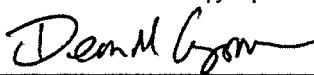



B 10 (Official Form 10) (12/08)

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.		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: Thompson & Knight LLP c/o John S. Brannon 1722 Routh St., Suite 1500 Dallas, Texas 75201 Telephone number: (214) 969-1700		Court Claim Number: _____ (If known)
Name and address where payment should be sent (if different from above): Bank of America, N.A. c/o Casey Carpenter Vice-President, Real Estate Special Assets 333 S. Hope St., 11th Floor Los Angeles, California 90071-1406 Telephone number: (213) 621-3604		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: \$ 29,183,816.33		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.
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		Specify the priority of the claim.
2. Basis for Claim: *See Addendum (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
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.)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier -- 11 U.S.C. §507 (a)(4).
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____ Value of Property: \$ _____ Annual Interest Rate: % _____ Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ *See Addendum Amount Unsecured: \$ *See Addendum		<input type="checkbox"/> Contributions to an employee benefit plan -- 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use -- 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units -- 11 U.S.C. §507 (a)(8).
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		<input type="checkbox"/> Other -- Specify applicable paragraph of 11 U.S.C. §507 (a)().
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:		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.
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. <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: center;">  </div> <div style="text-align: center;"> DEAN M. LYONS AUTHORIZED AGENT </div> </div>	
FOR COURT USE ONLY		<div style="text-align: center;"> OPUS WEST  00551 </div>

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.

Westlake

**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 (WESTLAKE VILLAGE) OF
BANK OF AMERICA, N.A.**

1. This proof of claim is made by Bank of America, N.A. (“Bank of America”).
2. Pursuant to that certain Promissory Note dated as of January 4, 2007, executed by Opus West Corporation (“Opus West”), as Borrower, to the order of LaSalle Bank National Association, as Lender (“LaSalle”) (as amended, the “Note”), LaSalle agreed to make a loan to Opus West in the maximum principal amount of Twenty-Eight Million Two Hundred Seventy-Five Thousand and No/100 Dollars (\$28,275,000.00) (the “Loan”). The purpose of the Loan was to provide financing for the acquisition and development costs of the Property (as defined herein).
3. Bank of America is the successor in interest by merger to LaSalle.
4. 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 the Note and any and all other or additional agreements, instruments, or other documents evidencing, securing, or otherwise relating to the Loan are hereinafter referred to collectively as the “Loan Documents”):
 - a. A Certificate of Representations, Warranties and Covenants dated as of January 4, 2007 (as amended, the “Certificate”).
 - b. The letter agreement dated as of March 21, 2008, among Bank of America, Opus West and certain other parties that amended certain provisions of the Loan Agreement relating to Opus West’s agreement to maintain certain liquidity and net worth levels (the “Letter Modification Agreement”).
 - c. A modification agreement dated as of December 31, 2008, that Bank of America and Opus West entered that amended various terms of the Note and the Loan Documents (the “Modification Agreement”).
 - d. A Deed of Trust, Assignment of Leases and Rents, Security Agreement, Fixture Filing and Financing Statement dated as of January 4, 2007, executed by Opus West, as Grantor, to Chicago Title Insurance Company, as Trustee, for the benefit of LaSalle, as Beneficiary, and recorded in the Official Records of Los Angeles County, California (the

“Official Records”) on January 5, 2007, as Document No. 20070026471 (as amended, the “Deed of Trust”). The Deed of Trust encumbers, among other things, certain real property located in Los Angeles County, California, as more particularly described therein (the “Property”). The Deed of Trust, inclusive of all assignment and security provisions contained therein, gives Bank of America, as the successor in interest, a security interest in the Property, improvements, land, proceeds, leases, rents and all other interests (as more fully described therein) derived from and related to the Property (collectively, the “Collateral”).

e. Assignment of Rents and Leases dated as of January 4, 2007, executed by Opus West for the benefit of LaSalle, and recorded in the Official Records on January 5, 2007 as Document No. 20070026472 (as amended, the “Assignment of Rents”). The Assignment of Rents further secures the interest of Bank of America, as the successor in interest, in the Collateral.

f. Financing Statements.

i. A form Uniform UCC-1 financing statement filed in the Office of the Secretary of State of Minnesota on January 5, 2007, as Filing No. 200714975683, naming Opus West as debtor and LaSalle as secured party; and

ii. A form UCC-1 financing statement filed in the Official Records on January 5, 2007, as Document No. 20070026473, naming Opus West as debtor and LaSalle as secured party (collectively, the “Financing Statements”). The Financing Statements further perfect Bank of America’s security interests in the Collateral.

5. Prior to the July 6, 2009 petition date (the “Petition Date”), Opus West defaulted under the terms of the Loan Documents. As a result of the events of default, Bank of America sent Opus West a default letter dated April 2, 2009 notifying it of the various events of default that had occurred and demanding that Opus West pay all past-due amounts in accordance with the terms of the Loan Documents. Opus West failed to cure the defaults under the Loan, and, as a result, Bank of America exercised its rights under the Loan Documents to accelerate the Loan and declare all outstanding amounts immediately due and payable.

6. On April 28, 2009, Bank of America caused Lawyers Title Company, authorized agent, to record a Notice of Default and Election to Sell Under Deed of Trust (the “Notice of Default”) in the Official Records as Instrument No. 2009-617968.

7. Just prior to the Petition Date, the Property was transferred to a special purpose entity, OWP Westlake Land, L.L.C., a Delaware limited liability company (“Westlake Land SPE”).

8. 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 **\$29,183,816.33** (the “Liquidated Claim Amount”), which consists of:

Principal	\$28,275,000.00
Interest	\$837,912.61

Prepetition Costs and Fees	
Attorney's Fees	\$16,799.15
Appraisal costs	\$17,375.00
Consulting Services	\$29,729.57
Trustee Fees	<u>\$7,000.00</u>
	\$70,903.72
TOTAL:	\$29,183,816.33

9. 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 manner set forth in the applicable Loan Documents; and
- c. Other Post-Petition Indebtedness, Charges, Costs. All other interest, charges, penalties, premiums, advances, and other sums that may be due or become due as more fully detailed in or made reference to in any or all of the Loan Documents, including, without limitation, reasonable compensation, expenses, disbursements and advances (including, without limitation, reasonable fees and disbursement of counsel and other professionals) of Bank of America.

10. As the amount of the claims asserted in paragraph 9 hereof cannot, at this time, be reasonably calculated or estimated, the total amount of all claims set forth in this proof of claim currently (the "Final Claim Amount") is unliquidated, but is in no event less than the Liquidated Claim Amount of **\$29,183,816.33**. To the extent any personal property Collateral was not transferred to Westlake Land 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 Westlake Land 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.¹

11. 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 has, or it may have, against Opus West 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.

¹ 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.

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

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

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

Date: November 9, 2009

Respectfully submitted,

/s/ Katharine B. Richter

David M. Bennett

State Bar No. 2139600

John S. Brannon

State Bar No. 02895500

THOMPSON & KNIGHT LLP

1722 Routh Street, Suite 1500

Dallas, Texas 75201

Telephone: 214/969-1700

Facsimile: 214/969-1751

E-mail: david.bennett@tklaw.com

E-mail: john.brannon@tklaw.com

Katharine Battaia Richter

Texas Bar No. 24046712

THOMPSON & KNIGHT LLP

98 San Jacinto Boulevard, Suite 1900

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.	§	

**TABLE OF CONTENTS TO
EXHIBIT A – ADDENDUM TO PROOF OF CLAIM (WESTLAKE VILLAGE) OF
BANK OF AMERICA, N.A.**

- ATTACHMENT 1:** Promissory Note dated January 4, 2007 by and between Opus West Corporation and LaSalle Bank National Association in the maximum principal amount of \$28,275,000.00.
- ATTACHMENT 2:** Certificate of Representations, Warranties and Covenants dated January 4, 2007.
- ATTACHMENT 3:** Letter Modification Agreement dated March 21, 2008.
- ATTACHMENT 4:** Modification Agreement dated December 31, 2008.
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- ATTACHMENT 6:** Assignment of Rents and Leases dated January 4, 2007 recorded in the Official Records on January 5, 2007 as Document No. 20070026472.
- ATTACHMENT 7:** UCC-1 Financing Statement filed in the Office of the Secretary of State of Minnesota on January 5, 2007, as Filing No. 200714975683.
- ATTACHMENT 8:** UCC-1 Financing Statement filed in the Official Records of Los Angeles County on January 5, 2007 as Document No. 20070026473.
- ATTACHMENT 9:** Default Letter dated April 2, 2009.
- ATTACHMENT 10:** Notice of Default and Election to Sell Under Deed of Trust filed April 28, 2009.

ATTACHMENT 1

PROMISSORY NOTE

\$28,275,000
Chicago, Illinois

No. _____
Date: January 4, 2007
Due Date: January 4, 2008

1. **AGREEMENT TO PAY.** For value received, OPUS WEST CORPORATION, a Minnesota corporation (the "**Borrower**") hereby promises to pay to the order of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns (the "**Lender**"), the principal sum of TWENTY EIGHT MILLION TWO HUNDRED SEVENTY FIVE THOUSAND AND 00/100 DOLLARS (\$28,275,000.00) (the "**Loan**"), on or before January 4, 2008 (the "**Maturity Date**"), at the place and in the manner hereinafter provided, together with interest thereon at the rate or rates described below, and any and all other amounts which may be due and payable hereunder or under any of the Loan Documents (as hereinafter defined) from time to time.

2. **INTEREST RATE.**

2.1 **Interest Prior to Default.**

(a) Interest shall accrue on the principal balance of this Note outstanding from the date hereof through the Maturity Date or Extended Maturity Date (as defined below), as applicable at the Borrower's option from time to time of (i) a floating per annum rate of interest (the "**Floating Rate**") equal to the Prime Rate (as hereinafter defined), or (ii) a per annum rate of interest (the "**LIBOR Rate**") equal to LIBOR (as hereinafter defined) for the relevant Interest Period (as hereinafter defined), plus two and one quarter percent (2.25%) (the "**Applicable Margin**"), such LIBOR Rate to remain fixed for such Interest Period. Changes in the Floating Rate to be charged hereunder based on the Prime Rate shall take effect immediately upon the occurrence of any change in the Prime Rate. Any portion of the principal amount of this Note bearing interest at the Floating Rate is referred to herein as a "**Prime Loan**". Any portion of the principal amount of this Note bearing interest at the LIBOR Rate is referred to herein as a "**LIBOR Loan**".

(b) A request by the Borrower for a Prime Loan must be received by the Lender in writing no later than 2:00 p.m. Chicago, Illinois time, on any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Chicago, Illinois (a "**Business Day**"). As used herein, "**Prime Rate**" shall mean the floating per annum rate of interest most recently announced by the Lender at Chicago, Illinois as its prime or base rate. A certificate made by an officer of the Lender stating the Prime Rate in effect on any given day, for the purposes hereof, shall be conclusive evidence of the Prime Rate in effect on such day. The Prime Rate is a base reference rate of interest adopted by the Lender as a general benchmark from which the Lender determines the floating interest rates

chargeable on various loans to borrowers with varying degrees of creditworthiness and the Borrower acknowledges and agrees that the Lender has made no representations whatsoever that the Prime Rate is the interest rate actually offered by the Lender to borrowers of any particular creditworthiness.

(c) LIBOR Rate. The designation of a LIBOR Loan by the Borrower is subject to the following requirements:

(i) A request for a LIBOR Loan (a "LIBOR Loan Request") must be received by the Lender no later than 2:00 p.m. Chicago, Illinois time two (2) Business Days prior to the first day of the Interest Period on which such LIBOR Loan shall be advanced, shall be irrevocable, and shall state the initial Interest Period and amount of such LIBOR Loan. Each LIBOR Loan will be in an amount not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) or a higher integral multiple of One Hundred Thousand and 00/100 Dollars (\$100,000.00). No more than five (5) separate LIBOR Loans may be outstanding at any time. A request for a LIBOR Loan received by the Lender after 2:00 p.m. Chicago, Illinois on any Business Day time will be processed and funded by the Lender on the third Business Day thereafter.

(ii) If pursuant to the LIBOR Loan Request, the initial Interest Period of any LIBOR Loan commences on any day other than the first Business Day of any month, then the initial Interest Period of such LIBOR Loan shall end on the first day of the following calendar month, notwithstanding the Interest Period specified in the LIBOR Loan Request, and the LIBOR Rate for such LIBOR Loan shall be equal to LIBOR for an interest period equal to the length of such partial month, plus the Applicable Margin. Thereafter, each LIBOR Loan shall automatically renew (a "LIBOR Rollover") for the Interest Period specified in the LIBOR Loan Request at the then current LIBOR Rate plus the Applicable Margin unless the Borrower, in a subsequent LIBOR Loan Request received by the Lender no later than 2:00 p.m. Chicago, Illinois time on the second (2nd) Business Day before the expiration of the existing Interest Period, shall elect a different Interest Period or the conversion of all or a portion of the LIBOR Loan to a Prime Loan. The Borrower may not elect a LIBOR Rate, and an Interest Period for a LIBOR Loan shall not automatically renew, with respect to any principal amount which is scheduled to be repaid before the last day of the applicable Interest Period, and any such amounts shall bear interest at the Floating Rate, until repaid.

