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

**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.

☐ 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

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

**Court Claim Number:**_____ (*If known*)

Filed on:_____

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
Telephone number: (213) 621-3604

☐ 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.

☐ Check this box if you are the debtor or trustee in this case.

**1. Amount of Claim as of Date Case Filed:** $ $16,707,882.03

If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.

If all or part of your claim is entitled to priority, complete item 5.

☐ 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.)

**3. Last four digits of any number by which creditor identifies debtor:** _____

**3a. Debtor may have scheduled account as:** _____
(See instruction #3a on reverse side.)

**4. Secured Claim** (See instruction #4 on reverse side.)
Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.

**Nature of property or right of setoff:** ☐ Real Estate ☐ Motor Vehicle ☐ Other
**Describe:**

**Value of Property:**$_____ **Annual Interest Rate**__%

**Amount of arrearage and other charges as of time case filed included in secured claim, if any:** $_____ **Basis for perfection:** _____

**Amount of Secured Claim:** $*See Addendum **Amount Unsecured:** $*See Addendum

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**5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.**

Specify the priority of the claim.

☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

☐ 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).

☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5).

☐ 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).

☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8).

☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(__).

**Amount entitled to priority:**

$_____

**Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.*

**6. Credits:** The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

**7. Documents:** Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (*See instruction 7 and definition of "redacted" on reverse side.*)

DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.

If the documents are not available, please explain:

Date: 11/09/2009

**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
DEAN M. LYONS
AUTHORIZED AGENT

**FOR COURT USE ONLY**

OPUS WEST
00549

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

Fort Bend

**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 (FORT BEND CROSSING) OF BANK OF AMERICA, N.A.**[1]

1. This proof of claim is made by Bank of America, N.A. ("Bank of America").

2. Pursuant to that certain Construction Loan Agreement dated as of November 10, 2006, by and between Opus West LP ("OWLP"), as Borrower, and Bank of America, as Lender (as amended, the "Loan Agreement") and for valuable consideration, Bank of America agreed to make a loan to the Borrower in the original principal amount of Twenty-One Million, Nine Hundred Thousand and No/100 Dollars ($21,900,000.00) (the "Loan"). The purpose of the Loan was 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 Property (as defined herein) as 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. That certain Deed of Trust Note dated as of November 10, 2006, in the original principal amount of $21,900,000.00 (as amended, the "Note").

b. On March 21, 2008, Bank of America, OWLP and certain other parties entered into an agreement that amended certain provisions of the Loan Agreement (the "Modification Agreement").

c. A Deed of Trust, Assignment of Rents and Leases, Security Agreement, Fixture Filing, and Financing Statement dated as of November 10, 2006, executed by OWLP, as Grantor, to James A. Johnson, as Trustee, for the benefit of Bank of America, as Beneficiary, and recorded in the Official Records of Harris County, Texas (the "Official Records") on November 10, 2006, as Document No. 20060189747 (as amended, the "Deed of Trust"). The Deed of Trust encumbers, among other things, certain real property located in Harris County, Texas, as more particularly described therein (the "Property"). The Deed of Trust, inclusive of all assignment and security provisions contained therein, gives Bank of America a security interest in the

[1] This claim is being simultaneously filed in the bankruptcies of Opus West Corporation (Case No. 09-34356-hdh11) and OWLP (Case No.09-34334-hdh11).

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").

d. A form UCC-1 financing statement was filed in the Delaware Department of State on November 14, 2006, as Filing No. 20064194114, naming OWLP as debtor and Bank of America as secured party (the "Financing Statement"). The Financing Statement further perfected Bank of America's security interest in the Collateral.

4. Opus West Corporation, a Minnesota corporation, the parent company of Opus West LP, executed a Guaranty Agreement, wherein Opus West Corporation irrevocably and unconditionally guaranteed the obligations of OWLP to Bank of America under the Loan.

5. Prior to the July 6, 2009 petition date (the "Petition Date"), OWLP defaulted under the terms of the Loan Documents. As a result of the events of default, Bank of America sent OWLP a default letter dated April 2, 2009, notifying it of the various events of default that had occurred and demanding that it pay all past-due amounts in accordance with the terms of the Loan Documents. OWLP failed to cure the defaults under the Loan, and the Loan fully matured prior to the Petition Date.

6. Just prior to the Petition Date, the Property was transferred to a special purpose entity, OWP Fort Bend Retail, L.L.C., a Delaware limited liability company ("Fort Bend SPE").

7. As of the Petition Date, the following liquidated, uncontested, and non-contingent amount was and is due and owing to Bank of America under the Loan Documents in an amount not less than **$16,707,882.03** (the "Liquidated Claim Amount"), which consists of:

| | |
|---|---|
| Principal | $16,458,987.03 |
| Interest | $225,078.64 |
| Prepetition Costs and Fees<br>Attorney's Fees | $23,816.36 |
| **TOTAL:** | **$16,707,882.03** |
| | |

8. Additionally, the following are due to Bank of America 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 the 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 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 Bank of America.

9. As the amount of the claims asserted in paragraph 8 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 Claim Amount of **$16,707,882.03**. To the extent any personal property Collateral was not transferred to Fort Bend SPE, Bank of America 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 Fort Bend SPE, Bank of America asserts an unsecured claim for the Final Claim Amount. The Final Claim Amount of Bank of America may be in a greater amount than stated herein. Bank of America does not waive any of its rights to recover all of the foregoing amounts by not asserting a specific dollar amount at this time.[2]

10. Bank of America 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 OWLP and/or Opus West Corporation that may come to the attention of Bank of America 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.

11. 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

[2] Bank of America reserves the right to assert a secured claim to the extent that any prepetition transfer of Collateral is set aside for any reason.

Date: November 9, 2009

Respectfully submitted,

/s/ Katharine B. Richter
**David M. Bennett**
State Bar No. 2139600
**John S. Brannon**
State Bar No. 02895500

**THOMPSON & KNIGHT LLP**
1722 Routh Street, Suite 1500
Dallas, Texas 75201
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Austin, Texas 78701
Telephone: 512/469-6100
Facsimile: 512/482-5076
E-mail: katie.richter@tklaw.com

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

**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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**ATTACHMENT 2**: Deed of Trust Note dated November 10, 2006 in the original principal amount of $21,900,000.00.

**ATTACHMENT 3**: Letter Agreement dated March 21, 2008 by and among Bank of America, Opus West LP, and certain other parties ("Modification Agreement").

**ATTACHMENT 4**: Deed of Trust, Assignment of Rents and Leases, Security Agreement, Fixture Filing, and Financing Statement dated November 10, 2006 recorded in the Official Records of Harris County, Texas on November 10, 2006 as Document No. 20060189747.

**ATTACHMENT 5**: UCC-1 Financing Statement filed with the Delaware Department of State on November 14, 2006 as Filing No. 20064194114.

**ATTACHMENT 6**: Guaranty Agreement executed by Opus West Corporation.

**ATTACHMENT 7**: Default Letter dated April 2, 2009.

# ATTACHMENT 1

# Construction Loan Agreement
between

Opus West LP, a Delaware limited partnership

and

Bank of America, N.A.

Dated as of November __, 2006

Bank of America

Fort Bend Crossing,
Houston, Texas

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# CONSTRUCTION LOAN AGREEMENT
(Fort Bend Crossing, Houston, Texas)

THIS CONSTRUCTION LOAN AGREEMENT ("Agreement") is made by and between BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, "Lender"), and Opus West LP, a Delaware limited partnership ("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 Lender 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.

| | | | |
|---|---|---|---|
| X | Exhibit "A" | - | Legal Description of the Land |
| X | Exhibit "B" | - | Definitions and Financial Statements |
| X | Exhibit "C" | - | Certain Conditions Precedent to the First Advance |
| X | Exhibit "D" | - | Budget |
| X | Exhibit "E" | - | Plans |
| X | Exhibit "F" | - | Advances |
| X | Exhibit "F-1" | - | Draw Request |
| X | Exhibit "G" | - | Survey Requirements |
| X | Exhibit "H" | - | Release Provisions |
| X | Exhibit "I" | - | Leasing and Tenant Matters |

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 Exhibit "B". This Agreement and the other Loan Documents, which must be in form, detail and substance satisfactory to Lender, evidence the agreements of Borrower and Lender with respect to the Loan. Borrower shall comply with all of the Loan Documents.

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

1.3 Commitment to Lend. Borrower agrees to borrow from Lender, and Lender agrees to make advances of the Loan proceeds to Borrower on the terms and subject to the conditions set forth in this Agreement and Exhibit "C" and Exhibit "F" attached to this Agreement. Lender's commitment to lend shall expire and terminate (a) automatically on the Advance Termination Date; (b) automatically if the Loan is prepaid in full; and (c) automatically upon the occurrence of a Default and during the continuance thereof. 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 Lender not to be unreasonably withheld. The Budget has been prepared by Borrower, and Borrower represents to Lender 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. Unless approved by Lender in its sole discretion, no advance shall be made (a) for any cost not set forth in the Budget, (b) from any line item in the Budget that, when added to all prior advances from that line item, would exceed the lesser of (i) the actual cost incurred by Borrower for such line item, or (ii) the sum shown in the Budget for such line item, (c) from any contingency line item, or (d) to pay interest on the Loan after commencement of operations in the Improvements if and to the extent that, subject to the provisions of Exhibit "I", there is sufficient net operating income from the Property to pay such interest. Advances from any line item in the Budget for purposes other than those for which amounts are initially allocated to such line item, or changes in the relative amounts allocated to particular line items in the Budget may only be made as Lender in its sole discretion deems necessary or advisable.

1.5 Borrower's Deposit. If at any time Lender 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 Lender'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 Lender, deposit with Lender the amount of the deficiency ("Borrower's Deposit") in an interest-bearing account of Lender's selection with interest earned thereon to be part of Borrower's Deposit. Such Borrower's Deposit is hereby pledged to Lender as additional security for the Loan, and Borrower hereby grants and conveys to Lender a security interest in all funds so deposited with Lender, as additional security for the Loan. Lender may advance all or a portion of the Borrower's Deposit prior to the Loan proceeds. Lender 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.

1.6 Evidence of Debt. Amounts of the Loan made by Lender shall be evidenced by one or more accounts or records maintained by Lender in the ordinary course of business. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Indebtedness.

1.7 Taxes.

(a) Any and all payments by Borrower to or for the account of 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 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 Lender 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 hereinafter referred to as "Taxes"). 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 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), 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 30 days after the date of such payment, Borrower shall furnish to Lender (which shall forward the same to 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 Lender, Borrower shall also pay to Lender, at the time interest is paid, such additional amount that 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) had not been made.

(d) Borrower agrees to indemnify 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) paid by 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 subsection (d) shall be made within 30 days after the date 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 shall survive the termination of the Commitments and the payment in full of all the other Indebtedness.

## ARTICLE 2 - ADDITIONAL COVENANTS AND AGREEMENTS

2.1 Construction of the Improvements. Borrower shall commence construction of the Improvements on or before the Construction Commencement Date, 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 cessation of work for a period in excess of fifteen (15) consecutive 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 or its

equivalent 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 Lender, 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.

2.2 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 Lender, Construction Consultant, all applicable governmental authorities, and all other parties required under the Loan Documents. Without Lender'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, except that Borrower may make Permitted Changes if: (a) Borrower notifies Lender 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 is not impaired by such change or extra; (d) no substantial change in architectural appearance is effected by such change or extra; (e) no default in any obligation to any person or violation of any Law or governmental requirement would 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. Lender 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 Lender have been obtained.

2.3 Contracts. Without Lender's prior written approval as to parties, terms, and all other matters, Borrower shall not (a) enter into any material contract (hereinafter defined) for the performance of any work or the supplying of any labor, materials or services for the design or construction of the Improvements, (b) enter into any management, leasing, maintenance or other contract pertaining to the Property not described in clause (a) that is not unconditionally terminable by Borrower or any successor owner without penalty or payment on not more than thirty (30) days notice to the other party thereunder, or (c) modify, amend, or terminate any such contracts. All such contracts shall provide that all rights and liens of the applicable contractor, architect, engineer, supplier, surveyor or other party and any right to remove removable Improvements are subordinate to Lender's rights and liens, shall require all subcontracts and purchase orders to contain a provision subordinating the subcontractors' and mechanics' and materialmen's liens and any right to remove removable Improvements to Lender's rights and liens, and shall provide that no change order shall be effective without the prior written consent of Lender, except for change orders which implement Permitted Changes. Borrower shall not default under any contract, Borrower shall not permit any contract to terminate by reason of any failure of Borrower to perform thereunder, and Borrower shall promptly notify Lender of any default thereunder. Borrower will deliver to Lender, upon request of Lender, the names and addresses of all persons or entities with whom each contractor has contracted or intends to

contract for the construction of the Improvements or for the furnishing of labor or materials therefor.

2.4 Assignment of Contracts and Plans. As additional security for the Obligations, Borrower hereby transfers and assigns to Lender and grants a security interest in all of Borrower's right, title and interest, but not its liability, in, under, and to all construction, architectural and design contracts, and the Plans, and agrees that all of the same are covered by the security agreement provisions of the Deed of Trust. Borrower agrees to deliver to Lender from time to time upon Lender's request such consents to the foregoing assignment from parties contracting with Borrower as Lender may require. Neither this assignment nor any action by Lender shall constitute an assumption by Lender of any obligation under any contract or with respect to the Plans, 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. Lender 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 Lender may determine to be necessary to cure any default under any contract or with respect to the Plans or to protect the rights of Borrower or Lender with respect thereto. Borrower irrevocably constitutes and appoints Lender 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 Lender's name all rights of Borrower under any contract or with respect to the Plans. Lender shall incur no liability if any action so taken by it or on its behalf shall prove to be inadequate or invalid. Borrower indemnifies and holds Lender harmless against and from any loss, cost, liability or expense (including, but not limited to, 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 Lender **INCLUDING SUCH FAILURE CONSTITUTING IN WHOLE OR PART LENDER'S STRICT LIABILITY, OR COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE** except to the extent such failure constitutes willful misconduct or gross negligence on Lender's part. Lender may use the Plans for any purpose relating to the Improvements. Borrower represents and warrants to Lender that the copy of any contract furnished or to be furnished to Lender is and shall be a true and complete copy thereof, that the copies of the Plans delivered to Lender are and shall be true and complete copies of the Plans, 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.

2.5 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 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.

2.6 Construction Consultant. Lender 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 Lender 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 considers necessary or useful in performing its duties. Lender will provide Borrower with a good faith estimate of costs for the initial review of the Plans and on site inspection.

2.7 Inspection. Lender 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 Lender deems such inspection is of an emergency nature, in which event Borrower shall provide Lender with immediate access to the Property. Borrower will furnish to Lender and its agents, including Construction Consultant, for inspection and copying, all Plans, shop drawings, specifications, books and records, and other documents and information that Lender may request from time to time.

2.8 Notice to Lender. Borrower shall promptly within five (5) days after the occurrence of any of the following events, notify 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 any Guarantor or the Property where the amount claimed is $100,000.00 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 $100,000.00 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) any required permit, license, certificate or approval with respect to the Property lapses or ceases to be in full force and effect.

2.9 Financial Statements. If reasonably required by Lender, Borrower shall deliver to Lender the Financial Statements and other statements and information at the times and for the periods described in (a) Exhibit "B" and (b) any other Loan Document, and Borrower shall deliver to Lender from time to time such additional financial statements and information as Lender may at any time reasonably request. Borrower will make all of its books, records and accounts available to Lender and its representatives at the Property upon request and will permit them to review and copy the same. Borrower shall promptly notify Lender of any material adverse change in the financial condition of Borrower or Guarantor and, if known by Borrower, or in the construction progress of the Improvements.

2.10 Other Information. Borrower shall furnish to Lender from time to time upon Lender's request (i) 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; (ii) 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; (iii) a list of all unpaid bills for labor and materials with respect to construction of the Improvements and copies of all invoices therefor; (iv) 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; (v) current or updated detailed Project schedules or construction schedules; and (vi) such other information relating to Borrower, Guarantor, 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.

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

2.12 Advertising by Lender. At Lender's request and at Borrower's expense, Borrower shall erect and maintain on the Property one or more advertising signs approved by Lender indicating that the construction financing for the Property has been provided by Lender.

2.13 Appraisal. Lender may obtain from time to time, an appraisal of all or any part of the Property prepared in accordance with written instructions from Lender by a third-party appraiser engaged directly by Lender. Each such appraiser and appraisal shall be satisfactory to Lender (including satisfaction of applicable regulatory requirements). The cost of any such appraisal shall be borne by Borrower, and such cost is due and payable by Borrower on demand and shall be secured by the Loan Documents. Lender shall provide a copy of such Appraisal to each Lender upon receipt.

2.14 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.

2.15 ERISA and Prohibited Transaction Taxes. As of the date hereof and throughout the term of this Loan 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, as amended (the "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 Lender of any of Lender's rights under this Agreement, any Note or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Code. Borrower further agrees to deliver to Lender such certifications or other evidence of compliance with the provisions of this Section 2.15 as Lender may from time to time request.

2.16 Loan to Value Amount. The Property shall comply with the "Loan to Value Amount," which shall be calculated as follows: Lender's maximum commitment under the Loan shall not exceed eighty percent (80.0%) of the appraised stabilized value of the Property. The appraised value of the Property shall be based upon the Appraisal, as reviewed, adjusted and approved by Lender.

2.17 Loan to Cost Amount. The Property shall have a "Loan to Cost Ratio" of not greater than ninety percent (90.0%), which "Loan to Cost Ratio" shall be calculated as follows: Lender's maximum commitment under the Loan divided by total Property costs.

2.18 Coverage Ratio. The Borrower shall satisfy a Debt Service Coverage Ratio of at least 1.20 to 1.00, where, for the purposes of this Section 2.18, "Debt Service Coverage Ratio" means, for any period, the ratio of Stabilized Net Operating Income from the Property to the Debt Service, where "Stabilized Net Operating Income" means the appraised net operating income from the Core Retail Portion of the Property, as evidenced by the Appraisal, and where "Debt Service" means the amount of the regularly scheduled debt service payments payable for the corresponding period based on the Loan commitment (the "Debt Coverage Amount"), assuming that interest accrues at the rate of the greater of (1) the ten (10) year Treasury Rate plus two percent (2.00%) or (2) seven percent (7.00%), and that interest and principal payments are based on a twenty-five (25) year amortization schedule.

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 Two Million And No/100 Dollars ($2,000,000.00).

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 Seventy-Five Million And No/100 Dollars ($75,000,000.00) for fiscal year 2006 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 the Loan (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.

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 6.0:1.0 through December 31, 2007 and 5.0:1.0 thereafter.

"Total Liabilities" means the sum of current liabilities plus long term liabilities plus joint venture debt.

2.22 Evidence at Closing. Prior to the First Advance, Borrower shall provide to Lender the following:

(a) Evidence of Borrower's equity contribution ("Up-front Equity") in the minimum amount of ONE MILLION TWO HUNDRED TWENTY-NINE THOUSAND FOUR HUNDRED SEVENTY-ONE AND 50/100 DOLLARS ($1,229,471.50) which represents approximately 5.05% of the total Property costs. Evidence of Borrower's equity contribution shall be acceptable to Lender in its sole and absolute discretion, and may include but may not be limited to cancelled checks or other evidence of payment and/or lien waivers. The balance of Borrower's equity contribution obligation, namely ONE MILLION TWO HUNDRED TWENTY-NINE THOUSAND FOUR HUNDRED SEVENTY-ONE AND 50/100 DOLLARS ($1,229,471.50) shall be in the form of deferred fees.

(b) A Lease satisfactory to Lender in its reasonable discretion shall have been executed by Borrower with Office Depot.

(c) The fully executed Home Depot Sales Contract.

## ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Lender to make the Loan, Borrower hereby represents and warrants to Lender that except as otherwise disclosed to Lender in writing (a) Borrower has complied with any and all Laws and regulations concerning its organization, existence and the transaction of its business, and has the right and power to own the Property and to develop the Improvements as contemplated in this Agreement and the other Loan Documents; (b) Borrower is authorized to execute, deliver and perform all of its obligations under the Loan Documents; (c) the Loan Documents are valid and binding obligations of Borrower; (d) 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; (e) to the extent required by applicable Law, Borrower has filed all necessary tax returns and reports and has paid all taxes and governmental charges thereby shown to be owing; (f) the Plans are complete in all material respects, contain all necessary detail and are adequate for construction of the Improvements, are satisfactory to Borrower, have been approved by all applicable governmental authorities, have been accepted by each contractor, and comply with the Loan Documents and all applicable Laws, restrictive covenants, and governmental requirements, rules, and regulations; (g) the Land is not part of a larger tract of land owned by Borrower or any of its affiliates or any Guarantor, 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; (h) 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; (i) the Plans do, and the Improvements when constructed will, comply with all legal requirements regarding access and facilities for handicapped or disabled persons; (j) 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; (k) the construction schedule for the Project is realistic and the Completion Date is a reasonable estimate of the time required to complete the Project; (l) the Financial Statements delivered to Lender are true, correct, and complete in all material respects, and there has been no event or condition that could reasonably be expected to have a Material Adverse Effect in Borrower's or Guarantor's financial condition from the financial condition of Borrower or Guarantor (as the case may be) indicated in such Financial Statements; (m) 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 available at the boundaries of the Land, including electric and natural gas facilities, telephone service, water supply, storm and sanitary sewer facilities; (n) except as otherwise provided for in the Loan Documents, the Borrower has made no contract or arrangement of any kind the performance of which by the other party thereto would give rise to a lien on the Property; (o) 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; and (p) prior to the recordation of the Deed of Trust except as disclosed to Lender 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, nor any 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 materialman's lien or similar lien to achieve priority over the Deed of Trust or the rights of Lender thereunder.

## ARTICLE 4 - DEFAULT AND REMEDIES

4.1 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 receipt of written notice from Lender; 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 receipt of written notice from Lender; (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 receipt of written notice from Lender; (f) construction of the Improvements is abandoned, Lender 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 Lender in its reasonable discretion), and is not cured within fifteen (15) days after receipt of written notice from Lender after such determination; (h) a Borrower's Deposit is not made with Lender within fifteen (15) days after Lender's request therefor in accordance with Section 1.5; (i) construction is enjoined or Borrower or Lender 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 Lender; (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 Lender, remains unsatisfied or unbonded for a period of fifteen (15) days after receipt of 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 Lender, 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 receipt of written notice to the Borrower thereof; (m) the entry of a judgment against Borrower or any Guarantor 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) Lender reasonably determines that a material adverse change has occurred in the financial condition of Borrower, any Guarantor or in the condition of the Property; (o) the dissolution or insolvency of Borrower or any Guarantor; or (p) without the prior written consent of Lender, more than fifty percent (50.0%) of the voting power in Guarantor is transferred to another Person. Notwithstanding the foregoing, transfers of any interest in Guarantor 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 Lender's consent so long as Opus West Corporation remains fully obligated for the payment of the Obligations as a guarantor. NOTICE – THE LOAN IS SUBJECT TO ACCELERATION IN THE EVENT OF A TRANSFER WHICH IS PROHIBITED UNDER THIS SECTION 4.1.

4.2 Remedies. Upon a Default, Lender at its election may (but shall not be obligated to), without notice, exercise any and all rights and remedies afforded by this Agreement, the other Loan Documents, 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, Lender at its election may (but shall not be obligated to), without notice, do any one or more of the following: (a) terminate Lender's Commitment to lend and any obligation to disburse any Borrower's Deposit hereunder; (b) in its own name on behalf of the Lender 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 Lender), 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, to the extent thereof and to the maximum extent permitted by Law, any and all deposits, funds, or assets at any time held and any and all other indebtedness at any time owing by Lender to or for the credit or account of Borrower against any Indebtedness.

Borrower hereby appoints Lender as Borrower's attorney-in-fact, which power of attorney is irrevocable and coupled with an interest, with full power of substitution if Lender so elects, to do any of the following in Borrower's name upon the occurrence of a Default and continuation thereof: (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 Lender 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 Lender), 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 Lender 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 Lender and shall constitute a portion of the Indebtedness, regardless of whether such amounts exceed any limits for Indebtedness otherwise set forth herein. Lender shall have no liability to Borrower for the sufficiency or adequacy of any such actions taken by Lender.

No delay or omission of Lender to exercise any right, power or remedy accruing upon the happening of a Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Default or any acquiescence therein. No delay or omission on the part of Lender 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 Lender hereunder in any one or more instances, or the acceptances by Lender of any partial payment on account of the Indebtedness, shall constitute a waiver of any such Default, and each such option shall remain continuously in full force and effect. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedies provided for in any Note or any of the other Loan Documents, and each and every such remedy shall be cumulative, and

shall be in addition to every other remedy given hereunder, or under any Note or any of the other Loan Documents, or now or hereafter existing at Law or in equity or by statute. Every right, power and remedy given to Lender by this Agreement, any Note or any of the other Loan Documents shall be concurrent, and 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, and every right, power and remedy given by this Agreement, any Note or any of the other Loan Documents may be exercised from time to time as often as may be deemed expedient by the Lender.

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

## ARTICLE 5 - [INTENTIONALLY LEFT BLANK]

## ARTICLE 6 - GENERAL TERMS AND CONDITIONS

6.1 Consents; Borrower's Indemnity. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Lender's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (a) within the reasonable discretion of Lender; and (b) deemed to have been given only by a specific writing intended for the purpose given and executed by Lender. Notwithstanding any approvals or consents by Lender, Lender has no obligation or responsibility whatsoever for the adequacy, form or content of the Plans, the Budget, any appraisal, contract, any change order, any lease, or any other matter incident to the Property or the construction of the Improvements. Lender's acceptance of an assignment of the Plans for the benefit of Lender 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 Lender shall be for Lender's protection 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. Lender has no duty to supervise or to inspect the Property or the construction of the Improvements nor any duty of care to Borrower or any other person to protect against, or inform Borrower or any other person of the existence of, negligent, faulty, inadequate or defective design or construction of the Improvements. Lender shall not be liable or responsible for, and Borrower shall indemnify each Indemnified Party and its Affiliates, directors, officers, agents, attorneys and employees (collectively, the "Indemnities") from and against: (a) any Claims, 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, contractors, the Construction Consultant, or any other person, (iii) any failure by Borrower to construct, complete, protect or insure the Improvements, (iv) the failure to pay any 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), (vi) the performance of any obligation of Borrower under the Loan Documents whatsoever, or (vii) Environmental Damages; (b) any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorney fees and costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such Indemnitee 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 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 (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 Indemnitee 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 6.6) or other materials obtained through internet, Intralinks or other similar information transmission systems in connection with and as they relate to this Agreement; and (d) any and all liabilities, losses, costs or expenses (including attorney fees and costs) that any Indemnified Party suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action or proceeding, in all cases, whether or not an Indemnified Party is a party to such claim, demand, action, cause of action or proceeding and whether it is defeated, successful or withdrawn, (all the foregoing, collectively, the "Indemnified Liabilities"), **INCLUDING IN WHOLE OR PART ANY LOSS ARISING OUT OF AN INDEMNIFIED PARTY'S STRICT LIABILITY, OR COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE**; provided that such indemnity shall not, as to any Indemnitee, 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 nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party. Upon demand by Lender, Borrower shall diligently defend any Claim which affects the Property or is made or commenced against Lender, whether alone or together with Borrower or any other person, all at Borrower's own cost and expense and by counsel to be approved by Lender in the exercise of its reasonable judgment. In the alternative, at any time Lender may elect to conduct its own defense on behalf of itself through counsel selected by Lender and at the cost and expense of Borrower. 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 Lender. Inspection shall not constitute an acknowledgment or representation by Lender or the Construction Consultant that there has been or will be compliance with the Plans, the Loan Documents, or applicable Laws, governmental requirements and 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 Lender's 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. Lender's failure to inspect shall not constitute a waiver of any of Lender's rights under the Loan Documents or at Law or in equity.

6.2 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 are for the sole benefit of Lender 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 the 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. 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.

6.3 Notices.

6.3.1 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 or any other Loan Document shall be in writing. Unless otherwise specifically provided in such other Loan Document, 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 subsection 6.3.2 below, a confirmatory duplicate copy sent by first class United States mail), addressed to the party to whom directed or by (subject to subsection 6.3.3 below) electronic mail address to Borrower, at the addresses set forth at the end of this Agreement. 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 shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

6.3.2 Effectiveness of Facsimile Documents and Signatures. Loan Documents 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. The Lender 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 limit the effectiveness of any facsimile document or signature.

6.3.3 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 Loan Documents for execution by the parties thereto, and may not be used for any other purpose.

6.3.4 Reliance by Lender. The Lender shall be entitled to rely and act upon any notices (including telephonic Loan advance notices) purportedly given by or on behalf of the 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. The Borrower shall indemnify Lender from all losses, costs, expenses and liabilities resulting from the reliance by Lender on each notice purportedly given by or on behalf of the Borrower, **INCLUDING IN WHOLE OR PART FOR AN AGENT RELATED PERSON'S OR LENDER'S STRICT LIABILITY, OR COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE, EXCEPT TO THE EXTENT OF THEIR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** All telephonic notices to and other communications with the Lender may be recorded by the Lender, and each of the parties hereto hereby consents to such recording. If a Lender does not notify or inform Lender of 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 Lender, 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 Lender) after such consent, approval or agreement is requested by Lender, the Lender shall be deemed to have given its consent, approval or agreement, as the case may be, with respect to the matter in question.

