall have provided evidence that there is in effect all insurance required by Agent pursuant to this Agreement and the other Loan Documents, written by insurers, and in form and in amount satisfactory to Agent.

(i) Taxes. Borrower shall have provided to Agent the tax identification number(s) assigned to the Land and evidence that all taxes and assessments levied against or affecting the Property have been paid current, or in the event Borrower has commenced a legal or administrative challenge to any such tax or assessment, evidence that such liability has been bonded over, or that funds for the payment thereof (in the amount of the original assessment) have been escrowed with an independent third party with provisions for the payment thereof satisfactory to Agent in its sole and absolute discretion. Additionally if requested by Agent, Borrower shall also provide a sales tax clearance letter from the appropriate taxing authority.

(j) Appraisal. Agent shall have received, reviewed and approved, in Agent's sole and absolute discretion, an MAI certified appraisal of the Property, performed in accordance with FIRREA and Agent's appraisal requirements by an appraiser selected and retained by Agent, in form and content acceptable to Agent showing a fair market value of the Property (based upon the Property's stabilized value) resulting in a Maximum Loan-to-Value Ratio not exceeding eighty percent (80%).

(k) Environmental. Agent shall have received, reviewed, and approved, in Agent's sole and absolute discretion, a Phase I Environmental Site Assessment prepared by a licensed or registered environmental engineer or other qualified party satisfactory to Agent, and the information set forth in it must be acceptable to Agent. If requested by Agent, Borrower shall also provide to Agent one or more of the following, as determined by Agent in its sole and absolute discretion: (i) a Phase II Environmental Site Assessment, (ii) an environmental survey, and/or (iii) a report prepared by a licensed or registered environmental engineer or other qualified party satisfactory to Agent stating that no Hazardous Substances are present in, on, under or around the Property and that no condition or circumstance warranting further investigation or analysis exists in the opinion of the preparer of the report.

(l) Agreements Related to the Property. If requested by Agent, Borrower shall provide Agent with copies of all ongoing agreements related to the Property, including but not limited to all property management agreements, all service contracts and warranties, all leases affecting the Property, and such other Property-related information which Agent may reasonably request, if any. All such agreements required by Agent shall be in full force and effect.

(m) Existing Leases; Subordinations. If there are any leases of any part of the Land or any space within the improvements in existence as of the loan closing date (i) copies of those leases must be delivered to and approved by Agent, and (ii) if required by Agent, Agent shall have received fully executed estoppel certificates, subordination agreements, and/or subordination, nondisturbance and attornment agreements, in form and substance acceptable to Agent.

(n) Fees. Borrower shall have paid to Agent, in immediately available funds, all fees and costs called for under this Agreement or by any Loan commitment letter, including but not limited to the Loan Fee.

(o) Approval of Items. Agent shall have received and approved all items required by Agent prior to the closing of the Loan pursuant to this Agreement which are subject to the approval of Agent. All contracts or agreements included in such items shall be in full force and effect. Such items include but are not limited to:

- (i) The Cost Breakdown, including the Loan Budget.
- (ii) The Construction Contract, the Architecture Contract (if any), and all other contracts listed on Exhibit B to the Assignment of Contracts.
- (iii) The Plans and Specifications.
- (iv) A Construction Schedule.
- (v) A site plan showing the layout of the Project.
- (vi) A list of all contractors' names, addresses, phone numbers, and respective contract amounts.
- (vii) Any leasing, management, and/or development agreements entered into by Borrower in connection with the construction and/or the operation of the Project.

(p) Zoning; Zoning Letter. Borrower shall have provided to Agent evidence satisfactory to Agent in its sole and absolute discretion that the Property is properly zoned for its intended use and that any and all zoning stipulations have been complied with. If requested by Agent, such evidence shall include an originally executed letter addressed to Agent from the applicable governmental

authority, dated within six (6) months of Loan Closing Date, indicating that all applicable zoning ordinances and/or restrictive covenants affecting the Property permit the use of the property for its intended purposes and that there are no variances or other conditions currently outstanding that would affect the zoning as stated. Such evidence, including any zoning letter, shall be in a form sufficient to permit the title insurance company to issue a zoning endorsement (ALTA Form 3.0 or equivalent).

(q) Condition of Property. INTENTIONALLY OMITTED.

(r) No Default. No event shall have occurred and be continuing which would constitute a Event of Default (as defined in the applicable document), Default, or an Unmatured Event of Default under any of the Loan Documents.

(s) No Condemnation Proceedings. Neither the Property nor any interest in it shall be affected by eminent domain or condemnation proceedings.

(t) No Mechanic's or Materialmen's Liens, Stop Notices, or Like Notices or Filings. If any construction of Improvements upon the Property has not been complete beyond the period for filing mechanic's or materialman's liens pursuant to applicable law, neither Borrower or Agent shall have received or have knowledge of any bonded stop notice, notice of mechanic's or materialmen's liens, or other similar notice or filing affecting or which could affect the Property or the priority of any disbursement, unless Borrower files a release bond or otherwise provides information satisfactory to Agent in its sole and absolute discretion that such notice or filing will not have such an effect.

(u) Opinion Letters. If required by Agent, Borrower has delivered to Agent, as Agent for the Lenders, a favorable opinion from independent counsel, opining to such matters as Agent may require, in form and substance satisfactory to Agent in its sole and absolute discretion, by counsel acceptable to Agent for Borrower and/or any other parties to the Loan Documents.

(v) Evidence of Equity. Borrower shall have provided evidence of total contribution equity in the Project by Borrower, Contractor, and/or their Affiliates, in an aggregate amount not less than Twelve Million One Hundred Sixty-Seven Thousand and No/100 Dollars (\$12,167,000.00), comprised of (i) Borrower's cash equity in the Project of not less than Seven Hundred Seventeen Thousand Six Hundred Fifty-One and No/100 Dollars (\$717,651.00), plus (ii) Land equity in an amount of not less than Seven Million Five Hundred Thousand and No/100 Dollars (\$7,500,000.00), plus (iii) Deferred Contractor Fees in an amount not less than Two Million Ninety-Two Thousand Two Hundred Seven and No/100 Dollars (\$2,092,207.00); plus (iv) Deferred Developer Fees in an amount not less than One Million Eight Hundred Fifty-Seven Thousand One Hundred Forty-Two and No/100 Dollars (\$1,857,142.00). Borrower's cash equity must be either (1) deposited with the Lender on or prior to the date of this Agreement and disbursed prior to the first disbursement of Loan proceeds or (2) used to pay direct Project costs approved by Lender with evidence of payment delivered to Lender prior to the first disbursement of Loan proceeds, which evidence shall be acceptable to Agent, and may include but may not be limited to canceled checks or other evidence of payment and/or lien waivers.

(w) Contractor Bonding. INTENTIONALLY OMITTED.

(x) Accounts Opened. Borrower shall have opened all accounts required pursuant to the Loan Documents, including the Account and, if required by Agent, the Borrower's Funds Account.

(y) Utilities; Utility Letters. Agent shall have received evidence satisfactory to Agent in its sole and absolute discretion that all utilities necessary to develop and occupy the Land and Improvements will be provided.

(z) Soils Report. If required by Agent, Borrower shall have delivered to Agent a soils report prepared within three (3) years prior to the closing of the Loan and acceptable to Agent in its sole and absolute discretion prepared by a qualified licensed soils engineer acceptable to Agent in its sole and absolute discretion. The soils report shall be satisfactory to Agent, shall be based upon adequate due diligence, and shall state that there are no unusual or hazardous soil conditions in, on, under, or around the Property, that no condition or circumstance warranting further investigation or analysis exists in the opinion of the soils engineer, and that construction of all Improvements as proposed is feasible under existing soil conditions so long as the recommendations of the soils report are followed.

(aa) Access. Unless waived by Agent, Borrower shall have delivered to Agent evidence that all streets and roads necessary for access to the property have been dedicated for public use and are completed and accepted by the appropriate governmental authorities, or otherwise private easements have been granted to Borrower providing such access, in a form sufficient to permit the title insurance company to issue an access endorsement (CLTA Form 103.7 or ALTA 17 or equivalent). This information can be shown on the survey by a notation of "dedicated" by the name of the street. Alternatively, copies of any recorded private easements should be submitted with the title commitment.

(bb) Compliance With Requirements: Engineer's/Architects Certificate. Borrower shall have provided to Agent evidence satisfactory to Agent in its sole and absolute discretion that the Property and the Project is in compliance with, and when completed will comply with, all Requirements, including without limitation, all zoning ordinances, environmental protection laws, and all other laws and governmental rules and regulations including the Americans with Disabilities Act. If requested by Agent, such evidence shall include an original certificate executed by the Architect and/or Project engineer, on Agent's prescribed form or otherwise in form and substance acceptable to Agent, certifying compliance therewith.

(cc) Permits. Agent shall have received copies of all building permits, licenses, and consents for the Improvements that have been issued to Borrower.

(dd) Construction Schedule and Cost Statement. Agent shall have received a construction schedule of the proposed progress of work and anticipated disbursement of loan proceeds.

(ee) Loan-To-Cost. Lender shall have received evidence reasonably satisfactory to Lender that the Loan Amount shall not exceed eighty-five percent (85%) of the total cost of the Project.

(ff) Miscellaneous. Borrower shall have delivered to Agent any other item reasonably deemed necessary by individually and as a Lender and as Agent for the Lenders (as such terms are described and defined in the Loan Agreement) and their respective successors and assigns and shall have fulfilled any other condition reasonably required by Agent to fulfill the intention of this Agreement and any Loan commitment issued to Borrower.

1.2 Conditions to Initial Disbursement. Before Agent or any Lender becomes obligated to make the initial disbursement of Loan funds under this Agreement, the following conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Agent in its sole and absolute discretion. No waiver of any condition is effective unless expressly made in writing by Agent.

(a) Closing Conditions. All closing conditions set forth above shall have been satisfied or shall have been waived or deferred by Agent in its sole and absolute discretion.

(b) Draw Request. Agent shall have received a complete and accurate Draw Request from Borrower, together with a Draw Request Certification for such Draw Request, and Agent shall have determined that all conditions contained in this Agreement to the disbursement of the items set

forth in the Draw Request have been met or waived in writing by Agent. For purposes hereof, a Draw Request shall not be considered "complete and accurate," and Agent shall have no obligation to fund all or any part of such Draw Request, unless and until such Draw Request includes and is accompanied by all items requested by Agent, which are complete and accurate, and in form and content acceptable to Agent in its sole and absolute discretion.

(c) Title Endorsements. If the initial disbursement is made after the closing of the Loan, Agent shall have received a "bring-down" or "date-down" endorsement, and/or other endorsements required by Agent, to the title insurance policy, insuring the continuing first-priority lien of the Deed of Trust on the Property, subject only to such exceptions and conditions to title as Agent has approved in its sole and absolute discretion, including first-priority lien of the disbursement, in form and substance acceptable to Agent in its sole and absolute discretion.

(d) Additional Conditions if Construction Commenced. If construction has commenced on the Property, the subsequent disbursement conditions set forth below shall be satisfied, or shall have been waived or deferred by Agent in its sole and absolute discretion.

1.3 Subsequent Disbursement Conditions. After the initial disbursement, but before any Lender becomes obligated to make any subsequent disbursement of Loan funds under this Agreement, all of the following conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Agent in its sole and absolute discretion. No waiver of any condition is effective unless expressly made in writing by Agent.

(a) Closing and Initial Disbursement Conditions; Title Endorsement. All closing conditions and initial disbursement conditions set forth above shall have been satisfied and remain satisfied as of the date of the disbursement, or shall have been waived or deferred by Agent in its sole and absolute discretion. With respect to title insurance, Agent shall have the right to require, with each subsequent disbursement, at Borrower's sole cost and expense, a "bring-down" or "date-down" endorsement to the title insurance policy, in form and substance reasonably acceptable to Agent.

(b) No Damage to Improvements. The Improvements shall not be materially damaged and not repaired, unless Agent shall have received funds from Borrower or insurance proceeds sufficient to pay for all repairs in a timely manner as determined by Agent in its sole and absolute discretion.

(c) No Mechanic's or Materialmen's Liens, Stop Notices, or Like Notices or Filings. Agent shall not have received or have knowledge of any bonded stop notice, notice of mechanic's or materialmen's liens or other similar notice or filing affecting or which could affect the Property or the priority of the disbursement, unless Borrower files a release bond or otherwise provides information satisfactory to Agent in its sole and absolute discretion that such notice or filing will not have such an effect.

(d) Loan "In Balance." The Loan shall be "in balance" as determined by Agent in its sole and absolute discretion, and Agent shall have approved any revised Cost Breakdown proposed by Borrower.

(e) Soils Report Compliance. INTENTIONALLY DELETED.

(f) Foundation Survey. If requested by Agent, Borrower shall have provided to Agent a survey showing the foundations of all Improvements then in place on the Land.

(g) Permits. Excepting those previously issued to Borrower and delivered to Agent pursuant to Section 1.1(cc) above, with respect to any work for which a Draw Request is made, Agent shall have received copies of all applicable building permits, licenses, and consents for such Improvements. Additionally Borrower shall have delivered to Agent copies of all building permits, licenses, and consents for the Improvements promptly upon Borrower's receipt thereof.

1.4 Final Disbursement. Before Agent, or any Lender, becomes obligated to make any final disbursement of Hard Costs and/or any final disbursement of retention under this Agreement, the following conditions shall have been satisfied at Borrower's sole cost and expense in a manner acceptable to Agent in its sole and absolute discretion. No waiver of any such condition is effective unless expressly made in writing by Agent.

(a) Closing, Initial, and Subsequent Disbursement Conditions. All closing conditions, initial disbursement conditions, and subsequent disbursement conditions set forth above shall have been satisfied or shall have been waived by Agent in its sole and absolute discretion

(b) Final Draw Request. Agent shall have received a complete and accurate final Draw Request from Borrower, and Agent shall have determined that all conditions contained in this Agreement to the disbursement of the items set forth in the final Draw Request have been met. Unless otherwise agreed to in writing by Agent, the final Draw Request shall be accompanied by written certification by the Architect and/or the Contractor (as determined by Agent) that all Improvements as completed conform to the Plans and Specifications and all Requirements (which shall include the Contractor's and/or Architect's execution of the standard AIA G702 and G703), together with such other documentation and information as Agent may reasonably require.

(c) Title Endorsements. Agent shall have received, at Borrower's sole cost and expense, endorsements to, or a reissue of, the title insurance policy, in form and substance acceptable to Agent in its sole and absolute discretion, insuring lien-free completion of the Improvements, and the continuing first-priority lien of the Deed of Trust, and including first-priority lien of the disbursement.

(d) Improvements Complete. All Improvements must be completed in accordance with Section 3.1(b) below and all Requirements.

(e) Governmental Approvals. Agent shall have received written evidence acceptable to Agent of the issuance of certificates of occupancy and/or any other approvals and acceptances required to be issued by all appropriate governmental authorities.

(f) As-Built Plans and Survey. If requested by Agent, then within one hundred twenty (120) days after the completion of the Improvements in accordance with Section 3.1(b) below, Borrower shall have provided to Agent a complete set of Plans and Specifications and/or a survey showing the Improvements as built.

2. Disbursement Conditions and Procedures; Other Loan Terms.

2.1 Cost Breakdown; Disbursements; Interest Reserve.

(a) Cost Breakdown. Subject to the satisfaction of all closing and disbursement conditions precedent set forth in this Agreement, Agent shall make disbursements of the Loan based on the Cost Breakdown. Set forth in the Cost Breakdown is the Loan Budget. From each line item within the Cost Breakdown, Agent shall disburse Loan funds in an amount not to exceed the total amount shown in the Loan Budget for that line item, taking into account all prior disbursements, retention requirements, and any reallocation of funds to which Agent has consented to in writing.

(b) Line Items Not Requiring Retention. For each line item set forth in the Cost Breakdown determined by Agent to be a Soft Cost, Agent shall make one or more disbursements without retention for each Draw Request, subject to the terms and conditions contained herein.

(c) Line Items Requiring Retention. Unless otherwise agreed in writing by Agent, for each line item set forth in the Cost Breakdown determined by Agent to be a Hard Cost, each disbursement hereunder shall be equal to ninety percent (90%) of the amount applied for in the applicable Draw Request and Agent shall retain the remaining ten percent (10%) undisbursed portion of these line items as retention.

(d) Release of Retention.

(i) Agent shall disburse the amounts held as retention in accordance with the terms of this Agreement when all of the following conditions are satisfied or waived in writing by Agent:

(A) The Improvements shall have been completed in accordance with Section 3.1(b) below.

(B) If requested by Agent, Agent shall have received evidence that a valid notice of completion and/or other completion documentation acceptable to Agent for the Improvements has been executed and recorded (if required or advisable under applicable law).

(C) All final disbursement conditions set forth in this Agreement have been satisfied or waived in writing by Agent.

(ii) Notwithstanding the foregoing, Agent shall make disbursements, without retention, in accordance with the terms of this Agreement, for the following items: general conditions, general contractor's fee or purchases of materials under the general contract; windows, floor and roof trusses, elevator shafting materials, appliances purchased by the general contractor, lumber, dry wall, interior trim materials and electrical light fixtures, when all of the following conditions are satisfied or waived in writing by Agent:

(A) The work for which the disbursement is requested shall have been completed as determined by Agent.

(B) If required by Agent, a construction inspection of the work by Agent's inspector shall have been completed, at Borrower's sole cost and expense, and Agent's inspector shall have approved such work as being complete.

(C) Agent shall have received one or more unconditional lien waivers covering all amounts previously disbursed with respect to the work, and conditional lien waivers covering the disbursement amount. Thereafter, upon payment of the disbursement for the work, Agent shall promptly receive an unconditional lien waiver covering the disbursement amount.

(D) All subsequent disbursement conditions set forth in Section 1.3 above have been satisfied.

(e) Interest Reserve. Notwithstanding any Interest Reserve set forth in the Cost Breakdown, all Net Monthly Cash Income from the Property shall be used to pay accrued interest coming

due under the Loan. After (i) all Net Monthly Cash Income has been used, and (ii) all disbursement conditions are met (or have been waived in writing by Agent) as determined in Agent's sole and absolute discretion, Agent shall disburse funds from the Interest Reserve to pay the excess monthly accrued interest coming due under the Loan. All disbursements from the Interest Reserve shall be made first from Borrower's Funds which may be allocated to that line item. Loan funds shall be disbursed from the Interest Reserve only after any and all such Borrower's Funds have been exhausted.

(f) Contingency Line Items. From time to time, Borrower may request Loan funds from a contingency line item (if any) set forth on the Cost Breakdown, subject to any retention or other requirements set forth herein or in any other Loan Document applying to that line item, or request Agent to allocate or reallocate Loan funds from a contingency line item, or increase, decrease, and/or deplete a contingency line item. Each such request shall be in writing (by Draw Request, submission of a revised Cost Breakdown, or other written request, as applicable) and shall contain such supporting documentation, including change orders, invoices, and canceled checks, in such forms as Agent shall require. Agent in its sole and absolute discretion may decline any such request for contingency funds, or any request to allocate, reallocate, increase, decrease, or deplete any contingency line item.

(g) Use of Disbursements: Revised Cost Breakdown. Borrower agrees to use disbursements solely in conformity with the Cost Breakdown and Loan Budget. Subject to subsection (f) above, if the Improvements cannot be completed in strict conformity with the most recently approved Cost Breakdown, Borrower shall immediately submit to Agent for its approval a revised Cost Breakdown. The revised Cost Breakdown shall identify Borrower's requested changes in any line items and shall be accompanied by Borrower's written statement of reasons for the changes. If further changes are required, Borrower shall seek Agent's approval, following the procedures described above. Agent may withhold further disbursements unless and until Agent approves the revised Cost Breakdown. Agent reserves the right to approve or disapprove any Cost Breakdown in its reasonable judgment. The most recently approved Cost Breakdown supersedes all previously approved Cost Breakdowns. Nothing contained in this section, or any approval by Agent of a revised Cost Breakdown, shall obligate Agent to advance any proceeds in excess of the Loan Amount.

(h) Disbursement to Pay Fees and Costs. Agent, at its option, may use Loan funds to pay loan fees owing to Agent or any Lender, interest on the Loan, legal fees and expenses of Agent's or any Lender's attorneys which are payable by Borrower, and such other sums as may be owing from time to time by Borrower to Agent or any other Lender with respect to the Loan all without further authorization by Borrower; provided, however, that Agent shall notify Borrower in writing of all such disbursements to pay fees and/or costs. Agent, at its option, may make any such payment on Borrower's behalf by (i) debiting the Loan funds in the amount of the payment and disbursing such amount to itself or any other Lender, as applicable, or (ii) disbursing all or part of the payment amount into the Account, and then either debiting the Account or invoicing Borrower in the amount of the payment(s). For these purposes, Agent is not restricted to the line items and cost categories of the Cost Breakdown. Borrower acknowledges that such a use of Loan funds by Agent or for the benefit of one or more Lender, may cause the Loan to become "out of balance," requiring deposits by Borrower into the Borrower's Funds Account.

(i) Debit of Loan at Closing. As of the day the Loan closes, Agent is authorized to make payments on Borrower's behalf by debiting the Loan funds and disbursing such amounts to itself or any other Lender, as applicable, for all costs and expenses payable by Borrower and discussed by Agent or any other Lender pursuant to the terms of this Agreement, if such have not been received by Agent in immediately available funds directly from Borrower's own funds. Such expenses shall include but not be limited to: (i) reasonable legal fees and expenses of Agent's and Lenders' counsel, (ii) loan administration and documentation fees, (iii) appraisal fees, and if applicable, appraisal review fees,

(iv) construction inspection fees, (v) the Loan Fee, if any; and (vi) and other fees and costs required to be paid to Agent by Borrower under this Agreement.

(j) Interest on Disbursements. Interest on each disbursement, whether initiated by Borrower, Agent, or any Lender, shall accrue from the time the Loan funds are so debited in the amount of the disbursement.

(k) Contractor's Fees/Developer Fees/Overhead. Except as otherwise agreed in writing by Agent, no Loan funds shall be disbursed by Agent for developer fees and/or contractor's fees. Borrower understands and acknowledges that (i) Deferred Contractor Fees, and (ii) Deferred Developer Fees, in the amounts set forth in Section 1.1(v) above, are required by Lender as a material condition of and a material consideration for the making of the Loan to Borrower.

2.2 Loan in Balance: Borrower's Funds Account.

(a) If at any time and from time to time Agent determines that the sums of (i) any undisbursed portion of the Loan to which Borrower is entitled (exclusive of the contingency amounts in the Cost Breakdown), plus (ii) any sums to be paid by Borrower or any other party from other funds on deposit with Agent or anticipated in the approved Cost Breakdown, are insufficient to pay through completion of Improvements and the Maturity Date the actual unpaid costs of the construction, marketing and leasing, ownership, maintenance and sale or leasing of the Property, as and if applicable, (including any interest and other sums accruing or payable under the Loan Documents), the Loan is "out of balance." If the Loan is "out of balance," Borrower shall, within ten (10) days after written demand by Agent, deposit with Agent the amount of the deficiency in the Borrower's Funds Account with interest earned thereon to be added to such account. The Loan is "in balance" when sufficient sums are in the Cost Breakdown to satisfy the requirements of this Section.

(b) Borrower acknowledges that the Loan may become "out of balance" from a shortage of funds in any single line item or category of the Cost Breakdown, even if there are undisbursed Loan funds in other line items or categories. Borrower further acknowledges that changes in circumstances may cause the Loan to become "out of balance", including but not limited to projections of interest rates, anticipated extensions of the Maturity Date, cost overruns and construction change orders, or failure of the improvements to be leased and occupied as anticipated by the Pro Forma Schedule.

(c) The disbursement procedures described in this Agreement shall apply to the Loan funds and also any Borrower's Funds which may be on deposit in the Borrower's Funds Account. Any such Borrower's Funds shall be fully disbursed until they are exhausted prior to any Loan funds being disbursed.

2.3 Draw Requests.

(a) For each disbursement, Borrower shall submit to Agent (or such other persons authorized in writing by Borrower), at least ten (10) Banking Days prior to the date of the requested disbursement, a Draw Request signed by Borrower and if required by Agent, the Architect and/or the Contractor, together with such documentation and information as Agent may require. Each Draw Request shall be acceptable in form and substance to Agent in the exercise of its reasonable judgment, and shall include such supporting items of information and documentation, including invoices, cancelled checks, lien waivers, and other evidence, as Agent may require to show that Borrower is in compliance with the Loan Documents. If Agent so requires, any given Draw Request shall also include written certification by the Architect and/or the Contractor (as determined by Agent) that the Improvements as constructed to date substantially conform to the Plans and Specifications.

(b) In each Draw Request, Borrower shall request disbursement for one or more specified line items of the Loan Budget. Borrower may submit a Draw Request to Agent no more than once in a calendar month, unless Agent agrees, in its sole and absolute discretion, to make disbursements more frequently. Borrower shall use all Loan funds and all Borrower's Funds strictly for the purposes for which they were disbursed by Lender.

(c) Unless Borrower has notified Agent in writing to the contrary, each Draw Request shall constitute Borrower's representation and warranty to Agent and the other Lenders that (i) the Loan is "in balance," (ii) all prior disbursements, as well as that currently being requested, were and will be used in strict compliance with the Loan Budget, and (iii) no Event of Default (as defined in the applicable document), Default, or Unmatured Event of Default has occurred and is continuing under any of the Loan Documents, and shall also constitute a reaffirmation of the representations and warranties of Borrower set forth in the Loan Documents as true and correct as of the date of such Draw Request.

(d) Telecopy or Electronic Mail Authorization.

(i) The Agent may honor telecopy or electronic mail instructions for advances or repayments given by any person authorized to sign a Draw Request pursuant to the terms of this Agreement, or any one of the individual signer(s) of this Agreement, or a person or persons authorized by any person authorized to sign a Draw Request pursuant to the terms of this Agreement or any one of the signer(s) of this Agreement.

(ii) The Borrower hereby indemnifies, defends, and holds Agent and all Indemnified Parties harmless for, from, and against all liability, loss, and costs in connection with any act resulting from telecopy or electronic mail instructions it reasonably believes are made by any person authorized to sign a Draw Request pursuant to the terms of this Agreement, or by one of the individual signer(s) of this Agreement, or by a person or persons authorized by any person authorized to sign a Draw Request pursuant to the terms of this Agreement or any one of the signer(s) of this Agreement, or by any other individual authorized by the Borrower to give such instructions. This indemnity shall survive the termination of Agreement and/or the payment in full of the Loan.

2.4 Disbursement Procedures. Unless otherwise agreed to in writing by Agent, the following procedures will apply with respect to the disbursement of the Loan.

(a) Soft Costs. Soft Costs shall be disbursed based upon Agent's approval of Borrower's Draw Requests as set forth in this Agreement. No disbursements for Soft Costs will be made until all conditions for disbursement applicable to the disbursement of such soft costs set forth in the Loan Documents have been met.

(b) Hard Costs. Hard Costs shall be disbursed on a percentage of completion basis. No disbursements for Hard Costs will be made until Agent or its designated construction inspector or consultant has completed a site inspection, including a construction inspection by Agent's inspector, at Borrower's sole cost and expense, and Agent or its construction inspector or consultant shall have approved the applicable percentage of completion of the Hard Costs being requested, and all other conditions under this Agreement for disbursement have been met.

(c) Procedures Generally. Agent shall make disbursements in accordance with its standard disbursement procedures. After the closing of the Loan, Agent may send to Borrower a letter summarizing the Agent's current disbursement procedures to be followed when Borrower submits each Draw Request. As part of each Draw Request, Borrower will be required to submit a package of

disbursement items and information as required by Agent, but consistent with this Agreement. The items which shall be included as part of the Draw Request include the following:

(i) Request for Payment. As a cover sheet to the Draw Request, Borrower shall submit to Agent a request for payment on a Agent-prescribed form setting forth, among other things, the total amount requested, any Loan Budget reallocations requested, and a draw summary by line item.

(ii) Contractor's Application and Certificate for Payment. Borrower shall submit to Agent a Contractor's Application and Certificate for Payment (i.e., AIA Documents G702 and G703) prepared and fully executed by the Contractor. If required by Agent, such Certificate for Payment shall also be fully executed by the Architect thus certifying the work covered therein. By submitting the Certificate for Payment to Agent, Borrower acknowledges its review and approval of such documents and all information it contains.

(iii) Lien Waivers. All Draw Requests for Hard Costs shall include a conditional lien waiver in the amount of the current payment due for each Hard Cost item set forth in the foregoing Certificate of Payment (and the AIA G702 and G703 thereto) being submitted. The subsequent Draw Request shall include an unconditional lien waiver for each such Hard Cost item and shall cover an amount which (A) is at least the total amount disbursed for such Hard Cost item pursuant to the previous Draw Request, and (B) when totaled with all previous unconditional lien waivers for such Hard Cost item, totals at least the total aggregate amount previously disbursed for such Hard Cost item. Borrower agrees that any conditional or unconditional lien waiver delivered pursuant to this Section shall be in the form of conditional or unconditional (as applicable) lien waiver set forth in or required by applicable law.

(iv) Back-Up Invoices for Soft Costs. All Draw Requests for Soft Costs shall include back-up invoices for each Soft Cost item over Twenty-Five Thousand and No/100 Dollars (\$25,000.00). Unless otherwise agreed in writing by Agent, each such invoice shall (A) indicate the correct address of the Project, (B) be no more than sixty (60) days old, except for Soft Costs incurred and paid prior to the closing of the Loan, and (C) be in an amount which reconciles with the applicable request for payment form.

(v) Offsite Stored Materials. Agent will disburse for materials to be used in the construction of the Improvements which are or will be stored at a location other than the Project site, so long as the aggregate of advances for such offsite stored materials does not exceed the Stored Materials Advance Limit if and only if, all of the following conditions are met:

(A) All conditions to disbursement set forth in the Loan Documents have been satisfied or waived in writing by Agent.

(B) Borrower shall have delivered to Agent a bill of sale and/or copies of invoices covering such offsite stored materials, and if required by Agent in Agent's discretion, Agent shall have filed a UCC-1 Financing Statement which shows of record as perfecting a first-priority security interest in the offsite stored materials.

(C) Unless otherwise agreed in writing by Agent, such offsite stored materials shall be located in a bonded warehouse and shall be properly tagged and identified as determined by Agent.

(D) Borrower shall have delivered evidence to Agent acceptable to Agent that such materials will be stored in a manner and condition acceptable to Agent, If

reasonably requested by Agent, then at Borrower's sole cost and expense, such offsite stored materials may be inspected at the storage site by Agent or Agent's independent third party inspector or consultant.

(E) At Borrower's sole cost and expense, Borrower shall have provided to Agent evidence of such additional insurance with respect to the offsite stored materials as Agent may require. Such additional insurance shall include coverage for transportation of such offsite stored materials from the storage site to the Project site.

2.5 Escrow for Loan Closing. In connection with the Loan closing and the initial disbursement of Loan proceeds by Agent under this Agreement, Agent, at its option, may require that such disbursement be made through an escrow maintained with a title insurance company or law firm acceptable to Agent in its sole and absolute discretion, in accordance with escrow instructions prepared by Agent.

2.6 Loan Disbursements. Unless Agent and Borrower have otherwise agreed in writing, Agent, if it so chooses, may make disbursements into the Account and/or directly to the Contractor, subcontractors, laborers, or material suppliers.

2.7 Disbursement Conditions.

(a) **Fulfillment of Conditions.** Lender need not make any disbursement of Loan funds until Borrower fulfills all conditions of the Loan Documents, at Borrower's sole cost and expense and in a manner acceptable to Agent in its sole and absolute discretion (unless another standard is specified) including the Loan closing conditions and the Loan disbursement conditions set forth in **Section 1** above. Borrower acknowledges that delays in disbursements may result from the time necessary for Agent to verify satisfactory fulfillment of any and all conditions to a given disbursement. Borrower consents to all such delays. Agent may waive a condition of disbursement, but each such waiver shall be enforceable against Agent and the other Lenders only if it is expressly made in writing by Agent. If Agent makes a disbursement before fulfillment of one or more required conditions, that disbursement alone shall not be a waiver of such conditions, and Agent reserves the right to require their fulfillment before making any subsequent disbursements. Agent may condition any disbursement made following waiver of any one or more conditions upon receipt of an endorsement to Lender's title insurance policy. If all conditions are not satisfied, Lender, in its sole and absolute discretion, may disburse as to certain items or categories of costs and not others.

(b) **Deferral of Conditions; Conditions Subsequent.** If Borrower has not fulfilled all closing conditions and initial disbursement conditions prior to the date set for closing the Loan, Lender, at its option, may close the Loan without disbursing any Loan funds or may close the Loan and disburse some or all of the Loan funds subject to Borrower's compliance with any or all such condition(s) as conditions subsequent to the Loan closing. In such event, Agent shall notify Borrower of the conditions subsequent that must be met and the time period(s) within which Borrower is required to comply. If no time period for compliance is specified by Agent as to any condition subsequent, then Borrower shall comply with such condition subsequent within forty-five (45) days of the date of closing of the Loan; provided, however, that if such condition subsequent cannot reasonably be satisfied by Borrower within such forty-five (45) day period, then so long as Borrower diligently pursues the satisfaction of such condition, Borrower may request and Agent shall extend such period in its reasonable discretion for up to an additional forty-five (45) days so that Borrower can in good faith satisfy such condition subsequent. Failure of Borrower to comply with all conditions subsequent within the applicable time periods shall be an Event of Default hereunder.

2.8 Interest Rate and Payment Terms.

(a) Interest Only Payments; Principal Due at Maturity. Interest is payable beginning **March 1, 2008**, and on the same date of each CONSECUTIVE month thereafter, plus a final interest payment with the final payment of principal. Principal is payable on **February _____, 2010**, the Maturity Date, as such Maturity Date may be extended pursuant to the terms and conditions of the Note and this Agreement.

(b) Interest Rate. Interest on each advance under the Loan Documents shall accrue at one of the following per annum rates selected by Borrower (i) upon notice received by Lender not later than 11:00 a.m. (Phoenix, Arizona time), the Prime-Based Rate (a "Prime Rate Loan"); (ii) upon at least two (2) New York Banking Days prior notice received by Lender not later than 11:00 a.m. (Phoenix, Arizona time), the LIBOR-Based Rate (a "LIBOR Rate Loan"). The term "New York Banking Day" means any day (other than a Saturday or Sunday) on which commercial banks are open for international business in New York, New York. The term "Money Markets" refers to one or more wholesale funding markets available to and selected by Lender, including negotiable certificates of deposit, commercial paper, eurodollar deposits, bank notes, federal funds, interest rate swaps or others. The term "Prime-Based Rate" means the prime rate announced by Agent, as and when such rate changes. The term "LIBOR Rate" means the 1, 2, 3 or 6 month LIBOR rate quoted by Agent from Reuters Screen LIBOR01 Page or any successor thereto (which shall be the LIBOR rate in effect two (2) New York Banking Days prior to commencement of the advance), adjusted for any reserve requirement and any subsequent costs arising from a change in government regulation. The term "LIBOR-Based Rate" means the LIBOR Rate Margin plus the LIBOR Rate. The term "LIBOR Rate Margin" means one and ninety-five hundredths percent (1.95%) (195 basis points) per annum; provided, however, upon the 50% Leasing Test being met, as determined by Agent in its reasonable discretion, such LIBOR Rate Margin shall be reduced to one and seventy hundredths percent (1.70%) (170 basis points) per annum. The term "50% Leasing Test" means (i) not less than fifty percent (50%) of the gross rentable area of the Improvements shall be leased (pursuant to fully executed Leases on the Approved Standard Lease Form, or otherwise in form and substance acceptable to Agent), (ii) rents from such Leases, on an aggregated/average basis, shall be at or above pro forma rental rates set out in the Appraisal approved by Agent, and (iii) Borrower shall have delivered copies of all such Leases to Agent or such other evidence of such leases and rents acceptable to Agent in Agent's discretion, which evidence may include rents rolls, leasing reports, and other leasing information.

In the event Borrower does not timely select another interest rate option by not later than 11:00 a.m. (Phoenix, Arizona time) at least two (2) New York Banking Days before the end of the Loan Period for a LIBOR Rate Loan, Agent may at any time after the end of the Loan Period convert the LIBOR Rate Loan to a Prime Rate Loan, but until such conversion, the funds advanced under the LIBOR Rate Loan shall continue to accrue interest at the same rate as the interest rate in effect for such LIBOR Rate Loan prior to the end of the Loan Period. The term "Loan Period" means the period commencing on the advance date of the applicable LIBOR Rate Loan and ending on the numerically corresponding day 1, 2, 3, or 6 months thereafter matching the interest rate term selected by Borrower; provided, however, (a) if any Loan Period would otherwise end on a day which is not a New York Banking Day, then the Loan Period shall end on the next succeeding New York Banking Day unless the next succeeding New York Banking Day falls in another calendar month, in which case the Loan Period shall end on the immediately preceding New York Banking Day; or (b) if any Loan Period begins on the last New York Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of the Loan Period), then the Loan Period shall end on the last New York Banking Day of the calendar month at the end of such Loan Period.

No LIBOR Rate Loan may extend beyond the Maturity Date. In any event, if the Loan Period for a LIBOR Rate Loan should happen to extend beyond the Maturity Date, such LIBOR Rate Loan must be prepaid

on the Maturity Date. Agent's internal records of applicable interest rates shall be determinative in the absence of manifest error. Each LIBOR Rate Loan, shall be in a minimum principal amount of One Million and No/100 Dollars (\$1,000,000.00).

The aggregate number of LIBOR Rate Loans in effect at any one time may not exceed three (3).

If a LIBOR Rate Loan is prepaid prior to the end of the Loan Period, as defined above, for such loan, whether voluntarily or because prepayment is required due to this Note maturing or due to acceleration of this Note upon default or otherwise, Borrower agrees to pay all of Lender's costs, expenses and Interest Differential (as determined by Lender) incurred as a result of such prepayment. The term "Interest Differential" shall mean that sum equal to the greater of zero or the financial loss incurred by Lender resulting from prepayment, calculated as the difference between the amount of interest Lender would have earned (from like investments in the Money Markets as of the first day of the LIBOR Rate Loan) had prepayment not occurred and the interest Lender will actually earn (from like investments in the Money Markets as of the date of prepayment) as a result of the redeployment of funds from the prepayment. Because of the short-term nature of this facility, Borrower agrees that the Interest Differential shall not be discounted to its present value. Any prepayment of a LIBOR Rate Loan shall be in an amount equal to the remaining entire principal balance of such loan.

(c) Principal Prepayments. Borrower may prepay some or all of the principal under any Prime Rate Loan, from time to time, without payment of any prepayment premium or fee. Any prepayment of some or all of the principal under any LIBOR Rate Loan is subject to the terms and conditions set forth in Section 2.8(b) above.

(d) Payment in Full on Maturity Date. All principal, accrued and unpaid interest, and other sums due under the Loan Documents shall be due and payable no later than the Maturity Date, as such may be extended pursuant to the terms and conditions of the Note and this Agreement.

(e) Effective Contracted Rate. Borrower agrees to pay an effective contracted for rate of interest equal to the rate of interest resulting from all interest payable as provided in the Loan Documents plus the additional rate of interest resulting from (a) any loan fee(s) or other similar fees described or defined in the Loan Documents, and (b) all Other Sums. For purposes hereof, the "Other Sums" shall mean all fees, charges, goods, things in action, or any other sums or things of value (other than interest payable as provided hereunder and any loan fee) paid or payable by Borrower, whether pursuant to this Agreement, any of the other Loan Documents, or any other document or instrument in any way pertaining to this lending transaction, that may be deemed to be interest for the purpose of any law of the State of Arizona, or any other applicable law, that may limit the maximum amount of interest to be charged with respect to this lending transaction. The Other Sums shall be deemed to be interest and part of the "contracted for rate of interest" for the purposes of any such law only.

(f) Usury Savings Clause. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Agreement and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the Maturity Date or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's and Borrower's express intent that (a) all such excess amounts collected by Lender shall be credited to the principal balance of the Loan and all other indebtedness of Borrower to Lender under the Loan Documents, and (b) the provisions of this Agreement and the other

Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Loan shall, to the extent not prohibited by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding. If the outstanding principal balance and all other indebtedness of Borrower to Lender under the Loan Documents has been repaid in full, the excess amount paid will be refunded to the Borrower.

(g) Calculation of Interest: Payments. Interest will be computed for the actual days elapsed on the basis of a three hundred sixty (360) day year, which results in more interest than if a three hundred sixty-five (365) day year method were used. Except as otherwise provided herein, all amounts payable under the Loan Documents are payable in lawful money of the United States during normal business hours on a Banking Day. Checks and drafts constitute payment only when collected. All payments made under the Loan Documents, including any payment made under any Note, shall be made without offset, demand, counter-claim, deduction or recoupment (each of which is hereby waived), and acceptance by Agent or any Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, notwithstanding any notation on or accompanying such partial payment to the contrary, and shall not constitute a waiver by Agent or any Lender of any Event of Default. Except as otherwise set forth herein or in any other Loan Document, payments shall be applied in such order and manner as Lender may determine in its sole and absolute discretion.

(h) Late Charge for Overdue Payments. If Lender has not received the full amount of any payment scheduled to be made under this Note, other than the final principal payment, by the end of ten (10) calendar days after the date it is due, Borrower shall pay a late charge to Lender in the amount of five percent (5%) of the overdue payment; provided, however, in no event shall any late charge be payable hereunder without Lender first having provided Borrower with any notice required by applicable law. Borrower shall pay this late charge only once on any late payment. This late charge shall not be construed as in any way extending the due date of any payment, and is in addition to, and not in lieu of, any other remedy Lender may have.

(i) Default Rate. Upon the occurrence of any Event of Default (subject to any applicable notice and cure periods), the unpaid balance of the Loan shall bear interest at the Default Rate. Additionally, from and after the Maturity Date, or such earlier date as all sums owing under the Loan become due and payable by acceleration or otherwise, the Loan shall bear interest at the Default Rate. Accrued interest, at the Applicable Rate, if not paid when due (after the expiration of applicable notice and cure periods), shall accrue interest at the Default Rate, as hereinabove provided, which may result in compounding of interest. Except as otherwise set forth herein or in any other Loan Document, payments under this Agreement or under any other Loan Document that are due on demand, shall bear interest at the Default Rate (i) from the date costs or expenses are incurred by Agent or any Lender that give rise to the demand or (ii) if there is no such date, then from the date of demand, until Borrower pays the full amount of such payment, including interest.

(j) Lost Note. Upon any Lender's furnishing to Borrower an affidavit to such effect, Borrower shall, if the applicable Note is mutilated, destroyed, lost or stolen, deliver to such Lender, in substitution therefor, a new note containing the same terms and conditions as the applicable Note.

2.9 Extension of Maturity Date. If on or before the Maturity Date, Borrower satisfies the conditions set forth in this Section, the Maturity Date will be extended to **February _____, 2011**. If the

Maturity Date is so extended (i) all sums outstanding under the Loan will be due and payable on the extended Maturity Date, and (ii) all references herein and in the other Loan Documents to the "Maturity Date" shall thereafter mean such extended Maturity Date. Lender's obligation to extend the Maturity Date as described above is subject to the following conditions to extend (collectively, the "Conditions to Extend"), all of which shall be satisfied as determined by Agent in its sole and absolute discretion, unless otherwise waived in writing by Agent:

(a) Notice of Intention to Extend. Borrower shall deliver to Agent, at least thirty (30) days prior to the Maturity Date, a written notice of Borrower's intention to extend the Loan as described above pursuant to the terms and conditions set forth in this Agreement, together with supporting documentation and evidence showing that all Conditions to Extend have been met or will be met on or before the Maturity Date, all in form and substance satisfactory to Agent in its sole and absolute discretion.

(b) Conditions to Final Disbursement Met. All Conditions to Final Disbursement shall have been met or waived in writing by Agent.

(c) Completion of Construction. Borrower shall have completed construction of the Improvements in accordance with Section 3.1(b) below on or before the Completion Date to Agent's satisfaction, and shall have provided Agent with a Certificate of Occupancy, and if requested by Agent, a Notice of Completion, Completion Affidavit, or other evidence of completion acceptable to Agent. Borrower shall provide Agent satisfactory evidence that all costs associated with such construction have been paid in full, and that the Property is subject to no liens, conditional sales contracts, or other encumbrances or interests except as approved in writing by Agent.

(d) Good Condition and Repair. Agent shall be satisfied that the Property, including any construction on it, has been well maintained and is in good condition and repair, except for any insured casualty which is being repaired as provided in the Loan Documents.

(e) Title Endorsements. Agent shall have received, at Borrower's sole cost and expense, a title policy "bring-down" or "date down" endorsement, and such other title endorsements or title policies as Agent may request, or a reissue of, the title policy, in form and substance acceptable to Agent in its sole and absolute discretion, insuring lien-free completion of the Improvements, and the continuing first-priority lien of the Deed of Trust.

(f) No Default. No Event of Default (as defined in the applicable document) or Default shall have occurred, and no Unmatured Event of Default shall have occurred and be continuing under any of the Loan Documents.

(g) No Material Adverse Effect. No Material Adverse Effect shall have occurred with respect to Borrower, Guarantor, or the Project.

(h) Loan In Balance. Agent shall be satisfied that the Loan is "in balance."

(i) Pro Forma Schedule. INTENTIONALLY OMITTED.

(j) Execution and Recordation of Modification Documents. Borrower and Agent shall have executed and delivered such modifications to the Loan Documentation as Agent may require, including any such documents as Agent may require to be in recordable form.

(k) Extension Fee. Agent shall have received the Extension Fee as described and defined in the Fee Letter, which is a nonrefundable extension fee, in consideration of such extension of the Maturity Date, on or before Maturity Date

(l) Updated Financial Reporting. Agent shall have received historic and year-to-date quarterly operating statements and rent rolls for the Project.

