


UNITED STATES BANKRUPTCY COURT Northern District of Texas		PROOF OF CLAIM
Name of Debtor: Opus West Corporation		Case Number: 09-34356-hdh11
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): Bank of America, N.A., as agent for itself and the other Lenders		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: Thompson & Knight LLP c/o John S. Brannon 1722 Routh St., Suite 1500 Dallas, Texas 75201 Telephone number: (214) 969-1700		Court Claim Number: (If known)
Name and address where payment should be sent (if different from above): Bank of America, N.A. c/o Casey Carpenter Vice-President, Real Estate Special Assets 333 S. Hope St., 11th Floor Los Angeles, California 90071-1406		Filed on: _____
1. Amount of Claim as of Date Case Filed: \$ 57,766,158.95 BMC GROUP		<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.
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.		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
If all or part of your claim is entitled to priority, complete item 5.		
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		
2. Basis for Claim: *See Addendum (See instruction #2 on reverse side.)		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.
3. Last four digits of any number by which creditor identifies debtor: _____		Specify the priority of the claim.
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
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.		<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).
Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe:		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).
Value of Property: \$ _____ Annual Interest Rate _____ %		<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).
Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____		<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).
Amount of Secured Claim: \$ *See Addendum Amount Unsecured: \$ *See Addendum		<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)() .
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		Amount entitled to priority: \$ _____
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.)		*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.
DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.		
If the documents are not available, please explain:		
Date: 11/09/2009	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. DEAN M. LYONS AUTHORIZED AGENT	FOR COURT USE ONLY OPUS WEST  00545

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 1343 and 1344.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	Chapter 11
	§	
OPUS WEST CORPORATION,	§	Case No. 09-34356-hdh11
	§	
DEBTOR.	§	

**EXHIBIT A – ADDENDUM TO PROOF OF CLAIM (COMMONS AT CHINO HILLS)
OF BANK OF AMERICA, N.A., AGENT BANK**

1. This proof of claim is made by Bank of America, N.A. (“Bank of America”), as Agent for itself and for three (3) other Lenders (as such terms are hereinafter defined).

2. Pursuant to that certain Construction Loan Agreement dated as of March 13, 2008 (as amended, the “Loan Agreement”), Bank of America, as the agent on behalf of itself, Wells Fargo Bank, U.S. Bank, and Compass Bank (collectively, the “Lenders”), agreed to make a loan to Opus West Corporation (“Opus West”), as Borrower, in the original principal amount of Eighty-Nine Million and No/100 Dollars (\$89,000,000.00) (the “Loan”), to provide financing for the development and construction of improvements on the Property (as defined herein).

3. All amounts claimed herein are secured by perfected mortgages, security interests, and liens in and to the properties defined in this paragraph and as more-fully described and granted in the Loan Agreement and the following additional documents (the following described documents, together with any and all other or additional agreements, instruments, or other documents evidencing, securing, or otherwise relating to the Loans are hereinafter referred to collectively as the “Loan Documents”):

a. Construction Deed of Trust Notes executed in favor of each of the Lenders in the amount of \$22,250,000.00 each, for an aggregate amount of \$89,000,000.00 (as amended, the “Notes”).

b. A Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing, dated as of March 13, 2008 executed by Opus West to PRLAP, Inc., as Trustee, for the benefit of Agent, and recorded in the Official Records of San Bernardino County, California (the “Official Records”) on March 14, 2008 as Document No. 2008-0115084 (as amended, the “Deed of Trust”). The Deed of Trust encumbers, among other things, certain real property located in San Bernardino County, California, as more particularly described therein (the “Property”). The Deed of Trust, inclusive of all assignment and security provisions contained therein, gives the Agent, for itself and the other Lenders, a security interest in the Property, improvements, land, proceeds, leases, rents, and all other interests (as more fully described therein) derived from and related to the Property (collectively, the “Collateral”).

c. On March 21, 2008, Agent, Opus West, and certain other parties entered into a letter agreement that amended certain provisions of the Loan Documents relating to Opus

West's agreement to maintain certain liquidity and net worth levels (the "Modification Agreement").

d. UCC-1 Financing Statement filed on March 25, 2008 with the Minnesota Secretary of State as No. 200811104313 naming Opus West as debtor and Agent as secured party.

4. Prior to the July 6, 2009 petition date (the "Petition Date"), Agent sent Opus West four default letters on April 7, April 9, May 5, and June 16, 2009 (the "Default Letters") notifying Opus West of events of default and demanding that Opus West pay all past-due amounts in accordance with the terms of the Loan Documents. Opus West failed to cure the defaults under the Loan Documents. As a result, Agent exercised its right under the Loan Documents to accelerate the Loan and declare all outstanding amounts immediately due and payable. On June 19, 2009, Agent sent Opus West an acceleration letter (the "Acceleration Notice") notifying Opus West of Agent's election to accelerate the Loan and demanding immediate repayment of all outstanding amounts.

5. Just prior to the Petition Date, the Property was transferred to a special purpose entity, OWP Commons Retail, L.L.C. ("Commons Retail SPE").

6. As of the Petition Date, the following liquidated, uncontested, and non-contingent amount was and is due and owing to Agent under the Loan Documents in an amount not less than **\$57,766,158.95** (the "Liquidated Agent Claim Amount"), which consists of:

Principal	\$57,261,847.65
Interest	\$421,068.27
Prepetition Costs and Fees for Bank of America	
Attorney's Fees	\$8,525.08
Appraisal costs	\$8,000.00
Consulting Fees	\$8,789.95
Trustee Fees	<u>\$57,928.00</u>
	\$83,243.03
TOTAL:	\$57,766,158.95

7. Each of the Lenders has a pro rata share in the Liquidated Agent Claim Amount made herein, as follows:

<u>BANK</u>	<u>PRO RATA SHARE</u>
Bank of America, N.A.	25.00%
Compass Bank	25.00%
US Bank	25.00%
Wells Fargo Bank	25.00%

8. The following other Lenders may have additional prepetition costs and attorney's fees for their own accounts (which shall be referred to herein as the "**Other Lender Costs**"):

- a. Compass Bank \$ as-yet undetermined
- b. US Bank \$ as-yet undetermined
- c. Wells Fargo Bank \$ as-yet undetermined

9. Additionally, the following are due to Agent under the Loan Documents:

- a. Post-Petition Interest. The amount of interest accruing on the outstanding principal amount of the Loan from the Petition Date to the date of payment of the Loan, at the rates and in the manner set forth in applicable Loan Documents;
- b. Other Post-Petition Interest. The amount of interest accruing from the Petition Date on past-due installments of interest on the Loan to the date of payment of such installments, which accrues at the rates and in the manner set forth in the applicable Loan Documents; and
- c. Other Post-Petition Indebtedness, Charges, Costs. All other interest, charges, penalties, premiums, advances, and other sums that may be due or become due as more fully detailed in or made reference to in any or all of the Loan Documents, including, without limitation, reasonable compensation, expenses, disbursements and advances (including, without limitation, reasonable fees and disbursement of counsel and other professionals) of Agent.

10. As the amount of the claims asserted in paragraph 9 hereof cannot, at this time, be reasonably calculated or estimated, the total amount of all claims set forth in this proof of claim currently (the "Final Claim Amount") is unliquidated, but is in no event less than the Liquidated Agent Claim Amount of **\$57,766,158.95 (plus the Other Lender Costs)**. To the extent any personal property Collateral was not transferred to Commons Retail SPE, the Agent asserts a secured claim for the Final Claim Amount up to the value of the retained personal property Collateral. To the extent the real and/or personal property Collateral was transferred to Commons Retail SPE prior to the Petition Date, Agent asserts an unsecured claim for the Final Claim Amount. The Final Claim Amount of Agent may be in a greater amount than stated herein. The Agent, for itself and the other Lenders, does not waive any of its/their rights to recover all of the foregoing amounts by not asserting a specific dollar amount at this time.¹

11. The Agent, on behalf of itself and the other Lenders, reserves the right to amend and/or supplement this proof of claim and to assert any and all other claims of whatever kind or nature that it/they has/have, or it/they may have, against Opus West that may come to the attention of Agent or any other Lender or arise after the filing of this proof of claim. The filing of this proof of claim shall not be deemed a waiver of any such claims or amounts.

¹ The Agent, on behalf of itself and the other Lenders, reserves the right to assert a secured claim to the extent that any prepetition transfer of Collateral is set aside for any reason.

12. All notices concerning this proof of claim should be sent to:

THOMPSON & KNIGHT LLP
c/o John S. Brannon
1722 Routh Street, Suite 1500
Dallas, Texas 75201

BANK OF AMERICA, N.A.
c/o Casey Carpenter
Vice President
Real Estate Special Assets
333 S. Hope St., 11th Floor
Los Angeles, CA 90071-1406

Date: November 9, 2009

Respectfully submitted,

/s/ Katharine B. Richter

David M. Bennett

State Bar No. 2139600

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**ATTORNEYS FOR BANK OF AMERICA,
N.A., AGENT BANK**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

IN RE:	§	Chapter 11
	§	
OPUS WEST CORPORATION,	§	Case No. 09-34356-hdh11
	§	
DEBTOR.	§	

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EXHIBIT A – ADDENDUM TO PROOF OF CLAIM (COMMONS AT CHINO HILLS)
OF BANK OF AMERICA, N.A., AGENT BANK**

ATTACHMENT 1: Construction Loan Agreement dated March 13, 2008 by and among Opus West, Bank of America, Wells Fargo Bank, U.S. Bank, and Compass Bank in the original principal amount of \$89,000,000.00.

ATTACHMENT 2: Construction Deed of Trust Notes in the aggregate amount of \$89,000,000.00.

ATTACHMENT 3: Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing dated as of March 13, 2008 filed in the Official Records of San Bernardino County, California on March 14, 2008 as Document No. 2008-0115084.

ATTACHMENT 4: Letter Agreement dated March 21, 2008 (“Modification Agreement”).

ATTACHMENT 5: Default Letters dated April 7, April 9, May 5 and June 16, 2009.

ATTACHMENT 6: Acceleration Notice dated June 19, 2009.

ATTACHMENT 7: UCC-1 Financing Statement filed on March 25, 2008 with the Minnesota Secretary of State as No. 200811104313.

ATTACHMENT 1

Construction Loan Agreement

among

OPUS WEST CORPORATION
a Minnesota corporation

and

BANK OF AMERICA, N.A.
as Administrative Agent

and

The Other Financial Institutions
Party Hereto

Dated as of March 13, 2008

Banc of America Securities LLC,
as
Sole Arranger and Sole Book Manager

Bank of America



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EXHIBITS:

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EXHIBIT "B"	DEFINITIONS AND FINANCIAL STATEMENTS
EXHIBIT "C"	CONDITIONS PRECEDENT TO THE FIRST ADVANCE
EXHIBIT "D"	BUDGET
EXHIBIT "E"	PLANS
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EXHIBIT "L"	ASSIGNMENT AND ASSUMPTION
EXHIBIT "M"	DEED OF TRUST NOTE
EXHIBIT "N"	SCHEDULE OF LENDERS

CONSTRUCTION LOAN AGREEMENT
(The Commons at Chino Hills, Chino Hills, CA – Construction Loan)

This Construction Loan Agreement ("Agreement") dated as of March 13, 2008 is made by and among each lender from time to time a party hereto (individually, a "Lender" and collectively, the "Lenders") and BANK OF AMERICA, N.A., a national banking association, as Administrative Agent and L/C Issuer, and OPUS WEST CORPORATION, a Minnesota corporation ("Borrower"), who agree as follows:

ARTICLE 1

THE LOAN

1.1 General Information and Exhibits. This Agreement includes the Exhibits listed below which are marked by an "X," all of which Exhibits are attached hereto and made a part hereof for all purposes. Borrower and Lenders agree that if any Exhibit to be attached to this Agreement contains blanks, the same shall be completed correctly and in accordance with this Agreement prior to or at the time of the execution and delivery thereof.

<u>X</u>	Exhibit "A"	-	Legal Description of the Land
<u>X</u>	Exhibit "B"	-	Definitions
<u>X</u>	Exhibit "C"	-	Conditions Precedent to First Advance
<u>X</u>	Exhibit "D"	-	Budget
<u>X</u>	Exhibit "E"	-	Plans
<u>X</u>	Exhibit "F"	-	Advances
<u>X</u>	Exhibit "F-1"	-	Draw Request
<u>X</u>	Exhibit "G"	-	Survey Requirements
<u>X</u>	Exhibit "H"	-	Release Provisions
<u>X</u>	Exhibit "I"	-	Leasing and Tenant Matters
<u> </u>	Exhibit "J"	-	[Intentionally left blank]
<u>X</u>	Exhibit "K"	-	Letter of Credit
<u>X</u>	Exhibit "L"	-	Assignment and Assumption
<u>X</u>	Exhibit "M"	-	Deed of Trust Note
<u>X</u>	Exhibit "N"	-	Schedule of Lenders

The Exhibits contain other terms, provisions and conditions applicable to the Loan. Capitalized terms used in this Agreement shall have the meanings assigned to them in the Definitions set forth in Exhibit "B". This Agreement, the other Loan Documents and the Environmental Agreement, which must be in form, detail and substance satisfactory to Lenders, evidence the agreements of Borrower and Lenders with respect to the Loan. Borrower shall comply with all of the Loan Documents and the Environmental Agreement.

1.2 Purpose. The proceeds of the Loan shall be used by Borrower to pay (a) the cost of the construction of Improvements on the Land, and (b) other fees, costs and expenses relating to the Property if and to the extent that such costs are specifically provided for in the Loan Allocation column in the Budget.

1.3 Commitment to Lend. Borrower agrees to borrow from each Lender, and each Lender severally agrees to make advances of its Pro Rata Share of the Loan proceeds to Borrower in amounts at any one time outstanding not to exceed such Lender's Pro Rata Share of the Loan and (except for Administrative Agent with respect to Administrative Agent Advances), on the terms and subject to the conditions set forth in this Agreement and Exhibit "F" attached to this Agreement. Lenders' commitment to lend shall expire and terminate automatically (a) if the Loan is prepaid in full, and (b) on the Maturity Date. The Loan is not revolving. Any amount repaid may not be reborrowed.

1.4 Budget. Upfront Equity and Loan funds are allocated to payment of the costs of the Property as described in the Budget attached to this Agreement as Exhibit "D". Borrower shall not amend the Budget or otherwise reallocate funds from one Budget line item to another without the prior written approval of Administrative Agent not to be unreasonably withheld. Amendments to any line item in the Budget or reallocations of funds from one Budget line item to another involving amounts in excess of the greater of (i) ten percent (10%) of the aggregate amount of such line item, or (ii) \$1,000,000.00 shall require the prior approval of the Required Lenders. The Budget has been prepared by Borrower and Borrower represents to Administrative Agent and Lenders that the Budget includes all costs incident to the Loan and the Project through the maturity date of the Loan (collectively, the "Aggregate Cost") after taking into account the requirements of this Agreement, including "hard" and "soft" costs, fees and expenses. Lenders shall not be required to make any advance for any cost which is not set forth in the Budget. Lenders shall not be obligated to make any advance which, when added to all prior advances from the same line item, would exceed Borrower's actual cost incurred for that line item or the sum shown in the Budget for that line item, whichever is the lesser. Lenders shall have no obligation to make any advance from any contingency line item unless Administrative Agent consents to such advance in its reasonable discretion. After the Improvements are placed in operation, Lenders shall not be required to make any advance to pay interest on the Loan or taxes or reserves related to the Loan if and to the extent that there is sufficient net operating income from the Property to pay such interest, taxes or reserves, subject to the provisions of Exhibit "I". Lenders may make advances from any line item in the Budget for purposes other than those for which such amounts were originally allocated or in different proportions, as Administrative Agent in its sole discretion deems necessary or advisable.

1.5 Borrower's Deposit. If at any time Administrative Agent determines that the sum of: (i) any unadvanced portion of the Loan to which Borrower is entitled, plus (ii) the portions of the Aggregate Cost that are to be paid by Borrower from other funds that, to Administrative Agent's satisfaction, are available, set aside and committed, is or will be insufficient to pay the actual unpaid Aggregate Cost, Borrower shall, within fifteen (15) days after written notice from Administrative Agent, deposit ("Borrower's Deposit") with Administrative Agent the amount of the deficiency ("Budget Shortfall") in an interest-bearing account of Administrative Agent's selection with interest earned thereon to be part of Borrower's Deposit. Such Borrower's Deposit is hereby pledged to Administrative Agent and Lenders as additional security for the Loan, and Borrower hereby grants and conveys to Administrative Agent for the ratable benefit of Administrative Agent and Lenders a security interest in all funds so deposited with Administrative Agent, as additional security for the Loan. Administrative Agent may advance all or a portion of the Borrower's Deposit prior to the Loan proceeds. After an Event of Default, Administrative Agent may (but shall have no obligation to) apply all or any part of Borrower's

Deposit against the unpaid Indebtedness in such order as Lender determines. Each Borrower's Deposit shall be accompanied by a revised proposed Budget for approval by Administrative Agent, which approval shall not be unreasonably withheld.

1.6 Evidence of Debt. Amounts of the Loan funded by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business. Any failure to record such amounts, interest or payments or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrower hereunder to pay any amount owing with respect to the Indebtedness. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error. Each Lender may attach schedules to its Note(s) and endorse thereon the date, amount and maturity of the applicable Note and payments with respect thereto.

ARTICLE 2

INTEREST RATES, ADVANCES AND PAYMENTS

2.1 Interest Rates. The Principal Debt from day to day outstanding which is not past due shall bear interest at a rate per annum equal to the following (computed as provided in Section 2.5 hereof) as applicable:

- (a) On Base Rate Principal, on any day, the Base Rate; and
- (b) On LIBOR Rate Principal, for the applicable Interest Period, the applicable LIBOR Rate.

2.2 Interest Rate Elections.

(a) Subject to the conditions and limitations in this Agreement, Borrower may by written notice to Administrative Agent in the form specified by Administrative Agent (a "Rate Election Notice"):

- (i) Elect, for a new advance of funds, that such Principal Debt will be Base Rate Principal, LIBOR Rate Principal or a combination thereof;
- (ii) Elect to convert, on a LIBOR Business Day, all or part of Base Rate Principal into LIBOR Rate Principal;
- (iii) Elect to convert, on the last day of the Interest Period applicable thereto, all or part of any LIBOR Rate Principal into Base Rate Principal; or
- (iv) Elect to continue, commencing on the last day of the Interest Period applicable thereto, any LIBOR Rate Principal.

If, for any reason, an effective election is not made in accordance with the terms and conditions hereof for any principal advance or for any LIBOR Rate Principal for which the

corresponding Interest Period is expiring or to convert Base Rate Principal to LIBOR Rate Principal, then the sums in question will be Base Rate Principal until an effective LIBOR Rate Election is thereafter made for such sums.

(b) Each Rate Election Notice must be received by Administrative Agent not later than 10:00 a.m. Administrative Agent's Time on the applicable date as follows:

(i) With respect to an advance of or conversion to Base Rate Principal, one (1) Business Day prior to the proposed date of advance or conversion; and

(ii) With respect to an advance of, conversion to or continuation of LIBOR Rate Principal, three (3) LIBOR Business Days prior to the proposed date of advance, conversion or continuation.

Unless otherwise specified herein, no conversion from LIBOR Rate Principal may be made other than at the end of the corresponding Interest Period. Each Rate Election Notice shall stipulate: (A) the amount of the advance or of the Principal Debt to be converted or continued; (B) the nature of the proposed advance, conversion or continuation, which shall be either Base Rate Principal, LIBOR Rate Principal or a combination thereof, and in the case of a conversion or continuation, the nature of the Principal Debt to be converted or continued; and (C) in the case of LIBOR Rate Principal, the proposed commencement date and duration of the Interest Period. All such notices shall be irrevocable once given, and shall be deemed to have been given only when actually received by Administrative Agent in writing in form specified by Administrative Agent.

(c) Administrative Agent shall promptly notify Borrower and Lenders of the interest rate applicable to each portion of the Principal Debt other than Base Rate Principal upon determination of the same.

2.3 General Conditions Precedent to LIBOR Rate Election. In addition to any other conditions herein, a LIBOR Rate Election shall not be permitted if:

(a) A Default has occurred and has not been waived by Administrative Agent or a Potential Default has occurred and is continuing; or

(b) After giving effect to the requested LIBOR Rate Election, the sum of all LIBOR Rate Principal plus all Base Rate Principal would exceed the combined Commitments; or

(c) The requested LIBOR Rate Election would cause more than five (5) LIBOR Rate Elections by Borrower to be in effect at any one time; or

(d) The amount of LIBOR Rate Principal requested in the LIBOR Rate Election is other than \$1,000,000.00 or more; or

(e) The requested interest period does not conform to the definition of Interest Period herein; or

(f) Any of the circumstances referred to in Section 2.6 hereof shall apply with respect to the requested LIBOR Rate Election or the requested LIBOR Rate Principal.

2.4 Authorized Persons. Borrower hereby designates Chuck Vogel or Vickie Sixta as being authorized to give Rate Election Notices on behalf of Borrower. Administrative Agent shall be entitled to rely on written or oral directions from such persons until this authorization is revoked by Borrower in writing.

2.5 Computations and Determinations. All interest shall be computed on the basis of a year of 360 days and paid for the actual number of days elapsed (including the first day but excluding the last day). Administrative Agent shall determine each interest rate applicable to the Principal Debt in accordance with this Agreement and its determination thereof shall be conclusive in the absence of manifest error. The books and records of Administrative Agent shall be prima facie evidence of all sums owing to Lenders from time to time under the Loan, but the failure to record any such information shall not limit or affect the obligations of Borrower under the Loan Documents.

2.6 Unavailability of Rate. If, with respect to any LIBOR Rate Election or any LIBOR Rate Principal outstanding hereunder, the Required Lenders determine that no adequate basis exists for determining the LIBOR Rate or that the LIBOR Rate will not adequately and fairly reflect the cost to Lenders of funding or maintaining the applicable LIBOR Rate Principal for such Interest Period, and Administrative Agent so notifies Borrower and Lenders, then, until Administrative Agent notifies Borrower and Lenders that the circumstances giving rise to such determination no longer exist, the obligation of Lenders to permit such LIBOR Rate Election shall be suspended and all existing affected LIBOR Rate Principal shall automatically become Base Rate Principal on the last day of the corresponding Interest Period. In addition, with respect to any LIBOR Rate Election or any LIBOR Rate Principal outstanding hereunder, if any Lender determines, and notifies Administrative Agent and Borrower, that any applicable Law or any request or directive (whether or not having the force of Law) of any Tribunal or compliance therewith by the Lender prohibits or restricts or makes impossible the making or maintaining of such LIBOR Rate Election or LIBOR Rate Principal or the charging of interest on such LIBOR Rate Principal, then until the Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such suspension no longer exist, (a) the obligation of the Lender to permit such LIBOR Rate Election shall be suspended, and (b) all existing affected LIBOR Rate Principal of the Lender shall automatically become Base Rate Principal, either (i) on the last day of the corresponding Interest Period (if the Lender determines that it may lawfully continue to fund and maintain the affected LIBOR Rate Principal to such day); or (ii) immediately (if the Lender determines that it may not lawfully continue to fund and maintain the affected LIBOR Rate Principal to such day) and in such case Borrower shall pay to such Lender the Consequential Loss, if any, pursuant to Section 2.9 hereof. Each Lender agrees to designate a different Lending Office if such designation will avoid the need for such notice and will not, in the good faith judgment of the Lender, otherwise be materially disadvantageous to the Lender.

2.7 Increased Cost and Reduced Return. If at any time after the date hereof, any Lender (which shall include, for purposes of this Section 2.7, any corporation controlling any Lender) determines that the adoption or modification of any applicable Law regarding taxation, the Lender's required levels of reserves, deposits, insurance or capital (including any allocation

of capital requirements or conditions), or similar requirements, or any interpretation or administration thereof by any Tribunal or compliance by the Lender with any of such requirements, has or would have the effect of (a) increasing the Lender's costs relating to the Indebtedness, or (b) reducing the yield or rate of return of the Lender on the Indebtedness, to a level below that which the Lender could have achieved but for the adoption or modification of any such requirements, Borrower shall, within fifteen (15) days of any request by the Lender, pay to the Lender such additional amounts as (in the Lender's sole judgment, after good faith and reasonable computation) will compensate the Lender for such increase in costs or reduction in yield or rate of return of the Lender. No failure by any Lender to immediately demand payment of any additional amounts payable hereunder shall constitute a waiver of the Lender's right to demand payment of such amounts at any subsequent time. Nothing herein contained shall be construed or shall so operate as to require Borrower to pay any interest, fees, costs or charges greater than is permitted by applicable Law.

2.8 Past Due Rate. Any principal of, and to the extent permitted by applicable law, any interest, and any other sum payable under any Loan Document, which is not paid within fifteen (15) days after it becomes due shall bear interest, from the date due and payable until paid, at a rate per annum (the "Past Due Rate") equal to the lesser of (i) the maximum non-insurance rate of interest allowed by applicable law or (ii) the higher of (a) the Base Rate, or (b) the LIBOR Rate plus three percent (3%).

2.9 Prepayment.

(a) Borrower may prepay the principal balance of this Note, in full at any time or in part from time to time, provided that: (i) Administrative Agent shall have actually received from Borrower prior written notice of Borrower's intent to prepay, the amount of principal that will be prepaid (the "Prepaid Principal"), and the date on which the prepayment will be made; (ii) each prepayment shall be in the amount of \$1,000 or larger integral multiple of \$1,000 (unless the prepayment retires the outstanding balance of the Loan in full); (iii) each prepayment shall be in the amount of 100% of the Prepaid Principal, plus accrued unpaid interest thereon to the date of prepayment, plus any other sums which have become due to Administrative Agent and Lenders under the Loan Documents on or before the date of prepayment but which have not been paid; and (iv) no portion of LIBOR Rate Principal may be prepaid except on the last day of the Interest Period applicable thereto, unless (x) the prior written consent of Administrative Agent is obtained which consent, if given, shall provide, without limitation, the manner and order in which the prepayment is to be applied to the Indebtedness, and (y) Borrower pays any Consequential Loss as a result thereof in accordance with this Section 2.9. Borrower expressly waives any right to prepay any LIBOR Rate Principal except on the express terms of this Section 2.9.

(b) Within fifteen (15) days after request by any Lender (or at the time of any prepayment), Borrower shall pay to such Lender such amount or amounts as will compensate such Lender for any loss, cost, expense, penalty, claim or liability, including any loss incurred in obtaining, prepaying, liquidating or employing deposits or other funds from third parties and any loss of revenue, profit or yield, as determined by such Lender [on a present value basis] in its judgment reasonably exercised (together, "Consequential Loss") incurred by such Lender with respect to any LIBOR Rate, including any LIBOR Rate Election or LIBOR Rate Principal as a

result of: (a) the failure of Borrower to make payments on the date specified under this Agreement or in any notice from Borrower to Administrative Agent; (b) the failure of Borrower to borrow, continue or convert into LIBOR Rate Principal on the date or in the amount specified in a notice given by Borrower to Administrative Agent pursuant to this Agreement or the Loan Agreement; (c) the early termination of any Interest Period for any reason; or (d) the payment or prepayment of any amount on a date other than the date such amount is required or permitted to be paid or prepaid, whether voluntarily or by reason of acceleration, including, but not limited to, acceleration upon any transfer or conveyance of any right, title or interest in the Property giving Administrative Agent on behalf of Lenders the right to accelerate the maturity of the Loan as provided in the Deed of Trust.

(c) Notwithstanding the foregoing, the amount of the Consequential Loss shall never be less than zero or greater than is permitted by applicable Law. If any Consequential Loss will be due, the applicable Lender shall deliver to Borrower a certificate as to the amount of the Consequential Loss, which certificate shall be conclusive in the absence of manifest error. If the Loan is prepaid in full, any commitment of Lenders for further advances shall automatically terminate. Neither Administrative Agent nor any Lender shall have any obligation to purchase, sell and/or match funds in connection with the funding or maintaining of the Loan or any portion thereof. The obligations of Borrower under this Section 2.9 shall survive any termination of the Loan Documents and payment of the Loan and shall not be waived by any delay by Administrative Agent in seeking such compensation.

(d) By its signature below, Borrower waives any right under California Civil Code Section 2954.10 or otherwise to prepay the Loan, in whole or in part, without payment of any and all Consequential Loss as described above. Borrower acknowledges that prepayment of the Loan may result in Lenders incurring additional losses, costs, expenses and liabilities, including lost revenues and lost profits. Borrower therefore agrees to pay any and all Consequential Loss if any LIBOR Rate Principal is prepaid, whether voluntarily or by reason of acceleration, including acceleration upon any transfer or conveyance of any right, title or interest in the Property giving Administrative Agent on behalf of Lenders the right to accelerate the maturity of the Loan as provided in the Deed of Trust. Borrower agrees that Lenders' willingness to offer the LIBOR Rate to Borrower is sufficient and independent consideration, given individual weight by Lenders, for this waiver. Borrower understands that Lenders would not offer the LIBOR Rate to Borrower absent this waiver.

Dated: March 13, 2008

OPUS WEST CORPORATION, a Minnesota
corporation

By: _____
Name: _____
Title: _____

2.10 Late Charges. If Borrower fails to make any payment under the terms of this Agreement within fifteen (15) days after the date such payment is due, Borrower shall pay to the

applicable Lender or Lenders on demand a late charge equal to four percent (4%) of such payment. Such fifteen (15) day period shall not be construed as in any way extending the due date of any payment. The "late charge" is imposed for the purpose of defraying the expenses of a Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Lenders may have and is in addition to any fees and charges of any agents or attorneys which Administrative Agent or Lenders may employ upon the occurrence of a Default, whether authorized herein or by Law. Borrower will pay this late charge only once on any late payment.

2.11 Payment Schedule and Maturity Date.

(a) The entire principal balance of the Loan then unpaid and all accrued interest then unpaid shall be due and payable in full on the Maturity Date. Accrued unpaid interest shall be due and payable on the 1st day of the first calendar month after the date of this Agreement and on the same day of each succeeding calendar month thereafter until all principal and accrued interest owing on this Loan shall have been fully paid and satisfied.

(b) Borrower may elect to extend the Maturity Date to March 13, 2011 (the "Extended Maturity Date"), upon and subject to the following terms and conditions; unless otherwise agreed by Administrative Agent with the consent of all Lenders in writing:

(i) Borrower shall request the extension, if at all, by written notice to Administrative Agent not less than sixty (60) days prior to the Maturity Date.

(ii) At the time of the request, the construction of the Improvements shall have been completed in accordance with the requirements of the Loan Documents, the temporary certificate of occupancy or its equivalent for all the Improvements shall have been issued, and all conditions to the final disbursement shall have been satisfied.

(iii) At the time of the request, and at the time of the extension, there shall not exist any Default, nor any condition or state of facts which after notice and/or lapse of time would constitute a Default under any Loan Document.

(iv) If required by Administrative Agent, current financial statements regarding Borrower (dated not earlier than thirty (30) days prior to the request for extension) and all other financial statements and other information as may be required under the Loan Documents regarding Borrower and the Property, shall have been submitted promptly to Administrative Agent, and there shall not have occurred, in the opinion of Administrative Agent, any material adverse change in the business or financial condition of Borrower or any tenant of the Property, or in the Property or in any other state of facts submitted to Administrative Agent in connection with the Loan Documents, from that which existed on the date of this Agreement.

(v) Whether or not the extension becomes effective, Borrower shall pay all out-of-pocket costs and expenses incurred by Administrative Agent and Lenders in connection with the proposed extension (pre- and post-closing), including, without limitation, appraisal fees, environmental audit and legal fees; all such costs and expenses incurred up to the time of Lenders' written agreement to the extension shall be due and

payable prior to Lenders' execution of that agreement (or if the proposed extension does not become effective, then upon demand by Administrative Agent), and any future failure to pay such amounts shall constitute a default under the Loan Documents.

(vi) All applicable regulatory requirements, including appraisal requirements, shall have been satisfied with respect to the extension.

(vii) Not later than the Maturity Date, (A) the extension shall have been consented to and documented to Administrative Agent and Lenders' satisfaction by Borrower, Lenders, and all other parties deemed necessary by Administrative Agent (such as any permitted subordinate lienholders, tenants of the Property and permanent lenders (if any)); (B) Administrative Agent shall have been provided with an updated title report and judgment and lien searches, and appropriate title insurance endorsements shall have been issued as required by Administrative Agent; and (C) Borrower shall have paid to Administrative Agent for the pro rata benefit of Lenders a non-refundable extension fee an amount equal to one quarter of one percent (0.25%) of the then Aggregate Commitments.

(viii) At the time of such extension, the Net Core Retail Commitment Amount shall not exceed seventy-five percent (75.0%) of the appraised Discounted Stabilized Value (as hereinafter defined) of the Property. As used herein, "Net Core Retail Commitment Amount" means, as of any date, the total obtained by adding the amount of the outstanding principal amount of the Loan to the amount of the undisbursed Loan proceeds and then subtracting the remaining Sitework Reimbursement Amount. As used herein, "Discounted Stabilized Value" means the discounted value of the Property at stabilized occupancy, based on an appraisal meeting all applicable regulatory requirements, taking into account current market conditions, including vacancy factors, estimated date of stabilization, discount rates, and rental rates and concessions, as determined by Administrative Agent in its reasonable discretion. Administrative Agent may determine the Discounted Stabilized Value of the Property based on a current appraisal or the original appraisal obtained in connection with the origination of the Loan, as Administrative Agent in its reasonable discretion may elect. Any appraisal used to determine the Discounted Stabilized Value of the Property shall meet all applicable regulatory requirements, shall be satisfactory to Administrative Agent in all respects, and shall be obtained at the sole cost and expense of Borrower. In the event this Loan to Value Ratio is not met, Borrower may satisfy this Loan to Value Ratio prior to the extension date by either (A) making a principal curtailment on the Loan in an amount sufficient to bring this Loan to Value Ratio into compliance and/or (B) providing additional collateral acceptable to Administrative Agent, which shall have value (as determined by Administrative Agent) which when added to the Property value is sufficient to satisfy this Loan to Value Ratio.

(ix) At the time of such extension, Borrower shall satisfy a Debt Service Coverage Ratio (as hereinafter defined) of at least 1.15 to 1.00, where for the purposes of this subsection (ix), "Debt Service Coverage Ratio" means, for any period, the ratio of Stabilized Net Operating Income from the rental portion of the Property to the Debt Service, where "Stabilized Net Operating Income" means actual net operating

income for the preceding three (3) months (on an annualized basis) and where "Debt Service" means the amount of the regularly scheduled debt service payments payable for the corresponding period, based on the then outstanding balance of the Loan less the remaining Sitework Reimbursement Amount, assuming that interest accrues at the rate of the greater of (a) the ten (10) year Treasury Rate plus one and three-quarters percent (1.75%) or (b) seven percent (7.00%), and that interest and principal payments are based on a thirty (30) year amortization schedule.

(x) At the time of such extension, at least eighty-five percent (85.0%) of the rental Improvements shall be leased.

2.12 Taxes.

(a) Any and all payments by Borrower to or for the account of Administrative Agent or any Lender under any Loan Document shall be made free and clear of and without deduction for any and all present or future taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges, and all liabilities with respect thereto, excluding, in the case of Administrative Agent and any Lender, taxes imposed on or measured by its net income, and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which Administrative Agent or such Lender, as the case may be, is organized or maintains a lending office (all such non-excluded taxes, duties, levies, imposts, deductions, assessments, fees, withholdings or similar charges and liabilities being included within the definition of "Taxes" herein). If Borrower shall be required by any Laws to deduct any Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Lender, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.12), Administrative Agent or such Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions, (iii) Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) within thirty (30) days after the date of such payment, Borrower shall furnish to Administrative Agent (who shall forward the same to such Lender) the original or a certified copy of a receipt evidencing payment thereof.

(b) In addition, Borrower agrees to pay any and all present or future stamp, court or documentary taxes and any other excise or property taxes or charges or similar levies which arise from any payment made under any Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, any Loan Document (hereinafter referred to as "Other Taxes").

(c) If Borrower shall be required by the Laws of any jurisdiction outside the United States to deduct any Taxes or Other Taxes from or in respect of any sum payable under any Loan Document to Administrative Agent or any Lender, Borrower shall also pay to such Lender or Administrative Agent (for the account of such Lender), at the time interest is paid, such additional amount that such Lender specifies is necessary to preserve the after-tax yield (after factoring in United States (federal and state) taxes imposed on or measured by net income) the Lender would have received if such deductions (including deductions applicable to additional sums payable under this Section 2.12) had not been made.

(d) Borrower agrees to indemnify Administrative Agent and each Lender for the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed or asserted by any jurisdiction on amounts payable under this Section 2.12) paid by Administrative Agent and such Lender and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, in each case whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Tribunal. Payment under this clause (d) shall be made within thirty (30) days after Administrative Agent or the Lender makes a demand therefor.

(e) Without prejudice to the survival of any other agreement of Borrower hereunder, the agreements and obligations of Borrower contained in this Section 2.12 shall survive the termination of the Commitments and the payment in full of all the other Indebtedness.

2.13 Advances and Payments.

(a) Following receipt of a Draw Request, Administrative Agent shall promptly provide each Lender with a copy of the Draw Request in the form of Exhibit "F 1", the related AIA Documents G-702 and G-703, the related written certification by Borrower's Architect and, if available, the related written certification of the Construction Consultant. Administrative Agent shall notify each Lender telephonically (with confirmation by facsimile) or by facsimile (with confirmation by telephone) not later than 1:00 p.m. Administrative Agent's Time two (2) Business Days prior to the advance Funding Date for LIBOR Rate Principal advances, and one (1) Business Day prior to the advance Funding Date for all other advances, of its Pro Rata Share of the amount Administrative Agent has determined shall be advanced in connection therewith ("Advance Amount"). In the case of an advance of the Loan, each Lender shall make the funds for its Pro Rata Share of the Advance Amount available to Administrative Agent not later than 11:00 a.m. Administrative Agent's Time on the funding date thereof. After Administrative Agent's receipt of the Advance Amount from Lenders, Administrative Agent shall make proceeds of the Loan in an amount equal to the Advance Amount (or, if less, such portion of the Advance Amount that shall have been paid to Administrative Agent by Lenders in accordance with the terms hereof) available to Borrower on the applicable Funding Date by advancing such funds to Borrower in accordance with the provisions of Exhibit "F".

(b) All payments by Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder shall be made to Administrative Agent not later than 12:00 p.m. (Administrative Agent's Time) on the date specified herein. Administrative Agent shall distribute to each Lender, such funds as such Lender may be entitled to receive hereunder, (i) on or before 2:00 p.m. (Administrative Agent's Time) on the day Administrative Agent receives such funds, if Administrative Agent has received such funds on or before 12:00 p.m. (Administrative Agent's Time), or (ii) on or before 12:00 p.m. (Administrative Agent's Time) on the Business Day following the day Administrative Agent receives such funds, if Administrative Agent receives such funds after 12:00 p.m. (Administrative Agent's Time). If Administrative Agent fails to timely pay any amount to any Lender in accordance with this clause (b), Administrative Agent shall pay to such Lender interest at the Federal Funds Rate on such amount, for each day from the day such amount was to be paid until it is paid to such Lender.

(c) Except as otherwise expressly provided herein, all payments by Borrower or any Lender shall be made to Administrative Agent at Administrative Agent's Office not later than the time for such type of payment specified in this Agreement. All payments received after such time shall be deemed received on the next succeeding Business Day. All payments shall be made in immediately available funds in lawful money of the United States of America. Whenever any payment falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

(d) Upon satisfaction of any applicable terms and conditions set forth herein, Administrative Agent shall promptly make any amounts received in accordance with clause (c) above available in like funds received as follows: (i) if payable to Borrower, in accordance with Exhibit "F", except as otherwise specified herein, and (ii) if payable to any Lender, by wire transfer to such Lender at the address specified in the Schedule of Lenders.