(iii) "LIBOR" shall mean a rate of interest equal to (A) the per annum rate of interest at which United States dollar deposits in an amount comparable to the amount of the relevant LIBOR Loan and for a period equal to the relevant Interest Period are offered in the London Interbank Eurodollar market at 11:00 a.m. (London time) two Business Days prior to the commencement of such Interest Period (or three Business Days prior to the commencement of such Interest Period if banks in London, England were not open and dealing in offshore United States dollars on such second preceding Business Day), as displayed in the

Bloomberg Financial Markets system (or other authoritative source selected by the Lender in its sole discretion), divided by (B) a number determined by subtracting from 1.00 the then stated maximum reserve percentage for determining reserves to be maintained by member banks of the Federal Reserve System for Eurocurrency funding or liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D), such rate to remain fixed for such Interest Period, or as LIBOR is otherwise determined by the Lender in its sole and absolute discretion. The Lender's determination of LIBOR shall be conclusive, absent manifest error.

(iv) "Interest Period" shall mean, with regard to any LIBOR Loan, successive one, two or three month periods, as selected by the Borrower in its LIBOR Loan Request; provided, however, that: (A) each Interest Period occurring after the initial Interest Period of any LIBOR Loan shall commence on the day on which the preceding Interest Period for such LIBOR Loan expires; (B) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; (C) whenever the first day of any Interest Period occurs on a date for which there is no numerically corresponding date in the month in which such Interest Period terminates, such Interest Period shall end on the last day of such month, unless such day is not a Business Day, in which case the Interest Period shall terminate on the first Business Day of the following month, provided, however, that so long as the LIBOR Rollover remains in effect, all subsequent Interest Periods shall terminate on the date of the month numerically corresponding to the date on which the initial Interest Period commenced; and (D) the final Interest Period for any LIBOR Loan must be such that its expiration occurs on or before the Maturity Date or Extended Maturity Date, as applicable. If at any time an Interest Period expires less than one month before the Maturity Date or Extended Maturity Date, as applicable such LIBOR Loan shall automatically convert to a Prime Loan on the last day of the then existing Interest Period, without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

(v) Notwithstanding anything to the contrary contained herein, the principal balance of any LIBOR Loan may not be prepaid in whole or in part at any time. If, for any reason, a LIBOR Loan is paid prior to the last Business Day of any Interest Period, whether voluntary, involuntary, by reason of acceleration or otherwise, each such prepayment of a LIBOR Loan will be accompanied by the amount of accrued interest on the amount prepaid and any and all costs, expenses, penalties and charges incurred by the Lender as a result of the early termination or breakage of a LIBOR Loan, plus the amount, if any, by which (A) the additional interest which would have been payable during the Interest Period on the LIBOR Loan prepaid had it not been prepaid, exceeds (B) the interest which would have been recoverable by the Lender by placing the amount prepaid on deposit in the domestic certificate of deposit market, the eurodollar deposit market, or other appropriate money market selected by the Lender, for a period starting on the date

on which it was prepaid and ending on the last day of the Interest Period for such LIBOR Loan (collectively, the "Make Whole Costs"). The amount of any such loss or expense payable by the Borrower to the Lender under this section shall be determined in the Lender's sole discretion based upon the assumption that the Lender funded its loan commitment for LIBOR Loans in the London Interbank Eurodollar market and using any reasonable attribution or averaging methods which the Lender deems appropriate and practical, provided, however, that the Lender is not obligated to accept a deposit in the London Interbank Eurodollar market in order to charge interest on a LIBOR Loan at the LIBOR Rate.

(vi) If the Lender determines in good faith (which determination shall be conclusive, absent manifest error) prior to the commencement of any Interest Period that (A) the making or maintenance of any LIBOR Loan would violate any applicable law, rule, regulation or directive, whether or not having the force of law, (B) United States dollar deposits in the principal amount, and for periods equal to the Interest Period, of any LIBOR Loan are not available in the London Interbank Eurodollar market in the ordinary course of business, (C) by reason of circumstances affecting the London Interbank Eurodollar market, adequate and fair means do not exist for ascertaining the LIBOR Rate to be applicable to the relevant LIBOR Loan, (D) the LIBOR Rate does not accurately reflect the cost to the Lender of a LIBOR Loan, or (E) an Event of Default (as hereinafter defined) has occurred and is continuing or any event or circumstance exists which, with the giving of notice or passage of time, would constitute an Event of Default, the Lender shall promptly notify the Borrower thereof and, so long as any of the foregoing conditions continue, the Lender will have no obligation to accept an election by the Borrower for a LIBOR Loan, and each existing LIBOR Loan, at the Borrower's option, shall be (1) converted to a Prime Loan on the last Business Day of the then existing Interest Period, or (2) due and payable on the last Business Day of the then existing Interest Period, without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

(vii) If, after the date hereof, a Regulatory Change (as hereinafter defined) shall, in the reasonable determination of the Lender, make it unlawful for the Lender to make or maintain any LIBOR Loans, the Lender will have no obligation to accept an election by the Borrower for a LIBOR Loan. In addition, at the Borrower's option, each existing LIBOR Loan shall be immediately (A) converted to a Prime Loan on the last Business Day of the then existing Interest Period or on such earlier date as required by law, or (B) due and payable on the last Business Day of the then existing Interest Period or on such earlier date as required by law, all without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower. As used herein, "Regulatory Change" shall mean the introduction of, or any change in any applicable law, treaty, rule, regulation or guideline or in the interpretation or administration thereof by any governmental authority or any central bank or other

fiscal, monetary or other authority having jurisdiction over the Lender or its lending office.

(viii) If any Regulatory Change (whether or not having the force of law) shall (a) impose, modify or deem applicable any assessment, reserve, special deposit or similar requirement against assets held by, or deposits in or for the account of, or loans by, or any other acquisition of funds or disbursements by, the Lender; (b) subject the Lender or any LIBOR Loan to any tax, duty, charge, stamp tax or fee, or change the basis of taxation of payments to the Lender of principal or interest due from the Borrower hereunder (other than a change in the taxation of the overall net income of the Lender); or (c) impose on the Lender any other condition regarding any LIBOR Loan or the Lenders' funding thereof, and the Lender shall determine (which determination shall be conclusive, absent manifest error) that the result of the foregoing is to actually increase the cost to the Lender of making or maintaining any LIBOR Loans or to reduce the amount of principal or interest received by the Lender hereunder on any LIBOR Loan, then the Borrower shall pay to the Lender, on demand, such additional amounts as the Lender shall from time to time determine are sufficient to compensate and indemnify the Lender for such increased costs or reduced amounts (the "LIBOR Indemnification Costs").

2.2 Interest After Default. From and after the Maturity Date or Extended Maturity Date, as applicable, or upon the occurrence and during the continuance of an Event of Default, interest shall accrue on the unpaid principal balance during any such period at an annual rate (the "Default Rate") equal to five percent (5.00%) plus the Floating Rate; provided, however, in no event shall the Default Rate exceed the maximum rate permitted by law. The interest accruing under this section shall be immediately due and payable by the Borrower to the holder of this Note upon demand and shall be additional indebtedness evidenced by this Note.

2.3 Interest Calculation. Interest on this Note shall be calculated on the basis of a 360 day year and the actual number of days elapsed in any portion of a month in which interest is due. If any payment to be made by the Borrower hereunder shall become due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

3. INTEREST/TAX RESERVE. The sum of Two Million Two Hundred Seventy Five Thousand and 00/100 Dollars (\$2,275,000.00) of the principal of this Note shall not be disbursed directly by the Lender to the Borrower, but shall be held back by the Lender (the "Loan Reserve"). The Loan Reserve shall only be disbursed by the Lender for the purpose of funding (i) accrued and unpaid interest on this Note as provided in Section 4 hereof not to exceed \$2,000,000.00 in the aggregate and (ii) the payment of real estate taxes not to exceed \$275,000.00 in the aggregate. The Loan Reserve shall not accrue interest until actually disbursed to or for the benefit of the Borrower and, when so disbursed, shall be considered outstanding principal of this Note. Notwithstanding the foregoing, the Lender shall have no obligation to disburse all or any part of the Loan Reserve upon the occurrence and continuation of an Event of Default. Upon the occurrence of an Event of Default, the Lender may use and apply any of the

Loan Reserve to cure such Event of Default, as a prepayment of the outstanding principal amount of this Note, or for the funding of accrued and unpaid interest on this Note.

4. PAYMENT TERMS.

4.1 Principal and Interest. Payments of principal and interest due under this Note, if not sooner declared to be due in accordance with the provisions hereof, shall be made as follows:

(a) Commencing on March 1, 2007, and continuing on the first day of each month thereafter through and including the month in which the Maturity Date or Extended Maturity Date, as applicable, occurs, all accrued and unpaid interest on the principal balance of this Note outstanding from time to time shall be due and payable, and which amounts shall be (i) disbursed directly by the Lender from the Loan proceeds up to the amount of the Loan Reserve and which, when advanced, shall constitute outstanding principal under this Note, and (ii) thereafter paid directly by the Borrower from sources other than the proceeds of this Loan. Interest accrued on any LIBOR Loan as of the date of termination, breakage or other disposition shall be due and payable in full on the date of such termination, breakage or disposition.

(b) Upon the sale of any portion of the Premises (as defined below) permitted under the Loan Documents, Borrower shall make the principal repayments set forth in Section 40 of the Deed of Trust.

(c) The unpaid principal balance of this Note, if not sooner paid or declared to be due in accordance with the terms hereof, together with all accrued and unpaid interest thereon and any other amounts due and payable hereunder or under any of the Loan Documents shall be due and payable in full on the Maturity Date or Extended Maturity Date, as applicable.

4.2 Application of Payments. Prior to the occurrence of an Event of Default, all payments and prepayments on account of the indebtedness evidenced by this Note shall be applied as follows: (a) first, to fees, expenses, costs and other similar amounts then due and payable to the Lender, including, without limitation any prepayment premium, exit fee or late charges due hereunder, (b) second, to accrued and unpaid interest on the principal balance of this Note, (c) third, to the payment of principal due in the month in which the payment or prepayment is made, (d) fourth, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents, (e) fifth, to any other amounts then due the Lender hereunder or under any of the Loan Documents, and (f) last, to the unpaid principal balance of this Note in the inverse order of maturity. Any prepayment on account of the indebtedness evidenced by this Note shall not extend or postpone the due date or reduce the amount of any subsequent monthly payment of principal and interest due hereunder. After an Event of Default has occurred and is continuing, payments may be applied by the Lender to amounts owed hereunder and under the Loan Documents in such order as the Lender shall determine, in its sole discretion.

4.3 Method of Payments. All payments of principal and interest hereunder shall be paid by automatic debit, wire transfer, check or in coin or currency which, at the time or times of payment, is the legal tender for public and private debts in the United States of America and shall be made at such place as the Lender or the legal holder or holders of this Note may from time to time appoint in the payment invoice or otherwise in writing, and in the absence of such appointment, then at the offices of the Lender at 135 South La Salle Street, Suite 1225, Chicago, Illinois 60603. Payment made by check shall be deemed paid on the date the Lender receives such check; provided, however, that if such check is subsequently returned to the Lender unpaid due to insufficient funds or otherwise, the payment shall not be deemed to have been made and shall continue to bear interest until collected. Notwithstanding the foregoing, the final payment due under this Note must be made by wire transfer or other immediately available funds. Interest, principal payments and any fees and expenses owed the Lender from time to time will be deducted by the Lender automatically on the due date from the Borrower's account with the Lender, as designated in writing by the Borrower. The Borrower will maintain sufficient funds in the account on the dates the Lender enters debits authorized by this Note. If there are insufficient funds in the account on the date the Lender enters any debit authorized by this Note, the debit will be reversed. The Borrower may terminate this direct debt arrangement at any time by sending written notice to the Lender at the address specified above.

4.4 Late Charge. If any payment of interest or principal due hereunder is not made within five days after such payment is due in accordance with the terms hereof, then, in addition to the payment of the amount so due, the Borrower shall pay to the Lender a "late charge" of five cents for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. The Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of five cents for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

4.5 Principal Prepayments. The portion of this Note bearing interest at the Floating Rate may be prepaid, either in whole or in part, without penalty or premium, at any time and from time to time upon fourteen (14) days prior notice to the Lender. The portion of this Note bearing interest at the LIBOR Rate may be prepaid only on the last day of an Interest Period; provided, however, that the Borrower may prepay a LIBOR Loan prior to such day so long as such prepayment is accompanied by a simultaneous payment of the Make Whole Costs described in Section 2.1(c)(v) above, plus accrued interest on the LIBOR Loan being prepaid through the date of prepayment.

4.6 Loan Fees. In consideration of the Lender's agreement to make the Loan, the Borrower shall pay to the Lender a non-refundable fee in the amount of Seventy Thousand Six Hundred Eighty Seven and 50/100 Dollars (\$70,687.50), which shall be due and payable in full as a condition precedent to the disbursement of proceeds under this Note.