(m) Updated Appraisal and Remargin Requirements. If required by Agent, in Agent's sole and absolute discretion, the following requirements shall apply:

(i) Updated Appraisal; Updated Appraisal Maximum Loan-to-Value Ratio. Agent shall have obtained, at Borrower's sole cost and expense, an Updated Appraisal of the Project, and based on the results of such Updated Appraisal, the Updated Appraisal Maximum Loan-to-Value Ratio shall not exceed eighty percent (80%).

(ii) Remargin Requirements. If the Updated Appraisal Maximum Loan-to-Value Ratio requirement set forth in subsection (i) above is not met upon such testing, as determined by Agent in its reasonable discretion, then Agent shall notify Borrower in writing of such failure and, Borrower shall, within ten (10) days after such notice, make the appropriate Remargin Payment or Remargin Deposit in an amount sufficient in Agent's reasonable judgment to meet the Updated Appraisal Maximum Loan-to-Value Ratio requirement. If a Remargin Deposit is made pursuant to this subsection, such Remargin Deposit shall be released upon the first to occur of the following: (a) when the Loan has been paid and performed in full; or (b) at Borrower's request, to be applied as a principal paydown of the Loan.

2.10 Collateral Security.

(a) Other Collateral. In addition to the Land, Improvements, and other Property described above, the Loan shall be secured by all of the following:

(i) Personalty Related to the Land and Improvements. A first-priority lien on all of Borrower's right, title and interest in and to equipment, furniture, fixtures, and materials to be incorporated into the Improvements, and any other personal property owned by Borrower located on or used in connection with the Land and Improvements.

(ii) Contracts, Plans and Specifications; Development Agreement. An assignment of, and first-priority security interest in all of Borrower's right, title and interest in and to: (A) the Construction Contract, the Architecture Contract, and all engineer contract(s), development contracts, management contracts, and all other agreements now or hereafter entered into by Borrower with any contractor in connection with construction of or on the Property and/or with any architect, engineer, or other consultant in connection with the design, engineering, construction of or on, management of, or for services on or related to, the Property, (B) the Plan and Specifications and all other plans, specifications, and drawings with respect to the Property, and (c) the Development Agreement.

(iii) Borrower's Funds Account. An assignment of, and first-priority security interest in all of the following accounts (whether opened prior to, concurrently with, or subsequent to, the closing of the Loan), and all funds contained or deposited therein: (A) the Borrower's Funds Account, if any, and (B) the Account, and (C) any other Project accounts of Borrower, if any.

(iv) Swap Payments. An assignment of, a lien on, and first-priority security interest in all Swap Payments due at any time and from time to time from Agent to Borrower under any Swap Contract, if any.

(b) Release of Collateral. Unless otherwise agreed in writing by the Required Lenders, Lender's security interest in all collateral for the Loan shall be released by Agent when the Loan has been paid and performed in full; provided, however, that if there is any conflict in the release terms contained in any security agreement, assignment, or other security instrument as to the terms upon which the Lender's security interest in the collateral described in that document, or any portion thereof, shall be terminated and/or released, and the terms of this Section, the terms of any such security agreement, assignment, or other security instrument shall control and govern the collateral described therein.

(c) Collateral Documents. Borrower agrees to execute and/or authorize, as the case may be, any and all documents, including security agreements and financing statements, as Agent may reasonably request in order to create, perfect, or continue the security interests described above.

2.11 Automatic Deduction. At Borrower's election, automatic deduction may be used to make payments under the Loan. If Borrower so elects, then the following shall apply:

(a) Monthly Payments. Except when Agent disburses Loan proceeds from the Interest Reserve, Borrower agrees that monthly payments on the Loan will be deducted automatically on the due date from the Account.

(b) Date of Debit. Agent will debit the Account on the dates the payments on the Loan become due. If a due date does not fall on a Banking Day, Agent will debit the Account on the first Banking Day following the due date.

(c) Maintenance of Funds. Borrower will maintain sufficient funds in the Account on the dates Agent enters debits authorized by this Agreement. If there are insufficient funds in the Account on the date Agent enters any debit authorized by this Agreement, the debit will be reversed.

(d) Security. Borrower hereby grants to Agent, for the benefit of Lender, a security interest in the Account, and any other accounts from which Borrower may hereafter authorize Agent to debit payments due on the Loan, for the purpose of securing the payment of amounts Agent is authorized to deduct from the Account or such other accounts.

3. Covenants of Borrower. Borrower promises to keep each of the covenants set forth below, unless Agent has waived compliance in writing.

3.1 Commencement and Completion of Improvements.

(a) Construction of the Improvements has commenced prior to the closing of the Loan. Borrower shall continue construction diligently to completion, provided, however, that it shall not be a breach by Borrower of this obligation to diligently continue construction to the extent that Borrower cannot so continue construction because of a Funding Deficiency.

(b) Subject to Section 9.28 below, by the Completion Date, Borrower shall have completed construction of the Improvements. As used in this Agreement, completion of Improvements includes completing construction of the structural components, operating systems, and all other elements of such buildings, but not including tenant improvements. Unless otherwise agreed to in writing by Agent, the Improvements are deemed complete for all purposes of this Agreement when (i) they have been substantially completed in accordance with the Plans and Specifications, as evidenced by the written

certification of the Architect and/or the Contractor (as determined by Agent) in a form satisfactory to Agent, (ii) Borrower has provided Agent with a certificate of occupancy and/or any other approvals required to be issued by all appropriate governmental authorities in order to permit occupancy of all units and facilities within the Improvements, notice of completion (recorded, when advisable or necessary under applicable law) and passage of the requisite time without the filing of claims for mechanic's or materialmen's liens, completion affidavit, or other evidence satisfactory to Agent that the Improvements are complete, are lien-free, and have been inspected by and received final approval of the appropriate governmental authorities.

3.2 Changes

(a) Borrower agrees to provide Agent with copies of all change orders (for any change in any work or materials for the Improvements, whether positive or negative), together with all additional documents relating thereto that Agent may require. These documents may include the following: (i) plans and specifications indicating the proposed change, (ii) a written description of the proposed change and related working drawings, and (iii) a written estimate of the cost of the proposed change and the time necessary to complete it.

(b) Borrower shall obtain Agent's prior written approval of any change order, if with respect to such change order any of the following apply:

(i) the cost of such change exceeds One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00); or

(ii) if the aggregate amount of all changes (whether positive or negative) will then exceed Five Hundred Thousand and No/100 Dollars (\$500,000.00); or

(iii) regardless of cost, if such change is a material change in structure, design, function, or exterior appearance of the Improvements; or

(iv) regardless of cost, if such change would cause any line item or category of the cost breakdown to be increased or decreased by five percent (5%) or more; or

(v) regardless of cost, if such change could materially affect the value of Agent's security adversely; or

(vi) regardless of cost, if such change will delay completion of the Improvements beyond the Completion Date.

(c) In addition, Borrower shall obtain Agent's prior written approval of all material changes in the scope or general conditions of the Construction Contract, the Architecture Contract, or any other contracts for the construction of the Improvements. Finally, Borrower shall obtain from the appropriate persons or entities all approvals of any changes in plans, specifications, work, materials or contracts required by any of the Requirements (including those of any governmental agency) or under the terms of any lease, loan commitment, or other agreement relating to the Property.

(d) Agent may take a reasonable time to evaluate any requests for proposed changes and may require that all approvals required from other parties be obtained before it reviews any requested change. Agent may approve or disapprove changes in the exercise of its reasonable judgment. Borrower acknowledges that delays may result and agrees that, so long as the delays are not unreasonable in duration, they will not affect Borrower's obligation to complete the Improvements by the Completion Date.

3.3 Construction Information and Verification.

(a) Within twenty (20) days after receiving notification from Agent, Borrower shall deliver to Agent, for Agent's review and approval, any and all of the following information and documents that Agent may request:

(i) Current plans and specifications for the Improvements certified by the Architect as being complete and accurate;

(ii) A current, complete, and correct list showing the name, address, and telephone number of each contractor, Major Subcontractor, and material supplier engaged in connection with the construction of the Improvements and the total dollar amount of each contract and subcontract (including any changes), together with the amounts paid through the date of the list;

(iii) True and correct copies of the most current versions of all executed contracts major identified in the list described in clause (ii) above, including any changes;

(iv) A current construction progress schedule showing the progress of construction and the projected sequencing and completion times for uncompleted work, all as of the date of the schedule; and

(v) Any update to any item described above, previously delivered to Agent.

(b) Borrower expressly authorizes Agent to contact the Architect, Contractor or any contractor, subcontractor, material supplier, surety, or any governmental authority or agency to verify or discuss any information disclosed in accordance with this Section and any other information related to the Property that Agent may reasonably require.

(c) Any defaulting architect, contractor, subcontractor, material supplier, or surety shall be replaced promptly, and Borrower shall deliver promptly all required information and documents to Agent regarding each replacement architect, contractor, subcontractor, material supplier, and surety. Agent may disapprove any architect, contractor, subcontractor, material supplier, surety, or other party Agent in its reasonable judgment deems financially or otherwise unqualified; however, in no event may the absence of disapproval be deemed approval.

(d) If, based on any construction progress schedule or other materials submitted by Borrower, Agent in its reasonable judgment determines that the Improvements will not be completed by the Completion Date, Agent may request Borrower in writing to reschedule the work of construction to permit timely completion. Within fifteen (15) days after receiving such a request from Agent, Borrower shall deliver to Agent a revised construction progress schedule and Pro Forma Schedule showing completion of the Improvements by the Completion Date.

3.4 Permits, Licenses and Approvals. Borrower shall obtain, comply with, and keep in effect all permits, licenses, and approvals required from governmental bodies in order to construct, occupy, operate, market, and lease or sell the Land and Improvements. Borrower shall deliver copies of all such permits, licenses, and approvals to Agent promptly, and in any event within five (5) days after receipt thereof.

3.5 Cooperation. Borrower shall cooperate at all times with Agent in bringing about the timely completion of the Improvements, and Borrower shall resolve all disputes arising during the work of construction in a manner allowing work to proceed expeditiously.

3.6 As-Built Plans: Surveys. If requested by Agent, after the Completion Date, Borrower shall promptly provide to Agent, at Borrower's sole cost and expense (a) as-built plans and specifications for the Improvements as actually completed, certified by the Architect as being complete and accurate, and/or (b) an as-built ALTA survey of the Land and Improvements in form and substance satisfactory to Agent, certified by a licensed land surveyor and showing the location of the completed improvements, and all boundary lines, easements, rights of way, and other matters affecting the Land.

3.7 Compliance with Law. Borrower shall construct the Improvements in a good and workmanlike manner in accordance with sound building practices, as well as the Plans and Specifications and the recommendations of any soils report satisfactory to Agent. Borrower shall comply with all existing and future laws, regulations, orders, building codes, restrictions and requirements of, and all permits and approvals from, and agreements with and commitments to, all governmental, judicial, or legal authorities having jurisdiction over the Property, including those pertaining to the ownership, construction, marketing, sale, leasing, or financing of the Improvements, and with all zoning ordinances and recorded covenants and restrictions and other title encumbrances affecting the Property (collectively, the "Requirements").

3.8 Taxes; Additional Costs. Borrower shall not deduct any taxes from any payments it makes to Agent or any Lender. If any government authority imposes any taxes on any payments made by Borrower, Borrower shall pay the taxes and shall also pay to Agent, for the benefit of Lender, at the time interest is paid, any additional amount which the Agent specifies as necessary to preserve the after-tax yield Lender would have received if such taxes had not been imposed. Upon request by Agent, the Borrower will confirm that it has paid the taxes by giving the Agent official tax receipts (or notarized copies) within thirty (30) days after the due date. However, the Borrower will not pay Agent's or any Lender's net income taxes. Additionally, Borrower shall pay Agent, on demand, for Lender's costs or losses arising from any statute or regulation, or any request or requirement of a regulatory agency. The costs and losses (a) will be allocated to the loan in a manner determined by the Agent, using any reasonable method, and (b) include the following: (i) any reserve or deposit requirements, and (ii) any capital requirements relating to Agents or the other Lenders assets and commitments for credit.

3.9 Insurance.

(a) Borrower shall provide, maintain, and keep in force at all times prior to repayment of the Loan, Commercial General Liability Insurance, which includes coverage for terrorism acts, a waiver of subrogation rights, and that includes:

- (i) Two Million and No/100 Dollars (\$2,000,000.00) property damage per occurrence;
- (ii) Three Million and No/100 Dollars (\$3,000,000.00) bodily damage per occurrence;
- (iii) Five Million and No/100 Dollars (\$5,000,000.00) aggregate limit; and
- (iv) Two Million and No/100 Dollars (\$2,000,000.00) excess or umbrella liability coverage.

This policy shall name the Borrower as an insured and Agent, for the benefit of Lender, as an additional insured. Coverage shall be written on an occurrence, not claims made, basis. Borrower shall supply Agent with an ORIGINAL Accord 25 Certificate of Commercial General Liability Insurance showing such coverage, together with an Additional Insured Endorsement naming Agent, for the benefit of Lender, as additional insured.

(b) Borrower shall provide, maintain, and keep in force at all times during any period of construction the following (in addition to, and not in lieu of, the Commercial General Liability Insurance described in Section 3.9(a) above):

(i) A policy or policies of "builder's risk special form" insurance in nonreporting form, in an amount not less than the full insurable completed value of the Property on a replacement cost basis. The policy or policies must insure against loss or damage by hazards customarily included within such "all risk" policies, and shall include: (1) a Mortgagee Clause naming Agent, for the benefit of Lender, as mortgagee with a thirty (30) day notice to Agent in the event of cancellation, non-renewal or material change, (2) a Loss Payee Clause naming Agent, for the benefit of Lender, as loss payee, (3) a Replacement Cost Endorsement, (4) no coinsurance clause, (5) vandalism and malicious mischief coverage, (6) boiler and machinery coverage, (7) demolition, increased cost of construction coverage, (8) in-transit coverage, and (9) terrorism coverage. This policy shall name the Borrower as an insured and Agent, for the benefit of Lender, as an additional insured. Coverage shall be written on an occurrence, not claims made, basis. Borrower shall supply Agent with an ORIGINAL (or certified copy) Builder's All-Risk, Completed Value, Non-Reporting Form Policy or ORIGINAL Accord 27 Certificate of Insurance or other form acceptable to Agent reflecting coverage of 100% of the replacement cost.

(ii) If Borrower is an owner/builder, then Borrower's comprehensive liability insurance shall include product/completed operations and contractual coverage.

(iii) Such policy or policies of worker's compensation insurance as may be required by applicable worker's compensation insurance laws (including employer's liability insurance, if required by Agent), covering all employees of Borrower and any contractors of Borrower.

(iv) Upon completion of the Improvements, loss of rents insurance in an amount of not less than the greater of (1) 100% of one year's Rental Value of the Property or (2) to twelve (12) months' principal and interest payments, taxes, and insurance premiums relating to the Property. For purposes hereof, "Rental Value" shall include (1) the total projected gross rental income from tenant occupancy of the Property as set forth in any tenant leases, and any other projections delivered to Agent, (2) the amount of all charges which are the legal obligation of tenants and which would otherwise be the obligation of the applicable Borrower, and (3) the fair rental value of any portion of the Property which is occupied by Borrower, or any Affiliate of Borrower.

(c) Borrower shall provide, maintain, and keep in force at all times prior to repayment of the Loan, any and all additional insurance Agent in its reasonable judgment may from time to time require, against commonly insured hazards for similarly situated properties. Such additional insurance may include flood insurance as required by federal law and earthquake and/or sinkhole insurance as required by Agent. At Agent's request, Borrower shall supply Agent with an original, countersigned original, or certified copy of any policy. All policies of insurance required under the Loan Documents shall be issued by companies approved by Agent having an A.M. Best's rating acceptable to Agent, with limits, coverage, forms, deductibles, inception and expiration dates and cancellation provisions acceptable to Agent, and shall provide that all proceeds be payable to Agent to the extent of its interest. An approval by Agent is not, and may not be deemed to be, a representation of the solvency of any insurer or the sufficiency of any amount of insurance. Each policy of insurance required under the Loan Documents shall provide that it may not be modified or canceled without at least thirty (30) days' prior written notice to Agent. When any required insurance policy expires, Borrower shall furnish Agent with proof acceptable to Agent that the policy has been reinstated or a new policy issued, continuing in force the insurance

covered by the expired policy. Borrower shall also furnish evidence satisfactory to Agent that all premiums for such policy have been paid within thirty (30) days of renewal or issuance. If Agent fails to receive such proof and evidence, Agent has the right, but not the obligation, to obtain current coverage and advance funds to pay the premiums for it. Borrower shall repay Agent immediately on demand for any advance for such premiums, which will be an additional loan to Borrower bearing interest at the Default Rate and secured by the Deed of Trust and any other collateral held by Agent in connection with the Loan. As to all policies of insurance provided by Borrower, Borrower shall be named as the insured and any additional insured parties shall be subject to Agent's approval. As to all policies of insurance provided by a third party other than Borrower (e.g., any contractor, subcontractor, or tenant), Borrower shall be named as an additional insured.

3.10 Payment of Expenses. Borrower shall pay Agent's and each Lender's reasonable costs and expenses incurred in connection with the making, disbursement, and administration of the Loan. Borrower shall also pay any and all of Agent's and each Lender's costs and expenses incurred in connection with any revisions, extensions, renewals, or "workouts" of the Loan, and in the exercise of any of Agent's or Lender's rights or remedies under this Agreement. Such costs and expenses include charges for title insurance (including endorsements), filing, recording, and escrow charges, fees for appraisal and appraisal review, architectural and engineering review, construction services (including those of Agent's construction inspector) and environmental services, mortgage taxes, document review and preparation, reasonable legal fees and expenses of Agent's and each Lender's counsel, and any other reasonable fees and costs for services, regardless of whether such services are furnished by such party's employees or agents or independent contractors. Borrower acknowledges that amounts payable under this Section are not included in any loan or commitment fees for the Loan. All such sums incurred by Agent and/or any other Lender and not immediately reimbursed by Borrower will be considered an additional loan to Borrower secured by the Deed of Trust and bearing interest at the Default Rate.

3.11 Financial and Other Information.

(a) **Financial and Other Information of Borrower.** Borrower shall keep true and correct financial books and records, using GAAP, or such other accounting principles as Agent in its reasonable judgment may find acceptable from time to time. Borrower shall provide to Agent the following:

(i) As soon as reasonably practicable, and in any event within one hundred twenty (120) days after Borrower's fiscal year end, Borrower's annual financial statements, which shall include Borrower's balance sheet, income statement, statement of cash flow, and all supporting schedules. These financial statements may be prepared by Borrower if certified to be true and correct by Borrower.

(ii) As soon as reasonably practicable, and in any event within sixty (60) days after Borrower's fiscal quarter end (excepting Borrower's 4th fiscal quarter), Borrower's quarterly balance sheets and income statements. These financial statements may be prepared by Borrower if certified to be true and correct by Borrower.

(iii) Within thirty (30) days after the end of each calendar month, a monthly leasing report for the Project.

(iv) After the completion of the Improvements in accordance with **Section 3.1(b)** above, then within thirty (30) days after the end of each calendar quarter, a quarterly rent roll for the Project.

(v) Promptly upon the request of Agent, such other information (excluding tax returns) as Agent may reasonably request concerning the affairs and properties of Borrower, and each of its managing or other members.

(b) Financial and Other Information of Guarantor. Borrower shall cause Guarantor to keep true and correct financial books and records, using GAAP, or such other accounting principles as Agent in its reasonable judgment may find acceptable from time to time. Borrower shall cause Guarantor to provide to Agent the following:

(i) As soon as reasonably practicable, and in any event within one hundred twenty (120) days after Guarantor's fiscal year end, such Guarantor's annual financial statements, which shall include Guarantor's balance sheet, income statement, statement of cash flow, and all supporting schedules. These financial statements shall be prepared and audited by a Certified Public Accountant acceptable to Agent.

(ii) As soon as reasonably practicable, and in any event within sixty (60) days after each fiscal quarter end of Guarantor (excepting Guarantor's 4th fiscal quarter), Guarantor's quarterly balance sheets and income statements. These financial statements may be prepared by Guarantor if certified to be true and correct by Guarantor. Such certification by Guarantor can be contained in and thus be a part of the Compliance Certificate described below.

(iii) Within forty-five (45) days after each fiscal quarter end of Guarantor, including Guarantor's fiscal year end, a duly executed of Compliance Certificate in the form of Exhibit C (each, a "Compliance Certificate"); attached hereto, together with such backup documentation as may be reasonably requested by Agent, showing Guarantor's compliance with financial covenants and other matters.

(v) Promptly upon the request of Agent, such other information (excluding tax returns) as Agent may reasonably request concerning the affairs and properties of such Guarantor.

3.12 Audits. Borrower shall allow Agent and its agents to inspect Borrower's properties and examine, audit, and make copies of Borrower's books and records at any reasonable time. If any of Borrower's properties, books, or records are in the possession of a third party, Borrower authorizes that third party to permit Agent or its agents to have access to perform inspections or audits and to respond to Agent's requests for information concerning such properties, books and records.

3.13 Notices. Borrower shall notify Agent promptly in writing of any and all of the following:

(a) Any litigation affecting Borrower or any Guarantor (if any) where the amount claimed is or may be One Hundred Thousand and No/100 Dollars (\$100,000.00) or more, and which (i) is not dismissed within sixty (60) days of the filing thereof, and (ii) is not Covered by Insurance.

(b) Any written or oral communication Borrower receives from any governmental, judicial, or legal authority giving notice of any claim or assertion that the Land or Improvements fail in any respect to comply with any of the Requirements or any other applicable governmental law.

(c) Any material adverse change in the physical condition of the Property (including any damage suffered as a result of fire, earthquakes, or floods).

(d) Any material adverse change in Borrower's or any Guarantor's financial condition, any material adverse change in Borrower's or any Guarantor's operations, or any other

circumstance, event, or occurrence that results in a material adverse change in Borrower's or any Guarantor's ability to timely perform any of its obligations under any of the Loan Documents.

(e) Any notice that the Borrower's business fails in any respect to comply with any Requirement, and/or any substantial dispute between the Borrower and any Guarantor, or between the Borrower and any Guarantor and any government authority.

(f) Any change in the Borrower's name, legal structure or business structure, state in which the Borrower has filed its entity incorporation or organizational documents, and/or location of its place of business or its chief executive office if it has more than one place of business, Borrower's organizational identification number assigned by the state of its incorporation or organization, and/or any change in the location of Borrower's books and records, which are currently located at Borrower's chief executive office.

(g) The institution of any steps by Borrower to withdraw from or terminate any employee benefit plan as to which Borrower may have liability.

(h) Any Change in Control of Borrower or any Guarantor.

(i) Any Event of Default, Default, or Unmatured Event of Default under any of the Loan Documents by Borrower and any alleged breach or default any of the Loan Documents by Agent or any Lender.

(j) Any default (subject to applicable cure periods) by the Contractor or any subcontractor, material supplier, or surety related to the Property, or any material adverse change in the financial condition or operations of any of them.

3.14 Keeping Guarantors and Third Party Pledgors Informed. If the Loan is guaranteed, Borrower shall keep each Guarantor and/or third party pledgor informed of Borrower's financial condition and business operations, the condition and all uses of the Property, including all changes in condition or use, and any and all other circumstances that may affect Borrower's ability to pay or perform its obligations under the Loan Documents. However, any failure to do so shall not give rise to any defense to Guarantor and/or any third party pledgor.

3.15 Performance of Acts. Upon Agent's request, Borrower shall perform all acts necessary or advisable to perfect any lien or security interest provided for in the Loan Documents or to carry out the intent of the Loan Documents.

3.16 Preservation of Rights. Borrower shall obtain, preserve and maintain in good standing, as applicable, all rights, privileges and franchises necessary or desirable for the operation of the Property and the conduct of Borrower's business thereon or therefrom.

3.17 Indemnity Regarding Construction and Other Risks. Borrower indemnifies, defends, and holds the Indemnified Parties harmless for, from, and against any and all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs, expenses, fines, penalties, and losses (including sums paid in settlement of claims and all reasonable consultant, expert and legal fees and expenses of the applicable Indemnified Parties' counsel), and any resulting damages, harm or injuries to the person or property of any third parties, directly or indirectly arising out of or resulting from (a) construction of any improvements on the Property, (b) the ownership, management, maintenance, operation, marketing, leasing, sale, or use of the Property, including any such claims based on theories of derivative liability, comparative negligence or otherwise, (c) any development of or improvement to the Property, including

any defective workmanship or materials, (d) any failure to satisfy any Requirements or any reports, maps, development agreements, or regulatory agreements that apply or pertain to the Property, (e) breach of any representation or warranty made or given by Borrower to any of the Indemnified Parties or to any prospective or actual lessee or buyer of all or any portion of the Property, and/or (f) any claim or cause of action of any kind by any party that any Indemnified Party is liable for any act or omission of Borrower or any other person or entity in connection with the ownership, management, maintenance, operation, marketing, leasing, sale, or use of the Property, or any development of or improvement to the Property, excepting those to the extent arising out of, or resulting, from the applicable Indemnified Party's gross negligence or willful misconduct. Notwithstanding, anything to the contrary in any other Loan Document, the provisions of this Section shall survive the termination of this Agreement, repayment of the Loan, and foreclosure of the Deed of Trust or similar proceedings.

3.18 Other Debts. Except as otherwise disclosed in writing to Agent prior to the date of this Agreement or provided herein or in any other Loan Document, without Agent's prior written consent, Borrower shall not have outstanding or incur any direct or contingent debts or long term monetary lease obligations (i.e., lease obligations in excess of one (1) year) related to or secured by the Property, other than those to Agent for the benefit of Lender, or become liable for the debts of others. This does not prohibit:

- (a) Acquiring goods, supplies, or merchandise on normal trade credit.
- (b) Endorsing negotiable instruments received in the usual course of business.
- (c) Obtaining surety bonds in the usual course of business.
- (d) Debts, lines of credit, and/or leases in existence on the date of this Agreement previously disclosed in writing to Agent.

3.19 Other Liens. Except as otherwise disclosed in writing to Agent prior to the date of this Agreement or provided herein or in any other Loan Document, without Agent's prior written consent, Borrower shall not create, assume, or allow any security interest or lien (including judicial liens) on property Borrower now or later owns, except:

- (a) Deeds of trust and security agreements in favor of Agent, for the benefit of Lender.
- (b) Liens for taxes not yet due.
- (c) Liens outstanding on the date of this Agreement previously disclosed in writing to the Agent.

3.20 Negative Covenants. Except as otherwise provided herein or in any other Loan Document, without Agent's prior written consent, Borrower shall not:

- (a) engage in any business activities substantially different from Borrower's present business;
- (b) liquidate or dissolve Borrower's business;
- (c) lease, sell, or otherwise dispose of all or a substantial part of Borrower's business or Borrower's assets or sell or otherwise dispose of any assets for less than fair market price;

- (d) enter into any consolidation, merger, pool, joint venture, syndicate or other combination;
- (e) enter into any sale and leaseback agreement covering any of the fixed or capital assets of Borrower, excepting the GPLET Transaction contemplated pursuant to Section 3.32 below;
- (f) acquire or purchase any business or substantially all of the assets of any business;
- (g) cause, permit, or suffer any direct or indirect Change in Control in Borrower; or
- (h) make any loans, advances, or other extensions of credit to anyone.

3.21 Site Visits; Right to Stop Work.

(a) Agent and its agents and representatives shall have the right to enter and visit the Property at any reasonable time for the purposes of performing an appraisal, observing the work of construction and examining all materials, plans, specifications, working drawings, and other matters relating to the construction. For purposes of these site visits, Borrower shall maintain at all times a full set of working drawings at the construction site. Agent has the right to examine, copy and audit the books, records, accounting data and other documents of Borrower and its contractors relating to the Property or construction of the Improvements. In each instance, Agent shall give Borrower reasonable notice before entering the Property and make reasonable efforts to avoid interfering with Borrower's use of the Property when exercising any of the rights granted in this Section. Notwithstanding anything herein to the contrary, Agent or its agents and representatives conducting tests upon the Property pursuant to this Section shall be liable to repair any material damage to the Property caused by the conducting of such tests upon the Property, except (a) where (i) the damage is not reasonably avoidable in the performance of such testing; and (ii) such testing results in the discovery of Hazardous Substances or any other adverse condition affecting the Property in violation of the Borrower's Indemnity, or which Borrower must correct pursuant to the terms of this Agreement; or (b) if such testing is done when a Default or an Event of Default (subject to applicable notice and cure periods) has occurred and is continuing under this Agreement, the Borrower's Indemnity, or any of the other Loan Documents, or (c) when such testing is required by law or regulation.

(b) If Agent in its reasonable judgment determines that any work or materials fail to conform to the approved Plans and Specifications or sound building practices, or that they otherwise depart from any of the requirements of this Agreement, Agent may require the work, or a portion thereof, to be stopped and may withhold disbursements until the matter is corrected. If this occurs, Borrower shall correct the work to Agent's satisfaction promptly and halt all other work to the extent that such other work relates to or otherwise cannot be properly completed absent completion of the corrective work, pending completion of such corrective work. No such action by Agent will affect Borrower's obligation to complete the Improvements in accordance with the Pro Forma Schedule and on or before the Completion Date.

(c) Agent has no duty to visit the site, to supervise or observe construction, or to examine any books or records. Any site visit, observation, or examination by Agent is solely for the purpose of protecting Agent's rights and interests. No site visit, observation, or examination by Agent shall impose any liability on Agent or result in a waiver of any default of Borrower or be a representation that Borrower is or will be in compliance with the Plans and Specifications, that the construction is free from defective materials or workmanship, or that the construction complies with all applicable Requirements. Neither Borrower nor any other party is entitled to rely on any site visit, observation, or examination by Agent. Agent owes no duty of care to protect Borrower or any other party against, or to inform Borrower or any other party of, any negligent or defective design or construction of the Improvements or any other adverse condition affecting the Property.

3.22 Protection Against Lien Claims. Borrower shall pay or otherwise promptly discharge all claims and liens for labor done and materials and services furnished in connection with the construction of the Improvements. If a mechanic's or materialman's lien has been recorded against the Land or a bonded stop notice has been issued with respect to the Land or Improvements, Borrower shall promptly deliver, or cause the title insurance company to deliver, a copy of such claim or lien to Agent (whether recorded or not). Borrower has the right to contest in good faith any claim or lien, provided that it does so diligently and without prejudice to Lender and without delay in completing the Improvements. If Borrower contests any such claim or lien, then promptly upon Agent's request, Borrower shall provide, or shall cause the Contractor to provide, a bond, cash deposit, or other security satisfactory to Agent in the exercise of its reasonable judgment. If Borrower chooses to contest such claim or lien in good faith, unless otherwise agreed to in writing by Agent, Borrower may record a payment bond in form and substance acceptable to Agent either (a) in an amount adequate to cover the Construction Contract amount, or (b) specifically covering such claim or lien. Agent shall not be required to make any further disbursements of the Loan unless and until Agent has received evidence acceptable to Agent in its sole and absolute discretion that each such claim or lien has been released, and that title to the Land is clear of each such claim or lien.

3.23 Appraisals. If required by Agent or if required by applicable law or regulations, Agent shall have the right to order appraisals of the Property from time to time from an appraiser selected by Agent, which appraisals shall comply with all federal and state standards for appraisals and otherwise shall be satisfactory to Agent in all material respects. Borrower agrees to pay the cost and expense for any Updated Appraisal ordered to satisfy any Condition to Extend set forth in Section 2.8 above, and for all such appraisals and reviews thereof ordered by Agent pursuant to this Section when (a) an Event of Default has occurred or an Unmatured Event of Default has occurred and is continuing hereunder, or (b) such appraisal or update is required by applicable law or regulation.

3.24 Tax Receipts. Borrower shall provide to Agent, within thirty (30) days after the end of the fiscal year of the applicable governmental authority, bills and receipts showing the payment (to the extent then due and payable) of all taxes and assessments that are or may become a lien upon the Property or any portion thereof. If Borrower fails, following demand, to provide Agent the tax receipts required by this Section, without limiting the other remedies available to Lender under this Agreement, Agent may, at Borrower's sole expense, obtain and enter into a tax services contract with respect to the Property with a tax reporting agency satisfactory to Agent.

3.25 Conditional Sales Contracts; Removal of Fixtures and Equipment. Without Agent's prior written consent, Borrower shall not (a) purchase or contract for any materials, equipment, furnishings, fixtures, or articles of personal property to be placed or installed on the Land or any Improvements under any security agreement or other agreement where the seller reserves or purports to reserve a lien, security interest, or title thereto, or the right of removal or repossession after such items are installed on or in the Property, or (b) remove or permit to be removed from the Land or the Improvements any equipment, machinery, or fixtures used in connection with the ownership, management, maintenance, operation, or enjoyment thereof unless replaced by articles of equal suitability and value owned by Borrower free and clear of any lien or security interest.

3.26 Income from Property. Borrower shall first apply all income from leases, and all other income derived from the Property, to pay costs and expenses associated with the ownership, maintenance, development, operation, and marketing of the Land and Improvements, including all amounts then required to be paid under the Loan Documents, before using or applying such income for any other purpose. At all times until the Loan is paid in full, (a) all Net Monthly Cash Income shall be used first to pay accrued monthly interest payments coming due under the Loan except as otherwise provided in the Loan Documents, and (b) except as may be otherwise permitted herein, Borrower may not distribute any income to any of its members, partners, or shareholders, allow any member, partner, or

shareholder to withdraw capital or make any payments on indebtedness owed to any member, partner, or shareholder.

3.27 Property Management Agreement. If any Property will be managed at any time during the term of the Loan by a third party property manager, such property manager shall be an Approved Manager, and any property management agreement entered into with respect to any Property must be in writing and be terminable upon no more than thirty (30) days written notice without penalty or charge (other than for unpaid accrued management fees), unless otherwise agreed in writing by Agent, and a copy any such property management agreement shall promptly be provided by Borrower to Agent.

3.28 Restrictions. Except as otherwise set forth herein, Borrower shall not record any covenants, conditions, restrictions, or easements (collectively, "Restrictions"), affecting all or part of the Property without the prior written consent of Agent, in Agent's sole and absolute discretion, in each instance. Borrower may submit to Agent a proposed form of any covenants, conditions, restrictions and/or easements affecting all or part of the Property and may request Agent to approve and to subordinate the Deed of Trust to such Restrictions. Agent has no obligation to grant such a request by Borrower. However, Agent will consider and honor any such request if it does not impair or affect the security of any obligation evidenced by the Loan Documents, all as Agent may determine in its sole and absolute discretion. Borrower acknowledges that delays may result from the approval process and agrees that, so long as the delays are not unreasonable in duration, they shall not affect Borrower's obligations to timely perform any other requirement set forth in this Agreement. With respect to any Restrictions which are recorded, upon Agent's request, Borrower shall execute and deliver to Agent an assignment of Borrower's rights thereunder, in form and substance acceptable to Agent in its sole and absolute discretion, as security for the performance of Borrower's obligations under the Loan Documents.

3.29 Employee Benefit Plans; ERISA Compliance. Except if Borrower is not a party in interest to any plan defined or regulated under ERISA, and the assets of Borrower are not "plan assets" of any employee benefit plan covered by ERISA or Section 4975 of the Internal Revenue Code, Borrower shall at all times maintain, and cause each Guarantor to at all times maintain, each employee benefit plan as to which Borrower, or any Guarantor, as the case may be, may have any liability, in compliance with all applicable laws, rules, and regulations. Borrower shall at all times comply with, and cause each Guarantor to comply with, the provisions of ERISA with respect to any retirement or other employee benefit plan to which it/they is/are a party as employer. As soon as possible after Borrower knows, or has reason to know, that any Reportable Event (as defined in ERISA) with respect to any such plan of Borrower or any Guarantor has occurred, it shall furnish to Agent a written statement setting forth details as to such Reportable Event and the action, if any, which Borrower or applicable Guarantor proposes to take with respect thereto, together with a copy of the notice of such Reportable Event furnished to the Pension Benefit Guaranty Corporation.

3.30 Financial Covenants. Borrower shall cause Guarantor OWC to comply with the financial covenants set forth in Section 11 of the Guaranty. Borrower understands, acknowledges, and agrees that failure of such Guarantor to comply with these covenants shall constitute an Event of Default hereunder and under the Loan Documents, including the Guaranty being executed by OWC.

3.31 Project CC&R's. Borrower shall comply with the terms and conditions of the Development and Disposition Agreement and the Project CC&R's. Borrower shall not amend, modify, waive, or otherwise change any of the Development and Disposition Agreement or the Project CC&R's in any manner that material affects the Property, Improvements or the use, operation, or marketability thereof without the consent of Agent. Borrower shall diligently enforce the Development and Disposition Agreement and the Project CC&R's.

3.32 GPLET Transaction. Borrower has advised the Agent and the Lenders of its desire to structure the ownership of the Project so as to enable Borrower to utilize the benefits of the GPLET Tax Abatement provided by the City pursuant to the GPLET Statutes. Borrower and the City contemplate that US Air and the City will enter into the Development Agreement Supplement after the Closing Date, pursuant to which, at any time on or before Borrower obtains the certificate of occupancy for the Project or up to one year thereafter, the GPLET Transaction will occur, including the concurrent GPLET Fee Conveyance and effectiveness of the GPLET Ground Lease.

After (i) the Development Agreement Supplement, in form and substance acceptable to, and approved in writing by, Agent in its reasonable discretion has been recorded in the Official Records of Maricopa County, Arizona, and (ii) the US Air Development Agreement Assignment has occurred, then, subject to the terms of the Development Agreement Supplement and upon Agent's reasonable request, at any time prior to completion of the Improvements or at any time up to one year after the completion of the Improvements, Borrower will cause the GPLET Transaction contemplated pursuant to the Development Agreement to occur and in connection therewith, Borrower shall take all actions and pay all expenses as may be required in connection with such GPLET Transaction. Further, in connection with such GPLET Transaction:

(a) Agent and Lenders shall not be obligated to release or modify the Deed of Trust in connection with the GPLET Transaction and, each transfer pursuant to GPLET Transaction shall be made subject to the liens, charges, and security interests of the Deed of Trust such that such liens, charges, and security interests shall continue to encumber the complete fee interest in the Property subject to the Permitted Exceptions.

(b) Notwithstanding Section 3.32(a) above, at the sole option of Agent, Agent may require that the Deed of Trust be amended in such manner as Agent may require, which may include that recording of an amended and restated leasehold deed of trust that amends, restates and replaces the existing Deed of Trust, in order that the fee interest in the Property transferred to the City pursuant to the GPLET Fee Conveyance is no longer encumbered by the Deed of Trust and that the Deed of Trust thereafter constitutes first-priority lien on all of Borrower's leasehold interest under the GPLET Ground Lease.

(c) In connection with the GPLET Transaction, Borrower will obtain from the City an estoppel certificate and agreement in the form attached hereto as Exhibit G, or such form otherwise reasonably approved by Agent, regarding the status of the Development and Disposition Agreement and such other matters as Agent may reasonably require. The Borrower acknowledges and agrees that the GPLET Ground Lease shall contain the agreement by the City, pursuant to the terms of such GPLET Ground Lease, that in the event of any termination of the GPLET Ground Lease, including a termination resulting from a foreclosure or trustee's sale under the Deed of Trust (or acceptance of a deed-in-lieu thereof), the City will enter into a new GPLET Ground Lease with Agent, Lenders, and their respective successors and assigns for the remaining unexpired term of the GPLET Ground Lease with Borrower.

(d) Agent shall have received evidence satisfactory to Agent that the portion of the Property to be subject to the GPLET Ground Lease is a legal parcel in compliance with all subdivision laws and ordinances and except as otherwise set forth in that certain Building Code Compliance Covenant and Agreement to Hold Property as One Parcel dated February ____, 2008 (the "2008 Building Code Covenant") the recorded prior to or concurrently with the recording of the Deed of Trust in the Official Records of Maricopa County, Arizona, that the City has released the parcel to be subject to the GPLET Ground Lease from that certain Covenant and Agreement to Hold Property as One Parcel dated February 6, 1998, and recorded February 26, 1998 as Instrument No. 98-0147247 in the Official Records of Maricopa County, Arizona (the "1998 Building Code Covenant"), as such has been amended or modified.

(e) In connection with the GPLET Transaction, (i) Borrower shall also satisfy such additional conditions precedent, provide such title insurance, and execute and deliver such additional documents as Agent may reasonably require, and (ii) Borrower shall comply with all GPLET Statutes and all other applicable laws, rules, and regulations.

(f) Upon execution of the GPLET Ground Lease, Borrower hereby covenants to comply with all terms and conditions of the GPLET Ground Lease applicable to Borrower.

4. Pro Forma Schedule; Leases.

4.1 Pro Forma Schedule.

(a) The following is Borrower's Pro Forma Schedule (the "Pro Forma Schedule"):

Date	Requirement
July 1, 2009	Notice of Completion for all Improvements
July 1, 2009	Certificate of Occupancy for all Improvements

(b) Borrower understands and acknowledges that Lender, in making the Loan, has relied on Borrower's projections set forth above in the Pro Forma Schedule.

(c) Whenever Borrower knows or believes there has been or will be a material failure to meet the projections of the Pro Forma Schedule, Borrower shall submit to Agent for its approval a revised Pro Forma Schedule in the form set forth above. Also, whenever Agent in its reasonable judgment determines that there has been or will be a material failure to meet such projections, Agent may make written demand on Borrower to submit a revised Pro Forma Schedule to Agent for its approval. Borrower shall submit a revised Pro Forma Schedule to Agent within fifteen (15) days after any such demand. Borrower shall use its best efforts to meet the projections of the currently approved Pro Forma Schedule.

(d) Any revised Pro Forma Schedule shall identify any changes in any projections or other economic terms and be accompanied by Borrower's statement of reasons for the changes. Borrower shall execute such documentation as Agent may reasonably require in connection with the revised Pro Forma Schedule. Agent need make no further disbursements unless and until it approves the revised Pro Forma Schedule. Agent reserves the right to approve or disapprove any Pro Forma Schedule in its reasonable judgment. The most recently approved Pro Forma Schedule supersedes all previously approved Pro Forma Schedules.

4.2 Lease Approval.

(a) Except as specifically provided below, each lease of any part of the Property is subject to Agent's written approval as to form and substance prior to execution and delivery. Agent (and all other parties whose approval is required) shall approve Borrower's standard form of lease or rental agreement prior to its use by Borrower. Borrower may not materially modify the lease form approved by Agent without Agent's prior written consent, together with the approval of all other parties whose consent is required.

(b) Notwithstanding the foregoing, Borrower may enter into leases (and amendments) in the ordinary course of business with bona fide third party tenants without Agent's prior written consent if Borrower uses the lease form approved by Agent and complies with all of the following:

(i) Within fifteen (15) days after Agent's written request therefor, Agent receives a copy of the executed lease (accompanied by all financial information and certificates obtained by Borrower pertaining to the tenant).

(ii) The lease meets the requirements of each party whose consent or approval is required for the lease.

(iii) The lease reflects an arm's-length transaction.

(iv) The lease is for a term of five (5) years or less, unless otherwise agreed in writing by Lender.

(v) The lease does not affect more than 15,000 rentable square feet of or within the Improvements unless otherwise agreed in writing by Lender.

(vi) The lease, together with all leases previously executed, does not cause the Loan to become "out of balance," and the lease conforms to any projections delivered by Borrower to Agent. Borrower acknowledges that the Loan may become "out of balance" if the landlord's aggregate economic obligations under the leases exceed, or the net operating income from the Property fails to meet, Borrower's projections for such obligations, thereby increasing the cost or decreasing the value of the Property.

(c) If any leases exist at or prior to the closing of the Loan, (i) Borrower shall have provided to Agent a true, correct, and complete copy of each such lease, including all amendments or modifications thereto and any agreements related thereto, (ii) each such pre-existing lease is subject to Agent's review and approval in its sole and absolute discretion, (iii) if required by Agent, in its sole and absolute discretion, for each such pre-existing lease, Borrower shall obtain and deliver to Lender a Subordination Agreement, Subordination, Nondisturbance, and Attornment Agreement, and/or Tenant Estoppel Certificate in form and substance acceptable to Agent in its sole and absolute discretion.

(d) Agent may consider any executed lease it receives to be unsatisfactory if the lease fails to meet any of the requirements of this Agreement. If this happens, or if Borrower at any time fails to submit any executed lease (and accompanying information) at the time required by this Section, or if any Event of Default has occurred and is continuing, Agent may make written demand on Borrower to submit all future leases for Agent's approval prior to execution. Borrower shall comply with any such demand by Agent.

4.3 Leasing Information and Documents. Borrower shall deliver to Agent a monthly leasing report for the Project, and after completion of the Improvements in accordance with Section 3.1(b) above, a quarterly rent roll, as required pursuant to Section 3.11(a) above. Borrower shall promptly deliver to Agent such tenant income certificates, leasing schedules and reports, and other leasing information as Agent from time to time may request. In addition, upon the request of Agent, Borrower shall promptly obtain and deliver to Agent such estoppel certificates, subordination agreements, and/or subordination, nondisturbance, and attornment agreements in form and substance acceptable to Agent, executed by such tenants as Agent from time to time may require.

4.4 Purpose and Effect of Lease Approval. Agent's approval of any lease is for the sole purpose of protecting Lender's security and preserving Lender's rights under the Loan Documents. No

approval by Agent will result in a waiver of any default of Borrower. In no event will Agent's approval of any lease be a representation of any kind with regard to the lease, its enforceability, or the financial capacity of any tenant thereunder or guarantor thereof.

4.5 Landlord's Obligations. Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the Land or any space within the Improvements.