(e) Unless Borrower or any Lender has notified Administrative Agent, prior to the date any payment is required to be made by it to Administrative Agent, that Borrower or such Lender, as the case may be, will not make such payment, Administrative Agent may assume that Borrower or such Lender, as the case may be, has timely made such payment and may (but shall not be required to do so) in reliance thereon, make available a corresponding amount to the person or entity entitled thereto. If and to the extent that such payment was not in fact made to Administrative Agent in immediately available funds, then:

(i) if Borrower failed to make such payment, each Lender shall forthwith on demand repay to Administrative Agent the portion of such assumed payment that was made available to such Lender in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by Administrative Agent to such Lender to the date such amount is repaid to Administrative Agent in immediately available funds at the Federal Funds Rate from time to time in effect; and

(ii) if any Lender failed to make such payment, such Lender or, if applicable, Electing Lender or Lenders shall forthwith on demand pay to Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by Administrative Agent to Borrower to the date such amount is recovered by Administrative Agent (the "Compensation Period") at a rate per annum equal to the interest rate applicable to such amount under the Loan. If such Lender pays such amount to Administrative Agent, then such amount shall constitute such Lender's Pro Rata Share, included in the applicable Loan advance. If such Lender does not pay such amount forthwith upon Administrative Agent's demand therefor, Administrative Agent may make a demand therefor upon Borrower, and Borrower shall pay such amount to Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to such amount under the Loan. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which Administrative Agent or Borrower may have against any Lender as a result of any default by such Lender hereunder.

A notice of Administrative Agent to any Lender or Borrower with respect to any amount owing under this clause (e) shall be conclusive, absent any manifest error.

(f) If any Lender makes available to Administrative Agent funds for any Loan advance to be made by such Lender as provided in the foregoing provisions of this Section 2.13, and the funds are not advanced to Borrower or otherwise used to satisfy any Obligations of such Lender hereunder, Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(g) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan advance in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan advance in any particular place or manner.

2.14 Administrative Agent Advances

(a) Administrative Agent is authorized, from time to time, in Administrative Agent's sole discretion to make, authorize or determine advances of the Loan, or otherwise expend funds, on behalf of Lenders ("Administrative Agent Advances"), (i) to pay any costs, fees and expenses as described in Section 7.11 herein, (ii) when the applicable conditions precedent set forth in Exhibit "C" and Exhibit "F" have been satisfied to the extent required by Administrative Agent, and (iii) when Administrative Agent deems necessary or desirable to preserve or protect the Loan collateral or any portion thereof (including those with respect to property taxes, insurance premiums, completion of construction, operation management, improvements, maintenance, repair, sale and disposition) (A) subject to Section 6.5, after the occurrence of a Default, and (B) subject to Section 6.10, after acquisition of all or a portion of the Loan collateral by foreclosure or otherwise.

(b) Administrative Agent Advances shall constitute obligatory advances of Lenders under this Agreement, shall be repayable on demand and secured by the Loan collateral, and if unpaid by Lenders as set forth below, shall bear interest at the rate applicable to such amount under the Loan or if no longer applicable, at the Base Rate. Administrative Agent shall notify each Lender in writing of each Administrative Agent Advance. Upon receipt of notice from Administrative Agent of its making of an Administrative Agent Advance, each Lender shall make the amount of such Lender's Pro Rata Share of the outstanding principal amount of the Administrative Agent Advance available to Administrative Agent, in same day funds, to such account of Administrative Agent as Administrative Agent may designate, (i) on or before 3:00 p.m. (Administrative Agent's Time) on the day Administrative Agent provides Lenders with notice of the making of such Administrative Agent Advance if Administrative Agent provides such notice on or before 12:00 p.m. (Administrative Agent's Time), or (ii) on or before 12:00 p.m. (Administrative Agent's Time) on the Business Day immediately following the day Administrative Agent provides Lenders with notice of the making of such advance if Administrative Agent provides notice after 12:00 p.m. (Administrative Agent's Time).

2.15 Defaulting Lender.

(a) **Notice and Cure of Lender Default; Election Period; Electing Lenders.** Administrative Agent shall notify (such notice being referred to as the "**Default Notice**") Borrower (for Loan advances) and each non-Defaulting Lender if any Lender is a Defaulting Lender. Each non-Defaulting Lender shall have the right, but in no event and under no circumstance the obligation, to fund such Defaulting Lender Amount, provided that within twenty (20) days after the date of the Default Notice (the "**Election Period**"), the non-Defaulting Lender or Lenders (each such Lender, an "**Electing Lender**") irrevocably commit(s) by notice in writing (an "**Election Notice**") to Administrative Agent, the other Lenders and Borrower to fund the Defaulting Lender Amount and to assume the Defaulting Lender's obligations with respect to the advancing of the entire undisbursed portion of the Defaulting Lender's principal obligations under this Agreement (such entire undisbursed portion of the Defaulting Lender's principal obligations under this Agreement, including its portion of the Payment Amount that is the subject of the default, is hereinafter referred to as the "**Defaulting Lender Obligation**"). If Administrative Agent receives more than one Election Notice within the Election Period, then the commitment to fund the Defaulting Lender Amount and the Defaulting Lender Obligation shall be apportioned pro rata among the Electing Lenders in the proportion that the amount of each such Electing Lender's Commitment bears to the total Commitments of all Electing Lenders. If the Defaulting Lender fails to pay the Defaulting Lender Payment Amount within the Election Period, the Electing Lender or Lenders, as applicable, shall be automatically obligated to fund the Defaulting Lender Amount and the Defaulting Lender Obligation (and the Defaulting Lender shall no longer be entitled to fund such Defaulting Lender Amount or such Defaulting Lender Obligation) within three (3) Business Days following the expiration of the Election Period to reimburse Administrative Agent or make payment to Borrower, as applicable. Notwithstanding anything to the contrary contained herein, if Administrative Agent has funded the Defaulting Lender Amount, Administrative Agent shall be entitled to reimbursement for its portion of the Defaulting Lender Payment Amount pursuant to **Section 6.11**.

(b) **Removal of Rights; Indemnity.** Administrative Agent shall not be obligated to transfer to a Defaulting Lender any payments made by or on behalf of Borrower to Administrative Agent for the Defaulting Lender's benefit; nor shall a Defaulting Lender be entitled to the sharing of any payments hereunder or under any Note until all Defaulting Lender Payment Amounts are paid in full. Amounts payable to a Defaulting Lender shall be paid by Administrative Agent to reimburse Administrative Agent and any Electing Lender pro rata for all Defaulting Lender Payment Amounts. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents or the Environmental Agreement, a Defaulting Lender shall be deemed not to be a "Lender" and such Defaulting Lender's Commitment shall be deemed to be zero. A Defaulting Lender shall have no right to participate in any discussions among and/or decisions by Lenders hereunder and/or under the other Loan Documents or the Environmental Agreement. Further, any Defaulting Lender shall be bound by any amendment to, or waiver of, any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the non-Defaulting Lenders under, any Loan Document or the Environmental Agreement which is made subsequent to the Defaulting Lender's becoming a Defaulting Lender. This **Section 2.15** shall remain effective with respect to a Defaulting Lender until such time as the Defaulting Lender shall no longer be in default of any of its obligations under this Agreement by curing such default by payment of all Defaulting Lender Payment Amounts (i) within the Election

Period, or (ii) after the Election Period with the consent of the non-Defaulting Lenders. Such Defaulting Lender nonetheless shall be bound by any amendment to or waiver of any provision of, or any action taken or omitted to be taken by Administrative Agent and/or the non-Defaulting Lenders under any Loan Document or the Environmental Agreement which is made subsequent to that Lender's becoming a Defaulting Lender and prior to such cure or waiver. The operation of this clause (b) or clause (a) above alone shall not be construed to increase or otherwise affect the Commitment of any non-Defaulting Lender, or relieve or excuse the performance by Borrower of its duties and obligations hereunder or under any of the other Loan Documents or the Environmental Agreement. Furthermore, nothing contained in this Section 2.15 shall release or in any way limit a Defaulting Lender's obligations as a Lender hereunder and/or under any of the other Loan Documents or the Environmental Agreement. Further, a Defaulting Lender shall indemnify and hold harmless Administrative Agent and each of the non-Defaulting Lenders from any claim, loss, or costs incurred by Administrative Agent and/or the non-Defaulting Lenders as a result of a Defaulting Lender's failure to comply with the requirements of this Agreement, including any and all additional losses, damages, costs and expenses (including attorneys' fees) incurred by Administrative Agent and any non-Defaulting Lender as a result of and/or in connection with (i) a non-Defaulting Lender's acting as an Electing Lender, (ii) any enforcement action brought by Administrative Agent against a Defaulting Lender, and (iii) any action brought against Administrative Agent and/or Lenders. The indemnification provided above shall survive any termination of this Agreement.

(c) Commitment Adjustments. In connection with the adjustment of the amounts of the Commitments of the Defaulting Lender and Electing Lender(s) upon the expiration of the Election Period as aforesaid, Borrower, Administrative Agent and Lenders shall execute such modifications to the Loan Documents and the Environmental Agreement as shall, in the reasonable judgment of Administrative Agent, be necessary or desirable in connection with the adjustment of the amounts of Commitments in accordance with the foregoing provisions of this Section. For the purpose of voting or consenting to matters with respect to the Loan Documents or the Environmental Agreement, such modifications shall also reflect the removal of voting rights of the Defaulting Lender and increase in voting rights of Electing Lenders to the extent an Electing Lender has funded the Defaulting Lender Amount and assumed the Defaulting Lender Obligation. In connection with such adjustments, the Defaulting Lender shall execute and deliver an Assignment and Assumption covering that Lender's Commitment and otherwise comply with Section 7.6. If a Lender refuses to execute and deliver such Assignment and Assumption or otherwise comply with Section 7.6, such Lender hereby appoints Administrative Agent to do so on such Lender's behalf. Administrative Agent shall distribute an amended Schedule of Lenders, which shall thereafter be incorporated into this Agreement, to reflect such adjustments. However, all such Defaulting Lender Amounts and such Defaulting Lender Obligation funded by Administrative Agent or Electing Lenders shall continue to be Defaulting Lender Amounts of the Defaulting Lender pursuant to its obligations under this Agreement.

(d) No Election. In the event that no Lender elects to commit to fund the Defaulting Lender Amount and Defaulting Lender Obligation within the Election Period, Administrative Agent shall, upon the expiration of the Election Period, so notify Borrower and each Lender.

2.16 Several Obligations; No Liability; No Release. Notwithstanding that certain of the Loan Documents and/or the Environmental Agreement now or hereafter may have been or will be executed only by or in favor of Administrative Agent in its capacity as such, and not by or in favor of Lenders, any and all obligations on the part of Administrative Agent (if any) to make any advances of the Loan or reimbursements for other Payment Amounts shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Pro Rata Shares. Except as may be specifically provided in this Agreement, no Lender shall have any liability for the acts of any other Lender. No Lender shall be responsible to Borrower or any other person for any failure by any other Lender to fulfill its obligations to make advances of the Loan or reimbursements for other Payment Amounts, or to take any other action on its behalf hereunder or in connection with the financing contemplated herein. The failure of any Lender to pay to Administrative Agent its Pro Rata Share of a Payment Amount shall not relieve any other Lender of any obligation hereunder to pay to Administrative Agent its Pro Rata Share of such Payment Amounts as and when required herein, but no Lender shall be responsible for the failure of any other Lender to so fund its Pro Rata Share of the Payment Amount. In furtherance of the foregoing, Lenders shall comply with their obligation to pay Administrative Agent their Pro Rata Shares of such Payment Amounts regardless of (i) the occurrence of any Default hereunder or under any Loan Document or the Environmental Agreement; (ii) any failure of consideration, absence of consideration, misrepresentation, fraud, or any other event, failure, deficiency, breach or irregularity of any nature whatsoever in the Loan Documents or the Environmental Agreement; (iii) any bankruptcy, insolvency or other like event with regard to Borrower. The obligation of Lenders to pay such Payment Amounts are in all regards independent of any claims between Administrative Agent and any Lender.

2.17 Replacement of Lenders. If any Lender is a Defaulting Lender, Borrower may, upon notice to such Lender and Administrative Agent, replace such Lender by causing such Lender to assign its Commitment with the payment of any assignment fee by the replaced Lender to one or more other lenders or Eligible Assignees acceptable to Borrower, and the Administrative Agent and the L/C Issuer. Borrower shall or shall cause the replacement lender to (subject to the provisions of Sections 2.14 and 2.15 providing for payment of all Defaulting Lender Payment Amounts to Administrative Agent and/or Electing Lenders, as applicable, prior to payment of amounts due to a Defaulting Lender), (a) pay in full all principal, interest, fees and other amounts owing to such Lender through the date of replacement, (b) provide appropriate assurances and indemnities (which may include letters of credit) as such Lender may reasonably require with respect to such replaced Lender's obligation to fund its participation interest in any letters of credit then outstanding, and (c) provide a release of such Lender from its obligations under the Loan Documents and the Environmental Agreement. Any Lender being replaced shall execute and deliver an Assignment and Assumption covering that Lender's Commitment and otherwise comply with Section 7.6. If a Lender being replaced refuses to execute and deliver such Assignment and Assumption or otherwise comply with Section 7.6, such Lender hereby appoints Administrative Agent to do so on such Lender's behalf. Administrative Agent shall distribute an amended Schedule of Lenders, which shall thereafter be incorporated into this Agreement, to reflect adjustments to Lenders and their Commitments.

ARTICLE 3

ADDITIONAL COVENANTS AND AGREEMENTS

3.1 Construction of the Improvements. Borrower shall commence construction of the Improvements as soon as practicable after the recording of the Deed of Trust in the official records of the county in which the Property is located, and shall prosecute the construction of the Improvements with diligence and continuity, in a good and workmanlike manner, and in accordance with sound building and engineering practices, all applicable Laws and governmental requirements, the Plans and the Loan Documents. Borrower shall not permit the cessation of work for a period in excess of ten (10) consecutive Business Days, except for Excusable Delays. Borrower shall complete construction of the Improvements free and clear of all liens (except liens created by the Loan Documents), and shall obtain a certificate of occupancy and all other permits, licenses and approvals from all applicable governmental authorities required for the occupancy, use and operation of the Improvements, in each case satisfactory to Administrative Agent, on or before the Completion Date. Borrower shall promptly correct (a) any material defect in the Improvements, (b) any material departure from the Plans, Law or governmental requirements, or (c) any encroachment by any Improvements or structure on any building setback line, easement, property line or restricted area.

3.2 Plans and Changes. No construction shall be undertaken on the Land except as shown in the Plans. Borrower assumes full responsibility for the compliance of the Plans and the Property with all Laws, governmental requirements and sound building and engineering practices. No plans or specifications or any changes thereto shall be included as part of the Plans until approved by Administrative Agent, Construction Consultant, all applicable governmental authorities, and all other parties required under the Loan Documents. Without Administrative Agent's prior written consent, Borrower shall not change or modify the Plans, agree to any change order, or allow any extras to any contractor or any subcontractor, provided, however, that Borrower may make Permitted Changes if (a) Borrower notifies Administrative Agent in writing of the change or extra with appropriate supporting documentation and information, (b) Borrower obtains the approval of the applicable contractor, Borrower's architect and all sureties, (c) the structural integrity, quality and standard of workmanship of the Improvements will not be impaired by such change or extra, (d) no substantial change in architectural appearance will be effected by such change or extra, (e) no default in any obligation to any person or violation of any Law or governmental requirement will result from such change or extra, (f) Borrower complies with Section 1.5 of this Agreement to cover any excess cost resulting from the change or extra, and (g) completion of the Improvements by the Completion Date will not be affected. Administrative Agent shall not be obligated to review a proposed change unless it has received all documents necessary to review such change, including the change order, cost estimates, plans and specifications, and evidence that all required approvals other than that of Administrative Agent have been obtained.

3.3 Contracts. Without Administrative Agent's prior written approval as to parties, terms and all other matters, Borrower shall not (a) enter into any Material Contract for the performance of any work or the supplying of any labor, materials or services for the design or construction of the Improvements, or (b) modify, amend or terminate any such Material Contracts. All such Material Contracts shall provide that no change order shall be effective

without the prior written consent of Administrative Agent except for change orders which implement Permitted Changes. Borrower may enter into any management, leasing, maintenance or other contract pertaining to the Property which is not a Material Contract so long as the contract is unconditionally terminable by Borrower or any successor owner without penalty or payment on not more than thirty (30) days' notice to the other party. Borrower shall not default under any contract or permit any contract to terminate by reason of any failure of Borrower to perform thereunder, and Borrower shall promptly notify Administrative Agent of any default thereunder.

3.4 Assignment of Plans and Contracts. As additional security for the Obligations, Borrower hereby transfers and assigns to Administrative Agent for the ratable benefit of Administrative Agent and Lenders all of Borrower's right, title and interest, but not its liability, in, under and to the Plans and all construction, architectural and design contracts, and agrees that all of the same are covered by the security agreement provisions of the Deed of Trust. Borrower agrees to deliver to Administrative Agent from time to time upon Administrative Agent's request such consents to the foregoing assignment from parties contracting with Borrower as Administrative Agent may require. Neither this assignment nor any action by Administrative Agent or Lenders shall constitute an assumption by Administrative Agent or Lenders of any obligation with respect to the Plans or under any contract. Borrower hereby agrees to perform all of its obligations under any contract, and Borrower shall continue to be liable for all obligations of Borrower with respect thereto. Administrative Agent shall have the right at any time (but shall have no obligation) to take in its name or in the name of Borrower such action as Administrative Agent may determine to be necessary to cure any default with respect to the Plans or under any contract or to protect the rights of Borrower, Administrative Agent or Lenders with respect thereto. Borrower irrevocably constitutes and appoints Administrative Agent as Borrower's attorney in fact, which power of attorney is coupled with an interest and irrevocable, to enforce in Borrower's name or in the names of Administrative Agent and Lenders all rights of Borrower with respect to the Plans or under any contract. Administrative Agent shall incur no liability if any action so taken by it or on its behalf shall prove to be inadequate or invalid. Administrative Agent may use the Plans for any purpose relating to the Improvements. Borrower indemnifies and holds Administrative Agent and Lenders harmless from and against any loss, cost, liability or expense (including consultants' fees and expenses and attorneys' fees and expenses) incurred in connection with Borrower's failure to perform such contracts or any action taken by Administrative Agent or Lenders. Borrower represents and warrants to Administrative Agent and Lenders that the copies of the Plans delivered to Administrative Agent are and shall be true and complete copies thereof, that the copy of any contract furnished or to be furnished to Administrative Agent is and shall be a true and complete copy thereof, that there have been no modifications thereof which are not fully set forth in the copies delivered, and that Borrower's interest therein is not subject to any claim, setoff or encumbrance.

3.5 Storage of Materials. Borrower shall cause all materials supplied for or intended to be utilized in the construction of the Improvements, but not yet affixed to or incorporated into the Improvements or the Land, to be stored on the Land or at such other site as Administrative Agent may approve, in each case with adequate safeguards to prevent loss, theft, damage or commingling with materials for other projects. Borrower shall not purchase or order materials for delivery more than forty-five (45) days prior to the scheduled incorporation of such materials into the Improvements.

3.6 Construction Consultant. Administrative Agent may retain the services of a Construction Consultant, whose duties may include, among others, reviewing the Plans and any proposed changes to the Plans, performing construction cost analyses, observing work in place and reviewing Draw Requests. The duties of Construction Consultant run solely to Administrative Agent for the ratable benefit of Lenders, and Construction Consultant shall have no obligations or responsibilities whatsoever to Borrower, Borrower's architect, engineer, contractor or any of their agents or employees. Unless prohibited by applicable Law, all reasonable fees, costs, and expenses of Construction Consultant shall be paid by Borrower. Borrower shall cooperate with Construction Consultant and will furnish to Construction Consultant such information and other material as Construction Consultant may consider necessary or useful in performing its duties. Administrative Agent will provide Borrower with a good faith estimate of costs for the initial review of the Plans and on site inspection.

3.7 Inspection. Administrative Agent and its agents, including Construction Consultant, may enter upon the Property to inspect the Property, the Project and any materials at any reasonable time, unless Administrative Agent deems such inspection is of an emergency nature, in which event Borrower shall provide Administrative Agent with immediate access to the Property. Borrower will also permit Administrative Agent and its agents, including Construction Consultant, to photograph the Property during normal business hours and at any other reasonable time. Borrower will furnish to Administrative Agent and its agents, including Construction Consultant, for inspection and copying, all Plans, shop drawings, specifications, books and records, and other documents and information that Administrative Agent may request from time to time.

3.8 Notice to Lenders. Borrower shall, within ten (10) days after the occurrence of any of the following events, notify each Lender in writing thereof, specifying in each case the action Borrower has taken or will take with respect thereto: (a) any violation of any Law or governmental requirement; (b) any litigation, arbitration or governmental investigation or proceeding instituted or threatened against Borrower or the Property where the amount claimed is \$150,000.00 or more, and any material development therein; (c) any actual or threatened condemnation of any portion of the Property, any negotiations with respect to any such taking, or any loss of or substantial damage to the Property; (d) any labor controversy pending or threatened against Borrower or any contractor, and any material development in any labor controversy where the amount claimed is \$150,000.00 or more; (e) any notice received by Borrower with respect to the cancellation, alteration or non renewal of any insurance coverage maintained with respect to the Property; (f) any failure by Borrower or any contractor, subcontractor or supplier to perform any material obligation under any construction contract, any event or condition which would permit termination of a construction contract or suspension of work thereunder, or any notice given by Borrower or any contractor with respect to any of the foregoing; (g) any lien filed against the Property or any stop notice served on Borrower in connection with construction of the Improvements; or (h) the lapse of any required permit, license, certificate or approval with respect to the Property or the failure of any of the foregoing to be in full force and effect.

3.9 Financial Statements, Records and Reports. If reasonably required by Administrative Agent, Borrower shall provide or cause to be provided to Administrative Agent all of the following:

(a) Financial Statements of Borrower for each fiscal year, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year, unqualified audited certified financial statements of Borrower, and for each fiscal quarter, as soon as reasonably practicable and in any event within sixty (60) days after the close of each such reporting period company-prepared financial statements of Borrower.

(b) Commencing the first month after the issuance of a certificate of occupancy or its equivalent, provided the Property is operating, within forty-five (45) days after the close of each fiscal quarter, operating statements of the Project, rent rolls and leasing reports of the Project.

(c) From time to time promptly after Administrative Agent's reasonable request, such additional information, reports and statements respecting the Property and the Improvements, or the business operations and financial condition of each Reporting Party, as Administrative Agent may reasonably request.

Borrower will make all of its books, records and accounts available to Administrative Agent and its representatives at the Property upon request and will permit them to review and copy the same. All Financial Statements shall be in form and detail satisfactory to Administrative Agent and shall contain or be attached to the signed and dated written certification of the Reporting Party in form specified by Administrative Agent to certify that the Financial Statements are furnished to Administrative Agent in connection with the extension of credit by Lenders and constitute a true and correct statement of the Reporting Party's financial position. All certifications and signatures on behalf of corporations, partnerships, limited liability companies or other entities shall be by a representative of the Reporting Party satisfactory to Administrative Agent. Borrower shall promptly notify Administrative Agent of any event or condition that could reasonably be expected to have a Material Adverse Effect in the financial condition of Borrower, or in the construction progress of the Improvements. Administrative Agent shall provide a copy of such Financial Statements to each Lender upon receipt.

3.10 Other Information. Borrower shall furnish to Administrative Agent from time to time upon Administrative Agent's request: (a) copies of any or all subcontracts entered into by contractors or subcontractors and the names and addresses of all persons or entities with whom Borrower or any contractor has contracted or intends to contract for the construction of the Improvements or the furnishing of labor or materials in connection therewith; (b) copies of any or all contracts, bills of sale, statements, receipts or other documents under which Borrower claims title to any materials, fixtures or articles of personal property incorporated or to be incorporated into the Improvements or subject to the lien of the Deed of Trust; (c) a list of all unpaid bills for labor and materials with respect to construction of the Improvements and copies of all invoices therefor; (d) budgets of Borrower and revisions thereof showing the estimated costs and expenses to be incurred in connection with the completion of construction of the Improvements; (e) current or updated detailed Project schedules or construction schedules; and (f) such other information relating to Borrower, the Improvements, the Property, or any indemnitor or other person or party connected with Borrower, the Loan, the construction of the Improvements or any security for the Loan.

3.11 Reports and Testing. Borrower shall (a) promptly deliver to Administrative Agent copies of all reports, studies, inspections and tests made on the Land, the Improvements or any materials to be incorporated into the Improvements, and (b) make such additional tests on the Land, the Improvements or any materials to be incorporated into the Improvements as Administrative Agent reasonably requires. Borrower shall immediately notify Administrative Agent of any report, study, inspection or test that indicates any adverse condition relating to the Land, the Improvements or any such materials.

3.12 Advertising by Lenders. At Administrative Agent's request and at Borrower's expense, Borrower shall erect and maintain on the Property one or more advertising signs furnished by Administrative Agent indicating that the construction financing for the Property has been provided by Lenders.

3.13 Appraisal. From time to time, Administrative Agent may obtain an appraisal of all or any part of the Property prepared in accordance with written instructions from Administrative Agent by a third party appraiser engaged directly by Administrative Agent. Each such appraiser and appraisal shall be satisfactory to Administrative Agent (including satisfaction of applicable regulatory requirements). The cost of any such appraisal shall be borne by Borrower if such appraisal is the first appraisal in any calendar year and in all events if Administrative Agent obtains such appraisal after the occurrence of a Default. Whenever Borrower is obligated to pay the cost of an appraisal hereunder, such cost is due and payable by Borrower on demand and shall be secured by the Loan Documents. Administrative Agent shall provide a copy of such appraisal to each Lender upon receipt.

3.14 Loan-to-Value Ratio. The Property shall have at all times a "Loan-to-Value Ratio" of not greater than seventy-five percent (75%), which Loan-to-Value Ratio shall be calculated as follows: the Net Core Retail Commitment Amount (as defined in Section 2.11(b)(viii) hereof) as of the date of the determination of the ratio shall be divided by the appraised Discounted Stabilized Value of the Property (as defined in Section 2.11(b)(viii) hereof).

3.15 Loan-to-Cost Amount. The Property shall have at all times a "Loan-to-Cost Ratio" of not greater than (86.2%), which "Loan to Cost Ratio" shall be calculated as follows: Net Commitment Amount divided by total Property costs as set forth in the Budget. Not less than \$9,107,110.00 (9% of total costs) of the required equity commitment of Borrower shall consist of up-front cash proceeds, with the remaining capitalization consisting of deferred development and construction fees. As used herein, "Net Commitment Amount" means, as of any date, the total obtained by adding the amount of the outstanding principal amount of the Loan to the amount of the undisbursed Loan proceeds.

3.16 Debt Service Coverage Ratio. Borrower shall satisfy at all times a "Debt Service Coverage Ratio" of at least 1.15 to 1.00, where Debt Service Coverage Ratio shall have the meaning given in Section 2.11(b)(ix) hereof except that Stabilized Net Operating Income shall mean the appraised net operating income.

3.17 Sitework Reimbursement Amount. The outstanding principal amount of the Loan plus the amount of the undisbursed Loan proceeds less the Net Core Retail Commitment Amount

shall not, at any time, exceed one hundred percent (100%) of the remaining Sitework Reimbursement Amount.

3.18 Payment of Withholding Taxes. Borrower shall not use, or knowingly permit any contractor or subcontractor to use, any portion of the proceeds of any Loan advance to pay the wages of employees unless a portion of the proceeds or other funds are also used to make timely payment to or deposit with (a) the United States of all amounts of tax required to be deducted and withheld with respect to such wages under the Internal Revenue Code, and (b) any state and/or local Tribunal or agency having jurisdiction of all amounts of tax required to be deducted and withheld with respect to such wages under any applicable state and/or local Laws.

3.19 ERISA and Prohibited Transaction Taxes. As of the date hereof and throughout the term of this Agreement: (a) Borrower is not and will not be (i) an "employee benefit plan," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or (ii) a "plan" within the meaning of Section 4975(e) of the Internal Revenue Code; (b) the assets of Borrower do not and will not constitute "plan assets" within the meaning of the United States Department of Labor Regulations set forth in 29 C.F.R. § 2510.3-101; (c) Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA; (d) transactions by or with Borrower are not and will not be subject to state statutes applicable to Borrower regulating investments of fiduciaries with respect to governmental plans; and (e) Borrower shall not engage in any transaction which would cause any obligation or action taken or to be taken hereunder (or the exercise by Administrative Agent of any of Lenders' rights under this Agreement, the Note or the other Loan Documents or the Environmental Agreement) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Internal Revenue Code. Borrower further agrees to deliver to Administrative Agent such certifications or other evidence of compliance with the provisions of this Section 3.19 as Administrative Agent may from time to time request.

3.20 Change in Interest in Borrower. Without the prior written consent of Administrative Agent, no more than fifty percent (50.0%) of the voting power in the Borrower shall be transferred after the date hereof to another person or entity. Notwithstanding the foregoing, transfers of any interest in Borrower to any person or entity that is directly or indirectly controlled by, controlling or under common control of or with (i) Opus 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, shall be permitted hereunder without Administrative Agent's consent, so long as Borrower remains fully obligated for the Borrower's obligations with respect to the Loan. NOTICE - THE LOAN IS SUBJECT TO ACCELERATION IN THE EVENT OF A TRANSFER WHICH IS PROHIBITED UNDER THIS SECTION 3.20.

3.21 Minimum Liquidity. Borrower shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities of not less than Three Million And No/100 Dollars (\$3,000,000.00).

3.22 Tangible Net Worth plus Subordinated Debt. Borrower 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).

3.23 Total Liabilities to Tangible Net Worth Ratio. Borrower 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.

3.24 Sitework Reimbursements. Borrower shall cause all amounts paid by Lowe's and Ayres under the Sitework Reimbursement Agreements to be applied to the payment of the cost of the Improvements as such costs are incurred or, at Borrower's election (subject to Administrative Agent's reasonable approval), to the prepayment of principal pursuant to Section 2.9 hereof. The cost of Improvements paid with amounts received under the Sitework Reimbursement Agreement shall nevertheless be shown on each applicable Draw Request submitted to Lender with the credit for such payment noted thereon and Loan proceeds shall no longer be available for the payment of such cost to the extent of such amounts so paid and received. To the extent that Ayres does not pay all amounts due under its Sitework Reimbursement Agreement within twelve (12) months after the date hereof, Borrower shall immediately make a prepayment of principal in the amount not so paid by Ayres.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

To induce Lenders to make the Loan, Borrower hereby represents and warrants to Administrative Agent and Lenders that except as otherwise disclosed to Administrative Agent in writing:

4.1 Organization. If Borrower is a corporation, partnership, limited liability company or other legal entity, Borrower is and will continue to be (a) duly organized, validly existing and in good standing under the Laws of the state of its organization, (b) authorized to do business and in good standing in each state in which the Property is located, and (c) possessed of all requisite power and authority to carry on its business, to own the Property and to develop and operate the Improvements as contemplated in this Agreement and the other Loan Documents.

4.2 Authorization; No Conflict. Each Loan Document executed by Borrower has been duly authorized, executed and delivered by Borrower, and the obligations thereunder and the performance thereof by Borrower in accordance with their terms are and will continue to be within Borrower's power and authority without the necessity of joinder or consent of any other person. No provision of the Loan Documents violates or will violate any applicable Law, any covenants or restrictions affecting the Property, any order of any court or governmental authority or any contract or agreement binding on Borrower or the Property.

4.3 Enforceability. The Loan Documents constitute legal, valid and binding obligations of Borrower enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws and except as the availability of certain remedies may be limited by general principles of equity.

4.4 No Violation: No Litigation. Borrower is not in violation of any Law, regulation or ordinance, or any order of any court or Tribunal, and no provision of the Loan Documents violates any applicable Law, any covenants or restrictions affecting the Property, any order of any court or Tribunal or any contract or agreement binding on Borrower or the Property.

4.5 Taxes. To the extent required by applicable Law, Borrower has filed all necessary tax returns and reports and have paid all taxes and governmental charges thereby shown to be owing.

4.6 Plans. The Plans are or will be complete in all material respects, contain all necessary detail and are or will be adequate for construction of the Improvements, are satisfactory to Borrower. The Plans have been or will be approved by all applicable governmental authorities and comply with the Loan Documents and all applicable Laws, restrictive covenants, and governmental requirements, rules and regulations. The Plans do, and the Improvements when constructed will, comply with all legal requirements regarding access and facilities for handicapped or disabled persons.

4.7 Requirements: Zoning. The Land and Improvements comply with all Laws and governmental requirements, including all subdivision and platting requirements, without reliance on any adjoining or neighboring property. The current and anticipated use of the Property complies with all applicable zoning ordinances, regulations and restrictive covenants affecting the Land without the existence of any variance, non-complying use, nonconforming use or other special exception, all use restrictions of any Tribunal having jurisdiction have been satisfied, and no violation of any Law or regulation exists with respect thereto.

4.8 Separate Tax Lot. The Land is not part of a larger tract of land owned by Borrower or any of its affiliates, is not otherwise included under any unity of title or similar covenant with other lands not encumbered by the Deed of Trust, and constitutes a separate tax lot or lots with a separate tax assessment or assessments for the Land and Improvements, independent of those for any other lands or improvements.

4.9 No Conveyance. Borrower has not directly or indirectly conveyed, assigned or otherwise disposed of or transferred (or agreed to do so) any development rights, air rights or other similar rights, privileges or attributes with respect to the Property, including those arising under any zoning or land use ordinance or other Law or governmental requirement.

4.10 Construction Matters. The construction schedule for the Project is realistic and the Completion Date is a reasonable estimate of the time required to complete the Project.

4.11 Utilities. All utility services necessary for the development of the Land and the construction of the Improvements and the operation thereof for their intended purpose are, or will be, available at the boundaries of the Land, including electric and natural gas facilities, telephone service, water supply, storm and sanitary sewer facilities.

4.12 Financial Matters. Borrower is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law is pending (or to Borrower's knowledge threatened) by or against Borrower as a debtor. All Financial Statements (collectively, "Submissions") heretofore furnished or hereafter to be

furnished by or on behalf of Borrower to Administrative Agent are true, correct and complete in all material respects as of their respective dates. There has been no event or condition that could reasonably be expected to have a Material Adverse Effect on Borrower's financial condition from the financial condition of Borrower indicated in such Submissions.

4.13 Borrower Not a Foreign Person. Borrower is not a "foreign person" within the meaning of the Internal Revenue Code, Sections 1445 and 7701 (i.e., Borrower is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder).

4.14 Business Loan. The Loan is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Borrower warrants that the proceeds of the Loan shall be used for commercial purposes and stipulates that the Loan shall be construed for all purposes as a commercial loan.

4.15 No Work Prior to Recordation. Prior to recordation of the Deed of Trust, except as disclosed to Administrative Agent in writing or as endorsed against by the Title Insurer, no work of any kind (including destruction or removal of any existing improvements, site work, clearing, grading, grubbing, draining or fencing of the Land) has been or will be commenced or performed on the Land, no equipment or material has been or will be delivered to or placed upon the Land for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor, materials or services for the design or construction of the Improvements, or the surveying of the Land or Improvements, and no affidavit or notice of commencement of construction of the Improvements, has been or will be executed or recorded, which could cause a mechanic's or materialmen's lien or similar lien to achieve priority over the Deed of Trust or the rights of Administrative Agent and Lenders thereunder.

ARTICLE 5

DEFAULT AND REMEDIES

5.1 Events of Default. The occurrence of any one of the following shall be a default under this Agreement ("Default"): (a) any of the Indebtedness is not paid within five (5) days after written notice from Administrative Agent; provided, however, no notice shall be required at maturity; (b) any covenant, agreement, condition, representation or warranty in this Agreement (other than covenants to pay the Indebtedness and other than Defaults expressly listed in this Section) is not fully and timely performed, observed or kept and such failure is not cured within fifteen (15) days after written notice from Administrative Agent; (c) the occurrence of a Default under any other Loan Document (taking into account any applicable notice and cure period set forth in such Loan Document); (d) construction of the Improvements ceases for more than fifteen (15) consecutive days except for Excusable Delays; (e) the construction of the Improvements, or any materials for which an advance has been requested, materially fails to comply with the Plans, the Loan Documents, any laws or governmental requirements, or any applicable restrictive covenants and such failure is not cured within fifteen (15) days after written notice from Administrative Agent; (f) construction of the Improvements is abandoned, Administrative Agent reasonably determines that construction of the Improvements in accordance with this Agreement will not be completed on or before the Completion Date, or Borrower fails to complete

construction of the Improvements (and obtain all applicable permits, licenses, certificates and approvals) in accordance with this Agreement on or before the Completion Date; (g) any required permit, license, certificate or approval with respect to the Property lapses or ceases to be in full force and effect and such lapse has a material adverse effect on the operations of the Property (as determined by Administrative Agent in its reasonable discretion), and is not cured within fifteen (15) days after written notice from Administrative Agent after such determination; (h) a Borrower's Deposit is not made with Administrative Agent within fifteen (15) days after Administrative Agent's request therefor in accordance with Section 1.5; (i) construction is enjoined or Borrower or Administrative Agent is enjoined or prohibited from performing any of its respective obligations under any of the Loan Documents and such prohibition is not cured or construction is not continued within fifteen (15) days after written notice from Administrative Agent; (j) the owner of the Property enters into any lease of part or all of the Property which does not comply with the Loan Documents; (k) a lien for the performance of work or the supply of materials which is established against the Property, or any stop notice served on Borrower, the general contractor, or Administrative Agent, remains unsatisfied or unbonded for a period of fifteen (15) days after written notice to the Borrower thereof or service, whichever is earlier; (l) the occurrence of any condition or situation which, in the reasonable determination of Administrative Agent, constitutes a danger to or impairment of the Property or the lien of the Deed of Trust, if such condition or situation is not remedied within ten (10) days after written notice to the Borrower thereof; (m) the entry of a judgment against Borrower that materially affects its ability to perform under the Loan Documents or the issuance of any attachment, sequestration, or similar writ levied upon any of its property which is not discharged or bonded against within a period of thirty (30) days; (n) Administrative Agent reasonably determines that a material adverse change has occurred in the financial condition of Borrower or in the condition of the Property; (o) the dissolution or insolvency of Borrower; (p) Borrower files a bankruptcy petition or makes a general assignment for the benefit of creditors, or a bankruptcy petition is filed against Borrower and such involuntary bankruptcy petition continues undismissed for a period of ninety (90) days after the filing thereof; or (q) a transfer of the voting power in Borrower in violation of the provisions of Section 3.20 hereof.