5. SECURITY. This Note is secured by that certain: (a) Deed of Trust, Security Agreement, Assignment of Leases and Rents, Fixture Filing and Financing Statement dated as of the date hereof, executed by the Borrower to and for the benefit of the Lender (the "Deed of Trust"), creating a first mortgage lien on certain real property (the "Premises") legally described

in Exhibit "A" attached to the Deed of Trust; (b) Assignment of Rents and Leases dated as of the date hereof, executed by the Borrower to and for the benefit of the Lender (the "Assignment of Rents"); and (c) Environmental Indemnity Agreement dated of even date herewith, executed by the Borrower to and for the benefit of the Lender (the "Indemnity Agreement"; the Deed of Trust, the Assignment of Rents, the Indemnity Agreement and any and all other documents now or hereafter given to evidence or secure payment of this Note or delivered to induce the Lender to disburse the proceeds of the Loan, as such documents may hereafter be amended, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents"). Reference is hereby made to the Loan Documents (which are incorporated herein by reference as fully and with the same effect as if set forth herein at length) for a statement of the covenants and agreements contained therein, a statement of the rights, remedies, and security afforded thereby, and all matters therein contained.

6. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Note:

(a) the failure by the Borrower to pay (i) any installment of principal or interest payable pursuant to this within five (5) days after the date when due, or (ii) any other amount payable to the Lender under this Note, the Deed of Trust or any of the other Loan Documents within five (5) days after notice from Lender that any such payment is due in accordance with the terms hereof or thereof; or

(b) the occurrence of any "Event of Default" under the Deed of Trust or any of the other Loan Documents.

7. REMEDIES. At the election of the holder hereof, and without notice, the principal balance remaining unpaid under this Note, and all unpaid interest accrued thereon and any other amounts due hereunder, shall be and become immediately due and payable in full upon the occurrence of any Event of Default. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent Event of Default. No holder hereof shall, by any act of omission or commission, be deemed to waive any of its rights, remedies or powers hereunder or otherwise unless such waiver is in writing and signed by the holder hereof, and then only to the extent specifically set forth therein. The rights, remedies and powers of the holder hereof, as provided in this Note, the Deed of Trust and in all of the other Loan Documents are cumulative and concurrent, and may be pursued singly, successively or together against the Borrower, any Guarantor hereof, the Premises and any other security given at any time to secure the repayment hereof, all at the sole discretion of the holder hereof. If any suit or action is instituted or attorneys are employed to collect this Note or any part hereof, the Borrower promises and agrees to pay all costs of collection, including reasonable attorneys' fees and court costs.

8. COVENANTS AND WAIVERS. The Borrower and all others who now or may at any time become liable for all or any part of the obligations evidenced hereby, expressly agree hereby to be jointly and severally bound, and jointly and severally: (i) waive and renounce any and all homestead, redemption and exemption rights and the benefit of all valuation and appraisal privileges against the indebtedness evidenced by this Note or by any extension or

renewal hereof; (ii) waive presentment and demand for payment, notices of nonpayment and of dishonor, protest of dishonor, and notice of protest; (iii) except as expressly provided in the Loan Documents, waive any and all notices in connection with the delivery and acceptance hereof and all other notices in connection with the performance, default, or enforcement of the payment hereof or hereunder; (iv) waive any and all lack of diligence and delays in the enforcement of the payment hereof; (v) agree that the liability of the Borrower and each guarantor, endorser or obligor shall be unconditional and without regard to the liability of any other person or entity for the payment hereof, and shall not in any manner be affected by any indulgence or forbearance granted or consented to by the Lender to any of them with respect hereto; (vi) consent to any and all extensions of time, renewals, waivers, or modifications that may be granted by the Lender with respect to the payment or other provisions hereof, and to the release of any security at any time given for the payment hereof, or any part thereof, with or without substitution, and to the release of any person or entity liable for the payment hereof; and (vii) consent to the addition of any and all other makers, endorsers, guarantors, and other obligors for the payment hereof, and to the acceptance of any and all other security for the payment hereof, and agree that the addition of any such makers, endorsers, guarantors or other obligors, or security shall not affect the liability of the Borrower, any guarantor and all others now liable for all or any part of the obligations evidenced hereby. This provision is a material inducement for the Lender making the Loan to the Borrower.

9. GENERAL AGREEMENTS.

9.1 Business Purpose Loan. The Loan is a business loan which comes within the purview of Section 205/4, paragraph (1)(c) of Chapter 815 of the Illinois Compiled Statutes, as amended. The Borrower agrees that the Loan evidenced by this Note is an exempted transaction under the Truth In Lending Act, 15 U.S.C., §1601, et seq.

9.2 Time. Time is of the essence hereof.

9.3 Governing Law. This Note is governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the statutes, laws and decisions of the State of Illinois, without regard to its conflict of laws provisions.

9.4 Amendments. This Note may not be changed or amended orally but only by an instrument in writing signed by the party against whom enforcement of the change or amendment is sought.

9.5 No Joint Venture. The Lender shall not be construed for any purpose to be a partner, joint venturer, agent or associate of the Borrower or of any lessee, operator, concessionaire or licensee of the Borrower in the conduct of its business, and by the execution of this Note, the Borrower agrees to indemnify, defend, and hold the Lender harmless from and against any and all damages, costs, expenses and liability that may be incurred by the Lender as a result of a claim that the Lender is such partner, joint venturer, agent or associate.

9.6 Disbursement. This Note has been made and delivered at Chicago, Illinois and all funds disbursed to or for the benefit of the Borrower will be disbursed in Chicago, Illinois.

9.7 Joint and Several Obligations. If this Note is executed by more than one party, the obligations and liabilities of each Borrower under this Note shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns. This Note shall inure to the benefit of and may be enforced by the Lender and its successors and assigns.

9.8 Severable Loan Provisions. If any provision of this Note is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Borrower and the Lender shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

9.9 Interest Limitation. If the interest provisions herein or in any of the Loan Documents shall result, at any time during the Loan, in an effective rate of interest which, for any month, exceeds the limit of usury or other laws applicable to the Loan, all sums in excess of those lawfully collectible as interest of the period in question shall, without further agreement or notice between or by any party hereto, be applied upon principal immediately upon receipt of such monies by the Lender, with the same force and effect as though the payer has specifically designated such extra sums to be so applied to principal and the Lender had agreed to accept such extra payment(s) as a premium-free prepayment. Notwithstanding the foregoing, however, the Lender may at any time and from time to time elect by notice in writing to the Borrower to reduce or limit the collection to such sums which, when added to the said first-stated interest, shall not result in any payments toward principal in accordance with the requirements of the preceding sentence. In no event shall any agreed to or actual exaction as consideration for this Loan transcend the limits imposed or provided by the law applicable to this transaction or the makers hereof in the jurisdiction in which the Premises are located for the use or detention of money or for forbearance in seeking its collection.

9.10 Assignability. The Lender may at any time assign its rights in this Note and the Loan Documents, or any part thereof and transfer its rights in any or all of the collateral, and the Lender thereafter shall be relieved from all liability with respect to such collateral. In addition, the Lender may at any time sell one or more participations in the Note. The Borrower may not assign its interest in this Note, or any other agreement with the Lender or any portion thereof, either voluntarily or by operation of law, without the prior written consent of the Lender

10. NOTICES. All notices required under this Note will be in writing and will be transmitted in the manner and to the addresses required by the Deed of Trust or to such other addresses as the Lender and the Borrower may specify from time to time in writing.

11. CONSENT TO JURISDICTION. TO INDUCE THE LENDER TO ACCEPT THIS NOTE, THE BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO THE LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS NOTE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. THE BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON THE BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE BORROWER AT THE ADDRESS STATED IN THE DEED OF TRUST AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

12. WAIVER OF JURY TRIAL. THE BORROWER AND THE LENDER (BY ACCEPTANCE OF THIS NOTE), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS NOTE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS NOTE OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS NOTE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE LENDER ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

13. WAIVER OF DEFENSES. OTHER THAN CLAIMS BASED UPON THE FAILURE OF THE LENDER TO ACT IN A COMMERCIALY REASONABLE MANNER, THE BORROWER WAIVES EVERY PRESENT AND FUTURE DEFENSE (OTHER THAN THE DEFENSE OF PAYMENT IN FULL), CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH THE BORROWER MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION BY THE LENDER IN ENFORCING THIS NOTE OR ANY OF THE LOAN DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE LENDER GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

14. CUSTOMER IDENTIFICATION - USA PATRIOT ACT NOTICE; OFAC AND BANK SECRECY ACT. The 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"), and the Lender's policies and practices, the Lender is required to obtain, verify and record certain information and documentation that identifies the Borrower, which information includes the name and address of the Borrower and such other information that will allow the Lender to identify the Borrower in accordance with the Act. In addition, the Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls the Borrower or any subsidiary of the Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset

control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

15. EXPENSES AND INDEMNIFICATION. The Borrower shall pay all costs and expenses incurred by the Lender in connection with the preparation of this Note and the Loan Documents, including, without limitation, reasonable attorneys' fees and time charges of attorneys who may be employees of the Lender or any affiliate or parent of the Lender. The Borrower shall pay any and all stamp and other taxes, UCC search fees, filing fees and other costs and expenses in connection with the execution and delivery of this Note and the other instruments and documents to be delivered hereunder, and agrees to save the Lender harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such costs and expenses. The Borrower hereby authorizes the Bank to charge any account of the Borrower with the Bank for all sums due under this section. The Borrower also agrees to defend (with counsel satisfactory to the Lender), protect, indemnify and hold harmless the Lender, any parent corporation, affiliated corporation or subsidiary of the Lender, and each of their respective officers, directors, employees, attorneys and agents (each an "Indemnified Party") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and distributions of any kind or nature (including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party thereto, which shall also include, without limitation, attorneys' fees and time charges of attorneys who may be employees of the Lender, any parent corporation or affiliated corporation of the Lender), which may be imposed on, incurred by, or asserted against, any Indemnified Party (whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including, without limitation, securities, environmental laws and commercial laws and regulations, under common law or in equity, or based on contract or otherwise) in any manner relating to or arising out of this Note or any of the Loan Documents, or any act, event or transaction related or attendant thereto, the preparation, execution and delivery of this Note and the Loan Documents, the making or issuance and management of the Loan, the use or intended use of the proceeds of this Note and the enforcement of the Lender's rights and remedies under this Note, the Loan Documents any other instruments and documents delivered hereunder, or under any other agreement between the Borrower and the Lender; provided, however, that the Borrower shall not have any obligations hereunder to any Indemnified Party with respect to matters caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it violates any law or public policy, the Borrower shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and failing prompt payment, together with interest thereon at the Default Rate from the date incurred by each Indemnified Party until paid by the Borrower, shall be added to the obligations of the Borrower evidenced by this Note and secured by the collateral securing this Note. The provisions of this section shall survive the satisfaction and payment of this Note.

16. EXTENSION OF MATURITY DATE. Subject to the satisfaction of the following conditions, Borrower shall have the right to extend the Maturity Date for one year to January 4,

2009 (the "Extended Maturity Date") by delivering to Lender written notice of Borrower's election to extend on or before November 20, 2007 (the "Extension Notice"):

(a) No Event of Default shall have occurred as of the date of the Extension Notice or the Maturity Date;

(b) Concurrently with delivery of the Extension Notice, Borrower pays Lender a "Loan Extension Fee" in an amount equal to .125% of the then outstanding principal balance of the Loan and the Loan Reserve; and

(c) Prior to the Maturity Date, Borrower shall have deposited funds sufficient, in Lender's sole discretion, to re-balance the Loan Reserve.

IN WITNESS WHEREOF, the Borrower has executed and delivered this Promissory Note as of the day and year first above written.

OPUS WEST CORPORATION, a Minnesota corporation

By: _____

Name: _____

Its: _____

Charles Vogel

Charles Vogel

Senior Vice President

ATTACHMENT 2

**CERTIFICATE OF REPRESENTATIONS,
WARRANTIES AND COVENANTS**

THIS CERTIFICATE OF REPRESENTATIONS, WARRANTIES AND COVENANTS (this "Certificate") is entered into as of the 4th day of January, 2007, by **OPUS WEST CORPORATION**, a Minnesota corporation ("Borrower") for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, ("Lender") and its successors and assigns.

RECITALS:

A. Lender has agreed to loan to Borrower the principal amount of Twenty Eight Million Two Hundred Seventy Five Thousand and 00/100 Dollars (\$28,275,000.00) ("Loan"). The Loan shall be evidenced by that certain Promissory Note of even date herewith in the principal amount of \$28,275,000.00 to the order of Lender (the "Note") and shall be secured by, among other things, a Deed of Trust, Assignment of Leases and Rents, Security Agreement, Fixture Filing and Financing Statement of even date herewith ("Deed of Trust") made by Borrower for the benefit of Lender encumbering the property legally described in Exhibit A attached thereto and the improvements located thereon (collectively, "Premises"). The Note, the Deed of Trust, this Certificate and all of the other documents now or hereinafter executed in favor or for the benefit of Lender which evidence, secure or are otherwise executed in connection with the Loan are hereinafter referred to collectively as "Loan Documents".