6.4 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Lender, or the Lender exercises its 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 the 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 Lender, or its 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 and effect as if such payment had not been made or such set-off had not occurred, and (b) each Lender severally agrees to pay to the Lender upon demand its applicable share of any amount so recovered from or repaid by the Lender, 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.

6.5 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 the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Lender.

(b) Lender may sell or offer to sell the Loan or interests therein to one or more assignees or participants. Lender may disseminate any information it now has or hereafter

obtains pertaining to the Loan, including any security for the Loan and credit or other information on the Project, Borrower, any of Borrower's principals, to any actual or prospective assignee or participant, to Lender's affiliates, including, without limitation, Banc of America Securities LLC, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate to Lender's reasonable judgment. Borrower shall execute, acknowledge, and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the rights and benefits with respect to the Loan Documents as such person(s) would have if such person(s) were Lender hereunder.

6.6 Confidentiality. The 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, to (i) any assignee of or participant in, or any prospective 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 Transaction or credit derivative transaction relating to obligations of the Borrower and Guarantor; (g) with the consent of the Borrower; (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from the Borrower or Guarantor relating to the Borrower or Guarantor or their business, other than any such information that is available to the Lender on a nonconfidential basis prior to disclosure by the Borrower or Guarantor; provided that, in the case of information received from the Borrower or Guarantor 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 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. The Lender 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 the Lender in connection with the administration and management of this Agreement, the Loan and Loan Documents.

6.7 Set-off. In addition to any rights and remedies of Lender provided by Law, upon the occurrence and during the continuance of any Event of Default, Lender is authorized at any time and from time to time, without prior notice to Borrower or any other party to the Loan Documents, any such notice being waived by Borrower (on its own behalf and on behalf of each party to the Loan Documents to the fullest extent permitted by Law, to set-off and apply any and all deposits, general or special, time or demand, provisional or final, any time owing by Lender

hereunder or under any other Loan Document to or for the credit or the account of such parties to the Loan Documents against any and all Indebtedness, irrespective of whether or not the Lender shall have made demand under this Agreement or any other Loan Document and although such Indebtedness may be contingent or unmatured or denominated in a currency different from that of the applicable depositor indebtedness. Lender agrees promptly to notify Borrower after any such set-off and application made by Lender; provided, however, that the failure to give such notice shall not affect the validity of such set-off and application.

6.8 [Intentionally left blank.]

6.9 Amendments; Survival. Lender may amend or waive any provision of this Agreement or any other Loan Document, or consent to any departure by any party to the Loan Documents therefrom which amendment, waiver or consent is intended to be within Lender's discretion or determination, or otherwise in Lender'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 Borrower or the applicable party to the Loan Documents, as the case may be, and acknowledged by Lender, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.10 Costs and Expenses. Without limiting any Loan Document and to the extent not prohibited by applicable Laws, Borrower shall pay when due, shall reimburse to Lender on demand and shall indemnify Lender from, all out-of-pocket fees, costs, and expenses paid or incurred by Lender in connection with the negotiation, preparation and execution of this Agreement and the other Loan Documents (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 Lender, including (a) all fees and expenses of Lender's 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 and each Guarantor; (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 Lender, including attorneys' fees, 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, administrative or bankruptcy proceedings. Borrower shall pay all costs and expenses of complying with the Loan Documents, whether or not such costs and expenses are included in the Budget. Borrower's obligations under this Section shall survive the delivery of the Loan Documents, 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 bankruptcy or other debtor relief proceeding, and any other event whatsoever.

6.11 [Intentionally left blank.]

6.12 Further Assurances. Borrower will, upon Lender's request, (a) promptly correct any defect, error or omission in any Loan Document; (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts as Lender deems necessary, desirable or proper to carry out the purposes of the Loan Documents 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 Lender 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 Lender to comply with the requirements of any agency having jurisdiction over Lender.

6.13 Inducement to Lender. The representations, warranties, covenant and agreements contained in this Agreement and the other Loan Documents (a) are made to induce Lender to make the Loan and extend any other credit to or for the account of the Borrower pursuant hereto, and Lender is relying thereon, and will continue to rely thereon, and (b) shall survive any bankruptcy proceedings involving Borrower, Guarantor or the Property, foreclosure, or conveyance in lieu of foreclosure.

6.14 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 6.2 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 they 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 6.2 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 Lender 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 Lender to serve process in any manner permitted by Law or limit the right of Lender to bring proceedings against any party in any other court or jurisdiction.

6.15 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 or Guarantor shall mean, each person

comprising same, jointly and severally. References to "persons" shall include both natural persons and any legal entities, including public or governmental bodies, agencies or instrumentalities. 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.

6.16 No Partnership, etc. The relationship between Lender and Borrower is solely that of lender and borrower. Lender has no fiduciary or other special relationship with or duty to Borrower and none is created by the Loan Documents. 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 Lender or in any way make Lender a co-principal with Borrower with reference to the Project, the Property or otherwise. In no event shall Lender's rights and interests under the Loan Documents be construed to give Lender the right to control, or be deemed to indicate that Lender is in control of, the business, properties, management or operations of Borrower.

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

6.18 Commercial Purpose. Borrower warrants that the Loan is being made solely to acquire or carry on a business or commercial enterprise, and/or Borrower is a business or commercial organization. Borrower further warrants that all of the proceeds of this Loan shall be used for commercial purposes and stipulates that the Loan shall be construed for all purposes as a commercial loan, and is made for other than personal, family, household or agricultural purposes.

6.19 Service of Process. Borrower hereby irrevocably designates and appoints OPUS WEST CORPORATION, 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016-9267, 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 Lender and shall promptly deliver to Lender 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 the agent, if any, hereinabove 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 Lender to serve process in any manner otherwise permitted by Law and nothing in

any Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions.

6.20 USA Patriot Act Notice. Lender hereby notifies the 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 the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act.

6.21 Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the transactions arising in connection with the Loan, and supersede all prior written or oral understandings and agreements between Borrower and Lender with respect to the matters addressed in the Loan Documents. In particular, and without limitation, the terms of any commitment letter, letter of intent or quote letter by Lender to make the Loan are merged into the Loan Documents. Lender has made no commitments to extend the term of the Loan past its 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, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

6.22 Dispute Resolution.

(a) Arbitration. Except to the extent expressly provided below, any Dispute shall, upon the request of any party, be determined by binding arbitration in accordance with the Federal Arbitration Act, Title 9, United States Code (or if not applicable, the applicable state law), the then-current rules for arbitration of financial services disputes of AAA and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. The filing of a court action is not intended to constitute a waiver of the right of Borrower or Lender, including the suing party, thereafter to require submittal of the Dispute to arbitration. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute in any court having jurisdiction over such action. For the purposes of this Dispute Resolution Section only, the terms "party" and "parties" shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described in or evidenced by this Agreement, together with the officers, employees, successors and assigns of each of the foregoing.

(b) Special Rules.

(i) The arbitration shall be conducted in any U.S. state where real or tangible personal property collateral is located, or if there is no such collateral, in the City and County where Lender is located pursuant to its address for notice purposes in this Agreement.

(ii) The arbitration shall be administered by AAA, who will appoint an arbitrator. If AAA is unwilling or unable to administer or legally precluded from administering the arbitration, or if AAA is unwilling or unable to

enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, then any party to this Agreement may substitute, without the necessity of the agreement or consent of the other party or parties, another arbitration organization that has similar procedures to AAA but that will observe and enforce any and all provisions of this Dispute Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars ($5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Agreement, referred to collectively as the "arbitrator").

(iii) All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(iv) The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any. The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.

(v) The arbitrator will give effect to statutes of limitation and any waivers thereof in determining the disposition of any Dispute and may dismiss one or more claims in the arbitration on the basis that such claim or claims is or are barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Dispute is the equivalent of the filing of a lawsuit.

(vi) Any dispute concerning this Dispute Resolution Section, including any such dispute as to the validity or enforceability hereof or whether a Dispute is arbitrable, shall be determined by the arbitrator; provided, however, that the arbitrator shall not be permitted to vary the express provisions of these Special Rules or the Reservations of Rights in subsection (c) below.

(vii) The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Agreement.

(viii) The arbitration will take place on an individual basis without reference to, resort to, or consideration of any form of class or class action.

(c) Reservations of Rights. Nothing in this Agreement shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Agreement, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against

any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Agreement in a third-party proceeding in any action brought against Lender in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Subject to the terms of this Agreement, Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Agreement. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any Dispute.

(d) Conflicting Provisions for Dispute Resolution. If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration or dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (i) this Agreement, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration or dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

(e) Jury Trial Waiver in Arbitration. By agreeing to this Section, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Dispute.

6.23 **WAIVER OF JURY TRIAL. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY "DISPUTE" (FOR PURPOSES OF THIS SECTION, AS DEFINED ABOVE) AS SET FORTH IN THIS AGREEMENT, TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. THE PARTIES HERETO ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS**

**AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.**

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.

EXECUTED and DELIVERED as of November 10, 2006.

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's Address for Notices:

c/o Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate Finance and Sales

with a copy to:

c/o Opus West Corporation
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

with a copy to:

Gallagher & Kennedy, P.A.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225
Attn: Mr. Gregory L. Mast
File No. 4827-0051
Telephone: (602) 530-8310
Fax: (602) 530-8500

Lender's Address for Notices:

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

BANK OF AMERICA, N.A., as Lender

By: _____
Name: EDGARDO MARTINEZ
Title: ASST. VICE PRESIDENT

# EXHIBIT "A"

## LEGAL DESCRIPTION OF LAND

Being all that certain tract or parcel containing 43.3323 acres (1,887,556 square feet) of land, situated in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being all of Restricted Reserve "A" and Restricted Reserve "B" of Crossings At Fort Bend Parkway, a subdivision of record at Film Code number 597210 of the Map Records, Harris County, Texas, said 43.3323 acres being more particularly described by metes and bounds as follows:( all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

BEGINNING at a found TxDot Monument in the north right-of-way line of Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A" and of the herein described tract;

THENCE North 63°49'29" West 376.24 feet, along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", 597.45 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 06°00"10", and a chord which bears North 60°49'24" West 597.18 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

THENCE North 57°49'19" West 323.37 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a TxDot Monument found marking the beginning of a curve to the left;

THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", an arc distance of 183.34 feet, along said curve to the left, having a radius of 5,756.58 feet, a central angle of 01°49'29", and a chord which bears North 58°44'04" West 183.33 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found in the south line of a Harris County Flood Control District Fee Strip (100.00 feet wide) recorded under Clerk's File Number H905971, Harris County, Texas, and being the west corner of said Restricted Reserve "A" and of the herein described tract;

THENCE North 87°28'30" East 441.35 feet, departing the north right-of-way line of said Beltway 8, along the south line of said Fee Strip and the most southerly north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Fee Strip, the southwest corner of said Restricted Reserve "B", an interior corner of said Restricted Reserve "A", and an interior corner of the herein described tract;

# EXHIBIT "A"
## (Continued)

THENCE North 02°20'57" West 723.17 feet, along the east line of said Fee Strip and the west line of said Restricted Reserve "B" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southwest corner of Unrestricted Reserve "C" of said Crossings At Fort Bend Parkway, the northwest corner of said Restricted Reserve "B", and the northwest corner of the herein described tract;

THENCE along the common line of said Restricted Reserve "B" and said Unrestricted Reserve "C" the following 5 (five) courses;

North 87°39'03" East 83.00 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

South 32°29'34" East 65.06 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

North 87°39'04" East 111.22 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

North 59°18'30" East 203.55 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

South 30°41'30" East 166.47 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the common north corner of said Restricted Reserves "A" and "B" and angle point of the herein described tract;

THENCE North 77°52'48" East 127.72 feet, continuing along the south line of said Unrestricted Reserve "C", along the north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

THENCE North 32°52'48" East 700.77 feet continuing along the south line of said Unrestricted Reserve "C" and the north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in a curve to the right in the west right-of-way line of said Hillcroft Avenue and marking the common east corner of said Unrestricted Reserve "C" and said Restricted Reserve "A", same being the northeast corner of the herein described tract;

THENCE along the west right-of-way line of said Hillcroft Avenue and the east line of said restricted Reserve "A" the following 7 (seven) courses;

75.74 feet, along the arc of said curve to the left, having a radius of 2,050.00 feet, a central angle of 02°07'01", and a chord which bears South 39°35'24" East 75.74 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 40°38'54" East 228.29 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

452.01 feet, along the arc of said curve to the right, having a radius of 684.34 feet, a central angle of 37°50'40", and a chord which bears South 21°43'36" East 443.84 feet, to utility pole found at the end of said curve;

# EXHIBIT "A"
## (Continued)

South 02°48'16" East 424.69 feet, to a utility pole found marking the beginning of a curve to the right;

446.40 feet, along the arc of said curve to the right, having a radius of 716.74 feet, a central angle of 35°41'06", and a chord which bears South 15°02'17" West 439.22 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 32°52'50" West 569.88 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", found marking the beginning of a curve to the right;

5.58 feet, along the arc of said curve to the right, having a radius of 5,759.56 feet, a central angle of 00°03'20", and a chord which bears South 32°51'10" West 5.58 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found at the end of said curve;

THENCE South 74°22'10" West 74.59 feet, along said cut-back line to the POINT OF BEGINNING and containing 43.3323 acres (1,887,556 square feet) of land. This description is based on a ALTA/ACSM Land Title Survey performed by Terra Surveying Company, Inc., dated April 18, 2006. TSC Project Number 1617-0501-S. Updated October 6, 2006.

Save and Except the following 11.7452 acres

Being all that certain tract or parcel containing 11.7452 acres (511,621 square feet) of land, situated partially in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being out of and a part of Restricted Reserve "A", Block 1 of Crossings at Fort Bend Parkway a subdivision of record at Film Code Number 597210, Harris County Map Records, Harris County, Texas, said 11.7452 acres being more particularly described by metes and bounds as follows: (all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

COMMENCING at a found TxDot Monument in the north right- of way line of the Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A";

THENCE North 63°49'29" West 370.74 feet, along the north right-of-way line of said Beltway 8, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the POINT OF BEGINNING of the herein described tract;

THENCE North 63°49'29" West 5.50 feet, continuing along the north right-of-way line of said Beltway 8, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the beginning of a curve to the right;

THENCE continuing along the north right-of-way line of said Beltway 8, 67.40 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 00°40'38", and a chord which bears North 63°29'10" West 67.40 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the southerly southwest corner herein described tract;

THENCE over and across said Restricted Reserve "A" the following 6 (six) courses;

# EXHIBIT "A"
## (Continued)

North 71°10'30" East 23.20 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most southerly west line of the herein described tract;

North 26°10'30" East 241.42 feet, to an "X" cut in concrete set at the beginning of a non-tangent curve to the right;

519.85 feet, along the arc of said curve to the right, having a radius of 5,494.04 feet, a central angle 05°25'17", and a chord which bears North 60°33'04" West 519.66 feet, to an "X" cut in concrete set at the end of said curve;

North 57°50'25" West 49.83 feet, to an "X" cut in concrete set at the beginning of a curve to the left;

64.05 feet, along the arc of said curve to the left, having a radius of 68.00 feet, a central angle of 53°58'05", and a chord which bears North 84°49'28" West 61.71 feet, to an "X" cut in concrete set at the end of said curve;

North 32°20'47" West 25.31 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the southwest corner of Restricted Reserve "B", Block 1 of said Crossings At Fort Bend Parkway, same being an interior corner of said Restricted Reserve "A" and the beginning of a non-tangent curve to the right;

THENCE along the common line of said Restricted Reserves "A" and "B" the following 4 (four) courses;

92.23 feet, along the arc of said curve to the right, having a radius of 93.00 feet, a central angle of 56°49'17", and a chord which bears South 86°15'04" East 88.50 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 57°50'25" East 24.89 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Unrestricted Reserve "B", an interior corner of said Restricted Reserve "A", and of the herein described tract;

North 32°52'48" East 600.60 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most northerly west line of the herein described tract;

North 12°07'12" West 91.31 feet, to a 5/8-inch iron rod with cap stamped "Terra

Surveying" set at the most northwesterly corner of the herein described tract;

THENCE departing said common line, over and across said Restricted Reserve "A" the following 6 (six) courses;

South 57°07'12" East 464.49 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract;

South 32°52'48" West 75.02 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract;

South 57°07'12" East 338.11 feet, to an "X" cut in concrete set at the beginning of a non-tangent curve to the right and being the most westerly northeast corner of the herein described tract;

# EXHIBIT "A"
## (Continued)

15.78 feet, along the arc of said curve to the right, having a radius of 900.00 feet, a central angle of 01°00'17", and a chord which bears South 13°50'37" West 15.78 feet, to an "X" cut in concrete set at the end of said curve;

South 74°11'23" East 265.76 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most easterly north line of the herein described tract;

North 60°48'37" East 19.97 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the arc of a curve, in the westerly right-of-way line of said Hillcroft Avenue and being the northeast corner of the herein described tract;

THENCE 75.15 feet, along the arc of said curve to the right, having a radius of 716.74 feet, a central angle of 06°00'28", and a chord which bears South 16°20'44" West 75.12 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the most easterly southeast corner of the herein described tract;

THENCE departing the westerly right-of-way line of said Hillcroft Avenue, over and across the said Restricted Reserve "A" the following 8 (eight) courses;

North 29°11'23" West 21.20 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point in the most easterly south line of the herein described tract;

North 74°11'23" West 264.11 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract and the beginning of a non-tangent curve to the right;

245.45 feet, along the arc of said curve to the right, having a radius of 904.55 feet, a central angle of 15°32'50", and a chord which bears South 25°06'24" West 244.70 feet, to an "X" cut in concrete set marking the end of said curve;

South 32°52'49" West 11.62 feet, to an "X" cut in concrete set marking the beginning of a curve to the right;

354.95 feet, along the arc of said curve to the right, having a radius of 272.00 feet, a central angle of 74°46'12", and a chord which bears South 70°15'54" West 330.30 feet, to an "X" cut in concrete set marking the end of said curve and being an interior corner of the herein described tract;

South 26°10'30" West 217.89 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point in the most southeasterly east line of the herein described tract;

South 63°49'30" East 10.50 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an interior corner of the herein described tract;

South 26°10'30" West 43.33 feet, to the POINT OF BEGINNING and containing 11.7452 acres (511,621 square feet) of land. This description is based on an ALTA/ACSM Land Title Survey prepared by Terra Surveying Co., Inc., dated April 18, 2006. TSC Project No. 1617-0501-S. Updated October 6, 2006

# EXHIBIT "A"
## (Continued)

**Save and Except the following 1.174 acres**

**Being all that certain tract or parcel containing 1.174 acres (51,118 square feet) of land, situated in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being a portion of Restricted Reserve "A" of Crossings At Fort Bend Parkway, a subdivision of record at Film Code number 597210 of the Map Records, Harris County, Texas, said 1.174 acres being more particularly described by metes and bounds as follows:( all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):**

**COMMENCING for reference at a found TxDot Monument in the north right-of-way line of Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A";**

**THENCE North 63°49'29" West 376.24 feet, along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;**

**THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", 597.45 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 06°00"10", and a chord which bears North 60°49'24" West 597.18 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;**

**THENCE North 57°49'19" West 118.18 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a mag nail with shiner set marking the southeast corner and POINT OF BEGINNING of the herein described tract;**

**THENCE North 57°49'19" West 205.19 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a TxDot Monument found marking the beginning of a curve to the left;**

**THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", an arc distance of 183.34 feet, along said curve to the left, having a radius of 5,756.58 feet, a central angle of 01°49'29", and a chord which bears North 58°44'04" West 183.33 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found in the south line of a Harris County Flood Control District Fee Strip (100.00 feet wide) recorded under Clerk's File Number H905971, Harris County, Texas, and being the west corner of said Restricted Reserve "A" and of the herein described tract;**

**THENCE North 87°28'30" East 441.35 feet, departing the north right-of-way line of said Beltway 8, along the south line of said Fee Strip and the most southerly north line of said**

**Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Fee Strip, the most westerly southwest corner of Restricted Reserve "B" of said Crossings At Fort Bend Parkway, an interior corner of said Restricted Reserve "A", and the northeast corner of the herein described tract;**

# EXHIBIT "A"
## (Continued)

THENCE South 32°20'47" East at a distance of 17.44 feet, pass an 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southwest corner of said Restricted Reserve "B", and an interior corner of said Restricted Reserve "A", continuing in all a total distance of 42.75 feet, to an "X" cut in concrete set marking the beginning of a non-tangent curve to the left;

THENCE over and across said Restricted Reserve "A", an arc distance of 42.76 feet, along said curve to the left, having a radius of 68.00 feet, a central angle of 36°01'47", and a chord which bears South 50°10'28" West 42.06 feet, to an "X" cut in concrete set at the end of said curve;

THENCE South 32°09'35" West 189.96 feet, continuing over and across said Restricted Reserve "A" to the POINT OF BEGINNING and containing 1.174 acres (51,118 square feet) of land. This description is based on a Standard Land Survey performed by Terra Surveying Company, Inc., dated April 18, 2006. TSC Project Number 1617-0501-S, latest revision dated August 28, 2006. Updated October 6, 2006.

Save and Except the following 0.6887 acre

Being all of that certain tract or parcel containing 0.6887 acre (30,000 square feet) of land situated in the C.W. Adams Survey, Abstract Number 101 and being out of and a part of Restricted Reserve "A", Block 1 of Crossings At Fort Bend Parkway, a subdivision of record at Film Code Number 597210 of the Map Records, Harris County, Texas, said 0.6887 acres being more particularly described by metes and bounds as follows. (All bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

COMMENCING at a 5/8-inch iron rod set in a curve to the left in the westerly right-of-way line of Hillcroft Avenue (width varies), as recorded under Harris County Clerk's File Numbers C806739 and C878625, marking the most northwest corner of Restricted Reserve "A", Block 1 of said Crossings At Fort Bend Parkway;

THENCE along the westerly right-of-way line of said Hillcroft Avenue a distance of 75.74 feet along the arc of said curve to the left, having a radius of 2,050.00 feet, a central angle of 02°07'01", and a chord which bears South 39°35'24" East 75.74 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

THENCE South 40°38'54" East continuing along said westerly right-of-way line of said Hillcroft Avenue a distance of 228.29 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

THENCE along the arc of said curve to the right a distance of 452.01 feet, having a radius of 684.34 feet, a central angle of 37°50'40", and a chord which bears South 21°43'36" East 443.84 feet, to a utility pole found marking the end of said curve;

# EXHIBIT "A"
## (Continued)

THENCE South 02°48'16" East along said westerly right-of-way line of said Hillcroft Avenue a distance of 27.82 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the POINT OF BEGINNING of the herein described tract;

THENCE South 02°48'16" East continuing along said westerly right-of-way line of said Hillcroft Avenue a distance of 116.28 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the southeast corner of the herein described tract;

THENCE South 87°11'44" West departing said westerly right-of-way line of said Hillcroft Avenue over and across said Restricted Reserve "A", Block 1 of said Crossings At Fort Bend Parkway a distance of 258.00 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the southwest corner of the herein described tract;

THENCE North 02°48'16" West over and across said Restricted Reserve "A", Block 1 a distance of 116.28 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the northwest corner of the herein described tract;

THENCE North 87°11'44" East over and across said Restricted Reserve "A", Block 1 a distance of 258.00 feet, to the POINT OF BEGINNING and containing 0.6887 acres (30,000 square feet) of land. This description is based on an ALTA/ACSM Land Title Survey prepared by Terra Surveying Company Inc., dated May 17, 2006. TSC Project No. 1617-0501-S. Updated October 6, 2006

Parcel 2: TOGETHER WITH all rights and easements appurtenant to the property described above as set forth under that certain Restriction Agreement and Grant of Easements as recorded under County Clerk's File No. Z273241 in the Official Public Records of Real Property of Harris County, Texas.

Parcel 3: TOGETHER WITH all rights and easements appurtenant to the property described above as set forth under that certain Declaration of Easements (Detention Pond) as recorded under County Clerk's File No. Z273236 in the Official Public Records of Real Property of Harris County, Texas.

**EXHIBIT "B"**

DEFINITIONS AND FINANCIAL STATEMENTS

1. DEFINITIONS:

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

"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, such 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.

"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.

"Appraised Value" means THIRTY MILLION SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS ($30,075,000.00) based on a sales approach valuation.

"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 to be attached as Exhibit "D".

"Business Day" means any 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 Lender's Office is located.

"Claims" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including fees, costs and expenses of attorneys, consultants, contractors, experts and laboratories), of any and every kind of character, contingent or otherwise, matured or unmatured, known or unknown, foreseeable or unforeseeable.

"Commitment" means Lender's obligation to advance in an aggregate principal amount not exceeding the Loan, as such amount may be reduced or adjusted from time to time in accordance with this Agreement.

"Completion Date" means July 1, 2008.

"Construction Commencement Date" means February 1, 2007.

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

"Core Retail Portion of the Property" means that portion of the Property that consists of an approximately 107,200 square foot retail center located on approximately 11.49 acres of the Land.

"Debtor Relief Laws" 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 Deed of Trust, Assignment of Rents and Leases, Security Agreement, Fixture Filing and Financing Statement dated of even date with the Agreement, granted by the Borrower to one or more trustees for Lender's benefit, securing repayment of the Indebtedness and Borrower's performance of its other obligations to Lender under the Loan Documents, as amended, modified, supplemented, restated and replaced from time to time.

"Default" has the meaning set forth in Section 4.1 of this Agreement.

"Dispute" means any controversy, claim or dispute between or among the parties to this Agreement, including any such controversy, claim or dispute arising out of or relating to (a) this Agreement, (b) any other Loan Document, (c) any related agreements or instruments, or (d) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort).

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

"Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other private or governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable Environmental Requirement (hereinafter defined), against Borrower or against or with respect to the Property or any condition, use or activity on the Property (including any such action against Lender), and any claim at any time threatened or made by any person against Borrower or against or with respect to the Property or any condition, use or activity on the Property (including any such claim against Lender), relating to damage, contribution, cost recovery, compensation, loss or injury resulting from or in any way arising in connection with any Hazardous Material (hereinafter defined) or any Environmental Requirement.

"Environmental Damages" means any and all Claims made, incurred, suffered, brought, or imposed at any time and from time to time, whether before or after the Release Date (hereinafter defined) and arising in whole or in part from (1) the presence of any Hazardous Material on the Property, or any escape, seepage, leakage, spillage, emission, release, discharge

or disposal of any Hazardous Material on or from the Property, or the migration or release or threatened migration or release of any Hazardous Material to, from or through the Property, on or before the Release Date; or (2) any act, omission, event or circumstance existing or occurring in connection with the handling, treatment, containment, removal, storage, decontamination, clean-up, transport or disposal of any Hazardous Material which is at any time on or before the Release Date present on the Property; or (3) the breach of any representation, warranty, covenant or agreement contained in this Agreement because of any event or condition occurring or existing on or before the Release Date; or (4) any violation on or before the Release Date, of any Environmental Requirement in effect on or before the Release Date, regardless of whether any act, omission, event or circumstance giving rise to the violation constituted a violation at the time of the occurrence or inception of such act, omission, event or circumstance; or (5) any Environmental Claim, or the filing or imposition of any environmental lien against the Property, because of, resulting from, in connection with, or arising out of any of the matters referred to in subparagraphs (1) through (4) preceding; and regardless of whether any of the foregoing subparagraphs (1) through (5) was caused by Borrower or a tenant or subtenant, or a prior owner of the Property or its tenant or subtenant, or any third party, including but not limited to (i) injury or damage to any person, property or natural resource occurring on or off of the Property, including but not limited to the cost of demolition and rebuilding of any improvements on real property; (ii) the investigation or remediation of any such Hazardous Material or violation of Environmental Requirement, including but not limited to the preparation of any feasibility studies or reports and the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, monitoring or similar work required by any Environmental Requirement or necessary to have full use and benefit of the Property as contemplated by the Loan Documents (including any of the same in connection with any foreclosure action or transfer in lieu thereof); (iii) all liability to pay or indemnify any person or governmental authority for costs expended in connection with any of the foregoing; (iv) the investigation and defense of any claim, whether or not such claim is ultimately defeated; and (v) the settlement of any claim or judgment.

"Environmental Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground or air or water or noise pollution or contamination, and underground or above ground tanks) and shall include without limitation, the Solid Waste Disposal Act, 42 U.S.C. § 6901, et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Texas Water Code; Texas Solid Waste Act and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

"Environmental Requirement" means any Environmental Law (hereinafter defined), agreement or restriction (including but not limited to any condition or requirement imposed by

any insurance or surety company), as the same now exists or may be changed or amended or come into effect in the future, which pertains to health, safety, any Hazardous Material, or the environment, including but not limited to ground or air or water or noise pollution or contamination, and underground or aboveground tanks.

"Excusable Delay" means a delay, not to exceed a total of ten (10) days, caused by unusually adverse weather conditions which have not been taken into account in the construction schedule, fire, earthquake or other acts of God, strikes, lockouts, acts of public enemy, riots or insurrections or any other unforeseen circumstances or events beyond the control of Borrower (except financial circumstances or events or matters which may be resolved by the payment of money), and as to which Borrower notifies Lender in writing within 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 Guarantor or any other person to pay any money.

"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 such day shall be such 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 such 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 on such day on such transactions as determined by Lender.