5.2 Remedies. Upon a Default, Administrative Agent may with the consent of, and shall at the direction of, the Required Lenders, without notice, exercise any and all rights and remedies afforded by this Agreement, the other Loan Documents, the Environmental Agreement, Law, equity or otherwise, including (a) declaring any and all Indebtedness immediately due and payable, (b) reducing any claim to judgment, or (c) obtaining appointment of a receiver (to which Borrower hereby consents) and/or judicial or nonjudicial foreclosure under the Deed of Trust. Provided, however, upon a Default, Administrative Agent at its election may (but shall not be obligated to) without the consent of, and shall at the direction of, the Required Lenders, without notice, do any one or more of the following: (a) terminate Lenders' Commitment to lend and any obligation to disburse any Borrower's Deposit hereunder; (b) in its own name on behalf of Lenders or in the name of Borrower, enter into possession of the Property, perform all work necessary to complete construction of the Improvements substantially in accordance with the Plans (as modified as deemed necessary by Administrative Agent), the Loan Documents, and all applicable Laws, governmental requirements and restrictive covenants, and continue to employ Borrower's architect, engineer and any contractor pursuant to the applicable contracts or otherwise; or (c) set off and apply against any Indebtedness, to the extent thereof and to the maximum extent permitted by Law, any and all deposits, funds, or assets in which

Administrative Agent has been granted a security interest on behalf of Lenders pursuant to any Loan Document to or for the credit or account of Borrower. Further, upon a Default, L/C Issuer may, with the approval of Administrative Agent, demand immediate payment by Borrower of an amount equal to the aggregate amount of the outstanding Letter of Credit to be held in a deposit account with Administrative Agent to secure amounts due from Borrower under the Letter of Credit and when the Letter of Credit no longer exists, the Loan; provided, that if such Default is cured, Administrative Agent shall release such account to Borrower. Administrative Agent shall not waive any Default without the approval of the Required Lenders.

Borrower hereby appoints Administrative Agent as Borrower's attorney in fact, which power of attorney is irrevocable and coupled with an interest, with full power of substitution if Administrative Agent so elects, to do any of the following in Borrower's name upon the occurrence of a Default: (i) use such sums as are necessary, including any proceeds of the Loan and any Borrower's Deposit, make such changes or corrections in the Plans, and employ such architects, engineers, and contractors as may be required, or as Lenders may otherwise consider desirable, for the purpose of completing construction of the Improvements substantially in accordance with the Plans (as modified as deemed necessary by Administrative Agent), the Loan Documents, and all applicable Laws, governmental requirements and restrictive covenants; (ii) execute all applications and certificates in the name of Borrower which may be required for completion of construction of the Improvements; (iii) endorse the name of Borrower on any checks or drafts representing proceeds of any insurance policies, or other checks or instruments payable to Borrower with respect to the Property; (iv) do every act with respect to the construction of the Improvements that Borrower may do; (v) prosecute or defend any action or proceeding incident to the Property; (vi) pay, settle, or compromise all bills and claims so as to clear title to the Property; and (vii) take over and use all or any part of the labor, materials, supplies and equipment contracted for, owned by, or under the control of Borrower, whether or not previously incorporated into the Improvements. Any amounts expended by Administrative Agent on its own behalf or on behalf of Lenders to construct or complete the Improvements or in connection with the exercise of its remedies herein shall be deemed to have been advanced to Borrower hereunder as a demand obligation owing by Borrower to Administrative Agent or Lenders as applicable and shall constitute a portion of the Indebtedness, regardless of whether such amounts exceed any limits for Indebtedness otherwise set forth herein. Neither Administrative Agent nor any Lender shall have any liability to Borrower for the sufficiency or adequacy of any such actions taken by Administrative Agent.

No delay or omission of Administrative Agent or Lenders to exercise any right, power or remedy accruing upon the happening of a Default shall impair such right, power or remedy or be construed to be a waiver of such Default or any acquiescence therein. No delay or omission on the part of Administrative Agent or Lenders to exercise any option for acceleration of the maturity of the Indebtedness or for foreclosure of the Deed of Trust following any Default as aforesaid, or any other option granted to Administrative Agent and Lenders hereunder in any one or more instances, and no acceptance by Administrative Agent or Lenders of any partial payment on account of the Indebtedness, shall constitute a waiver of such Default, and each such option shall remain continuously in full force and effect. No remedy herein conferred upon or reserved to Administrative Agent and/or Lenders is intended to be exclusive of any other remedies provided for in any Note, any of the other Loan Documents or the Environmental Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other

remedy given hereunder, or under any Note, any of the other Loan Documents or the Environmental Agreement, or now or hereafter existing at Law or in equity or by statute. Every right, power and remedy given to Administrative Agent and Lenders by this Agreement, any Note, any of the other Loan Documents or the Environmental Agreement shall be concurrent, and may be exercised from time to time as often as may be deemed expedient by the Required Lenders. Every right, power and remedy given to Administrative Agent and Lenders by this Agreement, any Note or any of the Loan Documents may be pursued separately, successively or together against Borrower, or the Property or any part thereof, or any personal property granted as security under the Loan Documents.

Regardless of how a Lender may treat payments received from the exercise of remedies under the Loan Documents or the Environmental Agreement for the purpose of its own accounting, for the purpose of computing the indebtedness, payments shall be applied as elected by Lenders. No application of payments will cure any Event of Default or prevent acceleration or continued acceleration of amounts payable under the Loan Documents or the Environmental Agreement or prevent the exercise or continued exercise of rights or remedies of Administrative Agent and Lenders hereunder or thereunder or at Law or in equity.

ARTICLE 6

ADMINISTRATIVE AGENT

6.1 Appointment and Authorization of Administrative Agent.

(a) Each Lender hereby irrevocably (subject to Section 6.9) appoints, designates and authorizes Administrative Agent to take such action on its behalf under the provisions of this Agreement, each other Loan Document and the Environmental Agreement and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement, any other Loan Document or the Environmental Agreement, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Loan Document or the Environmental Agreement, Administrative Agent shall not have any duties or responsibilities except those expressly set forth herein, nor shall Administrative Agent have or be deemed to have any fiduciary relationship with any Lender. No implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or the Environmental Agreement or shall otherwise exist against Administrative Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in the other Loan Documents and the Environmental Agreement with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) L/C Issuer shall act on behalf of Lenders with respect to the Letter of Credit issued by it and the documents associated therewith, and L/C Issuer shall have all of the benefits and immunities (i) provided to Administrative Agent in this Article with respect to any acts taken or omissions suffered by L/C Issuer in connection with the Letter of Credit issued by it

and the applications and agreements for letters of credit pertaining to the Letter of Credit as fully as if the term "Administrative Agent" as used in this Article and in the definition of "Agent-Related Person" included L/C Issuer with respect to such acts or omissions, and (ii) as additionally provided in this Agreement with respect to L/C Issuer.

(c) No individual Lender or group of Lenders or L/C Issuer shall have any right to amend or waive, or consent to the departure of any party from any provision of any Loan Document or the Environmental Agreement, or secure or enforce the obligations of Borrower or any other party pursuant to the Loan Documents or the Environmental Agreement, or otherwise. All such rights, on behalf of Administrative Agent, L/C Issuer or any Lender or Lenders, shall be held and exercised solely by and at the option of Administrative Agent for the pro rata benefit of Lenders. Such rights, however, are subject to the rights of L/C Issuer, a Lender or Lenders, as expressly set forth in this Agreement, to approve matters or direct Administrative Agent to take or refrain from taking action as set forth in this Agreement. Except as expressly otherwise provided in this Agreement, the other Loan Documents or the Environmental Agreement, Administrative Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions which Administrative Agent is expressly entitled to exercise or take under this Agreement, the other Loan Documents and the Environmental Agreement, including (i) the determination if and to what extent matters or items subject to Administrative Agent's satisfaction are acceptable or otherwise within its discretion, (ii) the making of Administrative Agent Advances, and (iii) the exercise of remedies pursuant to, but subject to, Article 5 or pursuant to any other Loan Document or the Environmental Agreement, and any action so taken or not taken shall be deemed consented to by Lenders.

(d) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower, no individual Lender or group of Lenders or L/C Issuer shall have the right, and Administrative Agent (irrespective of whether the principal of the Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Borrower) shall be exclusively entitled and empowered on behalf of itself, L/C Issuer and Lenders, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loan, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Lenders and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Administrative Agent and their respective agents and counsel and all other amounts due Lenders and Administrative Agent under Section 7.11 allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under Section 7.11.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of Lenders except as approved by the Required Lenders or to authorize Administrative Agent to vote in respect of the claims of Lenders except as approved by the Required Lenders in any such proceeding.

6.2 Delegation of Duties. Administrative Agent may execute any of its duties under this Agreement, any other Loan Document or the Environmental Agreement by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel and other consultant experts concerning all matters pertaining to such duties. Administrative Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects with reasonable care.

6.3 Liability of Administrative Agent. No Agent Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement, any other Loan Document or the Environmental Agreement or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by Borrower or any subsidiary or Affiliate of Borrower, or any officer thereof, contained herein, or in any other Loan Document or the Environmental Agreement, or in any certificate, report, statement or other document referred to or provided for in, or received by Administrative Agent under or in connection with, this Agreement, any other Loan Document or the Environmental Agreement, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, any other Loan Document or the Environmental Agreement, or for any failure of Borrower or any other party to any Loan Document or the Environmental Agreement to perform its obligations hereunder or thereunder. No Agent Related Person shall be under any obligation to any Lender to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document or the Environmental Agreement, or to inspect the properties, books or records of Borrower or any of its Affiliates.

6.4 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon advice and statements of legal counsel (including counsel to any party to the Loan Documents or the Environmental Agreement), independent accountants and other experts selected by Administrative Agent. Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement, any other Loan Document or the Environmental Agreement unless it shall first receive such advice or concurrence of the Required

Lenders or all Lenders if required hereunder as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement, any other Loan Document or the Environmental Agreement in accordance with a request or consent of the Required Lenders or such greater number of Lenders as may be expressly required hereby in any instance, and such request and any action taken or failure to act pursuant thereto shall be binding upon all Lenders. In the absence of written instructions from the Required Lenders or such greater number of Lenders, as expressly required hereunder, Administrative Agent may take or not take any action, at its discretion, unless this Agreement specifically requires the consent of the Required Lenders or such greater number of Lenders.

6.5 Notice of Default. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default, unless Administrative Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default that Administrative Agent determines will have a Material Adverse Effect. Administrative Agent will notify Lenders of its receipt of any such notice. Administrative Agent shall take such action with respect to such Default as may be requested by the Required Lenders in accordance with Article 5; provided, however, that unless and until Administrative Agent has received any such request, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable or in the best interest of Lenders.

6.6 Credit Decision: Disclosure of Information by Administrative Agent.

(a) Each Lender acknowledges that none of Agent Related Persons has made any representation or warranty to it, and that no act by Administrative Agent hereafter taken, including any consent to and acceptance of any assignment or review of the affairs of Borrower, shall be deemed to constitute any representation or warranty by any Agent-Related Person to Lenders or any of them as to any matter, including whether Agent Related Persons have disclosed material information in their possession. Each Lender represents to Administrative Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents and the Environmental Agreement, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower.

(b) Administrative Agent upon its receipt shall provide each Lender such notices, reports and other documents expressly required to be furnished to Lenders by Administrative Agent herein. To the extent not already available to a Lender, Administrative

Agent shall also provide the Lender and/or make available for the Lender's inspection during reasonable business hours and at the Lender's expense, upon the Lender's written request therefor: (i) copies of the Loan Documents and the Environmental Agreement; (ii) such information as is then in Administrative Agent's possession in respect of the current status of principal and interest payments and accruals in respect of the Loan; (iii) copies of all current financial statements in respect of Borrower or other person liable for payment or performance by Borrower of any obligations under the Loan Documents or the Environmental Agreement, then in Administrative Agent's possession with respect to the Loan; and (iv) other current factual information then in Administrative Agent's possession with respect to the Loan and bearing on the continuing creditworthiness of Borrower, or any of its Affiliates; provided that nothing contained in this Section 6.6 shall impose any liability upon Administrative Agent for its failure to provide a Lender any of such Loan Documents, the Environmental Agreement, information, or financial statements, unless such failure constitutes willful misconduct or gross negligence on Administrative Agent's part; and provided, further, that Administrative Agent shall not be obligated to provide any Lender with any information in violation of Law or any contractual restrictions on the disclosure thereof (provided such contractual restrictions shall not apply to distributing to a Lender factual and financial information expressly required to be provided herein). Except as set forth above, Administrative Agent shall not have any duty or responsibility to provide Lenders or any of them with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any of its Affiliates which may come into the possession of any of Agent Related Persons.

6.7 Indemnification of Administrative Agent. Whether or not the transactions contemplated hereby are consummated, Lenders shall indemnify upon demand each Agent Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), pro rata, and hold harmless each Agent Related Person from and against any and all Indemnified Liabilities incurred by it; provided, however, that no Lender shall be liable for the payment to any Agent Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; provided, further, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 6.7. Without limitation of the foregoing, to the extent that Administrative Agent is not reimbursed by or on behalf of Borrower, each Lender shall reimburse Administrative Agent upon demand for its ratable share of any costs or out of pocket expenses (including attorneys' fees) incurred by Administrative Agent as described in Section 7.11. The undertaking in this Section 6.7 shall survive the payment of all Indebtedness hereunder and the resignation or replacement of Administrative Agent.

6.8 Administrative Agent in Individual Capacity. Administrative Agent, in its individual capacity, and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any party to the Loan Documents or the Environmental Agreement and their respective Affiliates as though Administrative Agent were not Administrative Agent hereunder and without notice to or consent of Lenders. Lenders acknowledge that Bank of America, N.A. is the L/C Issuer, and Borrower and Bank of America,

N.A. or its Affiliate have entered or may enter into Swap Transactions. A portion of the Loan may be funded to honor Borrower's payment obligations under the terms of such Swap Transactions, and Lenders shall have no right to share in any portion of such payments. Lenders acknowledge that, pursuant to such activities, Bank of America, N.A. or its Affiliates may receive information regarding any party to the Loan Documents or the Environmental Agreement or their respective Affiliates (including information that may be subject to confidentiality obligations in favor of such parties or such parties' Affiliates) and acknowledge that Administrative Agent shall be under no obligation to provide such information to them. With respect to its Pro Rata Share of the Loan, Bank of America, N.A. shall have the same rights and powers under this Agreement as any other Lenders and may exercise such rights and powers as though it were not Administrative Agent, L/C Issuer or party to Swap Transactions, and the terms "Lender" and "Lenders" include Bank of America, N.A. in its individual capacity.

6.9 Successor Administrative Agent. Administrative Agent may, and at the request of the Required Lenders as a result of Administrative Agent's gross negligence or willful misconduct in performing its duties under this Agreement shall, resign as Administrative Agent and L/C Issuer upon thirty (30) days' notice to Lenders; provided any such resignation by Bank of America, N.A. shall also constitute its resignation as L/C Issuer, which resignation as L/C Issuer shall only be effective if a successor L/C Issuer is appointed with the consent of the beneficiary of the Letter of Credit. If Administrative Agent resigns under this Agreement, the Required Lenders shall appoint from among Lenders a successor administrative agent for Lenders, which successor administrative agent shall be consented to by Borrower at all times other than during the existence of a Default (which consent of Borrower shall not be unreasonably withheld or delayed). If no successor administrative agent is appointed prior to the effective date of the resignation of Administrative Agent, Administrative Agent may appoint, after consulting with Lenders and Borrower, a successor administrative agent from among Lenders. Upon the acceptance of its appointment as successor administrative agent and/or letter of credit issuer hereunder, such successor administrative agent and/or letter of credit issuer shall succeed to all the rights, powers and duties of the retiring Administrative Agent and/or L/C Issuer, as the case may be, and the respective terms "Administrative Agent" and "L/C Issuer", as the case may be, shall mean such successor administrative agent and letter of credit issuer, and the retiring Administrative Agent's appointment, powers and duties as Administrative Agent shall be terminated and, if applicable, the retiring L/C Issuer's rights, powers and duties as such shall be terminated, without any other or further act or deed on the part of such retiring L/C Issuer or any other Lender, other than the obligation of the successor L/C Issuer to issue letters of credit in substitution for the Letter of Credit, if outstanding at the time of such succession or to make other arrangements satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to the Letter of Credit. After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article 6 and other applicable Sections of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent and L/C Issuer under this Agreement. If no successor administrative agent has accepted appointment as Administrative Agent by the date which is thirty (30) days following a retiring Administrative Agent's notice of resignation, the retiring Administrative Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above.

6.10 Releases; Acquisition and Transfers of Collateral.

(a) Lenders hereby irrevocably authorize Administrative Agent to transfer or release any lien on, or after foreclosure or other acquisition of title by Administrative Agent on behalf of the Lenders to transfer or sell, any Loan collateral (i) upon the termination of the Commitments and payment and satisfaction in full of all Indebtedness, (ii) in connection with a release, transfer or sale of a lien or Loan collateral if Borrower will certify to Administrative Agent that the release, transfer or sale is permitted under this Agreement or the other Loan Documents (and Administrative Agent may rely conclusively on any such certificate without further inquiry), or (iii) after foreclosure if approved by the Required Lenders.

(b) If all or any portion of the Loan collateral is acquired by foreclosure or by deed in lieu of foreclosure, Administrative Agent shall take title to the collateral in its name or by an Affiliate of Administrative Agent, but for the benefit of all Lenders in their Pro Rata Shares on the date of the foreclosure sale or recordation of the deed in lieu of foreclosure (the "Acquisition Date"). Administrative Agent and all Lenders hereby expressly waive and relinquish any right of partition with respect to any collateral so acquired. After any collateral is acquired, Administrative Agent shall appoint and retain one or more persons (individually and collectively, the "Property Manager") experienced in the management, leasing, sale and/or disposition of similar properties. After consulting with the Property Manager, Administrative Agent shall prepare a written plan for completion of construction (if required), operation, management, improvement, maintenance, repair, sale and disposition of the Loan collateral and a budget for the aforesaid, which may include a reasonable management fee payable to Administrative Agent (the "Business Plan"). Administrative Agent will deliver the Business Plan not later than the sixtieth (60th) day after the Acquisition Date to each Lender with a written request for approval of the Business Plan. If the Business Plan is approved by the Required Lenders, Administrative Agent and the Property Manager shall adhere to the Business Plan until a different Business Plan is approved by the Required Lenders. Administrative Agent may propose an amendment to the Business Plan as it deems appropriate, which shall also be subject to Required Lender approval. If the Business Plan (as may be amended) proposed by Administrative Agent is not approved by the Required Lenders, or if sixty (60) days have elapsed following the Acquisition Date without a Business Plan being proposed by Administrative Agent, any Lender may propose an alternative Business Plan, which Administrative Agent shall submit to all Lenders for their approval. If an alternative Business Plan is approved by the Required Lenders, Administrative Agent may appoint one of the approving Lenders to implement the alternative Business Plan. Notwithstanding any other provision of this Agreement, unless in violation of an approved Business Plan or otherwise in an emergency situation, Administrative Agent shall, subject to clause (a) of this Section 6.10, have the right but not the obligation to take any action in connection with the Loan collateral (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvement, maintenance, repair, sale and disposition), or any portion thereof.

(c) Upon request by Administrative Agent or Borrower at any time, Lenders will confirm in writing Administrative Agent's authority to sell, transfer or release any such liens of particular types or items of Loan collateral pursuant to this Section 6.10; provided, however, that (i) Administrative Agent shall not be required to execute any document necessary to evidence such release, transfer or sale on terms that, in Administrative Agent's opinion, would

expose Administrative Agent to liability or create any obligation or entail any consequence other than the transfer, release or sale without recourse, representation or warranty, and (ii) such transfer, release or sale shall not in any manner discharge, affect or impair the obligations of Borrower other than those expressly being released.

(d) If only two (2) Lenders exist at the time Administrative Agent receives a purchase offer for Loan collateral for which one of the Lenders does not consent within ten (10) Business Days after notification from Administrative Agent, the consenting Lender may offer ("Purchase Offer") to purchase all of the non-consenting Lender's right, title and interest in the collateral for a purchase price equal to the non-consenting Lender's Pro Rata Share of the net proceeds anticipated from such sale of such collateral (as reasonably determined by Administrative Agent, including the undiscounted face principal amount of any purchase money obligation not payable at closing) ("Anticipated Net Proceeds"). Within ten (10) Business Days thereafter the non-consenting Lender shall be deemed to have accepted such Purchase Offer unless the non-consenting Lender notifies Administrative Agent that it elects to purchase all of the consenting Lender's right, title and interest in the collateral for a purchase price payable by the non-consenting Lender in an amount equal to the consenting Lender's Pro Rata Share of the Anticipated Net Proceeds. Any amount payable hereunder by a Lender shall be due on the earlier to occur of the closing of the sale of the collateral or ninety (90) days after the Purchase Offer, regardless of whether the collateral has been sold.

6.11 Application of Payments. Except as otherwise provided below with respect to Defaulting Lenders, aggregate principal and interest payments, payments for Indemnified Liabilities, and/or foreclosure or sale of the collateral, and net operating income from the collateral during any period it is owned by Administrative Agent on behalf of Lenders ("Payments") shall be apportioned pro rata among Lenders and payments of any fees (other than fees designated for Administrative Agent's separate account) shall, as applicable, be apportioned pro rata among Lenders. Notwithstanding anything to the contrary in this Agreement, all Payments due and payable to Defaulting Lenders shall be due and payable to and be apportioned pro rata among Administrative Agent and Electing Lenders. Such apportionment shall be in the proportion that the Defaulting Lender Payment Amounts paid by them bears to the total Defaulting Lender Payment Amounts of such Defaulting Lender. Such apportionment shall be made until Administrative Agent and Lenders have been paid in full for the Defaulting Lender Payment Amounts. All pro rata Payments shall be remitted to Administrative Agent and all such payments not constituting payment of specific fees, and all proceeds of the Loan collateral received by Administrative Agent, shall be applied first, to pay any fees, indemnities, costs, expenses (including those in Section 6.7) and reimbursements then due to Administrative Agent from Borrower; second, to pay any fees, costs, expenses and reimbursements then due to Lenders from Borrower; third, to pay pro rata interest and late charges due in respect of the Indebtedness and Administrative Agent Advances; fourth, to pay or prepay pro rata principal of the Indebtedness and Administrative Agent Advances; fifth, to secure the Letter of Credit (to the extent outstanding); sixth to pay any indebtedness of Borrower under Swap Transactions; and last, to Borrower, if required by Law, or Lenders in Pro Rata Share percentages equal to their percentages at the termination of the Aggregate Commitments.

Notwithstanding the above, subject to Section 3 of Exhibit "K", amounts used to Cash Collateralize the aggregate undrawn amount of the Letter of Credit shall be applied to satisfy

drawings under the Letter of Credit as they occur. If any amount remains on deposit as Cash Collateral after the Letter of Credit has either been fully drawn or expired, such remaining amount shall be applied to the other Indebtedness, if any, in the order set forth above.

6.12 Benefit. The terms and conditions of this Article 6 are inserted for the sole benefit of Administrative Agent and Lenders; the same may be waived in whole or in part, with or without terms or conditions, without prejudicing Administrative Agent's or Lenders' rights to later assert them in whole or in part.

6.13 Co Agents; Lead Managers. None of the Lenders or other persons identified on the facing page or signature pages of this Agreement as a "syndication agent," "documentation agent," "co agent," "book manager," or "lead manager," "arranger," "lead arranger" or "co-arranger" shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of such lenders, those applicable to all Lenders as such. Without limiting the foregoing, none of the Lenders or other persons so identified as a "syndication agent," "documentation agent," "co-agent" or "lead manager" shall have or be deemed to have any fiduciary relationship with Lenders or any of them. Each Lender acknowledges that it has not relied, and will not rely, on any of Lenders or other persons so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

ARTICLE 7

GENERAL TERMS AND CONDITIONS

7.1 Consents. Except where otherwise expressly provided in the Loan Documents or the Environmental Agreement, in any instance where the approval or consent of Administrative Agent or Lenders or the exercise of judgment by Administrative Agent or Lenders is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (a) within the sole discretion of Administrative Agent or Lenders, and (b) deemed to have been given only by a specific writing intended for the purpose given and executed by Administrative Agent or Lenders. Notwithstanding any approvals or consents by Administrative Agent or Lenders, neither Administrative Agent nor any Lender has any obligation or responsibility whatsoever for the adequacy, form or content of the Plans, the Budget, any appraisal, any contract, any change order, any lease, or any other matter incident to the Property or the construction of the Improvements. Administrative Agent's or Lenders' acceptance of an assignment of the Plans for the benefit of Administrative Agent and Lenders shall not constitute approval of the Plans. Any inspection, appraisal or audit of the Property or the books and records of Borrower, or the procuring of documents and financial and other information by or on behalf of Administrative Agent, shall be for the protection of Administrative Agent and Lenders only, and shall not constitute an assumption of responsibility to Borrower or anyone else with regard to the condition, value, construction, maintenance or operation of the Property, or relieve Borrower of any of Borrower's obligations. Borrower has selected all surveyors, architects, engineers, contractors, materialmen and all other persons or entities furnishing services or materials to the Project. Neither Administrative Agent nor any Lender has any duty to supervise or to inspect the Property or the construction of the Improvements, or has any duty of care to Borrower or any other person to protect against, or to inform Borrower or any other person of the

existence of, any negligent, faulty, inadequate or defective design or construction of the Improvements.

7.2 Borrower's Indemnity. Neither Administrative Agent nor any Lender shall be liable or responsible for, and Borrower shall indemnify each Agent-Related Person and each Lender and their respective Affiliates, directors, officers, agents, attorneys and employees (collectively, the "Indemnitees") from and against: (a) any claim, action, loss or cost (including attorneys' fees and costs) arising from or relating to (i) any defect in the Property or the Improvements, (ii) the performance or default of Borrower, Borrower's surveyors, architects, engineers or contractors, the Construction Consultant or any other person, (iii) any failure to construct, complete, protect or insure the Improvements, (iv) the payment of costs of labor, materials or services supplied for the construction of the Improvements, (v) in connection with the protection and preservation of the Loan collateral (including those with respect to property taxes, insurance premiums, completion of construction, operation, management, improvements, maintenance, repair, sale and disposition), or (vi) the performance of any obligation of Borrower whatsoever; (b) any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorneys' fees and costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnatee in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document, the Environmental Agreement or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Commitment or Loan or the Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under the Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of the Letter of Credit); or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnatee is a party thereto; (c) any and all claims, demands, actions or causes of action arising out of or relating to the use of Information (as defined in Section 7.7) or other materials obtained through internet, Intralinks or other similar information transmission systems in connection with this Agreement; and (d) any and all liabilities, losses, costs or expenses (including attorneys' fees and costs) that any Indemnatee suffers or incurs as a result of the assertion of any of the foregoing claims, demands, actions, causes of action or proceedings, or as a result of the preparation of any defense in connection with any of the foregoing claims, demands, actions, causes of action or proceedings, in all cases, whether or not an Indemnatee is a party to such claim, demand, action, cause of action or proceeding and whether it is defeated, successful or withdrawn (all of the foregoing, collectively, the "Indemnified Liabilities"); provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. Nothing, including any advance or acceptance of any document or instrument, shall be construed as a representation or warranty, express or implied, to any party by Administrative Agent or Lenders. Inspection shall not constitute an acknowledgment or representation by Administrative Agent or any Lender or Construction Consultant that there has

been or will be compliance with the Plans, the Loan Documents, the Environmental Agreement or applicable Laws, governmental requirements or restrictive covenants, or that the construction is free from defective materials or workmanship. Inspection, whether or not followed by notice of Default, shall not constitute a waiver of any Default then existing, or a waiver of Administrative Agent's and Lenders' right thereafter to insist that the Improvements be constructed in accordance with the Plans, the Loan Documents, and all applicable Laws, governmental requirements and restrictive covenants. Administrative Agent's failure to inspect shall not constitute a waiver of any rights of Administrative Agent or Lenders under the Loan Documents or the Environmental Agreement or at Law or in equity.

7.3 Miscellaneous. This Agreement may be executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The Loan Documents and the Environmental Agreement are for the sole benefit of Administrative Agent, Lenders and Borrower and are not for the benefit of any third party. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of any other provision and a determination that the application of any provision of this Agreement to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons, entities or circumstances. Time shall be of the essence with respect to Borrower's obligations under the Loan Documents and the Environmental Agreement. This Agreement and its validity, enforcement and interpretation shall be governed by Arizona Law (without regard to any conflict of Laws principles) and applicable United States federal Law.

7.4 Notices.

(a) **Modes of Delivery; Changes.** Except as otherwise provided herein, all notices and other communications required or which any party desires to give under this Agreement, any other Loan Document or the Environmental Agreement shall be in writing. Unless otherwise specifically provided in such other Loan Document or the Environmental Agreement, all such notices and other communications shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, by registered or certified United States mail, postage prepaid, or by facsimile (with, subject to clause (b) below, a confirmatory duplicate copy sent by first class United States mail), addressed to the party to whom directed or by (subject to clause (c) below) electronic mail address to Borrower, at the addresses set forth at the end of this Agreement or to Administrative Agent, L/C Issuer or Lenders at the addresses specified for notices on the Schedule of Lenders (unless changed by similar notice in writing given by the particular party whose address is to be changed). Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery, or in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile, upon receipt; provided, however, that service of a notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section 7.4 shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or the Environmental Agreement or to require giving of notice or demand to or upon any person in any situation or for any reason.

(b) Effectiveness of Facsimile Signatures. The Loan Documents and the Environmental Agreement may be transmitted and/or signed by facsimile. The effectiveness of any such documents and signatures shall, subject to applicable Law, have the same force and effect as manually-signed originals and shall be binding on all parties to the Loan Documents and the Environmental Agreement. Administrative Agent may also require that any such documents and signatures be confirmed by a manually-signed original thereof; provided, however, that the failure to request or deliver the same shall not affect the effectiveness of any facsimile document or signature.

(c) Limited Use of Electronic Mail. Electronic mail and internet and intranet websites may be used only to distribute routine communications, such as financial statements and other information, and to distribute the Loan Documents and the Environmental Agreement for execution by the parties thereto, and may not be used for any other purpose.

(d) Reliance by Administrative Agent and Lenders. Administrative Agent and Lenders shall be entitled to rely and act upon any notices (including telephonic Loan advance notices) purportedly given by or on behalf of Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, expenses and liabilities resulting from the reliance by such person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording. If a Lender does not notify or inform Administrative Agent as to whether or not it consents to, or approves of, or agrees to any matter of any nature whatsoever with respect to which its consent, approval or agreement is required under the express provisions of this Agreement or with respect to which its consent, approval or agreement is otherwise requested by Administrative Agent, in connection with the Loan or any matter pertaining to the Loan, within ten (10) Business Days (or such longer period as may be specified by Administrative Agent) after such consent, approval or agreement is requested by Administrative Agent, Lender shall be deemed to have given its consent, approval or agreement, as the case may be, with respect to the matter in question.

7.5 Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to Administrative Agent or any Lender, or Administrative Agent or any Lender exercises any right of set-off, and such payment or the proceeds of such set-off or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law, to a depository (including Administrative Agent, any Lender or its or their Affiliates) for returned items or insufficient collected funds or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect.

Notwithstanding the foregoing, no Lender Party (as defined in Section 7.8) may exercise any right of set-off except in accordance with Section 7.8.

7.6 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of clause (b) below, (ii) by way of participation in accordance with the provisions of clause (d) below, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of clause (f) below (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Any Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and Pro Rata Share of the Loan including for purposes of this subsection (b), participations in L/C Obligations at the time owing to it); provided that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and Pro Rata Share of the Loan at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund as defined in Exhibit "B" with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes its Pro Rata Share of the Loan outstanding) subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent, shall not be less than \$10,000,000.00 unless each of Administrative Agent and, so long as no Default has occurred and is continuing, Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to its Pro Rata Share of the Loan and the Commitment assigned; and

(iii) any assignment of a Commitment must be approved by Administrative Agent and L/C Issuer, unless the person that is the proposed assignee is itself a Lender (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee);

(iv) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and

recording fee of \$3,500.00 plus the cost of any applicable endorsement to the Title Insurance or new Title Insurance; and

(v) Administrative Agent shall maintain, as a Lender, a Commitment and Pro Rata Share of the Loan that is not less than that maintained by any other Lender.

Subject to acceptance and recording thereof by Administrative Agent pursuant to clause (c) of this Section 7.6, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, shall have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of this Agreement with respect to Borrower's obligations surviving termination of this Agreement). Upon request, Administrative Agent shall prepare and Borrower shall execute and deliver a Note ("Replacement Note") to the assignee Lender evidencing the assignee Lender's Pro Rata Share of the Loan. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this clause (b) shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (d) of this Section 7.6.

(c) Administrative Agent, acting solely for this purpose as an agent of Borrower, shall forward the Assignment and Assumption, and the Replacement Note to the Title Company for issuance of an applicable endorsement to the Title Insurance or new Title Insurance, and shall maintain at Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of Lenders, and the Commitments of, and principal amount of each Lender's Pro Rata Share of the Loan owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and Borrower, Administrative Agent and Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Any Lender may, without the consent of, but with prior notice to Administrative Agent, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or its Pro Rata Share of the Loan including such Lender's participations in L/C Obligations owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) Borrower, Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and (iv) except to the extent consented to by Administrative Agent in its sole discretion with respect to each participation, any agreement or instrument pursuant to which a Lender sells such a participation

shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement.

(e) A Participant shall not be entitled to receive any greater payment under Sections 2.1 through 2.10, inclusive, than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) If the consent of Borrower to an assignment or to an assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment threshold specified in clause (i) of the provision to the first sentence of clause (b) above), Borrower shall be deemed to have given its consent five (5) Business Days after the date notice thereof has been delivered by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Borrower prior to such fifth Business Day.

(h) [Intentionally left blank].

(i) Notwithstanding anything to the contrary contained herein, if at any time Bank of America, N.A. assigns all of its Commitment and interest in the Loans pursuant to subsection (b) above, Bank of America, N.A. may, upon [30] days' notice to the Borrower and the Lenders, resign as L/C Issuer, subject to the provisions of this subsection. In the event of any such resignation as L/C Issuer, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; provided, however, that unless a replacement to the Letter of Credit is issued by a successor L/C Issuer with the consent of the beneficiary thereof, Bank of America, N.A. shall continue as the L/C Issuer and it shall retain all the rights and obligations of the L/C Issuer hereunder with respect to the Letter of Credit and all L/C Obligations with respect thereto (including the right to require the Lenders to make an advance of Base Rate Principal or fund risk participations for L/C Borrowings pursuant to Exhibit K).

7.7 Confidentiality. Administrative Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent requested by any regulatory authority; (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process; (d) to any other party to this Agreement; (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section 7.7, to (i) any assignee of or participant in, any of its rights or obligations under this Agreement, or (ii) any direct or indirect contractual counterparty or prospective

counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any Swap Contract or credit derivative transaction relating to obligations to Borrower; (g) with the consent of Borrower; (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 7.7, or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Borrower; or (i) to the National Association of Insurance Commissioners or any other similar organization. For the purposes of this Section 7.7, "Information" means all information received from Borrower relating to Borrower or its business, other than any such information that is available to Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by Borrower; provided that, in the case of information received from Borrower after the date hereof, such information is clearly identified in writing at the time of delivery as confidential. Any person required to maintain the confidentiality of Information as provided in this Section 7.7 shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information. Administrative Agent and Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to Administrative Agent and Lenders in connection with the administration and management of this Agreement, the Loan and the Loan Documents.

7.8 No Set-off. Neither Administrative Agent nor any Lender nor any assignee, Participant or Affiliate thereof (each, a "Lender Party") shall proceed directly, by right of set-off, banker's lien, counterclaim or otherwise, against any assets of Borrower (including any general or special, time or demand, provisional or other deposits or other indebtedness owing by such Lender Party to or for the credit or the account of Borrower) for the purpose of applying such assets against the Indebtedness, without the prior written consent of all Lenders.

7.9 Sharing of Payments. If, other than as expressly provided elsewhere herein, any Lender shall obtain on account of the portions of the Loan advanced by it, or the participations in L/C Obligations held by it, any payment (whether voluntary, involuntary, through the exercise of any right of set-off subject to Section 7.8 or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (a) notify Administrative Agent of such fact, and (b) purchase from the other Lenders such participations in the portions of the Loan made by them and/or such subparticipations in the participations in L/C Obligations held by them, as the case may be as shall be necessary to cause such purchasing Lender to share the excess payment in respect of such portions of the Loan or such participations, as the case may be, pro rata with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 7.5 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (i) the amount of such paying Lender's required payment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered without further interest thereon. Borrower agrees that any Lender so purchasing a participation from another Lender may, to the fullest extent permitted by Law, exercise all of its rights of payment (including the right of set-off, but subject to Section 7.8)

with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 7.9 and will in each case notify Lenders following any such purchases or repayments. Each Lender that purchases a participation interest pursuant to this Section 7.9 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased.

7.10 Amendments; Survival. Administrative Agent and Lenders shall be entitled to amend (whether pursuant to a separate intercreditor agreement or otherwise) any of the terms, conditions or agreements set forth in Article 6 or as to any other matter in the Loan Documents or the Environmental Agreement respecting payments to Administrative Agent or Lenders or the required number of Lenders to approve or disapprove any matter or to take or refrain from taking any action, without the consent of Borrower or any other Person or the execution by Borrower or any other Person of any such amendment or intercreditor agreement. Subject to the foregoing, Administrative Agent may amend or waive any provision of this Agreement, any other Loan Document or the Environmental Agreement, or consent to any departure by any party to the Loan Documents or the Environmental Agreement therefrom which amendment, waiver or consent is intended to be within Administrative Agent's discretion or determination, or otherwise in Administrative Agent's reasonable determination shall not have a Material Adverse Effect; provided, however, otherwise no such amendment, waiver or consent shall be effective unless in writing, signed by the Required Lenders and Borrower or the applicable party to the Loan Documents or the Environmental Agreement, as the case may be, and acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided further, however, no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 5.2), without the written consent of such Lender (it being understood that a waiver of a Default shall not constitute an extension or increase in any Lender's Commitment);

(b) postpone any date fixed by this Agreement, any other Loan Document or the Environmental Agreement for any payment of principal, interest, fees or other amounts due to Lenders (or any of them) hereunder or under any other Loan Document or the Environmental Agreement, without the written consent of each Lender directly affected thereby;

(c) reduce the principal of, or the rate of interest specified herein on, any portion of the Loan or L/C Borrowing, or any fees or other amounts payable hereunder or any other Loan Document or the Environmental Agreement, without the written consent of each Lender directly affected thereby; provided, however, that Administrative Agent may waive any obligation of Borrower to pay interest at the Past Due Rate and/or late charges for periods of up to thirty (30) days, and only the consent of the Required Lenders shall be necessary to waive any obligation of Borrower to pay interest at the Past Due Rate or late charges thereafter, or to amend the definition of "Past Due Rate" or "late charges";

(d) change the percentage of the combined Commitments or of the aggregate unpaid principal amount of the Loan or L/C Obligation which is required for Lenders or any of them to take any action hereunder, without the written consent of each Lender;

(e) change the definition of "Pro Rata Share" or "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender;

(f) amend Sections 3.14, 3.15, 3.16, 3.21, 3.22, 3.23, 7.8, 7.9 or this Section 7.10, without the written consent of each Lender;

(g) release the liability of Borrower without the written consent of each Lender;

(h) permit the sale, transfer, pledge, mortgage or assignment of any Loan collateral or any direct or indirect interest in Borrower, except as expressly permitted under the Loan Documents, without the written consent of each Lender; or

(i) transfer or release any lien on, or after foreclosure or other acquisition of title by Administrative Agent on behalf of Lenders transfer or sell, any Loan collateral except as permitted in Section 6.10, without the written consent of each Lender;

and, provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or the Letter of Credit Application relating to the Letter of Credit issued or to be issued by it; and (ii) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to the Lenders required above, affect the rights or duties of Administrative Agent under this Agreement, any other Loan Document or the Environmental Agreement. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased without the consent of such Lender.

This Agreement shall continue in full force and effect until the Indebtedness is paid in full and all of Administrative Agent's and Lenders' obligations under this Agreement are terminated; and all representations and warranties and all provisions herein for indemnity of the Indemnitees, Administrative Agent and Lenders (and any other provisions herein specified to survive) shall survive payment in full, satisfaction or discharge of the Indebtedness, the resignation or removal of Administrative Agent or replacement of any Lender, and any release or termination of this Agreement or of any other Loan Documents.