B. A condition precedent to Lender's extension of the Loan to Borrower is the execution and delivery of this Certificate by the Borrower.

NOW, THEREFORE, as a material inducement to Lender's extension of the Loan, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby represents, warrants and covenants to Lender as follows:

1. **Corporate Organization**. Borrower is a duly formed corporation under the laws of the State of Minnesota, validly existing, in good standing and fully qualified to do business in the State of California. The Articles of Incorporation and By-Laws of Borrower, certified copies of which have been furnished to Lender, are in effect, unamended and are the true, correct and complete documents relating to Borrower's creation and governance. Borrower and its shareholders have fully complied with all applicable securities and other laws, ordinances and regulations in connection with the formation of Borrower and the sale and offer for sale of interests therein.

2. **Corporate Shareholders/Partnership Interests**. Neither Borrower nor any of its shareholders are bound by any shareholders, corporate governance, voting trust or like agreement. All such membership interests are owned and held free and clear of all liens, claims, pledges and encumbrances.

3. **Continuing Existence.** Borrower, without the prior written consent of Lender, shall not (i) permit itself to be dissolved or its existence terminated, or (ii) amend or modify its organizational documents if such amendment or modification could have a material adverse effect on Borrower's ability to perform its obligations under any of the Loan Documents.

4. **Solvency.** Borrower represents and warrants to Lender that it is able to pay its debts as such debts become due, and it has capital sufficient to carry on its respective present businesses and transactions and all businesses and transactions in which it is about to engage. Borrower (i) is not bankrupt or insolvent, (ii) has not made an assignment for the benefit of its respective creditors, (iii) has not had a trustee or receiver appointed, (iv) has not been involved in any bankruptcy, reorganization or insolvency proceedings instituted by or against it, or (v) shall not be rendered insolvent by its execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.

5. **Defaults.** Execution and delivery of this Certificate and the Loan Documents do not and will not contravene, conflict with, violate or constitute a default under the By-Laws or Articles of Incorporation governing Borrower.

6. **Financial Information.** All financial statements and rent rolls submitted to Lender relating to Borrower and the Premises are true, complete and correct in all material respects. The financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the person or entity to which they pertain. Neither the financial statements nor the rent rolls contain any untrue statement of a material fact or fail to state a fact material to such financial statements or rent rolls. No material adverse change has occurred in the financial condition or operations of Borrower or the Premises since the respective dates of the most recent financial statements and rent roll delivered to Lender.

7. **Authority.** Borrower has full power and authority to execute and deliver the Loan Documents to which it is a party and to perform its obligations set forth thereunder. Upon the execution and delivery hereof and thereof, this Certificate and the Loan Documents shall be valid, binding and enforceable upon the Borrower. Execution and delivery of this Certificate or any of the other Loan Documents do not and will not contravene, conflict with, violate or constitute a default under any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which Borrower is a party or is bound or which is binding upon or applicable to the Premises or any portion thereof.

8. **No Defenses.** There are no conditions, events or circumstances existing, or any litigation, arbitrations, governmental or administrative proceedings, actions, examinations, claims or demands pending or threatened affecting Borrower or the Premises, or which would prevent Borrower from complying with or performing its respective obligations under the Loan Documents within the time limits set forth therein for such compliance or performance, and no basis for any such matter exists.

9. **Events of Default.** A breach of any of the representations, warranties or covenants set forth in this Certificate shall constitute an Event of Default under the Note, the Deed of Trust and the other Loan Documents.

10. **Successors.** The covenants, representations and warranties of Borrower under this Certificate shall be binding upon and enforceable against it and its successors and permitted assigns and shall inure to the benefit of Lender and its successors and assigns.

11. **Loan Expenses.** Borrower shall pay all expenses, charges, costs and fees (including reasonable attorneys' fees and expenses) incurred in connection with the negotiation, documentation, administration, servicing and enforcement of the Loan, all recording fees and charges, title insurance charges and premiums, escrow fees, costs of surveys and of other bonds required by the title company in connection with clearing title to the Premises or the issuance of title reports, binders and policies, costs incurred by Lender for appraisals of the Premises ordered by Lender and all other costs, expenses, charges and fees referred to in or necessitated by the terms of this Certificate or any of the other Loan Documents (collectively, "**Loan Expenses**"). The Loan Expenses shall be paid by Borrower within ten (10) days after written demand therefor by Lender to Borrower and shall bear interest at the Default Rate (as defined in the Note) from the date such Loan Expenses are due until paid. All Loan Expenses shall be payable by Borrower regardless of whether there shall be any disbursement of the Loan.

12. **Continuing Effectiveness.** The Borrower shall continue to comply with the covenants contained in this Certificate throughout the term of the Loan. Without limiting the effect of any of the representations and warranties contained in this Certificate, the Borrower shall at all times during the term of the Loan take all actions required to assure that each and every one of the representations and warranties set forth in this Certificate shall remain true and correct throughout the term of the Loan. The Borrower hereby agrees to indemnify, defend and hold Lender harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) that may be imposed on, incurred by or asserted against Lender at any time which relate to or arise from (a) any material inaccuracy or untruth in any representation or warranty contained in this Certificate or (b) any breach by Borrower of any of the covenants contained in this Certificate.

13. **Operating and Reserve Accounts.** Borrower covenants to Lender that it shall maintain the operating, escrow, reserve and other accounts, if any, for the Premises with Lender and pledge the same to Lender as security for the Loan.

14. **Governing Law.** This Certificate shall be governed by and construed in accordance with the laws of the State of Illinois.

15. **Consent to Jurisdiction.** TO INDUCE LENDER TO ACCEPT THE NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO LENDER'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE

NOTE AND THIS CERTIFICATE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED IN THE LOAN DOCUMENTS AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

16. Waiver of Jury Trial. BORROWER AND LENDER (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS CERTIFICATE OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS CERTIFICATE, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST LENDER OR ANY OTHER PERSON ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

17. Financial Covenants.

(a) At all times during the term of the Loan, Borrower shall comply with the following covenants (collectively, the "Financial Covenants"):

(i) Borrower shall maintain an Adjusted Tangible Net Worth (as hereinafter defined) of at least \$75,000,000.00. Borrower's Adjusted Tangible Net Worth shall be calculated as of the end of each fiscal quarter and fiscal year.

(ii) Borrower shall maintain, in the aggregate, liquid assets in the form of cash or cash equivalents satisfactory to Lender of not less than Two Million and 00/100 Dollars (\$2,000,000.00).

(iii) From the date hereof through December 31, 2007, Borrower shall maintain a Leverage Ratio (as hereinafter defined) of equal to or less than 6.0:1.0. At all times after January 1, 2008, Borrower shall maintain a Leverage Ratio of equal to or less than 5.0:1.0. Borrower's Leverage Ratio shall be calculated at of the end of each fiscal quarter and fiscal year.

(iv) From the date hereof through December 31, 2007, Borrower shall maintain an Outstanding Bank Debt Ratio (as hereinafter defined) equal to or less than 5.0:1.0. At all times after January 1, 2008, Borrower shall maintain an Outstanding Bank Debt Ratio of equal to or less than 4.0:1.0. Outstanding Bank Debt Ratio shall be calculated at of the end of each fiscal quarter and fiscal year.

For purposes of this section, (i) "Adjusted Tangible Net Worth" shall mean the sum of all items which, in accordance with generally accepted accounting principals, consistently applied ("GAAP"), would be included as tangible assets plus Subordinated Affiliate Debt, less Indebtedness and all items which, in accordance with GAAP, would be included as minority interests, (ii) "Subordinated Affiliate Debt" shall mean all non-contingent liabilities owed by Borrower to one or more affiliates of Borrower which are junior and subordinate to the liabilities of Borrower to Lender, (iii) "Indebtedness" shall mean all items, which in accordance with GAAP, would be included as liabilities on the consolidated balance sheet of Borrower other than Subordinated Affiliate Debt, (iv) "Leverage Ratio" shall mean the ratio of Indebtedness to Adjusted Tangible Net Worth, (v) "Outstanding Bank Debt" shall mean (without duplication) the aggregate of all of Borrower's indebtedness, obligations and other liabilities to banks and other financial institutions less Subordinated Affiliated Debt for or with respect to (A) borrowed money, (B) reimbursement obligations with respect to letters of credit or similar instruments for which have been drawn and (C) all other items which, in accordance with GAAP, would be included as liabilities on the consolidated balance sheet of Borrower; and (vi) "Outstanding Bank Debt Ratio" shall mean the ratio of Outstanding Bank Debt to Adjusted Tangible Net Worth. Such market values shall be set forth on a schedule prepared and certified by Borrower and approved by Lender. Furthermore, Borrower shall deliver to Lender covenant compliance certificates in form and substance satisfactory to Lender with sixty (60) days of the end of each fiscal quarter.

(b) Borrower's failure to comply with all the Financial Covenants shall be constitute an Event of Default under the Note and other Loan Documents

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrower has executed this Certificate as of the date
set forth above.

BORROWER:

OPUS WEST CORPORATION, a Minnesota
corporation

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

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,

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as borrower, dated August 31, 2007 (as amended from time to time, the "Camarillo Ranch Agreement");

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

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

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

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

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

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

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

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

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

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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

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

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

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

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

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

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

2.20 Total Liabilities to Tangible Net Worth Ratio. Borrower shall maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter.

"Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

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

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

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

3.23 Total Liabilities to Tangible Net Worth Ratio. Borrower shall maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter.

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

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

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

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

Section 4.29 Total Liabilities to Tangible Net Worth Ratio. Opus shall maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter.

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"Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

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

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

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

"Tangible Net Worth" means the gross book value of Guarantor's assets (excluding goodwill, patents, trademarks, trade names, organization 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:

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

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

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

Section 4.29 Total Liabilities to Tangible Net Worth Ratio. Borrower shall cause Guarantor to maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter.

"Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

6. Sections 14(b)(i), (ii), and (iii) of the Highland Village Condos Guaranty, the Fort Bend Crossing Guaranty, the Pima Center Guaranty and the Pima Center III-C Guaranty are hereby amended in their entirety to read as follows:

(b) Guarantor hereby agrees as follows:

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

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(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus debt subordinated to Lender (limited to a 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,

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organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus debt subordinated to Lender (limited to a maximum of Thirty Million And no/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter. "Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long-term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

8. Section 22(a) of the Cypress Guaranty, the Hill Country Apartments Construction Guaranty, the Arch Road Construction Guaranty, and the Walker Commons Construction Guaranty are hereby amended in their entirety to read as follows:

(a) Guarantor hereby agrees as follows (the following covenants are collectively called the "Financial Covenants"):

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

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus debt subordinated to Lender (limited to a maximum of Thirty Million And no/100 Dollars [\$30,000,000.00]) in a manner acceptable to

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Lender (using Lender's standard form), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter. "Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long-term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

9. Section 17(a) of the Westlake Village Certificate and the Stanford Ranch Certificate are hereby amended in their entirety to read as follows:

(a) Borrower hereby agrees as follows (the following covenants are collectively called the "Financial Covenants"):

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

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million AND No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Borrower (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

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(iii) to maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter. "Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long-term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

10. Section 23(a) of the Hill Country Galleria Construction Guaranty and the Irvine Center Construction Guaranty are hereby amended in their entirety to read as follows:

(a) Guarantor hereby agrees as follows (the following covenants are collectively called the "Financial Covenants");

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

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus debt subordinated to Lender (limited to a maximum of Thirty Million And no/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter. "Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long-term liabilities plus consolidated joint venture debt less debt subordinated to Lender

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(limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

11. Section 23(a) of the Hill Country Apartments Land Guaranty is hereby amended in its entirety to read as follows:

(a) Guarantor hereby agrees as follows (the following covenants are collectively called the "Financial Covenants"):

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

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars (\$125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars (\$100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (excluding goodwill, patents, trademarks, trade names, organization expense, treasury stock, unamortized debt discount and expense, deferred research and development costs, deferred marketing expenses, and other like intangibles) plus debt subordinated to Lender (limited to a maximum of Thirty Million And no/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form), less total liabilities, including but not limited to accrued and deferred income taxes, and any reserves against assets; and

(iii) to maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter. "Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long-term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

Opus West Corporation
March 21, 2008
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(iv) to furnish to Lender certified annual financial statements within one hundred twenty (120) days after the close of each fiscal year, and

(v) to furnish to Lender certified quarterly financial statements, including compliance certificates, within sixty (60) days of each fiscal quarter and fiscal year end.

12. The following definitions are hereby added to Section 1.1 of the Scripps Ranch Construction Agreement:

"Tangible Net Worth" means the gross book value of Borrower's assets (excluding goodwill, patents, trademarks, trade names, organization 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.

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(c) Borrower shall maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter.

14. The following definitions are hereby added to Section 1.1 of the Irvine Center Construction Agreement:

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

"Total Liabilities" means in accordance with GAAP the sum of current liabilities plus long-term liabilities plus consolidated joint venture debt less debt subordinated to Lender (limited to a maximum of Thirty Million And No/100 Dollars [\$30,000,000.00]) in a manner acceptable to Lender (using Lender's standard form).