4.6 Costs and Expenses. If Agent's prior written approval is required for any Lease, Borrower shall pay to Agent, as a condition to such consent Agent's costs and expenses (including, without limitation, reasonable attorneys' fees) incurred in connection therewith. Such costs and expenses shall be due and payable whether or not such consent is given.

5. Representations and Warranties.

Borrower promises that each representation and warranty set forth below is and will be true, accurate and correct as of the date of this Agreement. Each Draw Request delivered to Agent will be deemed a reaffirmation of each and every representation and warranty made by Borrower in this Agreement.

5.1 Authority; Enforceability. Borrower and each Guarantor has complied with any and all laws and regulations concerning their organization, existence, and the transaction of its business. Borrower and, if applicable, any third party trustor, has the right and power to own the Property and to develop the Land and Improvements as contemplated in the Loan Documents. Borrower and each Guarantor is authorized to execute, deliver, and perform its obligations under the Loan Documents. Those documents are valid and binding obligations of Borrower and each Guarantor.

5.2 Compliance With Law. Borrower is familiar and has complied with all of the Requirements, as well as all other applicable laws, regulations, and ordinances. Borrower has properly obtained, or will properly obtain, all permits, licenses, and approvals necessary to construct the Improvements, and Borrower has delivered to Agent true and correct copies of each such permit, license, and approval. To the best of Borrower's knowledge and belief, no information or fact exists that would reasonably cause Borrower to believe that all permits, licenses, and approvals required to construct, occupy, operate, market, lease, or sell the Improvements that have not been obtained as of the date hereof will not be readily and properly obtainable prior to the Completion Date. No provision or obligation of Borrower or any Guarantor contained in any of the Loan Documents violates any of the Requirements or any order or ruling of any court or governmental entity. No such provision or obligation conflicts with, or constitutes a breach or default under, any agreement binding or regulating the Property. To the best of Borrower's knowledge and belief, as of the Closing Date, the 1998 Building Code Covenant, is the only covenant or restriction requiring the Property to be held as one parcel, and, when recorded, the 2008 Building Code Covenant will terminate the 1998 Building Code Covenant, and will then be the only covenant or restriction requiring the Property to be held as one parcel.

5.3 No Violation. The execution and delivery of this Agreement and the other Loan Documents and performance by Borrower of its obligations hereunder and thereunder will not result in a default under any other material agreement to which Borrower is a party.

5.4 No Claims. No claims, actions, proceedings, or investigations are pending against Borrower or affecting the Property or any collateral for the Loan, except for those previously disclosed by Borrower to Agent in writing. To the best of Borrower's knowledge, no threat of any such claim, action, proceeding, or investigation exists, except for those previously disclosed by Borrower to Agent in writing.

5.5 Financial Information. All financial information delivered to Agent and/or any Lender, including all information relating to the financial condition of (a) Borrower or any of its partners, shareholders, or members (as applicable), (b) any Guarantor, and (c) the Property, fairly and accurately represents, in all material respects, the financial condition being reported on as of its date. All such information is prepared in accordance with GAAP consistently applied, unless otherwise noted. There has been no material adverse change in the financial condition of any of the persons described above-reported at any time to Agent or any Lender, except as previously disclosed to Agent or the other applicable Lender in writing in later financial information and found acceptable to Agent, or such other Lender, as the case may be, in its sole and absolute discretion. Borrower has disclosed to Agent any and all leases affecting the Property or any portion thereof or interest therein.

5.6 Accuracy. To the best of Borrower's knowledge and belief, all reports, documents, instruments, information, and forms of evidence delivered to Agent concerning the Loan or required by this Agreement, any Loan commitment, and/or the other Loan Documents are accurate, correct, and sufficiently complete to give Agent true and accurate knowledge of their subject matter. None of them contains any misrepresentation or material omission.

5.7 Loan in Balance; Adequacy of Loan. The Loan is "in balance," and the undisbursed Loan funds, together with any sums provided or to be provided by Borrower as shown in the Cost Breakdown, are sufficient to construct the Improvements through completion and to accomplish the purposes contemplated by the Loan Documents.

5.8 Taxes. Borrower has filed all required state, federal, and local income tax returns and has paid all taxes when due and payable. Borrower knows of no basis for any additional assessment of taxes.

5.9 Utilities. All utility services, including gas, water, sewage, electrical, and telephone, necessary to develop and occupy the Land and Improvements are available, or will be available upon completion of the Improvements, at or within the boundaries of the Land. In the alternative, Borrower has taken all steps necessary to assure that all utility services will be available upon completion of the Improvements.

5.10 Borrower Not a "Foreign Person". Borrower is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended from time to time.

5.11 No Breaches or Defaults. No event has occurred and is continuing which would constitute an Event of Default (as defined in the applicable document), a Default, or an Unmatured Event of Default under any of the Loan Documents.

5.12 ERISA Plans. Either:

(a) Borrower is not a party in interest to any plan defined or regulated under ERISA, and the assets of Borrower are not "plan assets" of any employee benefit plan covered by ERISA or Section 4975 of the Internal Revenue Code, or

(b) If Borrower is a party in interest to a plan defined or regulated under ERISA, then all of the following are true: (i) the Borrower has fulfilled its obligations, if any, under the minimum funding standards of ERISA and the Code with respect to each Plan and is in compliance in all material respects with the presently applicable provisions of ERISA and the Code, and has not incurred any liability with respect to any Plan under Title IV of ERISA, (ii) no reportable event has occurred under Section 4043(b) of ERISA for which the PBGC requires thirty (30) days notice, (iii), no action by the Borrower to terminate or withdraw from any Plan has been taken and no notice of intent to terminate a Plan has been filed under Section 4041 of

ERISA, and (iv) no proceeding has been commenced with respect to a Plan under Section 4042 of ERISA, and no event has occurred or condition exists which might constitute grounds for the commencement of such a proceeding.

5.13 Disclosure to Guarantor and Third Parties. Before any Guarantor and/or any other third party (if any) became obligated in connection with the Loan or under any of the Loan Documents, Borrower made full disclosure to that Guarantor and/or third party trustor or pledgor regarding Borrower's financial condition and business operations, the present and former condition, uses, and ownership of the Property and all other circumstances bearing upon Borrower's ability to pay and perform its obligations under the Loan Documents.

6. Swap Contract. After the Closing Date, Borrower may elect to purchase from Agent a swap for the Loan, which will be governed by a Swap Contract entered into between Agent and Borrower. The Swap Contract is a "Loan Document." Capitalized terms used here without definition shall have the meanings given to them in the Swap Contract. With respect to any Swap Contract, the following shall apply:

6.1 Swap Payments; Grant of Security Interest. Under the Swap Contract, Agent or Borrower may be obligated from time to time to make certain payments ("Swap Payments") to the other party. Each Swap Payment to be made by Agent to Borrower shall be collateral for the Loan. As security for the prompt payment and performance of the Loan, and all obligations and indebtedness of Borrower to Lender under the Loan Documents, and all renewals, extensions, modifications, amendments, and/or supplements thereto, Borrower hereby irrevocably and unconditionally assigns, grants, pledges, transfers, and sets over to Agent, for the benefit of Lender, and there is hereby created a security interest in favor of Agent, for the benefit of Lender, in and to each Swap Payment due from Agent to Borrower, whether now or hereafter existing, and all proceeds thereof.

6.2 No Assumption of Borrower's Obligations. Borrower expressly understands and agrees that Agent does not assume any duties or obligations of Borrower arising out of the Note, any Swap Contract, or any other Loan Document.

6.3 Swap Documents. If Borrower elects to purchase a swap for the Loan, in connection with the Swap Contract, Borrower and/or Guarantor will execute certain documents as required by Agent, which may include, without limitation, (a) an ISDA International Swaps and Derivatives Association, Inc. Master Agreement, (b) a Schedule to Master Agreement, a consent to letter agreement regarding cross-collateralization of obligations under ISDA Master Agreement, and a Continuing Guaranty (Unlimited) (Derivatives) relating to the Borrower's obligations under the Swap Contract.

7. Default and Remedies.

7.1 Events of Default. An Event of Default will occur under this Agreement upon the occurrence of any of the following events:

(a) Borrower fails to make any payment of principal or interest under the Note within five (5) days after written notice from Lender; or

(b) Borrower fails to make any deposit of funds demanded by Lender under this Agreement within ten (10) days after Lender's written demand; or

(c) Borrower fails to comply with any other covenant contained in this Agreement calling for the payment of money and does not cure that failure within ten (10) days after written notice from Lender; or

(d) Borrower or any Guarantor becomes insolvent or the subject of any Insolvency Proceeding, or any such party consents to the appointment or taking of possession by a receiver (or similar official) with respect to its business or property, or makes an assignment for the benefit of creditors; provided, however, that any involuntary Insolvency Proceeding shall not be considered an Event of Default hereunder if it is either (i) consented to in writing by Agent, or (ii) dismissed within ninety (90) days of the filing thereof; or

(e) Borrower or any Guarantor dissolves or liquidates, or any of these events happens to any indemnitor hereunder or under any of the other Loan Documents (if any); or

(f) An Accelerating Transfer occurs; or

(g) Any representation or warranty when made or given in any of the Loan Documents proves to be false or misleading in any material respect; or

(h) Construction of the Improvements is not completed by the Completion Date, provided, however, that it shall not be a default by Borrower hereunder to the reasonable extent that construction is delayed because of a Funding Deficiency; or

(i) Construction of the Improvements is halted or abandoned prior to the Completion Date for any period of twenty (20) consecutive days for any cause not beyond the reasonable control of Borrower or any of its contractors or subcontractors, except as otherwise agreed in writing by Agent; or

(j) Any governmental, judicial or legal authority having jurisdiction over the Property orders or requires that construction of the Improvements be stopped in whole or in part, or any required approval, license or permit is withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect either (i) for a period of thirty (30) days, or (ii) for a total period of ninety (90) days, so long as Borrower begins within the initial thirty (30) day period and continues diligently to take steps to remove the effect of the order, requirement, withdrawal or suspension, and Agent, exercising reasonable judgment, determines that Borrower is reasonably likely to prevail; or

(k) Borrower is in default under the Architecture Contract, the Construction Contract, any other contract for the construction or rehabilitation (as applicable) of the Improvements or any lease of any part of the Land or any space within the Improvements, either (i) for a period of thirty (30) days, or (ii) for a total period of ninety (90) days, so long as Borrower begins within the initial thirty (30) day period and continues diligently to cure the default, and Agent, exercising reasonable judgment, determines that the cure cannot be reasonably completed at or before expiration of the initial thirty (30) day period; or

(l) Any Material Adverse Effect occurs with respect to Borrower or Guarantor; or

(m) INTENTIONALLY OMITTED; or

(n) INTENTIONALLY OMITTED; or

(o) INTENTIONALLY OMITTED; or

(p) INTENTIONALLY OMITTED; or

(q) Any of the following occurs: (i) any judgments, writs, warrants of attachment, executions, or similar process not Covered by Insurance are issued or levied against Borrower or any Guarantor or their respective assets in an aggregate amount that exceeds One Hundred Thousand and No/100 Dollars (\$100,000.00) in the aggregate for Borrower or Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00) 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 issuance or levy, or (ii) any government authority takes action materially adversely affecting either (A) Borrower's intended use of the Property, or (B) Borrower's ability to repay the Loan; or

(r) Agent, on behalf of and for the benefit of Lender, fails to have an enforceable first-priority lien on or first-priority security interest in any property given as security for the Loan (except as otherwise agreed by Agent in writing), and Borrower fails to pay the Loan in full within ten (10) days after Agent's written demand; or

(s) Under any of the Loan Documents, an Event of Default (as defined in that document, subject to applicable notice and cure periods) or Default occurs; or

(t) The occurrence of any one or more of the following events with respect to the Borrower, provided such event or events could reasonably be expected, in the judgment of the Agent, to subject the Borrower to any tax, penalty, or liability (or any combination of the foregoing) which, in the aggregate, could have a material adverse effect on the financial condition of the Borrower with respect to a Plan: (a) a reportable event shall occur with respect to a Plan which is, in the reasonable judgment of the Agent, likely to result in the termination of such Plan for purposes of Title IV of ERISA, or (b) any Plan termination (or commencement of proceedings to terminate a Plan) or the Borrower's full or partial withdrawal from a Plan; or

(u) An Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) occurs under any Guaranty, or any Guaranty becomes unenforceable for any reason, or any Guarantor purports to revoke or terminate its Guaranty; provided, however, that if any Guaranty becomes unenforceable for any reason, such shall not be an Event of Default hereunder if (a) such Guaranty is replaced by an enforceable replacement guaranty executed by Guarantor, or (b) the Loan is paid in full, within ten (10) days after Agent's written demand; or

(v) Guarantor fails to satisfy the financial covenants set forth in Section 11 of the Guaranty; or

(w) Under any Swap Contract, an Event of Default (as defined in that document, subject to applicable notice and cure periods) or Default of Borrower occurs; or

(z) Borrower fails to comply with any provision contained in this Agreement, other than those events specifically referred to above and thus set out as separate Events of Default in this Section 7.1; provided, however, that as to any non-monetary failure that is susceptible of cure, so long as (i) the collateral for the Loan is not materially impaired during any cure period and (ii) Borrower's or any Guarantor's ability to pay or perform under the Loan is not materially adversely impacted during any such cure period, such failure shall not be an Event of Default hereunder if cured by Borrower within thirty (30) days after written notice from Agent; provided, however, that the cure period to comply with such non-monetary covenants, agreements, and obligations shall be extended for a period of not more than an additional forty-five (45) days if the ability to cure such failure to comply within the specified cure period is not within the reasonable control of Borrower, the failure can be cured by Borrower within such extended cure period, and Borrower promptly and in good faith undertakes the curing of such failure and diligently thereafter in good faith pursues the curing to completion.

7.2 Remedies.

(a) If an Event of Default occurs under this Agreement, Agent, on behalf of Lender, may exercise any right or remedy under any of the Loan Documents or otherwise available at law or in equity, and all of such rights and remedies are cumulative. If any Event of Default occurs, Lender's obligation to lend under the Loan Documents automatically terminates, and Agent in its sole and absolute discretion may withhold any one or more disbursements. Agent may also withhold any one or more disbursements after an Unmatured Event of Default occurs and is continuing. By making a Loan disbursement, Agent will not be deemed to have waived any Event of Default unless Agent agrees otherwise in writing in each instance.

(b) If any Event of Default occurs, Agent shall have the right in its sole and absolute discretion to enter the Property and take possession of it, whether in person, by agent or by court-appointed receiver, collect rents and otherwise protect its collateral and rights under the Loan Documents. If Agent exercises any of the rights or remedies provided in this Section, that exercise shall not make Agent a partner or joint venturer of Borrower. All sums which are expended by Agent in preserving its collateral shall be considered an additional loan to Borrower secured by the Deed of Trust and bearing interest at the Default Rate, and shall be secured by the Deed of Trust and any other collateral held by Agent in connection with the Loan.

(c) If Borrower becomes the subject of any Insolvency Proceeding (which, if an involuntary Insolvency Proceeding has not been (i) consented to in writing by Agent, or (ii) dismissed within ninety (90) days of the filing thereof), all of Borrower's obligations under the Loan Documents automatically become immediately due and payable upon the filing of the petition commencing such proceeding, all without notice of default, presentment or demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind or character. Upon the occurrence of any other Event of Default, all of Borrower's obligations under the Loan Documents may become due and payable immediately without notice of default, presentment, or demand for payment, protest, or notice of nonpayment or dishonor, or other notices or demands of any kind or character, all at Agent's option, exercisable in its sole and absolute discretion. If such acceleration occurs, Agent may apply any undisbursed Loan funds and any sums in the Account and/or the Borrower's Funds Account to Borrower's obligations under the Loan Documents, in any order and proportions as Agent may determine in its sole and absolute discretion.

(d) Also upon any Event of Default that occurs during the course of construction of the Improvements, Agent in its sole and absolute discretion may enter and take possession of the Property, whether in person, by agent or by court-appointed receiver, and take any and all actions that Agent in its sole discretion may consider necessary to complete construction of the Improvements, including making changes in plans, specifications, work or materials and entering into, modifying or terminating any contractual arrangements, all subject to Agent's right at any time to discontinue any work without liability. By choosing to complete the Improvements, Agent does not assume any liability to Borrower or any other person for completing them or for the manner or quality of their construction, and Borrower expressly waives any such liability. If Agent exercises any of the rights or remedies provided in this subsection, that exercise will not make Agent, or cause Agent to be deemed, a partner or joint venturer of Borrower. Agent in its sole discretion may choose to complete construction in its own name. All sums expended by Agent in completing construction will be considered to have been disbursed to Borrower and will be secured by the Deed of Trust and any other collateral held by Agent, for the benefit of Lender, in connection with the Loan, any such sums will be considered to be a Loan of principal or an additional Loan to Borrower bearing interest at the Default Rate, and shall be secured by the Deed of Trust and any other collateral held by Agent, for the benefit of Lender, in connection with the Loan. For these purposes Agent, in its sole and absolute discretion, may reallocate any line item or cost category of the Cost Breakdown.

(e) As security for the payment and performance of all obligations of Borrower under the Loan Documents, Borrower hereby grants Agent and each Lender, and their respective successors and assigns, a security interest in, a lien on, and an express contractual right to set off against all depository account balances, cash, and any other property of Borrower now or hereafter in the possession or control of each such Lender and the right to refuse to allow withdrawals from any account. Without limiting the foregoing, the security interest granted herein and the right of setoff granted to each Lender hereunder is intended to cover and include the Account, any Borrower's Funds Account, and any Remargin Funds Account. Lender may, at any time upon the occurrence of any Default or Event of Default or Unmatured Event of Default under this Agreement or any other Loan Document, setoff against any amounts outstanding under the Loan whether or not the Loan or any portion thereof is then due or has been accelerated, all without any advance or contemporaneous notice of demand of any kind to Borrower, such notice and demand being expressly waived.

8. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OR OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION BASED UPON OR ARISING UNDER THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DISCUSSIONS, DEALINGS, OR ACTIONS OF THE PARTIES TO THIS AGREEMENT OR EITHER OF THEM (WHETHER ORAL OR WRITTEN) WITH RESPECT THERETO, OR TO THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AT LAW OR IN EQUITY, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY HERETO HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY A TRIAL COURT WITHOUT A JURY, AND THAT EITHER PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY HEREOF WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF THIS AGREEMENT AND EACH OTHER DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN MAKING THE LOAN. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

9. Miscellaneous Provisions.

9.1 No Waiver; Consents. Each waiver by Agent or any Lender must be in writing, and no waiver may be construed as a continuing waiver. No waiver shall be implied from Agent's or any Lender's delay in exercising or failure to exercise any right or remedy against Borrower or any security. Agent's or any Lender's consent to any act or omission by Borrower shall not be construed as a consent to any other or subsequent act or omission or as a waiver of the requirement for Agent's or any Lender's consent to be obtained in any future or other instance. All of Agents and each Lenders' rights and remedies are cumulative.

9.2 Purpose and Effect of Approval. Agent's or any Lender's approval of any matter in connection with the Loan is for the sole purpose of protecting their security and rights. No such approval shall result in a waiver of any default of Borrower. In no event shall Agent's or any Lender's approval be a representation of any kind with regard to the matter being approved.

9.3 No Third Parties Benefited. This Agreement is made and entered into for the sole protection and benefit of Borrower, Agent, and each Lender, and their permitted successors and assigns. No trust fund is created by this Agreement, and no other persons or entities have any right of action under this Agreement or any right to the Loan funds.

9.4 Joint and Several Liability. If more than one person or entity executes this Agreement as Borrower, each shall be jointly and severally liable to Lender for the faithful performance of the obligations of Borrower under this Agreement and the other Loan Documents.

9.5 Notices. All notices given under this Agreement shall be in writing and be given by personal delivery, overnight receipted courier (such as UPS, Airborne, or Federal Express) or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Notices shall be effective upon the first to occur of receipt, when proper delivery is refused, or the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. Addresses for notice may be changed by any party by notice to any other party in accordance with this Section. If more than one person or entity executes this Agreement as Borrower, service of any notice on any one Borrower shall be effective service on all Borrower parties for all purposes.

9.6 Actions. Agent and/or any Lender shall have the right, but not the obligation, to commence, appear in, and defend any action or proceeding that might affect its security or its rights, duties, or liabilities relating to the Loan, the Property, or any of the Loan Documents. Borrower shall pay promptly on demand all of Agent's and any such Lender's out-of-pocket costs, expenses, and reasonable legal fees and expenses of Agent's and any such Lender's counsel incurred in those actions or proceedings.

9.7 Attorneys' Fees. In any lawsuit or arbitration arising out of or relating to this Agreement, the Loan Documents or the Loan, the prevailing party will be entitled to recover from each other party such sums as the court or arbitrator adjudges to be reasonable attorneys' fees in the action or arbitration, in addition to costs and expenses otherwise allowed by law. In all other actions or proceedings, including any matter arising out of or relating to any Insolvency Proceeding, Borrower agrees to pay all of Agent's and each Lender's costs and expenses, including reasonable attorneys' fees, incurred in enforcing or protecting Agent's and Lender's rights or interests. From the time(s) incurred until paid in full to Agent, all such sums shall bear interest at the Default Rate. Whenever Borrower is obligated to pay or reimburse Agent's and/or any Lender for any attorneys' fees, those fees include the allocated costs for services of in-house counsel, to the extent not prohibited by applicable law.

9.8 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona, without regard to the choice of law rules of that state, except to the extent that any of such laws may now or hereafter be preempted by Federal law. Borrower consents to the jurisdiction of any Federal or State court within the State of Arizona, submits to venue in such state, and also consents to service of process by any means authorized by Federal law or the law of such state. Without limiting the generality of the foregoing, Borrower hereby waives and agrees not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) Borrower is not subject to the jurisdiction of the courts of the above-referenced state or the United States District Court for such state, or (ii) such suit, action, or proceeding is brought in an inconvenient forum, or (iii) the venue of such suit, action, or proceeding is improper.

9.9 Heirs, Successors, and Assigns; Participations. The terms of this Agreement shall bind and benefit the heirs, legal representatives, successors, and assigns of the parties; provided, however, that except for Allowed Transfers, Borrower may not assign this Agreement or any Loan funds, or assign or delegate any of its rights or obligations, without the prior written consent of Lender in each

instance, subject to Sections 10 and 11 below. Subject to Sections 10 and 11 below, Lender in its sole and absolute discretion may sell or assign the Loan or participations or other interests in all or part of the Loan on the terms and subject to the conditions of the Loan Documents, all without notice to or the consent of Borrower. Also without notice to or the consent of Borrower, any Lender or its affiliates may disclose to any actual or prospective purchaser of any securities issued or to be issued by such Lender and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan or any other loans made by such Lender to Borrower (whether under this Agreement or otherwise), any financial or other information, data or material in such Lender's possession relating to Borrower, any partners of Borrower, the Loan, the Improvements, or the Property.

9.10 Relationships With Other Customers. From time to time, Agent or any of the other Lenders may have business relationships with Borrower's customers, suppliers, contractors, tenants, partners, members, shareholders, officers, or directors, or with businesses offering products or services similar to those of Borrower, or with persons seeking to invest in, borrow from, or lend to Borrower. Borrower agrees that Agent and any of the other Lenders may extend credit to such parties and take any action it deems necessary to collect the credit, regardless of the effect that such extension or collection of credit may have on Borrower's financial condition or operations. Borrower further agrees that in no event shall Agent or any of the other Lenders be obligated to disclose to Borrower any information concerning any other customer of Agent or any of the other Lenders.

9.11 Disclosure to Title Company. Without notice to or the consent of Borrower, Agent may disclose to any title insurance company insuring any interest of Lender under the Deed of Trust (whether as primary insurer, coinsurer or reinsurer) any information, data, or material in Lender's possession relating to Borrower, the Loan, the Improvements, or the Property.

9.12 Improvement District. Borrower shall not consent to, vote in favor of, or directly or indirectly advocate or assist in, the incorporation of any part of the Property into any improvement or community facilities district, special assessment district or other district without Agent's prior written consent in each instance.

9.13 Restriction on Personal Property. Except for the replacement of personal property made in the ordinary course of Borrower's business with items of equal or greater value, Borrower shall not sell, convey or otherwise transfer or dispose of its interest in any personal property in which Lender has a security interest, or contract to do any of the foregoing, without the prior written consent of Agent, and any other Lenders whose consent is required pursuant to the terms of this Agreement, in each instance.

9.14 Publicity. Borrower hereby agrees that Lender, at its expense, may publicize the financing of the Property and, in connection therewith, may use the address, description and photographs or other illustrative drawings of the Property.

9.15 Severability. The invalidity or unenforceability of any one or more provisions of this Agreement shall in no way affect any other provision. If any court of competent jurisdiction determines any provision of this Agreement or any of the other Loan Documents to be invalid, illegal or unenforceable, that portion shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable portion had never been a part of the Loan Documents.

9.16 Interpretation. Whenever the context requires, all words used in the singular shall be construed to have been used in the plural, and vice versa, and each gender shall include any other gender. The captions of the sections of this Agreement are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word

"including" means "including, but not limited to." No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Agreement. Whenever any provision of this Agreement, including any representation, covenant, or Event of Default contained herein, applies to a guarantor, third party pledgor, or any other party to any Loan Document other than Borrower, such provision only applies to such party during the time that such party's guaranty, pledge, or other Loan Document, as applicable, remains in effect.

9.17 Amendments. This Agreement may not be modified or amended except by a written agreement signed by the party against whom enforcement is sought.

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

9.19 Language of Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party.

9.20 Exchange of Information. Borrower agrees that Agent and any of the other Lenders may exchange or disclose financial and other information about Borrower or the Property with or to any of their respective affiliates or other related entities and with any party that becomes a Lender hereunder or otherwise acquires a participation or other interest in all or part of the Loan.

9.21 Survival. The representations, warranties, acknowledgments, and agreements set forth herein shall survive the date of this Agreement.

9.22 Further Performance. Borrower, whenever and as often as they shall be requested by Agent, shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered to Agent, such further instruments and documents, and do any and all things as may be requested, in order to carry out the intent and purpose of this Agreement and the other Loan Documents.

9.23 Time is of the Essence. Time is of the essence in the performance of this Agreement and the other Loan Documents by Borrower, and each and every term thereof.

9.24 Recitals; Exhibits. The recitals to this Agreement set forth above in the "Factual Background" are true, complete, accurate, and correct, and such recitals are incorporated hereby by reference. The exhibits to this Agreement are incorporated hereby by reference.

9.25 Loan Commission. Except as otherwise agreed in writing by Agent: (a) Agent shall be obligated to pay any brokerage commission or fee in connection with or arising out of the Loan, and (b) Borrower shall pay any and all brokerage commissions or fees arising out of or in connection with the Loan.

9.26 Patriot Act Provisions. The following notification is provided to Borrower pursuant to Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318 (as such maybe amended or recodified from time to time, the "Patriot Act"):

(a) **Important Information About Procedures for Opening a New Account.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person or entity that opens an account, including any deposit account, treasury management account, loan, other extension of credit, or other financial services product. Borrower is hereby notified that when Borrower opens an account, including but not limited to the Account, any Borrower's Funds Account, any Remargin Funds

Account, and any reserve account that may be required pursuant to the terms of this Agreement, if any (i) if Borrower is not an individual, Agent will ask for Borrower's name, taxpayer identification number, business address, and other information that will allow Agent to identify Borrower, and may also ask to see Borrower's legal organizational documents or other identifying documents, and (ii) if Borrower is an individual, Agent will ask for Borrower's name, taxpayer identification number, residential address, date of birth, and other information that will allow Agent to identify Borrower, and may also ask to see Borrower's driver's license or other identifying documents.

(b) **Government Regulation.** Borrower shall not (a) be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits Agent or any other Lender from making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (b) fail to provide documentary and other evidence of Borrower's identity as may be requested by Agent at any time to enable Agent to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act.

9.27 Authority to File Notices. Borrower irrevocably appoints Agent as its attorney-in-fact, with full power of substitution, to file or record, at Borrower's cost and expense, and in Borrower's name, any notices of completion, notices of cessation of labor, or any other notices that Agent in its sole and absolute discretion considers necessary or desirable to protect its security, if Borrower fails to do so. The appointment granted in this Section shall be deemed to be a power coupled with an interest.

9.28 Force Majeure. If the work of construction is affected and delayed directly by fire, earthquake or other acts of God, strike, lockout, acts of public enemy, riot, insurrection or governmental regulation of the sale or transportation of materials, supplies, or labor, Borrower shall notify Agent in writing within five (5) calendar days after the event causing the delay. So long as no Event of Default has occurred and is continuing, Agent shall extend the Completion Date by a period of time equal to the period of the delay, but not more than a total of thirty (30) days and not extending beyond the Maturity Date. Such an extension shall not affect the time for performance of, or otherwise modify, any of Borrower's other obligations under the Loan Documents or the Maturity Date.

9.29 No Commitment to Increase Loan. From time to time, Agent may approve changes to the Plans and Specifications at Borrower's request and also require Borrower to make corrections to the work of construction, all on and subject to the terms and conditions of this Agreement. Borrower acknowledges that no such action or other action by Agent or any Lender will in any manner commit or obligate Lender or any to increase the amount of the Loan.

9.30 Integration and Relation to Loan Commitment. The Loan Documents (a) integrate all the terms and conditions mentioned in or incidental to this Agreement, (b) supersede all oral negotiations and prior writings with respect to their subject matter, including Lender's loan commitment to Borrower, and (c) are intended by the parties as the final expression of the agreement with respect to the terms and conditions set forth in those documents and as the complete and exclusive statement of the terms agreed to by the parties. No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in the Loan Documents. If there is any conflict between the terms, conditions and provisions of this Agreement and those of any other agreement or instrument, including any other Loan Document, the terms, conditions and provisions of this Agreement shall prevail.

10. Agent; Lender Provisions.

10.1 Appointment of Agent. Each Lender hereby irrevocably designates and appoints Agent as the agent for such Lender to act as specified herein and in the other Loan Documents, and each such Lender hereby irrevocably authorizes Agent to take such actions, exercise such powers, and perform

such duties as are expressly delegated to or conferred upon Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. Agent shall hold the Loan Documents and the collateral securing the Loan and any other documents or instruments delivered by Borrower or Agent, as the case may be, in connection therewith, and all payments or proceeds received in connection therewith, for the direct and undivided benefit and protection of Lenders and Agent in accordance with the terms and conditions of this Agreement and subject to applicable laws. Agent agrees to act as such upon the express conditions contained in this Section. Agent shall not have any duties or responsibilities to any Lender except those expressly set forth herein or in the other Loan Documents, nor shall it have any fiduciary relationship with any Lender, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into this Agreement or otherwise exist against Agent. The provisions of this Section are solely for the benefit of Agent and each Lender, and, except as specifically and expressly stated herein, Borrower shall not have any rights as a third party beneficiary nor any obligations under any of the provisions of such Section. Each Lender agrees with Borrower and Agent (a) that Borrower shall correspond solely with Agent (and not with any Lender) and shall be entitled to rely upon all actions of Agent regarding all matters in connection with the Loan, (b) that only Agent (and not any Lender) shall correspond with Borrower in connection with the Loan and the Loan Documents and (c) payments made to Agent by Borrower shall be sufficient to discharge Borrower's obligation, whether or not Agent makes proper disbursements to each Lender. Borrower may rely upon any consent, approval, or instructions received from Agent.

10.2 Administration of Loan by Agent. Agent shall be responsible for administering the Loan on a day-to-day basis. In the exercise of such administrative duties, Agent shall use the same diligence and standard of care that is customarily used by Agent with respect to similar loans held by Agent solely for its own account.

10.3 Specific Authority of Agent. Each Lender delegates to Agent the full right and authority on its behalf to take the following specific actions in connection with its administration of the Loan:

(a) To approve fundings, to determine whether or not any condition precedent to Lenders' obligations to make a funding have been satisfied, and to make fundings in accordance with the provisions of the Loan Documents, but only to the extent immediately available funds are provided to Agent by the respective Lender for such purpose.

(b) Subject to the limitations in Section 10.4(b) below, to make Protective Advances.

(c) To receive all payments of principal, interest, fees, and other charges paid by, or on behalf of, Borrower and, except for fees to which Agent is entitled pursuant to the Loan Documents or otherwise, to distribute all such funds to the respective Lender as provided for hereunder.

(d) To keep and maintain complete and accurate files and records of all material matters pertaining to the Loan, and make such files and records available for inspection and copying by each Lender and its respective employees and agents during normal business hours upon reasonable prior notice to Agent.

(e) To do or omit doing all such other actions as may be reasonably necessary or incident to the implementation, administration, and servicing of the Loan and the rights and duties delegated herein.

10.4 Right of Lender to Participate In Certain Decisions.

(a) Unanimous Approval. Notwithstanding the provisions of Section 10.3, the unanimous written approval of all Lenders (other than a Delinquent Lender) shall be required with respect to the following actions:

(i) (A) Extending the Maturity Date, except as expressly provided in this Agreement, (B) reducing the rate of interest, (C) extending the time of payment of interest or principal on the Loan, (D) increasing the principal amount of the Loan (other than fundings provided for hereunder), or (E) forgiving any indebtedness (except Loan Fees and/or costs to which Agent is entitled) evidenced or secured by the Loan Documents.

(ii) Any action that would release or discharge any material portion of the collateral for the Loan other than in accordance with the express provisions of the Loan Documents.

(iii) Any action that amends, modifies, or waives any provisions of this Section 10.4(a).

(iv) Any action that reduces the percentage specified in the definition of Required Lenders.

(v) The release of any Guarantor or waiver of any Guaranty.

(vi) Any action that amends or modifies any provision of Section 10 or Section 11 of this Agreement or any other provision of any Loan Documents that relates to the rights or obligations of Agent.

(vii) The waiver of any monetary Event of Default described in Section 7.1.

(b) Approval of Required Lenders. Unless required to act under the express terms of any Loan Document, Agent will not take any of the following actions without the consent of the Required Lenders (and shall take the following actions upon the request of the Required Lenders):

(i) Subject to the provisions of Section 10.8 of this Agreement, acceleration of the maturity of the Loan and declaration of an Event of Default.

(ii) Subject to the provisions of Section 10.8 of this Agreement, the exercise of any foreclosure or other remedy under the Loan Documents.

(iii) Make Protective Advances in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00) in the aggregate.

(iv) Make any material amendment or modification of the Loan Documents that does not require the unanimous consent of Lenders under Section 10.4(a).

(v) Waive any material condition to a funding, any Event of Default or Default.

(c) Deemed Consent or Approval. With respect to any requested amendment, waiver, consent, or other action which requires the approval of the Required Lenders or all Lenders, as

the case may be, in accordance with the terms of this Agreement, or if Agent is required hereunder to seek, or desires to seek, the approval of the Required Lenders or all Lenders, as the case may be, prior to undertaking a particular action or course of conduct, Agent in each case shall provide each Lender with written notice of any such request for amendment, waiver, or consent or any other requested or proposed action or course of conduct, accompanied by such detailed background information and explanations as may be reasonably necessary to determine whether to approve or disapprove such amendment, waiver, consent, or other action or course of conduct. Agent may (but shall not be required to) include in any such notice, printed in capital letters or boldface type, a legend substantially to the following effect:

"THIS COMMUNICATION REQUIRES IMMEDIATE RESPONSE. FAILURE TO RESPOND WITHIN TEN CALENDAR DAYS FROM THE RECEIPT OF THIS COMMUNICATION SHALL CONSTITUTE A DEEMED APPROVAL BY THE ADDRESSEE OF THE ACTION REQUESTED BY BORROWER OR THE COURSE OF CONDUCT PROPOSED BY AGENT AND RECITED ABOVE."

If the foregoing legend is included by Agent in its communication, a Lender shall be deemed to have approved such proposed action or course of conduct for all purposes hereunder if such Lender fails to respond to such communication by written notice to Agent within ten (10) calendar days of such Lender's receipt of such notice.

10.5 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through its agents or attorneys-in-fact, and shall be entitled to the advice of counsel concerning all matters pertaining to its rights and duties hereunder or under the other Loan Documents. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact unless selection thereof constitutes gross negligence or willful misconduct.

10.6 Exculpatory Provisions. Neither Agent nor any of its officers, directors, employees, Agents, attorneys-in-fact, or affiliates shall be liable for any action lawfully taken or omitted to be taken by it or them under or in connection with this Agreement or the other Loan Documents, except for its or their gross negligence or willful misconduct. Neither Agent nor any of its officers, directors, employees, Agents, attorneys-in-fact, or affiliates shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any recital, statement, representation, or warranty made by Borrower or any of its partners, members, managers, officers, directors, or agents contained in this Agreement or the other Loan Documents or in any certificate or other document delivered in connection therewith, or any recital, statement, representation, or warranty made by Guarantor or any third party indemnitor, or any of their respective partners, members, managers, officers, directors, or agents contained in the Loan Documents or in any certificate or other document delivered in connection therewith; (b) the performance or observance of any of the covenants or agreements contained in, or the conditions of, this Agreement or the other Loan Documents; (c) the state or condition of any properties of Borrower or any other obligor hereunder constituting collateral for the obligations of Borrower hereunder, or any information contained in the books or records of Borrower; (d) the validity, enforceability, collectability, effectiveness, or genuineness of this Agreement or any other Loan Document or any other certificate, document, or instrument furnished in connection therewith; or (e) the validity, priority, or perfection of any lien securing or purporting to secure the Loan or the value or sufficiency of any of the collateral.

10.7 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any notice, consent, certificate, affidavit, or other document or writing believed by it to be genuine and correct and to have been signed, sent, or made by the proper party, person, or persons, and upon the advice and statements of legal counsel (including, without limitation, counsel to Borrower), independent accountants, and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Lenders as it deems appropriate or it shall first be indemnified to its satisfaction by Lenders for, from, and against any and all liability and expense which

may be incurred by it by reason of the taking or failing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement and the other Loan Documents in accordance with any written request of the Required Lenders, and each such request of the Required Lenders, and any action taken or failure to act by Agent pursuant thereto, shall be binding upon all Lenders; provided, however, that Agent shall not be required in any event to act, or to refrain from acting, in any manner which is contrary to the Loan Documents or to applicable laws.

10.8 Default; Waivers.

(a) Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default, Default, or Unmatured Event of Default unless Agent has actual knowledge of the same or has received notice from a Lender or Borrower referring to this Agreement, describing such Event of Default, Default, or Unmatured Event of Default and stating that such notice is a "notice of default." If Agent obtains such actual knowledge or receives such a notice, Agent shall give prompt notice thereof to each Lender. Agent shall take such action with respect to such Event of Default or Default, or, if applicable, Unmatured Event of Default as shall be reasonably directed by the Required Lenders. Except as otherwise provided for in Section 10.4(a), the Required Lenders may, by written approval, waive any Event of Default, Default, or Unmatured Event of Default, other noncompliance with the terms, covenants, and conditions of the Loan Documents, and Agent shall do so upon request of the Required Lenders, by writing, other than any monetary Event of Default described in Section 7.1, which waiver requires the unanimous written approval of all Lenders (other than a Delinquent Lender) in accordance with Section 11.4(a)(vii). Unless and until Agent shall have received such direction, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Event of Default, Default, or Unmatured Event of Default, or other noncompliance as it shall deem advisable in the best interest of Lenders; provided, however, that Agent shall not accelerate the Loan without the prior written consent of the Required Lenders.

(b) Notwithstanding the above, if the Required Lenders cannot come to agreement regarding acceleration of the Loan and the exercise of remedies under the Loan Documents within thirty (30) days after the time when Lenders shall have had actual notice of any Event of Default or Default, thereby resulting in a deadlock, then Agent shall, at the end of such thirty (30) day period, give notice to Borrower that the Loan is accelerated and Agent shall thereafter take such action (pursuant to the Loan Documents under which it is acting as Agent) as Agent deems advisable to enforce Lenders' rights under this Agreement and the other Loan Documents.

10.9 Lenders' Credit Decisions; Reliance.

(a) Each Lender agrees that it has, independently, and without reliance upon any other party hereto, or upon the directors, officers, agents, or employees of any other party hereto, but only in reliance upon information supplied to it by or on behalf of Borrower and upon such other information as it has deemed appropriate, made its own independent credit analysis and decision to enter into this Agreement. Without limiting the foregoing, each Lender acknowledges that it has received copies of the Loan Documents and financial statements, certificates, instruments, documents, affidavits, resolutions, and agreements as it deems necessary to make its credit analysis and decisions in respect of the Loan. Each Lender also agrees that it shall independently, and without reliance upon any other party hereto, continue to make its own independent credit analyses and decisions in acting or not acting under the Loan Documents. Except as specifically provided herein, Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the date of this Agreement or at any time or times thereafter; provided, however, that Agent shall, promptly upon request of any Lender, provide such Lender with credit or other information regarding the Loan that is in the possession of Agent and that was not prepared or revised by Agent or Agent's agents or representatives.

(b) Each Lender hereby acknowledges that, except as specifically set forth herein, Agent (i) makes no warranty or representation to any Lender with respect to any statements, warranties or representations (written or otherwise, express or implied) made in or in connection with the Loan Documents, the financial condition of Borrower, or the title or the value of any of the collateral, and (ii) shall not be responsible to any Lender for the due execution, legality, validity, enforceability, genuineness, sufficiency, or collectability of any of the Loan Documents or any other instrument or document furnished pursuant thereto or in connection with the Loan or the legality, validity, enforceability, genuineness, sufficiency, perfection, or priority of any rights in all or any portion of the collateral. Agent shall not be bound to ascertain accuracy of any notice, consent, or request believed by it to be genuine and correct.

10.10 Agent's Reimbursement and Indemnification. Lenders agree to promptly reimburse and indemnify, defend, and hold Agent harmless for, from, and against their respective Proportionate Shares of (a) any amounts not reimbursed by Borrower for which Agent is entitled to reimbursement by Borrower under this Agreement or the other Loan Documents, including Protective Advances, (b) any other expenses incurred by Agent on behalf of Lenders in connection with the preparation, execution, delivery, administration, amendment, waiver, or enforcement of this Agreement and the other Loan Documents, and (c) any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, or fundings of any kind and nature whatsoever which may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or the other Loan Documents or any other document delivered in connection therewith or any transaction contemplated thereby, or the enforcement of any of the terms hereof or thereof; provided, however, that no Lender shall be liable for any of the foregoing to the extent that they arise from the gross negligence or willful misconduct of Agent. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO MATTERS THAT IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF AGENT.** If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity from Lenders and cease, or not commence, to do the action indemnified against until such additional indemnity is furnished.

10.11 Agent in its Individual Capacity. With respect to its Proportionate Share of the Loan, Agent, in its capacity as a Lender, shall have the same rights and powers hereunder and under any other Loan Document as any other Lender and may exercise the same as though it were not Agent for Lenders, and the term "Lender" or "Lenders" shall, unless the context otherwise indicates, include Agent, in its capacity as a Lender. Agent may accept deposits from, lend money to, and generally engage in any kind of banking or trust business with Borrower or any Affiliate of any Borrower as if it were not Agent for Lenders hereunder.

10.12 Successor Agent. If Agent defaults in its obligations as Agent for Lenders hereunder, Lenders whose Proportionate Shares total in the aggregate at least sixty-six and sixty-seven hundredths percent (66.67%) (but excluding from such calculation the Proportionate Share of Agent) may, prior to Agent's cure of any such default, remove Agent at any time by giving thirty (30) days' prior written notice to Agent, Borrower, and the other Lenders. In addition, after the Completion Event, Agent may at any time upon thirty (30) days prior written notice to Borrower and Lenders elect to resign as Agent hereunder. Upon any such resignation or removal, the Required Lenders shall have the right to appoint a successor to Agent, subject to approval by Borrower if no Event of Default, Default, or Unmatured Event of Default then exists under any of the Loan Documents, which approval shall not be unreasonably withheld or delayed. If no successor to Agent shall have been so appointed by the Required Lenders and accepted such appointment within thirty (30) days after Agent gives notice of resignation or the Required Lenders' give notice of removal, as the case may be, then Agent may appoint, on behalf of Borrower and the other Lenders, a successor Agent, subject to approval by Borrower if no Event of Default, Default, or Unmatured Event of Default then exists, which approval shall not be unreasonably withheld or delayed. Each such successor Agent under this **Section 10.12** shall be a financial institution which (i) has total assets equal to or in excess of \$25,000,000,000 and (ii) has a rating on the debt obligations issued by

such financial institution (or by a parent entity owning beneficially all of the capital stock of such financial institution) of "BBB" or higher by Standard & Poors or "Baa2" or higher by Moodys. Upon the acceptance of any appointment as Agent hereunder by a successor to Agent, such successor shall thereupon succeed to and become vested with all the rights, powers, privileges, and duties of Agent, and Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents. After Agent resigns, the provisions of this Section 10 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Agent hereunder. Agent or its successor shall promptly notify Borrower in writing of the appointment of the successor Agent.

10.13 Duties in Case of Enforcement. In case one or more Events of Default, Defaults, or Unmatured Events of Default have occurred and shall be continuing, and whether or not acceleration of the Loan shall have occurred, Agent shall, at the request, or may, upon the consent, of the Required Lenders, and provided that Lenders have given to Agent such additional indemnities and assurances against expenses and liabilities as Agent may reasonably request, proceed to enforce the provisions of this Agreement and the other Loan Documents respecting the foreclosure of the Deed of Trust or any other security instrument or agreement, the construction of the Improvement, the sale or other disposition of all or any part of the collateral and the exercise of any other legal or equitable rights or remedies as it may have hereunder or under any other Loan Documents or otherwise by virtue of applicable laws, or to refrain from so acting if similarly requested by the Required Lenders. Agent shall be fully protected in so acting or refraining from acting upon the instruction of the Required Lenders, and such instruction shall be binding upon all Lenders. The Required Lenders may direct Agent in writing as to the method and the extent of any such foreclosure, sale, or other disposition or the exercise of any other right or remedy, Lenders hereby agreeing to indemnify, defend, and hold Agent harmless for, from, and against all costs and liabilities incurred in respect of all actions taken or omitted in accordance with such direction, provided that Agent need not comply with any such direction to the extent that Agent reasonably believes Agent's compliance with such direction to be unlawful or commercially unreasonable in any applicable jurisdiction. Agent may, in its discretion, but without obligation, in the absence of direction from the Required Lenders, take such interim actions as it believes necessary to preserve the rights of Lenders hereunder and in and to any collateral, including but not limited to petitioning a court for injunctive relief, appointment of a receiver or preservation of the proceeds of any collateral. Each Lender acknowledges and agrees with Agent, Borrower and all other Lenders that no individual Lender may separately enforce or exercise any of the provisions of any of the Loan Documents, other than through Agent.