7.11 Costs and Expenses. Without limiting any Loan Document or the Environmental Agreement and to the extent not prohibited by applicable Laws, Borrower shall pay when due, shall reimburse to Administrative Agent for the benefit of itself and Lenders on demand and shall indemnify Administrative Agent and Lenders from, all out-of-pocket fees, costs and expenses paid or incurred by Administrative Agent in connection with the negotiation, preparation and execution of this Agreement, the other Loan Documents and the Environmental

Agreement (and any amendments, approvals, consents, waivers and releases requested, required, proposed or done from time to time), or in connection with the disbursement, administration or collection of the Loan or the enforcement of the obligations of Borrower or the exercise of any right or remedy of Administrative Agent, including: (a) all fees and expenses of Administrative Agent's counsel (including the market value of services of in-house counsel); (b) fees and charges of each Construction Consultant, inspector and engineer; (c) appraisal, re-appraisal and survey costs; (d) title insurance charges and premiums; (e) title search or examination costs, including abstracts, abstractors' certificates and Uniform Commercial Code searches; (f) judgment and tax lien searches for Borrower; (g) escrow fees; (h) fees and costs of environmental investigations, site assessments and remediations; (i) recordation taxes, documentary taxes, transfer taxes and mortgage taxes; (j) filing and recording fees; and (k) loan brokerage fees. Borrower shall pay all costs and expenses incurred by Administrative Agent, including attorneys' fees (including the market value of services of in-house counsel), if the obligations or any part thereof are sought to be collected by or through an attorney at law, whether or not involving probate, appellate or administrative proceedings or proceedings under any Debtor Relief Law. Borrower shall pay all costs and expenses of complying with the Loan Documents and the Environmental Agreement, whether or not such costs and expenses are included in the Budget. Borrower's obligations under this Section 7.11 shall survive the delivery of the Loan Documents and the Environmental Agreement, the making of advances, the payment in full of the Indebtedness, the release or reconveyance of any of the Loan Documents, the foreclosure of the Deed of Trust or conveyance in lieu of foreclosure, any proceeding under any Debtor Relief Law, and any other event whatsoever.

7.12 Tax Forms.

(a) (i) Each Lender and each holder of a participation interest herein that is not a "United States person" (a "Foreign Lender") within the meaning of Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended from time to time (the "Code") shall deliver to Administrative Agent, prior to receipt of any payment subject to withholding (or after accepting an assignment or receiving a participation interest herein), two duly-signed completed copies of either Form W-8BEN or any successor thereto (relating to such Foreign Lender and entitling it to a complete exemption from withholding on all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement) or Form W-8ECI or any successor thereto (relating to all payments to be made to such Foreign Lender by Borrower pursuant to this Agreement) of the United States Internal Revenue Service or such other evidence satisfactory to Borrower and Administrative Agent that such Foreign Lender is entitled to an exemption from or reduction of, United States withholding tax, including any exemption pursuant to Section 881(c) of the Code. Thereafter and from time to time, each such Foreign Lender shall (A) promptly submit to Administrative Agent such additional duly-completed and signed copies of one of such forms (or such successor forms as shall be adopted from time to time by the relevant United States taxing authorities) as may then be available under then-current United States Laws and regulations to avoid, or such evidence as is satisfactory to Borrower and Administrative Agent of any available exemption from or reduction of, United States withholding taxes in respect of all payments to be made to such Foreign Lender by Borrower pursuant to the Loan Documents or the Environmental Agreement, (B) promptly notify Administrative

Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (C) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lenders, and as may be reasonably necessary (including the re-designation of its lending office, if any) to avoid any requirement of applicable Laws that Borrower make any deduction or withholding for taxes from amounts payable to such Foreign Lender.

(ii) Each Foreign Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents or the Environmental Agreement (for example, in the case of a typical participation by such Lender), shall deliver to Administrative Agent on the date when such Foreign Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of Administrative Agent (in the reasonable exercise of its discretion), (A) two duly signed completed copies of the forms or statements required to be provided by such Lender as set forth above, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account that is not subject to U.S. withholding tax, and (B) two duly signed completed copies of United States Internal Revenue Service Form W-8IMY (or any successor thereto), together with any information such Lender chooses to transmit with such form, and any other certificate or statement of exemption required under the Code, to establish that such Lender is not acting for its own account with respect to a portion of any such sums payable to such Lender.

(iii) Borrower shall not be required to pay any additional amount to any Foreign Lender under Section 2.12(a) with respect to any Taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Lender transmits with a United States Internal Revenue Service Form W-8IMY pursuant to this subsection (a) if such Lender shall have failed to satisfy the foregoing provisions of this subsection (a); provided that if such Lender shall have satisfied the requirements of this subsection (a) on the date such Lender became a Lender or ceased to act for its own account with respect to any payment under any of the Loan Documents or the Environmental Agreement, nothing in this subsection (a) shall relieve Borrower of its obligation to pay any amounts pursuant to Section 2.12 in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender or other person for the account of which such Lender receives any sums payable under any of the Loan Documents or the Environmental Agreement is not subject to withholding or is subject to withholding at a reduced rate.

(iv) Administrative Agent may, without reduction, withhold any Taxes required to be deducted and withheld from any payment under any of the Loan Documents or the Environmental Agreement with respect to which Borrower is not required to pay additional amounts under this subsection (a).

(b) Upon the request of Administrative Agent, each Lender that is a "United States person" within the meaning of Section 7701(a)(3) of the Code shall deliver to Administrative Agent two duly-signed completed copies of United States Internal Revenue Service Form W-9. If such Lender fails to deliver such forms, then Administrative Agent may withhold from any interest payment to such Lender an amount equivalent to the applicable back-up withholding tax imposed by the Code, without reduction.

(c) If any Tribunal asserts that Administrative Agent did not properly withhold or back-up withhold, as the case may be, any tax or other amount from payments made to or for the account of any Lender, such Lender shall indemnify Administrative Agent therefor, including all penalties and interest and costs and expenses (including attorneys' fees) of Administrative Agent. The obligation of Lenders under this clause (c) shall survive the removal or replacement of a Lender, the payment of all Indebtedness and the resignation or replacement of Administrative Agent.

7.13 Further Assurances. Borrower will, upon Administrative Agent's request (a) promptly correct any defect, error or omission in any Loan Document or the Environmental Agreement, (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts as Administrative Agent deems necessary, desirable or proper to carry out the purposes of the Loan Documents and the Environmental Agreement and to identify and subject to the liens and security interest of the Loan Documents any property intended to be covered thereby, including any renewals, additions, substitutions, replacements or appurtenances to the Property, (c) execute, acknowledge, deliver, procure, file or record any document or instrument Administrative Agent deems necessary, desirable or proper to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons, and (d) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by Administrative Agent to comply with the requirements of any agency having jurisdiction over Administrative Agent. In addition, at any time, and from time to time, upon request by Administrative Agent or any Lender, Borrower will, at Borrower's expense, provide any and all further instruments, certificates and other documents as may, in the opinion of Administrative Agent or such Lender, be necessary or desirable in order to verify Borrower's identity and background in a manner satisfactory to Administrative Agent or such Lender.

7.14 Inducement to Lenders. The representations and warranties contained in this Agreement, the other Loan Documents and the Environmental Agreement (a) are made to induce Lenders to make the Loan and extend any other credit to or for the account of Borrower pursuant hereto, and Administrative Agent and Lenders are relying thereon and will continue to rely thereon, and (b) shall survive any foreclosure, any conveyance in lieu of foreclosure, or any proceedings under any Debtor Relief Law involving Borrower or the Property.

7.15 Forum. Each party to this Agreement hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State specified in Section 7.3 of this Agreement and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Agreement or the Indebtedness. Each party to this Agreement hereby irrevocably waives, to the

fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Each party to this Agreement hereby agrees and consents that, in addition to any methods of service of process provided for under applicable Law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the state specified in Section 7.3 may be made by certified or registered mail, return receipt requested, directed to such party at its address for notice stated in the Loan Documents, or at a subsequent address of which Administrative Agent received actual notice from such party in accordance with the Loan Documents, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Administrative Agent to serve process in any manner permitted by Law or limit the right of Administrative Agent to bring proceedings against any party in any other court or jurisdiction.

7.16 Interpretation. References to "Dollars," "\$," "money," "payments" or other similar financial or monetary terms are references to lawful money of the United States of America. References to Articles, Sections and Exhibits are, unless specified otherwise, references to articles, sections and exhibits of this Agreement. Words of any gender shall include each other gender. Words in the singular shall include the plural and words in the plural shall include the singular. References to Borrower shall mean each person comprising the same, jointly and severally. The words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Agreement (including the attached exhibits) and not to any particular Article, Section, paragraph or provision. The words "include" and "including" shall be interpreted as if followed by the words "without limitation." Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. The term "person" shall include firms, associations, partnerships (including limited partnerships and limited liability partnerships), joint ventures, trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

7.17 No Partnership, etc. The relationship between Lenders (including Administrative Agent) and Borrower is solely that of lender and borrower. Neither Administrative Agent nor any Lender has any fiduciary or other special relationship with or duty to Borrower and none is created by the Loan Documents or the Environmental Agreement. Nothing contained in the Loan Documents, and no action taken or omitted pursuant to the Loan Documents, is intended or shall be construed to create any partnership, joint venture, association or special relationship between Borrower and Administrative Agent or any Lender or in any way to make Administrative Agent or any Lender a co principal with Borrower with reference to the Project, the Property or otherwise. In no event shall the rights and interests of Administrative Agent or Lenders under the Loan Documents or the Environmental Agreement be construed to give Administrative Agent or any Lender the right to control, or be deemed to indicate that Administrative Agent or any Lender is in control of, the business, properties, management or operations of Borrower.

7.18 Records. The unpaid amount of the Loan and the amount of any other credit extended by Administrative Agent or Lenders to or for the account of Borrower set forth on the books and records of Administrative Agent shall be presumptive evidence of the amount thereof owing and unpaid, but failure to record any such amount on Administrative Agent's books and

records shall not limit or affect the obligations of Borrower under the Loan Documents to make payments on the Loan when due.

7.19 Dispute Resolution Provision. This Section, including the subsections below, is referred to as the "Dispute Resolution Provision." This Dispute Resolution Provision is a material inducement for the parties entering into this Agreement.

(a) This Dispute Resolution Provision concerns the resolution of any controversies or claims between or among the parties, whether arising in contract, tort or by statute, including controversies or claims that arise out of or relate to: (i) this Agreement (including any renewals, extensions or modifications); or (ii) any Loan Document, the Environmental Agreement or any other document related to this Agreement (collectively, a "Claim"). For the purposes of this Dispute Resolution Provision only, the term "parties" shall include any parent corporation, subsidiary or affiliate of Administrative Agent involved in the servicing, management or administration of any obligation described or evidenced by this Agreement.

(b) Except to the extent expressly provided below, any Claim shall, upon the mutual agreement of the parties, acting in their sole and absolute discretion, be resolved by binding arbitration in accordance with the Federal Arbitration Act (Title 9, U.S. Code) (the "Federal Arbitration Act"). The Federal Arbitration Act will apply even though this Agreement provides that it is governed by Arizona law.

(c) Arbitration proceedings will be determined in accordance with the Federal Arbitration Act, the then-current rules and procedures for the arbitration of financial services disputes of the AAA and the terms of this Dispute Resolution Provision. In the event of any inconsistency, the terms of this Dispute Resolution Provision shall control. If AAA is unwilling or unable to (i) serve as the provider of arbitration or (ii) enforce any provision of this arbitration clause, Administrative Agent may designate another arbitration organization with similar procedures to serve as the provider of arbitration.

(d) The arbitration shall be administered by AAA and conducted, unless otherwise required by law, in any U.S. state where real or tangible personal property for the Loan is located or if there is no such collateral, in the state specified in the governing law section of this Agreement. All Claims shall be determined by one arbitrator; however, if Claims exceed Five Million Dollars (\$5,000,000.00), upon the request of any party, the Claims shall be decided by three arbitrators. All arbitration hearings shall commence within ninety (90) days of the demand for arbitration and close within ninety (90) days of commencement and the award of the arbitrator(s) shall be issued within thirty (30) days of the close of the hearing. However, the arbitrator(s), upon a showing of good cause, may extend the commencement of the hearing for up to an additional sixty (60) days. The arbitrator(s) shall provide a concise written statement of reasons for the award. The arbitration award may be submitted to any court having jurisdiction to be confirmed and have judgment entered and enforced.

(e) The arbitrator(s) will give effect to statutes of limitation in determining any Claim and may dismiss the arbitration on the basis that the Claim is barred. For purposes of the application of any statutes of limitation, the service on AAA under applicable AAA rules of a

notice of Claim is the equivalent of the filing of a lawsuit. Any dispute concerning this arbitration provision or whether a Claim is arbitrable shall be determined by the arbitrator(s), except as set forth at clause (j) of this Dispute Resolution Provision. The arbitrator(s) shall have the power to award legal fees pursuant to the terms of this Agreement.

(f) The procedure described above will not apply if the Claim, at the time of the proposed submission to arbitration, arises from or relates to an obligation to Administrative Agent and/or Lenders secured by real property. In this case, all of the parties to this Agreement, in their sole and absolute discretion, must consent to submission of the Claim to arbitration.

(g) To the extent any Claims are not arbitrated, to the extent permitted by law the Claims shall be resolved in court by a judge without a jury, except any Claims which are brought in California state court shall be determined by judicial reference as described below.

(h) Any Claim which is not arbitrated and which is brought in California state court will be resolved by a general reference to a referee (or a panel of referees) as provided in California Code of Civil Procedure ("CCP") Section 638. The referee (or presiding referee of the panel) shall be a retired Judge or Justice. The referee (or panel of referees) shall be selected by mutual written agreement of the parties. If the parties do not agree, the referee shall be selected by the Presiding Judge of the Court (or his or her representative) as provided in CCP Section 638 and the following related sections. The referee shall determine all issues in accordance with existing California law and the California rules of evidence and civil procedure. The referee shall be empowered to enter equitable as well as legal relief, provide all temporary or provisional remedies, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a trial, including motions for summary judgment or summary adjudication. The award that results from the decision of the referee(s) will be entered as a judgment in the court that appointed the referee, in accordance with the provisions of CCP Sections 644(a) and 645. The parties reserve the right to seek appellate review of any judgment or order, including orders pertaining to class certification, to the same extent permitted in a court of law.

(i) This Dispute Resolution Provision does not limit the right of any party to: (i) exercise self-help remedies, such as but not limited to, setoff; (ii) initiate judicial or non-judicial foreclosure against any real or personal property collateral; (iii) exercise any judicial or power of sale rights; or (iv) act in a court of law to obtain an interim remedy, such as but not limited to, injunctive relief, writ of possession or appointment of a receiver, or additional or supplementary remedies. The filing of a court action is not intended to constitute a waiver of the right of any party, including the suing party, thereafter to request or require submittal of the Claim to arbitration or judicial reference as provided herein.

(j) Any arbitration, judicial reference or trial by a judge of any Claim will take place on an individual basis without resort to any form of class or representative action (the "Class Action Waiver"). Regardless of anything else in this Dispute Resolution Provision, the validity and effect of the Class Action Waiver may be determined only by a court or referee and not by an arbitrator. The parties to this Agreement acknowledge that the Class Action Waiver is material and essential to the arbitration of any disputes between the parties and is nonseverable from the agreement to arbitrate Claims. If the Class Action Waiver is limited, voided or found

unenforceable, then the parties' agreement to arbitrate shall be null and void with respect to such proceeding, subject to the right to appeal the limitation or invalidation of the Class Action Waiver. The parties acknowledge and agree that under no circumstances will a class action be arbitrated.

(k) By agreeing to binding arbitration or judicial reference, the parties irrevocably and voluntarily waive any right they may have to a trial by jury as permitted by law in respect of any Claim. Furthermore, without intending in any way to limit this Dispute Resolution Provision, to the extent any Claim is not arbitrated or submitted to judicial reference, the parties irrevocably and voluntarily waive any right they may have to a trial by jury to the extent permitted by law in respect of such Claim. This waiver of jury trial shall remain in effect even if the Class Action Waiver is limited, voided or found unenforceable. **WHETHER THE CLAIM IS DECIDED BY ARBITRATION, BY JUDICIAL REFERENCE, OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.**

7.20 Service of Process. Borrower hereby irrevocably designates and appoints Gregory L. Mast of Gallagher & Kennedy, P.A., 2575 East Camelback Road, Phoenix, Arizona 85016, as Borrower's authorized agent to accept and acknowledge on Borrower's behalf service of any and all process that may be served in any suit, action or proceeding instituted in connection with this Loan in any state or federal court sitting in the State of Arizona. If such agent shall cease so to act, Borrower shall irrevocably designate and appoint without delay another such agent in the State of Arizona satisfactory to Administrative Agent and shall promptly deliver to Administrative Agent evidence in writing of such agent's acceptance of such appointment and its agreement that such appointment shall be irrevocable. Borrower hereby consents to process being served in any suit, action or proceeding instituted in connection with this Loan by (a) the mailing of a copy thereof by certified mail, postage prepaid, return receipt requested, to Borrower and (b) serving a copy thereof upon Gregory L. Mast of Gallagher & Kennedy, P.A., 2575 East Camelback Road, Phoenix, Arizona 85016, the agent hereby designated and appointed by Borrower as Borrower's agent for service of process. Borrower irrevocably agrees that such service shall be deemed to be service of process upon Borrower in any such suit, action or proceeding. Nothing in any Note shall affect the right of Administrative Agent to serve process in any manner otherwise permitted by Law and nothing in any Note will limit the right of Administrative Agent on behalf of Lenders otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions.

7.21 USA Patriot Act Notice. Each Lender and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the Act.

7.22 Entire Agreement. The Loan Documents and the Environmental Agreement constitute the entire understanding and agreement between and among Borrower, Administrative Agent and Lenders with respect to the transactions arising in connection with the Loan, and

supersede all prior written or oral understandings and agreements between and among Borrower, Administrative Agent and Lenders with respect to the matters addressed in the Loan Documents or the Environmental Agreement. In particular, and without limitation, the terms of any commitment letter, letter of intent or quote letter by Administrative Agent or any Lender to make the Loan are merged into the Loan Documents and/or the Environmental Agreement, as applicable. Neither Administrative Agent nor any Lender has made any commitments to extend the term of the Loan past the stated Maturity Date or to provide Borrower with financing except as set forth in the Loan Documents. Except as incorporated in writing into the Loan Documents or the Environmental Agreement, there are not, and were not, and no persons are or were authorized by Administrative Agent or any Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents or the Environmental Agreement.

(Signatures appear on the following page)

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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

Borrower's Address for Notices:

2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate
Finance and Sales

with a copy to:

2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

with a copy to:

Luce, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, California 92101
Attn: David M. Hymer, Esq.
Telephone: (619) 699-2518
Fax: (619) 645-5334

Lender's Address for Notices:

Mail Code: AZ1-200-22-17
201 East Washington Street, 22nd Floor
Phoenix, Arizona 85004-2343
Attn: N. Alonzo

OPUS WEST CORPORATION, a
Minnesota corporation

By: _____

Name: _____

Title: _____

Charles Vogel

Charles Vogel

Senior Vice President

[Sign page 7]

BANK OF AMERICA, N.A., individually
as Administrative Agent, L/C Issuer, and a
Lender

By: _____

Name: Edgardo E. Martinez

Title: Assistant Vice President

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

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

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with a copy to:

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with a copy to:

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600 West Broadway
Suite 2600
San Diego, California 92101
Attn: David M. Hymer, Esq.
Telephone: (619) 699-2518
Fax: (619) 645-5334

Lender's Address for Notices:


Mail Code: AZ1-200-22-17
201 East Washington Street, 22nd Floor
Phoenix, Arizona 85004-2343
Attn: N. Alonzo

OPUS WEST CORPORATION, a
Minnesota corporation

By: _____
Name: _____
Title: _____

[Sign page 7]


BANK OF AMERICA, N.A., individually
as Administrative Agent, L/C Issuer, and a
Lender

By: 
Name: Edgardo E. Martinez
Title: Assistant Vice President

Lender's Address for Notices:

Compass Bank
Commercial Real Estate
2850 East Camelback Road, Suite 140
Phoenix, Arizona 85106
Attn: Aaron Cooper
Assistant Vice President

COMPASS BANK, an Alabama banking
corporation, as a Lender

By: 
Name: Aaron Cooper
Title: Assistant Vice President

Lender's Address for Notices:

U.S. Bank, National Association
Mail Code: LM-AZ-X16E
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003
Attn: Azona LaBostrie

U.S. BANK, NATIONAL
ASSOCIATION, as a Lender

By: *Theresa McKinley*
Name: Theresa McKinley
Title: Vice President

Lender's Address for Notices:

Wells Fargo Bank
Wells Fargo Real Estate Group
2030 Main Street, Suite 800
Irvine, California 92614
Attn: Ben Singh, Vice President

**WELLS FARGO BANK, NATIONAL
ASSOCIATION, as a Lender**

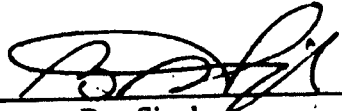
By: 
Name: Ben Singh
Title: Vice President

EXHIBIT "A"

[Legal Description of Land]

Real property in the City of Chino Hills, County of San Bernardino, State of California,
described as follows:

PARCEL I:

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

PARCEL II:

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

EXHIBIT "B"

DEFINITIONS

As used in this Agreement and the attached exhibits, the following terms shall have the following meanings:

"AAA" means the American Arbitration Association or any successor thereof.

"Adjusted LIBOR Rate" means the quotient obtained by dividing (a) the applicable London Interbank Offered Rate by (b) 1.00 minus the LIBOR Reserve Percentage, where,

"London Interbank Offered Rate" means, with respect to any applicable Interest Period, the rate per annum equal to the British Bankers Association LIBOR Rate ("**BBA LIBOR**"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Administrative Agent from time to time) at approximately 11:00 a.m. London time two (2) London Banking Days before the commencement of the Interest Period, for deposits in U.S. Dollars (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the rate for that Interest Period will be determined by such alternate method as reasonably selected by Administrative Agent; and

"LIBOR Reserve Percentage" means, with respect to any applicable Interest Period, for any day that percentage (expressed as a decimal) which is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including basic, supplemental, emergency, special and marginal reserves) generally applicable to financial institutions regulated by the Federal Reserve Board, whether or not applicable to any Lender, in respect of "Eurocurrency liabilities" (or in respect of any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Rate Principal is determined), whether or not any Lender has any Eurocurrency liabilities. The LIBOR Rate shall be adjusted automatically as of the effective date of each change in the LIBOR Reserve Percentage.

"Administrative Agent" means Bank of America, N.A., in its capacity as administrative agent under any of the Loan Documents or the Environmental Agreement, or any successor administrative agent.

"Administrative Agent Advances" means advances as set forth in Section 2.14 of this Agreement.

"Administrative Agent's Office" means Administrative Agent's address and, as appropriate, account as set forth on the Schedule of Lenders, or such other address or account as Administrative Agent hereafter may designate by written notice to Borrower and Lenders.

"Administrative Agent's Time" means the time of day observed in the city where Administrative Agent's Office is located.

"Advance Termination Date" means the Maturity Date.

"Affiliate" means any person, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under direct or indirect common control with, another person. A person shall be deemed to be "controlled by" any other person if such other person possesses, directly or indirectly, power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners or the equivalent; or (b) to direct or cause the direction of the management and policies of such person whether by contract or otherwise.

"Agent-Related Persons" means Administrative Agent, together with its Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such persons and Affiliates.

"Aggregate Commitments" means the Commitments of all Lenders.

"Aggregate Cost" has the meaning set forth in Section 1.4 of this Agreement.

"Agreement" has the meaning set forth in the introductory paragraph of this Agreement, and includes all exhibits attached hereto and referenced in Section 1.1.

"Anchor Lease" means any tenant lease of space in the Improvements in excess of 30,000 square feet of such Improvements.

"Appraised Value" means \$120,000,000.00.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means Banc of America Securities LLC, in its capacity as sole arranger and sole book manager.

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

"Assignment of Sitework Reimbursement Agreements" means one or more Assignment of Sitework Reimbursement Agreements or Assignment of Rights Under Agreement dated March 13, 2008, executed by the Borrower to Administrative Agent, as Assignee, and consented to by the parties to the Sitework Reimbursement Agreements, as amended, modified, supplemented, restated and replaced from time to time.

"Ayres" means Ayres - Chino Hills L.P., a California limited partnership.

"Base Rate" means, on any day, a simple rate per annum equal to the sum of the Prime Rate for that day plus the Base Rate Margin. Without notice to Borrower or anyone else, the Base Rate shall automatically fluctuate upward and downward as and in the amount by which the Prime Rate fluctuates.

"Base Rate Margin" means zero percent (0%) per annum.

"Base Rate Principal" means, at any time, the Principal Debt minus the portion, if any, of such Principal Debt which is LIBOR Rate Principal.

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

"Borrower's Deposit" has the meaning set forth in Section 1.5 of this Agreement.

"Budget" means the budget and cost itemization for the Project attached as Exhibit "D".

"Budget Shortfall" has the meaning set forth in Section 1.5 of this Agreement.

"Business Day" means a day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where Administrative Agent's Office is located.

"Cash Collateralize" has the meaning set forth in Section 7 of Exhibit "K".

"Claim" has the meaning set forth in Section 7.19 of this Agreement.

"Closing Checklist" means that certain Closing Requirements and Checklist setting forth the conditions for closing the Loan and recording the Deed of Trust.

"Commitment" means, as to each Lender, its obligation (a) to advance its Pro Rata Share of the Loan and (b) purchase participations in L/C Obligations in an aggregate principal amount not exceeding the amount set forth opposite such Lender's name on the Schedule of Lenders at any one time outstanding, as such amount may be adjusted from time to time in accordance with this Agreement.

"Completion Date" means March 14, 2009.

"Construction Consultant" means the construction consultant, if any, engaged by Administrative Agent with respect to the Project.

"Debt Service Coverage Ratio" has the meaning set forth in Section 2.11 of this Agreement.

"Debtor Relief Law" means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Deed of Trust" means the Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing dated March 13, 2008, granted by the Borrower to PRLAP, Inc., as Trustee, for the benefit of Administrative Agent and Lenders, securing repayment of the Indebtedness and

Borrower's performance of its other obligations to Administrative Agent and Lenders under the Loan Documents, as amended, modified, supplemented, restated and replaced from time to time.

"Default" has the meaning set forth in Section 5.1 of this Agreement.

"Defaulting Lender" means a Lender that fails to pay its Pro Rata Share of a Payment Amount within five (5) Business Days after notice from Administrative Agent, until such Lender cures such failure as permitted in this Agreement.

"Defaulting Lender Amount" means the Defaulting Lender's Pro Rata Share of a Payment Amount.

"Defaulting Lender Payment Amount" means a Defaulting Lender Amount plus interest from the date such Defaulting Lender Amount was funded by Administrative Agent and/or an Electing Lender, as applicable, to the date such amount is repaid to Administrative Agent and/or such Electing Lender, as applicable, at the rate per annum applicable to such Defaulting Lender Amount under the Loan or otherwise at the Base Rate.

"Draw Request" has the meaning set forth in Section 1 of Exhibit "F".

"Electing Lender" has the meaning set forth in Section 2.15(a).

"Eligible Assignee" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other person (other than a natural person) approved by Administrative Agent and, unless a Default has occurred and is continuing, Borrower (each such approval not to be unreasonably withheld or delayed).

"Environmental Agreement" means the Environmental Indemnification and Release Agreement of even date herewith by and among Borrower and Administrative Agent for the benefit of Lenders.

"Environmental Assessment" means a written report (including all drafts thereof) of an environmental assessment of the Property of such scope as may be requested by Administrative Agent, including the taking of soil borings and air and groundwater samples and other above- and below-ground testing, by a consulting firm acceptable to Administrative Agent and made in accordance with Administrative Agent's established guidelines.

"ERISA" has the meaning set forth in Section 3.19 of this Agreement.

"Excusable Delay" means a delay, not to exceed a total of ten (10) consecutive Business Days, caused by unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, earthquake or other acts of God, strikes, lockouts, acts of public enemy, riots or insurrections or any other unforeseen circumstances or events beyond the control of Borrower (except financial circumstances or events or matters which may be resolved by the payment of money), and as to which Borrower notifies Administrative Agent in writing within five (5) days after such occurrence; provided, however, no Excusable Delay shall extend the Completion Date or suspend or abate any obligation of Borrower or any other person to pay any money.

"Federal Arbitration Act" has the meaning set forth in Section 7.19 of this Agreement.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for that day shall be the rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on the next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upwards to the next higher 1/100 of 1%) charged to Bank of America, N.A. on such day on such transactions as determined by Administrative Agent.

"Financial Statements" means (a) for each Reporting Party other than an individual, a balance sheet, income statement, statements of cash flow and amounts and sources of contingent liabilities, a reconciliation of changes in equity and liquidity verification, and unless Administrative Agent otherwise consents, consolidated and consolidating statements if the Reporting Party is a holding company or a parent of a subsidiary entity, and (b) for each Reporting Party who is an individual, a balance sheet, statements of amounts and sources of contingent liabilities, sources and uses of cash and liquidity verification, and unless Administrative Agent otherwise consents, Financial Statements for each entity owned or jointly owned by the Reporting Party.

"First Advance" means the first advance of Loan proceeds after the recording of the Deed of Trust and after the conditions set forth in Exhibit "C" and Section 3 of Exhibit "F" to this Agreement have been satisfied.

"Fund" means any person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial real estate loans and similar extensions of credit in the ordinary course of its business.

"Funding Date" means the date on which an advance of Loan proceeds or Borrower's Deposit shall occur.

"Improvements" means all on-site and off-site improvements to the Land for an approximately 288,845 square foot retail power center to be constructed on the Land, together with all fixtures, tenant improvements and appurtenances now or later to be located on the Land and/or in such improvements.

"Indebtedness" means any and all indebtedness to Administrative Agent and/or Lenders evidenced, governed or secured by, or arising under, any of the Loan Documents, including the Loan.

"Indemnified Liabilities" has the meaning set forth in Section 7.2.

"Interest Period" means with respect to any LIBOR Rate Principal, the period commencing on the date such LIBOR Rate Principal is disbursed or on the date on which the Principal Debt or any portion thereof is converted into or continued as such LIBOR Rate Principal, and ending on

the date one (1), two (2), or three (3) months thereafter, as elected by Borrower in the applicable Rate Election Notice; provided that:

- (a) Each Interest Period must commence on a LIBOR Business Day;
- (b) In the case of the continuation of LIBOR Rate Principal, the Interest Period applicable after the continuation of such LIBOR Rate Principal shall commence on the last day of the preceding Interest Period;
- (c) The last day for each Interest Period and the actual number of days during the Interest Period shall be determined by Administrative Agent using the practices of the London interbank eurodollar market; and
- (d) No Interest Period shall extend beyond the Maturity Date, and any Interest Period which begins before the Maturity Date and would otherwise end after the Maturity Date shall instead end on the Maturity Date.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.

"L/C Borrowing" means an extension of credit resulting from a drawing under the Letter of Credit which has not been reimbursed on the date when made or refinanced as a Loan advance.

"L/C Credit Extension" means, with respect to the Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

"L/C Issuer" means Bank of America, N.A. in its capacity as issuer of the Letter of Credit hereunder or any successor issuer of the Letter of Credit hereunder.

"L/C Obligations" means, as at any date of determination, the aggregate undrawn face amount of the outstanding Letter of Credit plus the aggregate of all L/C Borrowings.

"Land" means the real property described in Exhibit "A", consisting of approximately 30.11 acres of land located in the northwest corner of Chino Hills Boulevard and Ramona Avenue, Chino Hills, California.

"Laws" means all constitutions, treaties, statutes, laws, ordinances, regulations, rules, orders, writs, injunctions, or decrees of the United States of America, any state or commonwealth, any municipality, any foreign country, any territory or possession, or any Tribunal.

"Lender" means each lender from time to time party to this Agreement.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such on the Schedule of Lenders, or such other office or offices as such Lender may from time to time notify Borrower and Administrative Agent.

"Letter of Credit" means Irrevocable Standby Letter of Credit Number 3089993 dated October 11, 2007, issued by L/C Issuer for the benefit of Lowe's HIW, Inc., in the face amount of \$3,850,000.00.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a letter of credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

"LIBOR Business Day" means a Business Day which is also a London Banking Day.

"LIBOR Margin" means one and three-fourths percent (1.75%) per annum.

"LIBOR Rate" means for any applicable Interest Period for any LIBOR Rate Principal, a simple rate per annum equal to the sum of the LIBOR Margin plus the Adjusted LIBOR Rate.

"LIBOR Rate Election" means an election by Borrower of an applicable LIBOR Rate in accordance with this Agreement.

"LIBOR Rate Principal" means any portion of the Principal Debt which bears interest at an applicable LIBOR Rate at the time in question.

"Loan" means the loan by Lenders to Borrower, in the maximum amount of \$89,000,000.00, but not to exceed, in the aggregate, an amount equal to the lesser of (i) the payment of 86.2% of the costs incident to the Project as specified in the Budget, (ii) an amount complying with Section 3.14 and Section 3.17, and (iii) an amount complying with Section 3.16. In the event the aggregate amount of the actual costs incident to the Project are less than the aggregate amount specified in the Budget, the maximum amount described above shall be reduced by the difference between the aggregate amount specified in the Budget and the aggregate amount of such actual costs.

"Loan Documents" means this Agreement (including all exhibits), the Construction Deed of Trust, the Notes, any guaranty, financing statements, Assignment of Sitework Reimbursement Agreements, the Budget, each Draw Request, and such other documents evidencing, securing or pertaining to the Loan as shall, from time to time, be executed and/or delivered by Borrower, or any other party to Administrative Agent or any Lender pursuant to this Agreement (but not including the Environmental Agreement), as they may be amended, modified, restated, replaced or supplemented from time to time.

"Loan-to-Cost Ratio" has the meaning set forth in Section 3.15 of this Agreement.

"Loan-to-Value Ratio" has the meaning set forth in Section 3.14 of this Agreement.

"London Banking Day" means a day on which dealings in dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Lowe's" means Lowe's HIW, Inc., a Washington corporation.

"Major Lease" means any tenant lease of space in the Improvements in excess of 5,000 square feet of such Improvements.

"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 or Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any party to the Loan Documents or the Environmental Agreement to perform its obligations under any such Loan Document or Environmental Agreement 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 or the Environmental Agreement of any such document or agreement to which it is a party.

"Material Contract" means a contract for the performance of any work or the supplying of any labor, materials or services that exceeds \$500,000.00 in total price.

"Maturity Date" means March 13, 2010, as it may be earlier terminated or extended in accordance with the terms hereof.

"Notes" means the Construction Deed of Trust Notes each dated March 13, 2008 executed by Borrower and payable to the order of each Lender in the amount of the Lender's Commitment and collectively in the maximum principal amount of the Loan, substantially in the form of Exhibit "M", as amended, modified, replaced, restated, extended or renewed from time to time.

"Obligations" means all liabilities, obligations, covenants and duties of, any party to a Loan Document arising under or otherwise with respect to any Loan Document, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any party to a Loan Document or any Affiliate thereof of any proceeding under any Debtor Relief Law naming such person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceedings.

"Past Due Rate" has the meaning set forth in Section 2.8 of this Agreement.

"Payment Amount" means an Advance of the Loan, an unreimbursed Administrative Agent Advance, an unreimbursed Indemnified Liability, a reimbursement by a Lender to L/C Issuer for a drawing under the Letter of Credit that has not been reimbursed by or for the account of Borrower, or any other amount that a Lender is required to fund under this Agreement.

"Permitted Changes" means changes to the Plans or Improvements, provided the cost of any single change or extra does not exceed \$250,000.00 and the aggregate amount of all such changes and extras (whether positive or negative) does not exceed \$750,000.00.

"Plans" means the plans and specifications listed in Exhibit "E" and all modifications thereof and additions thereto that are included as part of the Plans as the same shall be approved by Administrative Agent in the exercise of its sole discretion in accordance with the terms of this Agreement.

"Potential Default" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become a Default.

"Prime Rate" means, on any day, the rate of interest per annum then most recently established by Administrative Agent as its "prime rate," it being understood and agreed that such rate is set by Administrative Agent as a general reference rate of interest, taking into account such factors as Administrative Agent may deem appropriate, that it is not necessarily the lowest or best rate actually charged to any customer or a favored rate, that it may not correspond with future increases or decreases in interest rates charged by other lenders or market rates in general, and that Administrative Agent may make various business or other loans at rates of interest having no relationship to such rate. If Administrative Agent (including any subsequent Administrative Agent) ceases to exist or to establish or publish a prime rate from which the Prime Rate is then determined, the applicable variable rate from which the Prime Rate is determined thereafter shall be instead the prime rate reported in The Wall Street Journal (or the average prime rate if a high and a low prime rate are therein reported), and the Prime Rate shall change without notice with each change in such prime rate as of the date such change is reported.

"Principal Debt" means the aggregate unpaid principal balance of this Loan at the time in question.

"Pro Rata Share" means, with respect to each Lender at any time, a fraction expressed as a percentage, the numerator of which is the amount of the Commitment of such Lender at such time and the denominator of which is the amount of the Aggregate Commitments at such time or, if the Aggregate Commitments have been terminated, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the total outstanding amount of all Indebtedness held by such Lender at such time (taking into account funded participations in L/C Obligations) and the denominator of which is the total outstanding amount of all Indebtedness at such time. The initial Pro Rata Share of each Lender named on the signature pages hereto is set forth opposite the name of that Lender on the Schedule of Lenders.

"Project" means the acquisition of the Land, the construction of the Improvements, and if applicable, the leasing and operation of the Improvements.

"Property" means the Land, the Improvements and all other property constituting the "Property" as described and defined in the Deed of Trust, or subject to a right, lien or security interest to secure the Loan pursuant to any other Loan Document, less any property released pursuant to the provisions of Exhibit "H".

"Reporting Party" means Borrower.

"Reporting Period" means a specified period to which Financial Statements relate.

"Required Lenders" means as of any date of determination at least two Lenders having more than 66 ⅔% of the Aggregate Commitments or, if the Aggregate Commitments have been terminated, at least two Lenders holding in the aggregate more than 66 ⅔% of the total outstanding amount of all Indebtedness (taking into account funded participations in L/C Obligations); provided that the Commitment of, and the portion of the total outstanding amount of all Indebtedness (taking into account funded participations in L/C Obligations) held by, any

Defaulting Lender shall be excluded for purposes of making a determination of the Required Lenders.

"Schedule of Lenders" means the schedule of Lenders party to this Agreement as set forth on Exhibit "N", as it may be modified from time to time in accordance with this Agreement.

"Sitework Reimbursement Agreements" means the agreements with Lowe's and Ayres Hotel that provided for the reimbursement or payment by Lowe's and Ayres for a portion of the construction costs associated with sitework on the Property.

"Sitework Reimbursement Amounts" means the aggregate amount committed but not yet disbursed by Lowe's and Ayres under the Sitework Reimbursement Agreements.

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

"Stored Materials Advance Limit" means \$500,000.00.

"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.

"Survey" means a survey prepared in accordance with Exhibit "G" or as otherwise approved by Administrative Agent in its sole discretion.

"Swap Transactions" means (a) any and all rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, or (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement (any such master agreement, together with any related schedules, as amended, restated, extended, supplemented or otherwise modified in writing from time to time, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Tangible Net Worth" means the gross book value of Borrower's assets (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), plus 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) less Total Liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets.