15. Sections 8.14(i), (ii), (iii), and (iv) of the Irvine Center Construction Agreement are hereby amended in their entirety to read as follows:

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

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

(iii) Guarantor shall maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter.

Opus West Corporation
March 21, 2008
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16. The following definitions are hereby added to Section 1.1 of the Broadstone Galleria Construction Agreement:

"Tangible Net Worth" means the gross book value of Opus West's assets (excluding goodwill, patents, trademarks, trade names, organization 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.

Opus West Corporation
March 21, 2008
Page 17

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.

Opus West Corporation
March 21, 2008
Page 18

21. Section 5.4(f) of the Opus May RLC Agreement is hereby deleted in its entirety.

Each of the Loan Documents, to the extent applicable, is hereby modified to incorporate the foregoing modifications which shall govern and control in the event of any inconsistency with any other provision of any of the Loan Documents. All other terms and conditions of the Loan Documents shall remain unchanged and in full force and effect. Any property or rights or interest in property granted as security for the Loans shall remain as security for the Loans and the obligations of the borrowers under the Loan Documents.

BANK OF AMERICA, N.A., a national banking
association

By: 

Name: EDGARDO MARTINEZ

Title: ASST. VICE PRESIDENT

20-Mar-2008 05:50 PM Bank of America 602-523-4396


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Opus West Corporation
March 21, 2008
Page 18

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

QBACTIVE6108299.9

Opus West Corporation
March 21, 2008
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With respect to the Opus RLC Agreement:

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

With respect to the Commons at 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

Opus West Corporation
March 21, 2008
Page 20

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: Charles Vogel
Title: Senior Vice President

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

Opus West Corporation
March 21, 2008
Page 21

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

Opus West Corporation
March 21, 2008
Page 22

With respect to the Fort Bend Crossing Agreement and the
Fort Bend Crossing Guaranty:

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

OPUS WEST LP, a Delaware limited partnership,
Borrower

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 23

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

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

SHOPPES AT CHINO HILLS, INC., a Minnesota
corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 24

With respect to the Fremont Tech Agreement and the
Fremont Tech Guaranty:

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 25

With respect to the Pima Center Agreement and the Pima
Center Guaranty:

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 26

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

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 27

With respect to the Cypress Agreement and the Cypress
Guaranty:

Acknowledged and Agreed to as of the
21 day of March 2008

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

BY: OWR CYPRESS INC., a Delaware
corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 28

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

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

HILL COUNTRY APARTMENTS, L.P., a
Delaware limited partnership

BY: OWR Hill Country, Inc., a Delaware
corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 29

With respect to the Hill Country Apartments Land Note
and the Hill Country Apartments Land Guaranty:

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

HILL COUNTRY APARTMENTS, L.P., a
Delaware limited partnership

BY: OWR Hill Country, Inc., a Delaware
corporation, its General Manager

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

Opus West Corporation
March 21, 2008
Page 30

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

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

ARCH ROAD LIMITED PARTNERSHIP, a
Delaware limited partnership

BY: Stockton GP, L.L.C., a Delaware limited
liability company, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 31

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

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

Opus West Corporation
March 21, 2008
Page 32

With respect to the Scripps Ranch Construction
Agreement:

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

Opus West Corporation
March 21, 2008
Page 33

With respect to the Stanford Ranch Note and the Stanford
Ranch Certificate:

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

Opus West Corporation
March 21, 2008
Page 34

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

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

BROADSTONE WALKER COMMONS, L.P., a
Delaware limited partnership

BY: OWR Walker Commons, Inc., a Delaware
corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 35

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

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

IRVINE CENTER PARTNERS III, L.L.C., a
Delaware limited liability company

BY: Opus West Corporation, a Minnesota
corporation, its Manager

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

Opus West Corporation
March 21, 2008
Page 36

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

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

HILL COUNTRY GALLERIA, L.P., a Delaware
limited partnership

BY: OWR Hill Country, Inc., a Delaware
corporation, its General Partner

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

BORROWER

OPUS WEST CORPORATION, a Minnesota
corporation

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

GUARANTOR

~~Opus West Corporation~~
March 21, 2008
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With respect to the Broadstone Galleria Construction
Agreement and the Broadstone Galleria Construction
Guaranty:

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

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

BY: OWR Galleria, Inc., a Delaware corporation,
its General Partner

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

Opus West Corporation
March 21, 2008
Page 38

With respect to the Opus May RLC Agreement:

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

OPUS WEST CORPORATION, a Minnesota
corporation

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

BORROWER

Opus West Corporation
March 21, 2008
Page 39

CONSENT AND AGREEMENT OF GUARANTOR

The undersigned ("Guarantor") executed guarantees in connection with one or more of the Loans described and defined in the foregoing letter agreement. The Guarantor hereby consents and agrees to the modifications and all other matters contained in the letter agreement and agrees that nothing contained in the letter agreement shall in any manner affect or impair any of the obligations or liabilities of the undersigned Guarantor to Lender. Each guaranty executed by the Guarantor in connection with one or more of the Loans is continued in full force and effect and remains unaffected and unchanged except to the extent specifically amended by this consent and agreement. All such 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: Charles Vogel
Name: Charles Vogel
Title: Senior Vice President

GUARANTOR

ATTACHMENT 4

MODIFICATION AGREEMENT

The parties to this Modification Agreement ("Agreement") dated and effective as of December 31, 2008 (the "Modification Date") are BANK OF AMERICA, N.A., a national banking association, successor by merger to LaSalle Bank National Association ("Lender"), and OPUS WEST Corporation, a Minnesota corporation ("Borrower"). For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Background.

1.1 Lender owns the Promissory Note dated January 4, 2007 made by Borrower payable to the order of Lender in the principal face amount of \$28,275,000.00, which promissory note evidences a loan ("Loan") made to Borrower and is, as it may have been renewed, extended, amended, or supplemented by one or more documents, if any, dated before the Modification Date, herein called the "Note." In connection with the Loan, Borrower executed that Certificate of Representations, Warranties and Covenants dated January 4, 2007, as it may have been renewed, extended, amended or supplemented by one or more documents, if any, dated before the Modification Date, herein called the "Certificate of Covenants." Any and all documents evidencing, securing or pertaining to the Loan, as they may have been or may be amended, modified, restated, replaced and supplemented from time to time are herein called the "Loan Documents." All undefined terms used herein shall have the meaning given them in the Certificate of Covenants.

1.2 Borrower has requested that Lender modify the Loan and the Loan Documents as provided herein. Lender is willing to so modify the Loan and the Loan Documents, subject to the terms and conditions herein.

2. Modification of Loan Documents. Borrower and Lender agree to modify the Loan Documents as follows:

2.1 The "Maturity Date" as set forth in Section 1 of the Note, is hereby amended to be April 1, 2009.

2.2 Section 2 of the Note is hereby amended to read as follows:

2. Interest Rate.

(a) BBA LIBOR Daily Floating Rate.
The unpaid principal balance of this Note from day to day outstanding which is not past due, shall bear interest at the greater of (a) seven percent (7.00%) per annum or (b) a fluctuating rate of interest per annum equal to the BBA LIBOR Daily Floating Rate plus four and one-half percent (4.50%) (the "LIBOR Rate"). The "BBA LIBOR Daily Floating Rate" shall mean a fluctuating rate of interest 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) as determined for each Business Day at approximately 11:00 a.m. London time two (2) London Banking Days prior to the date in question, for U.S. Dollar deposits (for delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Lender's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternate method as reasonably selected by Lender. A "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). A "London Banking Day" is a day on which banks in London are open for business and dealing in offshore dollars. Interest shall be computed for the actual number of days which have elapsed, on the basis of a 360-day year.

(b) Alternative Rates. If Lender determines that no adequate basis exists for determining the BBA LIBOR Daily Floating Rate or that the BBA LIBOR Daily Floating Rate will not adequately and fairly reflect the cost to Lender of funding the Loan, or that any applicable Law or regulation or compliance therewith by Lender prohibits or restricts or makes impossible the charging of interest based on the BBA LIBOR Daily Floating Rate and Lender so notifies Borrower, then until Lender notifies Borrower that the circumstances giving rise to such suspension no longer exist, interest shall accrue and be payable on the unpaid principal balance of this Note from the date Lender so notifies Borrower until the Maturity Date of this Note (whether by acceleration, declaration, extension or otherwise) at a rate equal to the greater of (i) seven percent (7.00%) per annum, or (ii) a fluctuating rate of interest equal to the Prime Rate of Lender plus four and one-half percent (4.50%) per annum. The term "Prime Rate" means, on any day, the rate of interest per annum then most recently established by Lender as its "prime rate." Any such rate is a general reference rate of interest, may not be related to any other rate, and may not be the lowest or best rate actually charged by Lender to any customer or a favored rate and 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. Each time the Prime Rate changes, the per annum rate of interest on this Note shall change immediately and contemporaneously with such change in the Prime 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.

(c) Past Due Rate. If any amount payable by Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), such amount shall thereafter bear interest at the Past Due Rate (as defined below) to the fullest extent permitted by applicable Law. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable on demand, at a fluctuating rate per annum (the "Past Due Rate") equal to the BBA LIBOR Daily Floating Rate plus eight and one-half percent (8.50%).

(d) Prepayment. Borrower may prepay the principal balance of this Note, in full at any time or in part from time to time, without fee, premium or penalty, provided that: (a) 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; (b) Lender shall have actually received from Borrower prior written notice of (i) Borrower's intent to prepay, (ii) the amount of principal which will be prepaid (the "Prepaid Principal"), and (iii) the date on which the prepayment will be made; (c) 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 (d) 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. If this Note is prepaid in full, any commitment of Lender for further advances shall automatically terminate.

2.3 The final sentence of Section 4.1(a) of the Note is hereby intentionally deleted in its entirety.

2.4 The address of "135 South LaSalle Street, Suite 1225, Chicago, Illinois 60603" in Section 4.3 of the Note is hereby amended to be "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."

2.5 Section 4.5 of the Note is hereby intentionally deleted in its entirety.

2.6 Section 16 of the Note is hereby intentionally deleted in its entirety.

2.7 All references to "Extended Maturity Date" in the Note are hereby deleted in their entirety.

2.8 Borrower has informed Lender that it is likely that Borrower will not be in compliance with the Total Liabilities to Tangible Net Worth requirements set forth in Section 17(a)(iii) of the Certificate of Covenants (the "Leverage Covenant") on December 31, 2008. Lender agrees to forbear from exercising its rights and remedies under the Loan Documents as a result of Borrower's non-compliance with the Leverage Covenant until April 1, 2009, subject to the following terms and conditions: (i) Borrower obtains a similar forbearance or waiver from the applicable lenders of Borrower's compliance with any leverage covenant or other debt to net worth covenant applicable to Borrower with respect to any other loan to, or guaranteed by, Borrower; (ii) no other lender declares a default as a result of Borrower's failure to comply with any leverage covenant or other debt to net worth covenant applicable to Borrower with respect to any other loan to, or guaranteed by, Borrower; and (iii) Lender obtains the consent of all participants and co-lenders to a similar forbearance on all other loans to, or guaranteed by, Borrower under which Lender is a lender or administrative agent. In any event, Lender shall have no obligation to forbear from exercising its rights and remedies under the Loan Documents with respect to the Leverage Covenant on or after April 1, 2009 or with respect to any other default or event of default under the Loan Documents at any time. The foregoing agreement of forbearance shall not constitute an agreement by Lender to forbear from exercising its rights and remedies with respect to any other loan made by Lender or under which Lender is the administrative agent as a result of the failure of Borrower to comply with any leverage covenant or other debt to net worth covenant applicable to Borrower with respect to any such other loan.

2.9 Each of the Loan Documents is modified to provide that it shall be a default or an Event of Default thereunder if Borrower shall fail to comply with any of the covenants of Borrower herein or if any representation or warranty by Borrower herein or by any guarantor in any related Consent and Agreement of Guarantor is materially incomplete, incorrect, or misleading as of the date hereof.

2.10 Each reference in the Loan Documents to any of the Loan Documents is hereby amended to be a reference to such document as modified herein.

3. Ratification; Controlling Agreement; Applicable Law. The Loan Documents, and other documents, assignments, transfers, liens and security rights pertaining to it, are hereby ratified and confirmed as valid, subsisting and continuing in full force and effect as modified

hereby. Borrower promises to pay the Note to the order of Lender in accordance with its terms. Except as provided in Section 2.8 above, this Agreement does not waive any default or any right of Lender including but not limited to any rights Lender may have against any person not a party hereto.

4. Borrower Representations and Warranties. Borrower represents and warrants to Lender:

4.1 Other than with respect to information provided by Borrower to Lender with respect to Borrower's likely compliance with the Leverage Covenant, no default or event of default under any of the Loan Documents as modified herein, nor any event, that, with the giving of notice or the passage of time or both, would be a default or an event of default under the Loan Documents as modified herein has occurred and is continuing.