"Financial Statements" means (i) 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 Lender otherwise consents, consolidated and consolidating statements if the reporting party is a holding company or a parent of a subsidiary entity; and (ii) for each reporting party who is an individual, a balance sheet, statements of amount and sources of contingent liabilities, sources and uses of cash and liquidity verification and, unless Lender otherwise consents, Financial Statements for each entity owned or jointly owned by the reporting party. For purposes of this definition and any covenant requiring the delivery of Financial Statements, each party for whom Financial Statements are required is a "reporting party" and a specified period to which the required Financial Statements relate is a "reporting period".

"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 4 of Exhibit F to this Agreement have been satisfied.

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

"Guarantor" means OPUS WEST CORPORATION, a Minnesota corporation, whether one or more, and if more than one, each one individually or all collectively.

"Hazardous Material" means any substance, whether solid, liquid or gaseous: which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, explosive or radioactive material, or motor fuel or other petroleum hydrocarbons; or which causes or poses a threat to cause a contamination or nuisance on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on the Property.

"Home Depot Sales Contract" means that Purchase and Sale Agreement between Borrower and Home Depot with respect to the purchase of property near the Project.

"Improvements" means all on-site and off-site improvements to the Land for an approximately 107,200 square foot retail 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 Lender, 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 6.1.

"Indemnified Parties" means (i) Lender; (ii) the Trustee(s) under the Deed of Trust (the "Trustee"); (iii) any persons or entities owned or controlled by, owning or controlling, or under common control or affiliated with Lender and/or Trustee; (iv) any participants in the Loan; (v) the directors, officers, partners, employees and agents of Lender and/or Trustee, and/or such persons or entities; and (vi) the heirs, personal representatives, successors and assigns of each of the foregoing persons or entities.

"Land" means the real property described in and encumbered by the Deed of Trust which consists of approximately 31.5871 acres at the northwest corner of Beltway 8 and Fort Bend Parkway, in Houston, Texas.

"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 Bank of America, N.A., a national banking association.

"Loan" means the loan by Lender to Borrower, in the maximum amount of $21,900,000.00, but not to exceed in the aggregate an amount equal to the lesser of (i) the payment of 90.0% of the costs incident to the Project as specified in the Budget, (ii) an amount complying with Section 2.16, and (iii) an amount complying with Section 2.18. 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 Deed of Trust, any Note, any guaranty, financing statements, the Budget, each Draw Request, a Side Letter among Lender, Borrower and Guarantor, and such other documents evidencing, securing or pertaining to the Loan as shall, from time to time, be executed and/or delivered by Borrower, Guarantor, or any other party to Lender pursuant to this Agreement, as they may be amended, modified, restated, replaced and supplemented from time to time.

"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 the Borrower or the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the ability of any party to the Loan Documents to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any party to the Loan Documents of any Loan Document to which it is a party.

"Maturity Date" means November 1, 2008, as it may be earlier terminated or extended in accordance with the terms hereof.

"Note" means the Deed of Trust Note executed by Borrower and payable to the order of Lender in the maximum principal amount of the Loan 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 accrues after the commencement by or against any party to a Loan Document or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceedings.

"On" or "on", when used with respect to the Property or any property adjacent to the Property, means "on, in, under, above or about".

"Pads", each a "Pad" means those eleven (11) Pads located on the Land.

"Payment Amount" means an advance of the Loan, an unreimbursed Indemnified Liability, or any other amount that 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 $125,000.00 and the aggregate amount of all such changes and extras (whether positive or negative) does not exceed $500,000.00.

"Plans" means any and all plans and specifications prepared in connection with the development of the Land and/or the construction of the Improvements and all modifications approved in writing by Lender in the exercise of its sole discretion in accordance with the terms of this Agreement, as the same may be amended from time to time with the prior approval of Lender.

"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 Lender as its "prime rate," it being understood and agreed that such rate is set by Lender as a general reference rate of interest, taking into account such factors as Lender 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 Lender may make various business or other loans at rates of interest having no relationship to such rate. If Lender (including any subsequent Lender) 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.

"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 "Mortgaged Property," as described in the Deed of Trust, or subject to a right, lien or security interest to secure the Loan pursuant to any other Loan Document.

"Release Date" means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured by the Deed of Trust have been paid and performed in full and the Deed of Trust has been released; or (ii) the date on which the lien of the Deed of Trust is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective and possession of the Property has been given to and accepted by the purchaser or grantee free of occupancy and claims to occupancy by Borrower and their heirs, devisees, representatives, successors and assigns; provided that, if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is validly released, dismissed with prejudice or otherwise barred by law from further assertion.

"Stored Materials Advance Limit" means $250,000.00.

"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 Lender in its sole discretion.

"Swap Transaction" has the meaning set forth in the Deed of Trust.

"Title Insurance" means the loan policy or policies of title insurance issued to Lender by the Title Insurer, 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 Lender.

"Title Insurer" means Charter Title Company.

"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.

2. FINANCIAL STATEMENTS:

Borrower shall provide or cause to be provided to Lender of the following:

(a) Financial Statements of Guarantor: If required by Lender, for each fiscal year of such reporting party, as soon as reasonably practicable and in any event within one hundred twenty (120) days after the close of each fiscal year unqualified certified financial statements of Guarantor, 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) Property Operating Statements: Commencing the first month after the issue of a certificate of occupancy, 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 Lender's 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 Lender may reasonably request.

All Financial Statements shall be in form and detail satisfactory to Lender and shall contain or be attached to the signed and dated written certification of the reporting party in form specified by Lender to certify that the Financial Statements are furnished to Lender in connection with the extension of credit by Lender and constitute a true and correct statement of the reporting party's financial position. All certifications and signatures on behalf of corporations, partnerships or other entities shall be by a representative of the reporting party satisfactory to Lender. All fiscal year-end Financial Statements of Guarantor shall be company prepared, without any qualification or exception not acceptable to Lender, by independent certified public accountants acceptable to Lender, and shall contain all reports and disclosures required by generally accepted accounting principles for a fair presentation.

**EXHIBIT "C"**

CONDITIONS PRECEDENT TO THE FIRST ADVANCE

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

1. Fees and Expenses. A commitment fee and other fees, and evidence satisfactory to Lender that Borrower has paid all other fees, costs and expenses (including the fees and costs of Lender's counsel) then required to be paid pursuant to this Agreement and all other Loan Documents, including, without limitation, 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 Lender.

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 "stabilized" basis at not less than the Appraised Value. The appraiser and appraisal must be satisfactory to Lender (including satisfaction of applicable regulatory requirements) and the appraiser must be engaged directly by Lender.

4. Draw Schedule and Budget. Borrower's proposed cash flow, draw schedule, and construction schedule for the Project, and Lender 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. Evidence Lender requires of the existence, good standing, authority and capacity of Borrower, each Guarantor, and their respective constituent partners, members, managers and owners (however remote) to execute, deliver and perform their respective obligations to Lender under the Loan Documents, 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 evidence Administration Agent requires of registration or qualification to do business in the state where Borrower's principal place of business is located and the state where the Project is located, and (iii) a partnership affidavit certifying who will be authorized to execute or attest any of the Loan Documents, and a true and complete copy of the partnership resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents.

(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 a true and complete copy of resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; 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 Project 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 a true and complete copy of resolutions approving the Loan Documents and authorizing the transactions contemplated in this Agreement and the other Loan Documents; 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 Lender applicable to the foregoing.

6. Loan Documents. From Borrower, Guarantor and each other person required by Lender duly executed, acknowledged and/or sworn to as required, and delivered to Lender Loan Documents then required by Lender, dated the date of this Agreement, each in form and content satisfactory to Lender, and evidence Lender requires 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 Lender may require.

7. Opinions. If required by the Lender, the written opinion of counsel satisfactory to Lender for the Borrower, each Guarantor, and any other persons or entities addressed to Lender, dated the date of this Agreement.

8. Survey; No Special Flood Hazard. (a) two (2) prints of an original survey 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 the Title Insurer, but in any event not more than one hundred eighty (180) days prior to the date of this Agreement) satisfactory to Lender and the Title Insurer and otherwise, to the extent required by Lender, complying with Exhibit "G", and (b) a flood insurance policy in an amount equal to the lesser of the maximum Loan amount or the maximum amount of flood insurance available under the Flood Disaster Protection Act of 1973, as amended, and otherwise in compliance with the

requirements of the Loan Documents, or evidence satisfactory to Lender that none of the Land is located in a flood hazard area.

9. Title Insurance. An ALTA title insurance policy (or a title insurance policy promulgated by the laws of the state in which the Property is located if an ALTA insurance policy is not available), issued by the Title Insurer (which shall be approved by the Lender) 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 Lender, 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 Lender and subject only to those exceptions and encumbrances (regardless of rank or priority) Lender approves, in a form acceptable to Lender, 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 permitted; 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; providing full coverage against mechanics' and materialmens' liens to the extent authorized under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; 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; insuring all appurtenant easements; insuring that fee simple indefeasible or marketable (as coverage is available) fee simple title to the Land and Improvements is vested in Borrower; containing such affirmative coverage and endorsements as Lender may require and are available under applicable title insurance rules, and Borrower shall satisfy all requirements therefor; insuring any easements, leasehold estates or other matters appurtenant to or benefiting the Land and/or the Improvements as part of the insured estate; 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 containing provisions acceptable to Lender regarding advances and/or readvances of Loan funds after closing. Borrower and Borrower's counsel shall not have any interest, direct or indirect, in the Title Insurer (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 Lender 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 material contractors, architects, engineers, and other suppliers of services and materials 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 Lender, of (i) consents or other agreements satisfactory to Lender and (ii) agreements satisfactory to Lender subordinating all rights, liens, claims and charges they may have or acquire against Borrower or the Property to the rights, liens and security interests of Lender. As used herein, "material" party is one whose contract price exceeds $1,000,000.00 in the aggregate.

12. Insurance Policies. The insurance policies initially required by Lender, pursuant to the Loan Documents, together with evidence satisfactory to Lender 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, (i) true and correct copies of all leases and subleases, and guarantees thereof; (ii) estoppel certificates and subordination and attornment agreements (including nondisturbance agreements if and to the extent agreed by Lender in its discretion), dated within thirty (30) days prior to this Agreement and in form and content satisfactory to Lender, from the tenants and subtenants as Lender requires; (iii) evidence satisfactory to Lender of Borrower's compliance with the leases; and (iv) evidence satisfactory to Lender of the tenants' approval of all matters requiring their approval.

14. Environmental Compliance/Report. Evidence satisfactory to Lender 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 Tribunal, 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 without limitation, a written report of an environmental assessment of the Property, made within one (1) year prior to the date of this Agreement, by an engineering firm, and of a scope and in form and content satisfactory to Lender, complying with Lender's established guidelines, 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 Lender. All reports, drafts of reports, and recommendations, whether written or oral, from such engineering firm shall be made available and communicated to Lender.

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

16. Access, Utilities, and Laws. (a) Evidence satisfactory to Lender 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 Tribunal, 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 Lender of paid impact fees, utility reservation deposits, and connection fees required to assure the availability of such services; (c) evidence satisfactory to Lender 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 Lender 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 Lender 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 Lender may request, including all Laws and governmental requirements regarding access and facilities for handicapped or disabled persons including, without limitation and 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 Lender 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 Lender 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 or materialman's lien against the Property; (ii) no contract, or memorandum thereof, for construction, design, surveying, or any other service relating to the Project has been filed for record in the county where the Property is located; and (iii) no mechanic's or materialman's 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 Lender, 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 Lender; and (ii) if required by Lender, of the appropriate judgment and tax lien records, showing no outstanding judgment or tax lien against Borrower or any Guarantor.

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

19. Tax and Standby Fee Certificates. Evidence satisfactory to Lender (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. Evidence at Closing. The conditions specified in Section 2.22 shall have been satisfied.

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

22. Equity. Evidence satisfactory to Lender that the Up-front Equity (as defined in Section 2.22(a)) has been fully paid and funded.

23. Budget. A Budget satisfactory to Lender shall have been completed and attached as Exhibit D hereto.

# EXHIBIT "D"

## BUDGET

[redacted]

**BUDGET**

| | LINE ITEMS | | | % of Total Costs | $ Per Sq. Ft. of Bldg Area | $ Per Unit | Total Costs |
|---|---|---|---|---|---|---|---|
| [redacted] | | | | | | | |
| 1 | Land Acquisition (Cost) | $ 4.13 psf of Land Area | | 23.00% | 4.13 | | 5,680,967.00 |
| [redacted] | | | | | | | |
| 2 | Site Work / Costs | | | 19.00% | 3.32 | | 4,573,486.00 |
| 3 | Office Costs | | | 1.00% | 0.15 | | 200,000.00 |
| 4 | Construction Contract | | | 19.00% | 3.45 | | 4,745,703.00 |
| 5 | Borrower's General Conditions | | | 4.00% | 0.78 | | 1,068,771.00 |
| 6 | General Contractor's Fee | | | 3.00% | 0.59 | | 807,699.00 |
| 7 | Tenant Improvement Costs | | | 7.00% | 1.32 | | 1,816,587.00 |
| 8 | Option Costs | | | 2.00% | 0.35 | | 480,000.00 |
| 9 | | | | | - | | |
| 10 | | | | | - | | |
| 11 | Hard Costs Contingency | | 6.9% | 4.00% | 0.69 | | 948,941.00 |
| 12 | *SUB-TOTAL HARD COSTS* | | | *60.00%* | *10.64* | - | *14,641,187.00* |
| [redacted] | | | | | | | |
| 13 | Design Fees | | | 3.00% | 0.55 | | 750,656.00 |
| 14 | Leasing Commissions | | | 2.00% | 0.40 | | 549,029.00 |
| 15 | Legal | | | 1.00% | 0.15 | | 200,000.00 |
| 16 | Development Fee | | | 3.00% | 0.46 | | 634,329.00 |
| 17 | Sales Commissions | | | 2.00% | 0.44 | | 600,000.00 |
| 18 | Real Estate Taxes | | | 0.00% | 0.05 | | 64,436.00 |
| 19 | Land Interest Reserve | | | 1.00% | 0.25 | | 343,660.00 |
| 20 | Appraisal | | | 0.00% | 0.01 | | 20,000.00 |
| 21 | Survey | | | 0.00% | 0.01 | | 20,000.00 |
| 22 | Lender's Loan Fee | | | 1.00% | 0.17 | | 231,277.00 |
| 23 | | | | | - | | |
| 24 | | | | | - | | |
| 25 | | | | | - | | |
| 26 | | | | | - | | |
| 27 | | | | | - | | |
| 28 | | | | | - | | |
| 29 | | | | | - | | |
| 30 | | | | | - | | |
| 31 | | | | | - | | |
| 32 | | | | | - | | |
| 33 | Fees | | | | - | | |
| 34 | Developer's Fee | | | | - | | |
| 35 | Interest Reserve | | | 2.00% | 0.27 | | 373,402.00 |
| 36 | Operating Deficit | | | | - | | |
| 37 | Soft Cost Contingency | | 6.6% | 1.00% | 0.18 | | 250,000.00 |
| 38 | *SUB-TOTAL SOFT COSTS* | | | *17.00%* | *2.93* | | *4,036,789.00* |
| [redacted] | | | | | | | |
| | Up-Front Equity | (Source: Cash) | | 5.05% | 0.89 | | 1,229,471.50 |
| | Deferred Equity | (Source: Deferred Fees) | | 5.05% | 0.89 | | 1,229,471.50 |
| | | Due Date: | n/a | | | | |
| [redacted] | | | | | | | |

**EXHIBIT "E"**

PLANS

[Lender to receive post-closing.]

**EXHIBIT "F"**

ADVANCES

1. Draw Request. A "Draw Request" means a properly completed and executed written application by Borrower to Lender in the form of Exhibit "F-1" (or in another form satisfactory to Lender) setting forth the amount of Upfront Equity and/or Loan proceeds desired, together with the related AIA Document G-702 and G-703 and such schedules, affidavits, releases, waivers, statements, invoices, bills, and other documents, certificates and information satisfactory to Lender. At least five (5) Business Days before the requested date of each advance made under the Budget from Upfront Equity or the Loan, Borrower shall deliver a Draw Request to Lender. Borrower shall be entitled to an advance only in an amount approved by Lender in accordance with the terms of this Agreement and the Loan Documents. Lender shall not be required to make advances more frequently than once each calendar month. Lender shall, only upon the satisfaction, as determined by Lender in its sole discretion, of all applicable conditions of this Agreement and the Loan Documents, 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 that all representations and warranties in the Loan Documents remain true and correct as of the date of the Draw Request and the advance, respectively.

2. Advances. Borrower shall disburse all advances made to Borrower, for payments 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 Lender, and receipt and approval of a written report from Construction Consultant satisfactory to Lender, Lender will determine the amount of the advance Lender shall make in accordance with this Agreement, the Loan Documents, the Budget, and if and to the extent required by the Lender, to Lender's satisfaction, the following standards:

(a) 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 Lender of the work or material in place on the Improvements that comply 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.

(b) 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 Lender for the work or material in place that complies with the terms of the Loan Documents, provided that if required by Lender (i) an application for payment may be submitted only after all applicable tenant improvements have been completed, (ii) the amount of the requested advance does not exceed the amount per square foot allowance provided in the Budget, (iii) all provisions of the Loan Documents, including, without limitation, Sections 3, 4, and 5 of this Exhibit F, have been satisfied, (iv) the term of the applicable lease has commenced, (v) Lender has received a tenant

estoppel certificate, and a subordination and attornment agreement in form and content satisfactory to Lender from the applicable tenant, (vi) Lender has received two (2) sets of as-built plans for the applicable tenant improvements, and (vii) Lender 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.

(c) 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 the First Advance. As conditions precedent to the First Advance, if and to the extent required by Lender, to Lender's satisfaction, Borrower must have satisfied the conditions required under this Agreement, including all of those conditions set forth in Exhibit "C" and Section 4 below.

4. 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 Lender, (a) the Advance Termination Date shall not have passed and (b) Lender shall have received and approved the following:

(i) Evidence satisfactory to Lender of the continued satisfaction of all conditions to the first advance.

(ii) A Draw Request.

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

(iv) Evidence satisfactory to Lender that the representations and warranties made in the Loan Documents must be true and correct on and as of the date of each advance and no event shall have occurred or condition or circumstance shall exist which, if known to Borrower, would render any such representation or warranty incorrect or misleading.

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

(vi) Evidence satisfactory to Lender that no mechanic's or materialmen's lien or other encumbrance has been filed and remain in effect against the Property, no stop notices shall have been served on Lender that have not been bonded by Borrower in a manner and amount satisfactory to Lender, and releases or waivers of mechanics' 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.

(vii) If required by Lender evidence satisfactory to Lender that the Title Insurance has been endorsed and brought to date in a manner satisfactory to Lender to increase the coverage by the amount of each advance through the date of each such advance with no additional title change or exception not approved by Lender.

(viii) Certification by Construction Consultant, and if required by Lender 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 compromising 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.

(ix) If required by Lender (1) a foundation survey made immediately after, but in no event later than ten (10) days after, the laying of the foundation of each building or structure of the Improvements satisfactory to Lender and to the extent required by Lender complying with Exhibit "G", (2) 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 (3) a bearing capacity test report with respect to the excavated footings and foundations, reviewed and approved by the Construction Consultant and Borrower's architect.

(x) If required by Lender, within ten (10) 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.

(xi) If required by Lender, within ten (10) days after the compaction of any soil for construction, a report satisfactory to Construction Consultant of the results of soil tests.

(xii) Evidence satisfactory to Lender that as of the date of making such advance, no event shall have occurred, nor shall any condition exist, that could have a Material Adverse Effect on the enforceability of the Loan Documents, or a Material Adverse Effect to the financial condition of Borrower or any Guarantor, impair the ability of Borrower or any Guarantor to fulfill its

material obligations under the Loan Documents, or otherwise have a Material Adverse Effect whatsoever on the Property.

(xiii) [Intentionally left blank].

(xiv) Evidence satisfactory to Lender that the Improvements shall not have been damaged and not repaired and shall not be the subject of any pending or threatened condemnation or adverse zoning proceeding.

(xv) Evidence satisfactory to Lender that Borrower has paid all amounts then required to be paid by Borrower under the Budget.

(xvi) The Borrower's Deposit if required by Section 1.5 of this Agreement.

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

(xviii) Copies of notarized partial lien waiver forms executed by each contractor and each appropriate subcontractor, supplier and materialman, including, without limitation, 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.

(xix) Until leases satisfactory to Lender in its reasonable discretion shall have been executed by Borrower with Ross and Office Depot, the aggregate amount of all advances shall not exceed $5,000,000.

(xx) Such other information, documents and supplemental legal opinions as may be required by Lender.

5. Final Advance for Improvements. If and to the extent required by the Lender, to Lender's satisfaction, the final advance for the Improvements (including retainage) shall not be made until thirty (30) days after the later of the date on which the Improvements have been "completed," as defined by applicable state Law, or if required by Lender, the date on which an affidavit of completion has been recorded, and in the case of each such Draw Request, if and to the extent required by Lender, Lender 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 Lender, from the Construction Consultant, certifying that the Improvements (including any off-site improvements) have been completed in accordance with, and as completed comply with, the Plans and all Laws and governmental requirements; and Lender 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 Lender) from Borrower's architect, engineer, and each contractor certifying that each of them and 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 Lender) 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 mechanics' or materialmen's liens or pending disbursements, with no additional title change or exception objectionable to Lender, and with such other endorsements required by Lender.

(d) Evidence satisfactory to Lender 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 Lender 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 Lender and to the extent required by Lender complying with Exhibit "G".

(f) If applicable, an estoppel certificate and a subordination agreement, in the form approved by Lender, from each tenant, and written confirmation by each tenant having the right to do so that such tenant has approved the completed Improvements.

6. Direct Advances. Borrower hereby irrevocably authorizes Lender (but Lender shall have no obligation) to (i) advance Loan funds directly to Lender to pay interest due on the Loan, and (ii) advance and directly apply the proceeds of any advance to the satisfaction of any of Borrower's obligations under any of the Loan Documents, 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, Lender 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. Lender may hold, use, disburse and apply the Loan and the Borrower's Deposit for payment of any obligation of Borrower under the Loan

Documents. Borrower hereby assigns and pledges the proceeds of the Loan and any Borrower's Deposit to Lender for such purposes. Lender may advance and incur such expenses as Lender deems necessary for the completion of the Improvements and to preserve the Property, the Permanent Loan Commitment, 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 Lender on demand. Lender 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.

7. [Intentionally left blank.]

8. Conditions and Waivers. All conditions precedent to the obligation of Lender to make any advance are imposed hereby solely for the benefit of Lender, and no other party may require satisfaction of any such condition precedent or be entitled to assume that Lender will refuse to make any advance in the absence of strict compliance with such conditions precedent. Lender shall have the right to approve and verify the periodic progress of, costs incurred by Borrower for, and the estimated costs remaining to be incurred for the construction of the Improvements, after consultation with the Construction Consultant. No advance shall constitute an approval or acceptance by Lender of any construction work, or a waiver of any condition precedent to any further advance, or preclude Lender from thereafter declaring the failure of Borrower to satisfy such condition precedent to be a Default. No waiver by Lender of any condition precedent or obligation shall preclude Lender 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.

9. Funding. Borrower shall establish and maintain a special account with Lender into which advances funded directly to Borrower (but no other funds), and excluding direct disbursements made to or by Lender pursuant to this Agreement, 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 Lender 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 Lender'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 the Title Insurer (or its agent) for disbursement. Lender shall not be required to, and has no 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. ("Lender")

LOAN NO. _____

PROJECT Fort Bend Crossing

LOCATION Houston, Texas

BORROWER OPUS WEST LP, a Delaware limited partnership

FOR PERIOD ENDING _____

In accordance with the Construction Loan Agreement in the amount of $21,900,000.00 dated November ___, 2006, among Borrower and Lender as defined therein, Borrower requests that $_____ be advanced from Loan proceeds [, $_____ be advanced from Borrower's Deposit, $_____ be advanced from Up-Front 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 Lender, Borrower and the Title Insurer, 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 Lender, Borrower and Title Insurer that this map or plat and the survey on which it is based were made in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA, ACSM and NSPS in 1999, and pursuant to the Accuracy Standards as adopted by ALTA, NSPS and ACSM and in effect on the date of this certification. The undersigned hereby certifies that the Positional Uncertainties resulting from the survey measurements made on the survey do not exceed the allowable Positional Tolerance. The undersigned further certifies that optional items numbers 1, 2, 4 (in square feet or acres), 6, 8, 10, 11(b), 14, 15, 16, and if buildings are located on the land, numbers 7(a), 7(b)(1), 7(b)(2) and 9 from Table A, Optional Survey Responsibilities and Specifications, of the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys are included in this survey. 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. 1017000837 issued by the Title Insurer 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 #48201C-1005K dated April 20, 2000, which such map panel covers the area in which the Property 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"**

RELEASE PROVISIONS

Provided that no Event of Default beyond all applicable cure periods provided in this Agreement exists, Borrower shall be entitled to the release of the lien of the Deed of Trust and of any other instrument securing the Note from a pad (each a "Pad") that is a portion of the Property upon the terms and conditions contained herein, including the payment of the applicable Release Price (as hereinafter defined) for each Pad, and subject to the following terms and conditions:

(a) All state, county, municipal or other commercially reasonable requirements regarding the sale of that Pad shall have been satisfied and evidence thereof provided to Lender.

(b) Each partial release shall be in connection with the sale of the Pad to a bona fide purchaser for value.

(c) Lender shall have received such endorsements to its policy of title insurance insuring the lien of the Deed of Trust as Lender may require in order to confirm the priority of Lender's first lien on the Property remaining subject to the Deed of Trust.

(d) Borrower shall have subjected the Pad to an agreement providing for the development of that Pad and the remainder of the Improvements under a common plan and for reciprocal ingress/egress, parking and other easements. That agreement and all other related documents and instruments shall be reasonably satisfactory to Lender in both form and substance.

(e) Lender shall have received a written request for the partial release together with such documents and information as Lender may reasonably request to verify that the conditions for such release have been satisfied. After receipt of such notice and the satisfaction of all conditions precedent for the partial release, Lender shall deliver to Trustee a standard form "Request for Partial Release and Reconveyance," for the property to be released, executed by Lender and, if requested by Borrower, a Deed of Partial Release and Reconveyance covering the property to be released, to be executed by Lender.

(f) All reasonable costs and expenses of Lender relating to all releases shall be paid by Borrower, including but not limited to reconveyance fees, title fees, recording fees and legal expenses.

(g) No partial release shall impair or adversely affect Lender's security in the Property remaining subject to the Deed of Trust or any term or provision of the Deed of Trust as it pertains to the Property remaining subject to the Deed of Trust.

(h) Each Release Price received in connection with the Loan shall be applied as a prepayment of the outstanding principal balance under the Note in the manner provided therein for prepayments of principal. Regular payments of interest or principal due under the Note shall not apply toward any Release Price. "Release Price" means as to a Pad an amount equal to the greater of (i) ninety-two percent (92.0%) of the gross sale proceeds for the Pad, or (ii) ninety-two percent (92.0%) of the appraised retail value of such Pad.

**EXHIBIT "I"**

LEASING AND TENANT MATTERS

Borrower and Lender agree as follows:

1. Approved Leases. Borrower shall not enter into any tenant lease of space in the Improvements unless satisfactory to or deemed satisfactory to Lender prior to execution. Borrower's standard form of tenant lease, and any revisions thereto, must have the prior written approval of Lender. Any tenant lease shall be "deemed" satisfactory to Lender that (a) is on the standard form lease approved by Lender, with no material deviations except as satisfactory to Lender; (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 Lender (together with each guarantee 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 arms-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; and (g) is expressly subordinate to the Deed of Trust. Borrower shall provide to Lender a correct and complete copy of each tenant lease, including any exhibits, and each guarantee thereof (if any), prior to execution unless the lease in question is satisfactory to Lender under the foregoing requirements. Borrower shall, throughout the term of this Agreement, pay all reasonable costs incurred by Lender in connection with Lender's review and approval of tenant leases and each guarantee thereof (if any), including reasonable attorneys' fees and costs.

2. Effect of Lease Approval. No approval of any lease by Lender shall be for any purpose other than to protect Lender's security, and to preserve Lender's rights under the Loan Documents. No approval by Lender shall result in a waiver of any default of Borrower. In no event shall any approval by Lender 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 Lender that Borrower has delivered to Lender a true and correct copy of all tenant leases and each guarantee 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 guarantee 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 tenants other than residential 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) 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, operating, and marketing of the Land and Improvements, including all amounts then required to be paid under the Loan Documents, before using or applying such income for any other purpose.

6. Compliance and Default. As additional conditions to Lender's 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 Lender 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.

# ATTACHMENT 2

**DEED OF TRUST NOTE**
(Amended and Restated)
(Fort Bend Crossing, Houston, Texas)

$21,900,000.00 November 10, 2006

FOR VALUE RECEIVED, OPUS WEST LP, a Delaware limited partnership ("Borrower," whether one or more), hereby promises to pay to the order of BANK OF AMERICA, N.A., a national banking association (together with any and all of its successors and assigns and/or any other holder of this Note, "Lender"), without offset, in immediately available funds in lawful money of the United States of America, at 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, the principal sum of TWENTY-ONE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS ($21,900,000.00) (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. Payment Schedule and Maturity Date.

(a) The entire principal balance of this Note then unpaid shall be due and payable in full on November 1, 2008 (the "Maturity Date"), the final maturity of this Note. Accrued unpaid interest shall be due and payable on December 1, 2006, and on the same day of each succeeding month thereafter until all principal and accrued interest owing on this Note shall have been fully paid and satisfied.