"Taxes" means all taxes, assessments, fees, levies, imposts, duties, deductions, withholdings, or other charges of any nature whatsoever from time to time or at any time imposed by any Law or Tribunal, including any such Taxes as defined and described in Section 2.12.

"Title Company" means First American Title Insurance Company, a California corporation.

"Title Insurance" means the loan policy or policies of title insurance issued to Administrative Agent for the benefit of Lenders by Title Company, in an amount equal to the maximum principal amount of the Loan, insuring the validity and priority of the Deed of Trust encumbering the Land and Improvements for the benefit of Administrative Agent and Lenders, as further described in Exhibit "C" hereto.

"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).

"Tribunal" means any state, commonwealth, federal, foreign, territorial or other court or governmental department, commission, board, bureau, district, authority, agency, central bank, or instrumentality, or any arbitration authority.

EXHIBIT "C"

CONDITIONS PRECEDENT TO FIRST ADVANCE

As conditions precedent to the First Advance, if and to the extent required by Administrative Agent, Administrative Agent shall have received and approved the following:

1. **Fees and Expenses.** Any and all required commitment and other fees and evidence satisfactory to Administrative Agent that Borrower has paid all other fees, costs and expenses (including the fees and costs of Administrative Agent's counsel) then required to be paid pursuant to this Agreement and all other Loan Documents, including all fees, costs and expenses that Borrower is required to pay pursuant to any loan application or commitment.
2. **Financial Statements.** The Financial Statements of Borrower and Guarantor or any other party required by any loan application or commitment or otherwise required by Administrative Agent.
3. **Appraisal.** A market value appraisal of the Property made within one hundred eighty (180) days prior to the date of this Agreement, which appraises the Property on a "completed value" basis at not less than the Appraised Value. The appraiser, appraisal and appraised value of the Property must be satisfactory to Administrative Agent (including satisfaction of applicable regulatory requirements) and the appraiser must be engaged directly by Administrative Agent.
4. **Draw Schedule and Budget.** Borrower's proposed cash flow, draw schedule and construction schedule for the Project, and Administrative Agent shall be satisfied, in its sole discretion, that the Improvements may be completed in accordance with the construction schedule and for costs not exceeding those set forth in the Budget.
5. **Authorization.** Such evidence as Administrative Agent may require of the existence, good standing, authority and capacity of Borrower, and its constituent partners, members, managers and owners (however remote) to execute, deliver and perform their respective obligations to Administrative Agent and Lenders under the Loan Documents and the Environmental Agreement, including:
 - (a) For each partnership (including a joint venture or limited partnership):
 - (i) a true and complete copy of an executed partnership agreement or limited partnership agreement and all amendments thereto; (ii) for each limited partnership, a copy of the certificate of limited partnership and all amendments thereto accompanied by a certificate issued by the appropriate governmental official of the jurisdiction of formation that the copy is true and complete, and such evidence as Administrative Agent may require of registration or qualification to do business in the state where Borrower's principal place of business is located and if different, the state in which the Property is located; and (iii) a partnership affidavit certifying who will be authorized to execute or attest any of the Loan Documents and the Environmental Agreement, and a true and complete copy of the partnership resolutions approving the Loan Documents and the Environmental Agreement and authorizing the transactions contemplated in this Agreement, the other Loan Documents and the Environmental Agreement.

(b) For each corporation: (i) a true and complete copy of its articles of incorporation and by-laws and all amendments thereto, a certificate of incumbency of all of its officers who are authorized to execute or attest to any of the Loan Documents and the Environmental Agreement, and a true and complete copy of resolutions approving the Loan Documents and the Environmental Agreement and authorizing the transactions contemplated in this Agreement, the other Loan Documents and the Environmental Agreement; and (ii) certificates of existence, good standing and qualification to do business issued by the appropriate governmental officials in the state of its formation and if different, the state in which the Property is located.

(c) For each limited liability company or limited liability partnership: (i) a true and complete copy of the articles of organization and operating agreement and all amendments thereto, a certificate of incumbency of all of its members who are authorized to execute or attest to any of the Loan Documents and the Environmental Agreement, and a true and complete copy of resolutions approving the Loan Documents and the Environmental Agreement and authorizing the transactions contemplated in this Agreement, the other Loan Documents and the Environmental Agreement; and (ii) certificates of existence, good standing and qualification to do business issued by appropriate governmental officials in the state of its formation and if different, the state in which the Property is located.

(d) For each entity or organization that is not a corporation, partnership, limited partnership, joint venture, limited liability company or limited liability partnership, a copy of each document creating it or governing the existence, operation, power or authority of it or its representatives.

(e) All certificates, resolutions and consents required by Administrative Agent applicable to the foregoing.

(f) All due diligence materials deemed necessary by Administrative Agent and each Lender with respect to verifying Borrower's identity and background information in a manner satisfactory to Administrative Agent and each Lender.

6. Loan Documents and Environmental Agreement. From Borrower and each other person required by Administrative Agent, all Loan Documents then required by Administrative Agent and the Environmental Agreement (with a copy for each Lender), each duly executed, acknowledged and/or sworn to as required, each dated concurrently herewith and each in form and content satisfactory to Administrative Agent, and such evidence as Administrative Agent may require that the Deed of Trust has been recorded in the official records of the city or county in which the Property is located and UCC-1 financing statements have been filed in all filing offices that Administrative Agent may require.

7. [Intentionally Left Blank].

8. Survey, No Special Flood Hazard Area. (a) Two (2) prints of an original survey (with a copy for each Lender) of the Land and improvements thereon dated not more than sixty (60) days prior to the date of this Agreement (or dated such earlier date, if any, as is satisfactory to Title Company, but in any event not more than one hundred eighty (180) days prior to the date

of this Agreement) satisfactory to Administrative Agent and Title Company and otherwise complying with Exhibit "G"; and (b) a flood insurance policy (with a copy for each Lender) in an amount sufficient to meet the requirements of applicable law and the Federal Emergency Management Agency, as such requirements may from time to time be in effect, and otherwise in compliance with the requirements of the Loan Documents, or evidence satisfactory to Administrative Agent that no part of the Improvements is or will be located in a Special Flood Hazard Area (SFHA).

9. Title Insurance. An ALTA extended coverage lender's title insurance policy, issued by Title Company (which shall be approved by Administrative Agent) in the maximum amount of the Loan plus any other amount secured by the Deed of Trust, on a coinsurance and/or reinsurance basis if and as required by Administrative Agent: (a) insuring without exclusion or exception for creditors' rights that the Deed of Trust constitutes a valid lien covering the Land and all Improvements thereon, having the priority required by Administrative Agent and subject only to those exceptions and encumbrances (regardless of rank or priority) as Administrative Agent may approve, in a form acceptable to Administrative Agent, and with all "standard" exceptions which can be deleted, including the exception for matters which a current survey would show, deleted to the fullest extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; (b) containing no exception for standby fees or real estate taxes or assessments other than those for the year in which the closing occurs to the extent the same are not then due and payable and endorsed "not yet due and payable" and no exception for subsequent assessments for prior years; (c) providing full coverage against mechanic's, materialmen's and other similar liens to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; (d) insuring that no restrictive covenants shown in the Title Insurance have been violated, and that no violation of the restrictions will result in a reversion or forfeiture of title; (e) insuring all appurtenant easements; insuring that indefeasible or marketable (as coverage is available) title to the Land and Improvements is vested in Borrower; (f) containing such affirmative coverage and endorsements as Administrative Agent may require and are available under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; (g) insuring any easements, leasehold estates or other matters appurtenant to or benefiting the Land and/or the Improvements as part of the insured estate; (h) insuring the right of access to the Land to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; and (i) containing provisions acceptable to Administrative Agent regarding advances and/or readvances of Loan funds after closing. Borrower and Borrower's counsel shall not have any interest, direct or indirect, in Title Company (or its agent) or any portion of the premium paid for the Title Insurance.

10. Plans. Two (2) true and correct copies of all existing Plans (including the site plan), together with evidence satisfactory to Administrative Agent that all applicable governmental authorities, Borrower, Borrower's architect, engineer and contractors and Construction Consultant have approved the same.

11. Contracts. (a) A list containing the names and addresses of all existing contractors, architects, engineers and other suppliers of services and materials who are parties to Material Contracts for the Project, their respective contract amounts, and a copy of their contracts, and (b) duly executed, acknowledged and delivered originals, from each contractor,

architect, engineer, subcontractor or supplier of services or materials required by Administrative Agent, of consents or other agreements satisfactory to Administrative Agent.

12. Insurance Policies. The insurance policies initially required by Administrative Agent pursuant to the Loan Documents, together with evidence satisfactory to Administrative Agent that all premiums therefor have been paid for a period of not less than one (1) year from the date of this Agreement and that the policies are in full force and effect.

13. Leases. If Exhibit "I" is attached hereto, (a) true and correct copies of all leases and subleases and guaranties thereof; (b) such estoppel certificates, subordination agreements and/or subordination, nondisturbance and attornment agreements (each, an "SNDA") as Administrative Agent in its discretion may require, dated within thirty (30) days prior to this Agreement and in the respective forms attached as exhibits to the Closing Checklist, or otherwise in form and content satisfactory to Administrative Agent, from such tenants, subtenants and guarantors as Administrative Agent may require; (c) evidence satisfactory to Administrative Agent of Borrower's compliance with the leases; and (d) evidence satisfactory to Administrative Agent of the tenants' approval of all matters requiring their approval. Notwithstanding anything herein to the contrary, an SNDA shall not be required by Administrative Agent as to any lease that is not a Major Lease unless required by the Title Company.

14. Environmental Compliance/Report. Evidence satisfactory to Administrative Agent that no portion of the Land is "wetlands" under any applicable Law and that the Land does not contain and is not within or near any area designated as a hazardous waste site by any governmental authority, that neither the Property nor any adjoining property contains or has ever contained any substance classified as hazardous or toxic (or otherwise regulated, such as, without limitation, asbestos, radon and/or petroleum products) under any Law or governmental requirement pertaining to health or the environment, and that neither the Property nor any use or activity thereon violates or is or could be subject to any response, remediation, clean-up or other obligation under any Law or governmental requirement pertaining to health or the environment, including an Environmental Assessment of the Property made within twelve (12) months prior to the date of this Agreement by a consulting firm acceptable to Administrative Agent, showing that there is no evidence of any such substance which has been generated, treated, stored, released or disposed of in the Property and such additional evidence as may be required by Administrative Agent. All reports, drafts of reports and recommendations, whether written or oral, from such consulting firm shall be made available and communicated to Administrative Agent.

15. Soil Reports. A soil composition and test boring report and a foundation report satisfactory to Administrative Agent regarding the Land, made within three (3) years prior to the date of this Agreement by a licensed professional engineer satisfactory to Lenders.

16. Access, Utilities and Laws. (a) Evidence satisfactory to Administrative Agent that the Property abuts and has fully adequate direct and free access to one or more public streets dedicated to public use, fully installed and accepted by the appropriate governmental authority, that all fees, costs and expenses of the installation and acceptance thereof have been paid in full, and that there are no restrictions on the use and enjoyment of such streets which would adversely affect the Project; (b) letters from the applicable utility companies or governmental authorities

confirming that all utilities necessary for the Improvements are available at the Land in sufficient capacity, together with evidence satisfactory to Administrative Agent of paid impact fees, utility reservation deposits and connection fees required to assure the availability of such services; (c) evidence satisfactory to Administrative Agent that all applicable zoning ordinances, restrictive covenants and governmental requirements affecting the Property permit the use for which the Property is intended and have been or will be complied with without the existence of any variance, non-complying use, nonconforming use or other special exception; (d) evidence satisfactory to Administrative Agent that the Land and Improvements comply and will comply with all Laws and governmental requirements regarding subdivision and platting and would so comply if the Land and the Improvements thereon were conveyed as a separate parcel; (e) a true and correct copy of a valid building permit for the Improvements, together with all other consents, licenses, permits and approvals necessary for construction of the Improvements, all in assignable form (to the extent appropriate) and in full force and effect; (f) evidence satisfactory to Administrative Agent of compliance by Borrower and the Property, and the proposed construction, use and occupancy of the Improvements, with such other applicable Laws and governmental requirements as Administrative Agent may request, including all Laws and governmental requirements regarding access and facilities for handicapped or disabled persons, including, to the extent applicable, The Federal Architectural Barriers Act (42 U.S.C. § 4151 et seq.), The Fair Housing Amendments Act of 1988 (42 U.S.C. § 3601 et seq.), The Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), The Rehabilitation Act of 1973 (29 U.S.C. § 794), and any applicable state requirements; and (g) written evidence satisfactory to Administrative Agent that construction of the Improvements on the Land is permissible under all federal, state and local statutes, regulations and rulings protecting tidal and non-tidal wetlands and other environmentally protected areas.

17. Priority. (a) Evidence satisfactory to Administrative Agent that prior to and as of the time the Deed of Trust was filed for record (i) no activity or circumstance was visible on or near the Land which would constitute inception of a mechanic's, materialmen's or other similar lien against the Property, and (ii) no mechanic's, materialmen's or other similar lien claim or notice, lis pendens, judgment, or other claim or encumbrance against the Property has been filed for record in the county where the Property is located or in any other public record which by Law provides notice of claims or encumbrances regarding the Property; (b) a certificate or certificates of a reporting service acceptable to Administrative Agent, reflecting the results of searches made not earlier than ten (10) days prior to the date of this Agreement, (i) of the central and local Uniform Commercial Code records, showing no filings against any of the collateral for the Loan or against Borrower otherwise except as consented to by Administrative Agent, and (ii) if required by Administrative Agent, of the appropriate judgment and tax lien records, showing no outstanding judgment or tax lien against Borrower.

18. Construction Analysis. Administrative Agent shall have received and approved, in its sole discretion, a construction analysis of the Project.

19. Tax and Standby Fee Certificates. Evidence satisfactory to Administrative Agent (a) of the identity of all taxing authorities and utility districts (or similar authorities) having jurisdiction over the Property or any portion thereof, (b) that all taxes, standby fees and any other similar charges have been paid, including copies of receipts or statements marked "paid" by the appropriate authority, and (c) that the Land is a separate tax lot or lots with separate assessment

or assessments of the Land and Improvements independent of any other land or improvements and that the Land is a separate legally subdivided parcel.

20. Upfront Equity. Evidence satisfactory to Administrative Agent that the Upfront Equity (as defined in Section 1.4) has been fully paid and funded.

21. Pre-Leasing. Executed leases for at least 75,628 square feet and executed letters of intent for at least 9,000 square feet.

22. Other Documents. Such other documents and certificates as Administrative Agent may reasonably request from Borrower and any other person or entity, in form and content satisfactory to Administrative Agent.

EXHIBIT "E"

PLANS

EXHIBIT "F"

ADVANCES

1. **Draw Request.** A "Draw Request" means a properly completed and executed written application by Borrower to Administrative Agent in the form of Exhibit "F-1" (or in another form approved by Administrative Agent) setting forth the amount of Upfront or Deferred Equity and/or Loan proceeds desired, together with the related AIA Documents G-702 and G-703 and such schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents, certificates and information satisfactory to Administrative Agent. At least five (5) Business Days before the requested date of each advance made under the Budget from Upfront [or Deferred] Equity or the Loan, Borrower shall deliver a Draw Request to Administrative Agent. Borrower shall be entitled to an advance only in an amount approved by Administrative Agent in accordance with the terms of this Agreement and the Loan Documents. Lenders shall not be required to make advances more frequently than once each calendar month. Lenders shall, only upon the satisfaction, as determined by Administrative Agent in its sole discretion, of all applicable conditions of this Agreement and the Loan Documents, be required to make the requested advance to Borrower on a Funding Date which is a Business Day within five (5) Business Days after such satisfaction. Each Draw Request, and Borrower's acceptance of any advance, shall be deemed to ratify and confirm, as of the date of the Draw Request and the advance, respectively, except as specified in the Draw Request, all representations and warranties in the Loan Documents remain true and correct.

2. **Advances.** Borrower shall use and apply all advances made to Borrower for payment of the costs and expenses specified in the Budget for which the advances were made, and for no other purpose. Following receipt and approval of a Draw Request, all supporting documentation and information required by Administrative Agent, and receipt and approval of a written report (or an oral report followed by written confirmation) from Construction Consultant satisfactory to Administrative Agent, Administrative Agent will determine the amount of the advance Lenders will make in accordance with this Agreement, the Loan Documents, the Budget and, if and to the extent required by Administrative Agent, to Administrative Agent's satisfaction, the following standards:

(a) An initial advance in an amount sufficient to pay off the existing financing related to the acquisition of the Land.

(b) For construction work other than tenant improvement work, advances on the basis of ninety-five percent (95%) of the costs shown on the application for payment from the contractor reviewed and approved by Administrative Agent of the work or material in place on the Improvements that complies with the terms of the Loan Documents, minus all previous advances and all amounts required to be paid by Borrower, as described in the Budget.

(c) For tenant improvement work, advances on the basis of one hundred percent (100%) of the costs shown for each lease in the application for payment from the contractor reviewed and approved by Administrative Agent for the work or material in place that complies with the terms of the Loan Documents, provided that if required by Administrative

Agent: (i) an application for payment may be submitted only after all applicable tenant improvements have been completed for a given lease; (ii) the amount of the requested advance does not exceed \$20,822,271.00 in the aggregate as provided in the Budget for Tenant Improvement Costs and Tenant Shell Package; (iii) all provisions of the Loan Documents, including Sections 3 and 4 of this Exhibit "F", have been satisfied; (iv) the term of the applicable lease has commenced; (v) Administrative Agent has received from the applicable tenant a tenant estoppel certificate and, with respect to each Major Lease, a subordination agreement or a subordination, nondisturbance and attornment agreement, as Administrative Agent may require, in the respective forms attached as exhibits to the Closing Checklist, or otherwise in form and content satisfactory to Administrative Agent; (vi) Administrative Agent has received two (2) sets of as-built plans for the applicable tenant improvements; and (vii) Administrative Agent has received evidence of satisfaction of all applicable legal requirements, including applicable certificates of occupancy and evidence that the plans comply with all legal requirements regarding access and facilities for handicapped or disabled persons.

(d) No advances will be made for building materials or furnishings that are not yet incorporated into the Improvements ("stored materials") unless the stored materials are in Borrower's possession and satisfactorily stored on the Land and the aggregate of advances for stored materials that have not yet been incorporated into the Improvements does not exceed the Stored Materials Advance Limit.

3. Conditions to All Advances. As conditions precedent to each advance made pursuant to a Draw Request, in addition to all other requirements contained in this Agreement, if and to the extent required by Administrative Agent, the Advance Termination Date shall not have passed, and Administrative Agent shall have received and approved the following:

(a) Evidence satisfactory to Administrative Agent of the continued satisfaction of all conditions to the recording of the Deed of Trust, as set forth in Exhibit "C".

(b) A Draw Request.

(c) Evidence satisfactory to Administrative Agent that no Default or any event which, with the giving of notice or the lapse of time or both, could become a Default, exists.

(d) Evidence satisfactory to Administrative Agent that the representations and warranties made in the Loan Documents and the Environmental Agreement are true and correct on and as of the date of each advance and no event has occurred or condition or circumstance exists which, if known to Borrower, would render any such representation or warranty incorrect or misleading.

(e) Evidence satisfactory to Administrative Agent that each subcontract or other contract for labor, materials, services and/or other work included in a Draw Request has been duly executed and delivered by all parties thereto and is effective, and a true and complete copy of a fully executed copy of each such subcontract or other contract as Administrative Agent may have requested, together with performance and payment bonds securing such contracts and subcontracts, to the extent required by Administrative Agent, in form and substance satisfactory to Administrative Agent.

(f) Evidence satisfactory to Administrative Agent that no mechanic's, materialmen's or other similar lien or other encumbrance has been filed and remains in effect against the Property, no stop notices have been served on Lenders that have not been bonded by Borrower in a manner and amount satisfactory to Administrative Agent, and releases or waivers of mechanic's liens and receipted bills showing payment of all amounts due to all parties who have furnished materials or services or performed labor of any kind in connection with the Property.

(g) If required by Administrative Agent, evidence satisfactory to Administrative Agent that the Title Insurance has been endorsed and brought to date in a manner satisfactory to Administrative Agent through the date of each advance with no additional title change or exception not approved by Administrative Agent.

(h) Certification by Construction Consultant and if required by Administrative Agent, by Borrower's architect, that to the best of such party's knowledge, information and belief, construction is in accordance with the Plans, the quality of the work for which the advance is requested is in accordance with the applicable contract, the amount of the advance requested represents work in place based on on-site observations and the data comprising the Draw Request, the work has progressed in accordance with the construction contract and schedule, and the applicable contractor is entitled to payment of the amount certified.

(i) If the advance is requested within thirty (30) days after the laying of the foundation of any building or structure of the Improvements, (i) a foundation survey satisfactory to Administrative Agent and to the extent required by Administrative Agent complying with Exhibit "G", (ii) a certificate of Borrower's architect stating that based on personal inspection the foundations have been completed in accordance with the Plans and are satisfactory in all respects, and (iii) a bearing capacity test report with respect to the excavated footings and foundations, reviewed and approved by Construction Consultant and Borrower's architect.

(j) If required by Administrative Agent, if the advance is requested within thirty (30) days after the pouring of concrete for any Improvements, a report satisfactory to Construction Consultant of the results of concrete tests made at the time the concrete is poured.

(k) If required by Administrative Agent, if the advance is requested within thirty (30) days after the compaction of any soil for construction, a report satisfactory to Construction Consultant of the results of soil tests.

(l) Evidence satisfactory to Administrative Agent that as of the date of making such advance, no event has occurred, nor does any condition exist, that could impair the ability of Borrower to fulfill its material obligations under the Loan Documents or the Environmental Agreement or could have a Material Adverse Effect on (i) the enforceability of the Loan Documents or the Environmental Agreement, (ii) the financial condition of Borrower, or (iii) the Property whatsoever.

(m) [Intentionally left blank].

(n) Evidence satisfactory to Administrative Agent that the Improvements have not been damaged without being repaired and are not the subject of any pending or threatened condemnation or adverse zoning proceeding.

(o) Evidence satisfactory to Administrative Agent that Borrower has paid all amounts then required to be paid by Borrower under the Budget.

(p) The Borrower's Deposit if required under Section 1.5 of this Agreement.

(q) With respect to any advance to pay a contractor, original applications for payments in form approved by Administrative Agent, containing a breakdown by trade and/or other categories acceptable to Administrative Agent, executed and certified by each contractor and Borrower's architect, accompanied by invoices, and approved by Construction Consultant.

(r) Copies of notarized partial lien waiver forms executed by each contractor and each appropriate subcontractor, supplier and materialman, including such partial lien waivers from all parties sending statutory notices to contractors, notices to owners, or notices of nonpayment, specifying in such partial lien waivers the amount paid in consideration of such partial releases.

(s) Such other information, documents and supplemental legal opinions as may be required by Administrative Agent.

4. Final Advance for Improvements. If and to the extent required by Administrative Agent, the final advance for the Improvements (including retainage) shall not be made until thirty (30) days after the later of (i) the date on which the Improvements have been "completed" as defined by applicable state Law, and (ii) if required by Administrative Agent, the date on which an affidavit of completion has been recorded. In the case of each such Draw Request, if and to the extent required by Administrative Agent, Administrative Agent shall have received the following as additional conditions precedent to the requested advance:

(a) Certificates from Borrower's architect, engineer, contractor and if required by Administrative Agent, from Construction Consultant, certifying that the Improvements (including any off-site improvements) have been completed in accordance (and as completed comply) with the Plans and all Laws and governmental requirements; and Administrative Agent shall have received two (2) sets of detailed "as-built" Plans approved in writing by Borrower, Borrower's architect and each contractor.

(b) Final affidavits (in a form approved by Administrative Agent) from Borrower's architect and engineer and each contractor certifying that each of them and each of their subcontractors, laborers and materialmen has been paid in full for all labor and materials for construction of the Improvements; and final lien releases or waivers (in a form approved by Administrative Agent) by Borrower's architect, engineer, contractor, and all subcontractors, materialmen, and other parties who have supplied labor, materials or services for the construction of the Improvements, or who otherwise might be entitled to claim a contractual, statutory or constitutional lien against the Property.

(c) The Title Insurance shall be endorsed to remove any exception for mechanic's, materialmen's or similar liens or pending disbursements, with no additional title change or exception objectionable to Administrative Agent, and with such other endorsements required by Administrative Agent.

(d) Evidence satisfactory to Administrative Agent that all Laws and governmental requirements have been satisfied, including receipt by Borrower of all necessary governmental licenses, certificates and permits (including certificates of occupancy) with respect to the completion, use, occupancy and operation of the Improvements, together with evidence satisfactory to Administrative Agent that all such licenses, certificates and permits are in full force and effect and have not been revoked, canceled or modified.

(e) Three (3) copies of a final as-built survey satisfactory to Administrative Agent and, to the extent required by Administrative Agent, complying with Exhibit "G".

(f) [Intentionally left blank].

(g) A written confirmation by each tenant having the right to do so that such tenant has approved the completed Improvements.

5. Direct Advances. Borrower hereby irrevocably authorizes Administrative Agent (but Administrative Agent shall have no obligation) to (a) advance Loan funds directly to Lenders to pay interest due on the Loan, and (b) advance and directly apply the proceeds of any advance to the satisfaction of any of Borrower's obligations under any of the Loan Documents or the Environmental Agreement, even though Borrower did not include that amount in a Draw Request and/or no Default exists. Each such direct advance (except for application of a Borrower's Deposit) shall be added to the outstanding principal balance of the Loan and shall be secured by the Loan Documents. Unless Borrower pays such interest from other resources, Administrative Agent may advance Loan funds pursuant to this Section for interest payments as and when due. Nothing contained in this Agreement shall be construed to permit Borrower to defer payment of interest on the Loan beyond the date(s) due. The allocation of Loan funds in the Budget for interest shall not affect Borrower's absolute obligation to pay the same in accordance with the Loan Documents. Administrative Agent may hold, use, disburse and apply the Loan and Borrower's Deposit for payment of any obligation of Borrower under the Loan Documents or the Environmental Agreement. Borrower hereby assigns and pledges the proceeds of the Loan and any Borrower's Deposit to Administrative Agent for itself and for the benefit of Lenders for such purposes. Administrative Agent on behalf of Lenders may advance and incur such expenses as Administrative Agent deems necessary for the completion of the Improvements and to preserve the Property, and any other security for the Loan, and such expenses, even though in excess of the amount of the Loan, shall be secured by the Loan Documents and shall be payable to Administrative Agent on behalf of Lenders on demand. Administrative Agent on behalf of Lenders may disburse any portion of any advance at any time, and from time to time, to persons other than Borrower for the purposes specified in this Section and the amount of advances to which Borrower shall thereafter be entitled shall be correspondingly reduced.

6. Conditions and Waivers. All conditions precedent to the obligation of Lenders to make any advance are imposed hereby solely for the benefit of Administrative Agent and

Lenders, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lenders will refuse to make any advance in the absence of strict compliance with such conditions precedent. Any requirement of this Agreement may be waived, in whole or in part, in a specific written waiver intended for that purpose and signed by Administrative Agent. Administrative Agent shall have the right to approve and verify the periodic progress, costs incurred by Borrower, and the estimated costs remaining to be incurred, after consultation with Construction Consultant. No advance shall constitute an approval or acceptance by Administrative Agent of any construction work, or a waiver of any condition precedent to any further advance, or preclude Administrative Agent from thereafter declaring the failure of Borrower to satisfy such condition precedent to be a Default. No waiver by Administrative Agent of any condition precedent or obligation shall preclude Administrative Agent from requiring such condition or obligation to be met prior to making any other advance or from thereafter declaring the failure to satisfy such condition or obligation to be a Default.

7. Funding. Borrower shall establish and maintain a special account with Administrative Agent into which advances funded directly to Borrower shall be deposited by Borrower, and against which checks shall be drawn only for the payment of costs specified in the Budget, but which special account shall not be used for any other purpose. Borrower hereby irrevocably authorizes Administrative Agent to deposit each advance requested by Borrower to the credit of Borrower in that account, by wire transfer or other deposit. Advances may also be made, in addition to other methods contemplated herein, at Administrative Agent's option, by direct or joint check payment to any or all persons entitled to payment for work or services performed or material furnished in connection with the Project or the Loan, or by having the proceeds thereof made available to Title Company (or its agent) for disbursement. Neither Administrative Agent nor any Lender shall be required or have any responsibility to supervise the proper application or distribution of funds to third parties.

EXHIBIT "F-1"

DRAW REQUEST

[BORROWER'S LETTERHEAD]

DRAW REQUEST NO. _____

TO: BANK OF AMERICA, N.A. ("Administrative Agent")

LOAN NO. _____

PROJECT The Commons at Chino Hills

LOCATION Chino Hills, CA

BORROWER OPUS WEST CORPORATION, a Minnesota corporation

FOR PERIOD ENDING _____

In accordance with the Construction Loan Agreement in the amount of \$89,000,000.00 dated _____, 2008, among Borrower, Administrative Agent and the Lenders as defined therein, Borrower requests that \$ _____ be advanced from Loan proceeds [\$ _____ be advanced from Borrower's Deposit, \$ _____ be advanced from Upfront Equity, and \$ _____ be advanced from Deferred Equity]. The proceeds should be credited to the account of _____, Account No. _____, at _____.

- | | |
|----------------------------------------|----------|
| 1. CURRENT DRAW REQUEST FOR HARD COSTS | \$ _____ |
| 2. CURRENT DRAW REQUEST FOR SOFT COSTS | \$ _____ |
| 3. TOTAL DRAW REQUEST | \$ _____ |

AUTHORIZED SIGNER:

_____ Dated: _____

EXHIBIT "G"

SURVEY REQUIREMENTS

1. **Requirements.** The Survey shall be made in accordance with, and meet the requirements of, the certification below by a registered professional engineer or registered professional land surveyor. The description shall be a single metes and bounds perimeter description of the entire Land, and a separate metes and bounds description of the perimeter of each constituent tract or parcel out of the Land. The total acreage and square footage of the Land and each constituent tract or parcel of the Land shall be certified. If the Land has been recorded on a map or plat as part of an abstract or subdivision, all survey lines must be shown, and all lot and block lines (with distances and bearings) and numbers, must be shown. The date of any revisions subsequent to the initial survey prepared pursuant to these requirements must also be shown.

2. **Certification.** The certification for the property description and the map or plat shall be addressed to Administrative Agent for the Lenders, Borrower and the Title Company, signed by the surveyor (a registered professional land surveyor or registered professional engineer), bearing current date, registration number and seal, and shall be in the following form or its substantial equivalent:

This is to certify to Bank of America, N.A., as Administrative Agent for certain Lenders, Opus West Corporation, a Minnesota corporation, as Borrower, and First American Title Insurance Company, a California corporation, as the Title Company that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA and NSPS in 2005, and include optional items 1, 2, 4 (in square feet or acres), 6, 8, 10, 11(b), 16, 17, 18, and if buildings are located on the land, optional items 7(a), 7(b)(1), 7(b)(2) and 9 of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, the undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of California, the maximum Relative Positional Accuracy resulting from the measurements made on the survey does not exceed the Allowable Relative Positional Accuracy for Measurements Controlling Land Boundaries on ALTA/ACSM Land Title Surveys (0.07 feet or 20mm + 50 ppm). The undersigned additionally certifies that: (a) this survey was made on the ground under my supervision; (b) I have received and examined a copy of the Title Insurance Commitment No. NCS-329609-SA1 issued by the Title Company as well as a copy of each instrument listed therein, and the subject land and each tract or parcel thereof described in this survey is the same land as described in the Title Commitment; (c) if the subject land consists of two or more tracts or parcels having common boundaries, those tracts and parcels are contiguous along the common boundaries; (d) the subject land and each tract or parcel thereof has a tax map designation separate and distinct from that of any other land and the subject land and each tract or parcel thereof is a separate, legally subdivided parcel; (e) this survey correctly shows all matters of record (and to the extent they can be located, their location and dimensions) of which I have been advised affecting the subject land according to the legal description in

such matters (with instrument, book, and page number indicated); (f) except as shown on this survey, no part of the subject land is located in a 100-year Flood Plain or in an identified "flood prone area," as defined pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map Panel #06071C 9330F dated March 18, 1996, which such map panel covers the area in which the subject land is situated and this survey correctly indicates the zone designation of any area as being in the 100-year Flood Plain or "flood prone area"; (g) to the best of my knowledge, this survey shows the relation of and distance of all substantial, visible buildings, sidewalks and other improvements to easements and setback lines; and (h) to the best of my knowledge, except as shown on this survey, neither the subject land nor any tract or parcel thereof serves any adjoining land for drainage, utilities, or ingress or egress.

EXHIBIT "H"

[INTENTIONALLY LEFT BLANK]

EXHIBIT "I"

LEASING AND TENANT MATTERS

Borrower and Lenders agree as follows:

1. **Approved Leases.** Borrower shall not enter into any tenant lease of space in the Improvements unless approved or deemed approved by Administrative Agent prior to execution. Borrower's standard form of tenant lease, and any revisions thereto, must have the prior written approval of Administrative Agent. Administrative Agent shall be "deemed" to have approved any tenant lease that: (a) is on the standard form lease approved by Administrative Agent with no deviations except as approved by Administrative Agent; (b) is entered into in the ordinary course of business with a bona fide unrelated third party tenant, and Borrower, acting in good faith and exercising due diligence, has determined that the tenant is financially capable of performing its obligations under the lease; (c) is received by Administrative Agent (together with each guaranty thereof (if any) and financial information regarding the tenant and each guarantor (if any) received by Borrower) within fifteen (15) days after execution; (d) reflects an arm's length transaction at then-current market rate for comparable space; (e) contains no right to purchase the Property, or any present or future interest therein; (f) does not require Borrower to provide funds for tenant improvements in excess of the per square foot allowance provided in the Budget; (g) is expressly subordinate to the Deed of Trust; and (h) is not an Anchor Lease. Borrower shall not enter into any Anchor Lease unless approved by the Required Lenders. Borrower shall provide to Administrative Agent a correct and complete copy of each tenant lease, including any exhibits, and each guaranty thereof (if any), prior to execution unless the lease in question meets the foregoing requirements for "deemed" approval by Administrative Agent. Borrower shall, throughout the term of this Agreement, pay all reasonable costs incurred by Administrative Agent in connection with Administrative Agent's review and approval of tenant leases and each guaranty thereof (if any), including reasonable attorneys' fees and costs.

2. **Effect of Lease Approval.** No approval of any lease by Administrative Agent shall be for any purpose other than to protect Lenders' security and to preserve Lenders' rights under the Loan Documents. No approval by Administrative Agent shall result in a waiver of any default of Borrower. In no event shall any approval by Administrative Agent of a lease be a representation of any kind with regard to the lease or its adequacy or enforceability, or the financial capacity of any tenant or guarantor.

3. **Representations Concerning Leases.** Borrower represents and warrants to Administrative Agent and Lenders that Borrower has delivered to Administrative Agent a true and correct copy of all tenant leases and each guaranty thereof (if any), affecting any part of the Improvements, together with an accurate and complete rent roll for the Project, and no such lease or guaranty contains any option to purchase all or any portion of the Property or any interest therein or contains any right of first refusal relating to any sale of the Property or any portion thereof or interest therein.

4. **Delivery of Leasing Information and Documents.** Borrower shall promptly (a) deliver to Lender such monthly rent rolls, leasing schedules and reports, operating statements,

financial statements for all tenants other than tenants with a lease term for less than one year and other information regarding tenants and prospective tenants or other leasing information as Lender from time to time may request, and (b) with respect to all Major Leases, obtain and deliver to Lender such estoppel certificates and subordination and attornment agreements executed by such tenants (and guarantors, if any) in such forms as Lender from time to time may require.

5. Income from the 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 and the Environmental Agreement, before using or applying such income for any other purpose.

6. Compliance and Default. As additional conditions to Lenders' obligations under this Agreement, all tenants having the right to do so must approve all Plans and all changes thereto, the construction of the Improvements, and all other aspects of the Project requiring tenants' approval. A default by Borrower under or any failure by Borrower to satisfy any of the conditions of a lease shall constitute a Default under this Agreement. Borrower shall promptly notify Administrative Agent in writing of any failure by any party to perform any material obligation under any lease, any event or condition which would permit a tenant to terminate or cancel a lease, or any notice given by a tenant with respect to the foregoing, specifying in each case the action Borrower has taken or will take with respect thereto.

EXHIBIT "J"

[INTENTIONALLY LEFT BLANK]

EXHIBIT "K"

LETTER OF CREDIT

1. The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer has issued the Letter of Credit and agrees, in reliance upon the agreements of the other Lenders set forth in this Exhibit "K", (1) from time to time on any Business Day during the period from the date of this Agreement until the Letter of Credit Expiration Date, to amend the Letter of Credit previously issued by it, in accordance with Section 2 below, and (2) to honor drafts under the Letter of Credit; and (B) the Lenders severally agree to participate in the Letter of Credit issued for the account of the Borrower; provided that the L/C Issuer shall not be obligated to make any L/C Credit Extension with respect to the Letter of Credit (other than the issuance of the Letter of Credit), and no Lender shall be obligated to participate in, the Letter of Credit if as of the date of such L/C Credit Extension, the Outstanding Amount of all L/C Obligations and all Loan advances would exceed the combined Commitments.

(ii) The L/C Issuer shall be under no obligation to amend the Letter of Credit if the L/C Issuer or the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

2. Procedures for Amendment of Letter of Credit.

(i) The Letter of Credit shall be amended upon the request of the Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m., Administrative Agent's Time, at least two Business Days (or such later date and time as the L/C Issuer may agree in a particular instance in its sole discretion) prior to the proposed date of amendment. Such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the proposed date of amendment thereof (which shall be a Business Day); (B) the nature of the proposed amendment; and (C) such other matters as the L/C Issuer may require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Upon receipt by the L/C Issuer of confirmation from the Administrative Agent that the requested amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, enter into the applicable amendment in accordance with the L/C Issuer's usual and customary business practices. Each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a participation in the Letter of Credit in an amount equal to the product of such Lender's Pro Rata Share times the amount of the Letter of Credit.

(iii) Promptly after its delivery of any amendment to the Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such amendment.

3. Drawings and Reimbursements: Funding of Participations.

(i) Upon receipt from the beneficiary of the Letter of Credit of any notice of a drawing under the Letter of Credit, the L/C Issuer shall notify the Borrower and the Administrative Agent thereof. Not later than 11:00 a.m., Administrative Agent's Time, on the date of any payment by the L/C Issuer under the Letter of Credit (each such date, an "Honor Date"), the Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If the Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Pro Rata Share thereof. In such event, the Borrower shall be deemed to have requested an advance of Base Rate Principal to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, subject to the amount of the unutilized portion of the combined Commitments and subject to the condition that Administrative Agent shall have received and approved of evidence satisfactory to Administrative Agent that no Default or any event which, with the giving of notice or the lapse of time or both, could become a Default, exists. Any notice given by the L/C Issuer or the Administrative Agent pursuant to this subsection may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender (including the Lender acting as L/C Issuer) shall upon any notice pursuant to the subsection above make funds available to the Administrative Agent for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Pro Rata Share of the Unreimbursed Amount not later than 1:00 p.m., Administrative Agent's Time, on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of the subsection below, each Lender that so makes funds available shall be deemed to have made an advance of Base Rate Principal to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by an advance of Base Rate Principal because the conditions set forth in Section 3(i) of this Exhibit "K" for such an advance cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Past Due Rate. In such event, each Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to the subsection above shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute a participation in such L/C Borrowing from such Lender in satisfaction of its participation obligation under this Section.

(iv) Until each Lender funds its Loan advance or participation in an L/C Borrowing pursuant to this Section to reimburse the L/C Issuer for any amount drawn under the

Letter of Credit, interest in respect of such Lender's Pro Rata Share of such amount shall be solely for the account of the L/C Issuer.