10.14 Lender Proportionate Shares. Each Lender's Proportionate Share shall be as set forth on Schedule 1 to this Agreement, as the same may be amended from time to time by Agent to account for modifications in the Proportionate Share of any one or more Lenders, and each Lender shall be deemed to own an undivided interest equal to its Proportionate Share in (a) the Loan; (b) all Loan Documents; (c) all principal and interest due under or in connection with the Loan; and (d) each Lender's share of loan fees, extension fees and all other fees due under this Agreement or in connection with the Loan (excluding only fees payable pursuant to the Fee Letter, the appraisal review fee, the environmental review fee and fees paid to third parties by Agent or a Lender and reimbursed by Borrower).

10.15 Funding Advances. Agent shall give written notice (including notice by email or facsimile) to each Lender of each request for a funding of Loan proceeds by facsimile transmission, hand delivery or overnight courier, not later than 1:00 p.m. (Phoenix, Arizona time) on the Business Day immediately preceding the date the funding is to be made. Each such notice shall be accompanied by a written summary of the request for a funding and shall specify (a) the date of the requested funding, (b) the aggregate amount of the requested funding, and (c) each Lender's Proportionate Share of the requested funding. Each Lender agrees with Borrower, Agent and all other Lenders that it will, before 11:00 a.m. (Phoenix, Arizona time) on the date set forth in any such request for a funding, make available to Agent, at an account to be designated by Agent in Phoenix, Arizona, in same day funds, such Lender's Proportionate Share of the requested funding. After Agent's receipt of such funds, Agent shall make such

funds available to Borrower as provided for in this Agreement. Promptly after receipt by Agent of written request from any Lender, Agent shall deliver to the requesting Lender the accompanying certifications and such other instruments, documents, certifications and approvals delivered by or on behalf of Borrower to Agent in support of the requested funding.

10.16 Nature of Obligations of Lenders. The obligations of Lenders under this Agreement are several and not joint. Failure of any Lender to fulfill its obligations hereunder shall not result in any other Lender becoming obligated to advance more than its Proportionate Share of the Loan or of any funding, nor shall such failure release or diminish the obligations of any other Lender to fund its Proportionate Share of the Loan provided herein.

10.17 Payments to Agent. All payments of principal of and interest on the Loan shall be made to Agent by Borrower or Guarantors or other obligor for the account of Lenders in immediately available funds as provided in the Note and this Agreement. Agent agrees promptly to distribute to each Lender, on the Business Day each such payment is made if such payment is received by Agent by 11:00 a.m. (CST time) on such day or if received thereafter on the next Business Day, such Lender's Proportionate Share of each such payment (including each Lender's respective share in interest payments) in immediately available funds, except as otherwise expressly provided herein. Each payment to Agent under this **Section 10.17** shall constitute a payment to each Lender in the amount of such Lender's Proportionate Share of such payment (including each Lender's respective share in interest payments), and any such payment to Agent shall not be considered outstanding for any purpose after the date of such payment to Agent without regard to whether or when Agent makes distribution thereof as provided above. If any payment received by Agent is insufficient to pay both all accrued interest and all principal then due and owing, Agent shall first apply such payment to all outstanding interest until paid in full and shall then apply the remainder of such payment to all principal then due and owing, and shall distribute the payment to each Lender accordingly. In no event shall Agent be responsible for any shortfall in payments required to be made by Borrower.

10.18 Adjustments. If, after Agent has paid each Lender's Proportionate Share of any payment received or applied by Agent in respect of the Loan, that payment is rescinded or must otherwise be returned or paid over by Agent, whether pursuant to any bankruptcy or insolvency law, sharing of payments clause of any Loan Document or otherwise, such Lender shall, at Agent's request, promptly return its Proportionate Share of such payment or application to Agent, together with Lender's Proportionate Share of any interest or other amount required to be paid by Agent with respect to such payment or application.

10.19 Setoff. If Agent, acting in its individual capacity, shall exercise any right of setoff against a deposit balance or other account of Borrower held by such Lender on account of the obligations of Borrower under this Agreement, Agent shall apply all such sums for the benefit of all Lenders hereunder in accordance with the terms of this Agreement.

10.20 Distribution by Agent. If, in the opinion of Agent, distribution of any amount received by it in such capacity hereunder or under the Note or under any of the other Loan Documents might involve any liability, it may refrain from making distribution until its right to make distribution shall have been adjudicated by a court of competent jurisdiction or has been resolved by the mutual consent of all Lenders. In addition, Agent may request full and complete indemnity, in form and substance satisfactory to it, prior to making any such distribution. If a court of competent jurisdiction shall adjudge that any amount received and distributed by Agent is to be repaid, each Person to whom any such distribution shall have been made shall either repay to Agent its Proportionate Share of the amount so adjudged to be repaid or shall pay over to the same in such manner and to such Persons as shall be determined by such court.

10.21 Delinquent Lender.

(a) If for any reason any Lender shall fail or refuse to abide by its obligations under this Agreement, including without limitation its obligation to make available to Agent its Proportionate Share of any disbursement of Loan funds, expenses, or setoff for a period of two (2) Banking Days or more (a "Delinquent Lender"), then in addition to the rights and remedies that may be available to Agent and the other Lenders at law and in equity, such Delinquent Lender's right to participate in the administration of the Loan and the Loan Documents, including, without limitation, any rights to consent to or direct any action or inaction of Agent, shall be suspended during the pendency of such failure or refusal.

(b) If for any reason the Delinquent Lender fails to make timely payment to Agent or any Lender of any amount required to be paid to it hereunder, in addition to other rights and remedies that Agent or such Lender may have under Section 10.21(a) or otherwise, Agent and such Lender shall be entitled (i) to collect interest from the Delinquent Lender for the period from the date on which the payment was due until the date on which the payment is made for each day during such period at the Default Rate, (ii) to withhold or set off, and to apply to the payment of the defaulted amount and any related interest, any amounts to be paid to the Delinquent Lender under this Agreement, (iii) to bring an action or suit against the Delinquent Lender in a court of competent jurisdiction to recover the defaulted amount and any related interest, (iv) to arrange for the purchase of the Proportionate Share of the Loan of the Delinquent Lender as provided in Section 10.21(d); and (v) to advance funds on behalf of the Delinquent Lender as provided in Section 10.21(e).

(c) The Delinquent Lender shall indemnify, defend, and hold Agent and each of the other Lenders harmless for, from, and against any and all losses, damages, liabilities, and expense (including attorneys' fees) which they may sustain or incur by reason of or in consequence of the Delinquent Lender's failure or refusal to abide by the terms of this Agreement.

(d) If a Lender becomes a Delinquent Lender, the other Lenders who are not Delinquent Lenders shall have the right, but not the obligation, in their sole discretion, to acquire (pro rata based on the respective Proportionate Share of Lenders exercising such right, as adjusted to reflect the deletion of the Delinquent Lender's Proportionate Share) all of such Delinquent Lender's right, title and interest in and to the Loan. In the event that the other Lenders do not elect to purchase the Delinquent Lender's right, title and interest in the Loan, Borrower shall have the right to designate an Eligible Assignee to acquire all of such Delinquent Lender's right, title and interest in and to the Loan. In either case, the purchase price shall be the principal and accrued interest allocable to the Delinquent Lender's Proportionate Share of the Loan and shall be paid on the closing day of such purchase. On the date of closing of such purchase, the Delinquent Lender shall pay Agent a processing fee of \$3,000.00. The Delinquent Lender shall retain liability for all obligations in respect of the Loan and this Agreement arising prior to the date of transfer and shall execute and deliver such documents as may be reasonably necessary to effect such transfer.

(e) If a Lender becomes a Delinquent Lender, the other Lenders may (pro rata based on the respective Proportionate Share of Lenders exercising such right), but are not obligated to, make advances to Agent in the amounts that the Delinquent Lender is obligated to advance under this Agreement. Such advances shall be treated as loans made to the Delinquent Lender, shall bear interest at the Default Rate (payable on demand), shall be due and payable upon demand, and shall be paid prior to any payment being made to the Delinquent Lender.

(f) The exercise of the above remedies shall not reduce, diminish or liquidate the Delinquent Lender's obligation for the sharing of losses and reimbursement of costs, liabilities, and

expenses under the Loan Documents and this Agreement. The obligations of the Delinquent Lender arising prior to any purchase pursuant to Section 10.21(d) shall survive any such purchase.

10.22 Title to Project. If all or any portion of the collateral for the Loan is acquired by Agent as the 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 Borrower's obligations, title to any such collateral or any portion thereof shall be held in the name of Agent or a nominee or affiliate of Agent, in any case as Agent, for the ratable benefit of Agent and Lenders, as their interests may appear. Agent shall promptly after the taking of title prepare a recommended course of action for such collateral (the "Post-Foreclosure Plan"), which shall be subject to the approval, in accordance with the procedure set forth in Section 10.4(c), of Required Lenders. Agent shall manage, operate, repair, administer, complete, construct, restore or otherwise deal with the collateral so acquired in accordance with the Post-Foreclosure Plan and administer all transactions relating thereto, including, without limitation, employing a managing Agent and other Agents, contractors and employees, including Agents for the sale of such collateral, or any portion thereof, and the collecting of rent and other sums from such collateral, and paying expenses of such collateral. Agent shall render, or cause to be rendered by the managing Agent, to each Lender, monthly, an income and expense statement for such collateral. Each Lender shall promptly contribute its Proportionate Share of any operating loss for such collateral, and such other expenses and operating reserves as Agent shall deem reasonably necessary. Agent shall not undertake completion of any Improvements to the Property if the cost to the Lenders of completion thereof would exceed the unadvanced portion of the Loan (unless Agent is pursuing rights under a bond or the Required Lenders otherwise agree) or if prohibited by the Post-Foreclosure Plan. In the event the Required Lenders agree to the construction of Improvements notwithstanding the incurrence of costs in excess of the unadvanced portion of the Loan, each Lender shall fund its Proportionate Share in accordance with the funding provisions of Section 10.15. To the extent there is net operating income from such collateral, Agent shall determine the amount and timing of distributions to Lenders. All such distributions shall be made to Lenders in accordance with their Proportionate Shares. Agent shall undertake to sell such collateral, at such price and upon such terms and conditions as the Required Lenders shall reasonably determine to be most advantageous to Lenders. Any purchase money mortgage taken in connection with the disposition of such collateral in accordance with the immediately preceding sentence shall name Agent, as Agent for Lenders, as the mortgagee. In such case, Agent and Lenders shall enter into an agreement with respect to such purchase money mortgage defining the rights of Agent and Lenders in the same Proportionate Shares as provided hereunder.

11. Assignment and Participation Provisions.

11.1 Assignment by Lender. Except as provided herein, any Lender may assign to one or more Eligible Assignees all or a portion of its Proportionate Share of the Loan and its interests, rights and obligations under this Agreement, upon satisfaction of the following conditions: (a) Agent shall have given its prior written consent to such assignment, which consent shall not be unreasonably withheld, (b) each such assignment shall be of a constant, and not a varying, percentage of all the assigning Lender's rights and obligations under this Agreement, (c) each assignment of less than the entirety of such Lender's Proportionate Share shall be in an amount that is at least the lesser of \$10,000,000 or the entire remaining interest of such Lender in the Loan, (d) the parties to such assignment shall execute and deliver to Agent an Assignment and Acceptance Agreement in the form attached hereto as Exhibit D ("Assignment Agreement"), under which the assignee shall assume the obligations of the assigning Lender under this Agreement and the other Loan Documents, and (e) Agent shall be paid an administrative fee by the assignor in the amount of \$3,500 for each such assignment. From and after the effective date specified in the Assignment Agreement, which effective date shall be at least five (5) Business Days after the execution thereof, (x) the assignee thereunder shall be a party to this Agreement and have the rights and obligations of a Lender hereunder and (y) the assigning Lender shall be released from any obligations thereafter accruing under this Agreement. Notwithstanding the foregoing, in no case

may the Proportionate Share of the Loan held by Agent or its Affiliates, as a Lender, be less than twenty-five percent (25%) unless either there exists an Event of Default or Default under the Loan Documents or the Completion Event shall have occurred. Agent shall promptly notify Borrower in writing of such assignment or sale.

11.2 Participations. Each Lender may sell participations to one or more banks or other financial institutions in all or a portion of such Lender's rights and obligations under this Agreement and the other Loan Documents; provided that (a) each such participation shall be in a minimum amount of the lesser of \$10,000,000 or the entire remaining interest of such Lender in the Loan, (b) each participant shall meet the requirements of an Eligible Assignee, (c) any such sale or participation shall not affect the rights and duties of the selling Lender hereunder to Borrower and (d) the only rights granted to the participant pursuant to such participation arrangements with respect to waivers, amendments or modifications of the Loan Documents shall be the rights to approve waivers, amendments or modifications that would reduce the principal of or the interest rate on the Loan, release any material portion of the collateral, extend the term or increase the amount of the Proportionate Share of such Lender as it relates to such participant, reduce the amount of any loan fees and extension fees to which such participant is entitled or extend any regularly scheduled payment date for principal or interest. Agent shall have no obligation to provide any reports, funds or information to any participant of any Lender.

11.3 Disclosure. Any Lender may disclose information obtained by such Lender pursuant to this Agreement to assignees or participants and potential assignees or participants hereunder.

11.4 Miscellaneous Assignment Provisions.

(a) Any assigning Lender shall retain its rights to be indemnified pursuant to this Agreement with respect to any claims or actions arising prior to the date of such assignment.

(b) If any assignee Lender is not incorporated under the laws of the United States of America or any state thereof, it shall, prior to the date on which any interest or fees are payable hereunder or under any of the other Loan Documents for its account, deliver to Borrower and Agent certification as to its exemption from deduction or withholding of any United States federal income taxes.

(c) Anything contained in this section to the contrary notwithstanding, any Lender may at any time pledge all or any portion of its interest and rights under this Agreement to any of the Federal Reserve Banks organized under § 4 of the Federal Reserve Act, 12 U.S.C. § 341. No such pledge or the enforcement thereof shall release the pledgor Lender from its obligations hereunder or under any of the other Loan Documents.

11.5 Non-U.S. Lenders. Each Lender (or substituted Lender) that is organized under the laws of a jurisdiction other than the United States, any State thereof or the District of Columbia (a "Non-U.S. Lender") shall deliver to Borrower and Agent two copies of either United States Internal Revenue Form 1001 or Form 4224, or, in the case of a Non-U.S. Lender claiming exemption from U.S. Federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code with respect to payments of "portfolio interest," a Form W-8, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or reduced rate of, U.S. Federal withholding tax on payments by Borrower under this Agreement and the other Loan Documents.

Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement and on or before the date, if any, such Non-U.S. Lender changes its applicable lending office by designating a different lending office.

IN WITNESS WHEREOF, Borrower and Agent have executed this Agreement as of the date first above written.

"BORROWER"

TEMPE GATEWAY, L.L.C., a Delaware limited liability company

By: **OWC TEMPE, INC.**, a Delaware corporation,
its Manager

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

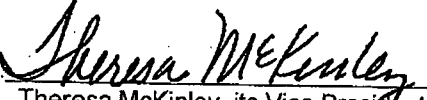
Address for notices to Borrower:

Tempe Gateway, L.L.C.
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President,
Real Estate Sales and Finance

"LENDER"

U.S. BANK NATIONAL ASSOCIATION,
a national banking association

By


Theresa McKinley, its Vice President

Address for notices to Agent and Lender:

U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, AZ 85003
Attention: Commercial Real Estate

EXHIBIT A

LEGAL DESCRIPTION

PARCEL NO. 1:

A PORTION OF OFFICE PLAZA 222 CONDOMINIUM PLAT ACCORDING TO BOOK 236 OF MAPS, PAGE 48, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 61, MAP OF TEMPE ACCORDING TO BOOK 2 OF MAPS, PAGE 26;

THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 61, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF 3RD STREET 123.43 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY OF MILL AVENUE PER OFFICE PLAZA 222;

THENCE CONTINUING SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG SAID SOUTH LINE 211.80 FEET;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST CONTINUING ALONG SAID SOUTH LINE 302.97 FEET;

THENCE NORTH 44 DEGREES 56 MINUTES 38 SECONDS WEST, 21.19 FEET TO AN ANGLE POINT ON THE WEST LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE EASTERLY RIGHT-OF-WAY OF ASH AVENUE;

THENCE NORTH 00 DEGREES 06 MINUTES 45 SECONDS EAST ALONG SAID WEST LINE AND 650.69 FEET TO THE NORTHWEST CORNER OF SAID OFFICE PLAZA 222;

THENCE SOUTH 89 DEGREES 45 MINUTES 10 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY OF 1ST STREET 318.67 FEET TO A CORNER OF SAID OFFICE PLAZA 222;

THENCE SOUTH 00 DEGREES 09 MINUTES 57 SECONDS WEST ALONG THE EAST LINE OF SAID OFFICE PLAZA 222, 329.82 FEET TO A CORNER OF SAID OFFICE PLAZA 222;

THENCE NORTH 89 DEGREES 57 MINUTES 25 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, 329.97 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY OF MILL AVENUE, SAID POINT BEING ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 533.50 FEET, THE CENTER OF SAID CURVE BEARS NORTH 89 DEGREES 50 MINUTES 49 SECONDS WEST;

THENCE SOUTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 38 DEGREES 54 MINUTES 10 SECONDS AN ARC LENGTH OF 362.24 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THAT PORTION OF OFFICE PLAZA 222, CONDOMINIUM PLAT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY,

ARIZONA, RECORDED IN BOOK 236 OF MAPS, PAGE 48, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID OFFICE PLAZA 222, SAID CORNER LYING ON THE EASTERLY RIGHT-OF-WAY OF ASH AVENUE;

THENCE NORTH 00 DEGREES 06 MINUTES 16 SECONDS EAST ALONG THE WEST LINE OF SAID OFFICE PLAZA 222, A DISTANCE OF 120.38 FEET TO A SET ½" REBAR WITH CAP #26404, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00 DEGREES 06 MINUTES 16 SECONDS EAST ALONG SAID WEST LINE A DISTANCE OF 198.70 FEET TO A SET ½" REBAR WITH CAP #26404;

THENCE NORTH 00 DEGREES 15 MINUTES 06 SECONDS EAST CONTINUING ALONG SAID WEST LINE A DISTANCE OF 331.52 FEET TO THE NORTHWEST CORNER OF SAID OFFICE PLAZA 222, SAID CORNER BEING A SET ½" REBAR WITH CAP #26404;

THENCE SOUTH 89 DEGREES 45 MINUTES 11 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY OF 1ST STREET A DISTANCE OF 317.77 FEET TO A CORNER OF SAID OFFICE PLAZA 222, LAST SAID CORNER BEING A FOUND COTTON PICKER SPINDLE;

THENCE SOUTH 00 DEGREES 09 MINUTES 42 SECONDS WEST ALONG THE EAST LINE OF SAID OFFICE PLAZA 222, A DISTANCE OF 329.73 FEET TO A CORNER OF SAID OFFICE PLAZA 222, LAST SAID CORNER BEING A FOUND COTTON PICKER SPINDLE;

THENCE SOUTH 00 DEGREES 10 MINUTES 15 SECONDS WEST A DISTANCE OF 199.32 FEET TO A SET ½" REBAR WITH CAP #26404;

THENCE NORTH 89 DEGREES 57 MINUTES 52 SECONDS WEST A DISTANCE OF 318.06 FEET TO THE TRUE POINT OF BEGINNING; AND

EXCEPT A PART OF OFFICE PLAZA 222 SUBDIVISION, AS RECORDED IN BOOK 236 OF MAPS, PAGE 48 AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF MILL AVENUE AND 3RD STREET (FOUND BRASS CAP IN HANDHOLE);

THENCE SOUTH 89 DEGREES 36 MINUTES 01 SECONDS WEST, ALONG THE CENTERLINE OF SAID 3RD STREET (CONTROL LINE TO OFFICE PLAZA 222, AS RECORDED IN BOOK 236 OF MAPS, PAGE 48, MCR), A DISTANCE OF 385.14 FEET;

THENCE SOUTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE OF 231.04 FEET;

THENCE NORTH 00 DEGREES 23 MINUTES 36 SECONDS WEST, A DISTANCE OF 69.00 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE OF 71.60 FEET;

Exhibit A – Page 2

THENCE NORTH 45 DEGREES 20 MINUTES 13 SECONDS WEST, A DISTANCE OF 21.19 FEET;

THENCE NORTH 00 DEGREES 16 MINUTES 51 SECONDS WEST, A DISTANCE OF 8.40 FEET TO THE POINT OF CUSP OF A CURVE WHOSE 459.50 FOOT RADIUS BEARS NORTH 20 DEGREES 19 MINUTES 58 SECONDS EAST AND IS CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 11 DEGREES 11 MINUTES 53 SECONDS, A DISTANCE OF 89.80 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THAT PORTION OF BLOCK 61, MAP OF TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 61;

THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 61, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF 3RD STREET 123.43 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF MILL AVENUE PER THE PLAT OF OFFICE PLAZA 222 ACCORDING TO BOOK 236 OF MAPS, PAGE 48, SAID POINT BEING ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 533.50 FEET, THE CENTER OF SAID CURVE BEARS NORTH 50 DEGREES 54 MINUTES 36 SECONDS WEST;

THENCE NORTHERLY ALONG SAID CURVE AND LAST SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 38 DEGREES 55 MINUTES 26 SECONDS AN ARC LENGTH OF 362.40 FEET TO THE CENTERLINE OF 2ND STREET PER SAID MAP OF TEMPE;

THENCE NORTH 89 DEGREES 58 MINUTES 00 SECONDS EAST ALONG SAID CENTERLINE 5.00 FEET TO A POINT ON THE NORTHERLY PROLONGATION OF THE EAST LINE OF SAID BLOCK 61;

THENCE SOUTH 00 DEGREES 10 MINUTES 08 SECONDS WEST ALONG SAID PROLONGATION AND SAID EAST LINE 334.84 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

COSTS BREAKDOWN

Opus West Corporation - Tempe Gateway					
PROJECT COST SUMMARY					
	Cost /SF	Total Cost	%	Initial Borrower Equity	Gross Loan Amount
LAND (0.541 Acres / 54,263 SF @ \$48.62/SF)	\$28.92	\$7,500,000	9.2%	\$7,500,000	\$0
HARD CONSTRUCTION COSTS					
On-Site Improvements	\$8.76	\$2,272,966	2.8%		\$2,272,966
Base Building	\$113.98	\$29,563,556	36.4%	\$717,651	\$28,845,905
General Contractors Fee	\$8.07	\$2,092,207	2.6%	\$2,092,207	\$0
Parking Garage	\$56.51	\$14,657,377	18.1%		\$14,657,377
Tenant Improvements	\$36.45	\$9,452,774	11.7%		\$9,452,774
Total Hard Construction Costs	\$223.77	\$58,038,880	71.5%	\$2,809,858	\$55,229,022
SOFT CONSTRUCTION COSTS					
Permits, Fees & Impact Fees (Included in Base Building)	\$0.00	\$0	0.0%		\$0
Architecture & Engineering (Included in Base Building)	\$0.00	\$0	0.0%		\$0
Developer Fee	\$7.16	\$1,857,142	2.3%	\$1,857,142	\$0
Construction Loan Fee	\$1.99	\$517,200	0.6%		\$517,200
Survey, Soil & Environmental Testing	\$0.08	\$20,000	0.0%		\$20,000
Leasing Commissions	\$11.81	\$3,062,380	3.8%		\$3,062,380
Sales Costs & Commissions	\$2.70	\$700,000	0.9%		\$700,000
Legal & Accounting	\$0.96	\$250,000	0.3%		\$250,000
Taxes & Insurance	\$0.51	\$131,918	0.2%		\$131,918
Marketing & Administration	\$0.19	\$50,000	0.1%		\$50,000
Total Soft Construction Costs	\$25.40	\$6,588,640	8.1%	\$1,857,142	\$4,731,498
CONTINGENCIES & FEES					
Contingency @ % of Soft Costs	\$0.10	\$25,000	0.0%		\$25,000
Contingency @ % of Hard Costs	\$5.78	\$1,500,000	1.8%		\$1,500,000
Other Loan Fees	\$3.10	\$803,234	1.0%		\$803,234
Construction Period Interest	\$25.72	\$6,671,246	8.2%		\$6,671,246
Total Contingencies & Fees	\$34.70	\$8,999,480	11.1%	\$0	\$8,999,480
Total	\$312.79	\$81,127,000	100.0%	\$12,167,000	\$68,960,000
Loan to Cost				15%	85%

EXHIBIT C

COMPLIANCE CERTIFICATE

The undersigned, **OPUS WEST CORPORATION**, a Minnesota corporation (the "Guarantor") hereby certifies to **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, individually and as a lender and Agent, and each of the lending institutions listed on the Schedule of Lenders, as such may be modified from time to time (Agent, as a lender, and each such lending institution, and their respective successors and assigns, referred to individually or collectively, as the context shall infer, the "Lender") as follows:

1. This certificate (the "Compliance Certificate") is being provided pursuant to Section 3.11 of that certain Construction Loan Agreement (the "Loan Agreement") dated as of February ____, 2008, by and between Lender and **TEMPE GATEWAY, L.L.C.**, a Delaware limited liability company (the "Borrower"), and pursuant to Section 11.1 of that certain Payment and Performance Guaranty (the "Guaranty") dated as of February ____, 2008, by Guarantor in favor of Lender. One or more loans or other credit facilities (each, a "Loan," and collectively the "Loans," as the context may require) have been made by Lender to Borrower pursuant to the Loan Agreement and the other Loan Documents, and such Loan(s) have been guaranteed by Guarantor pursuant to the Guaranty. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Guaranty, or if not defined in the Guaranty shall have the meanings set forth in the Loan Agreement.
2. As of the effective date set forth below, the undersigned has no knowledge of any event which constitutes, or which, with the giving of notice or the passage of time, or both, would constitute a Default or an Event of Default under any of the Loan Documents.
3. As of the effective date set forth below, (a) no Material Adverse Effect has occurred in the financial condition of Guarantor, and (b) no Material Adverse Effect has occurred that materially affects any collateral securing the Loan or Guarantor's ability to repay the Loan pursuant to the terms of the Loan Documents.
4. As of the effective date set forth below, Guarantor is in compliance with the financial covenants set forth in the Guaranty, including the Minimum Liquidity requirement, the Tangible Net Worth requirement, and the Total Liabilities to Tangible Net Worth Ratio requirement set forth in Section 11.2 of the Guaranty. The following financial covenant compliance information set forth on Schedule 1 attached hereto, which shows Guarantor's calculation of such financial covenants, is true, accurate, and complete on and as of the effective date of this Compliance Certificate set forth below, and such information is consistent with the financial statements and other financial information delivered to Lender in accordance with the terms of the Loan Agreement for the applicable reporting periods.
5. As of the effective date set forth below, Guarantor has no claim against Lender, or defenses or offsets to payment of any Loan or any other amounts due under the Loan Documents.
6. As of the effective date set forth below, the representations and warranties contained in the Loan Agreement and the other Loan Documents are true and correct in all material respects as of the date of this Compliance Certificate to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date.

IN WITNESS WHEREOF, this Certificate has been executed to be effective as of _____.

"GUARANTOR"

OPUS WEST CORPORATION,
a Minnesota corporation

Address for notices to Guarantor:

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President,
Real Estate Sales and Finance

By: _____
Name: _____
Title: _____

Exhibit C – Page 3

TEMPE CONSTRUCTION LOAN AGR
#111207V9F (REV. 02/14/08)

BORROWER: TEMPE GATEWAY, L.L.C.
PROJECT: MILL AVENUE AND 3RD STREET, TEMPE, AZ

SCHEDULE 1

(Please attach calculation here.)

EXHIBIT D

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "Assignment") is dated as of the Effective Date set forth below and is entered into by and between _____ ("Assignor") and _____ ("Assignee"). Capitalized terms used but not defined herein shall have the meanings given to them in the Construction Loan Agreement identified below (the "Loan Agreement"), receipt of a copy of which is hereby acknowledged by Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment as if set forth herein in full.

For an agreed consideration, Assignor hereby irrevocably sells and assigns to Assignee, and Assignee hereby irrevocably purchases and assumes from Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Agent as contemplated below, (i) all of Assignor's rights and obligations as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of Assignor under the respective facilities identified below (including, without limitation Guaranties, and (ii) to the extent permitted to be assigned under applicable Law, all claims, suits, causes of action and any other right of Assignor (in its capacity as a Lender) against any person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at Law or in equity, related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "Assigned Interest"). Such sale and assignment is without recourse to Assignor and, except as expressly provided in this Assignment, without representation or warranty by Assignor.

1. Assignor: _____
2. Assignee: _____ [Is an Affiliate/Approved Fund of
_____]
3. Borrower(s): **TEMPE GATEWAY, L.L.C.**, a Delaware limited liability company
4. Agent: **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, as the agent under the Loan Agreement
5. Loan Agreement: The Construction Loan Agreement, dated as of February ____, 2008, among **TEMPE GATEWAY, L.L.C.**, a Delaware limited liability company, and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for the Lenders (as such terms are described therein), and their respective successors and assigns (individually or collectively, as the context shall infer, the "Lender").

6. Assigned Interest:

Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans
\$ _____	\$ _____	_____ %

Effective Date: _____, 20__ [TO BE INSERTED BY AGENT AND WHICH SHALL BE
THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment are hereby agreed to:

ASSIGNOR:

By: _____
Title: _____

ASSIGNEE:

By: _____
Title: _____

[Consented to and] Accepted:

as Agent

By: _____
Title: _____

[Consented to:]

By: _____
Title: _____

Exhibit D – Page 2

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

**STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION**

1. Representations and Warranties.

1.1. **Assignor.** Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement, any other Loan Document or the Environmental Agreement, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents, or any collateral thereunder, or the Environmental Agreement, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or the Environmental Agreement, or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document or the Environmental Agreement.

1.2. **Assignee.** Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all requirements of an Eligible Assignee under the Loan Agreement (subject to receipt of such consents as may be required under the Loan Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Loan Agreement, together with copies of the most recent financial statements delivered pursuant to Section 3.9 thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision independently and without reliance on Agent or any other Lender to enter into this Assignment and to purchase the Assigned Interest on the basis of which it has made such analysis and decision, and (v) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by Assignee; and (b) agrees that (i) it will, independently and without reliance on Agent, Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents and the Environmental Agreement, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents and the Environmental Agreement are required to be performed by it as a Lender.

1.3 **Assignee's Address for Notices, etc.** Attached hereto as Schedule 1 is all contact information, address, account and other administrative information relating to Assignee.

2. **Payments.** From and after the Effective Date, Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to Assignee whether such amounts have accrued prior to or on or after the Effective Date. Assignor and Assignee shall make all appropriate adjustments in payments by Agent for periods prior to the Effective Date or with respect to the making of this Assignment directly between themselves.

3. **General Provisions.** This Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment may be executed in any

Exhibit D (Annex - Page 1)

number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment. This Assignment shall be governed by, and construed in accordance with, the Law of the State of Arizona.

Exhibit D (Annex - Page 2)

TEMPE_CONSTRUCTION LOAN AGR
#111207V9F (REV. 02/14/08)

BORROWER: TEMPE GATEWAY, L.L.C.
PROJECT: MILL AVENUE AND 3RD STREET, TEMPE, AZ

SCHEDULE 1 TO ASSIGNMENT AND ASSUMPTION

ADMINISTRATIVE DETAILS

(Assignee to list names of credit contacts, addresses, phone and facsimile numbers, electronic mail addresses and account and payment information)

(a) *LIBOR Lending Office:*

Assignee Name: _____
Address: _____

Mail Code: _____
Attn.: _____
Telephone: _____
Facsimile: _____
Electronic Mail: _____

(b) *Domestic Lending Office:*

Assignee Name: _____
Address: _____

Mail Code: _____
Attn.: _____
Telephone: _____
Facsimile: _____
Electronic Mail: _____

(c) *Notices:*

Assignee Name: _____
Address: _____

Mail Code: _____
Attn.: _____
Telephone: _____
Facsimile: _____
Electronic Mail: _____

(d) *Payment Instructions:*

Account No.: _____
Attn.: _____
Reference: _____

Exhibit D (Schedule 1 - Page 1)

Exhibit E

Schedule of Lenders

	<u>Lender</u>	<u>Commitment Amount</u>
1.	U.S. Bank National Association 101 North First Avenue, Suite 1600 Phoenix, AZ 85003 Attention: Commercial Real Estate	\$28,960,000.00
2.	Regions Bank 13535 Feather Sound Drive Building 1, Suite 610 Clearwater, FL 33762	\$25,000,000.00
3.	Guaranty Bank and Trust Company 1331 Seventeenth Street Denver, CO 80202	\$15,000,000.00

Exhibit F

DRAW REQUEST CERTIFICATION

Borrower hereby certifies as follows: (all terms herein having the meanings set forth in the Construction Loan Agreement ("Construction Loan Agreement") dated February ____, 2008, between Borrower and U.S. Bank National Association ("Lender")):

(a) At the date hereof no suit or proceeding at law or in equity, and no investigation or proceeding of any governmental body, has been instituted or, to the knowledge of Borrower, is threatened, which in either case would substantially affect the condition or business operations of Borrower, except the following:

(b) At the date hereof, no default or event of default under the Construction Loan Agreement or under any of the other Loan Documents has occurred and is continuing, and no event has occurred which, upon the service of notice and/or the lapse of time, would constitute an event of default thereunder, except the following:

(c) The representations and warranties set forth in the Construction Loan Agreement are hereby reaffirmed and restated, and Borrower represents and warrants to Lender that the same are true, correct and complete on the date hereof, except as to the following:

(d) No material adverse change has occurred in the financial condition or in the assets or liabilities of Borrower or Guarantor(s) from those set forth in the latest financial statements for each furnished to Lender, except the following:

(e) The progress of construction of the Project is such that it can be completed on or before the Completion Date specified in the Construction Loan Agreement for the cost originally represented to Lender, except for the following:

(f) The Loan, as of the date hereof, is in balance as required by the Construction Loan Agreement, and the undisbursed proceeds of the Loan, including the advance requested herein, are adequate and sufficient to pay for all labor, materials, equipment, work, services and supplies necessary for the completion of the Project, including the installation of all fixtures and equipment required for the operation of the Project, except for the following Project cost increases:

(g) The labor, materials, equipment, work, services and supplies described herein have been performed upon or furnished to the Project in full accordance with the Plans, which have not been amended except as expressly permitted by the Construction Loan Agreement.

(h) There have been no changes in the costs of the Project from those set forth on the Sworn Construction Cost Statement, as amended by any amendment thereto heretofore delivered by Borrower to Lender and approved by Lender, if such approval is required by the Construction Loan Agreement.

(i) All bills for labor, materials, equipment, work, services and supplies furnished in connection with the Project, which could give rise to a mechanic's lien if unpaid, have been paid or will be paid out of the requested advance.

(j) All claims for mechanics' liens which shall have arisen or could arise for labor, materials, equipment, work, services or supplies furnished in connection with the Project through the last day of the

period covered by the requested advance have been effectively waived in writing, or will be effectively waived in writing when payment is made, and such written waivers shall be delivered to Lender or its disbursing agent.

(k) All funds advanced under the Construction Loan Agreement to date have been utilized as specified in the Draw Requests pursuant to which the same were advanced, exclusively to pay costs incurred for or in connection with acquiring, constructing and developing the Land and the Project, and Borrower represents that no part of the Loan proceeds have been paid for labor, materials, equipment, work, services or supplies incorporated into or employed in connection with any project other than the Project, as that term is defined in the Construction Loan Agreement. Borrower further represents that all funds covered by this Draw Request are for payment for labor, materials, equipment, work, services or supplies furnished solely in connection with said Project.

Borrower authorizes and requests Lender to charge the total amount of this Draw Request against Borrower's Loan account and to advance from the proceeds of the Loan the funds hereby requested, and to make or authorize disbursement of said funds to or for the account of the persons or firms and in amounts up to, but not exceeding, the amounts listed herein, subject to the requirements of and in accordance with the procedures provided in the Construction Loan Agreement and/or any separate disbursing agreement relating to the Loan. The advance made pursuant to this Draw Request is acknowledged to be an accommodation to Borrower and is not a waiver by Lender of any defaults or events of default under the Loan Documents or any other claims of Lender against Borrower or the Contractor.

The advances and disbursements on the attached sheets are hereby approved and authorized.

"BORROWER"

Date: _____

TEMPE GATEWAY, L.L.C., a Delaware limited liability company

By: **OWC TEMPE, INC.**, a Delaware corporation,
its Manager

By: _____
Name: _____
Title: _____

Exhibit F – Page 2

Exhibit G

**ESTOPPEL AND AGREEMENT
(TEMPE GATEWAY)**

The undersigned, **CITY OF TEMPE**, an Arizona municipal corporation (the "City"), whose address is 31 East Fifth Street, Tempe, Arizona, 85281, Attention: City Manager's Office, and **TEMPE GATEWAY, L.L.C.**, a Delaware limited liability company ("Tempe Gateway"), whose address is c/o 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016, ~~["INCLUDE THE FOLLOWING IF THE US AIR ASSIGNMENT DESCRIBED BELOW HAS NOT YET OCCURRED, SUCH THAT US AIRWAYS REMAINS THE CURRENT OWNER OF THE PROPERTY."]~~ and **US AIRWAYS, INC.**, a Delaware corporation, successor in interest and successor by merger to **AMERICA WEST HOLDINGS CORPORATION**, a Delaware corporation, hereby certify to **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for the Lenders (as such terms are described and defined in the Loan Agreement described below), and their respective successors and assigns (individually or collectively, as the context shall infer, the "Lender" or "Lenders"), whose address is 101 North First Avenue, Suite 1600, Phoenix, Arizona 85003, Attention: Commercial Real Estate, and each of the City, Tempe Gateway and Agent on behalf of itself and Lenders covenant and agree as follows:

Unless defined elsewhere in this Agreement, defined terms used herein have the meanings given them in the Definitions Section hereof.

Factual Background

A. The City and AWHC entered into the Original Development Agreement, as such has been modified and amended pursuant to (a) the Development Agreement First Amendment, and (b) the Development Agreement Second Amendment, prior to the date hereof. It is anticipated that, prior to or concurrently with the execution hereof:

(1) With the prior consent of the City, US Air, as successor in interest and successor by merger to AWHC, will enter into the US Air Development Agreement Assignment, assigning the rights and interests of US Air under the Development Agreement with respect to Phase Two, Phase Three, the Phase Two Property and the Phase Three Property (as those terms are defined in the Development Agreement) to Tempe Gateway.

(2) The then current owner of the Property (i.e., US Air or Tempe Gateway, as the case may be) will enter into the Development Agreement Supplement, in form and substance acceptable to Agent in its reasonable discretion, and that the Development Agreement Supplement will thereafter be recorded in the Official Records of Maricopa County, Arizona.

B. Pursuant to the terms of that certain Construction Loan Agreement dated February __, 2008, by and among Tempe Gateway and Lender (as modified, amended, restated or replaced, the "Loan Agreement"), the Lender agreed to make a loan to Tempe Gateway in the principal sum of up to Sixty-Eight Million Nine Hundred Sixty Thousand and No/100 Dollars (\$68,960,000.00) for the purposes specified therein (the "Loan"). The Loan is evidenced by promissory notes, executed by Tempe Gateway and payable to the order of the Lenders (collectively, as modified, amended, restated or replaced, the "Note"). In connection with the Loan, Lender has required that Tempe Gateway execute and deliver to

Lender that certain Assignment of Development Agreement dated February __, 2008, by Tempe Gateway to and for the benefit of Lender (as modified, amended, restated or replaced, the "Assignment of Development Agreement"), wherein Tempe Gateway has assigned to Lender as security for the Loan, all of Borrower's present and future, now owned and after-acquired, right, title, interest, privilege, benefit, and remedies in, to and under (a) the Development Agreement, and (b) any and all present and future amendments, modifications, supplements, change orders, and addenda to the Development Agreement.

C. Tempe Gateway, as trustor, has executed, or proposes to execute for the benefit of Agent, as beneficiary, a Construction Deed of Trust, with Assignment of Rents, Security Agreement, and Fixture Filing dated February __, 2008, encumbering the real property generally located at the northwest corner of Third Street and Mill Avenue in Tempe, Arizona and legally described therein (the "Property"), as security for, among other things, the Loan and the Notes (the "Deed of Trust"). The Deed of Trust is to be recorded in the Official Records of Maricopa County (the "Official Records").

D. Tempe Gateway has requested that the City execute and deliver this Agreement in connection with the Loan. Lender has required that the City execute and deliver this Agreement to Lender as a material condition of and a material condition for Lender allowing Tempe Gateway to proceed with the GPLET Transaction after the Closing Date of the Loan, upon the terms and conditions set forth in Section 3.32 of the Loan Agreement.

THEREFORE, the City, Owner and Agent on behalf of itself and Lenders hereby agree as follows:

Definitions: The following capitalized words and terms shall have the meanings set forth in the "Factual Background" section above, or if not defined therein, shall have the following meanings when used in this Assignment. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require.

"**Agent**" means **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent selected pursuant to the terms of the Loan Agreement.

"**AWHC**" means **AMERICA WEST HOLDINGS CORPORATION**, a Delaware corporation.

"**Borrower**" has the meaning set forth in the introductory paragraph to this Assignment.

"**City**" means **THE CITY OF TEMPE**, a municipal corporation and a political subdivision of the State of Arizona.

"**Deed of Trust**" has the meaning set forth in Recital C above.

"**Development Agreement**" means the Original Development Agreement as such has been modified and amended pursuant to (a) the Development Agreement First Amendment, and (b) the Development Agreement Second Amendment, and as may be further modified and amended pursuant to (1) the Development Agreement Supplement in form and substance approved in writing by Agent in its reasonable discretion, and (2) any future material modifications or amendments to the Development Agreement in form and substance approved in writing by Agent in its reasonable discretion.

"**Development Agreement First Amendment**" means that certain First Amendment to Development Agreement [America West Airlines Corporate Headquarters] [97-250(A)] by and between the City and AWHC, dated as of September 12, 2002, recorded September 24, 2002, 1998, as Instrument Number

Exhibit F – Page 2

2002-0978976, in the Official Records of Maricopa County, Arizona relating to and/or encumbering all or a portion of the Property.

"Development Agreement Second Amendment" means that certain Second Amendment to Development Agreement [America West Airlines Corporate Headquarters] [97-250(B)] by and between the City and AWHC, dated as of June 23, 2004, recorded July 2, 2004, as Instrument Number 2004-0764287, in the Official Records of Maricopa County, Arizona relating to and/or encumbering all or a portion of the Property.

"Development Agreement Supplement" means a Supplemental Development Agreement supplementing and modifying the Development Agreement, or other amendment to Development Agreement, which anticipated to be recorded in the Official Records of Maricopa County, Arizona, relating to and/or encumbering all or a portion of the Property. The Development Agreement Supplement shall be in form and substance acceptable to Agent in its reasonable discretion and therefore is subject to the review and written approval of Agent in its reasonable discretion prior to the execution thereof and recording thereof in the Official Records of Maricopa County, Arizona.

"Lender" has the meaning set forth in the introductory paragraph to this Assignment.

"Loan" has the meaning set forth in Recital B above.

"Loan Agreement" has the meaning set forth in Recital B above.

"Note" has the meaning set forth in Recital B above.

"Original Development Agreement" means that certain Development Agreement [America West Airlines Corporate Headquarters] [97-250] by and between the City and AWHC, dated as of February 18, 1998, recorded February 26, 1998, as Instrument Number 98-0147245, in the Official Records of Maricopa County, Arizona relating to and/or encumbering all or a portion of the Property, which Original Development Agreement was partially assigned by AWHC, as Assignor, to FLY (CD) LLC, a Delaware limited liability company, and AWHQ, LLC, an Arizona limited liability company, as tenants in common, as Assignee, pursuant to that certain Partial Assignment of Development Agreement With Estoppel and Consent of City of Tempe dated as of February 18, 1998.

"Owner" means the owner of the Property as of the date hereof (i.e., US Air or Tempe Gateway, or their respective successors or assigns, as the case may be)

"Property" has the meaning set forth in Recital C above.

"US Air" means **US AIRWAYS, INC.**, a Delaware corporation, successor in interest and successor by merger to **AMERICA WEST HOLDINGS CORPORATION**, a Delaware corporation.

"US Air Development Agreement Assignment" means an assignment of the Development Agreement from US Air to Tempe Gateway, which may occur prior to or after the Closing Date of the Loan and shall be in form and substance acceptable to Agent in its reasonable discretion.

Agreement

1. The City and Owner each severally certify that the Development Agreement as it pertains to the Property is, as of the date hereof, in full force and effect. The City and Owner each severally certify

Exhibit F – Page 3

that the Development Agreement as it pertains to the Property contains the entire agreement of City and Owner with respect to the Property and there are no amendments, modifications or supplements thereto, except as described herein.