4.2 Other than with respect to information provided by Borrower to Lender with respect to Borrower's likely compliance with the Leverage Covenant, there has been no material adverse change in the financial condition of Borrower or any other person whose financial statement has been delivered to Lender in connection with the Loan from the most recent financial statement received by Lender.

4.3 Other than with respect to information provided by Borrower to Lender with respect to Borrower's likely compliance with the Leverage Covenant, each and all representations and warranties of Borrower in the Loan Documents are accurate on the date hereof.

4.4 Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

4.5 The Loan Documents as modified herein are the legal, valid, and binding obligation of Borrower, enforceable against Borrower in accordance with their terms.

4.6 Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

5. Borrower Covenants. Borrower covenants with Lender:

5.1 Borrower shall execute, deliver, and provide to Lender such additional agreements, documents, and instruments as reasonably required by Lender to effectuate the intent of this Agreement.

5.2 Borrower fully, finally, and absolutely and forever releases and discharges Lender and its present and former directors, shareholders, officers, employees, agents, representatives, successors and assigns, and their separate and respective heirs, personal representatives, successors and assigns, from any and all actions, causes of action, claims, debts,

damages, demands, liabilities, obligations, and suits, of whatever kind or nature, in law or equity of Borrower, whether now known or unknown to Borrower, and whether contingent or matured, (i) in respect of the Loan, the Loan Documents, or the actions or omissions of Lender in respect of the Loan or the Loan Documents, and (ii) arising from events occurring prior to the date of this Agreement.

6. 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 Agreement and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount called for under the 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 of the Note, 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 the Note and all other indebtedness and the provisions of the 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, forbearance, or detention 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 until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

7. Conditions Precedent. The agreements of Lender and the modifications contained herein shall not be binding upon Lender until Lender has executed and delivered this Agreement and Lender has received, at Borrower's expense, all of the following, all of which shall be in form and content satisfactory to Lender and shall be subject to approval by Lender:

7.1 An original of this Agreement fully executed by Borrower;

7.2 If Borrower is a corporation; limited liability company, partnership or trust, such resolutions or authorizations and such other documents as Lender may require relating to the authority of any person executing this Agreement or other documents on behalf of that corporation, limited liability company, partnership or trust;

7.3 Payment of an extension fee in the amount of \$70,687.50; and

7.4 Payment of all the internal and external costs and expenses incurred by Lender in connection with this Agreement (including, without limitation, inside and outside attorneys, appraisal, appraisal review, processing, title, filing and recording costs, expenses and fees).

8. WAIVER OF JURY TRIAL. BORROWER WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH BORROWER AND LENDER MAY BE PARTIES, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTION OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY BORROWER, AND BORROWER HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

9. Mandatory Arbitration. Any controversy or claim between or among the parties hereto including but not limited to those arising out of or relating to this Agreement or any related agreements or instruments, including any claim based on or arising from an alleged tort, shall be determined by binding arbitration in accordance with the Federal Arbitration Act (or if not applicable, the applicable state law), the Rules of Practice and Procedure for the Arbitration of Commercial Disputes of Judicial Arbitration and Mediation Services, Inc. ("J.A.M.S."), and the "Special Rules" set forth below. In the event of any inconsistency, the Special Rules shall control. Judgment upon any arbitration award may be entered in any court having jurisdiction. Any party to this Agreement may bring an action, including a summary or expedited proceeding, to compel arbitration of any controversy or claim to which this Agreement applies in any court having jurisdiction over such action.

(a) Special Rules. The arbitration shall be conducted in the city of the Borrower's domicile at the time of this Agreement's execution and administered by J.A.M.S. who will appoint an arbitrator; if J.A.M.S. is unable or legally precluded from administering the arbitration, then the American Arbitration Association will serve. All arbitration hearings will be commenced within ninety (90) days of the demand for arbitration; further, the arbitrator shall only, upon a showing of cause, be permitted to extend the commencement of such hearing for up to an additional sixty (60) days.

(b) Reservation of Rights. Nothing in this Agreement shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation or repose and any waivers contained in this Agreement; or (ii) be a waiver by Lender of the protection afforded to it by 12 U.S.C. Sec. 91 or any substantially equivalent state law; or (iii) limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose against any real or personal property collateral, or (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief or the appointment of a receiver. The Lender may exercise such self help rights, foreclose upon such property, or obtain such provisional or ancillary remedies before, during or after the pendency of any arbitration

proceeding brought pursuant to this Agreement. At Lender's option, foreclosure under a deed of trust or mortgage may be accomplished by any of the following: the exercise of a power of sale under the deed of trust or mortgage, or by judicial sale under the deed of trust or mortgage, or by judicial foreclosure. Neither this 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 controversy or claim occasioning resort to such remedies.

10. THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN PARTIES.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

EXECUTED to be effective as of the Modification Date.

BORROWER:

OPUS WEST CORPORATION, a Minnesota
corporation

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

LENDER:

BANK OF AMERICA, N.A., a national banking
association, successor by merger to LaSalle Bank
National Association

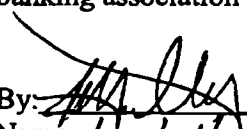
By: Casey Carpenter
Name: Casey Carpenter
Title: Vice President

CONSENT OF PARTICIPANT

1. PARK NATIONAL BANK, a national banking association ("Participant"), and BANK OF AMERICA, N.A., a national banking association, successor by merger to LaSalle Bank National Association ("Principal"), are parties to that Participation Agreement dated March 22, 2007 by which Purchaser bought an undivided 50% participation in the Loan and Loan Documents;
2. Principal shall deliver to Participant 50% of the extension fee to be paid by Opus West Corporation, a Minnesota corporation ("Borrower") in connection with the Modification Agreement between Principal and Borrower (the "Modification Agreement") in the form attached hereto as Exhibit "A"; and
3. Participant hereby acknowledges receipt of and consents to the terms of the Modification Agreement.

Date: 12/31/08

PARK NATIONAL BANK, a national
banking association

By: 
Name: Joseph Hasky
Title: Vice President

PARTICIPANT

ATTACHMENT 5

This page is part of your document - DO NOT DISCARD

	20070026471	Pages: 046
		
Recorded/Filed in Official Records Recorder's Office, Los Angeles County, California		Fees: Taxes: \$175.00 Other: \$0.00 Paid: \$0.00 \$175.00
01/05/07 AT 08:00AM		TitleCompany

TITLE(S) : _____



FEE

D.T.T.

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black Ink.

Number of AIN's Shown

THIS FORM IS NOT TO BE DUPLICATED

RECORDING REQUESTED BY:

Chicago Title Company

WHEN RECORDED MAIL TO:

Michael D. Rothstein, Esq.
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601



SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

Deed of Trust

TITLE ORDER NO.: 601024076-X49

ESCROW NO.: 603823383-M19

2054-030-089

dl
4/0

3

This space reserved for Recorder's use only

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

by

OPUS WEST CORPORATION, a Minnesota corporation, Trustor

to and for the benefit of

CHICAGO TITLE INSURANCE COMPANY, Trustee

and

**LASALLE BANK NATIONAL ASSOCIATION,
a national banking association, Beneficiary**

**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Michael D. Rothstein, Esq.

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

**THIS DOCUMENT SECURES, AMONG OTHER THINGS, OBLIGATIONS
THAT PROVIDE FOR ADJUSTMENTS IN THE INTEREST RATE AND PAYMENT
AMOUNTS FOR LOANS AND A BALLOON PAYMENT.**

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY
AGREEMENT, FIXTURE FILING AND FINANCING STATEMENT ("Deed of Trust") is
made as of the 4th day of January, 2007 by OPUS WEST CORPORATION, a Minnesota
corporation, whose mailing address is, 2555 East Camelback Road, Suite 800, Phoenix, Arizona
85016 ("Trustor"), to CHICAGO TITLE INSURANCE COMPANY ("Trustee"), for the benefit
of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its
successors and assigns ("Beneficiary").

RECITALS:

A. Beneficiary has agreed to loan to the Trustor the principal amount of Twenty
Eight Million Two Hundred Seventy Five Thousand and 00/100 Dollars (\$28,275,000.00) (the
"Loan"). The Loan shall be evidenced by that certain Promissory Note of even date herewith (as
amended, restated or replaced from time to time, the "Note"), executed by the Trustor and made
payable to the order of Beneficiary, in the principal amount of the Loan and due on January 4,
2008 as may be extended to January 4, 2009 (the "Maturity Date"), except as may be accelerated
pursuant to the terms hereof, of the Note or of any other document or instrument now or
hereafter given to evidence or secure the payment of the Note or delivered to induce the
Beneficiary to disburse the proceeds of the Loan (the Note this Deed of Trust, together with such
other documents, as amended, restated or replaced from time to time, being collectively referred
to herein as the "Loan Documents").

B. A condition precedent to Beneficiary's extension of the Loan to Trustor is the
execution and delivery by Trustor of this Deed of Trust.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of
which are hereby acknowledged, the Trustor agrees as follows:

Trustor, in consideration of the indebtedness herein recited and the trust herein created,
irrevocably transfer, grants, conveys and assigns unto Trustee, IN TRUST, WITH POWER OF
SALE, all of Trustor's estate, right, title and interest, now owned or hereafter acquired, including
any reversion or remainder interest, in and to the following property (referred to collectively
herein as "Premises"), all of which property, rights and interests are hereby pledged primarily
and on a parity with the Real Estate (as defined below) and not secondarily:

THE REAL ESTATE located in the State of California and legally described on
Exhibit A attached hereto and made a part hereof, including all heretofore or hereafter vacated
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alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property ("Real Estate");

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Trustor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Trustor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Trustor or on its behalf (the "Improvements");

TOGETHER WITH all easements, rights of way, gores of real estate, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way now or hereafter belonging, relating or appertaining to the Real Estate, and the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Trustor of, in and to the same;

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in the Code hereinafter defined), security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by Trustor thereon, to be applied against the Indebtedness (hereinafter defined); provided, however, that Trustor, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

TOGETHER WITH all interest of Trustor in all leases now or hereafter on the Premises, whether written or oral ("Leases"), together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Trustor to collect the rentals under any such Lease;

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Trustor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements

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thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Trustor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness (as hereinafter defined); notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Deed of Trust and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code in effect from time to time in the state of California) (the "Code"), this instrument shall constitute a security agreement, creating a security interest in such goods, as collateral, in Trustee for the benefit of Beneficiary, as a secured party, and Trustor, as Debtor, all in accordance with the Code; and

TOGETHER WITH all of Trustor's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of Trustor's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Trustor is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to Trustor thereunder; (iii) all intellectual property related to the Premises; and (iv) all choses in action and causes of action relating to the Premises;

TOGETHER WITH all of Trustor's accounts now owned or hereafter created or acquired as relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Trustor: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to the Trustor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Trustor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Trustor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due to become due to the Trustor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Trustor); (v) "securities", "investment property," "financial assets," and "securities entitlements" (each as defined in the Code), and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Trustor with respect to the Premises;

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and

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TO HAVE AND TO HOLD the Premises, unto Trustee for the benefit of Beneficiary, its successors and assigns, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default; Trustor hereby **RELEASING AND WAIVING** all rights under and by virtue of the homestead exemption laws of the State of California.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loan and all interest, late charges, LIBOR breakage charges (including any Make Whole Costs described in the Note) prepayment premium (if any), exit fee, interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by Beneficiary for the benefit of Trustor, if any, and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents, any interest rate swap or hedge agreement now or hereafter entered into between Trustor and Beneficiary and any application for letters of credit and master letter of credit agreement, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Trustor or any other obligor to or benefiting Beneficiary which are evidenced or secured by or otherwise provided in the Note, this Deed of Trust or any of the other Loan Documents; and (iii) the reimbursement to Beneficiary of any and all sums incurred, expended or advanced by Beneficiary pursuant to any term or provision of or constituting additional indebtedness under or secured by this Deed of Trust, any of the other Loan Documents, any interest rate swap or hedge agreement or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, "Indebtedness").

TO HAVE AND TO HOLD the above granted and described Premises unto and to the use and benefit of Trustee, **IN TRUST WITH POWER OF SALE**, and Trustor does hereby bind itself, and its successors and assigns, to **WARRANT AND DEFEND** title to the Premises, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Trustor shall pay to Beneficiary the Indebtedness at the time and in the manner provided in this Deed of Trust and shall abide by and comply with each and every covenant and condition set forth herein and in the other Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title.** Trustor represents, warrants and covenants that (a) Trustor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of or for the benefit of Beneficiary and as otherwise described on Exhibit B attached hereto ("Permitted Exceptions"); and (b) Trustor has legal power and authority to grant, bargain, sell, and convey the Premises. Trustor will warrant and forever defend unto Trustee and unto Beneficiary the title to the Premises against all claims and demands, subject only to the Permitted Exceptions.