(b) Lender shall grant a request by Borrower to extend the Maturity Date of this Note to November 1, 2009 (the "Extended Maturity Date"), upon and subject to the following terms and conditions:

(i) Basic Conditions. Unless otherwise agreed by Lender:

a. Borrower shall request the extension, if at all, by written notice to Lender not less than 45 days prior to the Maturity Date.

b. At the time of the request, construction of the Improvements shall have been completed in accordance with the requirements of the Loan Documents, a Certificate of Occupancy or its equivalent shall have been received by Borrower with respect to the Improvements, and all conditions to the final disbursement shall have been satisfied, including without limitation, the absence of any liens (other than the lien of the Deed of Trust, liens in the ordinary course of business or liens approved by Lender) on the Project.

c. 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.

d. If required by Lender, 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 (as defined below), shall have been submitted promptly to Lender, and there shall not have occurred, in the opinion of Lender, 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 Lender in connection with the Loan Documents, from that which existed on the date of this Note.

e. Whether or not the extension becomes effective, Borrower shall pay all reasonable out-of-pocket costs and expenses incurred by Lender 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 Lender's written agreement to the extension shall be due and payable prior to Lender's execution of that agreement (or if the proposed extension does not become effective, then upon demand by Lender), and any future failure to pay such amounts within five (5) days after written notice from Lender shall constitute a default under the Loan Documents.

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

g. Not later than the Maturity Date, (A) the extension shall have been consented to and documented to Lender's satisfaction by Borrower and all other parties deemed necessary by Lender (such as any permitted subordinate lienholders, tenants of the Property and permanent lenders (if any)); (B) Lender 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 Lender; and (C) Borrower shall have paid to Lender a non-refundable extension fee in an amount equal to one quarter percent (0.25%) of the then outstanding principal balance hereunder.

h. At the time of such extension, Borrower shall satisfy a Debt Service Coverage Ratio of at least 1.20 to 1.00, where for the purposes of this subsection (i), "Debt Service Coverage Ratio" means, for any period, the ratio of Stabilized Net Operating Income from the Core Retail Portion of the Property (as defined in the Loan Agreement), 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, assuming that interest accrues at the rate of the greater of (a) the ten (10) year Treasury Rate plus two percent (2.00%) or (b) seven percent (7.00%), and that interest and principal payments are based on a twenty-five (25) year amortization schedule.

i. At the time of such extension, the Property shall have a Loan to Value Ratio (as hereinafter defined) of not greater than eighty percent (80%), which Loan to Value Ratio shall be calculated as follows: Lender's maximum commitment under the Loan divided by the appraised stabilized value of the Property. The appraised stabilized value of the Property shall be based upon an appraisal, prepared by an appraiser acceptable to Lender at Borrower's expense, and satisfactory to Lender in all aspects, as reviewed, adjusted and approved by Lender. 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 this Note in an amount sufficient to bring this Loan to Value Ratio into compliance and/or (B) provide additional collateral acceptable to Lender, which shall have value (as determined by Lender) which when added to the Property value is sufficient to satisfy this Loan to Value Ratio.

j. At the time of such extension, at least eighty-five percent (85.0%) of the Core Retail Portion of the Property is subject to fully executed leases with tenants acceptable to Lender (the "Approved Tenants") and the Approved Tenants shall have commenced occupancy of the Property and the payment of rent to Borrower.

k. At least five of the Pads have been sold to parties unrelated to Borrower.

If all of the foregoing conditions are not satisfied strictly in accordance with their terms, the extension shall not be or become effective.

2. Security; Loan Documents. The security for this Note includes one or more Deeds of Trust, Assignment of Rents and Leases, Security Agreement, Fixture Filing, and Financing Statement (which, as they may have been or may be amended, restated, modified or supplemented from time to time, are herein collectively called the "Deed of Trust") of even date with this Note from Borrower to Lender covering and encumbering certain real and personal property more particularly described therein (the "Property"). This Note, the Deed of Trust, the Construction Loan Agreement between Borrower and Lender of even date herewith (as the same may from time to time be amended, restated, modified or supplemented, 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"), are, as the same have been or may be amended, restated, modified or supplemented from time to time, herein sometimes called individually a "Loan Document" and together the "Loan Documents."

3. Interest Rate.

3.1 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 3.3 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.

3.2 Interest Rate Elections.

(a) Subject to the conditions and limitations in this Note, Borrower may by written notice to Lender in the form specified by Lender (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 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 of this Note 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 Lender not later than 10:00 a.m. 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) 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 Lender in writing in form specified by Lender.

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

(a) An Event of Default has occurred and has not been waived by Lender 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 principal face amount of this Note; 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 less than $1,000,000.00; 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 3.5 hereof shall apply with respect to the requested LIBOR Rate Election or the requested LIBOR Rate Principal.

3.4 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). Lender shall determine each interest rate applicable to the Principal Debt in accordance with this Note and its determination thereof shall be conclusive in the absence of manifest error. The books and records of Lender shall be conclusive evidence, in the absence of

manifest error, of all sums owing to Lender from time to time under this Note, but the failure to record any such information shall not limit or affect the obligations of Borrower under the Loan Documents.

3.5 Unavailability of Rate. If, with respect to any LIBOR Rate Election, or any LIBOR Rate Principal outstanding hereunder, Lender determines that no adequate basis exists for determining the LIBOR Rate or that the LIBOR Rate will not adequately and fairly reflect the cost to Lender of funding or maintaining the applicable LIBOR Rate Principal for such Interest Period, or that any applicable Law, or any request or directive (whether or not having the force of law) of any governmental authority, or compliance therewith by 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, and Lender so notifies Borrower, then until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, (a) the obligation of Lender to permit such LIBOR Rate Election shall be suspended and (b) all existing affected LIBOR Rate Principal shall automatically become Base Rate Principal, either (i) on the last day of the corresponding Interest Period (if Lender determines that it may lawfully continue to fund and maintain the affected LIBOR Rate Principal to such day); or (ii) immediately (if 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 Lender the Consequential Loss, if any, pursuant to Section 4 hereof.

3.6 Increased Cost and Reduced Return. If at any time after the date hereof, Lender (which shall include, for purposes of this Section, any corporation controlling Lender) reasonably determines that the adoption or modification of any applicable Law regarding taxation, 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 governmental authority or compliance of Lender with any of such requirements, has or would have the effect of (a) increasing Lender's costs relating to the Indebtedness, or (b) reducing the yield or rate of return of Lender on the Indebtedness, to a level below that which Lender could have achieved but for the adoption or modification of any such requirements, Borrower shall, within fifteen (15) days of any request by Lender, pay to Lender such additional amounts as (in Lender's sole judgment, after good faith and reasonable computation) will compensate Lender for such increase in costs or reduction in yield or rate of return of Lender. No failure by Lender to immediately demand payment of any additional amounts payable hereunder shall constitute a waiver of Lender's right to demand payment of such amounts at any subsequent time. Nothing herein contained shall be construed or so operate as to require Borrower to pay any interest, fees, costs or charges greater than is permitted by applicable Law.

3.7 Past Due Rate. Any principal of, and to the extent permitted by applicable law, any interest on this Note, and any other sum payable hereunder, which is not paid within fifteen (15) days after it becomes due shall bear interest, from the date due and payable until paid, payable on demand, at a rate per annum (the "Past Due Rate") equal to the higher of (a) the Base Rate, or (b) the LIBOR Rate plus three percent (3%).

3.8 Additional Defined Terms. In addition to other terms defined herein, as used herein the following terms shall have the meanings indicated, unless the context otherwise requires:

"Adjusted LIBOR Rate" means the quotient obtained (rounded upward, if necessary, to the next higher 1/100 of 1%) by dividing (i) the applicable London Interbank Offered Rate by (ii) 1.00 minus the LIBOR Reserve Percentage.

"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.

"Business Day" means a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays), except that in the case of LIBOR Rate Principal such day must also be a day on which commercial banks are open for international business (including dealings in U.S. dollar deposits in London, England).

"Indebtedness" means any and all of the indebtedness to Lender evidenced, governed or secured by or arising under this Note or any other Loan Document.

"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:

(1) Each Interest Period must commence on a Business Day;

(2) 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;

(3) The last day for each Interest Period and the actual number of days during the Interest Period shall be determined by Lender using the practices of the London interbank market; and

(4) 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.

"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 governmental authority.

"LIBOR Margin" means one and seven-eighths percent (1.875%) 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 Note.

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

"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 comparable in size and type to 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 Lender has any Eurocurrency liabilities or such requirement otherwise in fact applies to Lender. The LIBOR Rate shall be adjusted automatically as of the effective date of each change in the LIBOR Reserve Percentage.

"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 Lender 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 Lender.

"Note" means this promissory note, and any renewals, extensions, amendments or supplements hereof.

"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 Lender as its "prime rate," it being understood and agreed that such rate is set by Lender as a general reference rate of interest, taking into account such factors as Lender 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 Lender may make various business or other loans at rates of interest having no relationship to such rate. If Lender (including any subsequent holder of this Note) 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 Note at the time in question.

"Rights" means rights, remedies, powers and privileges.

"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 governmental authority.

4. 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) no prepayment may be made which in Lender's judgment would contravene or prejudice funding under any applicable permanent loan commitment or tri-party agreement or the like; (ii) Lender shall have actually received from Borrower prior written notice of Borrower's intent to prepay, the amount of principal which will be prepaid (the "Prepaid Principal"), and the date on which the prepayment will be made; (iii) each prepayment shall be in the amount of $1,000 or a larger integral multiple of $1,000 (unless the prepayment retires the outstanding balance of this Note in full); and (iv) 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 Lender under the Loan Documents on or before the date of prepayment but have not been paid; and (v) 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 Lender 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 to Lender any Consequential Loss as a result thereof, in accordance with Section 4.1(b) below. If this Note is prepaid in full, any commitment of Lender for further advances shall automatically terminate.

(b) Consequential Loss. Within fifteen (15) days after request by Lender (or at the time of any prepayment), Borrower shall pay to Lender such amount or amounts as will compensate 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 Lender [on a present value basis] in its judgment reasonably exercised (together, "Consequential Loss") incurred by 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 Note or in any notice from Borrower to Lender; (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 Lender pursuant to this Note 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 Lender the right to accelerate the maturity of this Note as provided in the Deed of Trust. The foregoing notwithstanding, the amounts 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, Lender shall deliver to Borrower a notice as to the amount of the Consequential Loss, which notice shall be conclusive in the absence of manifest error. Lender shall have no 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 shall survive any termination of the Loan Documents and payment of this Note and shall not be waived by any delay by Lender in seeking such compensation.

5. Late Charges. If Borrower shall fail to make any payment under the terms of this Note within fifteen (15) days after the date such payment is due, Borrower shall pay to Lender 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 Lender incident to handling such delinquent payment. This charge shall be in addition to, and not in lieu of, any other remedy Lender may have and is in addition to any fees and charges of any agents or attorneys which Lender may employ upon the occurrence of a Default (hereinafter defined) hereunder, whether authorized herein or by law.

6. Certain Provisions Regarding Payments. All payments made as scheduled under this Note shall be applied, to the extent thereof, to late charges, to accrued but unpaid interest, to unpaid principal, and to any other sums due and unpaid to Lender under the Loan Documents, in such manner and order as Lender may elect in its sole discretion, any instructions from Borrower or anyone else to the contrary notwithstanding. Remittances shall be made without offset, demand, counterclaim, deduction, or recoupment (each of which is hereby waived) and shall be accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of any payment in an amount less than the amount then due on any indebtedness shall be deemed an acceptance on account only, notwithstanding any notation on or accompanying such partial payment to the contrary, and shall not in any way (a) waive or excuse the existence of an Event of Default (as hereinafter defined), (b) waive, impair or extinguish any right or remedy available to Lender hereunder or under the other Loan Documents, or (c) waive the requirement of punctual payment and performance or constitute a novation in any respect. Payments received after 2:00 p.m. shall be deemed to be received on, and shall be posted as of, the following Business Day. Whenever any payment under this Note or any other Loan Document falls due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day.

7. Events of Default. The occurrence of any one or more of the following shall constitute an "Event of Default" under this Note:

(a) Borrower fails to pay when and as due and payable any amounts payable by Borrower to Lender under the terms of this Note and such failure is not cured within five (5) days after receipt of written notice from Lender, provided, however, no notice shall be required at maturity.

(b) Any covenant, agreement or condition in this Note is not fully and timely performed, observed or kept and such failure continues for fifteen (15) days after receipt of written notice from Lender.

(c) An Event of Default (as therein defined) occurs under any of the Loan Documents other than this Note (subject to any applicable grace or cure period).

8. Remedies. Upon the occurrence of an Event of Default, Lender may at any time thereafter exercise any one or more of the following rights, powers and remedies:

(a) Lender may accelerate the Maturity Date and declare the unpaid principal balance and accrued but unpaid interest on this Note, and all other amounts payable hereunder and under the other Loan Documents, at once due and payable, and upon such declaration the same shall at once be due and payable.

(b) Lender may set off the amount due against any and all accounts, credits, money, securities or other property now or hereafter on deposit with, held by or in the possession of Lender to the credit or for the account of Borrower, without notice to or the consent of Borrower.

(c) Lender may exercise any of its other rights, powers and remedies under the Loan Documents or at law or in equity.

9. Remedies Cumulative. All of the rights and remedies of Lender under this Note and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Event of Default.

10. Costs and Expenses of Enforcement. Borrower agrees to pay to Lender on demand all costs and expenses incurred by Lender in seeking to collect this Note or to enforce any of Lender's rights and remedies under the Loan Documents, including court costs and reasonable attorneys' fees and expenses, whether or not suit is filed hereon, or whether in connection with bankruptcy, insolvency or appeal.

11. Service of Process. Borrower hereby consents to process being served in any suit, action, or proceeding instituted in connection with this Note 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 Gallagher & Kennedy, P.A., 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 this Note shall affect the right of Lender to serve process in any manner otherwise permitted by law and nothing in this Note will limit the right of Lender otherwise to bring proceedings against Borrower in the courts of any jurisdiction or jurisdictions, subject to any provision or agreement for arbitration or dispute resolution set forth in the Loan Agreement.

12. Heirs, Successors and Assigns. The terms of this Note and of the other Loan Documents shall bind and inure to the benefit of the 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.

13. 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 each party executing this Note as Borrower 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 Lender shall not 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 State of Arizona for the enforcement of any and all obligations under this Note and the other Loan Documents; (f) waive, to the full extent permitted by Law, 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 title, security interest or lien taken by Lender to secure this Note is invalid or unperfected; and (h) hereby subordinate to the Loan and the Loan Documents any and all rights against Borrower and any 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. This Note and its validity, enforcement and interpretation shall be governed by the laws of the State of Arizona (without regard to any principles of conflicts of laws) and applicable United States federal law. Whenever a time of day is referred to herein, unless otherwise specified such time shall be the local time of

the place where payment of this Note is to be made. The term "Business Day" shall mean a day on which Lender is open for the conduct of substantially all of its banking business at its office in the city in which this Note is payable (excluding Saturdays and Sundays). Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement. The words "include" and "including" shall be interpreted as if followed by the words "without limitation."

14. 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 terms of the Loan Agreement regarding notices. This Section 14 notwithstanding, the giving of a Rate Election Notice by Borrower pursuant to Section 3.2 above shall be in the form specified by Lender from time to time and shall not be effective until actually received.

15. No Usury. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Note and the other Loan Documents. All interest, fees, charges, reimbursable costs and expenses, and other things of value, including the value of any deposit accounts, which Borrower is required to pay or provide or reimburse or maintain to or for the benefit or account of Lender pursuant to any of the Loan Documents and Arizona Revised Statutes which constitute interest under Section 44 1201, et seq., or any other applicable law constitute items of interest and are included in the rates of interest which Borrower hereby consents to and agrees and contracts in writing to pay to Lender. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount called for under this Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the Maturity Date, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of this Note and all other indebtedness secured by the Deed of Trust, and the provisions of this Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use or forbearance of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan.

16. Amendment and Restatement. This Note amends and restates in its entirety that Promissory Note dated as of May 1, 2006 (the "Original Note") in the original principal amount of $30,000,000.00 from Borrower to Opus West Corporation, a Minnesota corporation, predecessor in interest to Bank of America, N.A., a national banking association.

**THE 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 ORAL AGREEMENTS BETWEEN THE PARTIES.**

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

**BORROWER:**

OPUS WEST LP, a Delaware limited partnership

BY: OPUS WEST CORPORATION, a Minnesota corporation, Its General Partner

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

The address of Borrower is:

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:

Gallagher & Kennedy, P.A.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225
Attn: Mr. Gregory L. Mast
File No. 4827-0051
Telephone: (602) 530-8310
Fax: (602) 530-8500

Lender's Address for Notices:

Commercial Real Estate Banking Group/AZ1-200-22-17
201 East Washington Street, 22nd Floor
Phoenix, Arizona 85004-2343
Attn: N. Alonzo

# ATTACHMENT 3

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,

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, 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,

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

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

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:

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.

"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 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 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:

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);

(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).

7. Section 13(B) of the Shoppes at Chino Hills Guaranty and the Freemont 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,

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

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

(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

(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).

(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 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).

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.

(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.

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 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).

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.

18. Section 8.16 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.

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

With respect to the Opus RLC Agreement:

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

With respect to the Commons at Chino Hills Construction Agreement:

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

With respect to the Camarillo Ranch Agreement:

Acknowledged and Agreed to as of the 20 day of March, 2008

O.W. COMMERCIAL, INC., a Delaware corporation

By: Charles Vogel
Name: [redacted]
Title: [redacted]

OPUS WEST CORPORATION, a Minnesota corporation

By: Charles Vogel
Name: Charles Vogel
Title: [redacted]

BORROWER

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

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

With respect to the Shoppes at Chino Hills Agreement and the Shoppes at Chino Hills Guaranty:

Acknowledged and Agreed to as of the 20 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

With respect to the Freemont 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: [signature]
Name: Charles Vogel
Title: Vice President

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

By: [signature]
Name: Charles Vogel
Title: Senior Vice President

GUARANTOR

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

With respect to the Pima Center III-C Agreement and the Pima Center III-C 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

With respect to the Cypress Agreement and the Cypress Guaranty:

Acknowledged and Agreed to as of the 20 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

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

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: [signature]
Name: Charles Vogel
Title: Vice President

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

By: [signature]
Name: Charles Vogel
Title: Senior Vice President

GUARANTOR

With respect to the Arch Road Construction Agreement and the Arch Road Construction Guaranty:

Acknowledged and Agreed to as of the 25 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

With respect to the Westlake Village Note and the Westlake Village Certificate.

Acknowledged and agreed to as of the 21st day of March, 2008.

OPUS WEST CORPORATION, a Minnesota corporation

By: [signature]
Name: [illegible]
Title: [illegible]

BORROWER

With respect to the Sahara Ranch Construction Agreement:

Acknowledged and Agreed to as of the 7 day of March, 2008

OPUS WEST CORPORATION, a Minnesota corporation

By: [signature]
Name: [illegible]
Title: [illegible]

BORROWER

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: [illegible]
Name: [illegible]
Title: [illegible]

BORROWER

With respect to the Walker Commons Construction Agreement and the Walker Commons Construction Guaranty:

Acknowledged and Agreed to as of the 22 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

With respect to the Irvine Center Construction Agreement and the Irvine Center Construction Guaranty:

Acknowledged and Agreed to as of the 20 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

With respect to the Hill Country Galleria Construction Agreement and the Hill Country Galleria Construction Guaranty:

Acknowledged and Agreed to as of the 7th 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

With respect to the Broadstone Galleria Construction Agreement and the Broadstone Galleria Construction Guaranty:

Acknowledged and Agreed to as of the 20 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

With respect to the Opus May RLC Agreement:

Acknowledged and Agreed to as of the 7th day of March, 2008

OPUS WEST CORPORATION, a Minnesota corporation

By: [illegible]
Name: [illegible]
Title: [illegible]

BORROWER

## 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 guaranties 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: [signature]
Name: Charles Vogel
Title: Senior Vice President

GUARANTOR

# ATTACHMENT 4

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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

AFTER RECORDING:
HOLD FOR
CHARTER TITLE COMPANY
GF 1017000837
Closer: LaVern

20060189747
11/10/2006 RP3 $204.00

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,**
**SECURITY AGREEMENT,**
**FIXTURE FILING, AND FINANCING STATEMENT**
**(Amended and Restated)**
**(Fort Bend Crossing, Houston, Texas)**

**by**

**OPUS WEST LP, a Delaware limited partnership**
**as Grantor,**

**to and in favor of**

**JAMES A. JOHNSON**
**as Trustee,**

**and**

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

This document serves as a Fixture Filing under 9.502 of the Texas Business and Commercial Code.

Grantor's Organizational Identification Number is 3507759.

FILED
2006 NOV 10 PM 3:31
COUNTY CLERK
HARRIS COUNTY, TEXAS

QBPHX\2038013.5

# DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT

(Amended and Restated)
(Fort Bend Crossing, Houston, Texas)

THIS DEED OF TRUST, ASSIGNMENT OF RENTS, LEASES, SECURITY AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT (Amended and Restated) (this "Mortgage") is made as of the 10 day of November, 2006, by Grantor, in favor of Trustee for the benefit of Lender.

This Mortgage amends and restates in its entirety that Deed of Trust, Assignment, Security Agreement and Fixture Filing dated as of May 1, 2006 (the "Original Mortgage") from Grantor as Grantor for the benefit of Opus West Corporation, a Minnesota corporation (the "Original Beneficiary"), as Beneficiary, predecessor in interest to Bank of America, N.A., a national banking association. The Original Mortgage was recorded on May 3, 2006 at Instrument No. Z 273253, Official Records of Harris County, Texas.

## ARTICLE 1

## DEFINITIONS, GRANTING CLAUSES; SECURED INDEBTEDNESS

Section 1.1. Principal Secured. This Mortgage secures the aggregate principal amount of TWENTY-ONE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS ($21,900,000.00) and all other Secured Indebtedness as more fully described in Section 1.5 hereof.

Section 1.2. Definitions. (a) In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it, such definitions to be applicable equally to the singular and the plural forms of such terms and to all genders:

"Grantor": OPUS WEST LP, a Delaware limited partnership, whose address is 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016-9267 and its permitted successors and assigns.

"Lender": Bank of America, N.A., a national banking association, and its successors and assigns.

"Promissory Note": One Deed of Trust Note made by Grantor and payable to the order of Lender in the principal face amount of $21,900,000.00, bearing interest as therein provided, containing a provision for, among other things, the payment of attorneys' fees. Additionally, the Promissory Note provides that the principal balance evidenced thereby shall bear interest at a floating rate of interest subject to change from time to time.

"Trustee": James A. Johnson, 4265 San Felipe, Suite 305, Houston, Texas, or any successor or substitute appointed and designated as herein provided from time to time acting hereunder, any one of whom may act alone.

"UCC": The Texas Business and Commerce Code.

(b) Any term used or defined in the UCC, as in effect from time to time, and not defined in this Mortgage has the meaning given to the term in the UCC, as in effect from time to time, when used in this Mortgage. However, if a term is defined in Chapter 9 of the UCC differently than in another chapter of the UCC, the term has the meaning specified in Title 9.

Section 1.3. Granting Clause. In consideration of the provisions of this Mortgage and the sum of TEN DOLLARS ($10.00) cash in hand paid and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the Grantor, Grantor does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to Trustee, with GENERAL WARRANTY, the following: (a) the real property described in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Land") together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively, the "Improvements"); and (ii) all right, title and interest of Grantor, now owned or hereafter acquired, in and to (1) all common area and other use rights, tenements, hereditaments, streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining or appurtenant to any of the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights or shares of stock evidencing water rights, timber, crops and mineral interests on or pertaining the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and 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 the 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 the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all (i) plans and specifications for the Improvements; (ii) Grantor's rights, but not liability for any breach by Grantor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity), Swap Transactions (as hereinafter defined), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Grantor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under

any other Loan Documents (hereinafter defined) for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts), instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Borrower may from time to time authorize Holder to debit and/or credit payments due with respect to the Loan or any Swap Transaction, all rights to the payment of money from Holder under any Swap Transaction, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Transaction; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) as extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Grantor or in which Grantor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section 1.3, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; (iii) all commercial tort claims Grantor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section 1.3; and (iv) other interests of every kind and character which Grantor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.3 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Grantor in any of the property referred to above in this Section 1.3 is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Grantor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Trustee, and its successors or substitutes in this trust, and to its successors and assigns, in trust, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure the obligations of Grantor under the Note and Loan Documents (as hereinafter defined) and all other indebtedness and matters defined as "Secured Indebtedness" in, this Mortgage.

Section 1.4. Security Interest. Grantor hereby grants to Holder (as hereinafter defined) a security interest in all of the Property 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 (herein sometimes collectively called the "Collateral") to secure the obligations of Grantor under the Note and Loan Documents and all other indebtedness and matters defined as Secured Indebtedness in Section 1.5 of this Mortgage. In addition to its rights hereunder or otherwise, Holder shall have all of the rights of a secured party under the UCC, 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.

Section 1.5. Secured Indebtedness, Note, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following promissory notes, obligations, indebtedness, duties and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time (collectively, the "Secured Indebtedness"): (a) the Promissory Note and all other promissory notes given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such promissory note or promissory notes, whether one or more, as from time to time renewed, extended, supplemented, increased or modified and all other notes given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "Note", and Lender, or the subsequent holder at the time in question of the Note or any of the Secured Indebtedness, as hereinafter defined, being herein collectively called "Holder"); (b) all indebtedness, liabilities, duties, covenants, promises and other obligations whether joint or several, direct or indirect, fixed or contingent, liquidated or unliquidated, and the cost of collection of all such amounts, owed by Grantor to Holder now or hereafter incurred or arising pursuant to or permitted by the provisions of the Note, this Mortgage, or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the loan evidenced by the Note, including but not limited to any loan or credit agreement, letter of credit or reimbursement agreement, tri-party financing agreement, Master Agreement relating to any Swap Transactions or other agreement between Grantor and Holder, or among Grantor, Holder and any other party or parties, pertaining to the repayment or use of the proceeds of the loan evidenced by the Note (the Note, this Mortgage, any Master Agreement relating to any Swap Transactions and such other documents, as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the "Loan Documents"); and (c) all other loans and future advances made by Holder to Grantor and all other debts, obligations and liabilities of Grantor of every kind and character now or hereafter existing in favor of Holder, whether direct or indirect, primary or secondary, joint or several, fixed or contingent, secured or unsecured, and whether originally payable to Holder or to a third party and subsequently acquired by Holder, it being contemplated that Grantor may hereafter become indebted to Holder for such further debts, obligations and liabilities; provided, however, and notwithstanding the foregoing provisions of this clause (c), this Mortgage shall not secure any such other loan, advance, debt obligation or liability with respect to which Holder is by applicable law prohibited from obtaining a lien on real estate nor shall this clause (c) operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law. "Swap Transaction" 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, 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 any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement (the "Master Agreement") published by the International Swaps and Derivatives Association, Inc., or any other master agreement entered into between Holder (or its affiliates) and Borrower (or its affiliates), together with any related schedules, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

## ARTICLE 2

## REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.1. Grantor represents, warrants, and covenants as follows:

(a) Payment and Performance. Grantor will make due and punctual payment of the Secured Indebtedness. Grantor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage and the other Loan Documents and will not permit a default to occur and continue hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) Title and Permitted Encumbrances. Grantor has, in Grantor's own right, and Grantor covenants to maintain, lawful, good and marketable title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, security interests, and encumbrances except for (i) the matters, if any, set forth on Schedule B to the Title Policy, which are Permitted Encumbrances only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) statutory liens for real estate taxes and assessments on the Property which are not yet delinquent, and (iv) other liens and security interests (if any) in favor of Lender (the matters described in the foregoing clauses (i), (ii), (iii), and (iv) being herein called the "Permitted Encumbrances"). Grantor, and Grantor's successors and assigns, will warrant generally and forever defend title to the Property, subject as aforesaid, to Trustee and their successors or substitutes and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Grantor will punctually pay prior to delinquency, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Holder. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Holder of any existing or future violation or other breach thereof by Grantor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Grantor if Grantor is an individual. If any right or interest of Holder in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Holder and Trustee, or either of them (whether or not named as parties to legal proceedings with respect thereto), are hereby authorized and empowered to take such steps as in their discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Holder, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Grantor hereby

promises to pay) owing by Grantor to Holder or Trustee (as the case may be), and the party (Holder or Trustee, as the case may be) making such expenditures shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions. Grantor will pay, or cause to be paid prior to delinquency, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all real estate taxes assessed against the Property or any part thereof, and shall deliver promptly to Holder such evidence of the payment thereof as Holder may require.