(v) Each Lender's obligation to make a Loan advance or participation in such L/C Borrowing to reimburse the L/C Issuer for amounts drawn under the Letter of Credit, as contemplated by this Section, shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrower or any other person for any reason whatsoever; (B) the occurrence or continuance of a Default or event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make an advance of Base Rate Principal pursuant to this Section is subject to the conditions set forth in Section 3(i) of this Exhibit "K" for such advance. No such reimbursement shall relieve or otherwise impair the obligation of the Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under the Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section by the time specified in subsection (ii), the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the Federal Funds Rate from time to time in effect. A certificate of the L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

4. Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under the Letter of Credit and has received from any Lender such Lender's participation in a L/C Borrowing in respect of such payment in accordance with Exhibit K, Section 3, if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Pro Rata Share (appropriately adjusted, in the case of interest payments, to reflect the period of time Lender's participation payment was outstanding) thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Exhibit K, Section 3(i) is required to be returned, under any of the circumstances described in Section 7.5 (including pursuant to any settlement entered into by the L/C Issuer in its discretion) each Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Pro Rata Share thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect.

5. Obligations Absolute. The obligation of the Borrower to reimburse the L/C Issuer for each drawing under the Letter of Credit, and to repay each L/C Borrowing, shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of the Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of the Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other person, whether in connection with this Agreement, the transactions contemplated hereby or by the Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under the Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under the Letter of Credit;

(iv) any payment by the L/C Issuer under the Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of the Letter of Credit; or any payment made by the L/C Issuer under the Letter of Credit to any person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of the Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower.

The Borrower shall promptly examine a copy of the Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

6. Role of L/C Issuer. Each Lender and the Borrower agree that, in paying any drawing under the Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, any Agent-Related Person nor any of the respective correspondents, participants or assignees of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as

applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to the Letter of Credit or Letter of Credit Application. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of the Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at Law or under any other agreement. None of the L/C Issuer, any Agent-Related Person, nor any of the respective correspondents, participants or assignees of the L/C Issuer, shall be liable or responsible for any of the matters described in clauses (i) through (v) of the above Section; provided, however, that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under the Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign the Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

7. Cash Collateral. Upon the request of the Administrative Agent, (i) if the L/C Issuer has honored any full or partial drawing request under the Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, the Letter of Credit may for any reason remain outstanding and partially or wholly undrawn, the Borrower shall immediately Cash Collateralize the then outstanding amount of all L/C Obligations (in an amount equal to such outstanding amount determined as of the date of such L/C Borrowing or the Letter of Credit Expiration Date, as the case may be) which are not already Cash Collateralized. For the purposes hereof "Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, as collateral for the L/C Obligations, cash or deposit account balances pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer (which documents are hereby consented to by the Lenders). Derivatives of such term shall have corresponding meaning. The Borrower hereby grants the Administrative Agent, for the benefit of the L/C Issuer and the Lenders, a security interest in all such cash and deposit account balances and all proceeds of the foregoing. Cash collateral shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America.

8. Applicability of ISP98 and UCP. Unless otherwise expressly agreed by the L/C Issuer and the Borrower, (i) the rules of the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to the Letter of Credit, and (ii) the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce (the "ICC") at the time of issuance (including the ICC decision published

by the Commission on Banking Technique and Practice on April 6, 1998 regarding the European single currency (euro)) shall apply to the Letter of Credit if a commercial letter of credit.

9. Letter of Credit Fees. The Borrower shall pay to the Administrative Agent for the account of each Lender in accordance with its Pro Rata Share (and prorated for each Lender for the period of time such Lender is a lender hereunder) a Letter of Credit fee for the Letter of Credit equal to the Letter of Credit Fee Rate times the daily maximum amount available to be drawn under the Letter of Credit (whether or not such maximum amount is then drawn under the Letter of Credit). Such fee for the Letter of Credit shall be due and payable on the date the Letter of Credit was issued and on the same date of each successive year thereafter until the earlier of such time that the Letter of Credit is no longer outstanding or the Letter of Credit Expiration Date. Borrower shall receive a credit for any fees previously paid in connection with the issuance of the Letter of Credit. For the purposes hereof, "Letter of Credit Fee Rate" shall mean the rate of 2% per annum prior to the recording of the Deed of Trust and 1% per annum thereafter.

10. Documentary and Processing Charges Payable to L/C Issuer. In addition, the Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

11. Conflict with Letter of Credit Application. In the event of any conflict between the terms hereof and the terms of any Letter of Credit Application, the terms hereof shall control.

EXHIBIT "L"

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 Administrative 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, 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): OPUS WEST CORPORATION, a Minnesota corporation
4. Administrative Agent: BANK OF AMERICA, N.A., a national banking
association, as the administrative agent under the Loan
Agreement
5. Loan Agreement: The Construction Loan Agreement, dated as of _____, 2007,
among Opus West Corporation, a Minnesota corporation, the
Lenders parties thereto, and Bank of America, N.A., as
Administrative Agent

6. Assigned Interest:

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

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE
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 Administrative Agent

By: _____
Title: _____

[Consented to:]

By: _____
Title: _____

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 Administrative 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 Administrative 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, Administrative 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 Administrative 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 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.

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 "M"

CONSTRUCTION DEED OF TRUST NOTE

\$ _____

FOR VALUE RECEIVED, OPUS WEST CORPORATION, a Minnesota corporation ("Borrower," whether one or more), hereby promises to pay to the order of _____ ("Lender"), under that certain Loan Agreement (defined below) among Borrower, Bank of America, N.A., a national banking association (together with any and all of its successors and assigns, "Administrative Agent") as agent for the benefit of the lenders (collectively, "Lenders") from time to time a party to that certain Construction Loan Agreement (the "Loan Agreement") dated _____, 2008, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of _____ DOLLARS (\$ _____) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Notes referred to in the Loan Agreement and is entitled to the benefits thereof and subject to prepayment in whole or in part as provided therein. The entire principal balance of this Note then unpaid shall be due and payable at the times set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate(s) set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and, if applicable, a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Deed of Trust") dated _____, 2008 from OPUS WEST CORPORATION, a Minnesota corporation, to PRLAP, Inc., as Trustee, covering certain property in Chino Hills, San Bernardino County, California described therein (the "Property"). This Note, the Deed of Trust, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same have been or may be amended, restated, modified or supplemented from time to time, are herein sometimes called individually a "Loan Document" and together the "Loan Documents." Notwithstanding the foregoing, the Environmental Indemnity Agreement of even date herewith ("Environmental Indemnity Agreement") is not a Loan Document.

3. Defaults.

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full within five (5) days of the date when due, regardless of how such amount may have become due, (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Document is not fully and timely performed, observed or kept, subject to any applicable grace or cure periods, or (iii) there shall occur any default or event of default under the Deed of Trust or any other Loan Document, subject to any applicable grace or cure periods. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, and no delay in exercising any Right, including the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect, or (iii) in any way excuse the existence of a Default.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender[s] hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Deed of Trust and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in Section 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. The words "include" and "including" shall be interpreted as if followed by the words "without limitation." THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY ARIZONA LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

**THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT
BETWEEN AND AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY
EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS
OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.**

**IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above
written.**

BORROWER:

**OPUS WEST CORPORATION, a Minnesota
corporation**

**By: _____
Name: _____
Title: _____**

EXHIBIT "N"

SCHEDULE OF LENDERS

BANK OF AMERICA, N.A., as Administrative Agent

Notices:

201 East Washington Street, 22nd Floor
Phoenix, Arizona 85004-2343
Mail Code: AZ1-200-22-17
Attn.: Edgardo E. Martinez

Telephone: 602-523-1250
Facsimile: 602-523-4396
Electronic Mail: Edgardo.e.martinez@bankofamerica.com

Payment Instructions:

Bank of America
ABA #0260-0959-3
To Credit Acct. #1366211723001
Account Name: Real Estate Loan Administration #1503
Reference: Opus West Corporation - #124967/1728494

BANK OF AMERICA, N.A., as Lender

Domestic and LIBOR Lending Office:

Commitment Amount: \$22,250,000.00

Pro Rata Share: 25.0%

Bank of America, N.A.
Commercial Real Estate Banking
Group, AZ1-200-22-17
201 East Washington Street, 22nd Floor
Phoenix, Arizona 85004-2343

Notices:

Bank of America, N.A.
Commercial Real Estate Banking
Group, AZ1-200-22-17
201 East Washington Street, 22nd Floor
Phoenix, Arizona 85004-2343

Payment Instructions:

Bank of America
ABA #0260-0959-3
To Credit Acct. #1366211723001
Account Name: Real Estate Loan Administration #1503
Reference: Opus West Corporation - #124967/1728494

U.S. BANK, NATIONAL ASSOCIATION

Domestic and LIBOR Lending Office:

Commitment Amount: \$22,250,000.00

U.S. Bank, National Association
Mail Code: LM-AZ-X16E
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003
Attn.: Azona M. LaBostrie

Pro Rata Share: 25.0%

Telephone: (602)257-5421
Facsimile: (602) 257-5422
Electronic Mail: azona.labostrie@usbank.com

Notices:

U.S. Bank, National Association
Mail Code: LM-AZ-X16E
101 North First Avenue, Suite 1600
Phoenix, Arizona 85003
Attn.: Azona M. LaBostrie

Telephone: (602) 257-5421
Facsimile: (602) 257-5422
Electronic Mail: azona.labostrie@usbank.com

Payment Instructions:

Account No.: 00340012160600
ABA #: 123-000-220
Attn.: Commercial Loan Servicing West
Reference: Opus West Corporation - Commons at Chino Hills

COMPASS BANK

Domestic and LIBOR Lending Office:

Commitment Amount: \$22,250,000.00

Compass Bank
Commercial Real Estate
2850 E. Camelback Road, Suite 140
Phoenix, Arizona 85016
Attn: _____

Pro Rata Share: 25.0%

Telephone: _____
Facsimile: _____
Electronic Mail: _____

Notices:

Compass Bank
Commercial Real Estate
2850 E. Camelback Road, Suite 140
Phoenix, Arizona 85016
Attn: _____

Telephone: _____
Facsimile: _____
Electronic Mail: _____

Payment Instructions:

Account No.: 041-0010006451
Attn.: Teresa Peterson
ABA #: 1221-05-744
Reference: Credit Account #90124099

WELLS FARGO BANK, NATIONAL ASSOCIATION

Domestic and LIBOR Lending Office:

Commitment Amount: \$22,250,000.00

Wells Fargo Bank, National Association
2030 Main Street, Suite 800
Irvine, California 92614
Attn.: _____

Pro Rata Share: 25.0%

Telephone: _____
Facsimile: _____
Electronic Mail: _____

Notices:

Wells Fargo Bank, National Association
2030 Main Street, Suite 800
Irvine, California 92614
Attn.: _____

Telephone: _____
Facsimile: _____
Electronic Mail: _____

Payment Instructions:

Account No.: 293450720
ABA #: 121000248
Account Name: Wires in Process - LALC
Attn.: Shirley Floresca
Reference: Loan # 105656

ATTACHMENT 2

CONSTRUCTION DEED OF TRUST NOTE

\$22,250,000.00

March 13, 2008

FOR VALUE RECEIVED, OPUS WEST CORPORATION, a Minnesota corporation ("Borrower," whether one or more), hereby promises to pay to the order of BANK OF AMERICA, N.A., a national banking association ("Lender"), under that certain Loan Agreement (defined below) among Borrower, Bank of America, N.A., a national banking association (together with any and all of its successors and assigns, "Administrative Agent") as agent for the benefit of the lenders (collectively, "Lenders") from time to time a party to that certain Construction Loan Agreement (the "Loan Agreement") dated March 13, 2008, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of TWENTY-TWO MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$22,250,000.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Notes referred to in the Loan Agreement and is entitled to the benefits thereof and subject to prepayment in whole or in part as provided therein. The entire principal balance of this Note then unpaid shall be due and payable at the times set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate(s) set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and, if applicable, a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Deed of Trust") dated March 13, 2008 from OPUS WEST CORPORATION, a Minnesota corporation, to PRLAP, Inc., as Trustee, covering certain property in Chino Hills, San Bernardino County, California described therein (the "Property"). This Note, the Deed of Trust, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same have been or may be amended, restated, modified or supplemented from time to time, are herein sometimes called individually a "Loan Document" and together the "Loan Documents." Notwithstanding the foregoing, the Environmental Indemnity Agreement of even date herewith ("Environmental Indemnity Agreement") is not a Loan Document.

3. Defaults.

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full within five (5) days of the date when due, regardless of how such amount may have

become due, (ii) any covenant, agreement, condition, representation or warranty herein or in any other Loan Document is not fully and timely performed, observed or kept, subject to any applicable grace or cure periods, or (iii) there shall occur any default or event of default under the Deed of Trust or any other Loan Document, subject to any applicable grace or cure periods. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, and no delay in exercising any Right, including the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect, or (iii) in any way excuse the existence of a Default.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender[s] hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its

interest in this Note, the Deed of Trust and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in Section 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. The words "include" and "including" shall be interpreted as if followed by the words "without limitation." THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY ARIZONA LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN AND AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY

EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS
OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above
written.

BORROWER:

OPUS WEST CORPORATION, a Minnesota
corporation

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

CONSTRUCTION DEED OF TRUST NOTE

\$22,250,000.00

March 13, 2008

FOR VALUE RECEIVED, OPUS WEST CORPORATION, a Minnesota corporation ("Borrower," whether one or more), hereby promises to pay to the order of COMPASS BANK, an Alabama banking corporation ("Lender"), under that certain Loan Agreement (defined below) among Borrower, Bank of America, N.A., a national banking association (together with any and all of its successors and assigns, "Administrative Agent") as agent for the benefit of the lenders (collectively, "Lenders") from time to time a party to that certain Construction Loan Agreement (the "Loan Agreement") dated March 13, 2008, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of TWENTY-TWO MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$22,250,000.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Notes referred to in the Loan Agreement and is entitled to the benefits thereof and subject to prepayment in whole or in part as provided therein. The entire principal balance of this Note then unpaid shall be due and payable at the times set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate(s) set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and, if applicable, a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Deed of Trust") dated March 13, 2008 from OPUS WEST CORPORATION, a Minnesota corporation, to PRLAP, Inc., as Trustee, covering certain property in Chino Hills, San Bernardino County, California described therein (the "Property"). This Note, the Deed of Trust, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same have been or may be amended, restated, modified or supplemented from time to time, are herein sometimes called individually a "Loan Document" and together the "Loan Documents." Notwithstanding the foregoing, the Environmental Indemnity Agreement of even date herewith ("Environmental Indemnity Agreement") is not a Loan Document.

3. Defaults.

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full within five (5) days of the date when due, regardless of how such amount may have become due, (ii) any covenant, agreement, condition, representation or warranty herein or in any

other Loan Document is not fully and timely performed, observed or kept, subject to any applicable grace or cure periods, or (iii) there shall occur any default or event of default under the Deed of Trust or any other Loan Document, subject to any applicable grace or cure periods. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

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IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above
written.

BORROWER:

OPUS WEST CORPORATION, a Minnesota
corporation

By: 
Name: Charles Vogel
Title: Senior Vice President

CONSTRUCTION DEED OF TRUST NOTE

\$22,250,000.00

March 13, 2008

FOR VALUE RECEIVED, OPUS WEST CORPORATION, a Minnesota corporation ("Borrower," whether one or more), hereby promises to pay to the order of U.S. BANK, NATIONAL ASSOCIATION ("Lender"), under that certain Loan Agreement (defined below) among Borrower, Bank of America, N.A., a national banking association (together with any and all of its successors and assigns, "Administrative Agent") as agent for the benefit of the lenders (collectively, "Lenders") from time to time a party to that certain Construction Loan Agreement (the "Loan Agreement") dated March 13, 2008, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of TWENTY-TWO MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$22,250,000.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Notes referred to in the Loan Agreement and is entitled to the benefits thereof and subject to prepayment in whole or in part as provided therein. The entire principal balance of this Note then unpaid shall be due and payable at the times set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate(s) set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and, if applicable, a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Deed of Trust") dated March 13, 2008 from OPUS WEST CORPORATION, a Minnesota corporation, to PRLAP, Inc., as Trustee, covering certain property in Chino Hills, San Bernardino County, California described therein (the "Property"). This Note, the Deed of Trust, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same have been or may be amended, restated, modified or supplemented from time to time, are herein sometimes called individually a "Loan Document" and together the "Loan Documents." Notwithstanding the foregoing, the Environmental Indemnity Agreement of even date herewith ("Environmental Indemnity Agreement") is not a Loan Document.

3. Defaults.

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full within five (5) days of the date when due, regardless of how such amount may have become due, (ii) any covenant, agreement, condition, representation or warranty herein or in any

other Loan Document is not fully and timely performed, observed or kept, subject to any applicable grace or cure periods, or (iii) there shall occur any default or event of default under the Deed of Trust or any other Loan Document, subject to any applicable grace or cure periods. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, and no delay in exercising any Right, including the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect, or (iii) in any way excuse the existence of a Default.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender[s] hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Deed of Trust and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in Section 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. The words "include" and "including" shall be interpreted as if followed by the words "without limitation." THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY ARIZONA LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN AND AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above
written.

BORROWER:

OPUS WEST CORPORATION, a Minnesota
corporation

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

CONSTRUCTION DEED OF TRUST NOTE

\$22,250,000.00

March 13, 2008

FOR VALUE RECEIVED, OPUS WEST CORPORATION, a Minnesota corporation ("Borrower," whether one or more), hereby promises to pay to the order of WELLS FARGO BANK, NATIONAL ASSOCIATION ("Lender"), under that certain Loan Agreement (defined below) among Borrower, Bank of America, N.A., a national banking association (together with any and all of its successors and assigns, "Administrative Agent") as agent for the benefit of the lenders (collectively, "Lenders") from time to time a party to that certain Construction Loan Agreement (the "Loan Agreement") dated March 13, 2008, without offset, in immediately available funds in lawful money of the United States of America, at Administrative Agent's Office as defined in the Loan Agreement, the principal sum of TWENTY-TWO MILLION TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$22,250,000.00) (or the unpaid balance of all principal advanced against this Note, if that amount is less), together with interest on the unpaid principal balance of this Note from day to day outstanding as hereinafter provided.

1. Note; Interest; Payment Schedule and Maturity Date. This Note is one of the Notes referred to in the Loan Agreement and is entitled to the benefits thereof and subject to prepayment in whole or in part as provided therein. The entire principal balance of this Note then unpaid shall be due and payable at the times set forth in the Loan Agreement. Accrued unpaid interest shall be due and payable at the times and at the interest rate(s) set forth in the Loan Agreement until all principal and accrued interest owing on this Note shall have been fully paid and satisfied. Any amount not paid when due and payable hereunder shall, to the extent permitted by applicable Law, bear interest and, if applicable, a late charge as set forth in the Loan Agreement.

2. Security; Loan Documents. The security for this Note includes a Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing (which, as it may have been or may be amended, restated, modified or supplemented from time to time, is herein called the "Deed of Trust") dated March 13, 2008 from OPUS WEST CORPORATION, a Minnesota corporation, to PRLAP, Inc., as Trustee, covering certain property in Chino Hills, San Bernardino County, California described therein (the "Property"). This Note, the Deed of Trust, the Loan Agreement and all other documents now or hereafter securing, guaranteeing or executed in connection with the loan evidenced by this Note (the "Loan"), as the same have been or may be amended, restated, modified or supplemented from time to time, are herein sometimes called individually a "Loan Document" and together the "Loan Documents." Notwithstanding the foregoing, the Environmental Indemnity Agreement of even date herewith ("Environmental Indemnity Agreement") is not a Loan Document.

3. Defaults.

(a) It shall be a default ("Default") under this Note and each of the other Loan Documents if (i) any principal, interest or other amount of money due under this Note is not paid in full within five (5) days of the date when due, regardless of how such amount may have become due, (ii) any covenant, agreement, condition, representation or warranty herein or in any

other Loan Document is not fully and timely performed, observed or kept, subject to any applicable grace or cure periods, or (iii) there shall occur any default or event of default under the Deed of Trust or any other Loan Document, subject to any applicable grace or cure periods. Upon the occurrence of a Default, Administrative Agent on behalf of Lenders shall have the rights to declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts due hereunder and under the other Loan Documents, at once due and payable (and upon such declaration, the same shall be at once due and payable), to foreclose any liens and security interests securing payment hereof and to exercise any of its other rights, powers and remedies under this Note, under any other Loan Document, or at Law or in equity.

(b) All of the rights, remedies, powers and privileges (together, "Rights") of Administrative Agent on behalf of Lenders provided for in this Note and in any other Loan Document are cumulative of each other and of any and all other Rights at Law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to time. No failure by Administrative Agent or Lenders to exercise, and no delay in exercising any Right, including the right to accelerate the maturity of this Note, shall be construed as a waiver of any Default or as a waiver of any Right. Without limiting the generality of the foregoing provisions, the acceptance by Lender from time to time of any payment under this Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment, shall not (i) constitute a waiver of or impair or extinguish the right of Administrative Agent or Lenders to accelerate the maturity of this Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect, or (iii) in any way excuse the existence of a Default.

(c) If any holder of this Note retains an attorney in connection with any Default or at maturity or to collect, enforce or defend this Note or any other Loan Document in any lawsuit or in any probate, reorganization, bankruptcy, arbitration or other proceeding, or if Borrower sues any holder in connection with this Note or any other Loan Document and does not prevail, then Borrower agrees to pay to each such holder, in addition to principal, interest and any other sums owing to Lender[s] hereunder and under the other Loan Documents, all costs and expenses incurred by such holder in trying to collect this Note or in any such suit or proceeding, including, without limitation, attorneys' fees and expenses, investigation costs and all court costs, whether or not suit is filed hereon, whether before or after the Maturity Date, or whether in connection with bankruptcy, insolvency or appeal, or whether collection is made against Borrower or any guarantor or endorser or any other person primarily or secondarily liable hereunder.

4. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the heirs, devisees, representatives, successors and assigns of the parties. The foregoing sentence shall not be construed to permit Borrower to assign the Loan except as otherwise permitted under the Loan Documents. As further provided in the Loan Agreement, a Lender may, at any time, sell, transfer, or assign all or a portion of its interest in this Note, the Deed of Trust and the other Loan Documents, as set forth in the Loan Agreement.

5. General Provisions. Time is of the essence with respect to Borrower's obligations under this Note. If more than one person or entity executes this Note as Borrower, all of said parties shall be jointly and severally liable for payment of the indebtedness evidenced hereby. Borrower and all sureties, endorsers, guarantors and any other party now or hereafter liable for the payment of this Note in whole or in part, hereby severally (a) waive demand, presentment for payment, notice of dishonor and of nonpayment, protest, notice of protest, notice of intent to accelerate, notice of acceleration and all other notices (except any notices which are specifically required by this Note or any other Loan Document), filing of suit and diligence in collecting this Note or enforcing any of the security herefor; (b) agree to any substitution, subordination, exchange or release of any such security or the release of any party primarily or secondarily liable hereon; (c) agree that neither Administrative Agent nor any Lender shall be required first to institute suit or exhaust its remedies hereon against Borrower or others liable or to become liable hereon or to perfect or enforce its rights against them or any security herefor; (d) consent to any extensions or postponements of time of payment of this Note for any period or periods of time and to any partial payments, before or after maturity, and to any other indulgences with respect hereto, without notice thereof to any of them; and (e) submit (and waive all rights to object) to non-exclusive personal jurisdiction of any state or federal court sitting in the city and county, and venue in the city or county, in which payment is to be made as specified in Section 1 of this Note, for the enforcement of any and all obligations under this Note and the Loan Documents; (f) waive the benefit of all homestead and similar exemptions as to this Note; (g) agree that their liability under this Note shall not be affected or impaired by any determination that any security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate any and all rights against Borrower and any of the security for the payment of this Note, whether by subrogation, agreement or otherwise, until this Note is paid in full. A determination that any provision of this Note is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Note to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances. This Note may not be amended except in a writing specifically intended for such purpose and executed by the party against whom enforcement of the amendment is sought. Captions and headings in this Note are for convenience only and shall be disregarded in construing it. The words "include" and "including" shall be interpreted as if followed by the words "without limitation." THIS NOTE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY ARIZONA LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW.

6. Notices. Any notice, request, or demand to or upon Borrower or Lender shall be deemed to have been properly given or made when delivered in accordance with the Loan Agreement.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN AND AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the date first above written.

BORROWER:

OPUS WEST CORPORATION, a Minnesota
corporation

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

ATTACHMENT 3

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
NATIONAL COMMERCIAL SERVICES
COMMERCIAL/INDUSTRIAL DIVISION

Recorded in Official Records, County of San Bernardino



LARRY WALKER
Auditor/Controller - Recorder

3/14/2008
1:00 PM
EM

861 California Hall F.A. (Riverside)

Recording Requested By/Return To:

Bank of America, N.A.
Commercial Real Estate Banking
Group, AZ1-200-22-17
201 East Washington Street, 22nd Floor
Phoenix, Arizona 85004-2343
Attention: N. Alonzo
NCS-329609-SAL

Doc#: 2008-0115084



Title: 4 Pages: 20

Fee	125.00
Taxes	0.00
Other	0.00
Paid	\$125.00

**CONSTRUCTION DEED OF TRUST, ASSIGNMENT,
SECURITY AGREEMENT AND
FIXTURE FILING**
(The Commons at Chino Hills, Chino Hills, CA - Construction Loan)

by

OPUS WEST CORPORATION,
a Minnesota corporation,
as Grantor,

to and in favor of

PRLAP, INC.,
a North Carolina corporation,
as Trustee,

and

BANK OF AMERICA, N.A.,
a national banking association,
as Administrative Agent,
as Beneficiary

This document serves as a Fixture Filing under the California Uniform Commercial Code.

Grantor's Organizational Identification Number is 8Z-83.

**CONSTRUCTION DEED OF TRUST, ASSIGNMENT,
SECURITY AGREEMENT AND FIXTURE FILING**
(The Commons at Chino Hills, Chino Hills, CA – Construction Loan)

This Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing is made as of the 13th day of March, 2008, by OPUS WEST CORPORATION, a Minnesota corporation (herein referred to as "Grantor"), whose address is 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016-9267, to PRLAP, INC., a North Carolina corporation ("Initial Trustee"), whose address is 10850 White Rock Road, Suite 101, Rancho Cordova, California, and BANK OF AMERICA, N.A., a national banking association, as Administrative Agent for itself and other Lenders (collectively together with their successors and assigns, "Lender"), whose address is Commercial Real Estate Banking Group, AZ1-200-22-17, 201 East Washington Street, 22nd Floor, Phoenix, Arizona 85004-2343, Attention: N. Alonzo. Initial Trustee is an affiliate of Beneficiary.

RECITALS

Grantor has requested that Lender make the Loan (as hereinafter defined) to Grantor. As a condition precedent to making the Loan, Lender has required that Grantor execute and deliver this Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing to Trustee and Lender.

GRANTS AND AGREEMENTS

NOW, THEREFORE, in order to induce Lender to make the Loan to Grantor, Grantor agrees as follows:

**ARTICLE I
DEFINITIONS**

As used in this Deed of Trust, the terms defined in the Preamble hereto shall have the respective meanings specified therein, and the following additional terms shall have the meanings specified:

"Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Grantor, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Grantor within the meaning of the Uniform Commercial Code, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"Additions" means any and all alterations, additions, accessions and improvements to the Property, substitutions therefor, and renewals and replacements thereof.

"Beneficiary" means Lender and its successors and assigns.

"Claim" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever arising out of or relating to the Property, including fees, costs and expenses of attorneys, consultants, contractors and experts.

"Condemnation" means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

"Condemnation Awards" means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

"Contract of Sale" means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

"Deed of Trust" means this Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Default" means an event or circumstance which, with the giving of Notice or lapse of time, or both, would constitute an Event of Default under the provisions of this Deed of Trust.

"Design and Construction Documents" means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the

development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

"Encumbrance" means any Lien, easement, right of way, roadway (public or private), condominium regime, cooperative housing regime, condition, covenant or restriction (including any CC&Rs in connection with any condominium development or cooperative housing development), Lease or other matter of any nature that would affect title to the Property.

"Environmental Agreement" means the Environmental Indemnification and Release Agreement of even date herewith by and between Grantor and Lender pertaining to the Property, as the same may from time to time be extended, amended, restated or otherwise modified. The Environmental Agreement is one of the Loan Documents, but this Deed of Trust does not secure the obligations of Grantor under the Environmental Agreement.

"Event of Default" means an event or circumstance specified in Article VI hereof and the continuance of such event or circumstance beyond the applicable grace and/or cure periods therefor, if any, set forth in Article VI hereof.

"Expenses" means all fees, charges, costs and expenses of any nature whatsoever incurred at any time and from time to time (whether before or after an Event of Default) by Beneficiary or Trustee in making, funding, administering or modifying the Loan, in negotiating or entering into any "workout" of the Loan, or in exercising or enforcing any rights, powers and remedies provided in this Deed of Trust or any of the other Loan Documents, including attorneys' fees, court costs, receiver's fees, management fees and costs incurred in the repair, maintenance and operation of, or taking possession of, or selling, the Property.

"Governmental Authority" means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

"Improvements" means all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

"Insurance Proceeds" means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

"Land" means the real property described in Exhibit "A" attached hereto and made a part hereof.

"Laws" means all federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time.

"Leases" means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

"Letter of Credit" means any letter of credit issued by Beneficiary for the account of Grantor or its nominee in connection with the development of the Land or the construction of the Improvements, together with any and all extensions, renewals or modifications thereof, substitutions therefor or replacements thereof.

"Lien" means any mortgage, deed of trust, pledge, security interest, assignment, judgment, lien or charge of any kind relating to the Property, including any conditional sale or other title retention agreement, any lease in the nature thereof, and the filing of, or agreement to give, any financing statement under the Uniform Commercial Code of any jurisdiction.

"Loan" means the loan from Beneficiary to Grantor, the repayment obligations in connection with which are evidenced by the Note.

"Loan Agreement" means that certain Construction Loan Agreement of even date herewith between Grantor and Lender which sets forth, among other things, the terms and conditions upon which the proceeds of the Loan will be disbursed, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Loan Documents" means this Deed of Trust, the Note, the Environmental Agreement, the Loan Agreement, any Swap Contract, any application or reimbursement agreement executed in connection with any Letter of Credit, and any and all other documents which Grantor or any other party or parties have executed and delivered, or may hereafter execute and deliver, to evidence, secure or guarantee the Obligations, or any part thereof, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Note" means one or more Deed of Trust Notes of even date herewith in the aggregate principal face amount of EIGHTY-NINE MILLION AND NO/100 DOLLARS (\$89,000,000.00) made by Grantor to the order of Lender, as the same may from time to time be extended, amended, restated, supplemented or otherwise modified.

"Notice" means a notice, request, consent, demand or other communication given in accordance with the provisions of Section 9.8 of this Deed of Trust.

"Obligations" means all present and future debts, obligations and liabilities of Grantor to Beneficiary and/or Trustee arising pursuant to, and/or on account of the provisions of this Deed of Trust, the Note or any of the other Loan Documents, including the obligations: (a) to pay all principal, interest, late charges, prepayment premiums (if any) and other amounts due at any time under the Note; (b) to pay all Expenses, indemnification payments, fees and other amounts due at any time under this Deed of Trust or any of the other Loan Documents, together with interest thereon as herein or therein provided; (c) to pay and perform all obligations of Grantor under any Swap Contract; (d) to perform, observe and comply with all of the other terms, covenants and conditions, expressed or implied, which Grantor is required to perform, observe or comply with pursuant to this Deed of Trust or any of the other Loan Documents; and (e) to pay and perform all future advances and other obligations that Grantor 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; excluding, however, the debts, obligations and liabilities of Grantor under the Environmental Agreement. This Deed of Trust does not secure the Environmental Agreement or any other Loan Document that is expressly stated to be unsecured.

"Permitted Encumbrances" means (a) any matters set forth in any policy of title insurance issued to Beneficiary and insuring Beneficiary's interest in the Property which are acceptable to Beneficiary as of the date hereof, (b) the Liens and interests of this Deed of Trust, and (c) any other Encumbrance that Beneficiary shall expressly approve in its sole and absolute discretion, as evidenced by a "marked-up" commitment for title insurance initialed on behalf of Beneficiary.

"Person" means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

"Personalty" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter

acquired, in which Grantor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein (provided all of such agreements shall be subordinate to this Deed of Trust, and Beneficiary shall have no responsibility for the performance of Grantor's obligations thereunder) and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, any Type 2 nonirrigation grandfathered water rights, contractual rights to water, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all of Grantor's rights and interests under all Swap Contracts, including all rights to the payment of money from Beneficiary under any Swap Contract and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Contract; (f) all insurance policies held by Grantor with respect to the Property or Grantor's operation thereof; and (g) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Grantor with Beneficiary related to the Property, including any such deposit account from which Grantor may from time to time authorize Beneficiary to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

"Proceeds," when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Grantor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Grantor's right, title and interest in and to all Design and Construction Contracts, all Contracts of Sale and all Refinancing Commitments.

"Property Assessments" means all Taxes, payments in lieu of taxes, water rents, sewer rents, assessments, condominium and owner's association assessments and charges, maintenance charges and other governmental or municipal or public or private dues, charges and levies and any Liens (including

federal tax liens) which are or may be levied, imposed or assessed upon the Property or any part thereof, or upon any Leases or any Rents, whether levied directly or indirectly or as excise taxes, as income taxes, or otherwise.

"Real Property" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Grantor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Grantor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Grantor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

"Refinancing Commitment" means any commitment from or other agreement with any Person providing for the financing of the Property, some or all of the proceeds of which are intended to be used for the repayment of all or a portion of the Loan.

"Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

"Swap Contract" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, interest cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option, currency option or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Beneficiary (or its affiliate) and Grantor (or its affiliate) in connection with the Loan, together with any related schedules and confirmations, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

"Taxes" means, solely with respect to the Property, all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Grantor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

"Transfer" means any direct or indirect sale, assignment, conveyance or transfer, including any Contract of Sale and any other contract or agreement to sell, assign, convey or transfer, whether made voluntarily or by operation of Law or otherwise, and whether made with or without consideration.

"Trustee" means the Initial Trustee or its successor in trust who may be acting under and pursuant to this Deed of Trust from time to time.

"Uniform Commercial Code" means the Uniform Commercial Code, as enacted in the state where the Land is located, or under the Uniform Commercial Code in any other state to the extent the same is applicable law, as amended, recodified, and in effect from time to time.

ARTICLE II

GRANTING CLAUSES; CONDITION OF GRANT

Section 2.1 Conveyances and Security Interests.

In order to secure the prompt payment and performance of the Obligations, Grantor (a) hereby irrevocably and unconditionally grants, conveys, 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 that Grantor now has or may later acquire in and to the Real Property; (b) grants to Beneficiary a security interest in the Personality; (c) assigns to Beneficiary, and grants to Beneficiary a security interest in, all Condemnation Awards and all Insurance Proceeds; and (d) assigns to Beneficiary, and grants to Beneficiary a security interest in, all of Grantor's right, title and interest in, but not any of Grantor's obligations or liabilities under, all Design and Construction Documents, all Contracts of Sale and all Refinancing Commitments. All Persons who may have or acquire an interest in all or any part of the Property will be deemed to have notice of, and will be bound by, the terms of the Obligations and each other agreement or instrument made or entered into in connection with each of the Obligations. Such terms include any provisions in the Note, the Loan Agreement or any Swap Contract which provide that the interest rate on one or more of the Obligations may vary from time to time. The definition of "Obligations" includes future advances.

Section 2.2 Absolute Assignment of Leases and Rents.

In consideration of the making of the Loan by Beneficiary to Grantor and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor

absolutely and unconditionally assigns the Leases and Rents to Beneficiary. This assignment is, and is intended to be, an unconditional, absolute and present assignment from Grantor to Beneficiary of all of Grantor's right, title and interest in and to the Leases and the Rents and not an assignment in the nature of a pledge of the Leases and Rents or the mere grant of a security interest therein. So long as no Event of Default shall exist, however, and so long as Grantor is not in default in the performance of any obligation, covenant or agreement contained in the Leases, Grantor shall have a license (which license shall terminate automatically and without notice upon the occurrence of an Event of Default or a default by Grantor under the Leases) to collect, but not prior to accrual, all Rents. Grantor agrees to collect and hold all Rents in trust for Beneficiary and to use the Rents for the payment of the cost of operating and maintaining the Property and for the payment of the other Obligations before using the Rents for any other purpose.

Section 2.3 Security Agreement, Fixture Filing and Financing Statement.

This Deed of Trust creates a security interest in the Personality, and, to the extent the Personality is not real property, this Deed of Trust constitutes a security agreement from Grantor to Beneficiary under the Uniform Commercial Code. In addition to all of its other rights under this Deed of Trust and otherwise, Beneficiary shall have all of the rights of a secured party under the Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force from time to time in any other state to the extent the same is applicable Law. This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including such fixtures) is situated. This Deed of Trust shall also be effective as a financing statement with respect to any other Property as to which a security interest may be perfected by the filing of a financing statement and may be filed as such in any appropriate filing or recording office. The respective mailing addresses of Grantor and Beneficiary are set forth in the opening paragraph of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or any other financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section. Grantor hereby irrevocably authorizes Beneficiary at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable Law, reasonably required by Beneficiary to establish or maintain the validity, perfection and priority of the security interests granted in this Deed of Trust.

Section 2.4 Release of Deed of Trust and Termination of Assignments and Financing Statements.

(a) **Reconveyance; Termination Statements.** If and when Grantor has paid and performed all of the Obligations, and no further advances are to be made under the Loan Agreement, Trustee, upon request by Beneficiary, will provide a reconveyance of the Property from the lien of this Deed of Trust and termination statements for filed financing statements, if any, to Grantor. Grantor shall be responsible for the recordation of such reconveyance and the payment of any recording and filing costs. Upon the recording of such reconveyance and the

filing of such termination statements, the absolute assignments set forth in Section 2.2 hereof shall automatically terminate and become null and void.

(b) Partial Releases: No Release in Default. Partial releases of the lien of this Deed of Trust shall be made in accordance with the terms and provisions of the Loan Agreement, or in accordance with such other terms and conditions as may subsequently be agreed to by Beneficiary. No partial release shall be sought, requested or required if any Event of Default has occurred which has not been cured.

(c) Effect of Partial Release. Beneficiary 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.

ARTICLE III REPRESENTATIONS AND WARRANTIES

Grantor makes the following representations and warranties to Beneficiary:

Section 3.1 Title to Real Property.

Grantor (a) owns fee simple title in the Real Property, (b) owns all of the beneficial and equitable interest in and to the Real Property, and (c) is lawfully seized and possessed of the Real Property. Grantor has the right and authority to convey the Real Property and does hereby convey the Real Property. The Real Property is subject to no Encumbrances other than the Permitted Encumbrances.

Section 3.2 Title to Other Property.

Grantor has good title to the Personalty, and the Personalty is not subject to any Encumbrance other than the Permitted Encumbrances. None of the Leases, Rents, Design and Construction Documents, Contracts of Sale or Refinancing Commitments are subject to any Encumbrance other than the Permitted Encumbrances.

Section 3.3 Property Assessments.

The Real Property is assessed for purposes of Property Assessments as a separate and distinct parcel from any other property, such that the Real Property shall never become subject to the Lien of any Property Assessments levied or assessed against any property other than the Real Property.

Section 3.4 Independence of the Real Property.