2. Certifications Regarding Development Agreement:

(a) The City certifies that the City, or, to the City's knowledge, Owner is not in default under the Development Agreement as it pertains to the Property, and no event has occurred and no condition required to be satisfied as of the date hereof exists that, after notice or lapse of time, or both, would constitute a default by either City or, to the City's knowledge, Owner under the Development Agreement as it pertains to the Property.

(b) Owner certifies that Owner, or, to Owner's knowledge, the City is not in default under the Development Agreement, and no event has occurred and no condition exists that, after notice or lapse of time, or both, would constitute a default by either Owner or, to Owner's knowledge, the City under the Development Agreement.

(c) The City knows of no claim presently existing in favor of the City against Owner, or its predecessors in interest, arising out of or related to the Development Agreement as it pertains to the Property.

(d) Owner knows of no claim presently existing in favor of Owner, or its predecessors in interest, against the City arising out of or related to the Development Agreement as it pertains to the Property.

(e) The City acknowledges that (a) the Deed of Trust is a permitted assignment by Tempe Gateway under the Ground Lease (as hereinafter defined) and the benefits of a "Leasehold Mortgagee" (as defined in the Ground Lease) accrue to and apply to Agent on behalf of itself and Lenders, and (b) Section 6 of this Agreement constitutes Agent's notice to the City of name and address for purposes of Section 16.3 of the Ground Lease. The City has consented to the Assignment of Development Agreement and the US Air Development Agreement Assignment.

(f) Owner and the City each severally certifies that it has no knowledge of any violation of any law, ordinance, or governmental rate or regulation relating to the Property and has not received any notification from any federal, state, municipal or other governmental authority having jurisdiction over the Property alleging that any such violation exists.

3. The Development Agreement Supplement provides, among other things, for certain statutorily-authorized property tax abatements with respect to the Property. In connection therewith and pursuant to the Development Agreement Supplement, (i) the City acknowledges that the transfer of title to the City may be by quit claim deed in the form attached as Exhibit "D" to the Development Agreement Supplement with an automatic reversion of title to Owner (or its successors and assigns) upon any termination of the Lease, and (ii) in accordance with the terms set forth in the Development Agreement Supplement, the City will lease-back such real property to Owner under the terms of a lease substantially in the form of the Lease attached as Exhibit "B" to the Original Development Agreement (subject to certain modifications set forth in the Development Agreement Supplement and such other modifications as mutually agreed on by the City and Owner and consented to by Agent) (the "Ground Lease").

4. The City acknowledges that pursuant to the terms of the Ground Lease, in the event Agent on behalf of the Lenders, forecloses (whether through judicial foreclosure or the exercise of a power of sale), pursuant to the Deed of Trust or accepts a transfer in lieu of such a foreclosure, with

respect to all or any portion of the Property and if such Property is subject to the Ground Lease between Owner and City (such Property and all improvements thereon, the "Leased Property"), and such foreclosure or transfer in lieu of foreclosure results in a termination of the Ground Lease, the City agrees that upon request made by Agent, Agent's and Lenders' successor(s) in interest, or any purchaser of the Property at or after such a foreclosure or transfer in lieu thereof as the case may be (each, a "Future Owner" for purposes of this Section 4), the City will enter into a sale/leaseback pursuant to the Ground Lease and in connection therewith will enter into a new lease of the Leased Property with the Future Owner, which new lease shall (a) commence as of the date of the transfer of the Leased Property from the Future Owner to the City and shall run for the remainder of the original term of the Ground Lease, (b) be on the same terms and conditions the Ground Lease, (c) be intended as a Government Property Lease as defined and contemplated by the provisions of A.R.S. §42-6201, et. seq., (d) contain such other requirements as are necessary to enable the Future Owner to have the rights of "Developer" under the Development Agreement Supplement, and (e) shall contain protections substantially the same terms as those set forth in Development Agreement as it pertains to the Property.

5. By its execution hereof, Agent, on behalf of itself and Lenders, hereby agrees and acknowledges that the City shall have no liability, duty or obligation to perform any obligation of "Borrower" under the Loan Documents unless expressly assumed in writing by the City.

6. All notices required or permitted to be given in connection herewith shall be in writing and may be given in person or by United States mail, by commercial delivery service or by electronic transmission with verified receipt. Any notice directed to a party to this Agreement shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) delivery to the designated address of that party, addressed to that party, or (c) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown at the beginning of this Agreement or such other address as that party, from time to time, may specify by notice to the other parties. For purposes of Section 16.3 of the Ground Lease, Agent's name and address is U.S. Bank National Association, 101 North First Avenue, Suite 1600, Phoenix, Arizona 85003, Attention: Commercial Real Estate.

7. This Agreement is executed and delivered to Agent for the benefit of Lenders at the request of Owner for the purpose of inducing Agent and Lenders to continue to provide those loan accommodations described above to Tempe Gateway and for Tempe Gateway to complete the GPLET Transaction in accordance with the terms of the Loan Agreement with the understanding that Agent and Lenders are relying upon the certifications, representations, and agreements contained herein and would not provide such accommodations without this Agreement.

This Agreement shall be binding upon the City, Tempe Gateway [and US Air], and Agent on behalf of the Lenders, and their respective successors and assigns. Successors and assigns of Agent and Lenders, including parties who refinance the Loan or purchase portions of the Property, in whole or in part, are intended third party beneficiaries of this Agreement.

IN WITNESS WHEREOF, these presents are executed as of the _____ day of _____, 2008.

"City"

CITY OF TEMPE, an Arizona municipal
corporation

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

City Attorney

"Tempe Gateway"

TEMPE GATEWAY, L.L.C., a Delaware limited
liability company

By OWC Tempe, Inc., a Delaware corporation,
its Manager

By: _____

Name: _____

Title: _____

"Agent"

U.S. BANK NATIONAL ASSOCIATION, a
national banking association

By: _____

Name: _____

Title: _____

Exhibit F – Page 6

TABLE OF CONTENTS

	<u>Page</u>
FACTUAL BACKGROUND.....	1
AGREEMENT	2
DEFINITIONS	2
1. CONDITIONS PRECEDENT TO CLOSING AND DISBURSEMENTS	12
1.1 CONDITIONS TO CLOSING	12
1.2 CONDITIONS TO INITIAL DISBURSEMENT	16
1.3 SUBSEQUENT DISBURSEMENT CONDITIONS	17
1.4 FINAL DISBURSEMENT	18
2. DISBURSEMENT CONDITIONS AND PROCEDURES; OTHER LOAN TERMS	18
2.1 COST BREAKDOWN; DISBURSEMENTS; INTEREST RESERVE	18
2.2 LOAN IN BALANCE; BORROWER'S FUNDS ACCOUNT	21
2.3 DRAW REQUESTS	21
2.4 DISBURSEMENT PROCEDURES	22
2.5 ESCROW FOR LOAN CLOSING	24
2.6 LOAN DISBURSEMENTS	24
2.7 DISBURSEMENT CONDITIONS	24
2.8 INTEREST RATE AND PAYMENT TERMS	25
2.9 EXTENSION OF MATURITY DATE	27
2.10 COLLATERAL SECURITY	29
2.11 AUTOMATIC DEDUCTION	30
3. COVENANTS OF BORROWER.....	30
3.1 COMMENCEMENT AND COMPLETION OF IMPROVEMENTS	30
3.2 CHANGES	31
3.3 CONSTRUCTION INFORMATION AND VERIFICATION	32
3.4 PERMITS, LICENSES AND APPROVALS	32
3.5 COOPERATION	32
3.6 AS-BUILT PLANS; SURVEYS	33
3.7 COMPLIANCE WITH LAW	33
3.8 TAXES; ADDITIONAL COSTS	33
3.9 INSURANCE	33
3.10 PAYMENT OF EXPENSES	35
3.11 FINANCIAL AND OTHER INFORMATION	35
3.12 AUDITS	36
3.13 NOTICES	36
3.14 KEEPING GUARANTORS AND THIRD PARTY PLEDGORS INFORMED	37
3.15 PERFORMANCE OF ACTS	37
3.16 PRESERVATION OF RIGHTS	37
3.17 INDEMNITY REGARDING CONSTRUCTION AND OTHER RISKS	37
3.18 OTHER DEBTS	38
3.19 OTHER LIENS	38
3.20 NEGATIVE COVENANTS	38
3.21 SITE VISITS; RIGHT TO STOP WORK	39
3.22 PROTECTION AGAINST LIEN CLAIMS	40

TABLE OF CONTENTS
(continued)

	<u>Page</u>
3.23 APPRAISALS.....	40
3.24 TAX RECEIPTS.....	40
3.25 CONDITIONAL SALES CONTRACTS; REMOVAL OF FIXTURES AND EQUIPMENT.....	40
3.26 INCOME FROM PROPERTY.....	40
3.27 PROPERTY MANAGEMENT AGREEMENT.....	41
3.28 RESTRICTIONS.....	41
3.29 EMPLOYEE BENEFIT PLANS; ERISA COMPLIANCE.....	41
3.30 FINANCIAL COVENANTS.....	41
3.31 PROJECT CC&R'S.....	41
3.32 GPLET TRANSACTION.....	42
4. PRO FORMA SCHEDULE; LEASES.....	43
4.1 PRO FORMA SCHEDULE.....	43
4.2 LEASE APPROVAL.....	43
4.3 LEASING INFORMATION AND DOCUMENTS.....	44
4.4 PURPOSE AND EFFECT OF LEASE APPROVAL.....	44
4.5 LANDLORD'S OBLIGATIONS.....	45
4.6 COSTS AND EXPENSES.....	45
5. REPRESENTATIONS AND WARRANTIES.....	45
5.1 AUTHORITY; ENFORCEABILITY.....	45
5.2 COMPLIANCE WITH LAW.....	45
5.3 NO VIOLATION.....	45
5.4 NO CLAIMS.....	45
5.5 FINANCIAL INFORMATION.....	46
5.6 ACCURACY.....	46
5.7 LOAN IN BALANCE; ADEQUACY OF LOAN.....	46
5.8 TAXES.....	46
5.9 UTILITIES.....	46
5.10 BORROWER NOT A "FOREIGN PERSON".....	46
5.12 ERISA PLANS.....	46
5.13 DISCLOSURE TO GUARANTOR AND THIRD PARTIES.....	47
6. SWAP CONTRACT.....	47
6.1 SWAP PAYMENTS; GRANT OF SECURITY INTEREST.....	47
6.2 NO ASSUMPTION OF BORROWER'S OBLIGATIONS.....	47
6.3 SWAP DOCUMENTS.....	47
7. DEFAULT AND REMEDIES.....	47
7.1 EVENTS OF DEFAULT.....	47
7.2 REMEDIES.....	50
8. WAIVER OF JURY TRIAL.....	51
9. MISCELLANEOUS PROVISIONS.....	51
9.1 NO WAIVER; CONSENTS.....	51
9.2 PURPOSE AND EFFECT OF APPROVAL.....	51
9.3 NO THIRD PARTIES BENEFITED.....	52

TABLE OF CONTENTS
(continued)

	<u>Page</u>
9.4 JOINT AND SEVERAL LIABILITY	52
9.5 NOTICES	52
9.6 ACTIONS	52
9.7 ATTORNEYS' FEES	52
9.8 GOVERNING LAW	52
9.9 HEIRS, SUCCESSORS, AND ASSIGNS; PARTICIPATIONS	52
9.10 RELATIONSHIPS WITH OTHER CUSTOMERS	53
9.11 DISCLOSURE TO TITLE COMPANY	53
9.12 IMPROVEMENT DISTRICT	53
9.13 RESTRICTION ON PERSONAL PROPERTY	53
9.14 PUBLICITY	53
9.15 SEVERABILITY	53
9.16 INTERPRETATION	53
9.17 AMENDMENTS	54
9.18 COUNTERPARTS	54
9.19 LANGUAGE OF AGREEMENT	54
9.20 EXCHANGE OF INFORMATION	54
9.21 SURVIVAL	54
9.22 FURTHER PERFORMANCE	54
9.23 TIME IS OF THE ESSENCE	54
9.24 RECITALS; EXHIBITS	54
9.25 LOAN COMMISSION	54
9.26 PATRIOT ACT PROVISIONS	54
9.27 AUTHORITY TO FILE NOTICES	55
9.28 FORCE MAJEURE	55
9.29 NO COMMITMENT TO INCREASE LOAN	55
9.30 INTEGRATION AND RELATION TO LOAN COMMITMENT	55
10. AGENT; LENDER PROVISIONS	55
10.1 APPOINTMENT OF AGENT	55
10.2 ADMINISTRATION OF LOAN BY AGENT	56
10.3 SPECIFIC AUTHORITY OF AGENT	56
10.4 RIGHT OF LENDER TO PARTICIPATE IN CERTAIN DECISIONS	57
10.5 DELEGATION OF DUTIES	58
10.6 EXCULPATORY PROVISIONS	58
10.7 RELIANCE BY AGENT	58
10.8 DEFAULT; WAIVERS	59
10.9 LENDERS' CREDIT DECISIONS; RELIANCE	59
10.10 AGENT'S REIMBURSEMENT AND INDEMNIFICATION	60
10.11 AGENT IN ITS INDIVIDUAL CAPACITY	60
10.12 SUCCESSOR AGENT	60
10.13 DUTIES IN CASE OF ENFORCEMENT	61
10.14 LENDER PROPORTIONATE SHARES	61
10.15 FUNDING ADVANCES	61
10.16 NATURE OF OBLIGATIONS OF LENDERS	62
10.17 PAYMENTS TO AGENT	62
10.18 ADJUSTMENTS	62
10.19 SETOFF	62
10.20 DISTRIBUTION BY AGENT	62

TABLE OF CONTENTS
(continued)

	<u>Page</u>
10.21 DELINQUENT LENDER	63
10.22 TITLE TO PROJECT	64
11. ASSIGNMENT AND PARTICIPATION PROVISIONS.....	64
11.1 ASSIGNMENT BY LENDER	64
11.2 PARTICIPATIONS	65
11.3 DISCLOSURE	65
11.4 MISCELLANEOUS ASSIGNMENT PROVISIONS	65
11.5 NON-U.S. LENDERS	65

LIST OF EXHIBITS TO LOAN AGREEMENT

Exhibit A – Legal Description
Exhibit B – Cost Breakdown
Exhibit C – Compliance Certificate
Exhibit D – Assignment and Assumption
Exhibit E – Schedule of Lenders
Exhibit F – Draw Request Certification
Exhibit G – Estoppel and Agreement

MARKICOPA COUNTY RECORDER

HELEN PURCELL

20080181771 02/29/2008 01:47

ELECTRONIC RECORDING

First American Title

Recording Requested By
And When Recorded Mail To:

U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, AZ 85003-1902
Attention: Commercial Real Estate

NCS 250944

4 of 4

250944A-31-5-5--

Hoyp

Space Above For Recorder's Use

CONSTRUCTION DEED OF TRUST, with Assignment of Rents, Security Agreement, and Fixture Filing

THIS DEED OF TRUST SERVES AS A FIXTURE FILING UNDER THE ARIZONA UNIFORM
COMMERCIAL CODE.

TRUSTOR'S ORGANIZATIONAL IDENTIFICATION NUMBER IS: DE-4342885.

THIS DEED OF TRUST SECURES ALL PRESENT AND FUTURE LOAN
DISBURSEMENTS MADE IN ACCORDANCE WITH THE TERMS OF THE
PROMISSORY NOTE AND THE LOAN AGREEMENT BETWEEN TRUSTOR AND
BENEFICIARY.

THIS DEED OF TRUST SECURES A VARIABLE RATE PROMISSORY NOTE WHICH
VARIES ACCORDING TO CHANGES IN CERTAIN CONTRACT RATES OF INTEREST
IN ACCORDANCE WITH THE TERMS OF THE PROMISSORY NOTE AND THE LOAN
AGREEMENT BETWEEN TRUSTOR AND BENEFICIARY.

The parties to this Construction Deed of Trust, with Assignment of Rents, Security Agreement, and Fixture Filing (this "Deed of Trust"), dated for reference purposes as of February 29, 2008, are **TEMPE GATEWAY, L.L.C.**, a Delaware limited liability company, as trustor (the "Trustor"), whose mailing address is: 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016, Attention: Senior Vice President, Real Estate Sales and Finance, **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, whose mailing address is 101 N. First Avenue, Suite 1600, Phoenix, Arizona 85003-1902, Attention: Commercial Real Estate, as trustee (the "Trustee"), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, individually and as a Lender and as Agent for the Lenders (as such terms are described and defined in the Loan Agreement referred to in subsection 1.2 below) and their respective successors and assigns (individually or collectively, as the context shall infer, the "Beneficiary") whose mailing address is 101 N. First Avenue, Suite 1600, Phoenix, Arizona 85003-1902, Attention: Commercial Real Estate, as beneficiary and secured party (the "Beneficiary"). Trustee is an affiliate of Beneficiary.

This Deed of Trust secures, among other things, repayment of a loan (the "Loan") described in Section 1.2(a) below, which Loan is made pursuant to a certain loan agreement, entered into by Trustor and Beneficiary (the "Loan Agreement") dated as of the date hereof. This Deed of Trust and the Loan Agreement, together with all of their exhibits, and all other documents which evidence, secure, or otherwise pertain to the Loan, collectively constitute the "Loan Documents." Capitalized terms used above and elsewhere in this Deed of Trust without definition have the meanings given them in the Loan

Agreement referred to and defined below. All terms not defined herein or in the Loan Agreement shall have the meaning given them in the Uniform Commercial Code, as enacted in the State of Arizona, or under the Uniform Commercial Code in any other state to the extent the same is applicable law (collectively, as amended, recodified, and in effect from time to time, the "UCC"). If a term is defined differently in Article 9 of the UCC than in another Article, Article 9 shall control.

1. Grant In Trust and Secured Obligations.

1.1 Grant In Trust. In consideration and for the purpose of securing payment and performance of the Secured Obligations (as defined below), Trustor hereby irrevocably and unconditionally grants, bargains, conveys, sells, transfers, and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title, and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of it, as the context may require, the "Property"):

(a) The real property located in Maricopa County, Arizona, as more fully described in Exhibit A attached hereto and made a part hereof, together with all rights, privileges, easements, appurtenances, tenements, hereditaments, rights of way, appendages, projections, water rights including riparian and littoral rights and whether or not appurtenant, streets, ways, alleys, and strips and gores of land, now or hereafter in any way belonging, adjoining, crossing or pertaining to such real property (the "Land"); together with

(b) All buildings, structures and improvements now located or later to be constructed on the Land (the "Improvements"); together with

(c) All articles of personal property (including those specified below) and any software imbedded therein, now owned or hereafter acquired by Trustor and attached to, placed upon for an indefinite term, or used in connection with the Land and/or Improvements, together with all goods and other property that are, or at any time become, so related to the Property that an interest in them arises under real estate law, or they are otherwise a "fixture" under applicable law (each a "Fixture," collectively "Fixtures"); together with

(d) All existing and future as-extracted collateral produced from or allocated to the Land, including, all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and any other commercially valuable substances which may be in, under or produced from any part of the Land, and all products processed or obtained therefrom, and the proceeds thereof, and all development rights and credits, air rights, water, water courses, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, easements, rights-of-way, gores or strips of land, and any land lying in the streets, ways, alleys, passages, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements; together with

(e) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements, concessions, and other agreements of any kind relating to the use or occupancy of all or any portion of the Property, whether now in effect or entered into in the future (each a "Lease," collectively, the "Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; together with

(f) All rents (and payments in lieu of rents), royalties, issues, profits, income, proceeds, payments, and revenues of or from the Property, and/or at any time payable under any and all

Leases, including all rent loss insurance proceeds, prepaid rents and any and all security deposits received or to be received by Trustor pursuant to any and all Leases, and all rights and benefits accrued, or to accrue, to Trustor under any and all Leases (some or all collectively, as the context may require, "Rents"); together with

(g) All rights to the name, signs, trade names, trademarks, trademark applications, service marks, licenses, software, and symbols used in connection with the Land and Improvements; together with

(h) All goods, materials, supplies, chattels, furniture, fixtures, machinery, apparatus, fittings, equipment, and articles of personal property of every kind and nature whatsoever, including consumable goods, now or hereafter located in or upon the Property or any part thereof, or to be attached to or placed in or on, or used or useable in connection with any present or future use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including by way of description but without limiting the generality of the foregoing, all computer systems, telephone and telecommunication systems, televisions and television systems, pumps or pumping plants, tanks, motors, conduits, engines, pipes, ditches and flumes, and also all gas and electrical apparatus (including, but not limited to, all electrical transformers, switches, switch boxes, and equipment boxes), cooking, heating, cooling, air conditioning, sprinkler equipment, lighting, power equipment, ventilation, incineration, refrigeration and plumbing apparatus, fixtures and equipment, screens, storm doors and windows, stoves, wall beds, refrigerators, attached cabinets, partitions, ovens, ranges, disposals, dishwashers, carpeting, plants and shrubbery, ground maintenance equipment, ducts and compressors; together with all building materials, goods and personal property on or off the Property intended to be affixed to or incorporated in the Property but not yet affixed to or incorporated in the Property, all which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust; together with

(i) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements; together with

(j) All deposit accounts of Trustor, including but not limited to, the Account (if any), the Borrower's Funds Account (if any), the Replacement Reserve Account (if any), the Operating Reserve Account (if any), and all Loan funds deposited into any such account, whether disbursed or not, and Trustor's own funds now or later to be held on deposit in all such accounts; together with

(k) All rights to the payment of money and all guaranties thereof and judgments therefor, and all accounts, accounts receivable, reserves, deferred payments, refunds of real property and personal property taxes and other refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), warranty rights, contract rights, management contracts, service contracts, construction and architectural contracts, contracts for the purchase and sale of the Property or any part thereof, end-loan or other financing commitments, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, promissory notes, drafts, letters of credit (other than letters of credit in favor of Beneficiary), letter of credit rights (whether or not the letter of credit is evidenced by a writing), supporting obligations, and general intangibles, including payment intangibles, whether any of the foregoing are tangible or electronic, which arise from or relate to construction on the Land or to any business now or later to be conducted on it, or to the Land and Improvements generally; together with

(l) All insurance policies (and the unearned premiums therefor) and bonds required by the Loan Documents and all proceeds thereof, and all proceeds (including all claims to and demands for them) of the voluntary or involuntary conversion of any of the Land, the Improvements, or the other property

described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to, or defect in, the Land, the Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, misrepresentation, or concealment of a material fact; together with

(m) All books, records, and all recorded data of any kind or nature (regardless of the medium of recording) pertaining to any and all of the property described above, including records relating to tenants under any leases, and the qualification of such tenants, and all certificates, vouchers, and other documents in any way related thereto, and all records relating to the application and allocation of any federal, state, and local tax credits or benefits, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, the "Books and Records"); together with

(n) All commercial tort claims Trustor now has or hereafter acquires relating to any of the property described above; together with

(o) All software embedded within or used in connection with any of the property described above; together with

(p) All products, accounts, and proceeds (cash or non-cash) of, additions, betterments, extensions, accessions and accretions to, substitutions, renewals and replacements for, and changes in any of the property described above, including all proceeds of any voluntary or involuntary disposition or claim respecting any such property (arising out of any judgment, condemnation or award, or otherwise arising) and all supporting obligations ancillary to or arising in connection therewith, general intangibles (including payment intangibles) arising in connection therewith, and all goods, accounts, instruments, documents, promissory notes, chattel paper, deposit accounts, supporting obligations, and general intangibles (including payment intangibles) (whether any of the foregoing are tangible or electronic), wherever located, acquired with cash proceeds of any of the foregoing or its proceeds.

Trustor shall and will warrant and forever defend the above-bargained Property in the quiet and peaceable possession of Trustee, its successors and assigns, against all and every person or persons lawfully claiming or to claim the whole or any part thereof. Trustor agrees that any greater title to the Property hereafter acquired by Trustor during the term hereof shall be subject hereto.

1.2 Secured Obligations.

(a) Trustor makes the grant, bargain, conveyance, sale, transfer, and assignment set forth above and grants the security interest set forth in Section 3 below for the purpose of securing the following obligations (the "Secured Obligations") in such order of priority as Beneficiary may determine:

(i) Payment of all obligations at any time owing under one or more promissory notes (each a "Note, collectively, "Notes") dated as of February 29, 2008, payable by Trustor as maker to the order of Beneficiary in the stated principal amount of Sixty-Eight Million Nine Hundred Sixty Thousand and No/100 Dollars (\$68,960,000.00) to the order of Beneficiary; and

(ii) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(iii) Payment and performance of all obligations of Trustor under the Loan Agreement, under any Loan Documents, and under any rate lock agreement or interest rate protection agreement (such as any rate lock agreement, interest rate swap agreement, International Swaps and Derivatives Association, Inc. Master Agreement, or similar agreement or arrangements now existing or hereafter entered into by Trustor and Beneficiary in connection with the Loan evidenced by the Note to hedge the risk of variable rate interest volatility or fluctuations in interest rates as any such agreement or arrangement may be modified, supplemented and in effect from time to time); provided, however, that this Deed of Trust does not secure any Loan Document or other document, or any provision of any Loan Document or other document, that is expressly stated to be unsecured; and

(iv) Payment and performance of all future advances and other obligations that Trustor, or any successor in interest to Trustor, and/or any other obligor (if different than Trustor), or any successor in ownership of all or part of the Property, may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Beneficiary, when a writing evidences the parties' agreement that the advance or obligation be secured by this Deed of Trust; and

(v) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations, including any successor agreements or instruments which restate and supersede any agreements or instruments evidencing the Secured Obligations.

(b) All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations. Such terms include any provisions in the Note or the Loan Agreement which permit borrowing, repayment, and reborrowing, or which provide that the interest rate on one or more of the Secured Obligations may vary from time to time.

2. Assignment of Lessor's Interest in Leases and Assignment of Rents.

2.1 Absolute Assignment. Effective upon the recordation of this Deed of Trust, Trustor hereby irrevocably, absolutely, presently, and unconditionally assigns, transfers, and sets over to Beneficiary:

(a) All of Trustor's right, title, and interest in, to, and under any and all Leases, all amendments, extensions, renewals, or modifications thereof (subject to Beneficiary's right to approve same pursuant to the terms of the Loan Documents), and any and all guaranties of, and security for, lessees' performance under any and all Leases, and all other agreements relating to or made in connection with any of such Leases; and

(b) All Rents.

In the event that anyone establishes and exercises any right to develop, bore for, or mine for any water, gas, oil, or mineral on or under the surface of the Property, any sums that may become due and payable to Trustor as bonus or royalty payments, and any damages or other compensation payable to Trustor in connection with the exercise of any such rights, shall also be considered Rents assigned under this Section.

THIS IS AN ABSOLUTE ASSIGNMENT, NOT AN ASSIGNMENT FOR SECURITY ONLY.

2.2 Grant of License. Beneficiary hereby confers upon Trustor a license (the "License") to collect and retain the Rents as they become due and payable, so long as no Event of Default (as such term

is defined below) shall exist. Upon the occurrence of an Event of Default, the License shall terminate (automatically and without notice or demand of any kind and without regard to the adequacy of Beneficiary's security under this Deed of Trust).

2.3 Collection and Application of Rents and Enforcement of Leases. Subject to the License granted to Trustor above and the other provisions of this Section, Beneficiary has the right, power, and authority to collect any and all Rents and enforce the provisions of any Lease. In connection with the provisions of this Section, Trustor hereby constitutes and irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, to perform any and all of the following acts, if and at the times after the occurrence of an Event of Default when Beneficiary in its sole and absolute discretion may so choose:

- (a) Demand, receive, and enforce payment of any and all Rents, and endorse all checks and other payment instruments related thereto;
- (b) Give receipts, releases, and satisfactions for any and all Rents;
- (c) Sue either in the name of Trustor or in the name of Beneficiary for any and all Rents;
- (d) Enforce the provisions of any and all Leases;
- (e) Enter into Leases; and/or
- (f) Perform and discharge any and all undertakings of Trustor or otherwise under any Lease.

The appointment granted in this Section shall be deemed to be a power coupled with an interest. Beneficiary's rights under this Section do not depend on whether or not Beneficiary takes possession of the Property as permitted under this Deed of Trust. In Beneficiary's sole and absolute discretion, Beneficiary may choose to collect Rents or enforce any and all Leases either with or without taking possession of the Property and either in person or through a court-appointed receiver. Beneficiary's rights and powers under this Section are in addition to the other remedies herein provided for upon the occurrence of an Event of Default and may be exercised independently of or concurrently with any other such remedies.

2.4 Notice. All lessees under any and all Leases are hereby irrevocably authorized and notified by Trustor to rely upon and to comply with (and will be fully protected in so doing) any notice or demand by Beneficiary for the payment to Beneficiary of any rental or other sums which may at any time become due under the Leases, or for the performance of any of lessees' undertakings under the Leases, and lessees have no right or duty to inquire whether any Event of Default has actually occurred or is then existing hereunder or to obtain Trustor's consent.

2.5 Proceeds. Beneficiary has the right to apply all amounts received by it pursuant to this assignment to pay any of the following in the amounts and in the order Beneficiary deems appropriate: (a) any and all Secured Obligations, in any order and proportions as Beneficiary in its sole and absolute discretion may choose, and (b) the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; including, without limitation, (i) salaries, fees, commissions and wages of a managing agent, and other employees, agents, or independent contractors; (ii) taxes, charges, claims, assessments, any other liens, and premiums for all insurance; and (iii) the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property. In addition, Beneficiary may hold the same as

security for the payment of the Secured Obligations. Beneficiary shall have no liability for any funds which it does not actually receive.

2.6 Beneficiary Not Responsible. Under no circumstances shall Beneficiary have any duty to produce Rents from the Property. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land and the Improvements, Beneficiary is not and shall not be deemed to be:

- (a) A "mortgagee in possession" for any purpose;
- (b) Responsible for performing any of the obligations of the Trustor as lessor under any lease;
- (c) Responsible for any waste committed by lessees or any other parties, any dangerous or defective condition of the Property, or any negligence in the management, upkeep, repair or control of the Property; or
- (d) Liable in any manner for the Property or the use, occupancy, enjoyment or operation of all or any part of it.

2.7 Leasing. Trustor shall not accept any deposit or prepayment of Rents for any rental period exceeding one (1) month without Beneficiary's express prior written consent. Trustor shall not lease the Property or any part of it except strictly in accordance with the Loan Agreement. Trustor shall apply all Rents received by it in the manner required by the Loan Agreement.

3. Grant of Security Interest.

3.1 Security Agreement. The parties intend for this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. The parties acknowledge that some of the Property and some of the Rents and Leases may be determined under applicable law to be personal property or fixtures. To the extent that any Property, Rents, or Leases may be or be determined to be personal property, Trustor, as debtor, hereby grants to Beneficiary, as secured party, a security interest in all such Property, Rents, and Leases, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the UCC, covering all such Property, Rents, and Leases. To the extent such Property, Rents, or Leases are not real property encumbered by the lien granted above, and are not absolutely assigned by the assignment set forth above, it is the intention of the parties that such Property, Rents, and/or Leases shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

3.2 Financing Statements; Authorization to File; Power of Attorney. Trustor hereby authorizes Beneficiary, at any time and from time to time, to file any initial financing statements, amendments thereto, and continuation statements, with or without the signature of Trustor, as authorized by applicable law, as applicable to the Property or any part thereof. Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require and all other reasonable fees and costs Beneficiary incurs in connection with perfection of its security interests. For purposes of such filings, Trustor agrees to promptly furnish any information requested by Beneficiary. Trustor also ratifies its authorization for Beneficiary to have filed any like initial financing statements, amendments thereto, or continuation statements if filed prior to the date of this Deed of Trust. Trustor hereby irrevocably constitutes and appoints Beneficiary, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Trustor to execute in Trustor's name any such documents and to otherwise carry out the purposes of this Section, to the extent that Trustor's

authorization above is not sufficient. Such power is deemed to be coupled with an interest, and is therefore irrevocable. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall never be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

Everything used in connection with the Property and/or adapted for use therein and/or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as part of the real estate encumbered by this Deed of Trust regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with Beneficiary or (iii) any such item is referred to or reflected in any such Financing Statement so filed at any time. Similarly, the mention in any such Financing Statement of (1) rights in or to the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for lessening of value, or (3) Trustor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property conveyed hereby, whether pursuant to lease or otherwise, shall never be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document. Such mention in the Financing Statement is declared to be solely for the protection of Beneficiary in the event any court or judge shall at any time hold, with respect to the matters set forth in the foregoing clauses (1), (2), and (3), that notice of Beneficiary's priority of interest is required in order to be effective against a particular class of persons, including but not limited to the federal government and any subdivisions or entity of the federal government, shall be filed in the UCC records.

4. Effective as a Financing Statement: Fixture Filing and Construction Mortgage.

This Deed of Trust constitutes a financing statement filed as a fixture filing under the applicable section of the UCC, covering any Property which now is or later may become fixtures attached to the Land or Improvements. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), accounts, and general intangibles under the UCC, which will be financed at the wellhead or minehead of the wells or mines located on the Land and is to be filed of record in the real estate records of each county where any part of the Land is situated. This Deed of Trust shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Trustor is the address of Trustor set forth at the end of this Deed of Trust, and the address of Beneficiary from which information concerning the security interests hereunder may be obtained is the address of Beneficiary set forth at the end of this Deed of Trust. A carbon, photographic, or other reproduction of this Deed of Trust or of any financing statement related to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section. This Deed of Trust is also a "Construction Mortgage," as defined in the UCC to the extent it secures an obligation incurred for the construction of an improvement on the Land (including the acquisition cost of the Land), or the refinancing of an obligation incurred for the construction of an improvement on the Land (including the acquisition cost of the Land).

5. Rights and Duties of the Parties.

5.1 Representations and Warranties. Trustor represents and warrants that, except as previously disclosed to Beneficiary in writing:

(a) Trustor is indefeasibly seized of and lawfully possesses and holds good and marketable fee simple title to all of the Land and the Improvements, unless any portion of Trustor's present interest in the Land is described in Exhibit A as a leasehold interest, in which case Trustor lawfully possesses and holds a leasehold interest in such portion of the Land as stated in Exhibit A; and Trustor and its successors and assigns warrant and shall forever defend title to the Property, subject only to such

exceptions and conditions to title as Beneficiary has approved in its sole and absolute discretion (the "Permitted Title Exceptions") (and any later such encumbrances approved by Beneficiary in writing), unto Trustee and Trustee's successors and assigns against the claims and demands of all persons claiming or to claim the same or any part thereof;

(b) Trustor has the full and unlimited power, right, and authority to encumber the Property and assign the Rents;

(c) This Deed of Trust creates a first and prior lien on the Property free and clear of all liens, encumbrances, and claims whatsoever, subject only to the Permitted Title Exceptions;

(d) The Property includes all property and rights which may be reasonably necessary or desirable to promote the present and any reasonable future beneficial use and enjoyment of the Land and the Improvements;

(e) Trustor owns any Property which is personal property free and clear of all liens, encumbrances, and claims whatsoever, as well as any security agreements, reservations of title, or conditional sales contracts, and there is no presently effective financing statement affecting such personal property on file in any public office nor is any of such personal property subject to a security interest having priority over Beneficiary's priority to the same except with respect to junior indebtedness, if any, approved and permitted by Beneficiary as a Permitted Title Exception and Trustor has the right to convey and encumber such property and will warrant and defend such property against the claims of all persons and parties;

(f) The Property has frontage on and direct access for ingress and egress to publicly dedicated streets;

(g) Electricity (and gas, if available), water facilities, sewer facilities and any other necessary utilities are available, or will be available upon completion of the Improvement in accordance with Section 3.1(b) of the Loan Agreement, and will thereafter be available, in sufficient capacity to service the Property satisfactorily and any easements necessary to the furnishing of such utilities are or will be granted and duly recorded; and

(h) Trustor's exact legal name, and, if Trustor is not an individual, organizational identification number (if any assigned by Trustor's state of incorporation or organization) are correctly set forth in this Deed of Trust. If Trustor is an individual, Trustor's principal residence has for the preceding four months been and will continue to be (unless Trustor notifies Beneficiary of any change in writing at least thirty (30) days prior to the date of such change) the address of the principal residence of Trustor as set forth at the end of this Deed of Trust. If Trustor is not an individual, Trustor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. If Trustor is an unregistered entity (including a general partnership), it is organized under the laws of the state specified in the introductory paragraph of this Deed of Trust. Trustor's principal place of business and chief executive office and the place where it keeps its Books and Records has for the preceding four months (or, if less, the entire period of the existence of Trustor) been and will continue to be (unless Trustor notifies Beneficiary of any change in writing at least thirty (30) days prior to the date of such change) the address of Trustor set forth at the end of this Deed of Trust.

(i) To the best of Trustor's knowledge and belief, Trustor has no presently currently existing commercial tort claims relating to any of the Property. If Trustor later acquires any such commercial tort claims relating to any of the Property, Trustor shall promptly provide to Beneficiary a detailed description of any such claim and shall execute all documents necessary for Beneficiary to perfect its security interest therein.

5.2 Taxes and Assessments.

(a) Trustor shall pay prior to delinquency all taxes, levies, charges and assessments, including assessments on appurtenant water stock (individually and collectively, an "Imposition"), imposed by any public or quasi-public authority or utility company that are (or if not paid, may become) a lien on all or part of the Property or any interest in it, or that, if not paid, may cause any decrease in the value of the Property or any part of it. If any Imposition becomes delinquent, Beneficiary may require Trustor to present evidence that it has been paid in full, on ten (10) days' written notice by Beneficiary to Trustor. Notwithstanding the foregoing provisions of this Section, Trustor may, at its expense, contest the validity or application of any Imposition by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may be reasonably required from time to time by Beneficiary; and provided further that if at any time payment of any obligation imposed upon Trustor by this Section becomes necessary to prevent a lien foreclosure sale or forfeiture or loss of the Property, or any part thereof, then Trustor must pay the same in sufficient time to prevent such sale, forfeiture, or loss.

(b) Following an Event of Default (as such term is defined below), Trustor shall, upon demand of Beneficiary, pay monthly to Beneficiary an amount sufficient, as estimated by Beneficiary, to accumulate the sum required to pay thirty (30) days prior to the due date thereof the annual cost of any real property taxes and any assessments and the estimated next premiums for hazard and other required insurance on the Property. These funds will be held by Beneficiary (and may be commingled with other funds of Beneficiary) without interest and will be released to Trustor for payment of Impositions and insurance premiums, or directly applied to such costs by Beneficiary, as Beneficiary may elect.

5.3 Performance of Secured Obligations. Trustor shall promptly pay and perform each Secured Obligation in accordance with its terms.

5.4 Liens, Charges, and Encumbrances. Trustor shall immediately discharge any lien on the Property that Beneficiary has not expressly consented to in writing. Trustor shall pay when due each obligation secured by or reducible to a lien, charge, or encumbrance which now does or later may encumber all or part of the Property or any interest in it, whether the lien, charge, or encumbrance is or would be senior or subordinate to this Deed of Trust. This Section is subject to any right granted to Trustor in the Loan Agreement to contest in good faith claims and liens for labor done and materials and services furnished in connection with construction of the Improvements. Trustor shall pay, perform and observe all obligations under any Permitted Title Exceptions, and will not modify or permit modification of them without Beneficiary's prior written consent.

5.5 Damages and Insurance and Condemnation Proceeds.

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, the following claims, causes of action, awards, payments, and rights to payment (whether awarded or to be awarded or which may be awarded because of judicial action, private action, settlement, or compromise):

(i) All awards of damages and all other compensation payable directly or indirectly because of a condemnation, proposed condemnation or taking for public or private use which affects all or part of the Property or any interest in it; and

(ii) All other awards, claims, and causes of action, arising out of any warranty affecting all or any part of the Property, or for damage or injury to or decrease in value of all or part of the Property or any interest in it; and

(iii) All proceeds of any insurance policies payable because of loss sustained to all or part of the Property, whether or not such insurance policies are required by Beneficiary; and

(iv) All interest which may accrue on any of the foregoing.

(b) Trustor shall immediately notify Beneficiary in writing if:

(i) Any damage occurs or any injury or loss is sustained to all or any part of the Property, or any action or proceeding relating to any such damage, injury, or loss is commenced; or

(ii) Any offer is made, or any action or proceeding is threatened or commenced, which relates to any actual or proposed condemnation or taking of all or part of the Property.

(c) If Beneficiary chooses to do so, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on warranty, or for damage, injury, or loss to all or part of the Property, and Beneficiary may make any compromise or settlement of the action or proceeding with respect to its rights and interests to the extent that such rights and interest are separate from the rights and interest of Trustor. Beneficiary, if it so chooses, may participate in any action or proceeding relating to condemnation or taking of all or part of the Property, and may join Trustor in adjusting any loss covered by insurance, and in connection therewith, Beneficiary shall have the right to be represented by counsel of its choice.

(d) All proceeds of these assigned claims and all other property and rights which Trustor may receive or be entitled to shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If, in any instance, each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to use the balance of such proceeds (the "Net Claims Proceeds") to pay costs of repairing or reconstructing the Property in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract, construction schedule, contractor and payment and performance bond for the work of repair or reconstruction shall all be reasonably acceptable to Beneficiary; and

(ii) Beneficiary shall receive evidence reasonably satisfactory to it that after repair or reconstruction, the Property would be at least as valuable as it was immediately before the damage or condemnation occurred, and in this regard and notwithstanding any other provisions of the Loan Documents, Beneficiary may order an appraisal from an appraiser acceptable to Beneficiary, the cost of which shall be borne by Trustor; and

(iii) The Net Claims Proceeds (together with the net proceeds of any rental interruption insurance and reasonably projected rental receipts during the repair or reconstruction period) shall be sufficient in Beneficiary's determination to pay for the total cost of repair or reconstruction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the repair or reconstruction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Claims

Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of repair or reconstruction; and

(iv) Unless otherwise agreed to by Beneficiary, Beneficiary shall receive evidence satisfactory to it that, after the repair or reconstruction is complete, (1) all non-residential leases acceptable to Beneficiary will continue (or a replacement therefor reasonably satisfactory to Beneficiary immediately commences); and (2) the Property will continue to operate in substantially the same manner, and will generate the same debt service coverage as immediately before the damage or condemnation occurred; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Note; and

(vi) No default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred and be continuing under this Deed of Trust, the Note, the Loan Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Claims Proceeds, and any funds which Trustor is required to provide, in an account and shall disburse them to Trustor to pay costs of repair or reconstruction upon presentation of evidence reasonably satisfactory to Beneficiary that repair or reconstruction has been completed satisfactorily and lien-free, including partial progress payments of Net Claims Proceeds from time to time, in accordance with a cost breakdown approved by Beneficiary and the same procedures and subject to the same conditions as are set forth in the Loan Agreement for Loan disbursements. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Claims Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary may determine, all without affecting the lien and security interest created by this Deed of Trust.

(e) Notwithstanding the foregoing, in the event any governmental agency or authority shall require, or commence any proceedings for, the demolition of any buildings or structures comprising a substantial part of the Improvements, or shall commence any proceedings to condemn or otherwise take pursuant to the power of eminent domain a material portion of the Land or Improvements, Beneficiary may, at its option, declare the Secured Obligations to be immediately due and payable and apply any condemnation awards or proceeds to the Secured Obligations.

(f) Trustor hereby specifically, unconditionally, and irrevocably waives all rights of a property owner granted under any applicable law that provides for allocation of condemnation proceeds between a property owner and a lienholder, and any other law or successor statute of similar import.

5.6 Surety Bond Proceeds.

(a) Trustor hereby absolutely and irrevocably assigns to Beneficiary, and authorizes the payor to pay to Beneficiary, all payments, rights to payment, and all other compensation payable, directly or indirectly, under any payment, performance, or other bond (each a "Surety Bond") related to, or issued in connection with, the construction of any Improvements or the performance of any acts, related to the Property or any interest in it, whether or not such Surety Bonds are required by Beneficiary.

(b) Trustor shall immediately notify Beneficiary in writing of:

(i) Any threatened or actual default or breach of any obligation under any Surety Bond; or

(ii) Any action or inaction, including a breach by any contractor under their contract (if applicable), which would give rise to the obligation of the payor/surety to pay any sums or perform any acts pursuant to the terms of any Surety Bond.

(c) If Beneficiary chooses to do so, after the occurrence of an Event of Default under the Loan Documents, Beneficiary may in its own name appear in or prosecute any action or proceeding to enforce any cause of action based on any claim under a Surety Bond, and Beneficiary may make any compromise or settlement of any such action or proceeding.

(d) All proceeds of these assigned payments, rights to payment, and compensation payable, directly or indirectly, under any Surety Bond which Trustor may receive or be entitled to, shall be paid to Beneficiary. In each instance, Beneficiary shall apply such proceeds first toward reimbursement of all of Beneficiary's costs and expenses of recovering the proceeds, including reasonable attorneys' fees. If Trustor desires to use the balance of such proceeds (the "Net Bond Proceeds") to pay the costs of completing all or a part of the construction of certain of the Improvements, and each and all of the following conditions are satisfied in Beneficiary's reasonable judgment, Beneficiary shall permit Trustor to pay such costs of construction, in the manner described below:

(i) The plans and specifications, cost breakdown, construction contract (including any replacement contract), construction schedule (including all revisions thereto), contractor (including any replacement contractor), and, if required by Beneficiary, any replacement payment and performance bond for the construction work, shall all be acceptable to Beneficiary; and

(ii) To the extent allowed pursuant to the terms of the Surety Bond, Beneficiary shall have approved any replacement contractor(s); and

(iii) Beneficiary shall receive evidence satisfactory to it that after the construction is complete, the Property would be at least as valuable as it would have been if completed pursuant to the original construction contract, and in this regard and notwithstanding any other provisions of the Loan Documents, Beneficiary may order an appraisal from an appraiser acceptable to Beneficiary, the cost of which shall be borne by Trustor; and

(iv) The Net Bond Proceeds shall be sufficient in Beneficiary's determination to pay for the total cost of the applicable construction, including all associated development costs and interest and other sums projected to be payable on the Secured Obligations until the applicable construction is complete; or Trustor shall provide its own funds in an amount equal to the difference between the Net Bond Proceeds and a reasonable estimate, made by Trustor and found acceptable by Beneficiary, of the total cost of such construction; and

(v) Beneficiary shall be satisfied that the repair or reconstruction can be completed prior to the maturity date of the Note; and

(vi) No default or Event of Default (as defined in the applicable document, subject to applicable notice and cure periods) shall have occurred and be continuing under this Deed of Trust, the Note, the Loan Agreement or any other Loan Document.