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2. **Maintenance, Repair, Restoration, Prior Liens, Parking.** Trustor covenants that, so long as any portion of the Indebtedness remains unpaid, Trustor will:

- (a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;
- (b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Trustor's right to contest liens as permitted by the terms of Paragraph 28 hereof);
- (c) pay when due the Indebtedness in accordance with the terms of the Note and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Trustor under the Note, this Deed of Trust and the other Loan Documents;
- (d) pay when due any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Beneficiary (subject to Trustor's right to contest liens as permitted by the terms of Paragraph 28 hereof);
- (e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;
- (f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;
- (g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Deed of Trust;
- (h) make no material alterations in the Premises or demolish any portion of the Premises without Beneficiary's prior written consent, except as required by law or municipal ordinance;
- (i) suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Beneficiary's prior written consent;
- (j) pay when due all operating costs of the Premises;

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(k) not initiate or acquiesce in any zoning reclassification with respect to the Premises, without Beneficiary's prior written consent;

(l) provide and thereafter maintain adequate parking areas within the Premises as may be required by law, ordinance or regulation (whichever may be greater), together with any sidewalks, aisles, streets, driveways and sidewalk cuts and sufficient paved areas for ingress, egress and right-of-way to and from the adjacent public thoroughfares necessary or desirable for the use thereof; and

(m) shall comply, and shall cause the Premises at all times to be operated in compliance, with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations, including, without limitation, Trustor shall (i) ensure, and cause each of its subsidiaries to ensure, that no person who owns twenty percent (20.00%) or more of the equity interests in the Trustor, or otherwise controls the Trustor or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (ii) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

3. **Payment of Taxes and Assessments.** Trustor will pay prior to delinquency and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever (all herein generally called "Taxes"), whether or not assessed against Trustor, if applicable to the Premises or any interest therein, or the Indebtedness, or any obligation or agreement secured hereby, subject to Trustor's right to contest the same, as provided by the terms hereof; and Trustor will, upon written request, furnish to the Beneficiary duplicate receipts therefor within ten (10) days after Beneficiary's request.

4. **Tax Deposits.** Upon an Event of Default and at Beneficiary's request, Trustor shall deposit with Beneficiary, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the most recent ascertainable annual Taxes on the Premises. If requested by Beneficiary, Trustor shall also deposit with Beneficiary an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by Beneficiary. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. So long as no Event of Default shall exist, Beneficiary shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from Trustor) or shall release sufficient funds to Trustor for the payment thereof. If the

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funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, Trustor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Beneficiary. Beneficiary, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

5. Beneficiary's Interest In and Use of Deposits. Upon an Event of Default, Beneficiary may, at its option, apply any monies at the time on deposit pursuant to Paragraph 4 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Beneficiary may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Trustor shall immediately, upon demand by Beneficiary, deposit with Beneficiary an amount equal to the amount expended by Trustor from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to Trustor. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of Trustor. Beneficiary shall not be liable for any failure to apply to the payment of Taxes any amount so deposited unless Trustor, prior to an Event of Default, shall have requested Beneficiary in writing to make application of such funds to the payment of such amounts, accompanied by the bills for such Taxes. Beneficiary shall not be liable for any act or omission taken in good faith or pursuant to the instruction of any party.

6. Insurance.

(a) Trustor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Beneficiary, in accordance with the terms, coverages and provisions described on Exhibit C attached hereto and made a part hereof, and such other insurance as Beneficiary may from time to time reasonably require; provided, however, Trustor shall not be required to obtain property insurance until such time as improvements are located on the Real Estate. Unless Trustor provides Beneficiary evidence of the insurance coverages required hereunder, Beneficiary may purchase insurance at Trustor's expense to cover Beneficiary's interest in the Premises. The insurance may, but need not, protect Trustor's interest. The coverages that Beneficiary purchases may not pay any claim that Trustor makes or any claim that is made against Trustor in connection with the Premises. Trustor may later cancel any insurance purchased by Beneficiary, but only after providing Beneficiary with evidence that Trustor has obtained insurance as required by this Deed of Trust. If Beneficiary purchases insurance for the Premises, Trustor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Beneficiary may impose in connection with the placement of the

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insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Trustor may be able to obtain on its own.

(b) Trustor shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained hereunder unless Beneficiary is included thereon as the loss payee or an additional insured as applicable, under a standard mortgage clause acceptable to Beneficiary and such separate insurance is otherwise acceptable to Beneficiary.

(c) In the event of loss, Trustor shall give prompt notice thereof to Beneficiary, who, if such loss exceeds the lesser of ten percent (10%) of the Indebtedness or Five Hundred Thousand Dollars (\$500,000) ("Threshold"), shall have the sole and absolute right to make proof of loss. If such loss exceeds the Threshold or if such loss is equal to or less than the Threshold and the conditions set forth in clauses (i), (ii) and (iii) of the immediately succeeding sentence are not satisfied, then Beneficiary, solely and directly shall receive such payment for loss from each insurance company concerned. If and only if (i) such loss is equal to or less than the Threshold, (ii) no Event of Default or event that with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and (iii) Beneficiary reasonably determines that the work required to complete the repair or restoration of the Premises necessitated by such loss can be completed no later than six (6) months prior to the Maturity Date, then Beneficiary shall endorse to Trustor any such payment and Trustor may collect such payment directly. Beneficiary shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Beneficiary pursuant to the terms of this paragraph, after the payment of all of Beneficiary's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon Beneficiary may declare the whole of the balance of Indebtedness plus any exit fee described in the Note to be due and payable, or (ii) to the restoration or repair of the property damaged as provided in subparagraph d below; provided, however, that Beneficiary hereby agrees to permit the application of such proceeds to the restoration or repair of the damaged property, subject to the provisions of subparagraph d below, if (i) Beneficiary has received satisfactory evidence that such restoration or repair shall be completed no later than the date that is six (6) months prior to the Maturity Date, and (ii) no Event of Default, or event that with the passage of time, the giving of notice or both would constitute an Event of Default, then exists. If insurance proceeds are made available to Trustor by Beneficiary as hereinafter provided, Trustor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. Any insurance proceeds applied on account of the unpaid principal balance of the Note shall be subject to any exit fee described in the Note. In the event of foreclosure of this Deed of Trust, all right, title and interest of Trustor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

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(d) If insurance proceeds are made available by Beneficiary to Trustor, Trustor shall comply with the following conditions:

(i) Before commencing to repair, restore or rebuild following damage to, or destruction of, all or a portion of the Premises, whether by fire or other casualty, Trustor shall obtain from Beneficiary its reasonable approval of all site and building plans and specifications pertaining to such repair, restoration or rebuilding.

(ii) Prior to each payment or application of any insurance proceeds to the repair or restoration of the improvements upon the Premises to the extent permitted in subparagraph c above (which payment or application may be made, at Beneficiary's option, through an escrow, the terms and conditions of which are satisfactory to Beneficiary and the cost of which is to be borne by Trustor), Beneficiary shall be satisfied as to the following:

(a) no Event of Default or any event which, with the passage of time or giving of notice would constitute an Event of Default, has occurred;

(b) either such Improvements have been fully restored, or the expenditure of money as may be received from such insurance proceeds will be sufficient to repair, restore or rebuild the Premises, free and clear of all liens, claims and encumbrances, except the lien of this Deed of Trust and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Premises, Trustor has deposited with Beneficiary such amount of money which, together with the insurance proceeds shall be sufficient to restore, repair and rebuild the Premises; and

(c) prior to each disbursement of any such proceeds, Beneficiary shall be furnished with a statement of Beneficiary's architect (the cost of which shall be borne by Trustor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs, restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Beneficiary and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Beneficiary shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(iii) If Trustor shall fail to restore, repair or rebuild the Improvements within a time deemed reasonably satisfactory by Beneficiary, then Beneficiary, at its option, may (a) commence and perform all necessary acts to restore, repair or

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rebuild the said Improvements for or on behalf of Trustor, or (b) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

7. **Condemnation.** If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Trustee for the benefit of Beneficiary, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Trustor and the same shall be paid forthwith to Beneficiary. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking Beneficiary may declare the whole of the balance of the Indebtedness plus any exit fee to be due and payable. Notwithstanding the provisions of this paragraph to the contrary, if any condemnation or taking of less than the entire Premises occurs and provided that no Event of Default and no event or circumstance which with the passage of time, the giving of notice or both would constitute an Event of Default then exists, and if such partial condemnation, in the reasonable discretion of Beneficiary, has no material adverse effect on the operation or value of the Premises, then the award or payment for such taking or consideration for damages resulting therefrom may be collected and received by Trustor, and Beneficiary hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

8. **Stamp Tax.** If, by the laws of the United States of America, or of any state or political subdivision having jurisdiction over Trustor, any tax is due or becomes due in respect of the execution and delivery of this Deed of Trust, the Note or any of the other Loan Documents, Trustor shall pay such tax in the manner required by any such law. Trustor further agrees to reimburse Beneficiary for any sums which Beneficiary may expend by reason of the imposition of any such tax. Notwithstanding the foregoing, Trustor shall not be required to pay any income or franchise taxes of Beneficiary.

9. **Lease Assignment.** Trustor acknowledges that, concurrently herewith, Trustor has executed and delivered to Beneficiary, as additional security for the repayment of the Loan, an Assignment of Rents and Leases ("Assignment") pursuant to which Trustor has assigned to Beneficiary interests in the leases of the Premises and the rents and income from the Premises. All of the provisions of the Assignment are hereby incorporated herein as if fully set forth at length in the text of this Deed of Trust. Trustor agrees to abide by all of the provisions of the Assignment.

10. **Effect of Extensions of Time and Other Changes.** If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the

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time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Trustor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Beneficiary, notwithstanding such extension, variation, release or change.

11. **Effect of Changes in Laws Regarding Taxation.** If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation or (b) the imposition upon Beneficiary of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Trustor, or (c) a change in the method of taxation of mortgages, deeds of trust, or debts secured by mortgages or deeds of trust or Beneficiary's interest in the Premises, or the manner of collection of taxes, so as to affect this Deed of Trust or the Indebtedness or the holders thereof, then Trustor, upon demand by Beneficiary, shall pay such Taxes or charges, or reimburse Beneficiary therefor; provided, however, that Trustor shall not be deemed to be required to pay any income or franchise taxes of Beneficiary. Notwithstanding the foregoing, if in the opinion of counsel for Beneficiary it is or may be unlawful to require Trustor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Beneficiary may declare all of the Indebtedness to be immediately due and payable.

12. **Beneficiary's Performance of Defaulted Acts and Expenses Incurred by Beneficiary.** If an Event of Default has occurred, Beneficiary may, but need not, make any payment or perform any act herein required of Trustor in any form and manner deemed expedient by Beneficiary, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Trustor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Beneficiary in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Trustor to Beneficiary, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Note) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Beneficiary in connection with (a) sustaining the lien of this Deed of Trust or its priority, (b) protecting or enforcing any of Beneficiary's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Deed of Trust, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Deed of Trust, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Trustor to Beneficiary, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Trustor to

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Beneficiary, and shall be additional Indebtedness evidenced by the Note and secured by this Deed of Trust. Beneficiary's failure to act shall never be considered as a waiver of any right accruing to Beneficiary on account of any Event of Default. Should any amount paid out or advanced by Beneficiary hereunder, or pursuant to any agreement executed by Trustor in connection with the Loan, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Beneficiary shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

13. Security Agreement. Trustor and Beneficiary agree that this Deed of Trust shall constitute a Security Agreement within the meaning of the Code with respect to (a) all sums at any time on deposit for the benefit of Trustor or held by the Beneficiary (whether deposited by or on behalf of Trustor or anyone else) pursuant to any of the provisions of this Deed of Trust or the other Loan Documents, and (b) with respect to any personal property included in the granting clauses of this Deed of Trust, which personal property may not be deemed to be affixed to the Premises or may not constitute a "fixture" (within the meaning the Code) (which property is hereinafter referred to as "Personal Property"), and all replacements of, substitutions for, additions to, and the proceeds thereof, and the "supporting obligations" (as defined in the Code) (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof being sometimes hereinafter collectively referred to as "Collateral"), and that a security interest in and to the Collateral is hereby granted to the Beneficiary, and the Collateral and all of Trustor's right, title and interest therein are hereby assigned to Beneficiary, all to secure payment of the Indebtedness. All of the provisions contained in this Deed of Trust pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises; and the following provisions of this Paragraph shall not limit the applicability of any other provision of this Deed of Trust but shall be in addition thereto:

(a) Trustor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other liens and encumbrances benefiting Beneficiary and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

(b) The Collateral is to be used by Trustor solely for business purposes.

(c) The Collateral will be kept at the Real Estate and, except for Obsolete Collateral (as hereinafter defined), will not be removed therefrom without the consent of Beneficiary (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the Real Estate but will not be affixed to any other real estate.

(d) The only persons having any interest in the Premises are Trustor, Trustee, Beneficiary and holders of interests, if any, expressly permitted hereby.