No buildings or other improvements on property not covered by this Deed of Trust rely on the Real Property or any interest therein to fulfill any requirement of any Governmental Authority for the existence of such property, building or improvements; and none of the Real

Property relies, or will rely, on any property not covered by this Deed of Trust or any interest therein to fulfill any requirement of any Governmental Authority. The Real Property has been properly subdivided from all other property in accordance with the requirements of any applicable Governmental Authorities.

Section 3.5 Existing Improvements.

The existing Improvements, if any, were constructed, and are being used and maintained, in accordance with all applicable Laws, including zoning Laws.

Section 3.6 Leases and Tenants.

The Leases are valid and are in full force and effect, and Grantor is not in default under any of the terms thereof. Except as expressly permitted in the Loan Agreement, Grantor has not accepted any Rents in advance of the time the same became due under the Leases and has not forgiven, compromised or discounted any of the Rents. Grantor has title to and the right to assign the Leases and Rents to Beneficiary, and no other assignment of the Leases or Rents has been granted. To the best of Grantor's knowledge and belief, no tenant or tenants occupying, individually or in the aggregate, more than five percent (5%) of the net rentable area of the Improvements are in default under their Lease(s) or are the subject of any bankruptcy, insolvency or similar proceeding.

**ARTICLE IV
AFFIRMATIVE COVENANTS**

Section 4.1 Obligations.

Grantor agrees to promptly pay and perform all of the Obligations, time being of the essence in each case.

Section 4.2 Property Assessments; Documentary Taxes.

Grantor (a) will promptly pay in full and discharge prior to delinquency all Property Assessments, and (b) will furnish to Beneficiary, upon demand, the receipted bills for such Property Assessments prior to the day upon which the same shall become delinquent. Property Assessments shall be considered delinquent as of the first day any interest or penalty commences to accrue thereon. Grantor will promptly pay all stamp, documentary, recordation, transfer and intangible taxes and all other taxes that may from time to time be required to be paid with respect to the Loan, the Note, this Deed of Trust or any of the other Loan Documents.

Section 4.3 Permitted Contests.

Grantor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as Grantor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to

prevent the collection of, or other realization upon, such Property Assessments or enforcement of the Law so contested, (b) there will be no sale, forfeiture or loss of the Property during the contest, (c) neither Beneficiary nor Trustee is subjected to any Claim as a result of such contest, and (d) Grantor provides assurances satisfactory to Beneficiary (including the establishment of an appropriate reserve account with Beneficiary) of its ability to pay such Property Assessments or comply with such Law in the event Grantor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Grantor shall indemnify, defend and save Beneficiary and Trustee harmless for, from and against all Claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Grantor shall comply with such Law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

Section 4.4 Compliance with Laws.

Grantor will comply with and not violate, and cause to be complied with and not violated, all present and future Laws applicable to the Property and its use and operation.

Section 4.5 Maintenance and Repair of the Property.

Grantor, at Grantor's sole expense, will (a) keep and maintain Improvements and Accessories in good condition, working order and repair, reasonable wear and tear excepted, and (b) make all necessary or appropriate repairs and Additions to Improvements and Accessories, if any, so that each part of the Improvements and all of the Accessories shall at all times be in good condition and fit and proper for the respective purposes for which they were originally intended, erected, or installed.

Section 4.6 Additions to Security.

All right, title and interest of Grantor in and to all Improvements and Additions hereafter constructed or placed on the Property and in and to any Accessories hereafter acquired shall, without any further deed of trust, conveyance, assignment or other act by Grantor, become subject to the Lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the granting clauses hereof. Grantor agrees, however, to execute and deliver to Trustee and/or Beneficiary such further documents as may be required by the terms of the Loan Agreement and the other Loan Documents.

Section 4.7 Subrogation.

To the extent not prohibited by applicable Law, Beneficiary shall be subrogated, notwithstanding its release of record, to any Lien now or hereafter existing on the Property to the extent that such Lien is paid or discharged by Beneficiary whether or not from the proceeds of the Loan. This Section shall not be deemed or construed, however, to obligate Beneficiary to pay or discharge any Lien.

Section 4.8 Leases.

(a) Except as expressly permitted in the Loan Agreement, Grantor shall not enter into any Lease with respect to all or any portion of the Property without the prior written consent of Beneficiary; provided, however, Beneficiary has approved Grantor's form lease agreement for the Property as of the date hereof, and any such consent is hereby deemed given by the Beneficiary.

(b) Neither Trustee nor Beneficiary shall be obligated to perform or discharge any obligation of Grantor under any Lease. The assignment of Leases provided for in this Deed of Trust in no manner places on Beneficiary or Trustee any responsibility for (i) the control, care, management or repair of the Property, (ii) the carrying out of any of the terms and conditions of the Leases, (iii) any waste committed on the Property, or (iv) any dangerous or defective condition on the Property (whether known or unknown).

(c) No approval of any Lease by Beneficiary shall be for any purpose other than to protect Beneficiary's security and to preserve Beneficiary's rights under the Loan Documents, and no such approval shall result in a waiver of a Default or Event of Default.

**ARTICLE V
NEGATIVE COVENANTS**

Section 5.1 Encumbrances.

Grantor will not permit any of the Property to become subject to any Encumbrance other than the Permitted Encumbrances and the liens created by the Loan Documents. Within thirty (30) days after the filing of any mechanic's lien or other Lien or Encumbrance against the Property, Grantor will promptly discharge the same by payment or filing a bond or otherwise as permitted by Law. So long as Beneficiary's security has been protected by the filing of a bond or otherwise in a manner satisfactory to Beneficiary in its sole and absolute discretion, Grantor shall have the right to contest in good faith any Claim, Lien or Encumbrance, provided that Grantor does so diligently and without prejudice to Beneficiary or delay in completing construction of the Improvements. Grantor shall give Beneficiary Notice of any default under any Lien and Notice of any foreclosure or threat of foreclosure with respect to any of the Property.

Section 5.2 Transfer of the Property.

Grantor will not Transfer, or contract to Transfer, all or any part of the Property or any legal or beneficial interest therein (except without Beneficiary's consent for (i) certain Transfers of the Accessories expressly permitted in this Deed of Trust, (ii) Transfers that will result in the full payoff of the Loan within ten (10) days after such Transfer, (iii) any Transfer to an affiliate or wholly-owned subsidiary of Grantor, and (iv) Leases which shall be deemed permitted Transfers). The Transfer of more than fifty percent (50.0%) of the voting power in Grantor (whether in one or more transactions during the term of the Loan) shall be deemed to be a prohibited Transfer of the Property, except as otherwise permitted in the Loan Agreement.

Notwithstanding the foregoing, transfers of any interest in Grantor to any person or entity that is directly or indirectly controlled by, controlling or under common control of or with (a) Opus West Corporation, Opus Corporation, Opus, L.L.C., (b) the founder of Opus Corporation, his children, his grandchildren or other members of his family, or (c) the trustee of a trust or trust for the benefit of the founder of Opus Corporation, his children, his grandchildren or other members of his family, shall be permitted hereunder without Beneficiary's consent so long as Opus West Corporation remains fully obligated for the payment of the Obligations.

Section 5.3 Removal, Demolition or Alteration of Accessories and Improvements.

Except to the extent permitted by the following sentence, no Improvements or Accessories shall be removed, demolished or materially altered without the prior written consent of Beneficiary. Notwithstanding the foregoing, Grantor may remove and dispose of, free from the Lien of this Deed of Trust and without Beneficiary's consent, such Accessories as from time to time become worn out or obsolete, provided that, either (a) at the time of, or prior to, such removal, any such Accessories are replaced with other Accessories which are free from Liens other than Permitted Encumbrances and have a value at least equal to that of the replaced Accessories (and by such removal and replacement Grantor shall be deemed to have subjected such Accessories to the Lien of this Deed of Trust), or (b) so long as a prepayment may be made without the imposition of any premium pursuant to the Note, such Accessories are sold at fair market value for cash and the net cash proceeds received from such disposition are paid over promptly to Beneficiary to be applied to the prepayment of the principal of the Loan.

Section 5.4 Additional Improvements.

Unless in accordance with the Design and Construction Documents, Grantor will not construct any Improvements other than those presently on the Land and those described in the Loan Agreement without the prior written consent of Beneficiary. Grantor will complete and pay for, within a reasonable time, any Improvements which Grantor is permitted to construct on the Land. Grantor will construct and erect any permitted Improvements (a) strictly in accordance with all applicable Laws and any private restrictive covenants, (b) entirely on lots or parcels of the Land, (c) so as not to encroach upon any easement or right of way or upon the land of others, and (d) wholly within any building restriction and setback lines applicable to the Land.

Section 5.5 Restrictive Covenants, Zoning, etc.

Unless in accordance with the Design and Construction Documents, without the prior written consent of Beneficiary, Grantor will not initiate, join in, or consent to any change in, any restrictive covenant, easement, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Property, or consent to or vote in favor of the inclusion of the Property in any community facilities district or any other improvement, assessment or similar district. Grantor (a) will promptly perform and observe, and use commercially reasonable efforts to cause to be performed and observed, all of the terms and conditions of all agreements affecting the Property, and (b) will do or use commercially reasonable efforts to cause to be done all things necessary to preserve intact and unimpaired any

and all easements, appurtenances and other interests and rights in favor of, or constituting any portion of, the Property.

ARTICLE VI EVENTS OF DEFAULT

The occurrence or happening, from time to time, of any one or more of the following shall constitute an Event of Default under this Deed of Trust:

Section 6.1 Payment Obligations.

Grantor fails to pay any of the Obligations when due, whether on the scheduled due date or upon acceleration, maturity or otherwise and such failure is not cured within five (5) days after receipt of Notice from Beneficiary to Grantor; provided, however, no Notice shall be required at maturity.

Section 6.2 Transfers.

Grantor Transfers, or contracts to Transfer, all or any part of the Property or any legal or beneficial interest therein (except as otherwise permitted in the Loan Agreement and except for any Transfers expressly permitted under this Deed of Trust). The Transfer of stock in Grantor (whether in one or more transactions during the term of the Loan) except as otherwise permitted in the Loan Agreement shall be deemed to be a prohibited Transfer of the Property constituting an Event of Default.

Section 6.3 Other Obligations.

Grantor fails to promptly perform or comply with any of the Obligations set forth in this Deed of Trust (other than those expressly described in other Sections of this Article VI), and such failure continues uncured for a period of fifteen (15) days after receipt of Notice from Beneficiary to Grantor.

Section 6.4 Event of Default Under Other Loan Documents.

An Event of Default (as defined therein) occurs under the Note or the Loan Agreement, or Borrower fails to promptly pay, perform, observe or comply with any obligation or agreement contained in any of the other Loan Documents (within any applicable grace or cure period).

Section 6.5 Change in Zoning or Public Restriction.

Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Loan Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed, and such violation will materially and adversely affect Borrower's ability to perform its obligations under the Loan Documents.

Section 6.6 Default Under Major Leases.

Grantor fails duly to perform its obligations under any Major Lease, and such failure is not cured within the grace period, if any, provided in the Major Lease.

Section 6.7 Default Under Other Lien Documents.

A default by Grantor occurs under any other mortgage, deed of trust or security agreement covering the Property, including any Permitted Encumbrances and is not cured within the grace period, if any, provided therein.

Section 6.8 Execution: Attachment.

Any execution or attachment is levied against any of the Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

**ARTICLE VII
RIGHTS AND REMEDIES**

Upon the happening of any Event of Default, Beneficiary, or Trustee at the direction of Beneficiary, shall have the right, in addition to any other rights or remedies available to Beneficiary under any of the Loan Documents or applicable Law, to exercise any one or more of the following rights, powers or remedies:

Section 7.1 Acceleration.

Beneficiary may accelerate all Obligations under the Loan Documents whereupon such Obligations shall become immediately due and payable, without notice of default, notice of acceleration or intention to accelerate, presentment or demand for payment, protest, notice of protest, notice of nonpayment or dishonor, or notices or demands of any kind or character (all of which are hereby waived by Grantor).

Section 7.2 Foreclosure: Power of Sale.

Trustee, if and as directed by Beneficiary, shall have all of the rights and may exercise all of the powers set forth in applicable Law of the State of California, including those powers set forth in Sections 2924 et seq. and Section 2938 of the California Civil Code or any successor provision of Law, Trustee may sell the Property in its entirety or in parcels, and by one or by several sales, as deemed appropriate by Trustee in its sole and absolute discretion. If Trustee chooses to have more than one foreclosure sale, Trustee 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 as Trustee may elect. Trustee shall receive and apply the proceeds from the sale of the Property, or any portion thereof, in accordance with Section 2924k of the California Civil Code or any successor provision of Law. Before any foreclosure sale, Beneficiary or Trustee shall give such notice of default and election to sell as may be required by Law. After the lapse of such time as may then be required by Law following the recordation of such notice of default,

and notice of sale having been given as then required by Law, 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 Grantor before any foreclosure sale. From time to time in accordance with then-applicable Law, Trustee may, and in any event at Beneficiary's request shall, postpone any foreclosure sale by public announcement at the time and place noticed for that sale. At any foreclosure sale, Trustee shall sell to the highest bidder at public auction for cash in lawful money of the United States (or cash equivalents acceptable to Trustee to the extent not prohibited by applicable Law), payable at the time of sale. Trustee shall execute and deliver to the purchaser(s) a deed or deeds conveying the property being sold without any covenant or warranty whatsoever, expressed or implied. The recitals in any such deed of any matters of fact, including any facts bearing upon the regularity or validity of any foreclosure sale, shall be conclusive proof of their truthfulness. Any such deed shall be conclusive against all Persons as to the facts recited therein. Any Person, including Trustee or Beneficiary, may purchase at such sale, and any bid by Beneficiary may be, in whole or in part, in the form of cancellation of all or any part of the Obligations.

Section 7.3 Judicial Action.

Beneficiary and Trustee, if and as directed by Beneficiary, shall have the right to bring an action in any court of competent jurisdiction for foreclosure of this Deed of Trust and a deficiency judgment as provided by Law, or for specific enforcement of any of the covenants or agreements of this Deed of Trust.

Section 7.4 Collection of Rents.

Upon the occurrence of an Event of Default, the license granted to Grantor to collect the Rents shall be automatically and immediately revoked, without further notice to or demand upon Grantor. Beneficiary may, but shall not be obligated to, exercise any or all of the rights and remedies provided in Section 2938 of the California Civil Code and perform any or all obligations of the landlord under any or all of the Leases, and Beneficiary may, but shall not be obligated to, exercise and enforce any or all of Grantor's rights under the Leases. Without limitation to the generality of the foregoing, Beneficiary may notify the tenants under the Leases that all Rents are to be paid to Beneficiary, and following such notice all Rents shall be paid directly to Beneficiary and not to Grantor or any other Person other than as directed by Beneficiary, it being understood that a demand by Beneficiary on any tenant under the Leases for the payment of Rent shall be sufficient to warrant payment by such tenant of Rent to Beneficiary without the necessity of further consent by Grantor. Grantor hereby irrevocably authorizes and directs the tenants under the Lease to pay all Rents to Beneficiary instead of to Grantor, upon receipt of written notice from Beneficiary, without the necessity of any inquiry of Grantor and without the necessity of determining the existence or non-existence of an Event of Default. Grantor hereby appoints Beneficiary as Grantor's attorney-in-fact with full power of substitution, which appointment shall take effect upon the occurrence of an Event of Default and is coupled with an interest and is irrevocable prior to the full and final payment and performance of the Obligations, in Grantor's name or in Beneficiary's name: (a) to endorse all checks and other instruments received in payment of Rents and to deposit the same in any account selected by

Beneficiary; (b) to give receipts and releases in relation thereto; (c) to institute, prosecute and/or settle actions for the recovery of Rents; (d) to modify the terms of any Leases including terms relating to the Rents payable thereunder; (e) to cancel any Leases; (f) to enter into new Leases; and (g) to do all other acts and things with respect to the Leases and Rents which Beneficiary may deem necessary or desirable to protect the security for the Obligations. Any Rents received shall be applied first to pay all Expenses and next in reduction of the other Obligations. Grantor shall pay, on demand, to Beneficiary, the amount of any deficiency between (i) the Rents received by Beneficiary, and (ii) all Expenses incurred together with interest thereon as provided in the Loan Agreement and the other Loan Documents.

Section 7.5 Taking Possession or Control of the Property.

As a matter of right without regard to the adequacy of the security, and to the extent permitted by Law without notice to Grantor, Beneficiary shall be entitled, upon application to a court of competent jurisdiction, to the immediate appointment of a receiver for all or any part of the Property and the Rents, whether such receivership may be incidental to a proposed sale of the Property or otherwise, and Grantor hereby consents to the appointment of such a receiver and agrees that such receiver shall have all of the rights and powers granted to Beneficiary pursuant to Section 7.4 hereof. In addition, to the extent not prohibited by applicable Law, and with or without the appointment of a receiver, or an application therefor, Beneficiary may (a) enter upon, and take possession of (and Grantor shall surrender actual possession of), the Property or any part thereof, without notice to Grantor and without bringing any legal action or proceeding, or, if necessary by force, legal proceedings, ejectment or otherwise, and (b) remove and exclude Grantor and its agents and employees therefrom.

Section 7.6 Management of the Property.

Upon obtaining possession of the Property or upon the appointment of a receiver as described in Section 7.5 hereof, Beneficiary, Trustee or the receiver, as the case may be, may, at its sole option, (a) make all necessary or proper repairs and Additions to or upon the Property, (b) operate, maintain, control, make secure and preserve the Property, and (c) complete the construction of any unfinished Improvements on the Property and, in connection therewith, continue any and all outstanding contracts for the erection and completion of such Improvements and make and enter into any further contracts which may be necessary, either in their or its own name or in the name of Grantor (the costs of completing such Improvements shall be Expenses secured by this Deed of Trust and shall accrue interest as provided in the Loan Agreement and the other Loan Documents). Beneficiary, Trustee or such receiver shall be under no liability for, or by reason of, any such taking of possession, entry, holding, removal, maintaining, operation or management, except for gross negligence or willful misconduct. The exercise of the remedies provided in this Section shall not cure or waive any Event of Default, and the enforcement of such remedies, once commenced, shall continue for so long as Beneficiary shall elect, notwithstanding the fact that the exercise of such remedies may have, for a time, cured the original Event of Default.

Section 7.7 Uniform Commercial Code.

Beneficiary may proceed under the Uniform Commercial Code as to all or any part of the Personalty, and in conjunction therewith may exercise all of the rights, remedies and powers of a secured creditor under the Uniform Commercial Code. Upon the occurrence of any Event of Default, Grantor shall assemble all of the Accessories and make the same available within the Improvements. Any notification required by the Uniform Commercial Code shall be deemed reasonably and properly given if sent in accordance with the Notice provisions of this Deed of Trust at least ten (10) days before any sale or other disposition of the Personalty. Disposition of the Personalty shall be deemed commercially reasonable if made pursuant to a public sale advertised at least twice in a newspaper of general circulation in the community where the Property is located. It shall be deemed commercially reasonable for the Trustee to dispose of the Personalty without giving any warranties as to the Personalty and specifically disclaiming all disposition warranties. Alternatively, Beneficiary may choose to dispose of some or all of the Property, in any combination consisting of both Personalty and Real Property, in one sale to be held in accordance with the Law and procedures applicable to real property, as permitted by Article 9 of the Uniform Commercial Code. Grantor agrees that such a sale of Personalty together with Real Property constitutes a commercially reasonable sale of the Personalty.

Section 7.8 Application of Proceeds.

Unless otherwise provided by applicable Law, all proceeds from the sale of the Property or any part thereof pursuant to the rights and remedies set forth in this Article VII and any other proceeds received by Beneficiary from the exercise of any of its other rights and remedies hereunder or under the other Loan Documents shall be applied first to pay all Expenses and next in reduction of the other Obligations, in such manner and order as Beneficiary may elect.

Section 7.9 Other Remedies.

Beneficiary shall have the right from time to time to protect, exercise and enforce any legal or equitable remedy against Grantor provided under the Loan Documents or by applicable Laws.

**ARTICLE VIII
TRUSTEE**

Section 8.1 Liability of Trustee.

Trustee shall have no liability or responsibility for, and make no warranties in connection with, the validity or enforceability of any of the Loan Documents or the description, value or status of title to the Property. Trustee shall be protected in acting upon any notice, request, consent, demand, statement, note or other paper or document believed by Trustee to be genuine and to have been signed by the party or parties purporting to sign the same. Trustee shall not be liable for any error of judgment, nor for any act done or step taken or omitted, nor for any mistakes of law or fact, nor for anything which Trustee may do or refrain from doing in good

faith, nor generally shall Trustee have any accountability hereunder except for its willful misconduct or gross negligence. The powers and duties of Trustee hereunder may be exercised through such attorneys, agents or servants as Trustee may appoint, and Trustee shall have no liability or responsibility for any act, failure to act, negligence or willful misconduct of such attorney, agent or servant, so long as the selection was made with reasonable care. In addition, Trustee may consult with legal counsel selected by Trustee, and Trustee shall have no liability or responsibility by reason of any act or failure to act in accordance with the opinions of such counsel. Trustee may act hereunder and may sell or otherwise dispose of the Property or any part thereof as herein provided, although Trustee has been, may now be or may hereafter be, an attorney, officer, agent or employee of Beneficiary, in respect of any matter or business whatsoever. Trustee, however, shall have no obligation to sell all or any part of the Property following an Event of Default or to take any other action authorized to be taken by Trustee hereunder except upon the demand of Beneficiary.

Section 8.2 Indemnification of Trustee.

Grantor agrees to indemnify, defend and hold Trustee harmless for, from and against any and all Claims and Expenses directly or indirectly arising out of or resulting from any transaction, act, omission, event or circumstance in any way connected with the Property or the Loan, including but not limited to any Claim arising out of or resulting from any assertion or allegation that Trustee is liable for any act or omission of Grantor or any other Person in connection with the ownership, development, financing, operation or sale of the Property; provided, however, that Grantor shall not be obligated to indemnify Trustee with respect to any Claim arising solely from the gross negligence or willful misconduct of Trustee. The agreements and indemnifications contained in this Section shall apply to Claims arising both before and after the repayment of the Loan and shall survive the repayment of the Loan, any foreclosure or deed, conveyance or assignment in lieu thereof and any other action by Trustee to enforce the rights and remedies of Beneficiary or Trustee hereunder or under the other Loan Documents for a period of twenty-four (24) months thereafter.

Section 8.3 Substitution of Trustee; Multiple Trustees.

Beneficiary shall have, and is hereby granted with warranty of further assurances, the irrevocable power to appoint a new or replacement or substitute Trustee. Such power may be exercised at any time without notice, without cause and without specifying any reason therefor, by filing for record in the office where this Deed of Trust is recorded a Substitution of Trustee. The power of appointment of a successor Trustee may be exercised as often as and whenever Beneficiary may choose, and the exercise of the power of appointment, no matter how often, shall not be an exhaustion thereof. Upon the recordation of such Notice of Substitution of Trustee, the Trustee so appointed shall thereupon, without any further act or deed of conveyance, become fully vested with identically the same title and estate in and to the Property and with all the rights, powers, trusts and duties of its predecessor in the trust hereunder with like effect as if originally named as Trustee hereunder. Whenever in this Deed of Trust reference is made to Trustee, it shall be construed to mean each Person appointed as Trustee for the time being, whether original or successor in trust. All title, estate, rights, powers, trusts and duties granted to

Trustee shall be in each Person appointed as Trustee so that any action hereunder by any Person appointed as Trustee shall for all purposes be deemed to be, and as effective as, the action of all Trustees.

ARTICLE IX MISCELLANEOUS

Section 9.1 Rights, Powers and Remedies Cumulative.

Each right, power and remedy of Beneficiary or Trustee as provided for in this Deed of Trust, or in any of the other Loan Documents or now or hereafter existing by Law, shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Deed of Trust, or in any of the other Loan Documents or now or hereafter existing by Law, and the exercise or beginning of the exercise by Beneficiary or Trustee of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by Beneficiary or Trustee of any or all such other rights, powers or remedies.

Section 9.2 No Waiver by Beneficiary or Trustee.

No course of dealing or conduct by or among Beneficiary, Trustee and Grantor shall be effective to amend, modify or change any provisions of this Deed of Trust or the other Loan Documents. No failure or delay by Beneficiary or Trustee to insist upon the strict performance of any term, covenant or agreement of this Deed of Trust or of any of the other Loan Documents, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Beneficiary or Trustee from exercising any such right, power or remedy at any later time or times. By accepting payment after the due date of any of the Obligations, neither Beneficiary nor Trustee shall be deemed to waive the right either to require prompt payment when due of all other Obligations, or to declare an Event of Default for failure to make prompt payment of any such other Obligations. Neither Grantor nor any other Person now or hereafter obligated for the payment of the whole or any part of the Obligations shall be relieved of such liability by reason of (a) the failure of Beneficiary to comply with any request of Grantor or of any other Person to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust, or (b) any agreement or stipulation between any subsequent owner or owners of the Property and Beneficiary, or (c) Beneficiary's extending the time of payment or modifying the terms of this Deed of Trust or any of the other Loan Documents without first having obtained the consent of Grantor or such other Person. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien on the Property, Beneficiary may release any Person at any time liable for any of the Obligations or any part of the security for the Obligations and may extend the time of payment or otherwise modify the terms of this Deed of Trust or any of the other Loan Documents without in any way impairing or affecting the Lien of this Deed of Trust or the priority of this Deed of Trust over any subordinate Lien. The holder of any subordinate Lien shall have no right to terminate any Lease regardless of whether or not such Lease is subordinate to this Deed of Trust. Beneficiary may resort to the

security or collateral described in this Deed of Trust or any of the other Loan Documents in such order and manner as Beneficiary may elect in its sole discretion.

Section 9.3 Waivers and Agreements Regarding Remedies.

To the fullest extent Grantor may do so, Grantor hereby:

(a) agrees that it will not at any time plead, claim or take advantage of any Laws now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, extension and notice of election to accelerate the Obligations;

(b) waives all rights to a marshalling of the assets of Grantor, including the Property, or to a sale in the inverse order of alienation in the event of a foreclosure of the Property, and agrees not to assert any right under any Law pertaining to the marshalling of assets, the sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatsoever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Property without any prior or different resort for collection, or the right of Beneficiary to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatsoever;

(c) waives any right to bring or utilize any defense, counterclaim or setoff, other than one which denies the existence or sufficiency of the facts upon which any foreclosure action is grounded. If any defense, counterclaim or setoff, other than one permitted by the preceding clause, is timely raised in a foreclosure action, such defense, counterclaim or setoff shall be dismissed. If such defense, counterclaim or setoff is based on a Claim which could be tried in an action for money damages, such Claim may be brought in a separate action which shall not thereafter be consolidated with the foreclosure action. The bringing of such separate action for money damages shall not be deemed to afford any grounds for staying the foreclosure action; and

(d) waives and relinquishes any and all rights and remedies which Grantor may have or be able to assert by reason of the provisions of any Laws pertaining to the rights and remedies of sureties.

Section 9.4 Successors and Assigns

All of the grants, covenants, terms, provisions and conditions of this Deed of Trust shall run with the Land and shall apply to and bind the successors and assigns of Grantor (including any permitted subsequent owner of the Property), and inure to the benefit of Beneficiary, its successors and assigns and to the successors in trust of Trustee.

Section 9.5 No Warranty by Beneficiary or Trustee.

By inspecting the Property or by accepting or approving anything required to be observed, performed or fulfilled by Grantor or to be given to Beneficiary or Trustee pursuant to this Deed of Trust or any of the other Loan Documents, Beneficiary and Trustee shall not be deemed to have warranted or represented the condition, sufficiency, legality, effectiveness or legal effect of the same, and such acceptance or approval shall not constitute any warranty or representation with respect thereto by Beneficiary or Trustee.

Section 9.6 Amendments.

This Deed of Trust may not be modified or amended except by an agreement in writing, signed by the party against whom enforcement of the change is sought.

Section 9.7 Severability.

In the event any one or more of the provisions of this Deed of Trust or any of the other Loan Documents shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any other respect, or in the event any one or more of the provisions of the Loan Documents operates or would prospectively operate to invalidate this Deed of Trust or any of the other Loan Documents, then and in either of those events, at the option of Beneficiary, such provision or provisions only shall be deemed null and void and shall not affect the validity of the remaining Obligations, and the remaining provisions of the Loan Documents shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.

Section 9.8 Notices.

All Notices required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by nationally recognized overnight courier service or by certified United States mail, postage prepaid, addressed to the party to whom directed at the applicable address specified in the Preamble to this Deed of Trust (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any Notice shall be deemed to have been given either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile, upon receipt; provided that service of a Notice required by any applicable statute shall be considered complete when the requirements of that statute are met. Notwithstanding the foregoing, no notice of change of address shall be effective except upon actual receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Deed of Trust or in any other Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

Section 9.9 Joint and Several Liability.

If Grantor consists of two (2) or more Persons, the term "Grantor" shall also refer to all Persons signing this Deed of Trust as Grantor, and to each of them, and all of them are jointly and severally bound, obligated and liable hereunder. Trustee or Beneficiary may release, compromise, modify or settle with any of Grantor, in whole or in part, without impairing, lessening or affecting the obligations and liabilities of the others of Grantor hereunder or under the Note. Any of the acts mentioned aforesaid may be done without the approval or consent of, or notice to, any of Grantor.

Section 9.10 Rules of Construction.

The words "hereof," "herein," "hereunder," "hereto," and other words of similar import refer to this Deed of Trust in its entirety. The terms "agree" and "agreements" mean and include "covenant" and "covenants." The words "include" and "including" shall be interpreted as if followed by the words "without limitation." The headings of this Deed of Trust are for convenience of reference only and shall not be considered a part hereof and are not in any way intended to define, limit or enlarge the terms hereof. All references (a) made in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (b) made in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to the Loan Documents are to the same as extended, amended, restated, supplemented or otherwise modified from time to time unless expressly indicated otherwise, (d) to the Land, Improvements, Personalty, Real Property or Property shall mean all or any portion of each of the foregoing, respectively, and (e) to Articles or Sections are to the respective Articles or Sections contained in this Deed of Trust unless expressly indicated otherwise. Any term used or defined in the Uniform Commercial Code, as in effect from time to time, which is not defined in this Deed of Trust shall have the meaning ascribed to that term in the Uniform Commercial Code. If a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article of the Uniform Commercial Code, the term shall have the meaning specified in Article 9.

Section 9.11 Governing Law and Jurisdiction.

The creation, perfection, enforcement, termination and release of the liens and security interests created pursuant to this Deed of Trust and the conveyance of any right, title, and interest in and to any of the Real Property shall be governed by and construed in accordance with the laws of the State of California, which is the state where the Land is located. Subject to the foregoing, irrespective of the place of execution and/or delivery, in all respects, including all matters of construction, validity, and performance, this Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona, except to the extent that any of such laws may now or hereafter be preempted by Federal law. Any procedures provided herein for such remedies shall be modified by and replaced with, where inconsistent with or required by, any procedures or requirements of the laws of the state in which the Land is located. Grantor hereby consents to the jurisdiction of any Federal or State court within (a) the state in which the Land is located, and (b) the State of Arizona, submits to venue in each such

state, and also consents to service of process by any means authorized by Federal law or the law of each such state. Without limiting the generality of the foregoing, Grantor hereby waives and agrees not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) Grantor is not subject to the jurisdiction of the courts of the above-referenced states or the United States District Court for each 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. Nothing in this Deed of Trust shall preclude Beneficiary from bringing a proceeding in any other jurisdiction nor will the bringing of a proceeding in any one or more jurisdictions preclude the bringing of a proceeding in any other jurisdiction. Grantor further agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any proceeding in any Federal or State court within (a) the state in which the Land is located, or (2) the State of Arizona, may be made by certified or registered mail, return receipt requested, directed to each such Grantor at the address indicated above, and service so made shall be complete upon receipt; except that if any such Grantor shall refuse to accept delivery, service shall be deemed complete five (5) days after the same shall have been so mailed. Except to the extent prohibited by applicable law, Grantor hereby unconditionally waives any claim to assert that the law of any other jurisdiction governs this Deed of Trust.

Section 9.12 Entire Agreement.

The Loan Documents constitute the entire understanding and agreement between Grantor and Beneficiary with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Grantor and Beneficiary with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment by Beneficiary to make the Loan are merged into the Loan Documents. Except as incorporated in writing into the Loan Documents, there are no representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 9.13 Deed of Trust.

This Deed of Trust secures a loan made by Lender to Grantor, some or all of the proceeds of which may be used for the purpose of constructing improvements on the Real Property. For purposes of Section 3097(j) of the California Civil Code, (a) the name and address of Lender and the name and address of Grantor, the owner of the Real Property, are set forth in the introductory paragraph of this Deed of Trust, and (b) a legal description of the Real Property is set forth in Exhibit "A" attached hereto.

IN WITNESS WHEREOF, Grantor has caused this Deed of Trust to be executed as of
the day and year first written above.

GRANTOR:

OPUS WEST CORPORATION, a Minnesota
corporation

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

State of ARIZONA)
) ss.
County of MARICOPA)

On March 12, 2008 before me, Kim A. Hennis, Notary Public (here insert
name and title of the officer), personally appeared Charles Vogel who proved to me
on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kim A. Hennis (Seal)

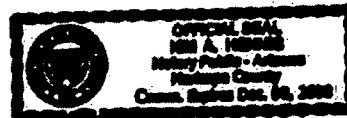


EXHIBIT "A"

LEGAL DESCRIPTION

Real property in the City of Chino Hills, County of San Bernardino, State of California, described as follows:

PARCEL I:

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

PARCEL II:

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

ATTACHMENT 4

BANK OF AMERICA
201 East Washington Street, 22nd Floor
AZ1-200-22-17
Phoenix, Arizona 85004-2343

March 21, 2008

Opus West Corporation
Opus West LP
O.W. Commercial, Inc.
PC 101, Inc.
Shoppes at Chino Hills, Inc.
Broadstone Cypress, L.P.
Hill Country Apartments, L.P.
Arch Road Limited Partnership
Broadstone Walker Commons, L.P.
Irvine Center Partners III, L.L.C.
Hill Country Galleria, L.P.
Broadstone Galleria, L.P.
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attention: Senior Vice President, Real Estate
Finance and Sales

Re: **BANK OF AMERICA, N.A.**, a national banking association, on behalf of itself and as agent for other Lenders ("Lender"), loans to **OPUS WEST CORPORATION**, a Minnesota corporation ("OPUS"), and various affiliates

Ladies/Gentlemen:

Lender has entered into and hereby modifies the following loan agreements, guaranty agreements, promissory notes, and certificates of representations, warranties, and covenants with OPUS and various affiliates for assorted financings (collectively, the "Loans"):

- (i) a Loan Agreement by and between Lender and OPUS, as borrower, dated July 28, 2003 (as amended from time to time, the "Opus RLC Agreement");
- (ii) a Construction Loan Agreement by and between Lender and OPUS, as borrower, dated March 13, 2007 (as amended from time to time, the "Commons at Chino Hills Construction Agreement");
- (iii) a Construction Loan Agreement by and between Lender and OPUS and O.W. COMMERCIAL, INC., a Delaware corporation, jointly and severally,

Open West Corporation
March 21, 2008
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as borrower, dated August 31, 2007 (as amended from time to time, the "Camarillo Ranch Agreement");

(iv) a Construction Loan Agreement by and between Lender and OPUS WEST LP, a Delaware limited partnership, as borrower, dated November 7, 2005 (as amended from time to time, the "Highland Village Condos Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated November 7, 2005 (as amended from time to time, the "Highland Village Condos Guaranty");

(v) a Construction Loan Agreement by and between Lender and OPUS WEST LP, a Delaware limited partnership, as borrower, dated November 10, 2006 (as amended from time to time, the "Fort Bend Crossing Agreement") and OPUS as guarantor pursuant to a Guaranty Agreement dated November 10, 2006 (as amended from time to time, the "Fort Bend Crossing Guaranty");

(vi) a Construction Loan Agreement by and between Lender and SHOPPES AT CHINO HILLS, INC., a Minnesota corporation, as borrower, dated May 16, 2007 (as amended from time to time, the "Shoppes at Chino Hills Agreement") and OPUS as guarantor pursuant to a Guaranty Agreement dated May 16, 2007 (as amended from time to time, the "Shoppes at Chino Hills Guaranty");

(vii) a Construction Loan Agreement by and between Lender and O.W. COMMERCIAL, INC., a Delaware corporation, as borrower, dated May 29, 2007 (as amended from time to time, the "Freemont Tech Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated May 29, 2007 (as amended from time to time, the "Freemont Tech Guaranty");

(viii) a Construction Loan Agreement by and between Lender and PC 101, INC., a Delaware corporation, as borrower, dated May 31, 2005 (as amended from time to time, the "Pima Center Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated May 31, 2005 (as amended from time to time, the "Pima Center Guaranty");

(ix) a Construction Loan Agreement by and between Lender and PC 101, INC., a Delaware corporation, as borrower, dated December 6, 2007 (as amended from time to time, the "Pima Center III-C Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated December 6, 2007 (as amended from time to time, the "Pima Center III-C Guaranty");

(x) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and BROADSTONE CYPRESS, L.P., a Delaware limited partnership, as borrower, dated August 31, 2007 (as amended from time to time,

~~Opus West Corporation~~
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the "Cypress Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated August 31, 2007 (as amended from time to time, the "Cypress Guaranty");

(xi) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and HILL COUNTRY APARTMENTS, L.P., a Delaware limited partnership, as borrower, dated March 1, 2007 (as amended from time to time, the "Hill Country Apartments Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated March 1, 2007 (as amended from time to time, the "Hill Country Apartments Construction Guaranty");

(xii) a Promissory Note by HILL COUNTRY APARTMENTS, L.P., a Delaware limited partnership, payable to the order of Lender, as successor by merger to LaSalle Bank National Association, a national banking association, dated March 1, 2007 (as amended from time to time, the "Hill Country Apartments Land Note") and OPUS as a guarantor pursuant to a Guaranty Agreement dated March 1, 2007 (as amended from time to time, the "Hill Country Apartments Land Guaranty");

(xiii) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership, as borrower, dated October 4, 2007 (as amended from time to time, the "Arch Road Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated October 4, 2007 (as amended from time to time, the "Arch Road Construction Guaranty");

(xiv) a Promissory Note by OPUS, payable to the order of Lender, as successor by merger to LaSalle Bank National Association, a national banking association, dated January 4, 2007 (as amended from time to time, the "Westlake Village Note") and a Certificate of Representations, Warranties and Covenants executed by OPUS, dated January 4, 2007 (as amended from time to time, the "Westlake Village Certificate");

(xv) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and OPUS, as borrower, dated September 27, 2007 (as amended from time to time, the "Scripps Ranch Construction Agreement");

(xvi) a Promissory Note by OPUS, payable to the order of Lender, as successor by merger to LaSalle Bank National Association, a national banking association, dated July 5, 2006 (as amended from time to time, the "Stanford Ranch Note") and a Certificate of Representations, Warranties and Covenants

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March 21, 2008
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executed by OPUS dated July 5, 2006 (as amended from time to time, the "Stanford Ranch Certificate");

(xvii) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and BROADSTONE WALKER COMMONS, L.P., a Delaware limited partnership, as borrower, dated August 31, 2007 (as amended from time to time, the "Walker Commons Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated August 31, 2007 (as amended from time to time, the "Walker Commons Construction Guaranty");

(xviii) an Amended and Restated Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and IRVINE CENTER PARTNERS III, L.L.C., a Delaware limited liability company, as borrower, dated October 31, 2006 (as amended from time to time, the "Irvine Center Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated October 11, 2006 (as amended from time to time, the "Irvine Center Construction Guaranty");

(xix) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and HILL COUNTRY GALLERIA, L.P., a Delaware limited partnership, as borrower, dated July 27, 2006 (as amended from time to time, the "Hill Country Galleria Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated July 27, 2006 (as amended from time to time, the "Hill Country Galleria Construction Guaranty");

(xx) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and BROADSTONE GALLERIA, L.P., a Delaware limited partnership, as borrower, dated July 30, 2006 (as amended from time to time, the "Broadstone Galleria Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated June 30, 2006 (as amended from time to time, the "Broadstone Galleria Construction Guaranty"); and

(xxi) a Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and OPUS, as borrower, dated May 29, 2003 (as amended from time to time, the "Opus May RLC Agreement").