(d) Insurance. Grantor shall obtain and maintain at Grantor's sole expense: (1) mortgagee title insurance issued to Holder covering the Premises as required by Holder without exception for mechanics' liens; (2) property insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such additional hazards as are presently included in Special Form (also known as "all-risk") coverage and against any and all acts of terrorism and such other insurable hazards as Holder may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor and Holder from becoming a coinsurer, such insurance to be in "builder's risk" completed value (non-reporting) form during and with respect to any construction on the Premises; (3) if and to the extent any portion of the Improvements is, under the Flood Disaster Protection Act of 1973 ("FDPA"), as it may be amended from time to time, in a Special Flood Hazard Area, within a Flood Zone designated A or V in a participating community, a flood insurance policy in an amount required by Holder, but in no event less than the amount sufficient to meet the requirements of applicable law and the FDPA, as such requirements may from time to time be in effect; (4) general liability insurance, on an "occurrence" basis against claims for "personal injury" liability, including bodily injury, death or property damage liability, for the benefit of Grantor as named insured and Holder as additional insured; (5) statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Holder), covering all employees of Grantor and any contractor; (6) if there is a general contractor, commercial general liability insurance, including products and completed operations coverage, and in other respects similar to that described in clause (4) above, for the benefit of the general contractor as named insured and Grantor and Holder as additional insureds, in addition to statutory workers' compensation insurance with respect to any work on or about the Premises (including employer's liability insurance, if required by Holder), covering all employees of the general contractor and any contractor; and (7) such other insurance on the Property and endorsements as may from time to time be requested by Holder (including but not limited to soft cost coverage, automobile liability insurance, business interruption insurance or delayed rental insurance, boiler and machinery insurance, wind insurance, sinkhole coverage, and/or permit to occupy endorsement)) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, limits and retentions, and in forms satisfactory to Holder, and shall require not less than ten (10) days' prior written notice to Holder of any cancellation for nonpayment of premiums, and not less than thirty (30) days' prior written notice to Holder of any other cancellation or any change

of coverage. All insurance companies must be licensed to do business in the state in which the Property is located and must have an A.M. Best Company financial and performance ratings of A-:IX or better. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Property, except for general liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Grantor or Holder and that all of the provisions thereof, except for limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Mortgage or any other Loan Document becomes insolvent or the subject of any petition, case, proceeding or other action pursuant to any Debtor Relief Law, or if in Holder's reasonable opinion the financial responsibility of such insurer is or becomes inadequate, Grantor shall, in each instance promptly upon its discovery thereof or upon the request of Holder therefor, and at Grantor's expense, promptly obtain and deliver to Holder a like policy (or, if and to the extent permitted by Holder, acceptable evidence of insurance) issued by another insurer, which insurer and policy meet the requirements of this Mortgage or such other Loan Document, as the case may be. Without limiting the discretion of Holder with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Holder as mortgagee with loss proceeds payable to Holder notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named or additional insured; (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy; (iii) any foreclosure or other action by Holder under the Loan Documents; or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals of each initial insurance policy (or to the extent permitted by Holder, a copy of the original policy and such evidence of insurance acceptable to Holder) shall be delivered to Holder at the time of execution of this Mortgage, with all premiums fully paid current, and each renewal or substitute policy (or evidence of insurance) shall be delivered to Holder, with all premiums fully paid current, at least ten (10) days before the termination of the policy it renews or replaces. Grantor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Holder evidence satisfactory to Holder of the timely payment thereof. If any loss occurs at any time when Grantor has failed to perform Grantor's covenants and agreements in this paragraph with respect to any insurance payable because of loss sustained to any part of the Property, whether or not such insurance is required by Holder, Holder shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Grantor, to the same extent as if it had been made payable to Holder. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the Secured Indebtedness, all of Grantor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Holder shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property regardless of whether or not such insurance policies are required by Holder, and the expenses incurred by Holder in the adjustment and collection of insurance proceeds shall be a part of the Secured Indebtedness and shall be due and payable to Holder on demand. Holder shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the

collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Grantor. Any such proceeds received by Holder shall, after deduction therefrom of all reasonable expenses actually incurred by Holder, including attorneys' fees, at Holder's option be (1) released to Grantor, or (2) applied (upon compliance with such terms and conditions as may be required by Holder) to repair or restoration, either partly or entirely, of the Property so damaged, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Holder, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Grantor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(e) Reserve for Insurance, Taxes and Assessments. Upon request of Holder, to secure the payment and performance of the Secured Indebtedness, but not in lieu of such payment and performance, Grantor will deposit with Holder a sum equal to real estate taxes, assessments and charges (which charges for the purposes of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Holder and prorated to the end of the calendar month following the month during which Holder's request is made, and thereafter will deposit with Holder, on each date when an installment of principal and/or interest is due on the Note, sufficient funds (as estimated from time to time by Holder) to permit Holder to pay at least fifteen (15) days prior to the due date thereof, the next maturing real estate taxes, assessments and charges and premiums for such policies of insurance. Holder shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. To the extent permitted by law, any excess over the amounts required for such purposes shall be held by Holder for future use, applied to any Secured Indebtedness or refunded to Grantor, at Holder's option, and any deficiency in such funds so deposited shall be made up by Grantor upon demand of Holder. All such funds so deposited shall bear no interest, may be commingled with the general funds of Holder and shall be applied by Holder toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Holder by Grantor (which statements shall be presented by Grantor to Holder a reasonable time before the applicable amount is due); provided, however, that, if a Default shall have occurred hereunder, such funds may at Holder's option be applied to the payment of the Secured Indebtedness in the order determined by Holder in its sole discretion, and that Holder may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Grantor's interest in the Property for any reason (including without limitation the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Grantor's interest in and rights to such funds held by Holder under this paragraph but subject to the rights of Holder hereunder.

(f) Condemnation. Grantor shall notify Holder immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the

Property received by Grantor in writing, and Grantor shall, at Grantor's expense, diligently prosecute any such proceedings. Holder shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Holder shall be entitled to receive all sums which may be awarded or become payable to Grantor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for injury or damage to the Property. Grantor shall, promptly upon request of Holder, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Holder to collect and receipt for any such sums. All such sums are hereby assigned to Holder, and shall, after deduction therefrom of all reasonable expenses actually incurred by Holder, including attorneys' fees, at Holder's option be (1) released to Grantor, or (2) applied (upon compliance with such terms and conditions as may be required by Holder) to repair or restoration of the Property so affected, or (3) applied to the payment of the Secured Indebtedness in such order and manner as Holder, in its sole discretion, may elect, whether or not due. In any event the unpaid portion of the Secured Indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Holder shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Grantor. Holder is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to attorneys' fees) incurred by Holder in connection with any condemnation shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Holder pursuant to this Mortgage.

(g) Compliance with Legal Requirements. The Grantor, the Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with the terms, conditions, covenants, representations and warranties of the Loan Agreement and all applicable Legal Requirements (hereinafter defined). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Grantor shall not, by act or omission, permit any building or other improvement not subject to the lien of this Mortgage to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No improvement upon or use of any part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Grantor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property.

If Grantor receives a written notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Grantor will promptly furnish a copy of such notice or claim to Holder. Grantor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "Legal Requirement" means any Law (hereinafter defined), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "Law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(h) Maintenance, Repair and Restoration. Grantor will keep the Property in first class order, repair, operating condition and appearance, ordinary wear and tear excepted, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Grantor will not, without the prior written consent of Holder, (i) remove from the Property any fixtures or personal property covered by this Mortgage except such as is replaced by Grantor by an article of equal suitability and value, owned by Grantor, free and clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Grantor shall give prompt notice thereof to Holder and Grantor shall promptly, at Grantor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, secure the Property as necessary and commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(i) No Other Liens. Grantor will not, without the prior written consent of Holder, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Holder, Grantor will cause the same to be promptly discharged and released. Grantor will own all parts of the Property and will not acquire any fixtures, equipment or other property (including software embedded therein) forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Holder. If Holder consents to the voluntary grant by Grantor of any deed of trust or mortgage, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Holder; (3) Rents (hereinafter defined), if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the Secured Indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Holder may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any

part of the Property shall be given to Holder with or immediately after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Grantor's rights hereunder without the prior written consent of Holder.

(j) Operation of Property. Grantor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Grantor will keep the Property occupied so as not to impair the insurance carried thereon. Grantor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Grantor will not initiate or permit any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Grantor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Holder. Grantor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Grantor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Unless in accordance with Plans and Specifications, without the prior written consent of Holder, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Grantor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment (including software embedded therein) and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(k) Financial Matters. Grantor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any Debtor Relief Law (hereinafter defined) is pending (or, to Grantor's knowledge, threatened) by or against Grantor, or any affiliate of Grantor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Grantor to Holder in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Grantor or, to Grantor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Grantor" shall also include any person liable directly or indirectly for the Secured Indebtedness or any part thereof and any joint venturer or general partner of Grantor.

(l) Status of Grantor; Suits and Claims; Loan Documents. If Grantor is a corporation, partnership, limited liability company, or other legal entity, Grantor is and will continue to be (i) duly organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Grantor has been duly authorized, executed and delivered by Grantor, and the obligations thereunder and the performance thereof by Grantor in accordance with their terms are and will continue to be within Grantor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement or any other document or agreement to which Grantor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Grantor, or any other person liable, directly or indirectly, for any of the Secured Indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Grantor's knowledge, threatened) against Grantor or against any other person liable directly or indirectly for the Secured Indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Grantor's title to the Property) or the validity, enforceability or priority Of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Grantor's knowledge, threatened) against Grantor, or against any other person liable directly or indirectly for the Secured Indebtedness, except as has been disclosed in writing to Holder in connection with the loan evidenced by the Note. The Loan Documents constitute legal, valid and binding obligations of Grantor enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws (hereinafter defined) and except as the availability of certain remedies may be limited by general principles of equity. Grantor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e. Grantor 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). The loan evidenced by the Note is solely for business and/or investment purposes, and is not intended for personal, family, household or agricultural purposes. Grantor further warrants that the proceeds of the Note shall be used for commercial purposes and stipulates that the loan evidenced by the Note shall be construed for all purposes as a commercial loan. Grantor's exact legal name is correctly set forth at the end of this Mortgage. If Grantor is not an individual, Grantor is an organization of the type and (if not an unregistered entity) is incorporated in or organized under the laws of the state specified in the introductory paragraph of this Mortgage. If Grantor is an unregistered entity (including, without limitation, a general partnership) it is organized under the laws of the state specified in the introductory paragraph of this Mortgage. Grantor will not cause or permit any change to be made in its name, identity (including its trade name or names), organizational structure, unless Grantor shall have notified Holder in writing of such change at least 30 days prior to the effective date of such change, and shall have first taken all action required by Holder for the purpose of further perfecting or protecting the lien and security interest of Holder in the Property. In addition, Grantor shall not change its organizational structure without first obtaining the prior written consent of Holder. Grantor's principal place of business and chief executive office, and the place where Grantor keeps its books and records, including recorded data of any kind or nature, regardless of the medium of recording including, without limitation, software, writings, plans,

specifications and schematics concerning the Property, has for the preceding four months (or, if less, the entire period of the existence of Grantor) been and will continue to be (unless Grantor notifies Holder of any change in writing at least 30 days prior to the date of such change) the address of Grantor set forth at the end of this Mortgage. If Grantor is an individual, Grantor's principal residence has for the preceding four months been and will continue to be (unless Grantor notifies Holder of any change in writing at least 30 days prior to the date of such change) the address of the principal residence of Grantor set forth at the end of this Mortgage. Grantor's organizational identification number, if any, assigned by the state of incorporation or organization is correctly set forth on the first page of this Mortgage. Grantor shall promptly notify Holder (i) of any change of its organizational identification number, or (ii) if Grantor does not now have an organization identification number and later obtains one, of such organizational identification number.

(m) Certain Environmental Matters. Grantor shall comply with the terms and covenants and agreements with respect to environmental matters of that certain loan agreement, dated of even date herewith, by and between Lender and Grantor pertaining to the Property (the "Environmental Agreement").

(n) Further Assurances. Grantor will, promptly on request of Holder, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages, deeds of trust, security agreements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Holder to protect the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Holder to enable Holder to comply with the requirements or requests of any agency having jurisdiction over Holder or any examiners of such agencies with respect to the indebtedness secured hereby, Grantor or the Property. Grantor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Holder pursuant to this Mortgage.

(o) Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Grantor will pay, and will reimburse to Holder and/or Trustee on demand to the extent paid by Holder and/or Trustee: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, attorneys' fees, architect fees, engineer fees, construction consultant fees, environmental inspection fees, survey fees, and all other costs and expenses of every character incurred by Grantor or Holder and/or Trustee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of

the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Grantor as owner of the Property; and (ii) all costs and expenses, including attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Grantor, hereunder or under any other Loan Document.

(p) Indemnification.

(i) Grantor will indemnify and hold harmless Holder and Trustee from and against, and reimburse them on demand for, any and all Indemnified Matters (hereinafter defined). For purposes of this paragraph (p), the terms "Holder" and "Trustee" shall include Holder, and Trustee respectively, and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Holder or Trustee respectively and the directors, officers, partners, employees, attorneys, agents and representatives of each of them. **WITHOUT LIMITATION, THE FOREGOING INDEMNITIES SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO MATTERS WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF, OR ARE CLAIMED TO BE CAUSED BY OR ARISE OUT OF, THE NEGLIGENCE (WHETHER SOLE, COMPARATIVE OR CONTRIBUTORY) OR STRICT LIABILITY OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PERSON. HOWEVER, SUCH INDEMNITIES SHALL NOT APPLY TO A PARTICULAR INDEMNIFIED PERSON TO THE EXTENT THAT THE SUBJECT OF THE INDEMNIFICATION IS CAUSED BY OR ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THAT INDEMNIFIED PERSON.** Any amount to be paid under this paragraph (p) by Grantor to Holder and/or Trustee shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Holder and/or Trustee pursuant to this Mortgage. Upon demand by Lender, Borrower shall diligently defend any Indemnified Matter which affects the Property or is made or commenced against Lender, whether alone or together with Borrower or any other person, all at Borrower's own cost and expense and by counsel to be approved by Lender in the exercise of its reasonable judgment. In the alternative, at any time Lender may elect to conduct its own defense through counsel selected by Lender and at the cost and expense of Borrower. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any rights or remedies of Holder and/or Trustee (including without limitation any rights of contribution or indemnification) against Grantor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) For purposes of this paragraph, the term "Holder" shall include the directors, officers, partners, employees and agents of Holder or Trustee, respectively, and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Holder or Trustee,

respectively. As used herein, the term "Indemnified Matters" means any and all claims, demands, liabilities (including strict liability), losses, damages (including consequential damages), causes of action, judgments, penalties, fines, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately withdrawn or defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Holder and/or Trustee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring after the date hereof on the Property through any cause whatsoever at any time on or before the Release Date (hereinafter defined) any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Grantor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein, any claim under or with respect to any Lease (hereinafter defined) or arising under the Environmental Agreement. The term "Release Date" as used herein means the earlier of the following two dates: (i) the date on which the indebtedness and obligations secured hereby have been paid and performed in fall and this Mortgage has been released, or (ii) the date on which the lien of this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Grantor and Grantor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this paragraph (p) shall not terminate upon the Release Date or upon the release, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the Secured Indebtedness the termination of any and all Swap Transactions, the discharge and release of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(q) Records and Financial Reports. Grantor will keep accurate books and records as required under the Loan Agreement (as defined in the Note).

(r) Taxes on Note or Mortgage. Grantor will promptly pay all income, franchise and other taxes owing by Grantor and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Grantor is prohibited by law) which may be required to be paid with respect to the Note, this Mortgage or any other instrument evidencing or securing any of the Secured Indebtedness. In the event of the enactment after this date of any

law of any governmental entity applicable to Holder, the Note, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Holder the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of deeds of trust or mortgages or security agreements or debts secured by deeds of trust or mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the Secured Indebtedness or Holder, then, and in any such event, Grantor, upon demand by Holder, shall pay such taxes, assessments, charges or liens, or reimburse Holder therefor; provided, however, that if in the opinion of counsel for Holder (i) it might be unlawful to require Grantor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Holder may elect, by notice in writing given to Grantor, to declare all of the Secured Indebtedness to be and become due and payable sixty (60) days from the giving of such notice.

(s) Statement Concerning Note or Mortgage. Grantor shall at any time and from time to time furnish within ten (10) days of request by Holder a written statement in such form as may be required by Holder stating that (i) the Note, this Mortgage and the other Loan Documents are valid and binding obligations of Grantor, enforceable against Grantor in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Mortgage or any other Loan Document. If any of the foregoing statements in clauses (i), (iv) and (v) are untrue, Grantor shall, alternatively, specify the reasons therefor.

Section 2.2. Performance by Holder on Grantor's Behalf. Grantor agrees that, if Grantor fails to perform any act or to take any action which under any Loan Document Grantor is required to perform or take, or to pay timely any money which under any Loan Document Grantor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the Secured Indebtedness has been accelerated, Holder, in Grantor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Holder and any money so paid by Holder shall be a demand obligation owing by Grantor to Holder (which obligation Grantor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Holder, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Holder and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Holder shall waive or cure any default or waive any right, remedy or recourse of Holder. Any such payment may be made by Holder in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Grantor to Holder pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Note for interest on past due principal owed on the Note but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Holder on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and

nature of any expense by Holder hereunder and the time when paid shall be fully established by the certificate of Holder or any of Holder's officers or agents.

Section 2.3. Absence of Obligations of Holder with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Grantor's rights, title and interests therein but not Grantor's obligations, duties or liabilities pertaining thereto, (ii) Holder neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Holder may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Holder's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Holder shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Holder elects otherwise by written notification.

Section 2.4. Authorization to File Financing Statements; Power of Attorney. Grantor hereby authorizes Holder at any time and from time to time to file any initial financing statements, amendments thereto and continuation statements as authorized by applicable law, required by Holder to establish or maintain the validity, perfection and priority of the security interests granted in this Mortgage. For purposes of such filings, Grantor agrees to furnish any information requested by Holder promptly upon request by Holder. Grantor also ratifies its authorization for Holder to have filed any like initial financing statements, amendments thereto or continuation statements if filed prior to the date of this Mortgage. Grantor hereby irrevocably constitutes and appoints Holder and any officer or agent of Holder, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of Grantor or in Grantor's own name to execute in Grantor's name any such documents and to otherwise carry out the purposes of this Section 2.4, to the extent that Grantor's authorization above is not sufficient. To the extent permitted by law, Grantor hereby ratifies all acts said attorneys-in-fact shall lawfully do, have done in the past or cause to be done in the future by virtue hereof This power of attorney is a power coupled with an interest and shall be irrevocable.

## ARTICLE 3

## ASSIGNMENT OF RENTS AND LEASES

Section 3.1. Assignment. Upon the occurrence and continuation of a Default hereunder, Holder shall have the right, power and privilege (but shall be under no duty) to demand possession of the Rents, which demand shall to the fullest extent permitted by applicable law be sufficient action by Holder to entitle Holder to immediate and direct payment of the Rents (including delivery to Holder of Rents collected for the period in which the demand occurs and for any subsequent period), for application as provided in this Mortgage, to collect, but not prior

to accrual, the Rents under the Leases and, where applicable, subleases, such Rents to be held in trust for Holder and to otherwise deal with all Leases as permitted by this Mortgage. Each month, provided no Default has occurred and is continuing, Grantor may retain such Rents as were collected that month and held in trust for Holder; provided, however, that all Rents collected by Grantor shall be applied all without the necessity of any further action by Holder, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property or any action for the appointment of a receiver. Grantor hereby authorizes and directs the tenants under the Leases to pay Rents to Holder upon written demand by Holder, without further consent of Grantor, without any obligation of such tenants to determine whether a Default has in fact occurred and regardless of whether Holder has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Holder to the tenants. Any such payments to Holder shall constitute payments to Grantor under the Leases, and Grantor hereby irrevocably appoints Holder as its attorney-in-fact to do all things, after a Default, which Grantor might otherwise do with respect to the Property and the Leases thereon, including, without limitation, (i) collecting Rents with or without suit and applying the same, less expenses of collection, to any of the obligations secured hereunder or under the Loan Documents or to expenses of operating and maintaining the Property (including reasonable reserves for anticipated expenses), at the option of the Holder, all in such manner as may be determined by Holder, or at the option of Holder, holding the same as security for the payment of the Secured Obligations, (ii) leasing, in the name of Grantor, the whole or any part of the Property which may become vacant, and (iii) employing agents therefor and paying such agents reasonable compensation for their services. The curing of such Default, unless other Defaults also then exist, shall entitle Grantor to recover its aforesaid license to do any such things which Grantor might otherwise do with respect to the Property and the Leases thereon and to again collect such Rents. The powers and rights granted in this paragraph shall be in addition to the other remedies herein provided for upon the occurrence of a Default and may be exercised independently of or concurrently with any of said remedies. Nothing in the foregoing shall be construed to impose any obligation upon Holder to exercise any power or right granted in this paragraph or to assume any liability under any Lease of any part of the Property and no liability shall attach to Holder for failure or inability to collect any Rents under any such Lease. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Grantor's rights thereunder) or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to the proceeds from any negotiated lease termination or buyout of such Lease, liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability caused by damage to any part of the Property, all of Grantor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Grantor by virtue of any and all

royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. Covenants, Representations and Warranties Concerning Leases and Rents. Grantor covenants, represents and warrants that: (a) Grantor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (b) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (c) neither Grantor nor any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Grantor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (h) Grantor will not without the prior written consent of Holder, enter into any Lease after the date hereof, or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant, reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease, or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise; provided, however, that Holder has approved Grantor's form of Lease, and Leases on such form shall not require the prior written consent of Holder; (i) Grantor will not, without the prior written consent of Holder, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one (1) year or more; (j) Grantor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (k) Grantor shall give prompt notice to Holder, as soon as Grantor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Grantor shall defend, at Grantor's expense, any proceeding pertaining to any Lease, including, if Holder so requests, any such proceeding to which Holder is a party; (l) Grantor shall as often as requested by Holder, within ten (10) days of each request, deliver to Holder a complete rent roll of the Property in such detail as Holder may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Grantor, and deliver to such of the tenants and others obligated under the Leases specified by Holder written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Holder; (m) promptly upon request by Holder, Grantor shall deliver to Holder executed originals of all Leases and copies of all records relating thereto; (n) there shall be no merger of the leasehold estates created by the Leases, with the fee estate of the Land without the prior written consent of Holder; and (o) Holder may at any

time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Grantor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate. No such subordination shall constitute a subordination to any lien or other encumbrance, whenever arising, or improve the right of any junior lienholder; and nothing herein shall be construed as subordinating this Mortgage to any Lease.

Section 3.3. Estoppel Certificates. All Leases shall require the tenant to execute and deliver to Holder an estoppel certificate in form and substance acceptable to Holder within ten (10) days after notice from the Holder.

Section 3.4. No Liability of Holder. Holder's acceptance of this assignment shall not be deemed to constitute Holder a "mortgagee in possession," nor obligate Holder to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Grantor by any tenant and not as such delivered to and accepted by Holder. Holder shall not be liable for any injury or damage to person or property in or about the Property, or for Holder's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Holder's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Holder nor Holder's consent to or approval of any Lease (nor all of the same), shall render Holder liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option.

If Holder seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Holder neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Holder under this Article 3 shall be cumulative of all other rights of Holder under the Loan Documents or otherwise.

## ARTICLE 4

## DEFAULT

Section 4.1. Events of Default. The occurrence of any one of the following shall be a default under this Mortgage ("default" or "Default"):

(a) Failure to Pay Indebtedness. Any of the Secured Indebtedness is not paid when due, regardless of how such amount may have become due.

(b) Nonperformance of Covenants. Any covenant, agreement or condition herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the Secured Indebtedness) is not fully and timely performed, observed or kept, and such failure is not cured within the applicable notice and cure period (if any) provided for herein or in such other Loan Document.

(c) Default under other Loan Documents. The occurrence and continuation of a Default under any other Loan Document, including an Early Termination Event as defined in any Master Agreement relating to any Swap Transaction.

(d) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Holder in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) Bankruptcy or Insolvency. The owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness (or any general partner or joint venturer of such owner or other person):

(i) (A) Executes an assignment for the benefit of creditors, or takes any action in furtherance thereof; or (B) admits in writing its inability to pay, or fails to pay, its debts generally as they become due; or (C) as a debtor, files a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, Title 11 of the United States Code as now or hereafter in effect or any other federal, state or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors (Title 11 of the United States Code and such other laws being herein called "Debtor Relief Laws"), or takes any action in furtherance thereof; or (D) seeks the appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property; or

(ii) Suffers the filing of a petition, case, proceeding or other action against it as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property, and (A) admits, acquiesces in or fails to contest diligently the material allegations thereof, or (B) the petition, case, proceeding or other action results in entry of any order for relief or order granting relief sought against it, or (C) in a proceeding under Debtor Relief Laws, the case is converted from one chapter to another, or (D) fails to have the petition, case, proceeding or other action permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of its filing; or

(iii) Conceals, removes, or permits to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or makes any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffers or permits, while insolvent, any creditor to obtain a lien (other than as described in subparagraph (iv) below) upon any of its property through legal proceedings

which are not vacated and such lien discharged prior to enforcement thereof and in any event within sixty (60) days from the date thereof, or

(iv) Fails to have discharged within a period of ten (10) days any attachment, sequestration, or similar writ levied upon any of its property; or

(v) Fails to pay immediately any final money judgment against it.

(f) Transfer of the Property. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Grantor, having a value equal to or greater than the replaced items when new; (ii) the grant, in the ordinary course of business, of a leasehold interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Mortgage or of any other Loan Document; and (iii) transfers permitted under the Loan Agreement. Holder may, in its sole discretion, waive a default under this paragraph, but it shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which Holder may require: the grantee's integrity, reputation, character, creditworthiness and management ability being satisfactory to Holder in its sole judgment and grantee executing, prior to such sale or transfer, a written assumption agreement containing such terms as Holder may require, a principal paydown on the Note, an increase in the rate of interest payable under the Note, a transfer fee, a modification of the term of the Note, and any other modification of the Loan Documents which Holder may require. NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL AND ANY AND ALL SWAP TRANSACTIONS ARE SUBJECT TO TERMINATION, OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED EXCEPT AS HEREIN PERMITTED.

(g) Transfer of Assets. Any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the other assets of Grantor, excluding the Property, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers in the ordinary course of Grantor's business; and (ii) sales or transfers for which Grantor receives consideration substantially equivalent to the fair market value of the transferred asset.

(h) Transfer of Ownership of Grantor. The sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Grantor (if Grantor is not a natural person but is a corporation, partnership, limited liability company, trust or other legal entity), without the prior written consent of Holder (including, without limitation, if Grantor is a partnership or joint venture, the withdrawal from or admission into it of any general partner or joint venturer) except as permitted under the Loan Agreement.

(i) Grant of Easement, Etc. Without the prior written consent of Holder, Grantor grants any easement or dedication, files any plat, condominium declaration, or

restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(j) Abandonment. The owner of the Property abandons all of the Property.

(k) Default Under Other Lien. A default or event of default occurs and is continuing under any lien, security interest or assignment covering the Property or any part thereof (whether or not Holder has consented, and without hereby implying Holder's consent, to any such hen, security interest or assignment not created hereunder), or the holder of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(l) Destruction. The Property is so demolished, destroyed or damaged that, in the reasonable opinion of Holder, it cannot be restored or rebuilt with available funds to a profitable condition within a reasonable period of time and in any event, prior to the final maturity date of the Note.

(m) Condemnation. (i) Any governmental authority shall require, or commence any proceeding for, the demolition of any building or structure comprising a part of the Premises, or (ii) there is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(n) Liquidation, Etc. The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State where the Property is located and/or the state of incorporation or organization, if different (or in the case of an individual, the death or legal incapacity) of the Grantor, any owner of the Property or any person obligated to pay any part of the Secured Indebtedness.

(o) Material, Adverse Change. In Holder's reasonable opinion, the prospect of payment of all or any part of the Secured Indebtedness has been impaired because of a material, adverse change in the financial condition, results of operations, business or properties of the Grantor, any owner of the Property or any person liable, directly or indirectly, for any of the Secured Indebtedness, or of any general partner or joint venturer thereof (if such owner or other person is a partnership or joint venture).

(p) Enforceability, Priority. Any Loan Document shall for any reason without Holder's specific written consent cease to be in full force and effect or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Holder; or the liens, mortgages or security interests of Holder in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or

in part, shall be challenged or denied by Grantor or any person obligated to pay any part of the Secured Indebtedness.

(q) Other Indebtedness. A default or event of default occurs and is continuing under any document executed and delivered in connection with the Loan, the owner of the Property, any person obligated to pay any part of the Secured Indebtedness, or any person or entity which guarantees the Secured Indebtedness.

Section 4.2. Notice and Cure. If any provision of this Mortgage or any other Loan Document provides for Holder to give to Grantor any notice regarding a default or incipient default, then if Holder shall fail to give such notice to Grantor as provided, the sole and exclusive remedy of Grantor for such failure shall be to seek appropriate equitable relief to enforce the agreement to give such notice and to have any acceleration of the maturity of the Note and the Secured Indebtedness postponed or revoked and foreclosure proceedings in connection therewith delayed or terminated pending or upon the curing of such default in the manner and during the period of time permitted by such agreement, if any, and Grantor shall have no right to damages or any other type of relief not herein specifically set out against Holder, all of which damages or other relief are hereby waived by Grantor. Nothing herein or in any other Loan Document shall operate or be construed to add on or make cumulative any cure or grace periods specified in any of the Loan Documents.

## ARTICLE 5

## REMEDIES

Section 5.1. Certain Remedies. If a Default shall occur and continue, Holder may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration; Termination. Holder may at any time and from time to time declare any or all of the Secured Indebtedness immediately due and payable and may terminate any and all Swap Transactions. Upon any such declaration, such Secured Indebtedness shall thereupon be immediately due and payable, and such Swap Transactions shall immediately terminate, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Grantor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (A), (C) or (D) of subparagraph (i) of paragraph (e) of Section 4.1, hereof, all of the Secured Indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Grantor.