If Beneficiary finds that such conditions have been met, Beneficiary shall hold the Net Bond Proceeds, and any funds which Trustor is required to provide, in a non-interest-bearing account and shall disburse them to Trustor to pay costs of construction upon presentation of evidence reasonably satisfactory to Beneficiary that the construction has been completed satisfactorily and lien-free, including partial progress payments of Net Bond Proceeds from time to time, in accordance with a cost breakdown

approved by Beneficiary and the same procedures and subject to the same conditions, as are set forth in the Loan Agreement for Loan disbursements. However, if Beneficiary finds that one or more of such conditions have not been satisfied, Beneficiary may apply the Net Bond Proceeds to pay or prepay some or all of the Secured Obligations in such order and proportions as Beneficiary may choose, all without affecting the lien and security interest created by this Deed of Trust.

(e) Notwithstanding anything herein to the contrary, to the extent that any of the terms of this Section conflict with the terms of any Surety Bond which has been approved in writing by Beneficiary, the terms of such Surety Bond shall control.

5.7 Maintenance and Preservation of Property.

(a) Trustor shall insure the Property as required by the Loan Agreement and keep the Property in good condition and repair.

(b) Trustor shall not remove or demolish the Property or any part of it, or alter, restore or add to the Property, or initiate or allow any change in any zoning or other land use classification which affects the Property or any part of it, except as permitted or required by the Loan Documents or with Beneficiary's express prior written consent in each instance.

(c) If all or part of the Property becomes damaged or destroyed, Trustor shall promptly and completely repair and/or restore the Property in a good and workmanlike manner in accordance with sound building practices and notwithstanding the unavailability (for whatever reason) of insurance proceeds from any Property insurer; provided, however, this subsection is subject to the provisions of Sections 5.5 and 5.6 above.

(d) Trustor shall not commit or allow any act upon or use of the Property which would violate: (i) any applicable law or order of any governmental authority, whether now existing or later to be enacted and whether foreseen or unforeseen; or (ii) any public or private covenant, condition, restriction or equitable servitude affecting the Property. Trustor shall not bring or keep any article on the Property or cause or allow any condition to exist on it, if that could invalidate or would be prohibited by any insurance coverage required to be maintained by Trustor on the Property or any part of it under the Loan Documents.

(e) Trustor shall not commit or allow waste of the Property, including those acts or omissions characterized under the Loan Documents as waste that arise out of Hazardous Substances (as such term is defined in the Loan Documents).

(f) Trustor shall perform all other acts which from the character or use of the Property may be reasonably necessary to maintain and preserve its value and utility.

(g) If any part of Trustor's interest in the Property is a leasehold interest, Trustor shall observe and perform all obligations of Trustor under any such lease or leases and shall refrain from taking any actions prohibited by any lease or leases, and Trustor shall preserve and protect such leasehold estate and its value.

(h) If any easement or right of way appurtenant to, or recorded agreement which benefits, the Property exists or is hereafter entered into, Trustor shall perform its obligations and duties under such easement, right of way, or agreement, and shall take all such actions as may be necessary to prevent such easement, right of way, or agreement from being terminated for Trustor's non-performance. Effective upon the occurrence of an Event of Default, Trustor irrevocably appoints Beneficiary its attorney-in-fact, with full power of substitution, for the purpose of performing any act to be performed by Trustor

under any such easement, right of way, or agreement, such power deemed to be coupled with an interest and therefore irrevocable.

5.8 Trustee's Acceptance of Trust. Trustee accepts this trust when this Deed of Trust is recorded.

5.9 Releases, Extensions, Modifications, and Additional Security.

(a) From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person:

- (i) Release any person liable for payment of any Secured Obligation; or
- (ii) Extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; or
- (iii) Accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements or any other instruments of security; or
- (iv) Alter, substitute or release any property securing the Secured Obligations.

(b) From time to time, when requested to do so by Beneficiary in writing, Trustee may perform any of the following acts without incurring any liability or giving notice to any person:

- (i) Consent to the making of any plat or map of the Property or any part of it;
or
- (ii) Join in granting any easement or creating any restriction affecting the
Property; or
- (iii) Join in any subordination or other agreement affecting this Deed of Trust
or the lien of it; or
- (iv) Reconvey the Property or any part of it without any warranty.

5.10 Reconveyance; Release. When all of the Secured Obligations have been paid and performed in full, and no further commitment to extend credit continues under the Secured Obligations, then (except to the extent expressly provided herein with respect to the survival of any indemnifications, representations, warranties, and other rights which are to continue following the release or reconveyance hereof) Trustee shall reconvey the Property from the liens, security interests, conveyances and assignments herein, and this Deed of Trust and all promissory notes and instruments evidencing the Secured Obligations shall be returned to the appropriate party or parties. Any such reconveyance shall be without warranty to the person or persons legally entitled to it. Such person or persons shall pay any costs of recordation. Neither Beneficiary nor Trustee shall have any duty to determine the rights of persons claiming to be rightful grantees of any reconveyance.

5.11 Compensation, Exculpation, Indemnification.

(a) Trustor agrees to pay fees in the maximum amounts legally permitted, or reasonable fees as may be charged by Beneficiary and Trustee when the law provides no maximum limit,

for any services that Beneficiary or Trustee may render in connection with this Deed of Trust, including Beneficiary's providing a statement of the Secured Obligations or Trustee's rendering of services in connection with a release or reconveyance (full or partial). Trustor shall also pay or reimburse all of Beneficiary's and Trustee's costs and expenses which may be incurred in rendering any such services. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses, and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including the exercise of any rights or remedies afforded to Beneficiary or Trustee or both of them under the remedies section below, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs (which shall include reimbursement for the allocated costs of in-house counsel used by Beneficiary and/or Trustee to the extent not prohibited by law), costs of any Trustee's Sale (as described below), any judicial foreclosure of this Deed of Trust, and any cost of evidence of title. If Beneficiary chooses to dispose of Property through more than one Trustee's Sale or judicial foreclosure, Trustor shall pay all costs, expenses, or other advances that may be incurred or made by Trustee or Beneficiary in each of such Trustee's Sales or judicial foreclosure actions.

(b) Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following:

- (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust;
- (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust;
- (iii) Any waste committed by lessees of the Property or any other parties, or any dangerous or defective condition of the Property; or
- (iv) Any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Property, or from any other act or omission of Beneficiary in operating or managing the Property, after an Event of Default, excepting to the extent the loss is caused by the applicable Beneficiary's gross negligence or willful misconduct

Trustor hereby expressly waives and releases all liability of the types described above, and agrees that no such liability shall be asserted against or imposed upon Beneficiary.

(c) Trustor agrees to indemnify, defend, and hold Trustee and Beneficiary harmless, for, from, and against, and reimburse them for, all losses, damages, liabilities, claims, causes of action, judgments, penalties, court costs, reasonable attorneys' fees and other legal expenses and expenses of professional consultants and experts, cost of evidence of title, cost of evidence of value, and other costs and expenses, including the settlement of any such matter, excepting those to the extent arising out of, or resulting, from Beneficiary's or Trustee's, as the case may be, gross negligence or willful misconduct, which either may suffer or incur:

- (i) In performing any act required or permitted by this Deed of Trust or any of the other Loan Documents or by law;
- (ii) Because of any failure of Trustor to perform any of Trustor's obligations; or
- (iii) Because of any alleged obligation of or undertaking by Beneficiary to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations in any document relating to the Property other than the Loan Documents.

This agreement by Trustor to indemnify Trustee and Beneficiary shall survive payoff, termination, or the release and cancellation of any or all of the Secured Obligations, and the full or partial release and/or reconveyance of this Deed of Trust.

(d) Trustor shall pay all obligations to pay money arising under this Section immediately upon written demand by Trustee or Beneficiary. Each such obligation shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date the obligation arises at the Default Rate (as such term may be defined in the Note), or if no Default Rate is specified, at five percent (5%) in excess of the Stated Rate. For purposes hereof, "Stated Rate" means the stated interest rate in effect from time to time under the Note and/or other debt instrument evidencing the Loan; provided that if more than one rate of interest is in effect, the highest rate shall be used.

5.12 Defense and Notice of Claims and Actions. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and title to and right of possession of the Property, and the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims. Trustor shall give Beneficiary and Trustee prompt notice in writing if any claim is asserted which does or could affect any of such matters, or if any action or proceeding is commenced which alleges or relates to any such claim.

5.13 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances affecting the Property, whether released or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of any loan secured by this Deed of Trust.

5.14 Site Visits, Observation and Testing. Beneficiary and its agents and representatives and the other Indemnified Parties (as such term is defined in the Loan Agreement), and their agents and representatives, shall have the right at any reasonable time to enter and visit the Property for the purposes of observing the Property, performing appraisals, taking and removing soil or groundwater samples, and conducting tests on any part of the Property. The Indemnified Parties have no duty, however, to visit or observe the Property or to conduct tests, and no site visit, observation, or testing by any Indemnified Party shall impose any liability on any Indemnified Party. In no event shall any site visit, observation, or testing by any Indemnified Party be a representation that Hazardous Substances (as such term is defined in the Loan Documents) are or are not present in, on, or under the Property, or that there has been or shall be compliance with any law, regulation, or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither Trustor nor any other party is entitled to rely on any site visit, observation, or testing by any Indemnified Party. The Indemnified Parties owe no duty of care to protect Trustor or any other party against, or to inform Trustor or any other party of, any Hazardous Substances or any other adverse condition affecting the Property. The Indemnified Parties may in their discretion disclose to Trustor or any other party any report or findings made as a result of, or in connection with, any site visit, observation, or testing by the Indemnified Parties. Trustor understands and agrees that the Indemnified Parties make no representation or warranty to Trustor or any other party regarding the truth, accuracy, or completeness of any such report or findings that may be disclosed. Trustor also understands that, depending on the results of any site visit, observation, or testing by any Indemnified Party which are disclosed to Trustor, Trustor may have a legal obligation to notify one or more environmental agencies of the results. Any Indemnified Party shall give Trustor reasonable notice before entering the Property. Such Indemnified Party shall make reasonable efforts to avoid interfering with Trustor's use of the Property in exercising any rights provided in this Section. In connection with any such site visit, observation, or testing, Trustor shall have any rights with respect to the release and/or disclosure of environmental reports as set forth in the Loan Documents. Notwithstanding anything herein to the contrary, any Indemnified Party or its agents and representatives conducting tests upon the Property pursuant to this Section shall be liable to repair any material damage to the Property caused by the conducting of such tests upon the Property, except (a) where (i) the damage is not reasonably avoidable in the performance of such testing; and (ii) such testing results in the discovery of Hazardous Substances or any other adverse condition affecting the Property in

violation of the Borrower's Indemnity, or which Borrower must correct pursuant to the terms of this Deed of Trust or the other Loan Documents; or (b) if such testing is done when a Default or an Event of Default (subject to applicable notice and cure periods) has occurred and is continuing under this Deed of Trust, the Borrower's Indemnity, or any of the other Loan Documents, or (c) when such testing is required by law or regulation.

5.15 Notice of Change. Trustor will not cause or permit any change to be made in (a) its name, identity, or corporate, partnership, limited liability company, or other entity structure, (b) its jurisdiction of organization (c) its organizational identification number, (d) its place of business or, if more than one, its chief executive office, (e) its mailing address, or (f) any change in the location of any Property, unless Trustor shall have notified Beneficiary in writing of such change at least thirty (30) days prior to the effective date of such change, and shall have first taken all action required by Beneficiary for the purpose of further perfecting or protecting the lien and security interest of Beneficiary in the Property. Unless otherwise approved by Beneficiary in writing, all Property that consists of personal property (other than Books and Records) will be located on the Land and all Books and Records will be located at Trustor's place of business or chief executive office, if Trustor has more than one place of business.

5.16 Further Assurances. Trustor shall, promptly on request of Beneficiary, (a) correct any defect, error or omission which may be discovered in the contents, execution, or acknowledgment of this Deed of Trust or any other Loan Document; (b) execute, authenticate, acknowledge, deliver, procure, and record and/or file and/or authorize the filing of such further documents (including, without limitation, further deeds of trust, security agreements, financing statements, financing statement amendments, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable, or proper (i) to carry out more effectively the purposes of this Deed of Trust and the other Loan Documents, (ii) to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property), or (iii) as deemed advisable by Beneficiary to protect the lien or security interest hereunder against the rights or interests of third persons; and (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper to enable Beneficiary to comply with the requirements or requests of any agency having jurisdiction over Beneficiary or any examiners of such agencies with respect to the Secured Obligations, the Trustor, or the Property. Trustor shall pay all costs connected with any of the foregoing within five (5) days after the written demand by Trustee or Beneficiary. If not paid when due, such costs shall be added to, and considered to be part of, the principal of the Note, and shall bear interest from the date of such written demand at the Default Rate (as such term may be defined in the Note), or if no Default Rate is specified, at three percent (3%) in excess of the Stated Rate.

6. Accelerating Transfers, Default and Remedies.

6.1 Accelerating Transfers.

(a) "Accelerating Transfer" means any sale, contract to sell, conveyance, encumbrance, pledge, mortgage, lease not expressly permitted under this Deed of Trust or the Loan Agreement, or other transfer of all or any material part of the Property or any interest in it, whether voluntary, involuntary, by operation of law, or otherwise. If Trustor is a corporation, "Accelerating Transfer" also means any transfer or transfers of shares possessing, in the aggregate, more than fifty percent (50%) of the voting power or more than fifty percent (50%) of the direct or indirect beneficial ownership of Trustor. If Trustor is a partnership, "Accelerating Transfer" also means withdrawal or removal of any general partner, dissolution of the partnership under applicable law, or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the partnership interests. If Trustor is a limited liability company, "Accelerating Transfer" also means withdrawal or removal of Opus West Corporation ("OWC") as a member (unless replaced by an

affiliate of OWC acceptable to Beneficiary), termination of the limited liability company, or any transfer or transfers of, in the aggregate, more than fifty percent (50%) of the voting power or, in the aggregate, more than fifty percent (50%) of the ownership interests in Trustor.

(b) Trustor acknowledges that Beneficiary is making one or more advances under the Loan Documents in reliance on the expertise, skill, and experience of Trustor; thus, the Secured Obligations include material elements similar in nature to a personal service contract. In consideration of Beneficiary's reliance, Trustor agrees that Trustor shall not make any Accelerating Transfer, other than a transfer allowed pursuant to the express terms of the Loan Documents, unless the transfer is preceded by Beneficiary's express written consent to the particular transaction and transferee. Beneficiary may withhold such consent in its sole and absolute discretion. If any Accelerating Transfer occurs, an Event of Default will occur under the Loan Agreement, and Beneficiary may implement available rights and remedies under the Loan Agreement and the other Loan Documents including declaration of all of the Secured Obligations to be immediately due and payable, and Beneficiary and Trustee may invoke any rights and remedies under this Deed of Trust. Trustor acknowledges the materiality of the provisions of this Section as a covenant of Trustor, given individual weight and consideration by Beneficiary in entering into the Secured Obligations, and that any Accelerating Transfer in violation of the prohibited transfer provisions herein set forth shall result in a material impairment of Beneficiary's interest in the Property and be deemed a breach of the foregoing covenant.

(c) Notwithstanding the foregoing, Beneficiary acknowledges and agrees that any transfer permitted or allowed by and made in accordance with the terms of the Loan Agreement or any other Loan Document specifically permitting a particular transfer, including if any, shall not be an Accelerating Transfer under this Section.

6.2 Events of Default. Trustor will be in default under this Deed of Trust upon the occurrence of any one or more of the following events (some or all collectively, "Events of Default," any one singly, an "Event of Default"):

(a) Trustor fails to perform any obligation to pay money which arises under this Deed of Trust, and does not cure that failure within ten (10) days after written notice from Beneficiary or Trustee; or

(b) Trustor fails to perform any obligation arising under this Deed of Trust other than one to pay money; provided, however, that as to any such failure that is curable (i.e., can be cured within the applicable cure period if such cure period is given), so long as (i) the collateral for the Loan, and the Beneficiary's rights with respect thereto, is not materially impaired during any cure period, and (ii) Trustor promptly and in good faith undertakes the curing of such failure and diligently thereafter in good faith pursues the curing to completion, such failure shall not be an Event of Default hereunder if cured by Trustor within thirty (30) days after written notice from Beneficiary; or

(c) A default or Event of Default (as such term is defined in the applicable document, subject to any applicable notice and cure periods) has occurred under the Loan Agreement or any other Loan Document or any other Secured Obligation; or

(d) Trustor makes or permits the occurrence of an Accelerating Transfer; or

(e) Any default (subject to any applicable notice and cure period) occurs under any other mortgage, deed of trust, security deed, or other security instrument on all or any part of the Property, or under any obligation secured by such security instrument, whether such security instrument is prior to or subordinate to this Deed of Trust.

6.3 Remedies. Except as otherwise expressly set forth in the Loan Agreement or any other Loan Document, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below or permitted by applicable law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) **Acceleration.** Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately and may terminate any Loan Document in accordance with its terms.

(b) **Receiver.** Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property. Trustor hereby consents to such appointment.

(c) **Entry.** Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and in its own name or in the name of Trustor sue for or otherwise collect any and all Rents, including those that are past due, and may also do any and all other things in connection with those actions that Beneficiary may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents (but not in excess of any applicable maximum low income rents for residential tenants); collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; contracting for and making repairs and alterations; and/or performing such acts of cultivation or irrigation as necessary to conserve the value of the Property. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments. The appointment granted in this Section shall be deemed to be a power coupled with an interest. Regardless of any provision of this Deed of Trust, or any other Loan Document, Beneficiary shall not be considered to have accepted any property other than cash or immediately available funds in satisfaction of any obligation of Trustor to Beneficiary, unless Beneficiary has given express written notice of Beneficiary's election of that remedy in accordance with applicable law. Trustor agrees to deliver to Beneficiary all Books and Records pertaining to the Property, including computer-readable memory and any computer hardware or software necessary to access or process such memory, as may reasonably be requested by Beneficiary in order to enable Beneficiary to exercise its rights under this Section.

(d) **Cure; Protection of Security.** Either Beneficiary or Trustee may cure any breach or default of Trustor, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things that it may in its sole and absolute discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding that purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien that in Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust; obtaining insurance and/or paying any premiums or charges for insurance required to be carried under the Loan Documents; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section either with or without giving notice to any person.

(e) **UCC Remedies.** Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

(f) Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for the foreclosure of deeds of trusts or mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust. If Beneficiary brings such an action, Trustor agrees to pay Beneficiary's reasonable attorneys' fees (including the allocated costs of in-house counsel to the extent not prohibited by applicable law) and court costs as determined by the court.

(g) Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

(i) Sales of Personal Property.

(A) For purposes of this power of sale, and to the extent not prohibited by applicable law, Beneficiary may elect to treat as personal property any Property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any personal property separately from the sale of real property, in any manner permitted by the UCC, including any public or private sale, or in any manner permitted by any other applicable law. Any proceeds of any such disposition shall not cure any Event of Default or reinstate any Secured Obligation.

(B) In connection with any sale or other disposition of such personal property disposed of separately from the sale of the real property, Trustor agrees that the following procedures constitute a commercially reasonable sale. Beneficiary shall mail written notice of the sale to Trustor not later than ten (10) days prior to the date of public sale of the Property or prior to the date after which a private sale of the Property will be made, and such notice shall constitute reasonable notice; provided that, if Beneficiary fails to comply with this subsection in any respect, its liability for such failure shall be limited to the liability, if any, imposed on it as a matter of law under the UCC. Upon receipt of any written request, Beneficiary will make the personal property available to any bona fide prospective purchaser for inspection during reasonable business hours. Notwithstanding, Beneficiary shall be under no obligation to consummate a sale if, in its judgment, none of the offers received by it equal the fair value of the personal property offered for sale. The foregoing procedures do not constitute the only procedures that may be commercially reasonable.

(ii) Trustee's Sales of Real Property or Mixed Collateral.

(A) Beneficiary may choose to dispose of some or all of the Property which consists solely of real property in any manner then permitted by applicable law. In its sole and absolute discretion, and to the extent not prohibited by applicable law, Beneficiary may also or alternatively choose to dispose of some or all of the Property, in any combination consisting of both real and personal property, together in one sale to be held in accordance with the law and procedures applicable to real property, as may be permitted by the UCC. Trustor agrees that such a sale of personal property together with real property constitutes a commercially reasonable sale of the personal property. For purposes of this power of sale, either a sale of real property alone, or a sale of both real and personal property together in accordance with the UCC, will sometimes be referred to as a "Trustee's Sale."

(B) Before any Trustee's Sale, Beneficiary or Trustee shall give such statement of breach or nonperformance, notice of sale, and/or notice of default as may then be required by applicable law. When all time periods then legally mandated have expired, and after such notice of sale and/or other notice as may then be legally required has been given, Trustee shall sell the property being sold at a public auction to be held at the time and place specified in the notice of sale. Neither Trustee nor Beneficiary shall have any obligation to make demand on Trustor before any Trustee's Sale. From time to time in accordance with then applicable law, Trustee may, and in any event at Beneficiary's request shall, postpone any Trustee's Sale by public announcement at the time and place noticed for that Trustee's Sale, unless otherwise required by applicable law.

(C) At any Trustee's Sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States, payable at the time of sale unless otherwise required by applicable law. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, express or implied. The recitals in any such deed of any matters or facts, including any facts bearing upon the regularity or validity of any Trustee's Sale, shall be conclusive proof of their truthfulness, absent manifest error. Absent manifest error, any such deed shall be (1) conclusive against all persons as to the facts recited in it; and (2) conclusive evidence in favor of purchasers and encumbrancers for value and without actual notice, that all requirements of this Deed of Trust and all requirements of law were met relating to the exercise of the power of sale and the Trustee's Sale of the Property conveyed by such deed. Knowledge of the Trustee shall not be imputed to the Beneficiary.

(h) Attorney-in-Fact. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact, with full power of substitution, to perform such acts and execute such documents as Beneficiary in its sole and absolute discretion may consider to be appropriate (1) to effect the purpose of this Deed of Trust after the occurrence of an Event of Default; and (2) in connection with taking the measures described in this Section, including endorsement of Trustor's name on any instruments. This appointment granted in this Section shall be deemed to be a power coupled with an interest, and is therefore Irrevocable.

(i) Single or Multiple Foreclosure Sales. Unless prohibited by applicable law, Beneficiary may elect to dispose of the Property, or any portion thereof, including but not limited to lots, parcels, and/or items through a single consolidated sale or disposition to be held or made under the power of sale granted above, or in connection with judicial proceedings, or by virtue of a judgment and decree of foreclosure and sale; or through two or more such sales or dispositions; or in any other manner Beneficiary may deem to be in its best interests (any such sale or disposition, a "Foreclosure Sale;" any two or more, "Foreclosure Sales"). If the Property consists of more than one lot, parcel or item of property, Beneficiary may designate the order in which the lots, parcels and/or items shall be sold or disposed of or offered for sale or disposition. If Beneficiary chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as Beneficiary may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the lien of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid and performed in full.

6.4 Personal Property. It shall not be necessary that Beneficiary take possession of all or any part of the Property that is personal property or fixture property prior to the time that any sale pursuant to the provisions of this Section is conducted, and it shall not be necessary that such Property or any part thereof be present at the location of such sale. With respect to application of proceeds from disposition of such Property, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable

attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house counsel to the extent not prohibited by applicable law) incurred by Beneficiary. Any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Obligations or as to the occurrence of any default or Event of Default, or as to Beneficiary having declared all of such indebtedness to be due and payable, or as to notice of time, place, and terms of sale, and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Beneficiary, shall be taken as prima facie evidence of the truth of the facts so stated and recited (absent manifest error). Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary. Beneficiary may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Property or any part thereof, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Beneficiary may sell all or any portion of the Property without giving any warranties as to such Property, and may specifically disclaim any warranties of title, merchantability, fitness for a specific purpose, or the like, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of such Property. Trustor acknowledges that a private sale of all or any part of the Property may result in less proceeds than a public sale, and Trustor acknowledges that the Property may be sold at a loss to Trustor, and that, in such event, Beneficiary shall have no liability or responsibility to Trustor for such loss. In addition to the rights granted elsewhere in this Deed of Trust, after the occurrence of any default or Event of Default, Beneficiary may at any time notify the account debtors or obligors of any accounts, chattel paper (whether tangible or electronic), general intangibles (including payment intangibles), negotiable instruments, promissory notes, or other evidences of indebtedness included in the Property to pay Beneficiary directly.

6.5 Credit Bids. At any Trustee's Sale, Foreclosure Sale, or any sale of personal property collateral under this Deed of Trust, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property being sold or any part of it to the extent not expressly prohibited by then applicable law. Instead of paying cash for such property, Beneficiary shall have the benefit of any applicable law permitting credit bids.

6.6 Application of Trustee's Sale or Foreclosure Sale Proceeds. Except as may be otherwise required by law, Beneficiary and Trustee shall apply the proceeds of any Trustee's Sale, Foreclosure Sale, or any other sale of personal property collateral under this Deed of Trust, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, including all costs and expenses of exercising the power of sale and other costs of sale, including, but not limited to, trustee's fees and reasonable attorneys' fees, the costs of any action, and any other sums for which Trustor is obligated to reimburse Beneficiary or Trustee under this Deed of Trust; and

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary or Trustee under the terms of this Deed of Trust which then remain unpaid; and

(c) Third, to pay all other Secured Obligations, to the extent not expressly prohibited by applicable law, in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it, or, if permitted or required by applicable law, to the clerk of the court of the county in which the Trustee's Sale, Foreclosure Sale, or any other sale of personal property collateral under this Deed of Trust, took place.

If the Secured Obligations include more than one loan or line of credit, by cross-collateralization or otherwise, it is specifically agreed that the proceeds of any Trustee's Sale or other foreclosure action shall not be applied pro-rata unless such application is directed by Beneficiary, but instead shall be applied to all such Secured Obligations in any order, proportions and manner as Beneficiary in its sole and absolute discretion may choose.

6.7 Application of Rents and Other Sums. Beneficiary shall apply any and all Rents collected by it in such order as set forth in Section 2.6 above, and any and all other sums, other than proceeds of a Trustee's Sale or a judicial foreclosure sale under this Deed of Trust, which Beneficiary may receive or collect under this Section, in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the costs and expenses of operation of the Property and collection of Rents and other sums that may be incurred by Trustee, Beneficiary, and/or any receiver, including but not limited to reasonable attorneys' fees and any and all expenses of leasing, operating, maintaining, and managing the Property, and all other costs and charges incident to the Property; and

(b) Second, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole and absolute discretion may choose; and

(c) Third, to remit the remainder, if any, to the person or persons entitled to it.

Beneficiary shall have no liability for any funds which it does not actually receive.

7. Miscellaneous Provisions.

7.1 Additional Provisions. The Loan Documents fully state all of the terms and conditions of the parties' agreement regarding the matters mentioned in or incidental to this Deed of Trust. The Loan Documents also grant further rights to Beneficiary and certain of them contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and to the Property.

7.2 No Waiver or Cure.

(a) Each waiver by Beneficiary or Trustee shall be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. Reinstatement after an Event of Default shall not constitute a waiver of any Event of Default then existing or subsequently occurring, nor impair the right of Beneficiary to declare other Events of Default, nor otherwise affect this Deed of Trust or any of the Loan Documents, or any of the rights, obligations, or remedies of Beneficiary or Trustee under this Deed of Trust or any of the Loan Documents.

(b) If any of the events described below occurs, that event alone shall not: cure or waive any breach, Event of Default, or notice of default under this Deed of Trust or invalidate any act performed pursuant to any such default or notice; or nullify the effect of any notice of default or sale (unless all Secured Obligations then due have been paid and performed and all other defaults under the Loan Documents have been cured); or impair the security of this Deed of Trust; or prejudice Beneficiary, Trustee, or any receiver in the exercise of any right or remedy afforded any of them under this Deed of Trust; or be construed as an affirmation by Beneficiary of any tenancy, lease or option, or a subordination of the lien of this Deed of Trust.

(i) Beneficiary, its agent, or a receiver takes possession of all or any part of the Property in the manner provided this Deed of Trust; or

(ii) Beneficiary collects and applies Rents and enforces any Lease provision as permitted under this Deed of Trust, either with or without taking possession of all or any part of the Property; or

(iii) Beneficiary receives and applies to any Secured Obligation any proceeds of any Property, including any proceeds of insurance policies, condemnation awards, surety bond proceeds, or other claims, property or rights assigned to Beneficiary under this Deed of Trust; or

(iv) Beneficiary makes a site visit, observes the Property, and/or conducts tests as permitted under this Deed of Trust; or

(v) Beneficiary receives any sums under this Deed of Trust or any proceeds of any collateral held for any of the Secured Obligations, and applies them to one or more Secured Obligations; or

(vi) Beneficiary, Trustee, any agent of either of them, or any receiver performs any act which it is empowered or authorized to perform, or invokes any right or remedy provided under this Deed of Trust.

7.3 Powers of Beneficiary and Trustee.

(a) Trustee shall have no obligation to perform any act which it is empowered to perform under this Deed of Trust unless it is requested to do so in writing and is reasonably indemnified against loss, cost, liability and expense.

(b) If either Beneficiary or Trustee performs any act which it is empowered or authorized to perform under this Deed of Trust, that act alone shall not release or change the personal liability of any person for the payment and performance of the Secured Obligations then outstanding or the lien of this Deed of Trust on all or the remainder of the Property for full payment and performance of all outstanding Secured Obligations. The liability of the original Trustor shall not be released or changed if Beneficiary grants any successor in interest to Trustor any extension of time for payment, or modification of the terms of payment, of any Secured Obligation. Beneficiary shall not be required to comply with any demand by the original Trustor that Beneficiary refuse to grant such an extension or modification to, or commence proceedings against, any such successor in interest.

(c) Beneficiary may take any of the actions permitted under this Deed of Trust, including without limitation appointment of a receiver, regardless of the adequacy of the security for the Secured Obligations, or whether any or all of the Secured Obligations have been declared to be immediately due and payable, or whether notice of default and election to sell has been given under this Deed of Trust.

(d) From time to time, Beneficiary or Trustee may apply to any court of competent jurisdiction for aid and direction in executing the trust and enforcing the rights and remedies created under this Deed of Trust. Beneficiary or Trustee may from time to time obtain orders or decrees directing, confirming, or approving acts in executing this trust and enforcing such rights and remedies.

7.4 Merger. No merger shall occur as a result of Beneficiary's acquiring any other estate in or any other lien on the Property unless Beneficiary consents to a merger in writing.

7.5 Joint and Several Liability. If more than one person has executed this Deed of Trust as Trustor, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust

7.6 Governing Law; Waiver of Jury Trial. This Deed of Trust shall be governed by, and construed in accordance with, the laws of the state where the Land is located, without regard to the choice of law rules of that State, except to the extent that any of such laws may now or hereafter be preempted by Federal law. **TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, TRUSTOR WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH TRUSTOR AND BENEFICIARY MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO, THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS DEED OF TRUST. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY TRUSTOR, AND TRUSTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. TRUSTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN SIGNING THIS DEED OF TRUST AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

7.7 Successors In Interest. The terms, covenants, and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, and permitted successors, and assigns of the parties; provided, however, that this Section shall not waive or modify the provisions of **Section 6.1** above.

7.8 Statute of Limitations. To the extent not expressly prohibited by law, Trustor hereby waives (a) the right to plead the statute of limitations as a defense to any and all obligations secured by this Deed of Trust, and (b) any homestead exemption and other exemption rights that Trustor may have or acquire under applicable law.

7.9 Substitution of Trustee. From time to time, Beneficiary may substitute a successor to any Trustee named in or acting under this Deed of Trust in any manner now or later to be provided at law, or by a written instrument executed and acknowledged by Beneficiary and recorded in the office(s) of the recorder(s) of the county or counties where the Land and the Improvements are situated. Any such instrument shall be conclusive proof of the proper substitution of the successor Trustee, who shall automatically upon recordation of the instrument succeed to all estate, title, rights, powers and duties of the predecessor Trustee, without conveyance from it.

7.10 Time of Essence. Time is of the essence of this Deed of Trust and each and every term hereof.

7.11 Interpretation.

(a) Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the sections of this Deed of Trust are for convenience only and do not define or limit any terms or provisions. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to."

(b) The word "obligations" is used in its broadest and most comprehensive sense, and includes all primary, secondary, direct, indirect, fixed, and contingent obligations. It further includes all principal, interest, prepayment fees, late charges, loan fees, and any other fees and charges accruing or assessed at any time, as well as all obligations to perform acts or satisfy conditions.

(c) No listing of specific instances, items, or matters in any way limits the scope or generality of any language of this Deed of Trust. The exhibits, and any rider or addendum, to this Deed of Trust are hereby incorporated by reference in this Deed of Trust.

(d) No course of prior dealing, usage of trade, or parol or extrinsic evidence of any nature shall be used to supplement, modify, or vary any of the terms hereof.

7.12 Attorneys Fees. In any lawsuit or arbitration arising out of or relating to this Deed of Trust the prevailing party will be entitled to recover from each other party such sums as the court or arbitrator adjudges to be reasonable attorneys' fees in the action or arbitration, in addition to costs and expenses otherwise allowed by law. Whenever Trustor is obligated to pay or reimburse Beneficiary or Trustee for any attorneys' fees, those fees shall include the allocated costs for services of in-house counsel to the extent not prohibited by applicable law.

7.13 Waiver of Marshaling. Trustor waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which any of the Property will be sold in the event of any sale under this Deed of Trust. Each successor and assign of Trustor, including any holder of a lien subordinate to this Deed of Trust, by acceptance of its interest or lien agrees that it shall be bound by the above waiver, as if it had given the waiver itself.

7.14 Severability. If any provision of this Deed of Trust should be held unenforceable or void, that provision shall be deemed severable from the remaining provisions and shall in no way affect the validity of this Deed of Trust, except that if such provision relates to the payment of any monetary sum, then Beneficiary may, at its option, declare all Secured Obligations immediately due and payable.

7.15 Notices. Trustor hereby requests that a copy of any notice of default, notice of sale, and/or other notices prescribed by applicable law, be mailed to it at the address set forth below. If any Trustor fails to insert an address, that failure will constitute a designation of Trustor's last known address as the address of such notice. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address given below is the address for Beneficiary as secured party under the UCC.

7.16 Partial Releases. Trustor may, regardless of consideration, cause the release of any part of the Property from the lien of this Deed of Trust without in any manner affecting or impairing the lien or priority of this Deed of Trust as to the remainder of the Property. Notwithstanding anything contained herein to the contrary, this Deed of Trust is subject to any partial release provisions set forth in the Loan Agreement.

7.17 Reporting Compliance. Trustor agrees to comply with any and all reporting requirements applicable to Secured Obligations which are set forth in any law, statute, ordinance, rule, regulation, order, or determination of any governmental authority, and further agrees to furnish Beneficiary with evidence of such compliance upon the request of Beneficiary.

7.18 Release Fee. Unless expressly prohibited by applicable law, Trustor shall pay to Beneficiary, at the time of each partial or complete release of the lien of this Deed of Trust, a reasonable release fee, as determined by Beneficiary.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust the date first above written.

"TRUSTOR"

TEMPE GATEWAY, L.L.C.,
a Delaware limited liability company

Address of Trustor's chief executive office
for notices to Trustor:

By: **OWC TEMPE, INC.**, a Delaware corporation,
its Manager

Tempe Gateway, L.L.C.
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President,
Real Estate Sales and Finance

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

Address for notice to Trustee:

Address for notices to Beneficiary:

U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, AZ 85003
Attention: Commercial Real Estate

U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, AZ 85003
Attention: Commercial Real Estate

STATE OF ARIZONA) ss.

County of Maricopa)

On this 18 day of February, 2008, before me, DEBRA LEE PRICE, a Notary Public
in and for said State, personally appeared CHARLES VOGEL, the VICE PRESIDENT of
OWC TEMPE, INC., a Delaware corporation, the Manager of **TEMPE GATEWAY, L.L.C.**, a Delaware
limited liability company, ☐ personally known or me or ☐ proved to me on basis of satisfactory evidence
to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she
executed the same in his/her authorized capacity, and that by his/her signature on the instrument the
person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal the day and year in this certificate first above written.

Debra Lee Price

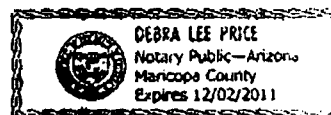


Exhibit A to DEED OF TRUST dated for reference purposes as of February 29 2008, by TEMPE GATEWAY, L.L.C., a Delaware limited liability company, as "Trustor", U.S. BANK NATIONAL ASSOCIATION, a national banking association, as "Trustee" for the benefit of U.S. BANK NATIONAL ASSOCIATION, a national banking association, as "Beneficiary."

Description of Property

PARCEL NO. 1:

A PORTION OF OFFICE PLAZA 222 CONDOMINIUM PLAT ACCORDING TO BOOK 236 OF MAPS, PAGE 48, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHEAST CORNER OF BLOCK 61, MAP OF TEMPE ACCORDING TO BOOK 2 OF MAPS, PAGE 26;

THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 61, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF 3RD STREET 123.43 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY OF MILL AVENUE PER OFFICE PLAZA 222;

THENCE CONTINUING SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG SAID SOUTH LINE 211.80 FEET;

THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST CONTINUING ALONG SAID SOUTH LINE 302.97 FEET;

THENCE NORTH 44 DEGREES 56 MINUTES 38 SECONDS WEST, 21.19 FEET TO AN ANGLE POINT ON THE WEST LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE EASTERLY RIGHT-OF-WAY OF ASH AVENUE;

THENCE NORTH 00 DEGREES 06 MINUTES 45 SECONDS EAST ALONG SAID WEST LINE AND 650.69 FEET TO THE NORTHWEST CORNER OF SAID OFFICE PLAZA 222;

THENCE SOUTH 89 DEGREES 45 MINUTES 10 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY OF 1ST STREET 318.67 FEET TO A CORNER OF SAID OFFICE PLAZA 222;

THENCE SOUTH 00 DEGREES 09 MINUTES 57 SECONDS WEST ALONG THE EAST LINE OF SAID OFFICE PLAZA 222, 329.82 FEET TO A CORNER OF SAID OFFICE PLAZA 222;

THENCE NORTH 89 DEGREES 57 MINUTES 25 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, 329.97 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY OF MILL AVENUE, SAID POINT BEING ON A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 533.50 FEET, THE CENTER OF SAID CURVE BEARS NORTH 89 DEGREES 50 MINUTES 49 SECONDS WEST;

THENCE SOUTHERLY ALONG SAID CURVE AND SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 38 DEGREES 54 MINUTES 10 SECONDS AN ARC LENGTH OF 362.24 FEET TO THE TRUE POINT OF BEGINNING.

Exhibit A - Page 1

TEMPE_DEED OF TRUST_AZ
#111207V7F (REV. 02/08/08)

BORROWER: TEMPE GATEWAY, L.L.C.
PROJECT: MILL AVENUE AND 3RD STREET, TEMPE, AZ

EXCEPT THAT PORTION OF OFFICE PLAZA 222, CONDOMINIUM PLAT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 236 OF MAPS, PAGE 48, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID OFFICE PLAZA 222, SAID CORNER LYING ON THE EASTERLY RIGHT-OF-WAY OF ASH AVENUE;

THENCE NORTH 00 DEGREES 06 MINUTES 16 SECONDS EAST ALONG THE WEST LINE OF SAID OFFICE PLAZA 222, A DISTANCE OF 120.38 FEET TO A SET ½" REBAR WITH CAP #26404, BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00 DEGREES 06 MINUTES 16 SECONDS EAST ALONG SAID WEST LINE A DISTANCE OF 198.70 FEET TO A SET ½" REBAR WITH CAP #26404;

THENCE NORTH 00 DEGREES 15 MINUTES 06 SECONDS EAST CONTINUING ALONG SAID WEST LINE A DISTANCE OF 331.52 FEET TO THE NORTHWEST CORNER OF SAID OFFICE PLAZA 222, SAID CORNER BEING A SET ½" REBAR WITH CAP #26404;

THENCE SOUTH 89 DEGREES 45 MINUTES 11 SECONDS EAST ALONG THE NORTH LINE OF SAID OFFICE PLAZA 222, SAID LINE ALSO BEING THE SOUTHERLY RIGHT-OF-WAY OF 1ST STREET A DISTANCE OF 317.77 FEET TO A CORNER OF SAID OFFICE PLAZA 222, LAST SAID CORNER BEING A FOUND COTTON PICKER SPINDLE;

THENCE SOUTH 00 DEGREES 09 MINUTES 42 SECONDS WEST ALONG THE EAST LINE OF SAID OFFICE PLAZA 222, A DISTANCE OF 329.73 FEET TO A CORNER OF SAID OFFICE PLAZA 222, LAST SAID CORNER BEING A FOUND COTTON PICKER SPINDLE;

THENCE SOUTH 00 DEGREES 10 MINUTES 15 SECONDS WEST A DISTANCE OF 199.32 FEET TO A SET ½" REBAR WITH CAP #26404;

THENCE NORTH 89 DEGREES 57 MINUTES 52 SECONDS WEST A DISTANCE OF 318.06 FEET TO THE TRUE POINT OF BEGINNING; AND

EXCEPT A PART OF OFFICE PLAZA 222 SUBDIVISION, AS RECORDED IN BOOK 236 OF MAPS, PAGE 48 AND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 1 NORTH, RANGE 4 EAST OF THE GILA AND SALT RIVER BASE MERIDIAN, MARICOPA COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF MILL AVENUE AND 3RD STREET (FOUND BRASS CAP IN HANDHOLE);

THENCE SOUTH 89 DEGREES 36 MINUTES 01 SECONDS WEST, ALONG THE CENTERLINE OF SAID 3RD STREET (CONTROL LINE TO OFFICE PLAZA 222, AS RECORDED IN BOOK 236 OF MAPS, PAGE 48, MCR), A DISTANCE OF 385.14 FEET;

THENCE SOUTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE OF 231.04 FEET;

THENCE NORTH 00 DEGREES 23 MINUTES 36 SECONDS WEST, A DISTANCE OF 69.00 FEET TO THE POINT OF BEGINNING;

Exhibit A – Page 2

THENCE SOUTH 89 DEGREES 36 MINUTES 24 SECONDS WEST, A DISTANCE OF 71.60 FEET;

THENCE NORTH 45 DEGREES 20 MINUTES 13 SECONDS WEST, A DISTANCE OF 21.19 FEET;

THENCE NORTH 00 DEGREES 16 MINUTES 51 SECONDS WEST, A DISTANCE OF 8.40 FEET TO THE POINT OF CUSP OF A CURVE WHOSE 459.50 FOOT RADIUS BEARS NORTH 20 DEGREES 19 MINUTES 58 SECONDS EAST AND IS CONCAVE NORTHEASTERLY;

THENCE SOUTHEASTERLY, ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 11 DEGREES 11 MINUTES 53 SECONDS, A DISTANCE OF 89.80 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 2:

THAT PORTION OF BLOCK 61, MAP OF TEMPE, ACCORDING TO BOOK 2 OF MAPS, PAGE 26, MARICOPA COUNTY, ARIZONA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 61;

THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS WEST ALONG THE SOUTH LINE OF SAID BLOCK 61, SAID LINE ALSO BEING THE NORTHERLY RIGHT-OF-WAY OF 3RD STREET 123.43 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY OF MILL AVENUE PER THE PLAT OF OFFICE PLAZA 222 ACCORDING TO BOOK 236 OF MAPS, PAGE 48, SAID POINT BEING ON A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 533.50 FEET, THE CENTER OF SAID CURVE BEARS NORTH 50 DEGREES 54 MINUTES 36 SECONDS WEST;

THENCE NORTHERLY ALONG SAID CURVE AND LAST SAID RIGHT-OF-WAY THROUGH A CENTRAL ANGLE OF 38 DEGREES 55 MINUTES 26 SECONDS AN ARC LENGTH OF 382.40 FEET TO THE CENTERLINE OF 2ND STREET PER SAID MAP OF TEMPE;

THENCE NORTH 89 DEGREES 58 MINUTES 00 SECONDS EAST ALONG SAID CENTERLINE 5.00 FEET TO A POINT ON THE NORTHERLY PROLONGATION OF THE EAST LINE OF SAID BLOCK 61;

THENCE SOUTH 00 DEGREES 10 MINUTES 08 SECONDS WEST ALONG SAID PROLONGATION AND SAID EAST LINE 334.84 FEET TO THE POINT OF BEGINNING.

PAYMENT AND PERFORMANCE GUARANTY

This Payment and Performance Guaranty (the "Guaranty") is dated for reference purposes as of February 29, 2008, and is made by **OPUS WEST CORPORATION**, a Minnesota corporation (the "Guarantor") in favor of **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for the Lenders (as such terms are described and defined in the Loan Agreement), and their respective successors and assigns (individually or collectively, as the context shall infer, the "Lender").

Unless defined elsewhere in this Guaranty, defined terms used herein have the meanings given them in the Definitions Section hereof.