The documents evidencing, securing, guaranteeing or executed and delivered in connection with the Loans, including, without limitation, the Loan Agreements executed in connection with the Loans (collectively, as amended from time to time, the "Loan Agreements"), the Guaranties executed in connection with the Loans (collectively, as amended from time to

~~Opus West Corporation~~
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time, the "Guaranties"), and the Certificates of Representations, Warranties, and Covenants executed in connection with the Loans (collectively, as amended from time to time, the "Certificates") are herein called the "Loan Documents".

The Loan Agreements, Guaranties, and Certificates are hereby amended as follows:

1. Sections 2.18, 2.19 and 2.20 of the Opus RLC Agreement are hereby amended in their entirety to read as follows:

2.18 Minimum Liquidity. Borrower shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00).

2.19 Tangible Net Worth plus Subordinated Debt. Borrower shall maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.

"Tangible Net Worth" means the gross book value of Borrower's assets (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), plus debt subordinated to the Lenders (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Administrative Agent (using Administrative Agent's standard form) less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets.

2.20 Total Liabilities to Tangible Net Worth Ratio. Borrower 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 5.0 to 1.0 thereafter.

"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).

2. Sections 3.21, 3.22 and 3.23 of the Commons at Chino Hills Construction Agreement are hereby amended in their entirety to read as follows:

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3.21 Minimum Liquidity. Borrower shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities of not less than Three Million And No/100 Dollars (\$3,000,000.00).

3.22 Tangible Net Worth plus Subordinated Debt. Borrower shall maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.

3.23 Total Liabilities to Tangible Net Worth Ratio. Borrower 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 5.0 to 1.0 thereafter.

3. Sections 4.27, 4.28 and 4.29 of the Camarillo Ranch Agreement are hereby amended in their entirety to read as follows:

Section 4.27 Minimum Liquidity. Opus shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00).

Section 4.28 Tangible Net Worth plus Subordinated Debt. Opus shall maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.

"Tangible Net Worth" means the gross book value of Opus' assets (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), plus 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) less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets.

Section 4.29 Total Liabilities to Tangible Net Worth Ratio. Opus 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 5.0 to 1.0 thereafter.

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"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).

4. Sections 2.19, 2.20, and 2.21 of the Highland Village Condos Agreement and Fort Bend Crossing Agreement are hereby amended in their entirety to read as follows:

2.19 **Minimum Liquidity.** Borrower shall cause Guarantor to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00).

2.20 **Tangible Net Worth plus Subordinated Debt.** Borrower shall cause Guarantor to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and one Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.

"Tangible Net Worth" means the gross book value of Guarantor's assets (excluding goodwill, patents, trademarks, trade names, organization expenses, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles), plus debt subordinated to the Loan (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Administrative Agent (using Lender's standard form) less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets.

2.21 **Total Liabilities to Tangible Net Worth Ratio.** Borrower shall cause Guarantor to 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 5.0 to 1.0 thereafter.

"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).

5. Sections 4.27, 4.28 and 4.29 of the Freemont Tech Agreement, the Pima Center Agreement and the Pima Center III-C Agreement are hereby amended in their entirety to read as follows:

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March 21, 2008
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Section 4.27 Minimum Liquidity. Borrower shall cause Guarantor to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00).

Section 4.28 Tangible Net Worth plus Subordinated Debt. Borrower shall cause Guarantor to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.

"**Tangible Net Worth**" means the gross book value of Guarantor's assets (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), plus 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) less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets.

Section 4.29 Total Liabilities to Tangible Net Worth Ratio. Borrower shall cause Guarantor to 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 5.0 to 1.0 thereafter.

"**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).

6. Sections 14(b)(i), (ii), and (iii) of the Highland Village Condos Guaranty, the Fort Bend Crossing Guaranty, the Pima Center Guaranty and the Pima Center III-C Guaranty are hereby amended in their entirety to read as follows:

(b) Guarantor hereby agrees as follows:

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00);

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(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (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) plus debt subordinated to Lender (limited to a minimum of Thirty Million And no/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form); less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to 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 5.0 to 1.0 thereafter. "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).

7. Section 13(B) of the Shoppes at Chino Hills Guaranty and the Fremont Tech Guaranty are hereby amended in their entirety to read as follows:

B. Guarantor hereby agrees as follows:

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00);

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (excluding goodwill, patents, trademarks, trade names,

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organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus 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), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to 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 5.0 to 1.0 thereafter. "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).

8. Section 22(a) of the Cypress Guaranty, the Hill Country Apartments Construction Guaranty, the Arch Road Construction Guaranty, and the Walker Commons Construction Guaranty are hereby amended in their entirety to read as follows:

(a) Guarantor hereby agrees as follows (the following covenants are collectively called the "Financial Covenants"):

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00);

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (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) plus debt subordinated to Lender (limited to a maximum of Thirty Million And no/100 Dollars [\$30,000,000.00]) in a manner acceptable to

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Lender (using Lender's standard form), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to 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 5.0 to 1.0 thereafter. "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).

9. Section 17(a) of the Westlake Village Certificate and the Stanford Ranch Certificate are hereby amended in their entirety to read as follows:

(a) Borrower hereby agrees as follows (the following covenants are collectively called the "Financial Covenants"):

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00);

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million AND No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Borrower (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) plus 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), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

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(iii) to 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 5.0 to 1.0 thereafter. "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).

10. Section 23(a) of the Hill Country Galleria Construction Guaranty and the Irvine Center Construction Guaranty are hereby amended in their entirety to read as follows:

(a) Guarantor hereby agrees as follows (the following covenants are collectively called the "Financial Covenants"):

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00);

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (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) plus 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), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to 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 5.0 to 1.0 thereafter. "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

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(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).

11. Section 23(a) of the Hill Country Apartments Land Guaranty is hereby amended in its entirety to read as follows:

(a) Guarantor hereby agrees as follows (the following covenants are collectively called the "Financial Covenants"):

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00);

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (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) plus 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), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to 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 5.0 to 1.0 thereafter. "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).

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(iv) to furnish to Lender certified annual financial statements within one hundred twenty (120) days after the close of each fiscal year; and

(v) to furnish to Lender certified quarterly financial statements, including compliance certificates, within sixty (60) days of each fiscal quarter and fiscal year end.

12. The following definitions are hereby added to Section 1.1 of the Scripps Ranch Construction Agreement:

"Tangible Net Worth" means the gross book value of Borrower's assets (excluding goodwill, patents, trademarks, trade names, organization expenses, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus 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), 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).

13. Sections 8.14(a), (b), (c), (d), and (e) of the Scripps Ranch Construction Agreement are hereby amended in their entirety to read as follows:

(a) Borrower shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00).

(b) Borrower shall maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million AND No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.

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(c) Borrower 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 5.0 to 1.0 thereafter.

14. The following definitions are hereby added to Section 1.1 of the Irvine Center Construction Agreement:

"Tangible Net Worth" means the gross book value of Guarantor's assets (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) plus 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), 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).

15. Sections 8.14(i), (ii), (iii), and (iv) of the Irvine Center Construction Agreement are hereby amended in their entirety to read as follows:

(i) Guarantor shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00).

(ii) Guarantor shall maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million AND No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.

(iii) 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 5.0 to 1.0 thereafter.

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16. The following definitions are hereby added to Section 1.1 of the Broadstone Galleria Construction Agreement:

"Tangible Net Worth" means the gross book value of Opus West's assets (excluding goodwill, patents, trademarks, trade names, organization expenses, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus 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), 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).

17. Sections 8.13, 8.14, and 8.15 of the Broadstone Galleria Construction Agreement are hereby amended in their entirety to read as follows:

8.13 Opus West shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00).

8.14 Opus West shall maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million AND No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.

8.15 Opus West 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 5.0 to 1.0 thereafter.

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18. Section 2.16 of the Broadstone Galleria Construction Agreement is hereby deleted in its entirety.

19. The following definitions are hereby added to Section 1.1 of the Opus May RLC Agreement:

"Tangible Net Worth" means the gross book value of Borrower's assets (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) plus 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), 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).

20. Sections 5.4(b), (c), and (d) of the Opus May RLC Agreement are hereby amended in their entirety to read as follows:

(b) Borrower shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars (\$3,000,000.00).

(c) Borrower shall maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million AND No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter.


(d) Borrower 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 5.0 to 1.0 thereafter.

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21. Section 5.4(f) of the Opus May RLC Agreement is hereby deleted in its entirety.

Each of the Loan Documents, to the extent applicable, is hereby modified to incorporate the foregoing modifications which shall govern and control in the event of any inconsistency with any other provision of any of the Loan Documents. All other terms and conditions of the Loan Documents shall remain unchanged and in full force and effect. Any property or rights or interest in property granted as security for the Loans shall remain as security for the Loans and the obligations of the borrowers under the Loan Documents.

BANK OF AMERICA, N.A., a national banking
association

By: 
Name: EDGARDO MARTINEZ
Title: ASST. VICE PRESIDENT

20-Mar-2008 06:50 PM Bank of America 602-523-4396


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21. Section 3.4(c) of the Opus May LLC Agreement is hereby deleted in its entirety.

Each of the Loan Documents, to the extent applicable, is hereby modified to incorporate the foregoing modifications which shall govern and control in the event of any inconsistency with any other provision of any of the Loan Documents. All other terms and conditions of the Loan Documents shall remain unchanged and in full force and effect. Any property or rights or interest in property granted as security for the Loans shall remain as security for the Loans and the obligations of the borrowers under the Loan Documents.

BANK OF AMERICA, N.A., a national banking
association

By: 
Name: EDUARDO MARTINEZ
Title: ASST. VICE PRESIDENT

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With respect to the Opus RLC Agreement:

Acknowledged and Agreed to as of the
22 day of March, 2008

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

With respect to the Commons at China Hills Construction
Agreement:

Acknowledged and Agreed to as of the
22 day of March, 2008

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

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With respect to the Camarillo Ranch Agreement:

Acknowledged and Agreed to as of the
20th day of March 2008

O.W. COMMERCIAL, INC., a Delaware
corporation

By: Charles Vogel
Name: Charles Vogel
Title: CEO

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

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With respect to the Highland Village Condos Agreement
and the Highland Village Condos Guaranty:

Acknowledged and Agreed to as of the
20 day of March, 2008

OPUS WEST LP, a Delaware limited partnership,
Borrower

BY: OPUS WEST CORPORATION, a
Minnesota corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

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With respect to the Fort Bend Crossing Agreement and the
Fort Bend Crossing Guaranty:

Acknowledged and Agreed to as of the
20 day of March, 2008

OPUS WEST LP, a Delaware limited partnership,
Borrower

BY: OPUS WEST CORPORATION, a
Minnesota corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 23

With respect to the Shoppes at Chino Hills Agreement and
the Shoppes at Chino Hills Guaranty:

Acknowledged and Agreed to as of the
22 day of March, 2008

SHOPPES AT CHINO HILLS, INC., a Minnesota
corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 24

With respect to the Fremont Tech Agreement and the
Fremont Tech Guaranty:

Acknowledged and Agreed to as of the
20 day of March, 2008

O.W. COMMERCIAL, INC., a Delaware
corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 25

With respect to the Pima Center Agreement and the Pima
Center Guaranty:

Acknowledged and Agreed to as of the
20 day of March, 2008

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 26

With respect to the Pima Center III-C Agreement and the
Pima Center III-C Guaranty:

Acknowledged and Agreed to as of the
21 day of March, 2008

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 27

With respect to the Cypress Agreement and the Cypress
Guaranty:

Acknowledged and Agreed to as of the
21 day of March, 2008

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

BY: OWR CYPRESS INC., a Delaware
corporation, its General Partner

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

Opus West Corporation
March 21, 2008
Page 28

With respect to the Hill Country Apartments Construction
Agreement and the Hill Country Apartments Construction
Guaranty:

Acknowledged and Agreed to as of the
7th day of March, 2008

HILL COUNTRY APARTMENTS, L.P., a
Delaware limited partnership

BY: OWR Hill Country, Inc., a Delaware
corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 29

With respect to the Hill Country Apartments Land Note
and the Hill Country Apartments Land Guaranty.

Acknowledged and Agreed to as of the
20 day of March 2008

HILL COUNTRY APARTMENTS, L.P., a
Delaware limited partnership

BY: OWR Hill Country, Inc., a Delaware
corporation, its General Manager

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

Opus West Corporation
March 21, 2008
Page 30

With respect to the Arch Road Construction Agreement and
the Arch Road Construction Guaranty:

Acknowledged and Agreed to as of the
20 day of March, 2008

ARCH ROAD LIMITED PARTNERSHIP, a
Delaware limited partnership

BY: Stockton GP, L.L.C., a Delaware limited
liability company, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 31

With respect to the Westlake Village Note and the
Westlake Village Certificate:

Acknowledged and Agreed to as of the
21 day of March 2008

OPUS WEST CORPORATION, a Minnesota
corporation

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


BORROWER

Opus West Corporation
March 21, 2008
Page 32

With respect to the Scripps Ranch Construction
Agreement:

Acknowledged and Agreed to as of the
20 day of March, 2008

OPUS WEST CORPORATION, a Minnesota
corporation

By: 
Name: Charles Vogel
Title: Senior Vice President

BORROWER

Opus West Corporation
March 21, 2008
Page 33

With respect to the Stanford Ranch Note and the Stanford
Ranch Certificate:

Acknowledged and Agreed to as of the
20 day of March, 2008

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

Opus West Corporation
March 21, 2008
Page 34

With respect to the Walker Commons Construction
Agreement and the Walker Commons Construction
Guaranty:

Acknowledged and Agreed to as of the
21st day of March, 2008

BROADSTONE WALKER COMMONS, L.P., a
Delaware limited partnership

BY: OWR Walker Commons, Inc., a Delaware
corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 35

With respect to the Irvine Center Construction Agreement
and the Irvine Center Construction Guaranty:

Acknowledged and Agreed to as of the
21 day of March, 2008

IRVINE CENTER PARTNERS III, L.L.C., a
Delaware limited liability company

BY: Opus West Corporation, a Minnesota
corporation, its Manager

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

Opus West Corporation
March 21, 2008
Page 36

With respect to the Hill Country Galleria Construction
Agreement and the Hill Country Galleria Construction
Guaranty:

Acknowledged and Agreed to as of the
20 day of March, 2008

HILL COUNTRY GALLERIA, L.P., a Delaware
limited partnership

BY: OWR Hill Country, Inc., a Delaware
corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation

March 21, 2008

Page 37

With respect to the Broadstone Galleria Construction
Agreement and the Broadstone Galleria Construction
Guaranty:

Acknowledged and Agreed to as of the

21 day of March, 2008

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

BY: OWR Galleria, Inc., a Delaware corporation,
its General Partner

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

Opus West Corporation
March 21, 2008
Page 38

With respect to the Opus May RLC Agreement:

Acknowledged and Agreed to as of the
22 day of March, 2008

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

Opus West Corporation
March 21, 2008
Page 39

CONSENT AND AGREEMENT OF GUARANTOR

The undersigned ("Guarantor") executed guarantees in connection with one or more of the Loans described and defined in the foregoing letter agreement. The Guarantor hereby consents and agrees to the modifications and all other matters contained in the letter agreement and agrees that nothing contained in the letter agreement shall in any manner affect or impair any of the obligations or liabilities of the undersigned Guarantor to Lender. Each guaranty executed by the Guarantor in connection with one or more of the Loans is continued in full force and effect and remains unaffected and unchanged except to the extent specifically amended by this consent and agreement. All such guarantees are hereby ratified and reaffirmed and Guarantor specifically acknowledges the validity and enforceability thereof.

Dated as of March 20, 2008.

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

ATTACHMENT 5



One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
Fax 602.229.5690
www.quarles.com

Attorneys at Law in
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

April 7, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate Finance and Sales

RE: \$89,000,000 Loan (the "Loan") made by Bank of America, N.A., a national banking association, individually as a Lender and as Administrative Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Opus West Corporation, a Minnesota corporation ("Borrower") (Chino Hills)

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of an Event of Default (hereinafter, the "Event of Default") under Section 5.1(a) of the Construction Loan Agreement dated March 13, 2008 between Borrower and Bank of America and the other Lenders party thereto (the "Loan Agreement") and under Section 3(a) of certain promissory notes executed by Borrower payable to the order of each Lender in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes, and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents". Borrower is in default as the result of Borrower's failure to make the installment payment of interest due and payable on April 1, 2009 as required under the Loan Agreement and the Notes. Late charges (as described in and calculated according to Section 2.10 of the Loan Agreement) will apply to the defaulted amounts if payment is not received in good funds on or before April 16, 2009. Interest at the Past Due Rate (provided in and calculated according to Section 2.8 of the Loan Agreement) will accrue from and after April 2, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the above-described Event of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: (i) constitute a commitment to lend or to modify the Loan; (ii) constitute an offer to extend credit or modify the existing Loan terms; (iii) constitute a waiver by any Lender of the Event of Default or performance or cure of the Event of Default by Borrower; (iv) constitute an amendment of any term or condition of any

Opus West Corporation
April 7, 2009
Page 2

Loan Document; (v) create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation, default, or Event of Default by Borrower under any loan; or (vi) directly or indirectly impair or otherwise affect any of the Lenders' rights, interests, or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Event of Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

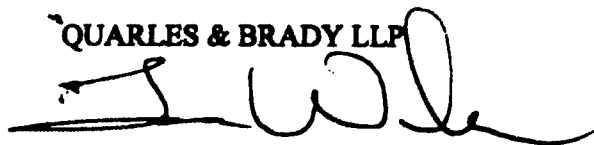
As a result of the Event of Default: (i) Bank of America, on behalf of itself and each of the Lenders, is entitled to the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Past Due Rate interest, late charges and other charges recoverable as a consequence of the Event of Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and the other Lenders, is entitled to enforce the Lenders' rights and remedies relating to the collateral, including, without limitation, appointment of receiver and foreclosure. Please contact me for payment information relating to the Loan.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default or Event of Default by Borrower; and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults or Events of Default now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP



Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Opus West Corporation
April 7, 2009
Page 3

Via UPS Overnight:
Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

Via UPS Overnight:
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, California 92101
Attn: David M. Hymer, Esq.



One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
Fax 602.229.5690
www.quarles.com

Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

April 9, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate Finance and Sales

RE: \$89,000,000 Loan (the "Loan") made by Bank of America, N.A., a national banking association, individually as a Lender and as Administrative Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Opus West Corporation, a Minnesota corporation ("Borrower") (Commons at Chino Hills)

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of a default (hereinafter, the "Specified Default") under Section 3.23 of the Construction Loan Agreement dated March 13, 2008 between Borrower and Bank of America and the other Lenders party thereto (as amended and modified from time to time, the "Loan Agreement") and under Section 3(a) of certain promissory notes executed by Borrower payable to the order of each Lender in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes, and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents". Borrower has informed Bank of America that, for the fiscal quarter ended December 31, 2008, Borrower will fail to satisfy the Total Liabilities to Tangible Net Worth requirement of not exceeding 6.0 to 1.0 on a consolidated basis as required under Section 3.23 of the Loan Agreement. If the Specified Default is not cured on or before April 24, 2009, the Specified Default will constitute an Event of Default under Section 5.1(b) of the Loan Agreement.

Notwithstanding the existence of the above-described Specified Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither

Opus West Corporation
April 9, 2009
Page 2

such election nor the actual funding thereof does or shall: (i) constitute a commitment to lend or to modify the Loan; (ii) constitute an offer to extend credit or modify the existing Loan terms; (iii) constitute a waiver by any Lender of the Specified Default or performance or cure of the Specified Default by Borrower; (iv) constitute an amendment of any term or condition of any Loan Document; (v) create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation, default, or Event of Default by Borrower under any loan; or (vi) directly or indirectly impair or otherwise affect any of the Lenders' rights, interests, or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Specified Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

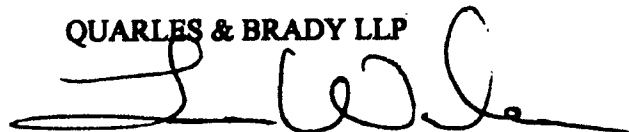
If the foregoing Specified Default is not cured on or before April 24, 2009, Bank of America, on behalf of itself and each of the Lenders is: (i) entitled to the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of charges as a consequence of the Specified Default (including attorneys' fees and costs); and (ii) entitled to enforce the Lenders' rights and remedies relating to the collateral, including, without limitation, appointment of receiver and foreclosure.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default or Event of Default by Borrower; and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults or Events of Default now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP



Lori L. Winkelman

Opus West Corporation
April 9, 2009
Page 3

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

Via UPS Overnight:
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, California 92101
Attn: David M. Hymer, Esq.



One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
Fax 602.229.5690
www.quarles.com

Attorneys at Law in
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

May 5, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate Finance and Sales

RE: \$89,000,000 Loan (the "Loan") made by Bank of America, N.A., a national banking association, individually as a Lender and as Administrative Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Opus West Corporation, a Minnesota corporation ("Borrower") (Chino Hills)

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of a default (hereinafter, the "Specified Default") under Section 2.11(a) of the Construction Loan Agreement dated March 13, 2008 between Borrower and Bank of America and the other Lenders party thereto (the "Loan Agreement") and under Section 1 of certain promissory notes executed by Borrower payable to the order of each Lender in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes, and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents". Borrower is in default as the result of Borrower's failure to make the installment payment of interest due and payable on May 1, 2009 as required under the Loan Agreement and the Notes. If payment is not received in good funds on or before May 6, 2009, then such failure will constitute a Default under the Loan Agreement. Late charges (as described in and calculated according to Section 2.10 of the Loan Agreement) will apply to the defaulted amounts if payment is not received in good funds on or before May 16, 2009. Interest at the Past Due Rate (provided in and calculated according to Section 2.8 of the Loan Agreement) will accrue from and after May 2, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the above-described Specified Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: (i) constitute a commitment to lend or

Opus West Corporation
May 5, 2009
Page 2

to modify the Loan; (ii) constitute an offer to extend credit or modify the existing Loan terms; (iii) constitute a waiver by any Lender of the Specified Default or performance or cure of the Specified Default by Borrower; (iv) constitute an amendment of any term or condition of any Loan Document; (v) create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation, default, or Event of Default by Borrower under any loan; or (vi) directly or indirectly impair or otherwise affect any of the Lenders' rights, interests, or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Specified Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

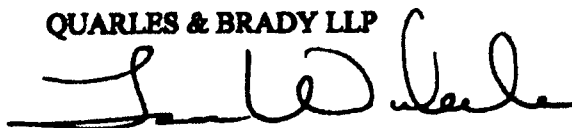
In the event the foregoing Specified Default is not cured on or before May 6, 2009 by payment in full of all amounts due and owing under the Loan Agreement as of May 1, 2009, plus any and all accrued Past Due Rate interest, late charges, costs and fees (including attorneys' fees): (i) Bank of America, on behalf of itself and each of the Lenders, is entitled to the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Past Due Rate interest, late charges and other charges recoverable as a consequence of the Specified Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and the other Lenders, is entitled to enforce the Lenders' rights and remedies relating to the collateral, including, without limitation, appointment of receiver and foreclosure. Please contact me for payment information relating to the Loan.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default or Event of Default by Borrower; and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults or Events of Default now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP



Lori L. Winkelman

Opus West Corporation
May 5, 2009
Page 3

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

Via UPS Overnight:
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, California 92101
Attn: David M. Hymer, Esq.



One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
Fax 602.229.5690
www.quarles.com

Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

June 16, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate Finance and Sales

RE: \$89,000,000 Loan (the "Loan") made by Bank of America, N.A., a national banking association, individually as a Lender and as Administrative Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Opus West Corporation, a Minnesota corporation ("Borrower") (Chino Hills)

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of a Default (hereinafter, the "Event of Default") under Section 5.1(c) of the Construction Loan Agreement dated March 13, 2008 between Borrower and Bank of America and the other Lenders party thereto (the "Loan Agreement") and under Section 3(a) of each of the certain promissory notes executed by Borrower payable to the order of each Lender in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes, and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents". The Event of Default occurred as a result of Borrower's failure to make the installment payment of interest due and payable on June 1, 2009 as required under the Loan Agreement and the Notes. Late charges (as described in and calculated according to Section 2.10 of the Loan Agreement) will apply to the defaulted amounts in accordance with the Loan Documents. Interest at the Past Due Rate (provided in and calculated according to Section 2.8 of the Loan Agreement) will accrue from and after June 2, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the above-described Event of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: (i) constitute a commitment to lend or to modify the Loan; (ii) constitute an offer to extend credit or modify the existing Loan terms; (iii) constitute a waiver by any Lender of the Event of Default or performance or cure of the

Opus West Corporation
June 16, 2009
Page 2

Event of Default by Borrower; (iv) constitute an amendment of any term or condition of any Loan Document; (v) create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation, default, or Event of Default by Borrower under any loan; or (vi) directly or indirectly impair or otherwise affect any of the Lenders' rights, interests, or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Event of Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

As a result of the Event of Default: (i) Bank of America, on behalf of itself and each of the Lenders, is entitled to the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Past Due Rate interest, late charges and other charges recoverable as a consequence of the Event of Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and the other Lenders, is entitled to enforce the Lenders' rights and remedies relating to the collateral, including, without limitation, appointment of receiver and foreclosure. Please contact me for payment information relating to the Loan.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default or Event of Default by Borrower; and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults or Events of Default now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP


Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Opus West Corporation
June 16, 2009
Page 3

Via UPS Overnight:
Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

Via UPS Overnight:
Luca, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, California 92101
Attn: David M. Hymer, Esq.

ATTACHMENT 6



One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
Fax 602.229.5690
www.quarles.com

Attorneys at Law in
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

June 19, 2009

ACCELERATION NOTICE

VIA UPS OVERNIGHT

Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate Finance and Sales

RE: \$89,000,000 Loan (the "Loan") made by Bank of America, N.A., a national banking association, individually as a Lender and as Administrative Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Opus West Corporation, a Minnesota corporation ("Borrower") (Chino Hills)

Ladies and Gentlemen:

By notice dated June 16, 2009 (the "6/16/09 Default Notice"), Bank of America provided formal notice to Borrower that a Default had occurred under the Loan Agreement and the Notes. A copy of the 6/16/09 Default Notice is attached to this letter as Exhibit A and incorporated herein by this reference. Capitalized terms used in this letter without definition will have the meanings assigned thereto in the 6/16/09 Default Notice.

The Default identified in the 6/16/09 Default Notice continues to exist (the "Specified Event of Default"). As a result of the occurrence of the Specified Event of Default, Bank of America is entitled to exercise the Lenders' rights and remedies, at law and in equity, against Borrower and the collateral and, accordingly, Bank of America hereby declares the Indebtedness, as described in the Loan Agreement, to be immediately due and payable in full accordance with Section 5.2(a) of the Loan Agreement. Interest and other fees and charges (including without limitation attorneys' fees) continue to accrue as provided in the Loan Agreement and other Loan Documents. In order to obtain the full payoff amount as of any particular business day, please contact the undersigned.

On behalf of each of the Lenders, Bank of America hereby demands that Borrower immediately pay all of the Indebtedness owing as described above, with all additional interest and other amounts that will accrue until payment in full is received by Bank of America. Payment in full of the Indebtedness must be made in readily available funds delivered to my attention. Wire transfer instructions are available upon request to the undersigned. If full payment of the Indebtedness is not received immediately, Bank of America and/or any Lender may exercise all rights and remedies under the terms of the Loan Agreement and other Loan Documents.

Opus West Corporation
June 19, 2009
Page 2

Notwithstanding the existence of the Specified Event of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Specified Event of Default. To the extent any Lender elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Lender of the Specified Event of Default or performance or cure of the Specified Event of Default by Borrower; constitute an amendment of any term or condition of any Loan Document; create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Lenders' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby also reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Specified Event of Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the Project is located. The Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

As a result of the foregoing Specified Event of Default, Bank of America, on behalf of itself and each of the Lenders is entitled to: (i) the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, imposition charges recoverable as a consequence of the Specified Event of Default (including attorneys' fees and costs); and (ii) enforce the Lenders' rights and remedies relating to its collateral, including, without limitation, appointment of receiver and foreclosure.

Nothing in this letter or in the Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any Lender, that are not referenced in this letter.

If you have any questions or concerns, please contact the undersigned.

Very truly yours,

QUARLES & BRADY LLP

for
Lori L. Winkelman

Opus West Corporation
June 19, 2009
Page 3

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

Via UPS Overnight:
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, California 92101
Attn: David M. Hymer, Esq.

Opus West Corporation
June 19, 2009
Page 4

EXHIBIT A



One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.239.5200
Fax 602.239.5690
www.quarles.com

Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

June 16, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate Finance and Sales

RE: \$89,000,000 Loan (the "Loan") made by Bank of America, N.A., a national banking association, individually as a Lender and as Administrative Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Opus West Corporation, a Minnesota corporation ("Borrower") (Chino Hills)

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of a Default (hereinafter, the "Event of Default") under Section 5.1(c) of the Construction Loan Agreement dated March 13, 2008 between Borrower and Bank of America and the other Lenders party thereto (the "Loan Agreement") and under Section 3(a) of each of the certain promissory notes executed by Borrower payable to the order of each Lender in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes, and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents". The Event of Default occurred as a result of Borrower's failure to make the installment payment of interest due and payable on June 1, 2009 as required under the Loan Agreement and the Notes. Late charges (as described in and calculated according to Section 2.10 of the Loan Agreement) will apply to the defaulted amounts in accordance with the Loan Documents. Interest at the Past Due Rate (provided in and calculated according to Section 2.8 of the Loan Agreement) will accrue from and after June 2, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the above-described Event of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: (i) constitute a commitment to lend or to modify the Loan; (ii) constitute an offer to extend credit or modify the existing Loan terms; (iii) constitute a waiver by any Lender of the Event of Default or performance or cure of the

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Opus West Corporation
June 16, 2009
Page 2

Event of Default by Borrower; (iv) constitute an amendment of any term or condition of any Loan Document; (v) create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation, default, or Event of Default by Borrower under any loan; or (vi) directly or indirectly impair or otherwise affect any of the Lenders' rights, interests, or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Event of Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

As a result of the Event of Default: (i) Bank of America, on behalf of itself and each of the Lenders, is entitled to the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Past Due Rate interest, late charges and other charges recoverable as a consequence of the Event of Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and the other Lenders, is entitled to enforce the Lenders' rights and remedies relating to the collateral, including, without limitation, appointment of receiver and foreclosure. Please contact me for payment information relating to the Loan.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default or Event of Default by Borrower; and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults or Events of Default now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP

for
Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Opus West Corporation
June 16, 2009
Page 3

Via UPS Overnight:
Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

Via UPS Overnight:
Luce, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, California 92101
Attn: David M. Hymer, Esq.

ATTACHMENT 7

Filing NO: 200811104313
Filing Date: 2008/03/25
Filing Time: 10:23 AM
State of Minnesota
Processing Office: Secretary of State
Filed by: tukam01

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] Matthew Mehr, 602-229-5288	
B. SEND ACKNOWLEDGEMENT TO (Name and Address) [Quarles & Brady LLP Renaissance One Two North Central Avenue Phoenix, Arizona 85004 Attention: Matthew Mehr]	

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME OPUS WEST CORPORATION				
OR				
1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 2555 East Camelback Road, Suite 800 Phoenix AZ 85016-9267 USA				
1d. TAX ID# SSN or EIN 51-0278211	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION corporation	1f. JURISDICTION OF ORGANIZATION Minnesota	1g. ORGANIZATIONAL ID #, if any 87-83 (Minnesota) <input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME				
OR				
2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS				
2d. TAX ID# SSN or EIN				
ADD'L INFO RE ORGANIZATION DEBTOR		2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME BANK OF AMERICA, N.A., a national banking association, as Administrative Agent				
OR				
3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS Commercial Real Estate Banking Group, AZ1-200-22-17 201 East Washington Street, 22nd Floor Attn: N. Alonzo Phoenix AZ 85004-2343 USA				

4. This FINANCING STATEMENT covers the following collateral:

See Schedule "I" attached hereto and by this reference incorporated herein.

5. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> LESSEE/LESSOR <input type="checkbox"/> CONSIGNEE/CONSIGNOR <input type="checkbox"/> BAILEE/BAILOR <input type="checkbox"/> SELLER/BUYER <input type="checkbox"/> AG LIEN <input type="checkbox"/> NON-UCC FILING	
6. <input type="checkbox"/> This FINANCING STATEMENT is to be filed (for record) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]	7. Check to REQUEST SEARCH REPORT(s) on Debtor(s) [ADDITIONAL FEE] [optional] <input type="checkbox"/> All Debtors <input type="checkbox"/> Debtor 1 <input type="checkbox"/> Debtor 2
8. OPTIONAL FILER REFERENCE DATA	

Minnesota Secretary State for The Commons at Chino Hills, Chino Hills, CA - Construction Loan
FILING OFFICE COPY - UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)

QBACTIVE5956752.3

Filing NO: 200811104313

SCHEDULE "I"

(The Commons at Chino Hills, Chino Hills, CA – Construction Loan)

Financing Statement (continued)

Name of Debtor: OPUS WEST CORPORATION, a Minnesota corporation

All of the Property (as hereinafter defined) which constitutes personal property or fixtures, all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith, where:

"Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Debtor, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land.

"Accounts" means all accounts of Debtor within the meaning of the Uniform Commercial Code of the State, derived from or arising out of the use, occupancy or enjoyment of the Property or for services rendered therein or thereon.

"Additions" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.

"Claim" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

"Condemnation" means any taking of title to, use of, or any other interest in the Property under the exercise of the power of condemnation or eminent domain, whether temporarily or permanently, by any Governmental Authority or by any other Person acting under or for the benefit of a Governmental Authority.

"Condemnation Awards" means any and all judgments, awards of damages (including severance and consequential damages), payments, proceeds, settlements, amounts paid for a taking in lieu of Condemnation, or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, or in connection with, any Condemnation or threatened Condemnation.

"Contract of Sale" means any contract for the sale of all or any part of the Property or any interest therein, whether now in existence or hereafter executed.

Filing NO: 200811104313

"Design and Construction Contracts" means, collectively, (a) all contracts for services to be rendered, work to be performed or materials to be supplied in the development of the Land or the construction or repair of Improvements, including all agreements with architects, engineers or contractors for such services, work or materials; (b) all plans, drawings and specifications for the development of the Land or the construction or repair of Improvements; (c) all permits, licenses, variances and other rights or approvals issued by or obtained from any Governmental Authority or other Person in connection with the development of the Land or the construction or repair of Improvements; and (d) all amendments of or supplements to any of the foregoing.

"Governmental Authority" means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

"Improvements" means all buildings, structures and other improvements now or hereafter existing, erected or placed on the Land, together with any on-site improvements and off-site improvements in any way used or to be used in connection with the use, enjoyment, occupancy or operation of the Land.

"Insurance Proceeds" means the insurance claims under and the proceeds of any and all policies of insurance covering the Property or any part thereof, including all returned and unearned premiums with respect to any insurance relating to such Property, in each case whether now or hereafter existing or arising.

"Land" means the real property described in Exhibit "A" attached hereto and made a part hereof.

"Leases" means all leases, license agreements and other occupancy or use agreements (whether oral or written), now or hereafter existing, which cover or relate to the Property or any part thereof, together with all options therefor, amendments thereto and renewals, modifications and guaranties thereof, including any cash or security deposited under the Leases to secure performance by the tenants of their obligations under the Leases, whether such cash or security is to be held until the expiration of the terms of the Leases or applied to one or more of the installments of rent coming due thereunder.

"Loan" means the loan from Beneficiary to Debtor with respect to the Land.

"Person" means an individual, a corporation, a partnership, a joint venture, a limited liability company, a trust, an unincorporated association, any Governmental Authority or any other entity.

"Personalty" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Debtor now has or hereafter acquires an interest and which is used in the

Filing NO: 200811104313

construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, including (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Real Property or the business conducted therein and all general intangibles (including payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property or the operation thereof; (d) all sewer and water taps, appurtenant water stock or water rights, any Type 2 nonirrigation grandfathered water rights, contractual rights to water, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Real Property or the operation thereof; (e) all of Debtor's rights and interests under all Swap Contracts, including all rights to the payment of money from Beneficiary under any Swap Contract and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Contract; (f) all insurance policies held by Debtor with respect to the Property or Debtor's operation thereof; and (g) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Debtor with Beneficiary related to the Property, including any such deposit account from which Debtor may from time to time authorize Beneficiary to debit and/or credit payments due with respect to the Loan; together with all Additions to and Proceeds of all of the foregoing.

"Proceeds," when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

"Property" means the Real Property and the Personalty and all other rights, interests and benefits of every kind and character which Debtor now has or hereafter acquires in, to or for the benefit of the Real Property and/or the Personalty and all other property and rights used or useful in connection therewith, including all Leases, all Rents, all Condemnation Awards, all Proceeds, and all of Debtor's right, title and interest in and to all Design and Construction Contracts, all Contracts of Sale and all Refinancing Commitments.

"Real Property" means the Land and Improvements, together with (a) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Debtor and belonging or appertaining to the Land or Improvements; (b) all Claims whatsoever of Debtor with respect to the Land or Improvements, either in law or in equity, in possession or in expectancy; (c) all estate, right, title and interest of Debtor in and to all streets, roads and public places,

Filing NO: 200811104313

opened or proposed, now or hereafter adjoining or appertaining to the Land or Improvements; and (d) all options to purchase the Land or Improvements, or any portion thereof or interest therein, and any greater estate in the Land or Improvements, and all Additions to and Proceeds of the foregoing.

"Refinancing Commitment" means any commitment from or other agreement with any Person providing for the financing of the Property, some or all of the proceeds of which are intended to be used for the repayment of all or a portion of the Loan.

"Rents" means all of the rents, royalties, issues, profits, revenues, earnings, income and other benefits of the Property, or arising from the use or enjoyment of the Property, including all such amounts paid under or arising from any of the Leases and all fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities within the Real Property.

"State" means the State of Arizona.

"Swap Contract" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, interest cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option, currency option or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Beneficiary (or its affiliate) and Debtor (or its affiliate) in connection with the Loan, together with any related schedules and confirmations, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

"Taxes" means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Debtor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits.

The Land is all that real property situate in the County of San Bernardino, State of California, and more particularly described on Exhibit "A" attached hereto.

Filing NO: 200811104313

EXHIBIT "A"

Legal Description

Real property in the City of Chino Hills, County of San Bernardino, State of California, described as follows:

PARCEL I:

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

PARCEL II:

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

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: (12791347) BANK OF AMERICA, N.A. c/o Casey Carpenter Vice President Real Estate Special Assets 333 S. Hope St., 11th Floor Los Angeles, CA 90071-1406	Claim No: 65 <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> Richter, Katharine <i>Modified:</i>
Unsecured claimed: \$57766158.95 Total claimed: \$57766158.95		
History: <u>Details</u> <u>65-1</u> 11/09/2009 Claim #65 filed by BANK OF AMERICA, N.A., total amount claimed: \$57766158.95 (Richter, Katharine)		
<u>Description:</u> (65-1) Commons at Chino		
<u>Remarks:</u> (65-1) But see Addendum for possible secured status		

Claims Register Summary