(b) Enforcement of Assignment of Rents. In addition to the rights of Holder under Article 3 hereof, prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Holder may: (1) collect and/or sue for the Rents in Holder's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the

Secured Indebtedness. Holder may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Grantor to transfer all security deposits and records thereof to Holder together with original counterparts of the Leases.

(c) Foreclosure. Upon the occurrence of a Default that is continuing, Trustee, or his successor or substitute, is authorized and empowered and it shall be his special duty at the request of Holder to sell the Property or any part thereof situated in the State of Texas, at the courthouse of any county (whether or not the counties in which the Property is located are contiguous, if the Property is located in more than one county) in the State of Texas in which any part of the Property is situated, at public venue to the highest bidder for cash between the hours of ten o'clock a.m. and four o'clock p.m. on the first Tuesday in any month or at such other place, time and date as provided by the statutes of the State of Texas then in force governing sales of real estate under powers of sale conferred by deed of trust, after having given notice of such sale in accordance with such statutes. Any sale made by Trustee hereunder may be as an entirety or in such parcels as Holder may request. To the extent permitted by applicable law, any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and, if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Secured Indebtedness and the expense of executing this trust as provided herein, this Mortgage and the lien hereof shall remain in fall force and effect as to the unsold portion of the Property just as though no sale had been made; provided, however, that Grantor shall never have any right to require the sale of less than the whole of the Property but Holder shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property. Trustee may, after any request or direction by Holder, sell not only the real property but also the Collateral and other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It shall not be necessary for Trustee to have taken possession of any part of the Property or to have present or to exhibit at any sale any of the Collateral. After each sale, Trustee shall make to the purchaser or purchasers at such sale good and sufficient conveyances in the name of Grantor, conveying the property so sold to the purchaser or purchasers with general warranty of title of Grantor, subject to the Permitted Encumbrances (and to such leases and other matters, if any, as Trustee may elect upon request of Holder), and shall receive the proceeds of said sale or sales and apply the same as herein provided. Payment of the purchase price to the Trustee shall satisfy the obligation of purchaser at such sale therefor, and such purchaser shall not be responsible for the application thereof. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or his substitute or successor, and such power of sale may be exercised from time to time and as many times as Holder may deem necessary until all of the Property has been duly sold and all Secured Indebtedness has been fully paid, In the event any sale hereunder is not completed or is defective in the opinion of Holder, such sale shall not exhaust the power of sale hereunder and Holder shall have the right to cause a subsequent sale or sales to be made hereunder. Any and all statements of fact or other recitals made in any deed or deeds or other conveyances given by Trustee or any successor or substitute appointed hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Holder's having declared all of said indebtedness to be

due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and the properties to be sold having been duly given, or as to the refusal, failure or inability to act of Trustee or any substitute or successor trustee, or as to the appointment of any substitute or successor trustee, or as to any other act or thing having been duly done by Holder or by such Trustee, substitute or successor, shall be taken as prima facie evidence of the truth of the facts so stated and recited. The Trustee or his successor or substitute may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee, including the posting of notices and the conduct of sale, but in the name and on behalf of Trustee, his successor or substitute. If Trustee or his successor or substitute shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the conveyance of the property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale.

(d) Uniform Commercial Code. Without limitation of Holder's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Holder may exercise its rights of enforcement with respect to the Collateral or any part thereof under the UCC, 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) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Holder may enter upon Grantor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Holder may require Grantor to assemble the Collateral and make it available at a place Holder designates which is mutually convenient to allow Holder to take possession or dispose of the Collateral; (3) written notice mailed to Grantor as provided herein at least five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; provided that, if Holder fails to comply with this clause (3) in any respect, its liability for such failure shall be limited to the liability (if any) imposed on it as a matter of law under the UCC, 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); (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided in paragraph (c) above in this Section 5.1; (5) in the event of a foreclosure sale, whether made by Trustee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Holder, be sold as a whole; (6) it shall not be necessary that Holder take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Collateral under Section 5.2 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses (including, without limitation, the allocated costs for in-house legal services) incurred by Holder; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the Secured Indebtedness or as to the occurrence of any default, or as to Holder having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly

given, or as to any other act or thing having been duly done by Holder, shall be taken as prima facie evidence of the truth of the facts so stated and recited; (9) Holder may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Holder, including the sending of notices and the conduct of the sale, but in the name and on behalf of Holder; (10) Holder may comply with any applicable state or federal law or regulatory requirements in connection with a disposition of the Collateral, and such compliance will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (11) Holder may sell the Collateral without giving any warranties as to the Collateral, and specifically disclaim all warranties including, without limitation, warranties relating to title, possession, quiet enjoyment and the like, and all warranties of quality, merchantability and fitness for a specific purpose, and this procedure will not be considered to affect adversely the commercial reasonableness of any sale of the Collateral; (12) Grantor acknowledges that a private sale of the Collateral may result in less proceeds than a public sale; and (13) Grantor acknowledges that the Collateral may be sold at a loss to Grantor, and that, in such event, Holder shall have no liability or responsibility to Grantor for such loss.

(e) Lawsuits. Holder may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.

(f) Entry on Property. Holder is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Property, or any part thereof, and to take possession of the Property and all books and records, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics relating thereto, and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Property. Holder shall not be deemed to have taken possession of the Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Holder in managing, operating, maintaining, protecting or preserving the Property shall constitute a demand obligation of Grantor (which obligation Grantor hereby promises to pay) to Holder pursuant to this Mortgage. If necessary to obtain the possession provided for above, Holder may invoke any and all legal remedies to dispossess Grantor. In connection with any action taken by Holder pursuant to this Section, Holder shall not be liable for any loss sustained by Grantor resulting from any failure to let the Property or any part thereof, or from any act or omission of Holder in managing the Property unless such loss is caused by the willful misconduct and bad faith of Holder, nor shall Holder be obligated to perform or discharge any obligation, duty or liability of Grantor arising under any lease or other agreement relating to the Property or arising under any Permitted Encumbrance or otherwise arising. Grantor hereby assents to, ratifies and confirms any and all actions of Holder with respect to the Property taken under this Section.

(g) Receiver. Holder shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property whether such receivership be incident

to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Grantor does hereby irrevocably consent to the appointment of such receiver or receivers, waives notice of such appointment of any request therefor or hearing in connection therewith, and any and all defenses to such appointment, agrees not to oppose any application therefor by Holder, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Holder to application of Rents as provided in this Mortgage. Nothing herein is to be construed to deprive Holder of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Holder in connection with any such receivership shall be a demand obligation (which obligation Grantor hereby promises to pay) owing by Grantor to Holder pursuant to this Mortgage.

(h) Termination of Commitment to Lend. Holder may terminate any commitment or obligation to lend or disburse funds under any Loan Document or enter into any other credit arrangement to or for the benefit of Grantor.

(i) Other Rights and Remedies. Holder may exercise any and all other rights and remedies which Holder may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Proceeds of Foreclosure. The proceeds of any sale held by Trustee or Holder or any receiver or public officer in foreclosure of the liens and security interests evidenced hereby shall be applied in accordance with the requirements of applicable laws and to the extent consistent therewith, FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all attorneys' fees and legal expenses, advertising costs, auctioneer's fees, costs of title rundowns and lien searches, inspection fees, appraisal costs, fees for professional services, environmental assessment and remediation fees, all court costs and charges of every character (not exceeding five percent (5%) of the gross proceeds of such sale) to Trustee acting under the provisions of paragraph (c) of Section 5.1 hereof if foreclosed by power of sale as provided in said paragraph, and to the payment of the other Secured Indebtedness, including specifically without limitation the principal, accrued interest and attorneys' fees due and unpaid on the Note and the amounts due and unpaid and owed to Holder under this Mortgage and the amounts due and unpaid and owed to Holder (or its affiliates) under any Swap Transaction, the order and manner of application to the items in this clause (all with interest at the rate per annum provided in the Note FIRST to be in Holder's sole discretion; and SECOND the remainder, if any there shall be, shall be paid to Grantor, or to Grantor's heirs, devisees, representatives, successors or assigns, or such other persons (including the holder or beneficiary of any inferior lien) as may be entitled thereto by law; provided, however, that if Holder is uncertain which person or persons are so entitled, Holder may interplead such remainder in any court of competent jurisdiction, and the amount of any attorneys' fees, court costs and expenses incurred in such action shall be a part of the Secured Indebtedness and shall be reimbursable (without limitation) from such remainder.

Section 5.3. Holder as Purchaser. Holder shall have the right to become the purchaser at any sale held by Trustee or substitute or successor or by any receiver or public officer or at any public sale, and Holder shall have the right to credit upon the amount of Holder's successful bid,

to the extent necessary to satisfy such bid, all or any part of the Secured Indebtedness in such manner and order as Holder may elect.

Section 5.4. Foreclosure as to Matured Debt. Upon the occurrence of a default Holder shall have the right to proceed with foreclosure (judicial or nonjudicial) of the liens and security interests hereunder without declaring the entire Secured Indebtedness due, and in such event any such foreclosure sale may be made subject to the unmatured part of the Secured Indebtedness; and any such sale shall not in any manner affect the unmatured part of the Secured Indebtedness, but as to such unmatured part this Mortgage shall remain in full force and effect just as though no sale had been made. The proceeds of such sale shall be applied as provided in Section 5.2 hereof except that the amount paid under clause FIRST thereof shall be only the matured portion of the Secured Indebtedness and any proceeds of such sale in excess of those provided for in clause FIRST (modified as provided above) shall be applied to the prepayment (without penalty) of any other Secured Indebtedness in such manner and order and to such extent as Holder deems advisable, and the remainder, if any, shall be applied as provided in clause SECOND of Section 5.2 hereof. Several sales may be made hereunder without exhausting the right of sale for any unmatured part of the Secured Indebtedness.

Section 5.5. Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Trustee and Holder shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail themselves of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the Secured Indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and security interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

Section 5.6. Discretion as to Security. Holder may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the Secured Indebtedness, in whole or in part, and in such portions and in such order as may seem best to Holder in its sole and uncontrolled discretion, and any such action shall not in anywise be considered as a waiver of any of the rights, benefits, liens or security interests evidenced by this Mortgage.

Section 5.7. Grantor's Waiver of Certain Rights. To the full extent Grantor may do so, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Grantor, for Grantor, Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, notice of intention to mature or declare due the whole of the Secured Indebtedness, notice of election to mature or declare due the whole of the Secured Indebtedness and all rights to a marshaling of assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created.

Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, 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 Holder under the terms of this Mortgage to a sale of the Property for the collection of the Secured Indebtedness without any prior or different resort for collection, or the right of Holder under the terms of this Mortgage to the payment of the Secured Indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatsoever. Grantor waives any right or remedy which Grantor may have or be able to assert pursuant to any provision of any statute or rule of law, including Chapter 34 of the Texas Business and Commerce Code, pertaining to the rights and remedies of sureties, If any law referred to in this Section and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

Section 5.8. Delivery of Possession After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Grantor or Grantor's heirs, devisees, representatives, or successors as owners of the Property are occupying or using the Property, or any part thereof, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of purchaser, at a reasonable rental per day based upon the value of the property occupied, such rental to be due daily to the purchaser; and to the extent permitted by applicable law, the purchaser at such sale shall, notwithstanding any language herein apparently to the contrary, have the sole option to demand immediate possession following the sale or to permit the occupants to remain as tenants at will. After such foreclosure, any Leases to tenants or subtenants that are subject to this Mortgage (either by their date, their express terms, or by agreement of the tenant or subtenant) shall, at the sole option of Holder or any purchaser at such sale, either (i) continue in full force and effect, and the tenant(s) or subtenant(s) thereunder will, upon request attorn to and acknowledge in writing to the purchaser or purchasers at such sale or sales as landlord thereunder, or (ii) upon notice to such effect from Holder, the Trustees or any purchaser or purchasers, terminate within thirty (30) days from the date of sale. In the event the tenant fails to surrender possession of the Property upon demand, the purchaser shall be entitled to institute and maintain a summary action for possession of the Property (such as an action for forcible detainer) in any court having jurisdiction.

Section 5.9. Effective as Mortgage. This instrument shall be effective as a mortgage as well as a Mortgage and upon the occurrence of a default may be foreclosed as to any of the Property in any manner permitted by applicable law, and any foreclosure suit may be brought by Trustee or by Holder; and to the extent if any, required to cause this instrument to be so effective as a mortgage as well as a Mortgage, Grantor hereby mortgages the Property to Holder. In the event a foreclosure hereunder shall be commenced by Trustee, or his substitute or successor, Holder may at any time before the sale of the Property direct Trustee to abandon the sale, and may then institute suit for the collection of the Note and/or any other secured indebtedness, and for the foreclosure of this Mortgage. It is agreed that if Holder should institute a suit for the collection of the Note or any other secured indebtedness and for the foreclosure of this Mortgage, Holder may at any time before the entry of a final judgment in said suit dismiss the same, and require Trustee, his substitute or successor to sell the Property in accordance with the provisions of this Mortgage.

## ARTICLE 6

## MISCELLANEOUS

Section 6.1. Scope of Mortgage. This Mortgage is a deed of trust and mortgage of both real and personal property, a security agreement, an assignment of rents and leases, a financing statement and fixture filing and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2. Effective as a Financing Statement. This Mortgage 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 said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering as-extracted collateral (including oil and gas), timber, accounts and general intangibles under the UCC, as, in effect from time to time, and the Uniform Commercial Code, as in effect from time to time, in any other state where the Property is situated which will be financed at the wellhead or minehead of the wells or mines located on the Property and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Grantor and the Holder are set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Holder may at any time notify the account debtors or obligors of any accounts, chattel paper, general intangibles, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Holder directly.

Section 6.4. Waiver by Holder. Holder may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Grantor with any covenant herein made by Grantor to the extent and in the manner specified in such writing; (b) consent to Grantor's doing any act which hereunder Grantor is prohibited from doing, or to Grantor's failing to do any act which hereunder Grantor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Mortgage, without the joinder of Trustee; or (d) release any party liable, either directly or indirectly, for the Secured Indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Holder or Trustee hereunder except to the extent specifically agreed to by Holder in such writing.

Section 6.5. No Impairment of Security. The lien, security interest and other security rights of Holder hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Holder including, but not limited to, any renewal, extension or modification which Holder may grant with respect to any Secured Indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Holder may grant in respect of the Property, or any part thereof or any interest therein, or any release or

indulgence granted to any endorser, guarantor or surety of any Secured Indebtedness. The taking of additional security by Holder shall not release or impair the lien, security interest or other security rights of Holder hereunder or affect the liability of Grantor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Holder's consent to any junior lien).

Section 6.6. Acts Not Constituting Waiver by Holder. Holder may waive any default without waiving any other prior or subsequent default. Holder may remedy any default without waiving the default remedied. Neither failure by Holder to exercise, nor delay by Holder in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the Secured Indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Holder of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by Holder and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor in any case shall of itself entitle Grantor to any other or farther notice or demand in similar or other circumstances. Remittances in payment of any part of the Secured Indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Holder in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Holder of any payment in an amount less than the amount then due on any Secured Indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder notwithstanding any notation on or accompanying such partial payment to the contrary.

Section 6.7. Grantor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Grantor, Holder may, without notice to Grantor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Holder, and no extension of the time for the payment of the Secured Indebtedness given by Holder shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Grantor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Grantor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Holder and any subsequent owner of the Property, with or without notice to such Grantor, and no such modifications shall impair the obligations of such Grantor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Holder's consent to any transfer of the Property.

Section 6.8. Place of Payment, Forum; Waiver of Jury Trial. All Secured Indebtedness which may be owing hereunder at any time by Grantor shall be payable at the place designated in the Note (or if no such designation is made, at the address of Holder indicated at the end of this Mortgage). Grantor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any State court, or any United States federal court, sitting in the county in which the Secured Indebtedness is payable, and to the non-exclusive 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 Mortgage or the Secured Indebtedness. Grantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Grantor 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. Grantor 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 in which the Property is located, or any United States federal court, sitting in the State in which the Secured Indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Grantor at its address stated at the end of this Mortgage, or at a subsequent address of Grantor of which Holder received actual notice from Grantor in accordance with this Mortgage, 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 Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Grantor in any other court or jurisdiction. TO THE FULLEST EXTENT PERMITTED BY LAW, GRANTOR WAIVES THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ANY ACTION, SUIT OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS DEED OF TRUST OR ANY OTHER LOAN DOCUMENT.

Section 6.9. Subrogation to Existing Liens; Vendor's/Purchase Money Lien. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Holder at Grantor's request, and Holder shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, security interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Holder is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Holder, Grantor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loan evidenced by the Note or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's or purchase money lien is waived; and Holder shall have, and is hereby granted, a vendor's or purchase money lien on the Property as cumulative additional security for the secured indebtedness. Holder may foreclose under this Mortgage or under the vendor's or purchase money lien without waiving the other or may foreclose under both.

Section 6.10. Application of Payments to Certain Indebtedness. If any part of the Secured Indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property

cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.11. Nature of Loan; Compliance with Usury Laws. The loan evidenced by the Note is being made solely for the purpose of carrying on or acquiring a business or commercial enterprise. It is the intent of Grantor and Holder and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Holder and Grantor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Holder shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Grantor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Holder does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Holder shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State where the Property is located or where the Secured Indebtedness is payable, or the federal laws of the United States applicable to this transaction, whichever laws allow the greatest interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.12. Releases.

(a) Release of Mortgage. If all of the Secured Indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all Swap Transactions and all other obligations, if any, of Holder for further advances have been terminated, then, and in that event only, all rights under this Mortgage shall terminate (except to the extent expressly provided herein with respect to indemnifications, representations and warranties and other rights which are to continue following the release hereof) and the Property shall become wholly clear of the liens,

security interests, conveyances and assignments evidenced hereby, and such liens and security interests shall be released by Holder in due form at Grantor's cost. Without limitation, all provisions herein for indemnity of Holder or Trustee shall survive discharge of the Secured Indebtedness, the termination of any and all Swap Transactions and any foreclosure, release or termination of this Mortgage.

(b) Partial Releases, No Release in Default. Partial releases of the lien of this Mortgage 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 Holder. No partial release shall be sought, requested or required if any Default has occurred which has not been cured.

(c) Effect of Partial Release. Holder may, regardless of consideration, cause the release of any part of the Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Property.

Section 6.13. Notices. All notices, requests, consents, demands and other communications 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 registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by facsimile. Any such notice or communication 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 Texas Property Code Section 51.002, as amended, 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 receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.14. Invalidity of Certain Provisions. A determination that any provision of this Mortgage 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 Mortgage 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.

Section 6.15. Gender; Titles, Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as

used in this Mortgage shall include firms, associations, partnerships (including limited 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.

Section 6.16. Reporting Compliance. Grantor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Note and secured by this Mortgage which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Holder to furnish Holder with evidence of such compliance.

Section 6.17. Holder's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Holder is required or requested, (a) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Holder, and Holder shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Holder's judgment, and (b) no approval or consent of Holder shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Holder.

Section 6.18. Grantor. Unless the context clearly indicates otherwise, as used in this Mortgage, "Grantor" means the grantors named in Section 1.1 hereof or any of them. The obligations of Grantor hereunder shall be joint and several. If any Grantor, or any signatory who signs on behalf of any Grantor, is a corporation, partnership or other legal entity, Grantor and any such signatory, and the person or persons signing for it, represent and warrant to Holder that this instrument is executed, acknowledged and delivered by Grantor's duly authorized representatives. If Grantor is an individual, no power of attorney granted by Grantor herein shall terminate on Grantor's disability.

Section 6.19. Execution, Recording. This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof Grantor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Trustee or Holder shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.20. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor, and shall inure to the benefit of Trustee and Holder and shall constitute

covenants running with the Land. All references in this Mortgage to Grantor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Grantor.

Section 6.21. Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.22. No Partnership, Etc. The relationship between Holder and Grantor is solely that of lender and borrower. Holder has no fiduciary or other special relationship with Grantor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Grantor and Holder or in any way make Holder a co-principal with Grantor with reference to the Property. All agreed contractual duties between or among Holder, Trustee and Grantor are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.23. Applicable Law. THIS DEED OF TRUST, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH AND PURSUANT TO THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT AS OTHERWISE REQUIRED BY MANDATORY PROVISIONS OF LAW AND EXCEPT TO THE EXTENT THAT REMEDIES PROVIDED BY THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE WHERE THE PROPERTY IS LOCATED ARE GOVERNED BY THE LAWS OF SUCH OTHER JURISDICTION.

Section 6.24. Construction Mortgage. This Mortgage constitutes a "construction mortgage" as defined in Section 9.334 of the UCC to the extent that it secures an obligation incurred for the construction of the Improvements, including the acquisition cost of the Land.

Section 6.25. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Grantor and Holder with respect to the transactions arising in connection with the Secured Indebtedness and supersede all prior written or oral understandings and agreements between Grantor and Holder with respect to the matters addressed in the Loan Documents. Grantor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Holder to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.26. Substitute Trustee. The Trustee may resign by an instrument in writing addressed to Holder, or Trustee may be removed at any time with or without cause by an instrument in writing executed by Holder. In case of the death, resignation, removal, or disqualification of Trustee, or if for any reason Holder shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Holder shall have the right and is hereby authorized and empowered to

appoint a successor trustee(s), or a substitute trustee(s), without other formality than appointment and designation in writing executed by Holder and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the Secured Indebtedness has been paid in fall, or until the Property is fully and finally sold hereunder. If Holder is a corporation or association and such appointment is executed on its behalf by an officer of such corporation or association, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation or association. Upon the making of any such appointment and designation, all of the estate and title of Trustee in the Property shall vest in the named successor or substitute Trustee(s) and he shall thereupon succeed to, and shall hold, possess and execute, all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to "Trustee" shall be deemed to refer to Trustee (including any successor(s) or substitute(s) appointed and designated as herein provided) from time to time acting hereunder.

Section 6.27. No Liability of Trustee. The Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever (including Trustee's negligence), except for Trustee's gross negligence or willful misconduct. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by him hereunder. Grantor hereby ratifies and confirms any and all acts which the herein named Trustee or his successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof. Grantor will reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties. The foregoing indemnity shall not terminate upon discharge of the Secured Indebtedness or foreclosure, or release or other termination, of this Mortgage.

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, Grantor has executed this instrument as of the date first written on page 1 hereof.

OPUS WEST LP, a Delaware limited partnership

BY: OPUS WEST CORPORATION, a Minnesota corporation, its General Partner

Address: 2555 East Camelback Road
Suite 800
Phoenix, Arizona 85016-9267

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

STATE OF ARIZONA §
§
County of Maricopa §

This instrument was acknowledged before me on November 8, 2006, by CHARLES J. VOGEL, Senior Vice President of OPUS WEST CORPORATION, a Minnesota corporation, the General Partner of OPUS WEST LP, a Delaware limited partnership.

OFFICIAL SEAL
KIM A. HENNIS
Notary Public - Arizona
Maricopa County
Comm. Expires Dec. 08, 2008

Kim A. Hennis
Printed Name: Kim A. Hennis
Notary Public, State of ARIZONA

# EXHIBIT A

## LAND

All that parcel or parcels of real property located in the Harris County, State of Texas, and more particularly described as follows:

**Being all that certain tract or parcel containing 43.3323 acres (1,887,556 square feet) of land, situated in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being all of Restricted Reserve "A" and Restricted Reserve "B" of Crossings At Fort Bend Parkway, a subdivision of record at Film Code number 597210 of the Map Records, Harris County, Texas, said 43.3323 acres being more particularly described by metes and bounds as follows:( all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):**

**BEGINNING at a found TxDot Monument in the north right-of-way line of Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A" and of the herein described tract;**

**THENCE North 63°49'29" West 376.24 feet, along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;**

**THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", 597.45 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 06°00"10", and a chord which bears North 60°49'24" West 597.18 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;**

**THENCE North 57°49'19" West 323.37 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a TxDot Monument found marking the beginning of a curve to the left;**

**THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", an arc distance of 183.34 feet, along said curve to the left, having a radius of 5,756.58 feet, a central angle of 01°49'29", and a chord which bears North 58°44'04" West 183.33 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found in the south line of a Harris County Flood Control District Fee Strip (100.00 feet wide) recorded under Clerk's File Number H905971, Harris County, Texas, and being the west corner of said Restricted Reserve "A" and of the herein described tract;**

**THENCE North 87°28'30" East 441.35 feet, departing the north right-of-way line of said Beltway 8, along the south line of said Fee Strip and the most southerly north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Fee Strip, the southwest corner of said Restricted Reserve "B", an interior corner of said Restricted Reserve "A", and an interior corner of the herein described tract;**

# EXHIBIT "A"
## (Continued)

THENCE North 02°20'57" West 723.17 feet, along the east line of said Fee Strip and the west line of said Restricted Reserve "B" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southwest corner of Unrestricted Reserve "C" of said Crossings At Fort Bend Parkway, the northwest corner of said Restricted Reserve "B", and the northwest corner of the herein described tract;

THENCE along the common line of said Restricted Reserve "B" and said Unrestricted Reserve "C" the following 5 (five) courses;

North 87°39'03" East 83.00 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

South 32°29'34" East 65.06 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

North 87°39'04" East 111.22 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

North 59°18'30" East 203.55 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

South 30°41'30" East 166.47 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the common north corner of said Restricted Reserves "A" and "B" and angle point of the herein described tract;

THENCE North 77°52'48" East 127.72 feet, continuing along the south line of said Unrestricted Reserve "C", along the north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

THENCE North 32°52'48" East 700.77 feet continuing along the south line of said Unrestricted Reserve "C" and the north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in a curve to the right in the west right-of-way line of said Hillcroft Avenue and marking the common east corner of said Unrestricted Reserve "C" and said Restricted Reserve "A", same being the northeast corner of the herein described tract;

THENCE along the west right-of-way line of said Hillcroft Avenue and the east line of said restricted Reserve "A" the following 7 (seven) courses;

75.74 feet, along the arc of said curve to the left, having a radius of 2,050.00 feet, a central angle of 02°07'01", and a chord which bears South 39°35'24" East 75.74 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 40°38'54" East 228.29 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

452.01 feet, along the arc of said curve to the right, having a radius of 684.34 feet, a central angle of 37°50'40", and a chord which bears South 21°43'36" East 443.84 feet, to utility pole found at the end of said curve;

# EXHIBIT "A"
## (Continued)

South 02°48'16" East 424.69 feet, to a utility pole found marking the beginning of a curve to the right;

446.40 feet, along the arc of said curve to the right, having a radius of 716.74 feet, a central angle of 35°41'06", and a chord which bears South 15°02'17" West 439.22 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 32°52'50" West 569.88 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", found marking the beginning of a curve to the right;

5.58 feet, along the arc of said curve to the right, having a radius of 5,759.56 feet, a central angle of 00°03'20", and a chord which bears South 32°51'10" West 5.58 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found at the end of said curve;

THENCE South 74°22'10" West 74.59 feet, along said cut-back line to the POINT OF BEGINNING and containing 43.3323 acres (1,887,556 square feet) of land. This description is based on a ALTA/ACSM Land Title Survey performed by Terra Surveying Company, Inc., dated April 18, 2006. TSC Project Number 1617-0501-S. Updated October 6, 2006.