Factual Background

A. Guarantor is executing this Guaranty to induce Lender to make a construction loan (the "Loan") to **TEMPE GATEWAY, L.L.C.**, a Delaware limited liability company (the "Borrower") in the principal amount of Sixty-Eight Million Nine Hundred Sixty Thousand and No/100 Dollars (\$68,960,000.00) (the "Loan Amount"). The Loan is being made under that certain Construction Loan Agreement (the "Loan Agreement") between Lender and Borrower dated as of even date herewith. Capitalized terms used but not defined herein shall have the meanings set forth in the Loan Agreement.

B. The Loan is evidenced by one or more Notes (as such term is defined in the Loan Agreement) executed by Borrower and made payable to Lender in the Loan Amount. The Notes and Borrower's obligations under the other Loan Documents are secured by that certain Construction Deed of Trust, with Assignment of Rents, Security Agreement, and Fixture Filing (as modified or amended from time to time, the "Deed of Trust") covering the Land and Improvements and certain other real and personal property, as therein described (collectively, the "Property"). The Notes may also be secured by other collateral, as more fully explained in the Loan Agreement.

C. This Guaranty is one of several "Loan Documents," as that term is defined in the Loan Agreement. The Loan Documents include the Loan Agreement, the Notes, the Deed of Trust, and all other documents evidencing, securing or otherwise related to the Loan (including, without limitation, any indemnification agreements, and any interest rate lock agreements and any interest rate hedge, swap, or other protection agreements related to the Loan in any way), as such documents may be modified, amended, extended, renewed, and/or restated from time to time.

Guaranty

Definitions: The following capitalized words and terms shall have the meanings set forth in the "Factual Background" section above, or if not defined therein, shall have the following meanings when used in this Guaranty. All references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require.

"Affiliate of" or "affiliated with" means in control of, controlled by or under common control with.

"GAAP" means generally accepted accounting principles.

"Liquidity" means unpledged cash, cash equivalents as determined in accordance with GAAP, and marketable securities.

"Material Adverse Effect" means: (a) a material adverse change in, or a material adverse effect upon, the Project, or the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of Guarantor or Guarantor and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any party to the Loan Documents to perform its obligations under any such Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any party to the Loan Documents of any such document or agreement to which it is a party.

"Tangible Net Worth" means the gross book value of Guarantor's assets in accordance with GAAP (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles), less Total Liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets.

"Total Liabilities" means in accordance with GAAP, the sum of current liabilities plus long term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million and No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

1. Guaranty of Loan.

1.1 Guarantor, jointly and severally if more than one, unconditionally guarantees to Lender the prompt and full payment of the obligations of Borrower under the Loan Documents, including, without limitation: the prompt and full payment of all Loan principal and accrued interest, and any and all charges, fees, and expenses under the Note; the payment of all charges, fees, and expenses for which Borrower is obligated under the Loan Agreement and/or the Deed of Trust; and any other fees, prepayment fees, charges, sums, costs, and expenses which may be owing at any time under any of the Loan Documents, including any rate lock agreement and any interest rate protection agreement between Borrower and Lender; and the payment of all obligations of Borrower under any indemnity, specifically including any hazardous waste indemnity, under or constituting one of the Loan Documents (collectively, the "Loan Payment Obligations").

1.2 Guarantor additionally unconditionally guarantees to Lender the timely performance of all other obligations of Borrower under the Loan Documents, including, without limiting the generality of the foregoing and as applicable: (a) that the Improvements will be constructed in accordance with Section 3.1(b) of the Loan Agreement; (b) that the Improvements will be completed, lien free, and ready for occupancy, including delivery of any permits, certificates or governmental approvals required by law or the Loan Agreement, on or before the Completion Date; and (c) that Borrower will duly and punctually perform and observe all other terms, covenants, and conditions of the Note, the Security Instrument, the Loan Agreement or any other Loan Document (collectively, the "Loan Performance Obligations"). The Loan Payment Obligations and Loan Performance Obligations may be referred to herein collectively as the "Loan Obligations".

1.3 In addition to the foregoing (and as part of the Loan Obligations), Guarantor hereby agrees to pay any and all costs and expenses (including, without limitation, reasonable attorneys' fees and costs, including allocated costs for services of Lender's in-house counsel, to the extent not prohibited by applicable law) incurred by Lender in enforcing any rights or remedies under this Guaranty, including in the context of any Insolvency Proceeding (as that term is hereinafter defined). From the time incurred until paid in full to Lender, all such sums shall bear interest at the Default Rate as defined in the Note and

if no Default Rate is specified therein, then at the Note Rate of interest applicable from time to time, plus five percent (5%) per annum (the "Default Rate").

1.4 With respect to the Loan Performance Obligations (a) if Lender has sent Guarantor written notice to perform Borrower's obligation to complete the Improvements under the terms required by the Loan Documents following Borrower's failure to so perform, Lender shall make undisbursed Loan proceeds available to Guarantor for the purpose of fulfilling Guarantor's obligations hereunder so long as: (i) Guarantor is not in default under this Guaranty; (ii) Guarantor cures any outstanding default under the Loan Documents (including any failure of the Loan to be "in balance" as and if described in the Loan Agreement) and thereafter performs the obligations assumed by Guarantor under this Guaranty; and (ii) all conditions of the Loan Documents to the disbursement of Loan funds are satisfied in writing, and (b) If Guarantor fails to promptly perform any of the Loan Performance Obligations under this Guaranty, Lender shall have the following remedies: (i) Lender, in its sole and absolute discretion, may perform, or cause the performance of, any and all of Guarantor's obligations under this Guaranty, and in such event, Guarantor shall reimburse Lender immediately on demand for all costs and expenses, including reasonable attorney's fees, that Lender may incur in performing those obligations, together with interest on those sums (at Lender's option) from and after the date(s) incurred at the Default Rate; and/or (i) Lender may bring any action at law or in equity or both, or commence any appropriate proceeding, to compel Guarantor to perform its obligations under this Guaranty, and in such event, Lender shall be entitled to collect from Guarantor compensation for all loss, cost, damage, and expense which Lender may incur as a direct or indirect consequence of Guarantor's failure to perform those obligations, including interest at the Default Rate. Lender may bring any such action or commence any such proceeding regardless of whether Lender has exhausted any and all security for the Loan.

1.5 This is a guaranty of payment, not of collection. Guarantor shall be liable for the payment and performance of the Loan Obligations as a primary obligor. If Borrower defaults (subject to applicable notice and cure periods) in the payment when due of any of the Loan Obligations or any part of them, Guarantor shall in lawful money of the United States pay to Lender or its order, on demand, all sums due with respect to the Loan Obligations. If the amount outstanding under the Loan is determined by a court of competent jurisdiction, that determination shall be conclusive and binding on Guarantor, regardless of whether Guarantor was a party to the proceeding in which the determination was made or not.

2. **Loan.** In this Guaranty, the term "Loan" is broadly defined to mean and include the loan evidenced by the Loan Documents and include all primary, secondary, direct, indirect, fixed, and contingent obligations of Borrower to pay principal, interest, prepayment charges, late charges, loan fees, and any other fees, charges, sums, costs and expenses which may be owing at any time under the Note or the other Loan Documents, as any or all of them may from time to time be modified, amended, extended, or renewed. For purposes of this Guaranty, the Loan includes any and all such obligations which may arise in connection with (a) all indemnifications provided by Borrower in connection with the Loan, including the Borrower's Indemnity, (b) any set aside letters, (c) any advances made before recording of the Deed of Trust, and (d) any interest rate lock, swap, or protection provisions or agreements.

3. **Rights of Lender.** Guarantor authorizes Lender to perform any or all of the following acts at any time in its sole and absolute discretion, all without notice to Guarantor and without affecting Guarantor's obligations under this Guaranty:

3.1 Lender may alter any terms of the Loan or any part of it, including renewing, compromising, extending or accelerating, or otherwise changing the time for payment of, or increasing or decreasing the rate of interest on, the Loan or any part of it.

3.2 Lender may take and hold security for the Loan or this Guaranty, accept additional or substituted security for either, and subordinate, exchange, enforce, waive, release, compromise, fail to perfect and sell or otherwise dispose of any such security.

3.3 Lender may direct the order and manner of any sale of all or any part of any security now or later to be held for the Loan or this Guaranty, and Lender may also bid at any such sale.

3.4 Subject to the terms of the Loan Documents, Lender may apply any payments or recoveries from Borrower, Guarantor or any other source, and any proceeds of any security, to the Loan Obligations in such manner, order, and priority as Lender may elect, whether or not those obligations are guaranteed by this Guaranty or secured at the time of the application.

3.5 Lender may release Borrower of its liability for the Loan, the Loan Obligations, or any portion thereof.

3.6 Lender may substitute, add or release any one or more guarantors or endorsers.

3.7 In addition to the Loan, Lender may extend other credit to Borrower, and may take and hold security for the credit so extended, all without affecting Guarantor's liability under this Guaranty.

3.8 Lender may approve modifications to the Plans and Specifications, change the terms and conditions of disbursement of the Loan, or advance additional funds to Borrower for purposes related to the Loan Documents.

4. **Guaranty to be Absolute; No Deductions.** Guarantor expressly agrees that until (a) this Guaranty is released pursuant to the terms hereof, or (b) the Loan Obligations are paid in full and each and every term, covenant, and condition of this Guaranty is fully performed, Guarantor shall not be released by or because of;

4.1 Any act or event which might otherwise discharge, reduce, limit, or modify Guarantor's obligations under this Guaranty;

4.2 Any waiver, extension, modification, forbearance, delay or other act or omission of Lender, or its failure to proceed promptly or otherwise as against Borrower, Guarantor or any security;

4.3 Any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Borrower;

4.4 Any dealings occurring at any time between Borrower and Lender, whether relating to the Loan or otherwise; or

4.5 Any action of Lender described in Section 3 above.

Guarantor hereby expressly waives and surrenders any defense to any liability under this Guaranty based upon any of such acts, omissions, agreements, waivers or matters. It is the purpose and express intent of Guarantor that Guarantor's obligations under this Guaranty are and shall be absolute, unconditional, and irrevocable. All payments by Guarantor hereunder shall be paid in full without setoff, counterclaim, or deduction.

5. **Guarantor's Walvers.** Except as may be prohibited by applicable law, Guarantor waives:

5.1 All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Lender pursuant to this Guaranty;

5.2 Any right it may have to require Lender to proceed against Borrower, proceed against or exhaust any security held from Borrower, or pursue any other remedy in Lender's power to pursue, and any defense based on any homestead exemption or other exemption under applicable law, whether available to Borrower or Guarantor;

5.3 Any defense based on any limitation of liability or recourse in any other Loan Document or arising under law or any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower;

5.4 Any defense based on (a) any legal disability of Borrower, (b) any release, discharge, modification, impairment or limitation of the liability of Borrower to Lender from any cause, whether consented to by Lender or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships, including any proceeding under the Bankruptcy Reform Act of 1978, as amended or recodified (the "Bankruptcy Code"), or under any other present or future state or federal law regarding bankruptcy, reorganization or other relief to debtors (collectively, "Debtor Relief Laws") (any such proceeding referred to as an "Insolvency Proceeding"), or (c) any rejection or disaffirmance of the Loan, or any part of it, or any security held for it, in any such Insolvency Proceeding;

5.5 Any defense based on any action taken or omitted by Lender in any Insolvency Proceeding involving Borrower, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender to Borrower in any Insolvency Proceeding, and the taking and holding by Lender of any security for any such extension of credit;

5.6 All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of intention to accelerate, notices of acceleration, notices of any suit or any other action against Borrower or any other person, notices of default, notices of dishonor, notices of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind except for any demand or notice by Lender to Guarantor expressly provided for elsewhere in this Guaranty;

5.7 Any defense based on or arising out of any defense that Borrower may have to the payment or performance of the Loan Obligations or any part of them other than Lender's material breach;

5.8 Any defense based on any lack of authority of the officers, directors, partners, members 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; and

5.9 Any defense based on or arising out of any action of Lender described in **Section 3** or **Section 4** above.

6. **Walvers of Subrogation and Other Rights and Defenses.**

6.1 Upon a Default or Event of Default by Borrower under the Loan Documents (subject to applicable notice and cure periods), Lender, in its sole discretion, without prior notice to or consent of Guarantor, may elect to: (a) foreclose either judicially or nonjudicially (as allowed by applicable law)

against any real or personal property security it may hold for the Loan; (b) accept a transfer of any such security in lieu of foreclosure; (c) compromise or adjust the Loan or any part of it or make any other accommodation with Borrower or Guarantor; or (d) exercise any other remedy available against Borrower or any security. No such action by Lender shall release or limit the liability of Guarantor, who shall remain liable under this Guaranty after the action, even if the effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Lender, whether contractual or arising by operation of law or otherwise. Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Lender or any third party after any foreclosure or transfer in lieu of foreclosure of any security for the Loan.

6.2 Regardless of whether Guarantor may have made any payments to Lender, Guarantor hereby waives: (a) all rights of subrogation, indemnification, contribution, and any other rights to collect reimbursement from Borrower or any other party for any sums paid to Lender, whether contractual or arising by operation of law (including, without limitation, under any provisions of the Bankruptcy Code, or any successor or similar statutes) or otherwise; (b) all rights to enforce any remedy that Lender may have against Borrower; and (c) all rights to participate in any security now or later to be held by Lender for the Loan. Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification, and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement, indemnification, and contribution Guarantor may have against Borrower or against any collateral or security, shall be junior and subordinate to any rights Lender may have against Borrower, and to all right, title and interest Lender may have in any such collateral or security. If any amount shall be paid to Guarantor on account of any such subrogation, reimbursement, indemnification, or contribution rights at any time when all obligations under the Loan have not been paid in full, such amount shall be held in trust for Lender and shall forthwith be paid over to Lender to be credited and applied against the Loan, whether matured or unmatured, in accordance with the terms of the Loan Documents. The covenants and waivers of Guarantor contained in this Section 6.2 shall be effective until the Loan Obligations have been paid and performed in full, and are made for the benefit of Lender and Borrower.

6.3 Guarantor understands and acknowledges that if Lender forecloses judicially or nonjudicially against any real property security for the Loan, that foreclosure could impair or destroy any ability that Guarantor may have to seek reimbursement, contribution, or indemnification from Borrower or others based on any right Guarantor may have of subrogation, reimbursement, contribution or indemnification for any amounts paid by Guarantor under this Guaranty. Guarantor further understands and acknowledges that in the absence of this Section 6, such potential impairment or destruction of Guarantor's rights, if any, may entitle Guarantor to assert a defense to this Guaranty. By executing this Guaranty, Guarantor freely, irrevocably, and unconditionally: (a) waives and relinquishes that defense and agrees that Guarantor shall be fully liable under this Guaranty even though Lender may foreclose judicially or nonjudicially against any real property security for the Loan; (b) agrees that Guarantor shall not assert that defense in any action or proceeding which Lender may commence to enforce this Guaranty; (c) acknowledges and agrees that the rights and defenses waived by Guarantor under this Guaranty include any right or defense that Guarantor may have or be entitled to assert based upon or arising out of any one-action, anti-deficiency, reimbursement, or other borrower or guarantor protective statute (including, without limitation, any defense that any exercise by Lender of any right or remedy hereunder or under the Loan Documents violates, or would, in combination with the previous or subsequent exercise by Guarantor of any rights of subrogation, reimbursement, contribution, or indemnification against Borrower or any other person, directly or indirectly result in, or be deemed to be, a violation of, any of such statutory provisions); and (d) acknowledges and agrees that Lender is relying on this waiver in making the Loan, and that this waiver is a material part of the consideration which Lender is receiving for making the Loan.

6.4 Guarantor waives any rights and defenses that are or may become available to Guarantor by reason of any statute governing guarantees or suretyship, but not limited to any benefit of the provisions of Arizona Revised Statutes §§ 12-1641 and 12-1642 et seq., and Rule 17(f) of the Arizona Rules of Civil Procedures, to the extent applicable.

6.5 Guarantor waives all rights and defenses that Guarantor may have because Borrower's Loan is secured by real or personal property including any homestead exemption or other exemptions under applicable law. This means, among other things:

(a) Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower.

(b) If Lender forecloses on any real property collateral pledged by Borrower:

(i) The amount of the Loan may be reduced only by the net price for which the collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.

(ii) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any ability Guarantor may have to collect from Borrower.

This Section 6.5 is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because Borrower's Loan is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses available under applicable law.

6.6 Guarantor waives any right or defense it may have at law or in equity to a fair market value hearing or action to determine a deficiency judgment after a foreclosure. These rights and defenses include, but are not limited to, any rights or defenses available under applicable law.

6.7 Guarantor waives any right or defense it may have at law or in equity, which may provide, among other things: that a creditor must file a complaint for deficiency within a specified period of time after a nonjudicial foreclosure sale or judicial foreclosure sale, as applicable; that a fair market value hearing must be held; and that the amount of the deficiency judgment shall be limited to the amount by which the unpaid debt exceeds the fair market value of the security, but not more than the amount by which the unpaid debt exceeds the sale price of the security.

6.8 No provision or waiver in this Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this Guaranty.

6.9 Guarantor agrees that the payment or performance of any act which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

7. Revival and Reinstatement. If all or any portion of the Loan Obligations are paid, 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 is avoided or recovered directly or indirectly from Lender as a preference, fraudulent transfer or otherwise under the Bankruptcy Code or under any other Debtor Relief Law or other similar laws, regardless of (a) any notice of revocation given by Guarantor prior to such avoidance or recovery, or (b) full payment and performance of all of Loan Obligations. If Lender is required to pay, return, or restore to Borrower or any other person any amounts previously paid on any of the Loan Obligations because of any Insolvency Proceeding of Borrower, or any other reason, the obligations of

Guarantor shall be reinstated and revived and the rights of Lender shall continue with regard to such amounts, all as though they had never been paid.

8. **Information Regarding Borrower and the Property.** Before signing this Guaranty, Guarantor investigated the financial condition and business operations of Borrower, the present and former condition, uses and ownership of the Property, and such other matters as Guarantor deemed appropriate to assure itself of Borrower's ability to discharge its obligations under the Loan Documents. Guarantor assumes full responsibility for that due diligence, as well as for keeping informed of all matters that may affect Borrower's ability to pay and perform its obligations to Lender. Lender has no duty to disclose to Guarantor any information which Lender may have or receive about Borrower's financial condition or business operations, the condition or uses of the Property, or any other circumstances bearing on Borrower's ability to perform.

9. **Subordination.** Any rights of Guarantor (including but not limited to any rights as subrogee of Lender or resulting from Guarantor's performance under this Guaranty), whether now existing or later arising, to receive payment on account of any indebtedness (including interest) owed to it by Borrower, any general partner of Borrower, or any subsequent owner of the Property, or to withdraw capital invested by it in Borrower, or to receive distributions from Borrower, shall at all times be subordinate as to lien and time of payment and in all other respects to the full and prior repayment to Lender of the Loan Obligations. Guarantor shall not be entitled to enforce or receive payment of any sums hereby subordinated until all the Loan Obligations have been paid and performed in full and any such sums received in violation of this Guaranty shall be received by Guarantor in trust for Lender.

10. **Bankruptcy of Borrower.** In any Insolvency Proceeding in which the filing of claims is required by law, Guarantor shall file all claims which Guarantor may have against Borrower relating to any indebtedness of Borrower to Guarantor and shall assign to Lender all rights of Guarantor thereunder. If Guarantor does not file any such claim, Lender, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Lender's discretion, to assign the claim to a nominee and to cause proof of claim to be filed in the name of Lender's nominee. The foregoing power of attorney is with full power of substitution and coupled with an interest and cannot be revoked. Lender or its nominee shall have the right, in its reasonable discretion, to accept or reject any plan proposed in such Insolvency 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 Lender the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor hereby assigns to Lender all of Guarantor's rights to any such payments or distributions; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Lender receives cash by reason of any such payment or distribution. If Lender receives anything hereunder other than cash, the same shall be held as collateral for amounts due or to become due under this Guaranty. In the event that acceleration of the time for payment of the Loan is stayed under a Debtor Relief Law, Guarantor's obligations hereunder shall nonetheless be payable immediately upon demand of Lender.

11. **Financial and Other Information of Guarantor; Financial Covenants of Guarantor.**

11.1 **Financial and Other Information of Guarantor.** Guarantor shall keep true and correct financial books and records, using generally accepted accounting principles consistently applied, or such other accounting principles as Lender in its reasonable judgment may find acceptable from time to time. Guarantor shall provide to Lender the following:

- (a) As soon as reasonably practicable, and in any event within one hundred twenty (120) days after Guarantor's fiscal year end, such Guarantor's annual financial statements, which shall

include Guarantor's balance sheet, income statement, statement of cash flow, and all supporting schedules. These financial statements shall be prepared and audited by a Certified Public Accountant acceptable to Agent.

(b) As soon as reasonably practicable, and in any event within sixty (60) days after each fiscal quarter end of Guarantor (excepting Guarantor's 4th fiscal quarter), Guarantor's quarterly balance sheets and income statements. These financial statements may be prepared by Guarantor if certified to be true and correct by Guarantor. Such certification by Guarantor can be contained in and thus be a part of the Compliance Certificate described below.

(c) Within forty-five (45) days after each fiscal quarter end of Guarantor, including Guarantor's fiscal year end, a duly executed Compliance Certificate in the form of Exhibit A (each, a "Compliance Certificate"), attached hereto, together with such backup documentation as may be reasonably requested by Agent, showing Guarantor's compliance with financial covenants and other matters.

(d) Promptly upon the request of Agent, such other information (excluding tax returns) as Agent may reasonably request concerning the affairs and properties of such Guarantor.

11.2 Financial Covenants of Guarantor. Guarantor shall comply with all of the following financial covenants.

(a) Minimum Liquidity. Guarantor shall maintain during the life of the Loan at the end of each fiscal quarter, Liquidity of not less than Two Million and No/100 Dollars (\$2,000,000.00).

(b) Tangible Net Worth. Guarantor shall maintain at the end of each fiscal quarter on a consolidated basis a Tangible Net Worth equal to at least One Hundred Million And No/100 Dollars (\$100,000,000.00)

(c) Total Liabilities to Tangible Net Worth Ratio. Guarantor shall maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through **December 31, 2008**, and not exceeding 5.0 to 1.0 thereafter.

12. Representations, Warranties, and Covenants of Guarantor. Guarantor hereby represents, warrants, and covenants that:

12.1 If not a natural person, Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and is lawfully doing business in all jurisdictions in which it is conducting its business.

12.2 This Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor.

12.3 Guarantor will derive a material and substantial benefit, directly or indirectly, from the making by Lender of the Loan to Borrower and from the making of this Guaranty by Guarantor.

12.4 All financial statements were or shall be prepared in accordance with generally accepted accounting principles, or such other accounting principles as may be acceptable to Lender at the time of their preparation, consistently applied, and in compliance with all applicable government regulations, and do or shall fully and accurately present the condition (financial or otherwise) of Guarantor, including all contingent liabilities, as of their dates, and the results of Guarantor's operations for the periods therein

specified, and, since the date of the most recent financial statements of Guarantor furnished to Lender. No material adverse change has occurred in the financial condition of Guarantor since the date of the most recent financial statements delivered to Lender, nor, except as previously disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent.

12.5 There is no litigation or proceeding pending against Guarantor except for those previously disclosed by Guarantor to Lender in writing, and to the best of Guarantor's knowledge and belief, there has been no threat of any such litigation or proceeding, except for those previously disclosed by Guarantor to Lender in writing, in each case that could adversely affect Guarantor's ability to perform its obligations under the Loan Document or Guarantor's operations or financial condition.

12.6 Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default, or at risk of acceleration of indebtedness, under any agreement or restriction by which Guarantor is bound or affected. No provision or obligation of Guarantor contained in this Guaranty violates any applicable law, regulation or ordinance, or any order or ruling of any court or governmental agency applicable to Guarantor. No consent, approval or authorization of or notice to any person or entity is required in connection with Guarantor's execution of and obligations under this Guaranty.

12.7 After giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature.

12.8 Guarantor acknowledges that Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition.

12.9 Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Loan Obligations in full without assistance or support from Borrower or any other entity or person.

12.10 Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Deed of Trust, and the other Loan Documents.

12.11 Except for Allowed Transfers pursuant to the terms of the Loan Agreement, Guarantor will indemnify, defend, and hold Lender harmless for, from, and against any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect.

12.12 Guarantor will not enter into any consolidation, merger, or other combination unless Guarantor is the surviving business entity. Further, Guarantor shall not change its legal structure unless Guarantor obtains Lender's prior written consent and Guarantor's obligations hereunder are assumed by the new business entity.

Guarantor's representations, warranties, and covenants are a material inducement to Lender to enter into the Loan, and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Loan Obligations.

13. **Events of Default.** Lender may declare Guarantor to be in default under this Guaranty upon the occurrence of any of the following events (each an "Event of Default"):

13.1 Guarantor fails to perform any of its obligations under this Guaranty; or

13.2 Guarantor attempts to revoke this Guaranty or this Guaranty becomes ineffective for any reason; or

13.3 Any representation or warranty made or given by Guarantor to Lender proves to be false or misleading in any material respect or ceases to be true; or

13.4 Guarantor becomes insolvent or the subject of any Insolvency Proceeding; provided, however, that an involuntary Insolvency Proceeding shall not be considered an Event of Default hereunder if it is either (a) consented to in writing by Lender, or (b) has been dismissed within ninety (90) days of the filing thereof; or

13.5 Guarantor dissolves or liquidates; or

13.6 A Material Adverse Effect occurs with respect to Guarantor.

14. **Additional and Independent Obligations.** Guarantor's obligations under this Guaranty are in addition to its obligations under any other existing or future guarantees, each of which shall remain in full force and effect until it is expressly modified or released in a writing signed by Lender. Guarantor's obligations under this Guaranty are independent of those of Borrower on the Loan or any other guarantor. Lender may bring a separate action, or commence a separate proceeding against Guarantor without first proceeding against Borrower, any other person (including any other guarantor), or any security that Lender may hold, and without pursuing any other remedy. Lender's rights under this Guaranty shall not be exhausted by any action by Lender until all of the Loan Obligations have been paid and performed in full and this Guaranty has been released pursuant to the terms of this Guaranty.

15. **No Waiver; Consents; Cumulative Remedies.** Each waiver by Lender shall be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from Lender's delay in exercising or failure to exercise any right or remedy against Borrower, Guarantor or any security. Consent by Lender to any act or omission by Borrower or Guarantor shall not be construed as a consent to any other or subsequent act or omission, or as a waiver of the requirement for Lender's consent to be obtained in any future or other instance. All remedies of Lender against Borrower and Guarantor are cumulative.

16. **Survival; Release.** This Guaranty shall be deemed to be continuing in nature and shall remain in full force and effect and shall survive the exercise of any remedy by Lender under the Deed of Trust or any of the other Loan Documents, including, without limitation, any foreclosure or deed in lieu thereof. Guarantor shall be released from its obligations under this Guaranty only upon the first to occur of the following: (a) by a writing signed by Lender releasing Guarantor; or (b) when the Loan Obligations and all obligations of Guarantor under this Guaranty have been paid and performed in full. Notwithstanding the foregoing, this Guaranty shall continue in effect with respect to any of the Loan Obligations that survive the full and final payment of the indebtedness evidenced by the Note and with respect to any obligations of Guarantor hereunder which specifically state that they survive. "Loan Obligations" include those obligations of Borrower, if any, which survive repayment of the Loan. Lender shall be entitled to continue to hold this Guaranty in its possession for as long as any Loan Obligations remain outstanding, but return of this Guaranty to Guarantor when any Loan Obligations remain outstanding is not intended to be, nor shall it be, a waiver of any rights that may remain available to Lender under this Guaranty.

17. **Heirs, Successors, and Assigns; Participations.** The terms of this Guaranty shall bind and benefit the heirs, legal representatives, successors, and assigns of Lender and Guarantor and inures to the benefit of Lender and its successors, assigns, and indorsees; provided, however, that Guarantor may not assign this Guaranty, or assign or delegate any of its rights or obligations under this Guaranty, without the prior written consent of Lender in each instance. Lender, in its sole and absolute discretion, may sell or assign the Loan or participations or other interests in the Loan and this Guaranty, in whole or in part, all without notice to or the consent of Guarantor and without affecting Guarantor's obligations under this Guaranty. Also without notice to or the consent of Guarantor, Lender may disclose any and all information in its possession concerning Guarantor, this Guaranty and any security for this Guaranty to any actual or prospective purchaser of any securities issued or to be issued by Lender, and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan and this Guaranty.
18. **Notices.** All notices given under this Guaranty shall be in writing and be given by personal delivery, overnight receipted courier (such as UPS, Airborne, or Federal Express), or by registered or certified United States mail, postage prepaid, sent to the party at its address appearing below its signature. Notices shall be effective upon the first to occur of (a) receipt, (b) when proper delivery is refused, or (c) the expiration of forty-eight (48) hours after deposit in registered or certified United States mail as described above. Addresses for notice may be changed by any party by notice to any other party in accordance with this Section. If Guarantor consists of more than one party, service of any notice on any one Guarantor signing this Guaranty shall be effective service on each Guarantor for all purposes.
19. **Rules of Construction.** In this Guaranty, the word "Borrower" includes both the named Borrower and any other person who at any time assumes or otherwise becomes primarily liable for all or any part of the obligations of the named Borrower on the Loan. The word "person" includes any individual, company, trust or other legal entity of any kind. If this Guaranty is executed by more than one person, the word "Guarantor" includes all such persons. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." When the context and construction so require, all words used in the singular shall be deemed to have been used in the plural and vice versa. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Guaranty. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.
20. **Governing Law.** This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Arizona, without regard to the choice of law rules of that state, except to the extent that any of such laws may now or hereafter be preempted by Federal law. Guarantor and all persons and entities in any manner obligated to Lender under this Guaranty (a) consent to the jurisdiction of any Federal or State Court within the State of Arizona, (b) submit to venue in such state, and (c) consent to service of process by any means authorized by Federal law or the law of such state. Without limiting the generality of the foregoing, Guarantor hereby waives and agrees not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) any Guarantor is not subject to the jurisdiction of the courts of the State of Arizona or the United States District Court for such state; (ii) that such suit, action, or proceeding is brought in an inconvenient forum; or (iii) that the venue of such suit, action, or proceeding is improper.
21. **Costs and Expenses.** Without limiting the generality of the obligation of Guarantor to pay the fees and expenses of Lender as provided in this Guaranty, if any lawsuit or arbitration is commenced which arises out of, or which relates to this Guaranty, the Loan Documents or the Loan, the prevailing party shall be entitled to recover from each other party such sums as the court or arbitrator may adjudge to be reasonable attorneys' fees (including allocated costs for services of in-house counsel, to the extent not prohibited by applicable law) in the action or proceeding, in addition to costs and expenses otherwise allowed by law. In all other situations, including any Insolvency Proceeding, Guarantor agrees to pay all

of Lender's costs and expenses, including attorneys' fees (including allocated costs for services of Lender's in-house counsel, to the extent not prohibited by applicable law) which may be incurred in any effort to collect or enforce the Loan or any part of it, or the Loan Obligations, or any term of this Guaranty. From the time(s) incurred until paid in full to Lender, all sums shall bear interest at the Default Rate.

22. **Consideration.** Guarantor acknowledges that it expects to benefit from Lender's extension of the Loan to Borrower because of its relationship to Borrower, and that it is executing this Guaranty in consideration of that anticipated benefit.

23. **Exchange of Information.** Guarantor agrees that Lender may exchange or disclose financial and other information about Guarantor with or to any of Lender's affiliates or other related entities.

24. **Credit Verification.** Each legal entity and individual obligated on this Guaranty, whether as a Guarantor, a general partner of a Guarantor, or in any other capacity, hereby authorizes Lender to check any credit references, verify his/her employment, and obtain credit reports from credit reporting agencies of Lender's choice in connection with any monitoring, collection, or future transaction concerning the Loan, including any modification, extension, or renewal of the Loan. Also in connection with any such monitoring, collection, or future transaction, Lender is hereby authorized to check credit references, verify employment, and obtain a third party credit report for the spouse of any married person obligated on this Guaranty, if such person lives in a community property state.

25. **Enforceability.** Guarantor acknowledges that Guarantor has had adequate opportunity to carefully read this Guaranty and to seek and receive legal advice from skilled legal counsel of Guarantor's choice in the area of financial transactions of the type contemplated herein prior to signing it. Guarantor hereby acknowledges that: (a) the obligations undertaken by Guarantor in this Guaranty are complex in nature, (b) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter, and (c) as part of Lender's consideration for entering into this transaction, Lender has specifically bargained for the waiver and relinquishment by Guarantor of all such defenses. Given all of the above, Guarantor does hereby represent and confirm to Lender that Guarantor is fully informed regarding, and that Guarantor does thoroughly understand: (i) the nature of such possible defenses, (ii) the circumstances under which such defenses may arise, (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 Lender, and that Lender is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

26. **Miscellaneous.** This Guaranty may be executed in counterparts, and all counterparts shall constitute but one and the same document. The illegality or unenforceability of one or more provisions of this Guaranty shall not affect any other provision. Time is of the essence in the performance of this Guaranty by Guarantor. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several.

27. **Integration; Modifications.** This Guaranty (a) integrates all the terms and conditions mentioned in or incidental to this Guaranty, (b) supersedes all oral negotiations and prior writings with respect to its subject matter, and (c) is intended by Guarantor and Lender as the final expression of the agreement with respect to the terms and conditions set forth in this Guaranty and as the complete and exclusive statement of the terms agreed to by Guarantor and Lender. No representation, understanding, promise or condition shall be enforceable against any party hereto unless it is contained in this Guaranty. This Guaranty may not be modified except in a writing signed by both Lender and Guarantor. No course of

prior dealing, usage of trade, parol or extrinsic evidence of any nature shall be used to supplement, modify or vary any of the terms hereof.

28. Joint and Several Liability. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several. If more than one person or party has executed this Guaranty, each such person or party shall be jointly and severally liable.

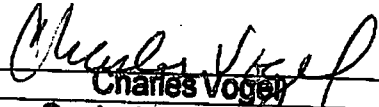
29. WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OR OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION BASED UPON OR ARISING UNDER THIS GUARANTY OR ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DISCUSSIONS, DEALINGS, OR ACTIONS OF THE PARTIES TO THIS GUARANTY OR EITHER OF THEM (WHETHER ORAL OR WRITTEN) WITH RESPECT THERETO, OR TO THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREINAFTER ARISING, AT LAW OR IN EQUITY, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY HEREBY CONSENTS AND AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY A TRIAL COURT WITHOUT A JURY, AND THAT EITHER PARTY TO THIS GUARANTY MAY FILE AN ORIGINAL COUNTERPART OR A COPY HEREOF WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY. EACH PARTY ACKNOWLEDGES AND AGREES THAT IT HAS RECEIVED FULL AND SUFFICIENT CONSIDERATION FOR THIS PROVISION (AND EACH OTHER PROVISION OF THIS GUARANTY AND EACH OTHER DOCUMENT TO WHICH IT IS A PARTY) AND THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER IN MAKING THE LOAN. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

*(Remainder of page intentionally left blank.
See the following page for signatory.)*

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

"GUARANTOR"

OPUS WEST CORPORATION,
a Minnesota corporation

By: 
Name: Charles Vogel
Title: Senior Vice President

Address for notices to Guarantor:

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016-9267
Attention: Senior Vice President,
Real Estate Sales and Finance

Address for notices to Lender:

U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, AZ 85003
Attention: Commercial Real Estate

EXHIBIT A

COMPLIANCE CERTIFICATE

The undersigned, **OPUS WEST CORPORATION**, a Minnesota corporation (the "Guarantor") hereby certifies to **U.S. BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, individually and as a lender and Agent, and each of the lending institutions listed on the Schedule of Lenders, as such may be modified from time to time (Agent, as a lender, and each such lending institution, and their respective successors and assigns, referred to individually or collectively, as the context shall infer, the "Lender") as follows:

1. This certificate (the "Compliance Certificate") is being provided pursuant to **Section 3.11** of that certain Construction Loan Agreement (the "Loan Agreement") dated as of February 29, 2008, by and between Lender and **TEMPE GATEWAY, L.L.C.**, a Delaware limited liability company (the "Borrower"), and pursuant to **Section 11.1** of that certain Payment and Performance Guaranty (the "Guaranty") dated as of February 8, 2008, by Guarantor in favor of Lender. One or more loans or other credit facilities (each, a "Loan," and collectively the "Loans," as the context may require) have been made by Lender to Borrower pursuant to the Loan Agreement and the other Loan Documents, and such Loan(s) have been guaranteed by Guarantor pursuant to the Guaranty. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Guaranty, or if not defined in the Guaranty shall have the meanings set forth in the Loan Agreement.
2. As of the effective date set forth below, the undersigned has no knowledge of any event which constitutes, or which, with the giving of notice or the passage of time, or both, would constitute a Default or an Event of Default under any of the Loan Documents.
3. As of the effective date set forth below, (a) no Material Adverse Effect has occurred in the financial condition of Guarantor, and (b) no Material Adverse Effect has occurred that materially affects any collateral securing the Loan or Guarantor's ability to repay the Loan pursuant to the terms of the Loan Documents.
4. As of the effective date set forth below, Guarantor is in compliance with the financial covenants set forth in the Guaranty, including the Minimum Liquidity requirement, the Tangible Net Worth requirement, and the Total Liabilities to Tangible Net Worth Ratio requirement set forth in **Section 11.2** of the Guaranty. The following financial covenant compliance information set forth on **Schedule 1** attached hereto, which shows Guarantor's calculation of such financial covenants, is true, accurate, and complete on and as of the effective date of this Compliance Certificate set forth below, and such information is consistent with the financial statements and other financial information delivered to Lender in accordance with the terms of the Loan Agreement for the applicable reporting periods.
5. As of the effective date set forth below, Guarantor has no claim against Lender, or defenses or offsets to payment of any Loan or any other amounts due under the Loan Documents.
6. As of the effective date set forth below, the representations and warranties contained in the Loan Agreement and the other Loan Documents are true and correct in all material respects as of the date of this Compliance Certificate to the same extent as though made on and as of such date, except to the extent such representations and warranties specifically relate to an earlier date.

IN WITNESS WHEREOF, this Certificate has been executed to be effective as of _____.

"GUARANTOR"

OPUS WEST CORPORATION,
a Minnesota corporation

Address for notices to Guarantor:

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President,
Real Estate Sales and Finance

By: _____
Name: _____
Title: _____

Exhibit A – Page 2

GUARANTOR: OPUS WEST CORPORATION
TEMPE_PAYMENT & PERFORMANCE GTY_AZ
#111207V7F (Rev. 02/08/08)

BORROWER: TEMPE GATEWAY, L.L.C.
PROJECT: MILL AVENUE AND 3RD STREET, TEMPE, AZ

SCHEDULE 1

(Please attach calculation here.)

Schedule 1 – Page 1

GUARANTOR: OPUS WEST CORPORATION
TEMPE_PAYMENT & PERFORMANCE GTY_AZ
#111207V7 (Rev. 02/08/08)

BORROWER: TEMPE GATEWAY, L.L.C.
PROJECT: MILL AVENUE AND 3RD STREET, TEMPE, AZ

May 6, 2009

VIA OVERNIGHT RECEIPTED COURIER (UPS)

Tempe Gateway, L.L.C.
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Chuck Vogel, Senior Vice President, Real Estate Sales and
Finance
Vice President, Real Estate Finance and Sales

Re: Construction Loan Agreement – Tempe, Arizona

Ladies and Gentlemen:

This notice is given pursuant to the Construction Loan Agreement dated February 29, 2009 (the "Loan Agreement," which term shall include any amendment, modification, supplement, extension, renewal, replacement, or restatement thereof), among Tempe Gateway, L.L.C. ("Borrower"), U.S. Bank National Association ("Agent"), and certain other Lenders party thereto (collectively, "Lenders") with respect to the office and retail project located in Tempe, Arizona. Unless the context otherwise indicates, capitalized terms used herein and not defined herein shall have the meanings provided such terms in the Loan Agreement.

This letter is written notice to Borrower of the following defaults (collectively, the "Identified Defaults") under the Loan Agreement and other Loan Documents:

1. Borrower has failed to deliver to Agent, within 120 days after Borrower's fiscal year end, Borrower's annual financial statements, including Borrower's balance sheet, income statement, statement of cash flow, and all supporting schedules, as required by Section 3.11(a)(i) of the Loan Agreement. Because Borrower's ability to pay and perform under the Loan has been materially adversely impacted, this default constitutes an immediate Event of Default under Section 7.1(z) of the Loan Agreement.
2. Opus West Corporation, a Minnesota corporation ("Guarantor") has failed to deliver to Agent, within 120 days after Guarantor's fiscal year end, Guarantor's annual financial statements, including Guarantor's balance sheet, income statement, statement of cash flow, and all supporting schedules, prepared and audited by a Certified Public Accountant acceptable to Agent, as required by Section 11.1(a) of the Guaranty and Section 3.11(b)(i) of the Loan Agreement. This default is an immediate Event of Default under Section 13.1 of the Guaranty and Section 7.1(u) of the Loan Agreement.

Exhibit D

May 6, 2009
Page 2

3. Guarantor has failed to deliver to Agent, within 45 days after Guarantor's fiscal year end, Guarantor's executed Compliance Certificate, together with backup documentation, showing Guarantor's compliance with financial covenants and other matters, as required by Section 11.1(c) of the Guaranty and Section 3.11(b)(iii) of the Loan Agreement. This default is an immediate Event of Default under Section 13.1 of the Guaranty and Section 7.1(u) of the Loan Agreement.
4. Material adverse changes and effects have occurred on the operations, businesses, properties, liabilities, conditions and prospects of Borrower, Guarantor, and Guarantor and its Subsidiaries taken as a whole, which constitute Material Adverse Effects pursuant to the Guaranty and the Loan Agreement. This default is an immediate Event of Default under Section 13.6 of the Guaranty and Sections 7.1(l) and (u) of the Loan Agreement.
5. Material impairments have occurred in the ability of Borrower and Guarantor to perform their obligations under the Loan Documents to which they are parties, which constitute Material Adverse Effects pursuant to the Guaranty and the Loan Agreement. This default is an immediate Event of Default under Section 13.6 of the Guaranty and Sections 7.1(l) and (u) of the Loan Agreement.

All of the Identified Defaults also constitute Events of Default under Section 4.3 of each of the Notes. In addition, Borrower and Guarantor have informed Agent that, for the fiscal quarter ended December 31, 2008, Guarantor will fail to comply with its covenant to maintain a consolidated Total Liabilities to Tangible Net Worth ratio not exceeding 6.0 to 1.0 at the end of each fiscal quarter, as provided in Section 11.2(c) of the Guaranty and Section 3.30 of the Loan Agreement. Such failure would constitute an additional immediate Event of Default under Section 13.1 of the Guaranty and Sections 7.1(u) and (v) of the Loan Agreement.

By reason of the Identified Defaults, pursuant to Section 2.8(i) of the Loan Agreement, the unpaid balance of the Loan will bear interest at the Default Rate from and after May 6, 2009. In addition, pursuant to Section 9.7 of the Loan Agreement, Borrower is obligated to pay Agent's and each Lenders' costs and expenses (including reasonable attorneys' fees) incurred in enforcing or protecting Agent's and Lenders' rights and interests, including with respect to the Identified Defaults. From the time incurred until paid, all such sums will bear interest at the Default Rate.

Note that, by reason of the Identified Defaults, Agent and Lenders are entitled, in their sole discretion, to exercise certain rights and remedies under the Loan Documents. Notwithstanding the Identified Defaults or any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as the Identified Defaults), Agent and Lenders reserve the right to elect to make or refrain from making disbursements of Loan funds, including with respect to presently

May 6, 2009
Page 3

pending or future Draw Requests. Agent and Lenders expressly reserve all of their rights and remedies under the Loan Agreement and the other Loan Documents with respect to the Identified Defaults and with respect to any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as the Identified Defaults), including, without limitation, Agent's right to pursue foreclosure and execution under the Deed of Trust. No disbursements of Loan funds or delay by Agent or Lenders in enforcing rights and remedies with respect to any of the Identified Defaults or with respect to any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as any of the Identified Defaults) constitute, and no future disbursements of Loan funds or enforcement delay will constitute, and no such disbursements of Loan funds or enforcement delay may be construed as, (i) a waiver of any of Agent's or Lenders' rights and remedies or of any such Defaults or Events of Default, (ii) a course of conduct on the part of Agent or Lenders on which Borrower may rely at any time, (iii) a commitment to lend or modify the Loan or Loan Documents, or an offer to extend or modify the existing Loan terms, or (iv) an amendment to any term or condition of the Loan Documents, and none of the foregoing will impair Agent's or Lenders' ability to exercise their rights and remedies now or in the future. Further, any single or partial exercise by Agent or Lenders of any of their rights and remedies does not preclude any other or further exercise by Agent or Lenders of any available rights and remedies.

Should you have any questions regarding the amount due or the information required from you, please contact Ziad W. Amra, telephone (612) 303-4517.