Save and Except the following 11.7452 acres

Being all that certain tract or parcel containing 11.7452 acres (511,621 square feet) of land, situated partially in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being out of and a part of Restricted Reserve "A", Block 1 of Crossings at Fort Bend Parkway a subdivision of record at Film Code Number 597210, Harris County Map Records, Harris County, Texas, said 11.7452 acres being more particularly described by metes and bounds as follows: (all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

COMMENCING at a found TxDot Monument in the north right- of way line of the Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A";

THENCE North 63°49'29" West 370.74 feet, along the north right-of-way line of said Beltway 8, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the POINT OF BEGINNING of the herein described tract;

THENCE North 63°49'29" West 5.50 feet, continuing along the north right-of-way line of said Beltway 8, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the beginning of a curve to the right;

THENCE continuing along the north right-of-way line of said Beltway 8, 67.40 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 00°40'38", and a chord which bears North 63°29'10" West 67.40 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the southerly southwest corner herein described tract;

THENCE over and across said Restricted Reserve "A" the following 6 (six) courses;

# EXHIBIT "A"
## (Continued)

North 71°10'30" East 23.20 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most southerly west line of the herein described tract;

North 26°10'30" East 241.42 feet, to an "X" cut in concrete set at the beginning of a non-tangent curve to the right;

519.85 feet, along the arc of said curve to the right, having a radius of 5,494.04 feet, a central angle 05°25'17", and a chord which bears North 60°33'04" West 519.66 feet, to an "X" cut in concrete set at the end of said curve;

North 57°50'25" West 49.83 feet, to an "X" cut in concrete set at the beginning of a curve to the left;

64.05 feet, along the arc of said curve to the left, having a radius of 68.00 feet, a central angle of 53°58'05", and a chord which bears North 84°49'28" West 61.71 feet, to an "X" cut in concrete set at the end of said curve;

North 32°20'47" West 25.31 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the southwest corner of Restricted Reserve "B", Block 1 of said Crossings At Fort Bend Parkway, same being an interior corner of said Restricted Reserve "A" and the beginning of a non-tangent curve to the right;

THENCE along the common line of said Restricted Reserves "A" and "B" the following 4 (four) courses;

92.23 feet, along the arc of said curve to the right, having a radius of 93.00 feet, a central angle of 56°49'17", and a chord which bears South 86°15'04" East 88.50 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 57°50'25" East 24.89 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Unrestricted Reserve "B", an interior corner of said Restricted Reserve "A", and of the herein described tract;

North 32°52'48" East 600.60 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most northerly west line of the herein described tract;

North 12°07'12" West 91.31 feet, to a 5/8-inch iron rod with cap stamped "Terra

Surveying" set at the most northwesterly corner of the herein described tract;

THENCE departing said common line, over and across said Restricted Reserve "A" the following 6 (six) courses;

South 57°07'12" East 464.49 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract;

South 32°52'48" West 75.02 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract;

South 57°07'12" East 338.11 feet, to an "X" cut in concrete set at the beginning of a non-tangent curve to the right and being the most westerly northeast corner of the herein described tract;

# EXHIBIT "A"
## (Continued)

15.78 feet, along the arc of said curve to the right, having a radius of 900.00 feet, a central angle of 01°00'17", and a chord which bears South 13°50'37" West 15.78 feet, to an "X" cut in concrete set at the end of said curve;

South 74°11'23" East 265.76 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most easterly north line of the herein described tract;

North 60°48'37" East 19.97 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the arc of a curve, in the westerly right-of-way line of said Hillcroft Avenue and being the northeast corner of the herein described tract;

THENCE 75.15 feet, along the arc of said curve to the right, having a radius of 716.74 feet, a central angle of 06°00'28", and a chord which bears South 16°20'44" West 75.12 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the most easterly southeast corner of the herein described tract;

THENCE departing the westerly right-of-way line of said Hillcroft Avenue, over and across the said Restricted Reserve "A" the following 8 (eight) courses;

North 29°11'23" West 21.20 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point in the most easterly south line of the herein described tract;

North 74°11'23" West 264.11 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract and the beginning of a non-tangent curve to the right;

245.45 feet, along the arc of said curve to the right, having a radius of 904.55 feet, a central angle of 15°32'50", and a chord which bears South 25°06'24" West 244.70 feet, to an "X" cut in concrete set marking the end of said curve;

South 32°52'49" West 11.62 feet, to an "X" cut in concrete set marking the beginning of a curve to the right;

354.95 feet, along the arc of said curve to the right, having a radius of 272.00 feet, a central angle of 74°46'12", and a chord which bears South 70°15'54" West 330.30 feet, to an "X" cut in concrete set marking the end of said curve and being an interior corner of the herein described tract;

South 26°10'30" West 217.89 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point in the most southeasterly east line of the herein described tract;

South 63°49'30" East 10.50 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an interior corner of the herein described tract;

South 26°10'30" West 43.33 feet, to the POINT OF BEGINNING and containing 11.7452 acres (511,621 square feet) of land. This description is based on an ALTA/ACSM Land Title Survey prepared by Terra Surveying Co., Inc., dated April 18, 2006. TSC Project No. 1617-0501-S. Updated October 6, 2006



RP 033-52-1353

# EXHIBIT "A"
## (Continued)

**Save and Except the following 1.174 acres**

**Being all that certain tract or parcel containing 1.174 acres (51,118 square feet) of land, situated in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being a portion of Restricted Reserve "A" of Crossings At Fort Bend Parkway, a subdivision of record at Film Code number 597210 of the Map Records, Harris County, Texas, said 1.174 acres being more particularly described by metes and bounds as follows:( all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):**

**COMMENCING for reference at a found TxDot Monument in the north right-of-way line of Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A";**

**THENCE North 63°49'29" West 376.24 feet, along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;**

**THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", 597.45 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 06°00"10", and a chord which bears North 60°49'24" West 597.18 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;**

**THENCE North 57°49'19" West 118.18 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a mag nail with shiner set marking the southeast corner and POINT OF BEGINNING of the herein described tract;**

**THENCE North 57°49'19" West 205.19 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a TxDot Monument found marking the beginning of a curve to the left;**

**THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", an arc distance of 183.34 feet, along said curve to the left, having a radius of 5,756.58 feet, a central angle of 01°49'29", and a chord which bears North 58°44'04" West 183.33 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found in the south line of a Harris County Flood Control District Fee Strip (100.00 feet wide) recorded under Clerk's File Number H905971, Harris County, Texas, and being the west corner of said Restricted Reserve "A" and of the herein described tract;**

**THENCE North 87°28'30" East 441.35 feet, departing the north right-of-way line of said Beltway 8, along the south line of said Fee Strip and the most southerly north line of said**

**Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Fee Strip, the most westerly southwest corner of Restricted Reserve "B" of said Crossings At Fort Bend Parkway, an interior corner of said Restricted Reserve "A", and the northeast corner of the herein described tract;**

# EXHIBIT "A"
## (Continued)

THENCE South 32°20'47" East at a distance of 17.44 feet, pass an 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southwest corner of said Restricted Reserve "B", and an interior corner of said Restricted Reserve "A", continuing in all a total distance of 42.75 feet, to an "X" cut in concrete set marking the beginning of a non-tangent curve to the left;

THENCE over and across said Restricted Reserve "A", an arc distance of 42.76 feet, along said curve to the left, having a radius of 68.00 feet, a central angle of 36°01'47", and a chord which bears South 50°10'28" West 42.06 feet, to an "X" cut in concrete set at the end of said curve;

THENCE South 32°09'35" West 189.96 feet, continuing over and across said Restricted Reserve "A" to the POINT OF BEGINNING and containing 1.174 acres (51,118 square feet) of land. This description is based on a Standard Land Survey performed by Terra Surveying Company, Inc., dated April 18, 2006. TSC Project Number 1617-0501-S, latest revision dated August 28, 2006. Updated October 6, 2006.

Save and Except the following 0.6887 acre

Being all of that certain tract or parcel containing 0.6887 acre (30,000 square feet) of land situated in the C.W. Adams Survey, Abstract Number 101 and being out of and a part of Restricted Reserve "A", Block 1 of Crossings At Fort Bend Parkway, a subdivision of record at Film Code Number 597210 of the Map Records, Harris County, Texas, said 0.6887 acres being more particularly described by metes and bounds as follows. (All bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

COMMENCING at a 5/8-inch iron rod set in a curve to the left in the westerly right-of-way line of Hillcroft Avenue (width varies), as recorded under Harris County Clerk's File Numbers C806739 and C878625, marking the most northwest corner of Restricted Reserve "A", Block 1 of said Crossings At Fort Bend Parkway;

THENCE along the westerly right-of-way line of said Hillcroft Avenue a distance of 75.74 feet along the arc of said curve to the left, having a radius of 2,050.00 feet, a central angle of 02°07'01", and a chord which bears South 39°35'24" East 75.74 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

THENCE South 40°38'54" East continuing along said westerly right-of-way line of said Hillcroft Avenue a distance of 228.29 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

THENCE along the arc of said curve to the right a distance of 452.01 feet, having a radius of 684.34 feet, a central angle of 37°50'40", and a chord which bears South 21°43'36" East 443.84 feet, to a utility pole found marking the end of said curve;



RP 033-52-1355

# EXHIBIT "A"
## (Continued)

THENCE South 02°48'16" East along said westerly right-of-way line of said Hillcroft Avenue a distance of 27.82 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the POINT OF BEGINNING of the herein described tract;

THENCE South 02°48'16" East continuing along said westerly right-of-way line of said Hillcroft Avenue a distance of 116.28 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the southeast corner of the herein described tract;

THENCE South 87°11'44" West departing said westerly right-of-way line of said Hillcroft Avenue over and across said Restricted Reserve "A", Block 1 of said Crossings At Fort Bend Parkway a distance of 258.00 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the southwest corner of the herein described tract;

THENCE North 02°48'16" West over and across said Restricted Reserve "A", Block 1 a distance of 116.28 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the northwest corner of the herein described tract;

THENCE North 87°11'44" East over and across said Restricted Reserve "A", Block 1 a distance of 258.00 feet, to the POINT OF BEGINNING and containing 0.6887 acres (30,000 square feet) of land. This description is based on an ALTA/ACSM Land Title Survey prepared by Terra Surveying Company Inc., dated May 17, 2006. TSC Project No. 1617-0501-S. Updated October 6, 2006

Parcel 2: TOGETHER WITH all rights and easements appurtenant to the property described above as set forth under that certain Restriction Agreement and Grant of Easements as recorded under County Clerk's File No. Z273241 in the Official Public Records of Real Property of Harris County, Texas.

Parcel 3: TOGETHER WITH all rights and easements appurtenant to the property described above as set forth under that certain Declaration of Easements (Detention Pond) as recorded under County Clerk's File No. Z273236 in the Official Public Records of Real Property of Harris County, Texas.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

NOV 10 2006

COUNTY CLERK

RP 033-52-1356

# ATTACHMENT 5

# State of Delaware

SECRETARY OF STATE
DIVISION OF CORPORATIONS
P.O. BOX 898
DOVER, DELAWARE 19903

061046322

9325320 12-02-2006

QUARLES & BRADY STREICH LANG LLP
TWO NORTH CENTRAL AVENUE
ONE RENAISSANCE SQUARE
PHOENIX AZ 85004-2391
ATTN: MILA F. CRUZ

| DESCRIPTION | AMOUNT |
|---|---|
| 20064194114 - UCC1 UCC-1 | |
| UCC1 Filing Fee | 50.00 |
| UCC Filing Page Fee | 16.00 |
| FILING TOTAL | 66.00 |
| TOTAL PAYMENTS | 66.00 |
| SERVICE REQUEST BALANCE | .00 |

The following Debtor Names were indexed in the UCC Management System as a result of this filing:

OPUS WEST LP

[redacted]

DELAWARE DEPARTMENT OF STATE
U.C.C. FILING SECTION
FILED 12:30 PM 11/14/2006
INITIAL FILING NUM: 6419411 4
AMENDMENT NUMBER: 0000000
SRV: 061046322

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]
Mila Cruz, 602-229-5523

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)
Quarles & Brady Streich Lang LLP
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004
Attention: Mila Cruz

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 LP

OR

1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

1c. MAILING ADDRESS: 2555 East Camelback Road, Suite 800 | CITY: Phoenix | STATE: AZ | POSTAL CODE: 85016-9267 | COUNTRY: USA

1d. TAX ID# SSN or EIN: 81-0545535 | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION: limited partnership | 1f. JURISDICTION OF ORGANIZATION: Delaware | 1g. ORGANIZATIONAL ID #, if any: 3507759 ☐ 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 | CITY | STATE | POSTAL CODE | COUNTRY

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 ☐ NONE

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 association

OR

3b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

3c. MAILING ADDRESS: Mail Code: REBG/AZ1-200-22-17
201 East Washington Street, Attn: N. Alonzo | CITY: Phoenix | STATE: AZ | POSTAL CODE: 85004-2343 | COUNTRY: 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): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ 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] ☐ All Debtors ☐ Debtor 1 ☐ Debtor

8. OPTIONAL FILER REFERENCE DATA

Delaware Secretary of State for Ft. Bend Crossing, Harris County, TX

**SCHEDULE "I"**

Financing Statement (continued)
Name of Debtor: OPUS WEST LP, a Delaware limited partnership

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. "Property" consists of the following: (a) the real property described in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Land") together with: (i) any and all buildings, structures, improvements, alterations or appurtenances now or hereafter situated or to be situated on the Land (collectively the "Improvements"); and (ii) all right, title and interest of Debtor, now owned or hereafter acquired, in and to (1) all common area and other use rights, streets, roads, alleys, tenements, hereditaments, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining or appurtenant to any of the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; and (4) all water and water rights, shares of stock evidencing water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and 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 the 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 the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all (i) plans and specifications for the Improvements; (ii) Debtor's rights, but not liability for any breach by Debtor, under all commitments (including any commitments for financing to pay any of the secured indebtedness), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the loan documents between Debtor and Secured Party (the "Loan Documents") or from or through any state or federal government sponsored program or entity) swap transactions, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Premises or the Accessories or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Premises or the Accessories (including but not limited to Debtor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts (including deposit accounts),

instruments, documents, promissory notes and chattel paper (whether tangible or electronic) arising from or by virtue of any transactions related to the Premises or the Accessories, and any account or deposit account from which Debtor may from time to time authorize Secured Party to debit and/or credit payments due with respect to the loan or any swap transaction, all rights to the payment of money from Secured Party under any swap transaction, and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any swap transaction; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories; (vi) as-extracted collateral produced from or allocated to the Land including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; and (vii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Debtor or in which Debtor can otherwise grant a security interest; and (d) all (i) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to herein, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (ii) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing Debtor now has or hereafter acquires relating to the properties, rights, titles and interests referred to herein; (iii) all commercial tort claims Debtor now has or hereafter acquires relating to the properties, rights, titles and interests referred to herein, and (iv) other interests of every kind and character which Debtor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to herein and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Debtor in any of the property referred to herein is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Debtor in or to the property demised under the lease creating the leasehold estate; the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto. As used herein, the terms "accounts," "chattel paper," "documents," "equipment," "general intangibles," "goods," "instruments" and "inventory" have the meanings provided by the Arizona Uniform Commercial Code on the date hereof.

The Land is all that real property situate in the County of Harris, State of Texas, and more particularly described on Exhibit "A" attached hereto.

**EXHIBIT "A"**

**Legal Description**

# EXHIBIT "A"

## (LEGAL DESCRIPTION)

All that real property situate in Harris County, Texas, more particularly described as follows:

Being all that certain tract or parcel containing 43.3323 acres (1,887,556 square feet) of land, situated in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being all of Restricted Reserve "A" and Restricted Reserve "B" of Crossings At Fort Bend Parkway, a subdivision of record at Film Code number 597210 of the Map Records, Harris County, Texas, said 43.3323 acres being more particularly described by metes and bounds as follows:( all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

BEGINNING at a found TxDot Monument in the north right-of-way line of Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A" and of the herein described tract;

THENCE North 63°49'29" West 376.24 feet, along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", 597.45 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 06°00"10", and a chord which bears North 60°49'24" West 597.18 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

THENCE North 57°49'19" West 323.37 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a TxDot Monument found marking the beginning of a curve to the left;

THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", an arc distance of 183.34 feet, along said curve to the left, having a radius of 5,756.58 feet, a central angle of 01°49'29", and a chord which bears North 58°44'04" West 183.33 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found in the south line of a Harris County Flood Control District Fee Strip (100.00 feet wide) recorded under Clerk's File Number H905971, Harris County, Texas, and being the west corner of said Restricted Reserve "A" and of the herein described tract;

THENCE North 87°28'30" East 441.35 feet, departing the north right-of-way line of said Beltway 8, along the south line of said Fee Strip and the most southerly north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Fee Strip, the southwest corner of said Restricted Reserve "B", an interior corner of said Restricted Reserve "A", and an interior corner of the herein described tract;

**EXHIBIT "A"**
**(Continued)**

THENCE North 02°20'57" West 723.17 feet, along the east line of said Fee Strip and the west line of said Restricted Reserve "B" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southwest corner of Unrestricted Reserve "C" of said Crossings At Fort Bend Parkway, the northwest corner of said Restricted Reserve "B", and the northwest corner of the herein described tract;

THENCE along the common line of said Restricted Reserve "B" and said Unrestricted Reserve "C" the following 5 (five) courses;

North 87°39'03" East 83.00 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

South 32°29'34" East 65.06 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

North 87°39'04" East 111.22 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

North 59°18'30" East 203.55 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

South 30°41'30" East 166.47 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the common north corner of said Restricted Reserves "A" and "B" and angle point of the herein described tract;

THENCE North 77°52'48" East 127.72 feet, continuing along the south line of said Unrestricted Reserve "C", along the north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point of the herein described tract;

THENCE North 32°52'48" East 700.77 feet continuing along the south line of said Unrestricted Reserve "C" and the north line of said Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in a curve to the right in the west right-of-way line of said Hillcroft Avenue and marking the common east corner of said Unrestricted Reserve "C" and said Restricted Reserve "A", same being the northeast corner of the herein described tract;

THENCE along the west right-of-way line of said Hillcroft Avenue and the east line of said restricted Reserve "A" the following 7 (seven) courses;

75.74 feet, along the arc of said curve to the left, having a radius of 2,050.00 feet, a central angle of 02°07'01", and a chord which bears South 39°35'24" East 75.74 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 40°38'54" East 228.29 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

452.01 feet, along the arc of said curve to the right, having a radius of 684.34 feet, a central angle of 37°50'40", and a chord which bears South 21°43'36" East 443.84 feet, to utility pole found at the end of said curve;

# EXHIBIT "A"
## (Continued)

South 02°48'16" East 424.69 feet, to a utility pole found marking the beginning of a curve to the right;

446.40 feet, along the arc of said curve to the right, having a radius of 716.74 feet, a central angle of 35°41'06", and a chord which bears South 15°02'17" West 439.22 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 32°52'50" West 569.88 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", found marking the beginning of a curve to the right;

5.58 feet, along the arc of said curve to the right, having a radius of 5,759.56 feet, a central angle of 00°03'20", and a chord which bears South 32°51'10" West 5.58 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found at the end of said curve;

THENCE South 74°22'10" West 74.59 feet, along said cut-back line to the POINT OF BEGINNING and containing 43.3323 acres (1,887,556 square feet) of land. This description is based on a ALTA/ACSM Land Title Survey performed by Terra Surveying Company, Inc., dated April 18, 2006. TSC Project Number 1617-0501-S. Updated October 6, 2006.

Save and Except the following 11.7452 acres

Being all that certain tract or parcel containing 11.7452 acres (511,621 square feet) of land, situated partially in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being out of and a part of Restricted Reserve "A", Block 1 of Crossings at Fort Bend Parkway a subdivision of record at Film Code Number 597210, Harris County Map Records, Harris County, Texas, said 11.7452 acres being more particularly described by metes and bounds as follows: (all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

COMMENCING at a found TxDot Monument in the north right- of way line of the Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A";

THENCE North 63°49'29" West 370.74 feet, along the north right-of-way line of said Beltway 8, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the POINT OF BEGINNING of the herein described tract;

THENCE North 63°49'29" West 5.50 feet, continuing along the north right-of-way line of said Beltway 8, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the beginning of a curve to the right;

THENCE continuing along the north right-of-way line of said Beltway 8, 67.40 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 00°40'38", and a chord which bears North 63°29'10" West 67.40 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the southerly southwest corner herein described tract;

THENCE over and across said Restricted Reserve "A" the following 6 (six) courses;

# EXHIBIT "A"
## (Continued)

North 71°10'30" East 23.20 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most southerly west line of the herein described tract;

North 26°10'30" East 241.42 feet, to an "X" cut in concrete set at the beginning of a non-tangent curve to the right;

519.85 feet, along the arc of said curve to the right, having a radius of 5,494.04 feet, a central angle 05°25'17", and a chord which bears North 60°33'04" West 519.66 feet, to an "X" cut in concrete set at the end of said curve;

North 57°50'25" West 49.83 feet, to an "X" cut in concrete set at the beginning of a curve to the left;

64.05 feet, along the arc of said curve to the left, having a radius of 68.00 feet, a central angle of 53°58'05", and a chord which bears North 84°49'28" West 61.71 feet, to an "X" cut in concrete set at the end of said curve;

North 32°20'47" West 25.31 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found marking the southwest corner of Restricted Reserve "B", Block 1 of said Crossings At Fort Bend Parkway, same being an interior corner of said Restricted Reserve "A" and the beginning of a non-tangent curve to the right;

THENCE along the common line of said Restricted Reserves "A" and "B" the following 4 (four) courses;

92.23 feet, along the arc of said curve to the right, having a radius of 93.00 feet, a central angle of 56°49'17", and a chord which bears South 86°15'04" East 88.50 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;

South 57°50'25" East 24.89 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Unrestricted Reserve "B", an interior corner of said Restricted Reserve "A", and of the herein described tract;

North 32°52'48" East 600.60 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most northerly west line of the herein described tract;

North 12°07'12" West 91.31 feet, to a 5/8-inch iron rod with cap stamped "Terra

Surveying" set at the most northwesterly corner of the herein described tract;

THENCE departing said common line, over and across said Restricted Reserve "A" the following 6 (six) courses;

South 57°07'12" East 464.49 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract;

South 32°52'48" West 75.02 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract;

South 57°07'12" East 338.11 feet, to an "X" cut in concrete set at the beginning of a non-tangent curve to the right and being the most westerly northeast corner of the herein described tract;

# EXHIBIT "A"
## (Continued)

15.78 feet, along the arc of said curve to the right, having a radius of 900.00 feet, a central angle of 01°00'17", and a chord which bears South 13°50'37" West 15.78 feet, to an "X" cut in concrete set at the end of said curve;

South 74°11'23" East 265.76 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at an angle point in the most easterly north line of the herein described tract;

North 60°48'37" East 19.97 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set in the arc of a curve, in the westerly right-of-way line of said Hillcroft Avenue and being the northeast corner of the herein described tract;

THENCE 75.15 feet, along the arc of said curve to the right, having a radius of 716.74 feet, a central angle of 06°00'28", and a chord which bears South 16°20'44" West 75.12 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the most easterly southeast corner of the herein described tract;

THENCE departing the westerly right-of-way line of said Hillcroft Avenue, over and across the said Restricted Reserve "A" the following 8 (eight) courses;

North 29°11'23" West 21.20 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point in the most easterly south line of the herein described tract;

North 74°11'23" West 264.11 feet, to an "X" cut in concrete set marking an interior corner of the herein described tract and the beginning of a non-tangent curve to the right;

245.45 feet, along the arc of said curve to the right, having a radius of 904.55 feet, a central angle of 15°32'50", and a chord which bears South 25°06'24" West 244.70 feet, to an "X" cut in concrete set marking the end of said curve;

South 32°52'49" West 11.62 feet, to an "X" cut in concrete set marking the beginning of a curve to the right;

354.95 feet, along the arc of said curve to the right, having a radius of 272.00 feet, a central angle of 74°46'12", and a chord which bears South 70°15'54" West 330.30 feet, to an "X" cut in concrete set marking the end of said curve and being an interior corner of the herein described tract;

South 26°10'30" West 217.89 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an angle point in the most southeasterly east line of the herein described tract;

South 63°49'30" East 10.50 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking an interior corner of the herein described tract;

South 26°10'30" West 43.33 feet, to the POINT OF BEGINNING and containing 11.7452 acres (511,621 square feet) of land. This description is based on an ALTA/ACSM Land Title Survey prepared by Terra Surveying Co., Inc., dated April 18, 2006. TSC Project No. 1617-0501-S. Updated October 6, 2006

# EXHIBIT "A"
## (Continued)

**Save and Except the following 1.174 acres**

**Being all that certain tract or parcel containing 1.174 acres (51,118 square feet) of land, situated in the C.W. Adams Survey, Abstract Number 101 and the T.T.R.R. Co. Survey, Abstract Number 1005 Harris County, Texas, and being a portion of Restricted Reserve "A" of Crossings At Fort Bend Parkway, a subdivision of record at Film Code number 597210 of the Map Records, Harris County, Texas, said 1.174 acres being more particularly described by metes and bounds as follows:( all bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):**

**COMMENCING for reference at a found TxDot Monument in the north right-of-way line of Beltway 8 (400 feet wide) as described in deed recorded under County Clerk's Film Code Number 185-64-0059, Harris County, Texas, at the south end of a cut-back line from the west right-of-way line of Hillcroft Avenue (width varies), recorded under Clerk's File Numbers C806739 and C878625, Harris County, Texas, and being the most southerly corner of said Restricted Reserve "A";**

**THENCE North 63°49'29" West 376.24 feet, along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;**

**THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", 597.45 feet, along the arc of said curve to the right, having a radius of 5,702.58 feet, a central angle of 06°00"10", and a chord which bears North 60°49'24" West 597.18 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set at the end of said curve;**

**THENCE North 57°49'19" West 118.18 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a mag nail with shiner set marking the southeast corner and POINT OF BEGINNING of the herein described tract;**

**THENCE North 57°49'19" West 205.19 feet, continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", to a TxDot Monument found marking the beginning of a curve to the left;**

**THENCE continuing along the north right-of-way line of said Beltway 8 and the south line of said Restricted Reserve "A", an arc distance of 183.34 feet, along said curve to the left, having a radius of 5,756.58 feet, a central angle of 01°49'29", and a chord which bears North 58°44'04" West 183.33 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" found in the south line of a Harris County Flood Control District Fee Strip (100.00 feet wide) recorded under Clerk's File Number H905971, Harris County, Texas, and being the west corner of said Restricted Reserve "A" and of the herein described tract;**

**THENCE North 87°28'30" East 441.35 feet, departing the north right-of-way line of said Beltway 8, along the south line of said Fee Strip and the most southerly north line of said**

**Restricted Reserve "A" to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southeast corner of said Fee Strip, the most westerly southwest corner of Restricted Reserve "B" of said Crossings At Fort Bend Parkway, an interior corner of said Restricted Reserve "A", and the northeast corner of the herein described tract;**

# EXHIBIT "A"
## (Continued)

THENCE South 32°20'47" East at a distance of 17.44 feet, pass an 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the southwest corner of said Restricted Reserve "B", and an interior corner of said Restricted Reserve "A", continuing in all a total distance of 42.75 feet, to an "X" cut in concrete set marking the beginning of a non-tangent curve to the left;

THENCE over and across said Restricted Reserve "A", an arc distance of 42.76 feet, along said curve to the left, having a radius of 68.00 feet, a central angle of 35°01'47", and a chord which bears South 50°10'28" West 42.06 feet, to an "X" cut in concrete set at the end of said curve;

THENCE South 32°09'35" West 189.96 feet, continuing over and across said Restricted Reserve "A" to the POINT OF BEGINNING and containing 1.174 acres (51,118 square feet) of land. This description is based on a Standard Land Survey performed by Terra Surveying Company, Inc., dated April 18, 2006. TSC Project Number 1617-0501-S, latest revision dated August 28, 2006. Updated October 6, 2006.

Save and Except the following 0.6887 acre

Being all of that certain tract or parcel containing 0.6887 acre (30,000 square feet) of land situated in the C.W. Adams Survey, Abstract Number 101 and being out of and a part of Restricted Reserve "A", Block 1 of Crossings At Fort Bend Parkway, a subdivision of record at Film Code Number 597210 of the Map Records, Harris County, Texas, said 0.6887 acres being more particularly described by metes and bounds as follows. (All bearings are based on the recorded plat of said Crossings At Fort Bend Parkway):

COMMENCING at a 5/8-inch iron rod set in a curve to the left in the westerly right-of-way line of Hillcroft Avenue (width varies), as recorded under Harris County Clerk's File Numbers C806739 and C878625, marking the most northwest corner of Restricted Reserve "A", Block 1 of said Crossings At Fort Bend Parkway;

THENCE along the westerly right-of-way line of said Hillcroft Avenue a distance of 75.74 feet along the arc of said curve to the left, having a radius of 2,050.00 feet, a central angle of 02°07'01", and a chord which bears South 39°35'24" East 75.74 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the end of said curve;

THENCE South 40°38'54" East continuing along said westerly right-of-way line of said Hillcroft Avenue a distance of 228.29 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying" set marking the beginning of a curve to the right;

THENCE along the arc of said curve to the right a distance of 452.01 feet, having a radius of 684.34 feet, a central angle of 37°50'40", and a chord which bears South 21°43'36" East 443.84 feet, to a utility pole found marking the end of said curve;

# EXHIBIT "A"
## (Continued)

THENCE South 02°48'16" East along said westerly right-of-way line of said Hillcroft Avenue a distance of 27.82 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the POINT OF BEGINNING of the herein described tract;

THENCE South 02°48'16" East continuing along said westerly right-of-way line of said Hillcroft Avenue a distance of 116.28 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the southeast corner of the herein described tract;

THENCE South 87°11'44" West departing said westerly right-of-way line of said Hillcroft Avenue over and across said Restricted Reserve "A", Block 1 of said Crossings At Fort Bend Parkway a distance of 258.00 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the southwest corner of the herein described tract;

THENCE North 02°48'16" West over and across said Restricted Reserve "A", Block 1 a distance of 116.28 feet, to a 5/8-inch iron rod with cap stamped "Terra Surveying", set marking the northwest corner of the herein described tract;

THENCE North 87°11'44" East over and across said Restricted Reserve "A", Block 1 a distance of 258.00 feet, to the POINT OF BEGINNING and containing 0.6887 acres (30,000 square feet) of land. This description is based on an ALTA/ACSM Land Title Survey prepared by Terra Surveying Company Inc., dated May 17, 2006. TSC Project No. 1617-0501-S. Updated October 6, 2006

Parcel 2: TOGETHER WITH all rights and easements appurtenant to the property described above as set forth under that certain Restriction Agreement and Grant of Easements as recorded under County Clerk's File No. Z273241 in the Official Public Records of Real Property of Harris County, Texas.

Parcel 3: TOGETHER WITH all rights and easements appurtenant to the property described above as set forth under that certain Declaration of Easements (Detention Pond) as recorded under County Clerk's File No. Z273236 in the Official Public Records of Real Property of Harris County, Texas.

# ATTACHMENT 6

# GUARANTY AGREEMENT

(Fort Bend Crossing, Houston, Texas)

This Guaranty Agreement (this "Guaranty") is made as of the ____ day of November, 2006, by OPUS WEST CORPORATION, a Minnesota corporation (singly or collectively, "Guarantor"), in favor of BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns "Lender").