Very truly yours,

U.S. BANK NATIONAL ASSOCIATION, as
Agent

By: 

Name: ZIAD W. AMRA

Its: VICE PRESIDENT

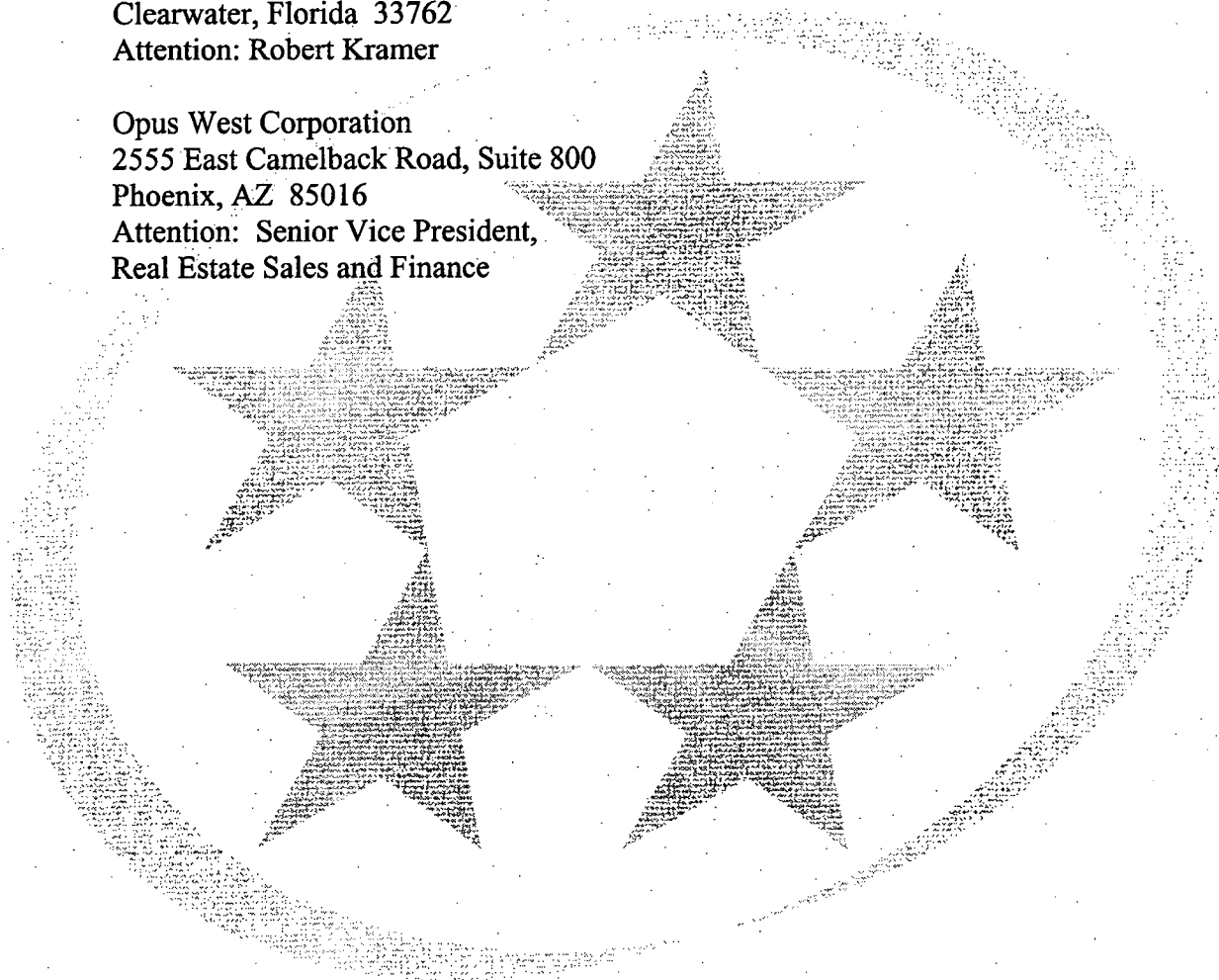
cc: Trustee: U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003
Attention: Commercial Real Estate, as trustee

May 6, 2009
Page 4

Guaranty Bank and Trust Company
1331 Seventeenth Street
Denver, CO 80202
Attention: Matthew W. Carrothers, Senior Vice President

Regions Bank
13535 Feather Sound Drive
Building 1; Suite 610
Clearwater, Florida 33762
Attention: Robert Kramer

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President,
Real Estate Sales and Finance



July 2, 2009

VIA OVERNIGHT RECEIPTED COURIER (UPS)

Tempe Gateway, L.L.C.
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President, Real Estate Sales and Finance
Vice President, Real Estate Finance and Sales

Re: Construction Loan Agreement – Tempe, Arizona

Ladies and Gentlemen:

This notice is given pursuant to the Construction Loan Agreement dated February 29, 2009 (the "Loan Agreement," which term shall include any amendment, modification, supplement, extension, renewal, replacement, or restatement thereof), among Tempe Gateway, L.L.C. ("Borrower"), U.S. Bank National Association ("Agent"), and certain other Lenders party thereto (collectively, "Lenders") with respect to the office and retail project located in Tempe, Arizona. Unless the context otherwise indicates, capitalized terms used herein and not defined herein shall have the meanings provided such terms in the Loan Agreement.

By letters from Agent to Borrower dated as of May 6, 2009 and June 19, 2009 (the "Prior Default Letters"), Agent has notified Borrower of certain Identified Defaults (as defined therein), existing under the Loan Agreement and the other Loan Documents and has demanded payment in full of all of the outstanding principal balance, including all accrued and unpaid interest, fees and other amounts owing to Agent and Lenders pursuant to the Loan Documents. This letter is written notice to Borrower of the following additional defaults (collectively, the "Additional Identified Defaults") under the Loan Agreement and other Loan Documents:

1. Borrower has failed to complete construction of the Improvements by the Completion Date, as required by Section 3.1(b) of the Loan Agreement. This default is an immediate Event of Default under Section 7.1(h) of the Loan Agreement.
2. Opus West Corporation, a Minnesota corporation ("Guarantor") has not fulfilled its guaranty obligations to have the Improvements constructed in accordance with Section 3.1(b) of the Loan Agreement, and to have the Improvements completed, lien free, and ready for occupancy, including delivery of any permits, certificates or governmental approvals required by law or the Loan Agreement, on or before the Completion Date, as required by Section 1.2(a) and (b) of the Guaranty. This default is an immediate Event of Default under Section 13.1 of the Guaranty and Section 7.1(u) of the Loan Agreement.

Exhibit E

July 6, 2009
Page 2

All of the Additional Identified Defaults also constitute Events of Default under Section 4.3 of each of the Notes.

Pursuant to Section 9.7 of the Loan Agreement, Borrower is obligated to pay Agent's and each Lenders' costs and expenses (including reasonable attorneys' fees) incurred in enforcing or protecting Agent's and Lenders' rights and interests, including with respect to the Additional Identified Defaults. Interest at the Default Rate continues to accrue on all amounts owing to Agent and Lenders pursuant to the Loan Documents.

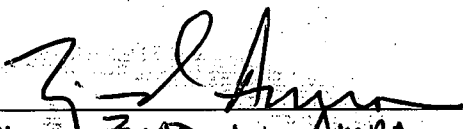
Note that, by reason of the Additional Identified Defaults, Agent and Lenders are entitled, in their sole discretion, to exercise certain rights and remedies under the Loan Documents. Notwithstanding the Additional Identified Defaults, the Identified Defaults (as defined in the Prior Default Letters), or any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as the Additional Identified Defaults or the Identified Defaults), Agent and Lenders reserve the right to elect to make or refrain from making disbursements of Loan funds, including with respect to presently pending or future Draw Requests. Agent and Lenders expressly reserve all of their rights and remedies under the Loan Agreement and the other Loan Documents with respect to the Additional Identified Defaults, the Identified Defaults and any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as the Additional Identified Defaults or the Identified Defaults), including, without limitation, Agent's right to pursue foreclosure and execution under the Deed of Trust. No disbursements of Loan funds or delay by Agent or Lenders in enforcing rights and remedies with respect to any of the Additional Identified Defaults, the Identified Defaults or any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as any of the Additional Identified Defaults or the Identified Defaults) constitute, and no future disbursements of Loan funds or enforcement delay will constitute, and no such disbursements of Loan funds or enforcement delay may be construed as, (i) a waiver of any of Agent's or Lenders' rights and remedies or of any such Defaults or Events of Default, (ii) a course of conduct on the part of Agent or Lenders on which Borrower may rely at any time, (iii) a commitment to lend or modify the Loan or Loan Documents, or an offer to extend or modify the existing Loan terms, or (iv) an amendment to any term or condition of the Loan Documents, and none of the foregoing will impair Agent's or Lenders' ability to exercise their rights and remedies now or in the future. Further, any single or partial exercise by Agent or Lenders of any of their rights and remedies does not preclude any other or further exercise by Agent or Lenders of any available rights and remedies.

Should you have any questions regarding the amount due or the information required from you, please contact Ziad W. Amra, telephone (612) 303-4517.

July 6, 2009
Page 3

Very truly yours,

U.S. BANK NATIONAL ASSOCIATION, as
Agent

By: 
Name: ZIAD W. AMRA
Its: VICE PRESIDENT

cc: Trustee: U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003
Attention: Commercial Real Estate, as trustee

Guaranty Bank and Trust Company
1331 Seventeenth Street
Denver, CO 80202
Attention: Matthew W. Carrothers, Senior Vice President

Regions Bank
13535 Feather Sound Drive
Building 1, Suite 610
Clearwater, Florida 33762
Attention: Robert Kramer

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President,
Real Estate Sales and Finance

June 19, 2009

VIA OVERNIGHT RECEIPTED COURIER (UPS)

Tempe Gateway, L.L.C.
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President, Real Estate Sales and Finance
Vice President, Real Estate Finance and Sales

Re: Construction Loan Agreement – Tempe, Arizona

Ladies and Gentlemen:

This notice is given pursuant to the Construction Loan Agreement dated February 29, 2009 (the "Loan Agreement," which term shall include any amendment, modification, supplement, extension, renewal, replacement, or restatement thereof), among Tempe Gateway, L.L.C. ("Borrower"), U.S. Bank National Association ("Agent"), and certain other Lenders party thereto (collectively, "Lenders") with respect to the office and retail project located in Tempe, Arizona. Unless the context otherwise indicates, capitalized terms used herein and not defined herein shall have the meanings provided such terms in the Loan Agreement.

By letter from Agent to Borrower dated as of May 6, 2009 (the "Default Letter"), Agent has notified Borrower of certain Identified Defaults, defined and described in more detail in the Default Letter, existing under the Loan Agreement and the other Loan Documents. By reason of the Identified Defaults, Agent hereby accelerates and declares, on behalf of the Lenders, all of the outstanding principal balance, all accrued and unpaid interest, fees, and other amounts owing to Agent and Lenders pursuant to the Loan Documents immediately due and payable in full.

Demand is hereby made for the payment in full of all of the outstanding principal balance, all accrued and unpaid interest, fees, and other amounts owing to Agent and Lenders pursuant to the Loan Documents before the close of business on June 26, 2009. Pursuant to Section 9.7 of the Loan Agreement, Borrower is obligated to pay Agent's and each Lenders' costs and expenses (including reasonable attorneys' fees) incurred in enforcing or protecting Agent's and Lenders' rights and interests, including with respect to the Identified Defaults. Interest at the Default Rate continues to accrue on all amounts owing to Agent and Lenders pursuant to the Loan Documents.

Note that, by reason of the Identified Defaults, Agent and Lenders are entitled, in their sole discretion, to exercise certain rights and remedies under the Loan Documents.

Exhibit F

June 19, 2009
Page 2

Notwithstanding the Identified Defaults or any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as the Identified Defaults), Agent and Lenders reserve the right to elect to make or refrain from making disbursements of Loan funds, including with respect to presently pending or future Draw Requests. Agent and Lenders expressly reserve all of their rights and remedies under the Loan Agreement and the other Loan Documents with respect to the Identified Defaults and with respect to any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as the Identified Defaults), including, without limitation, Agent's right to pursue foreclosure and execution under the Deed of Trust. No disbursements of Loan funds or delay by Agent or Lenders in enforcing rights and remedies with respect to any of the Identified Defaults or with respect to any other existing or future Defaults or Events of Default (including, without limitation, any Defaults or Events of Default that are related to the same subject matter as any of the Identified Defaults) constitute, and no future disbursements of Loan funds or enforcement delay will constitute, and no such disbursements of Loan funds or enforcement delay may be construed as, (i) a waiver of any of Agent's or Lenders' rights and remedies or of any such Defaults or Events of Default, (ii) a course of conduct on the part of Agent or Lenders on which Borrower may rely at any time, (iii) a commitment to lend or modify the Loan or Loan Documents, or an offer to extend or modify the existing Loan terms, or (iv) an amendment to any term or condition of the Loan Documents, and none of the foregoing will impair Agent's or Lenders' ability to exercise their rights and remedies now or in the future. Further, any single or partial exercise by Agent or Lenders of any of their rights and remedies does not preclude any other or further exercise by Agent or Lenders of any available rights and remedies.

Should you have any questions regarding the amount due or the information required from you, please contact Ziad W. Amra, telephone (612) 303-4517.

Very truly yours,

U.S. BANK NATIONAL ASSOCIATION, as
Agent

By: 
Name: Ziad W. Amra
Its: Vice President

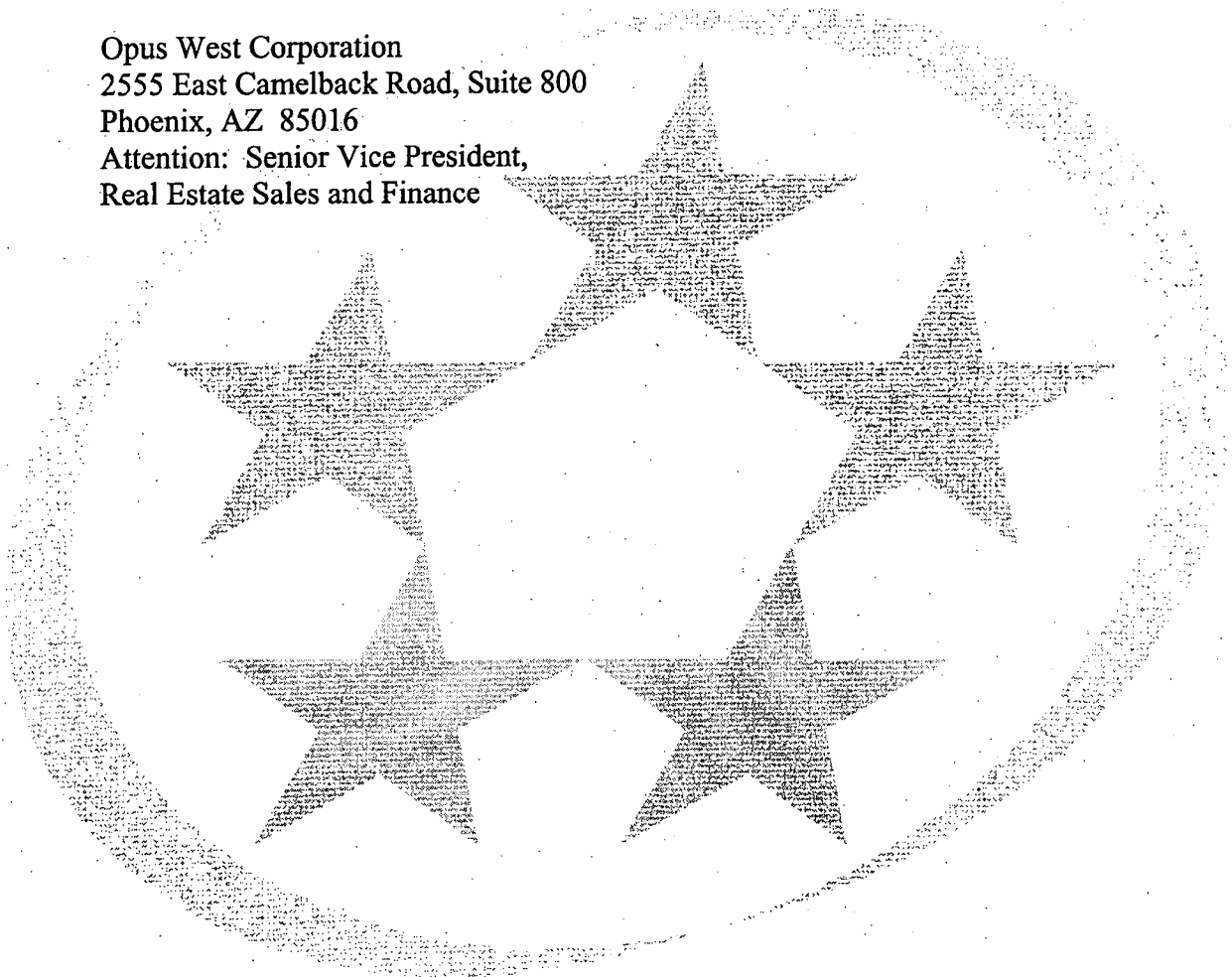
cc: Trustee: U.S. Bank National Association
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003
Attention: Commercial Real Estate, as trustee

June 19, 2009
Page 3

Guaranty Bank and Trust Company
1331 Seventeenth Street
Denver, CO 80202
Attention: Matthew W. Carrothers, Senior Vice President

Regions Bank
13535 Feather Sound Drive
Building 1; Suite 610
Clearwater, Florida 33762
Attention: Robert Kramer

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, AZ 85016
Attention: Senior Vice President,
Real Estate Sales and Finance



LOAN REQ: 0490 CURRENT FINANCIAL INFO 11/04/09 PAGE 0001 OF 0001
BANK: 66 AP: 1 OBGOR: 0000153438 OBGAT: 0000000034 **TEMPE / PRIME**
DATE: 070609 CHG CD: INCLUDE ESCROW AMOUNT(Y/N): Y PAGE:
ASSN UNIT : 71049 ORG EFF DATE: 02/29/08 OBLIG TYPE: 235
OFFICER : ZWA00 MAT DATE : 03/01/10 GUARANTEE : NO
RISK RATE : 85 LST REN DTE : COLL TYPE : 210
EXP STRAT : LST FIN ST : AUTO DEBIT:
STAT CODE : 7 P R TKDOWN OBGOR: 0000153438 RATE : 8.25000000
CHGOFF STA: N/A TKDOWN OBGAT: 0000000026 REL PRIME: 00001 MULTIPLE
***** BALANCE INFO ***** ***** PAYOFF INFO *****
ORIG LN AMOUNT: 68,960,000.00 PRINCIPAL AMT : 47,603,977.30
AVAIL CREDIT : .00 INTEREST AMT : 474,937.86
NET BOOK BAL : .00 LATE FEES : .00
12 MTH AVG BAL: 21,880,885.20 OTHER FEES : .00
FEES COLL YTD : .00 ESCROW : .00
PER DIEM: 10,909.24480 ==> PAYOFF 07/06/09 : 48,078,915.16
***** PAYMENT INFO *****
TOTAL BILLED: 1,733,359.72 PAYMENT AMOUNT:
TOTAL PAST DUE: 1,733,359.72 PAYMENT TYPE:
INT FREQ MONTHLY PD TO: 05/01/09 PRIN FREQ PD TO: 02/29/08
DUE 12/01/09 : .00 DUE : .00
PSTDUE 06/01/09 : 1,733,359.72 PSTDUE :
NO PREPAYMENT INDEMNITY

Exhibit G

MICHAEL K. JEANES
Clerk of the Superior Court

By JULIETA GARCIA, Deputy
Date 07/17/2009 Time 02:33 PM
Description Qty Amount
CASE# CV2009-023215
CIVIL NEW COMPLAINT 001 301.00
TOTAL AMOUNT 301.00
Receipt# 00011111084

Steven D. Jerome (#018420)
Benjamin W. Reeves (#025708)
SNELL & WILMER L.L.P.
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-2202
Telephone: (602) 382-6000
Facsimile: (602) 382-6070
E-mail: docket@swlaw.com
Attorneys for U.S. Bank National Association

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

U.S. BANK NATIONAL
ASSOCIATION, a national banking
association,

Plaintiff,

v.

TEMPE GATEWAY, L.L.C., a
Delaware limited liability company;
CALIFORNIA WHOLESALE
MATERIAL SUPPLY, INC. dba
DESERT BUILDING
MATERIALS/PHOENIX BRANCH
fka CALIFORNIA WHOLESALE
MATERIAL SUPPLY, INC. dba
CALPLY, INC., a California
corporation; SOURCE ARIZONA dba
FLOORING CONSULTANTS, an
Arizona corporation; PROGRESSIVE
ROOFING, INC., an Arizona
corporation; PHOENIX PIPELINES,
INC., an Arizona corporation; SUN
VALLEY MASONRY CO., INC., an
Arizona corporation;

Defendants.

No. CV2009-023215

VERIFIED COMPLAINT FOR:
(1) BREACH OF LOAN DOCUMENTS;
(2) APPOINTMENT OF A RECEIVER

Plaintiff U.S. Bank National Association, a national banking association
("Plaintiff" or "Lender" or "USB"), individually and in its capacity as the administrative
agent for Regions Bank and Guaranty Bank and Trust Company (collectively with USB
the "Banks"), for its complaint against Defendant Tempe Gateway, L.L.C. ("Defendant")

Exhibit H

or "Borrower" or "Tempe"), alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. USB is a national banking association authorized to do and doing business in Maricopa County, Arizona. USB is the administrative agent under the Loan Documents, as that term is defined below.

2. Upon information and belief, Borrower is a Delaware limited liability company authorized to do and doing business in Maricopa County, Arizona.

3. Borrower caused acts to occur in Maricopa County, Arizona, which are the subject of this cause of action.

4. Upon information and belief, California Wholesale Material Supply, Inc. dba Desert Building Material/Phoenix Branch fka California Wholesale Material Supply, Inc. dba Calply, Inc., a California corporation; Source Arizona dba Flooring Consultants, an Arizona corporation; Progressive Roofing, Inc., an Arizona corporation; Phoenix Pipelines, Inc., an Arizona corporation; and Sun Valley Masonry Co., Inc., an Arizona corporation (collectively the "Notice Defendants") each claim some *in rem* interest in the real or personal property that is the subject matter of this action that may, or may not, be affected by the appointment of a receiver. USB seeks no affirmative monetary relief against the Notice Defendants and names them for notice purposes only.

5. The real and personal property, which are the subject matter of this action, are located within the jurisdictional boundaries of this Court; therefore, this Court is the proper forum for resolution of this action.

6. The acts and events giving rise to USB's claims against Borrower are based primarily upon conduct that occurred in Maricopa County, Arizona.

7. This Court has original jurisdiction over this matter pursuant to Arizona Revised Statute ("A.R.S.") § 12-123.

8. Venue is proper in this Court pursuant to A.R.S. § 12-401.

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2102
(602) 382-6000

THE LOAN TRANSACTION

9. On or about February 29, 2008, Lender extended credit to Borrower in the original maximum principal amount of \$68,960,000.00 (the "Loan").

10. The Loan is evidenced by, among other things, that certain "Promissory Note Secured by Deed of Trust (Construction Loan)" dated February 29, 2008 and executed by Borrower in favor of Regions Bank, an Alabama state chartered bank in the original maximum principal amount of \$25,000,000.00 (the "Regions Bank Note"). A true and correct copy of the Regions Bank Note is attached hereto as Exhibit 1 and incorporated herein by this reference.

11. The Loan is also evidenced by, among other things, that certain "Promissory Note Secured by Deed of Trust (Construction Loan)" dated February 29, 2008 and executed by Borrower in favor of Guaranty Bank and Trust Company in the original maximum principal amount of \$15,000,000.00 (the "Guaranty Bank Note"). A true and correct copy of the Guaranty Bank Note is attached hereto as Exhibit 2 and incorporated herein by this reference.

12. The Loan is also evidenced by, among other things, that certain "Promissory Note Secured by Deed of Trust (Construction Loan)" dated February 29, 2008 and executed by Borrower in favor of USB in the original maximum principal amount of \$28,960,000.00 (the "USB Note"). A true and correct copy of the USB Note is attached hereto as Exhibit 3 and incorporated herein by this reference (collectively the Regions Bank Note, Guaranty Bank Note, and USB Note are referred to as the "Notes").

13. The terms and conditions of the Loan are set forth in that certain "Construction Loan Agreement" (the "Loan Agreement") dated February 29, 2008 and executed by Borrower and Lender. A true and correct copy of the Loan Agreement is attached hereto as Exhibit 4 and incorporated herein by this reference.

///

THE SECURITY DOCUMENTS

14. The Loan is secured by, among other things, that certain "Construction Deed of Trust, with Assignment of Rents, Security Agreement, and Fixture Filing" (the "Deed of Trust") dated February 29, 2008 and executed by Borrower, as trustor, for the benefit of USB, as beneficiary. A true and correct copy of the Deed of Trust is attached hereto as Exhibit 5 and incorporated herein by this reference.

15. Pursuant to the Deed of Trust, Borrower granted Lender a security interest in, among other things, the Borrower's "Property," as that term is defined in § 1.1 of the Deed of Trust, which includes but is not limited to: (i) certain real property located in Maricopa County, Arizona as more fully described in Exhibit "A" to the Deed of Trust (the "Real Property"); (ii) the Improvements, as that term is defined in the Deed of Trust; (iii) the Fixtures, as that term is defined in the Deed of Trust; (iv) the Leases, as that term is defined in the Deed of Trust; (v) the Rents, as that term is defined in the Deed of Trust; (vi) the Books and Records, as that term is defined in the Deed of Trust; (vii) Borrower's accounts; (viii) Borrower's commercial tort claims; (ix) Borrower's right to payment of money which arise from or relate to construction on the Real Property; (x) Borrower's insurance policies related to the Real Property (collectively, with all other property securing the Loan, referred to as the "Collateral").

16. Lender perfected its security interest in the Real Property and Collateral by, among other things, recording the Deed of Trust in the Official Records of the Maricopa County Recorder's Office as Instrument No. 2008-0181771 on or about February 29, 2008.

17. The Loan is also secured by that certain "Assignment of Contracts, Plans and Specifications" ("Assignment of Contracts") dated February 29, 2008 and executed by Borrower in favor of USB, individually and as the administrative agent for the Banks.

///

Snell & Wilmer

L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 A true and correct copy of the Assignment of Contracts is attached hereto as Exhibit 6 and
2 incorporated herein by this reference.

3 18. Pursuant to the Assignment of Contracts, Borrower, among other things,
4 assigned to Lender all of its rights under the "Contracts," as that term is defined in the
5 Assignment of Contracts. The Assignment of Contracts provides that upon the occurrence
6 of an Event of Default, as that term is defined in the Loan Agreement ("Event of
7 Default"), Lender may elect to assume some or all of the obligations of Borrower under
8 the Contracts.

9 19. The Loan is also secured by that certain "Assignment of Development
10 Agreement" (the "Assignment of Development Agreement") dated February 29, 2009 and
11 executed by Borrower in favor of USB, individually and as the administrative agent for
12 the Banks. A true and correct copy of the Assignment and Development Agreement is
13 attached hereto as Exhibit 7 and incorporated herein by this reference.

14 20. Pursuant to the Assignment of Development Agreement, Borrower, among
15 other things, assigned to Lender all of its rights under that certain "Development
16 Agreement [America West Airlines Corporate Headquarters] [97-250]," as amended (the
17 "Development Agreement") by and between the City of Tempe, Arizona and America
18 West Holdings Corporation, dated as of February 18, 1998, and recorded on February 26,
19 1998 as Instrument No. 1998-0147245 in the Official Records of the Maricopa County
20 Recorder. The Assignment of Development Agreement provides that, upon the
21 occurrence of an Event of Default, as that term is defined in the Loan Agreement, Lender
22 may elect to assume some or all of the obligations of Borrower under the Development
23 Agreement. A true and correct copy of the Development Agreement, as amended, is
24 attached hereto as Exhibit 8 and incorporated herein by this reference.

25 21. The Loan is also secured by that certain "Assignment of Permits, Licenses
26 and Approvals" (the "Assignment of Permits") dated February 29, 2008 and executed by

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 900 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 Borrower in favor of USB individually and as the administrative agent for the Banks. A
2 true and correct copy of the Assignment of Permits is attached hereto as Exhibit 9 and
3 incorporated herein by this reference.

4 22. Pursuant to the Assignment of Permits, Borrower, among other things,
5 assigned to Lender all of its right, title, interest, privilege, benefit, and remedies in, to and
6 under all permits, licenses, and approvals (including without limitation all building
7 permits) heretofore or hereafter issued to Borrower from time to time with respect to the
8 Property, as that term is defined in the Deed of Trust, together with any and all present
9 and future amendments, modifications, supplements, and addenda to any such permits,
10 licenses, and approvals (the "Permits"). The Assignment of Permits provides, among
11 other things, that upon the occurrence of an Event of Default, Lender may elect to
12 exercise Borrower's rights under the Permits.

13 23. Lender perfected its security interest in the Collateral by, among other
14 things, filing that certain "UCC Financing Statement" (the "Arizona UCC") with the
15 Arizona Secretary of State as File No. 2008-15289744 on March 3, 2008. A true and
16 correct copy of the Arizona UCC is attached hereto as Exhibit 10 and incorporated herein
17 by this reference.

18 24. Lender perfected its security interest in the Collateral by, among other
19 things, filing that certain "UCC Financing Statement" (the "Delaware UCC") with the
20 Delaware Department of State as Initial Filing No. 2008-0864635 on March 4, 2008. A
21 true and correct copy of the Delaware UCC is attached hereto as Exhibit 11 and
22 incorporated herein by this reference.

23 25. The Notes, Loan Agreement, "Commitment Fee Letter" (as defined in the
24 Loan Agreement), "Indemnity Agreement" (as defined in the Loan Agreement), Deed of
25 Trust, Assignment of Contracts, Assignment of Development Agreement, Assignment of
26 Permits, Arizona UCC, Delaware UCC, and all other guarantees, instruments, and/or

documents evidencing, relating to, or securing the Loan are referred to collectively herein as the "Loan Documents").

DEFENDANT'S DEFAULTS

26. The following defaults caused an Event of Default to occur under the Loan Documents:

- a. Failing to timely deliver to USB all statements required under § 3.11(a)(i) and § 3.11(b)(i) of the Loan Agreement;
- b. Failing to timely deliver to USB an executed Compliance Certificate (as defined in the Loan Agreement) from Opus West Corporation, a Minnesota corporation ("Guarantor") required under § 3.11(b)(iii) of the Loan Agreement;
- c. Material adverse changes have occurred to Borrower's and Guarantor's businesses under § 7.1(l) and (u) of the Loan Agreement, respectively;
- d. Material impairments have occurred in the ability of Borrower and Guarantor to perform their obligations under the Loan Documents under § 7.1(l) and (u) of the Loan Agreement; and
- e. Failing to complete construction of the Improvements (as defined in the Loan Agreement) by the Completion Date (as defined in the Loan Agreement), required under § 3.1(b) of the Loan Agreement (collectively the "Defaults").

27. By letters dated May 6, 2009 and July 2, 2009, (the "Notice Letters"), Lender informed Borrower that the Defaults had occurred. True and correct copies of the Notice Letters are attached hereto respectively as Exhibits 12 and 13 and incorporated herein by this reference.

28. By letter dated June 19, 2009 (the "Demand and Acceleration Letter"),

Snell & Wilmer

L.L.P.
LAW OFFICES
One Arizona Center, 400 B. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

1 Lender, among other things, accelerated the Loan and demanded payment for the full
2 outstanding amounts due under the Loan Documents by June 26, 2009. A true and correct
3 copy of the Demand and Acceleration Letter is attached hereto as Exhibit 14 and
4 incorporated herein by this reference.

5 29. Despite demand, Borrower has failed to pay the amounts due and owing to
6 Lender.

7 30. As of July 6, 2009, the principal due and owing under the Loan Documents
8 was no less than \$44,093,884.88, plus accrued interest in the amount of no less than
9 \$474,937.86, plus accrued and accruing interest, attorneys' fees and costs and all other
10 sums due under the Loan Documents.

11 31. Pursuant to the terms of the Deed of Trust, in the event of a default, USB is
12 entitled to obtain the appointment of a receiver. Deed of Trust § 6.3(b).

13 COUNT I

14 **(Breach of Loan Documents)**

15 32. USB realleges and reincorporates herein by reference all preceding
16 allegations contained in this complaint as though fully set forth herein.

17 33. There was a contract between USB and Borrower as evidenced by, among
18 other things, the Loan Documents.

19 34. USB performed all of its obligations under the Loan Documents.

20 35. Despite demand, Borrower has refused to pay to USB all amounts due under
21 the Loan Documents to date.

22 36. Borrower materially breached the Loan Documents and defeated their
23 purpose by, among other things, failing to repay the Loan when due.

24 37. As a direct and proximate result of Borrower's material breach, USB has
25 suffered, and will continue to suffer, damages in an amount to be proven at trial plus
26 accrued and accruing interest.

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 381-6000

1 38. As this cause of action arises out of a contract, USB is entitled to recover
2 its costs and attorneys' fees pursuant to A.R.S. §§ 12-341 and 12-341.01(A).

3 39. In addition, the Loan Documents entitle USB to recover its reasonable
4 costs and attorneys' fees.

5 **WHEREFORE**, USB prays for judgment against Tempe Gateway, L.L.C. as
6 follows:

7 a. For all outstanding amounts due under the Loan Documents,
8 including but not limited to: the outstanding principal amount of the Loan; all
9 interest accrued thereon, pre-and post-judgment interest, late fees, default
10 interest and attorneys' fees and costs;

11 b. For attorneys' fees and costs pursuant to the terms of the Loan
12 Documents;

13 c. For attorneys' fees and costs pursuant to A.R.S. §§ 12-341 and
14 12-341.01;

15 d. For pre-judgment interest and fees at the default rate specified in the
16 Notes, from May 6, 2009 to entry of judgment;

17 e. For post-judgment interest and fees at the default rate specified by
18 the Notes from the date of the judgment until paid in full; and

19 f. For such other and further relief as this Court may deem just and
20 equitable.

21 **COUNT TWO**

22 **(Appointment of Receiver)**

23 40. USB realleges and incorporates herein by reference each and every
24 allegation of the Complaint as though fully set forth herein.

25 41. Borrower is in default under the Loan Documents for, among other things,
26 failing to pay all amounts when due and owing.

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-7202
(602) 387-6000

1 42. The Loan Documents grant USB a perfected security interest in, among
2 other things, the Real Property.

3 43. A receiver will provide proper security for the Real Property and collect the
4 Rents that serve as additional security for Borrower's obligations to USB, whereas
5 Borrower has little or no incentive, or ability, to expend the resources necessary to protect
6 USB's interests and/or turnover rents.

7 44. Upon information and belief, several subcontractors have, or will, file
8 mechanics' liens against the Real Property. A receiver is necessary to deal with each
9 subcontractor and mechanics' lien holder to ensure that USB's and the other Banks'
10 interests are adequately protected.

11 45. Unless granted the relief as prayed for herein, USB will suffer injury from
12 the diminution in the value of its Real Property and Collateral.

13 46. As a result of Borrower's default under the Loan Documents, USB has
14 retained counsel to enforce its rights under the Loan Documents. Pursuant to its rights
15 under the Loan Documents, USB will seek payment from Borrower for the amount of fees
16 and costs incurred by USB in enforcing its rights under the Loan Documents.

17 47. Pursuant to A.R.S. §§ 12-1241 and 33-702(B)(1), USB is entitled to the
18 appointment of a receiver to protect and preserve the Collateral.

19 48. USB has met the requirements of A.R.S. § 12-1242 and RULE 66, ARIZ. R.
20 CIV. P., for the appointment of a receiver.

21 49. The provisions of RULE 65, ARIZ. R. CIV. P., are not applicable to this
22 situation.

23 50. Pursuant to the terms of Deed of Trust, Borrower agreed that, upon default,
24 USB may immediately seek the appointment of a receiver over the Collateral. (Deed of
25 Trust § 6.3(b)) Consequently, Borrower has already agreed to the relief requested herein.

26 ///

1 WHEREFORE, USB prays for judgment against Tempe Gateway, L.L.C. as
2 follows:

- 3 a. For entry of an order appointing a receiver and allowing the receiver,
4 after taking possession of the Premises, to perform such duties as set
5 forth in the order appointing a receiver in the form submitted
6 contemporaneously herewith;
- 7 b. For an order to exclude Borrower, or anyone claiming under or
8 through it who does not have valid rights in the Collateral or any
9 portion thereof, from possession of the Premises;
- 10 c. For an order awarding USB its costs and attorneys' fees expended in
11 connection with seeking a receiver pursuant to the terms of the Loan
12 Documents and A.R.S. §§ 12-341 and 12-341.01; and
- 13 d. For such other and further relief as the Court may deem just and
14 equitable.

15 DATED this 11 day of July, 2009.

16 SNELL & WILMER LLP

17 By 

18 Steven D. Jerome
19 Benjamin W. Reeves
20 One Arizona Center
21 400 E. Van Buren
22 Phoenix, AZ 85004-2202
23 Attorneys for U.S. Bank National Association
24
25
26

Snell & Wilmer

LLP
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2202
(602) 382-6000

VERIFICATION

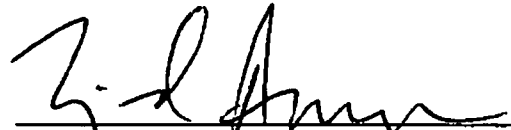
STATE OF Minnesota }
County of Hennepin } ss.

I, Ziad W. Amra, being first duly sworn upon oath, depose and say:

That I am a Vice President of the Special Asset Group for U.S. Bank National Association, the Plaintiff in this action; that I have carefully read the "Verified Complaint For: (1) Breach of Loan Documents; and (2) Appointment of Receiver" filed in this action and know the contents thereof and that the facts and matters alleged therein are true in fact to the best of my knowledge and are well grounded in fact, except those matters alleged on information and belief, and as to those, I believe them to be true; that the relief requested is warranted by existing law; and that this claim is not made for any bad faith, vexatious, wanton, improper, or oppressive reason, including to harass, to cause unnecessary delay, to impose a needless increase in the cost of litigation or to force an unjust settlement through the serious character of the averments.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 16 day of July, 2009.


Ziad W. Amra

SUBSCRIBED AND SWORN to before me this 16 day of July, 2009.


Notary Public

1-31-2010
Notary Expiration



Snell & Wilmer

L.L.P.
LAW OFFICES
One Arizona Center, 400 E. Van Buren
Phoenix, Arizona 85004-2201
(602) 382-6000

SELF CONTAINED APPRAISAL REPORT

**Tempe Gateway
222 S. Mill Avenue
Tempe, Arizona 85281**

PREPARED FOR:

**U.S. Bank
File No: 09-002299-01**

June 11, 2009

FVS File No: 09-1057

Exhibit I

June 11, 2009

Ms. Sally Biadasz
U.S. Bank
4100 Newport Place, Suite 900
LM-CA-NBCR
Newport Beach, CA 92660

RE: Appraisal of Tempe Gateway
222 S. Mill Ave.
Tempe, Maricopa County, Arizona
FVS File No. 09-1057

Dear Ms. Biadasz:

At your request and authorization, Finney Valuation Services, LLC has prepared a self-contained appraisal report of the referenced property and presented our analysis in the following report.

The purpose of this appraisal is to estimate the following: 1) "As Is" Market Value - Leasehold; 2) Hypothetical "As Is" Market Value - Fee Simple; 3) Prospective Market Value Upon Completion of Construction - Leasehold; 4) Prospective Market Value Upon Completion of Construction - Leased Fee; 5) Prospective Market Value Upon Stabilization of Occupancy - Leasehold; 6) Prospective Market Value Upon Stabilization of Occupancy - Leased Fee. The intended user of this report is U.S. Bank for foreclosure purposes.

The subject involves a suburban office building located on 3.54 acres along Mill Avenue in Tempe. The 8-story office building has a GLA of 259,365 SF that includes first floor retail space of 25,000 SF. Parking is provided by a four-level parking garage with 1,035 spaces. The project is under construction and completion is projected by July 1, 2009. The only executed lease as of the effective date involved a first floor retail suite of 1,352 SF. I have projected that the subject will be leased to a stabilized occupancy by July 1, 2013.

The development of the subject involves a joint venture between US Airways and Opus West Corporation. There exists a Development Agreement between US Airways and the city of Tempe that provides a tax abatement under the Government Property Lease Excise Tax (GPLET). The abatement period is 8 years with the developer responsible for a payment in-lieu of taxes of \$50,000 per annum. In order to effectuate the abatement, the developer will transfer ownership of the property (land and improvements) to the city upon completion of construction, and the city will lease the property back to the developer for the 8-year period. At

the end of the 8-year period title reverts to the developer. Therefore, the developer will have a leasehold interest in the property for the next eight years.

The market value conclusions are summarized as follows:

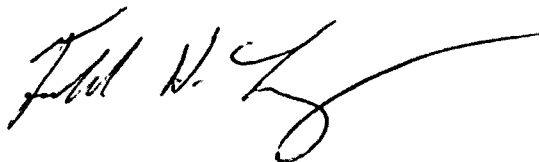
Value Conclusions			
Premise	Interest Appraised	Effective Date of Value	Value Conclusion
As Is Market Value	Leasehold	June 2, 2009	\$32,300,000
As Is Hypothetical Market Value	Fee Simple	June 2, 2009	\$27,800,000
PMV Upon Completion	Leasehold	July 1, 2009	\$33,500,000
PMV Upon Completion	Leased Fee	July 1, 2009	\$29,000,000
PMV Upon Stabilization	Leasehold	July 1, 2013	\$65,000,000
PMV Upon Stabilization	Leased Fee	July 1, 2013	\$62,000,000

The value conclusions are based on an exposure time of twelve months and a marketing time of twelve months. The value conclusions are based on the underlying assumptions and limiting conditions contained herein. The value conclusions are based on the extraordinary assumption that the executed lease to UPS Store approximates a market level (contract rent information not available). Regardless, the impact on value is insignificant given the small size of the tenant (1,352 SF).

This report has been prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP), the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Title XI Regulations, and the appraisal guidelines of US Bank.

Thank you for this opportunity to provide our services. Please contact me with any questions.

Respectfully submitted,

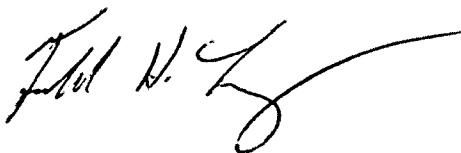


Todd H. Finney, MAI
AZ Certified General Real Estate Appraiser No. 30091

CERTIFICATION OF THE APPRAISAL

I certify to the best of my knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this report and have no personal interest with respect to the parties involved.
4. I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
5. My engagement in his assignment is not contingent upon developing or reporting predetermined results.
6. My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. This appraisal assignment was not based upon a requested minimum valuation, a specific valuation, or the approval of a loan.
8. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice* of The Appraisal Foundation and the requirements of the *Code of Ethics and the Standards of Professional Appraisal Practice* of the Appraisal Institute, as well as the requirements of the State of Arizona relating to review by its duly authorized representatives. This report also conforms to the requirements of the Financial Institutions Reform, recovery, and Enforcement Act of 1989 (FIRREA).
9. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
10. Todd H. Finney, MAI has made a personal inspection of the property that is the subject of this report.
11. No one provided significant real property appraisal assistance to the person signing this report.
12. Todd H. Finney has extensive experience in the appraisal/review of similar property types.
13. Todd H. Finney is currently certified in the state where the subject is located.
14. As of the date of this report, Todd H. Finney has completed the continuing education program of the Appraisal Institute.



Todd H. Finney, MAI
AZ Certified General Real Estate Appraiser No. 30091

EXECUTIVE SUMMARY

<i>Property Name:</i>	Tempe Gateway
<i>Property Type:</i>	Suburban Office with first floor retail
<i>Location:</i>	NWC Mill Ave. & 3rd St., Tempe, AZ
<i>Address:</i>	222 S. Mill Ave., Tempe, AZ 85281
<i>Assessor's Parcel Nos.</i>	132-29-107A & 181
<i>Date of Inspection:</i>	June 2, 2009
<i>Effective Date of Report:</i>	
<i>As Is:</i>	June 2, 2009
<i>PMV Upon Completion:</i>	July 1, 2009
<i>PMV Upon Stabilization:</i>	July 1, 2013
<i>Interest Appraised:</i>	As Is - Fee Simple and Leasehold PMV - Leased Fee and Leasehold
<i>Site</i>	
<i>Land Area:</i>	3.54
<i>Zoning:</i>	CC
<i>Improvements</i>	
<i>GLA - Office:</i>	234,365
<i>GLA - Retail:</i>	25,000
<i>GLA - Total:</i>	259,365
<i>Year Built:</i>	2009
<i>Parking:</i>	4.0:1000
<i>Financial Indicators</i>	
<i>Market Rent - Office:</i>	\$27.50, full service
<i>Market Rent - Retail:</i>	\$28.00, net
<i>Vacancy & Collection Loss:</i>	10.00%
<i>Absorption:</i>	4 yrs.
<i>Cap Rate:</i>	8.00%
<i>Discount Rate - Upon Completion:</i>	11.00%
<i>Discount Rate - Stabilized:</i>	9.50%
<i>Terminal Cap Rate:</i>	8.25%

EXECUTIVE SUMMARY - continued

Land Value: \$6,480,000

Value Conclusions - Leasehold:

As Is: \$32,300,000

Upon Completion: \$33,500,000

Upon Stabilization: \$65,000,000

Value Conclusions - Leased Fee:

As Is: \$27,800,000

Upon Completion: \$29,000,000

Upon Stabilization: \$62,000,000

Northern District of Texas Claims Register

09-34356-hdh11 Opus West Corporation

Judge: Harlin DeWayne Hale

Chapter: 11

Office: Dallas

Last Date to file claims: 11/09/2009

Trustee:

Last Date to file (Govt):

Creditor: (12454608) U.S. Bank Attention: Commercial Real Estate BC-MN-H22A 800 Nicollet Mall Minneapolis, MN 55402	Claim No: 52 <i>Original Filed</i> Date: 11/09/2009 <i>Original Entered</i> Date: 11/09/2009	Status: <i>Filed by:</i> CR <i>Entered by:</i> Degeyter, Angela <i>Modified:</i>
Unsecured claimed: \$20330559.13 Total claimed: \$20330559.13		
History: <u>Details</u> <u>52-1</u> 11/09/2009 Claim #52 filed by U.S. Bank, total amount claimed: \$20330559.13 (Degeyter, Angela)		
<u>Description:</u> (52-1) Tempe Gateway Project		
<u>Remarks:</u>		

Claims Register Summary