## PRELIMINARY STATEMENTS

Lender and OPUS WEST LP, a Delaware limited partnership ("Borrower"), have entered into, are entering into concurrently herewith, or contemplate entering into, that certain Construction Loan Agreement dated as of October 30, 2006 (herein called, as it may hereafter be modified, supplemented, restated, extended, or renewed and in effect from time to time, the "Loan Agreement"), which Loan Agreement sets forth the terms and conditions of a loan (the "Loan") to Borrower for the construction of the Improvements on, and with respect to, land located in Houston, Texas, as more particularly described in the Loan Agreement and identified therein as the Land. The Loan is secured in part by the Deed of Trust as defined in the Loan Agreement (herein called, as it may hereafter be modified, supplemented, restated, extended or renewed and in effect from time to time, the "Mortgage").

A condition precedent to Lender's obligation to make the Loan to Borrower is Guarantor's execution and delivery to Lender of this Guaranty.

The Loan is, or will be, evidenced by that Deed of Trust Note, executed by Borrower and payable to the order of Lender in the principal face amount of TWENTY-ONE MILLION NINE HUNDRED THOUSAND AND NO/100 DOLLARS ($21,900,000.00) (such notes, as they may hereafter be renewed, extended, supplemented, increased or modified and in effect from time to time, and all other notes given in substitution therefor, or in modification, renewal, or extension thereof, in whole or in part, are collectively herein called the "Note").

Borrower and Lender may from time to time enter into one or more "Swap Transactions" as defined in the Mortgage.

Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement. This Guaranty is one of the Loan Documents described in the Loan Agreement.

## STATEMENT OF AGREEMENTS

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to Lender to extend credit to Borrower, Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

1. Guaranty of Payment. Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to (a) the terms of the Note, the Loan Agreement, the Mortgage, any application, agreement, note or other document executed and delivered in connection with any Letter of Credit, any Swap Transaction or any other Loan Documents, including the making of required Borrower's Deposits, and any indemnifications contained in the Loan Documents, now or hereafter existing, and (b) all renewals, extensions, refinancings, modifications, supplements or amendments of such indebtedness, or any of the Loan Documents, or any part thereof (the indebtedness described in clauses (a) and (b) above in this Section 1 is herein collectively called the "Indebtedness"). This Guaranty covers the Indebtedness, whether presently outstanding or arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

2. Guaranty of Performance. Guarantor additionally hereby unconditionally and irrevocably guarantees to Lender the timely performance of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing:

(a) that the Improvements will be constructed in accordance with the Loan Agreement and with the Plans;

(b) that the Improvements will be completed and ready for occupancy, including delivery of any certificates required by law or the Loan Agreement, on or before the Completion Date required in the Loan Agreement; and

(c) that Borrower will duly and punctually perform and observe all other terms, covenants, and conditions of the Note, the Mortgage, the Loan Agreement or any other Loan Document, [or any Swap Transaction] whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants, or conditions thereof now or hereafter made or granted.

If any of such obligations of Borrower are not complied with, in any respect whatsoever, and without the necessity of any notice from Lender to Guarantor, Guarantor agrees to (i) assume all responsibility for the completion of the Improvements and, at Guarantor's own cost and expense, cause the Improvements to be fully completed in accordance with the Plans and the Loan Documents; (ii) pay all bills in connection with the construction of the Improvements; and (iii) indemnify and hold Lender harmless from any and all loss, cost, liability or expense that Lender may suffer by reason of any such non-compliance. So long as all of such obligations are being performed by Borrower or Guarantor and no Default exists and is continuing, Lender will make the Loan proceeds available under and subject to the terms of the Loan Agreement. If after the occurrence and continuation of a Default, and without limiting Lender's rights and remedies, Lender, in its sole and absolute discretion, is dissatisfied with the progress of construction by

Borrower and/or Guarantor, Lender may, at its option, without notice to Guarantor or anyone else, complete the Improvements either before or after commencement of foreclosure proceedings or before or after exercise of any other right or remedy of Lender against Borrower or Guarantor, with such changes or modifications in the Plans as Lender deems necessary and expend such sums as Lender, in its sole and absolute discretion, deems necessary or advisable to complete the Improvements, and Guarantor hereby waives any right to contest any such expenditures by Lender. The amount of any and all expenditures made by Lender for the foregoing purposes shall bear interest from the date made until repaid to Lender, at a rate per annum equal to the interest rate provided for in the Note and, together with such interest, shall be due and payable by Guarantor to Lender upon demand. Lender does not have and shall never have any obligation to complete the Improvements or take any such action. The obligations and liability of Guarantor under this Section 2 shall not be limited or restricted by the existence of (or any terms of) the guaranty of payment under Section 1.

3. Primary Liability of Guarantor.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance. Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any suretyship laws in effect from time to time, including any right or privilege, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or Person (hereinafter defined) whatsoever.

(b) Guarantor hereby agrees that in the event of (i) default by Borrower in payment or performance of the Guaranteed Obligations, or any part thereof, when such indebtedness or performance becomes due, either by its terms or as the result of the exercise of any power to accelerate; (ii) the failure of Guarantor to perform completely and satisfactorily the covenants, terms and conditions of any of the Guaranteed Obligations; (iii) the death, incompetency, dissolution or insolvency of Guarantor; (iv) the inability of Guarantor to pay debts as they mature; (v) an assignment by Guarantor for the benefit of creditors; (vi) the institution of any proceeding by or against Guarantor in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for any of them or for any of their respective properties; (vii) the determination by Lender in good faith that a material adverse change has occurred in the financial condition of Guarantor; (viii) the entry of a judgment against Guarantor; (ix) a writ or order of attachment, levy or garnishment is issued against Guarantor; (x) the falsity in any material respect of, or any material omission in, any representation made to Lender by Guarantor; or (xi) any transfer of assets of any Guarantor, without the Lender's prior consent (except for transfers of assets for estate planning purposes valued at less than $50,000 per year per Guarantor, customary political and charitable contributions, and transfers for which the Guarantor receives consideration substantially equivalent to the fair market value of the transferred asset) (individually and collectively an "Event of Default"); then upon the occurrence of such Event of Default, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of Lender, and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor, default or nonperformance, or notice of

acceleration or of intent to accelerate, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by Lender of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the amount due to Lender or perform or observe the agreement, covenant, term or condition, as the case may be, and pay all damages and all costs and expenses that may arise in consequence of such Event of Default (including, without limitation, all attorneys' fees and expenses, investigation costs, court costs, and any and all other costs and expenses incurred by Lender in connection with the collection and enforcement of the Note or any other Loan Document), whether or not suit is filed thereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal. It shall not be necessary for Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or others liable on such indebtedness or for such performance, or to enforce any rights against any security that shall ever have been given to secure such indebtedness or performance, or to join Borrower or any others liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from suing on the Note or foreclosing the Mortgage or from exercising any other rights thereunder, and if such foreclosure or other remedy is availed of, only the net proceeds therefrom, after deduction of all charges and expenses of every kind and nature whatsoever, shall be applied in reduction of the amount due on the Note and Mortgage, and Lender shall not be required to institute or prosecute proceedings to recover any deficiency as a condition of payment hereunder or enforcement hereof. At any sale of the Property or other collateral given for the Indebtedness or any part thereof, whether by foreclosure or otherwise, Lender may at its discretion purchase all or any part of the Property or collateral so sold or offered for sale for its own account and may, in payment of the amount bid therefor, deduct such amount from the balance due it pursuant to the terms of the Note and Mortgage.

(c) Suit may be brought or demand may be made against Borrower or against all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto. Any time that Lender is entitled to exercise its rights or remedies hereunder, it may in its discretion elect to demand payment and/or performance. If Lender elects to demand performance, it shall at all times thereafter have the right to demand payment until all of the Guaranteed Obligations have been paid and performed in full. If Lender elects to demand payment, it shall at all times thereafter have the right to demand performance until all of the Guaranteed Obligations have been paid and performed in full.

4. Certain Agreements and Waivers by Guarantor.

(a) Guarantor hereby agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, circumstances or

rights, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any limitation of liability or recourse in any other Loan Document or arising under any law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;

(iii) the taking or accepting of any other security or guaranty for, or right of recourse with respect to, any or all of the Guaranteed Obligations;

(iv) any homestead exemption or any other exemption under applicable law;

(v) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, including any impairment of Guarantor's recourse against any Person or collateral;

(vi) whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranties are now or hereafter obtained by Lender covering all or any part of the Guaranteed Obligations, any complete or partial release of any one or more of such guarantors under any such other guaranty, or any complete or partial release of Borrower or any other party liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

(vii) the death, insolvency, bankruptcy, disability, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Borrower or any other party at any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(viii) either with or without notice to or consent of Guarantor: any renewal, extension, modification, supplement, subordination or rearrangement of the terms of any or all of the Guaranteed Obligations and/or any of the Loan Documents, including, without limitation, material alterations of the terms of payment (including changes in maturity date(s) and interest rate(s)) or performance (including changes in the Plans and other terms or aspects of construction of the Improvements) or any other terms thereof, or any waiver, termination, or release of, or consent to departure from, any of the Loan Documents or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by Lender to Borrower, Guarantor, and/or any other Person at

any time liable for the payment or performance of any or all of the Guaranteed Obligations;

(ix) any neglect, lack of diligence, delay, omission, failure, or refusal of Lender to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to foreclose or take or prosecute any action to foreclose (or in foreclosing or taking or prosecuting any action to foreclose) upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with any Loan Document, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(x) any failure of Lender to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations or any part thereof, or of any Loan Document, or of any release of or change in any security, or of any other action taken or refrained from being taken by Lender against Borrower or any security or other recourse, or of any new agreement between Lender and Borrower, it being understood that Lender shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and the Guarantor shall be responsible for obtaining for itself information regarding the Borrower, including, but not limited to, any changes in the business or financial condition of the Borrower, and the Guarantor acknowledges and agrees that the Lender shall have no duty to notify the Guarantor of any information which the Lender may have concerning the Borrower.

(xi) if for any reason Lender is required to refund any payment by Borrower to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or pay the amount thereof to someone else;

(xii) the making of advances by Lender to protect its interest in the Property, preserve the value of the Property or for the purpose of performing any term or covenant contained in any of the Loan Documents;

(xiii) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other Person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement or any other Loan Document;

(xiv) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or

because the officers or Persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other Person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations); or

(xv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other Person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender.

(b) By way of expansion and illustration and not limitation of the provisions of Sections 3, and 4(a) of this Guaranty, and to the full extent permitted by the Law, Guarantor waives and agrees not to assert or take advantage of the provisions of any of Arizona Revised Statutes Sections 12-1566, 12-1641 through 12-1646 inclusive, 33-814, 44-142, 47-3419 and 47-3605, Arizona Rule of Civil Procedure 17(f), and any similar or analogous other present or future statutory or common law or procedural rule of any jurisdiction relevant to guarantors, indemnitors, sureties, co-makers and/or accommodation parties.

(c) In the event any payment by Borrower or any other Person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another Person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys' fees, costs and expenses paid or incurred by Lender in connection with any such event. It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor. Lender shall be entitled to continue to hold this Guaranty in its possession for the longer of (i) the period after which any performance of obligations under the Loan Agreement shall accrue, or (ii) a period of one year from the date the Guaranteed Obligations are paid and performed in full and for so long thereafter as may be necessary to enforce any obligation of Guarantor hereunder and/or to exercise any right or remedy of Lender hereunder.

(d) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement or any other Loan Document is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

(e) To the full extent permitted by the Law, Guarantor waives and agrees not to assert or take advantage of the provisions of any of Arizona Revised Statutes Sections 12-1566, 12-1641 through 12-1646 inclusive, 33-814, 44-142, 47-3419 and 47-3605, Arizona Rule of Civil Procedure 17(f), and any similar or analogous other present or future statutory or common law or procedural rule of any jurisdiction relevant to guarantors, indemnitors, sureties, co-makers and/or accommodation parties.

5. Subordination. If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not a Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including, but not limited to, execution and delivery of financing statements, proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments

evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

6. Other Liability of Guarantor or Borrower. If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Indebtedness for which Guarantor is liable under this Guaranty, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may, except to the extent paid by Guarantor on the Indebtedness or specifically required by law or agreement of Lender to be applied to the Indebtedness, in Lender's sole discretion, be applied upon indebtedness of Borrower to Lender other than the Indebtedness. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including without limitation, its capacity as a general partner.

7. Lender Assigns. This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations, or any part thereof, and agrees that failure to give notice of any such transfer or assignment will not affect the liabilities of Guarantor hereunder.

8. Binding Effect. This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one Person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such Persons and each of them individually.

9. Governing Law; Forum, Consent to Jurisdiction. This Guaranty is an agreement executed under seal. The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of Arizona and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. If any Guarantor is a corporation, the designation "(SEAL)" on this Guaranty shall be effective as the affixing of such Guarantor's corporate seal physically to this Guaranty. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable. Guarantor hereby irrevocably submits generally and unconditionally for Guarantor and in respect of

Guarantor's property to the nonexclusive jurisdiction of any state court, or any United States federal court, sitting in the state specified in the first sentence of this Section and to the jurisdiction of any state or United States federal court sitting in the state in which any of the Land is located, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor 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. Final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon Guarantor and may be enforced in any court in which Guarantor is subject to jurisdiction. Guarantor 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 the first sentence of this Section may be made by certified or registered mail, return receipt requested, directed to Guarantor at the address set forth at the end of this Guaranty, or at a subsequent address of which Lender receives actual notice from Guarantor in accordance with the notice provisions hereof, 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 Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Guarantor in any other court or jurisdiction. Guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which the Guarantor may otherwise be entitled under the laws of the United States of America or any State or possession of the United States of America now in force or which may hereinafter be enacted. The authority and power to appear for and enter judgment against the Guarantor shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdiction as often as the Lender shall deem necessary and desirable.

10. Invalidity of Certain Provisions. If any provision of this Guaranty or the application thereof to any Person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the remaining provisions of this Guaranty nor the application of such provision to any other Person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other Persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

11. Attorneys' Fees and Costs of Collection. Guarantor shall pay on demand all attorneys' fees and all other costs and expenses incurred by Lender in the enforcement of or preservation of Lender's rights under this Guaranty including, without limitation, all attorneys' fees and expenses, investigation costs, and all court costs, whether or not suit is filed hereon, or whether at maturity or by acceleration, or whether before or after maturity, or whether in connection with bankruptcy, insolvency or appeal, or whether in connection with the collection and enforcement of this Guaranty against any other Guarantor, if there be more than one. Guarantor agrees to pay interest on any expenses or other sums due to Lender under this Section 11 that are not paid when due, at a rate per annum equal to the interest rate provided for in the Note. Guarantor's obligations and liabilities under this Section 11 shall survive any payment or discharge in full of the Guaranteed Obligations.

12. Payments. All sums payable under this Guaranty shall be paid in lawful money of the United States of America that at the time of payment is legal tender for the payment of public and private debts.

13. Controlling Agreement. It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section 13 shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

14. Representations, Warranties, and Covenants of Guarantor.

(a) Guarantor hereby represents, warrants, and covenants that (a) Guarantor has a financial interest in the Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and under Arizona and Texas laws, is lawfully doing business in Arizona and Texas, and has full power and authority to enter into and perform this Guaranty; (e) Guarantor will indemnify Lender from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect; (f) there is no litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting Guarantor; (g) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (h) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (i) Lender has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Borrower or any change therein, and Guarantor will keep fully apprised of Borrower's financial and business condition; (j) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Borrower or any other Person; and (k) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Mortgage, and the other Loan Documents.

Guarantor's representations, warranties and covenants are a material inducement to Lender to enter into the other Loan Documents and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

(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 Two Million And No/100 Dollars ($2,000,000.00);

(ii) to maintain at the end of each fiscal quarter a Tangible Net Worth plus subordinated debt equal to at least Seventy-Five Million And No/100 Dollars ($75,000,000.00) for fiscal year 2006 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 the Loan (limited to a maximum of $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 6.0:1.0 through December 31, 2007, and 5.0 to 1.0 thereafter. "Total Liabilities" means the sum of current liabilities plus long-term liabilities plus joint venture debt less subordinated debt.

15. Notices. All notices, requests, consents, demands and other communications 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 courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified in this Guaranty (unless changed by similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication 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 telegram, telex or 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 Guaranty or in any Loan Document or to require giving of notice or demand to or upon any Person in any situation or for any reason.

16. Cumulative Rights. The exercise by Lender of any right or remedy hereunder or under any other Loan Document, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. Lender shall have all rights, remedies and recourses afforded to Lender by reason of this Guaranty or any other Loan Document or by law or equity or otherwise, and the same (a) shall be cumulative and concurrent, (b) may be pursued separately, successively or concurrently against Guarantor or others obligated for the Guaranteed Obligations, or any part thereof, or against any one or more of them, or against any security or otherwise, at the sole and absolute discretion of Lender, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty or of any other document shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by Lender shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right, remedy or recourse of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by Lender.

17. Term of Guaranty. This Guaranty shall continue in effect until all the Guaranteed Obligations are fully and finally paid, performed and discharged, except that, and notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the full and final payment of the indebtedness evidenced by the Note, only with respect to such amounts, if any, (ii) with respect to all obligations and liabilities of Guarantor under Section 11 and (iii) as provided in Section 4(b) only with respect to such amounts, if any.

18. Financial Statements. Guarantor agrees to provide to Lender, as and when required, the financial statements and other financial information required to be delivered to Lender with respect to Guarantor pursuant to the terms of the Loan Agreement and the other Loan Documents, in the form and detail required by the Loan Documents. Guarantor also agrees to provide to Lender such other and further financial information with respect to Guarantor as Lender shall from time to time request.

19. Disclosure of Information. Lender may sell or offer to sell the Loan or interests in the Loan to one or more assignees or participants and may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, including without limitation Banc of America Securities LLC, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any

information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including, without limitation, information regarding any security for the Guaranteed Obligations or for this Guaranty, credit or other information on Guarantor, Borrower, and/or any other party liable, directly or indirectly, for any part of the Guaranteed Obligations.

20. Right of Set-Off. Upon the occurrence and during the continuance of any Default, however defined, in the payment or performance when due of any of the Guaranteed Obligations, Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, without notice to any Person (any such notice being expressly waived by Guarantor to the fullest extent permitted by applicable law), to set off and apply any and all deposits, funds, or assets at any time held and other indebtedness at any time owing by Lender to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty, whether or not Lender shall have made any demand under this Guaranty or exercised any other right or remedy hereunder. Lender will promptly notify Guarantor after any such set-off and application made by Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of Lender under this Section 20 are in addition to the other rights and remedies (including other rights of set-off) that Lender may have and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by an instrument in writing executed by Lender.

21. Subrogation. Notwithstanding anything to the contrary contained herein, Guarantor shall not have any right of subrogation in or under any of the Loan Documents or to participate in any way therein, or in any right title or interest in and to any security or right of recourse for the Indebtedness or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Indebtedness has been fully and finally paid. This waiver is given to induce Lender to make the Loan to Borrower.

22. Further Assurances. Guarantor at Guarantor's expense will promptly execute and deliver to Lender upon Lender's request all such other and further documents, agreements, and instruments in compliance with or accomplishment of the agreements of Guarantor under this Guaranty.

23. No Fiduciary Relationship. The relationship between Lender and Guarantor is solely that of lender and guarantor. Lender has no fiduciary or other special relationship with or duty to Guarantor and none is created hereby or may be inferred from any course of dealing or act or omission of Lender.

24. Interpretation. If this Guaranty is signed by more than one Person as "Guarantor", then the term "Guarantor" as used in this Guaranty shall refer to all such Persons, jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Guaranty are made by and shall be binding upon each and every such Person, jointly and severally and Lender may pursue any Guarantor hereunder without being required (i) to pursue any other Guarantor hereunder or (ii) pursue rights and remedies under the Mortgage and/or applicable law with respect to the Property or any other Loan Documents. The term "Lender" shall be deemed to include any subsequent holder(s) of the Note. Whenever the context of any provisions hereof shall require it, words in the singular shall include the plural,

words in the plural shall include the singular, and pronouns of any gender shall include the other gender. Captions and headings in the Loan Documents are for convenience only and shall not affect the construction of the Loan Documents. All references in this Guaranty to Schedules, Articles, Sections, Subsections, paragraphs and subparagraphs refer to the respective subdivisions of this Guaranty, unless such reference specifically identifies another document. The terms "herein", "hereof" "hereto", "hereunder" and similar terms refer to this Guaranty and not to any particular Section or subsection of this Guaranty. The terms "include" and "including" shall be interpreted as if followed by the words "without limitation". All references in this Guaranty to sums denominated in dollars or with the symbol "$" refer to the lawful currency of the United States of America, unless such reference specifically identifies another currency. For purposes of this Guaranty, "Person" or "Persons" shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations, limited liability companies, and other legal entities, including governmental bodies, agencies, or instrumentalities, as well as natural persons.

25. Time of Essence. Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

26. Counterparts. This Guaranty may be executed in multiple counterparts, each of which, for all purposes, shall be deemed an original, and all of which taken together shall constitute but one and the same agreement.

27. Entire Agreement. This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to the effectiveness of this Guaranty exist. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

28. Dispute Resolution.

(a) Arbitration. Except to the extent expressly provided below, any controversy, claim or dispute between or among the parties hereto, including any such controversy, claim or dispute arising out of or relating to (i) this Guaranty, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort) (collectively, a "Dispute"), shall, upon the request of either party, be determined by binding arbitration in accordance with the Federal Arbitration Act, Title 9, United States Code (or if not applicable, the applicable state law), the then current rules for arbitration of financial services disputes of the American Arbitration Association, or any successor thereof ("AAA"), and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. The filing of a court action is not intended to constitute a waiver of the right of Guarantor or Lender, including the suing party, thereafter to require submittal of the Dispute to arbitration. Any party to this Guaranty may bring an action, including a summary or expedited proceeding, to compel arbitration of any Dispute in any court having jurisdiction over such

action. For the purposes of this Dispute Resolution Section only, the terms "party" and "parties" shall include any parent corporation, subsidiary or affiliate of Lender involved in the servicing, management or administration of any obligation described in or evidenced by this Guaranty, together with the officers, employees, successors and assigns of each of the foregoing.

(b) Special Rules.

(i) The arbitration shall be conducted in any U.S. state where real or tangible personal property collateral is located, or if there is no such collateral in the City and County where Lender is located pursuant to its address for notice purposes in this Guaranty.

(ii) The arbitration shall be administered by AAA, who will appoint an arbitrator; if AAA is unwilling or unable to administer or legally precluded from administering the arbitration or if AAA is unwilling or unable to enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, then any party to this Guaranty may substitute, without the necessity of the agreement of consent of the other party or parties, another arbitration organization that has similar procedures to AAA but that will observe and enforce any and all provisions of this Dispute Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars ($5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Guaranty, referred to collectively as the "arbitrator").

(iii) All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration and completed within ninety (90) days from the date of commencement; provided, however, that upon a showing of good cause, the arbitrator shall be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(iv) The judgment and the award, if any, of the arbitrator shall be issued with thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.

(v) The arbitrator will give effect to statutes of limitations and any waivers thereof in determining the disposition of any Dispute and may dismiss one or more claims in the arbitration on the basis that such claim or claims is or are barred. For purposes of the application of the statute of limitations, the service on AAA under applicable AAA rules of a notice of Dispute is the equivalent of the filing of a lawsuit.

(vi) Any dispute concerning this Dispute Resolution Section, including any such dispute as to the validity or enforceability of this provision, or

whether a Dispute is arbitrable, shall be determined by the arbitrator; provided, however, that the arbitrator shall not be permitted to vary the express provisions of the Special Rules or the Reservation of Rights in subsection (c) below.

(vii) The arbitrator shall have the power to award legal fees and costs pursuant to the terms of this Guaranty.

(viii) The arbitration will take place on an individual basis without reference to, resort to, or consideration of any form of class or class action.

(c) Reservations of Rights. Nothing in this Guaranty shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Guaranty, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment or the appointment of a receiver, or (D) to pursue rights against a party to this Guaranty in a third-party proceeding in any action brought against Lender in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration proceeding brought pursuant to this Guaranty. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration of any Dispute.

(d) Conflicting Provisions for Dispute Resolution. If there is any conflict between the terms, conditions and provisions of this Section and those of any other provision or agreement for arbitration or dispute resolution, the terms, conditions and provisions of this Section shall prevail as to any Dispute arising out of or relating to (i) this Guaranty, (ii) any other Loan Document (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort). In any other situation, if the resolution of a given Dispute is specifically governed by another provision or agreement for arbitration or dispute resolution, the other provision or agreement shall prevail with respect to said Dispute.

(e) Jury Trial Waiver in Arbitration. By agreeing to this Section, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Dispute.

29. WAIVER OF JURY TRIAL. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO ARBITRATE ANY "DISPUTE" (FOR PURPOSES OF THIS SECTION, AS DEFINED ABOVE) AS SET FORTH IN THIS GUARANTY, TO

THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO ARBITRATION OR IS DEEMED BY THE ARBITRATOR OR BY ANY COURT WITH JURISDICTION TO BE NOT ARBITRABLE OR NOT REQUIRED TO BE ARBITRATED, GUARANTOR AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND LENDER, AND GUARANTOR AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. GUARANTOR AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

THE 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, Guarantor duly executed this Guaranty under seal as of the date first written above.

Address of Grantor:

2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267

GRANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

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

Address of Administrative Agent:

BANK OF AMERICA, N.A.

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

# ATTACHMENT 7

Quarles & Brady LLP

One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
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www.quarles.com

*Attorneys at Law in:*
*Phoenix and Tucson, Arizona*
*Naples, Florida*
*Chicago, Illinois*
*Milwaukee and Madison, Wisconsin*

April 2, 2009

**DEFAULT NOTICE**

**VIA UPS OVERNIGHT**

Opus West LP
c/o Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate Finance and Sales

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Charles J. Vogel

**RE:** ***$21,900,000.00 Loan (the "Loan") made by Bank of America, N.A. ("Lender") to Opus West LP ("Borrower"); Fort Bend Crossing***

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of a default (hereinafter, the "Default") under Section 4.1 of the Construction Loan Agreement dated November 10, 2006 between Borrower and Lender, as amended by that certain letter agreement dated March 21, 2008 and as amended by that certain Modification Agreement dated November 1, 2008 (as modified or amended from time to time, the "Loan Agreement"), and an Event of Default under Section 7 of the Deed Of Trust Note of even date therewith, made by Borrower and delivered to Lender, as amended by that certain Modification Agreement dated November 1, 2008 (as modified or amended from time to time, the "Note"). The Loan Agreement, Note and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively as the "Loan Documents." The Loan is fully matured and all amounts due in connection with the Loan are fully due and payable. Borrower is in default as the result of Borrower's failure to pay the full amount of principal and interest due and owing on the Maturity Date (as defined in the Loan Agreement). Late charges (as described in and calculated according to in Section 5 of the Note) will apply to the Defaulted amounts. Interest at the Past Due Rate (provided in and calculated according to Section 3(c) of

the Note) commenced accruing from and after the Maturity Date on any amounts outstanding as of such date.

Notwithstanding the existence of the above-described Default, or any additional defaults that may arise under the Loan Documents, Lender 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 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 Lender of the Default or performance or cure of the Default by Borrower; constitute an amendment of any term or condition of any Loan Document; create an obligation of 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 Lender's rights, interests or remedies with respect to the Loan.

Lender 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 Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Lender may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

In the event the foregoing default is not cured on or before April 9, 2009 by payment in full of all amounts due and owing under the Loan Documents, including without limitation, Default Rate interest, late charges, costs and fees (including attorneys' fees): (i) Lender is entitled to the exercise of its rights and remedies under the Loan Documents, at law and in equity, including, without limitation, the imposition of charges recoverable as a consequence of the default (including attorneys' fees and costs); and (ii) Lender is entitled to enforce its rights and remedies relating to its collateral, including, without limitation, appointment of receiver and foreclosure. Please contact me for payoff information relating to the Loan.

Nothing in this letter or in Lender's 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 Lender and its 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 Lender 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 Lender, that are not referenced in this letter.

Opus West Corporation (the "Guarantor") guaranteed the payment and performance of the Loan and Borrower's obligations under the Loan Documents under that certain instrument entitled Guaranty Agreement dated November __, 2006 (the "Guaranty"). Demand is hereby made on Guarantor for prompt payment or performance of Borrower's obligations under the Default described herein.

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.

**Via UPS Overnight Delivery:**
c/o Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

**Via UPS Overnight Delivery:**
Gallagher & Kennedy, P.A.
2575 East Camelback Road, 11th Fl.
Phoenix, Arizona 85016-9225
Attn: Gregory L. Mast
File No. 4827-0051

# 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)<br>BANK OF AMERICA, N.A.<br>c/o Casey Carpenter<br>Vice President<br>Real Estate Special Assets<br>333 S. Hope St., 11th Floor<br>Los Angeles, CA 90071-1406 | **Claim No: 68**<br>*Original Filed Date*: 11/09/2009<br>*Original Entered Date*: 11/09/2009 | *Status:*<br>*Filed by:* CR<br>*Entered by:* Richter, Katharine<br>*Modified:* |

Unsecured claimed: $16707882.03

**Total claimed: $16707882.03**

*History:*

Details 68-1 11/09/2009 Claim #68 filed by BANK OF AMERICA, N.A., total amount claimed: $16707882.03 (Richter, Katharine )

*Description:* (68-1) Fort Bend

*Remarks:* (68-1) But see Addendum for possible secured status

## Claims Register Summary