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(e) No Financing Statement (other than Financing Statements showing Beneficiary as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Trustor, at its own cost and expense, upon demand, will furnish to Beneficiary such further information and will execute and deliver to Beneficiary such financing statements and other documents in form satisfactory to Beneficiary and will do all such acts as Beneficiary may request at any time or from time to time or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness, subject to no other liens or encumbrances, other than liens or encumbrances benefiting Beneficiary and no other party and liens and encumbrances (if any) expressly permitted hereby; and Trustor will pay the cost of filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by Beneficiary to be desirable. Trustor hereby irrevocably authorizes Beneficiary at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the Collateral as all assets of Trustor (or words of similar effect), regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed (including, without limitation, the Code), or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Trustor is an organization, the type of organization and any organizational identification number issued to Trustor, and in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Trustor agrees to furnish any such information to Beneficiary promptly upon request. Trustor further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by or on behalf of Beneficiary in any jurisdiction prior to the date of this Deed of Trust.

(f) Upon an Event of Default hereunder, Beneficiary shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Trustor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Beneficiary shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Trustor's right of redemption in satisfaction of Trustor's obligations, as provided in the Code. Beneficiary may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Beneficiary may

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require Trustor to assemble the Collateral and make it available to Beneficiary for its possession at a place to be designated by Beneficiary which is reasonably convenient to both parties. Beneficiary will give Trustor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Trustor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Beneficiary may buy at any public sale. Beneficiary may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Beneficiary so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Beneficiary, shall be applied against the Indebtedness in such order or manner as Beneficiary shall select. Beneficiary will account to Trustor for any surplus realized on such disposition.

(g) The terms and provisions contained in this Paragraph 13, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

(h) This Deed of Trust is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Trustor (Debtor) and Beneficiary (Secured Party) are hereinbelow set forth. This Deed of Trust is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located.

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Trustor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Trustor, as lessor thereunder.

(j) Trustor represents and warrants that:

- (i) Trustor is the record owner of the Premises;
- (ii) Trustor's chief executive office is located in the State of Arizona;
- (iii) Trustor's state of formation is the State of Minnesota;

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(iv) Trustor's exact legal name is as set forth in the first paragraph of this Deed of Trust; and

(v) Trustor's organizational identification number is 8Z-83.

(k) Trustor agrees that:

(i) Where Collateral is in possession of a third party, Trustor will join with the Beneficiary in notifying the third party of the Beneficiary's interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Beneficiary;

(ii) Trustor will cooperate with the Beneficiary in obtaining control with respect to Collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the Indebtedness is paid in full, Trustor will not change the state where it is located or change its corporate name without giving the Beneficiary at least 30 days' prior written notice in each instance.

14. Restrictions on Transfer.

(a) Trustor, without the prior written consent of Beneficiary, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

(i) The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

(ii) Any shares of capital stock of a corporate Trustor, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Trustor, or a corporation which is the owner of substantially all of the capital stock of any corporation described in this subparagraph (other than the shares of capital stock of a corporate trustee or a corporation whose stock is publicly traded on a national securities exchange or on the National Association of Securities Dealers' Automated Quotation System); provided that up to 10% of the total outstanding shares of capital stock of Trustor may be transferred to officers and employees of Trustor;

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(iii) All or any part of the membership interests of Trustor, or of the managing member or manager interest, as the case may be, in a limited liability company Trustor or a limited liability company which is a general partner of a partnership Trustor;

(iv) All or any part of the general partner or joint venture interest, as the case may be, of a partnership Trustor or a partnership which is a manager of a limited liability company Trustor or the conversion of a partnership Trustor to a corporation or limited liability company; or

(v) If there shall be any change in control (by way of transfers of stock, partnership or member interests or otherwise) in any partner, member, manager or shareholder, as applicable, which directly or indirectly controls the day to day operations and management of Trustor and/or owns a controlling interest in Trustor;

in each case whether any such conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that notwithstanding anything to the contrary in this Deed of Trust, the foregoing provisions of this Paragraph 14 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, (iv) to leases permitted by the terms of the Loan Documents, if any, or (v) to a transfer of the Premises in a transaction in which the Loan will be paid off or to any "private fund" transaction (i.e., transfer to an Opus Real Estate acquisition and investment fund).

Notwithstanding anything to the contrary herein, transfers of any of the foregoing to an Affiliate of Grantor shall not constitute Prohibited Transfers. "Affiliate" for this Section shall mean, when used with reference to a specific Person (as defined herein), any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlling" or "controlled by") as applied with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person whether through the ownership of voting securities or by contract or otherwise provided (but without limiting the foregoing) that no pledge of voting securities of any person without the current right to exercise voting rights with respect thereto shall by itself be deemed to constitute control over such Person. Without limiting the generality of the foregoing, with respect to Grantor, the word "Affiliate" shall include the founder of Opus Corporation, a

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trust for the benefit of such individual and/or members of his family or their issue, Opus, L.L.C., Opus Corporation, or the parent or subsidiary of any of them, or a partner, limited liability company, corporation or other entity comprised of all or some of the above. "Person" means any individual, partnership, joint venture, limited liability company, corporation, trust, governmental authority or other entity.

(b) In determining whether or not to make the Loan, Beneficiary evaluated the background and experience of Trustor and its partners/officers in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Beneficiary's security for the Note. Trustor and its partners/officers are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loan, including this provision. Trustor recognizes that Beneficiary is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Trustor. Trustor further recognizes that any secondary junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note; (b) could result in acceleration and foreclosure by any such junior encumbrances which would force Beneficiary to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Beneficiary come into possession thereof with the intention of selling same; and (d) would impair Beneficiary's right to accept a deed in lieu of foreclosure, as a foreclosure by Beneficiary would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Beneficiary's security, both of repayment and of value of the Premises; (ii) giving Beneficiary the full benefit of its bargain and contract with Trustor; (iii) allowing Beneficiary to raise the interest rate and collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Trustor agree that if this Paragraph 14 is deemed a restraint on alienation, that it is a reasonable one.

15. Intentionally Deleted.

16. Events of Default; Acceleration. Each of the following shall constitute an "Event of Default" for purposes of this Deed of Trust:

(a) Trustor fails to pay (i) any installment of principal or interest payable pursuant to the Note within five (5) business days of the date when due, or (ii) any other amount payable to Beneficiary under the Note, this Deed of Trust or any of the other Loan Documents within five (5) business days after notice from Beneficiary that any such payment is due in accordance with the terms hereof or thereof;

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(b) Trustor fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Trustor under the Note, this Deed of Trust or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by the Deed of Trust or any of the other Loan Documents and the value of the Premises are not materially impaired, threatened or jeopardized, then Trustor shall have a period ("Cure Period") of thirty (30) days after Trustor obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Trustor commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for forty-five (45) additional days, but in no event shall the Cure Period be longer than seventy-five (75) days in the aggregate;

(c) the existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Deed of Trust or any of the other Loan Documents or of any statement or certification as to facts delivered to Beneficiary by Trustor;

(d) Trustor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Trustor or of all or any substantial part of the property of Trustor or all or a substantial part of the assets of Trustor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within sixty (60) days;

(e) the commencement of any involuntary petition in bankruptcy against Trustor or the institution against Trustor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Trustor which shall remain undismissed or undischarged for a period of sixty (60) days;

(f) the dissolution, termination or merger of Trustor;

(g) the occurrence of a Prohibited Transfer;

(h) the occurrence of a material adverse change in the financial condition of Trustor; or

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(i) the occurrence of an "Event of Default" under the Note or any of the other Loan Documents.

If an Event of Default occurs, the Beneficiary may, at its option, declare the whole of the Indebtedness to be immediately due and payable without further notice to the Trustor, with interest thereon accruing from the date of such Event of Default until paid at the Default Rate.

17. Foreclosure; Expense of Litigation.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Beneficiary shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Deed of Trust or any of the other Loan Documents in accordance with the Deed of Trust Foreclosure Act of the State of California (as may be amended from time to time, the "Act"). In the event of a foreclosure sale, Beneficiary is hereby authorized, without the consent of Trustor, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Beneficiary may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit or other proceeding to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to the title as Beneficiary may deem reasonably necessary either to prosecute such suit or other proceeding to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Trustor's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Deed of Trust, including the reasonable fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust, the Note, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Trustor, with interest thereon until paid at the Default Rate and shall be secured by this Deed of Trust.

18. Remedies.

(a) Subject to such notice and cure periods set forth in Section 16 above, upon the occurrence and during the continuance of any Event of Default, Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Premises, by Beneficiary itself or otherwise,

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including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

(i) declare the entire principal amount of the indebtedness secured hereby with interest accrued thereon to be immediately due and payable;

(ii) institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Deed of Trust in which case the Premises or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner in accordance with the laws of the jurisdiction in which such Premises is located;

(iii) with or without entry, to the extent permitted, and pursuant to the procedures provided by, applicable law, institute proceedings for the foreclosure of this Deed of Trust for the Obligations then due and payable subject to the continuing Lien of this Deed of Trust, in accordance with the laws of the jurisdiction in which such Premises is located, for the balance of the Obligations not then due;

(iv) sell for cash or upon credit the Premises or any part thereof and all estate, claim, demand, right, title and interest of Trustor therein and rights of redemption thereof, pursuant to the power of sale contained herein or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by the laws of the jurisdiction in which such Premises is located;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the other Loan Documents;

(vi) to the extent permitted by law, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Deed of Trust;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Premises, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Trustor or any person, firm or other entity liable for the payment of the Obligations;

(viii) enforce Beneficiary's interest in the Leases and Rents and enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess Trustor and its agents and servants therefrom, and thereupon Beneficiary may (A) use, operate, manage, control, insure, maintain,

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repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (B) complete any construction on the Premises in such manner and form as Beneficiary deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Premises; (D) exercise all rights and powers of Trustor with respect to the Premises, whether in the name of Trustor or otherwise (including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues profits and other income of the Premises and every part thereof); and (E) apply the receipts from the Premises to the payment of the Obligations, after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Premises, as well as just and reasonable compensation for the services of Beneficiary, Trustee and their respective counsel, agents and employees;

(ix) require Trustor to pay monthly in advance to Beneficiary, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Premises occupied by Trustor and require Trustor to vacate and surrender possession to Beneficiary of the Premises or to such receiver and, in default thereof, evict Trustor by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the Code including the right to establish a lock box for all rents and other receivables of Trustor relating to the Premises.

In the event of a sale, by foreclosure or otherwise, of less than all of the Premises, this Deed of Trust shall continue as a lien on the remaining portion of the Premises.

(b) The proceeds of any sale made under or by virtue of this Paragraph 18, together with any other sums which then may be held by Beneficiary under this Deed of Trust, whether under the provisions of this section or otherwise, shall be applied by Beneficiary in accordance with the provisions of this Deed of Trust.

(c) Upon any sale made under or by virtue of this Paragraph 18, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, (i) it shall not be necessary for Trustee to be physically present at or to have constructive possession of the Premises (Trustor shall deliver to Trustee any portion of the Premises not actually or constructively possessed by Trustee immediately upon demand by Trustee), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if Trustee had been actually present and delivered to purchaser at such sale, (ii) Trustee is hereby irrevocably appointed the true and lawful attorney of Trustor, in Trustor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the

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Premises and rights so sold and for that purpose Trustee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereby, it being agreed that such power of attorney shall be coupled with an interest, (iii) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Trustor, (iv) each recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Obligations, advertisement and conduct of such sale in the manner provided herein and otherwise by law, and appointment of any successor Trustee hereunder, (v) any prerequisites to the validity of such sale shall be conclusively presumed to have been performed, (vi) the receipt of Trustee or other party making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof, and (vii) to the fullest extent permitted by law, Trustor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Trustor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Trustor. Beneficiary may bid for and acquire the Premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust.

(d) To the extent allowed by law, no recovery of any judgment by Beneficiary and no levy of an execution under any judgment upon the Premises or upon any other property of Trustor shall affect in any manner or to any extent the lien of this Deed of Trust upon the Premises or any part thereof, or any Liens, rights, powers or remedies of Beneficiary and Trustee hereunder, but such Liens, rights, powers and remedies of Beneficiary and Trustee shall continue unimpaired as before.

(e) Beneficiary may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section 18 at any time before the conclusion thereof, as determined in Beneficiary's sole discretion and without prejudice to Beneficiary. Beneficiary may postpone the sale of all or any portion of the Premises, by public announcement at the time and place fixed for such sale and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement.

(f) To the extent permitted by law, Beneficiary may resort to any remedies and the security given by this Deed of Trust or the other Loan Documents in whole or in

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part, and in such portions and in such order as determined by Beneficiary's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by this Deed of Trust or the other Loan Documents. The failure of Beneficiary to exercise any right, remedy or option provided in this Deed of Trust or the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by this Deed of Trust or the other Loan Documents. No acceptance by Beneficiary of any payment after the occurrence and during the continuation of any Event of Default and no payment by Beneficiary of any obligation for which Trustor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Trustor, or Trustor's liability to pay such obligation. No sale of all or any portion of the Premises, no forbearance on the part of Beneficiary, and no extension of time for the payment of the whole or any portion of the Obligations or any other indulgence given by Beneficiary to Trustor, shall operate to release or in any manner affect the interest of Beneficiary in the remaining Premises or the liability of Trustor to pay the Obligations. No waiver by Beneficiary shall be effective, unless it is in writing and then only to the extent specifically stated.

(g) The interests and rights of Beneficiary and Trustee under this Deed of Trust or the other Loan Documents shall not be impaired by (i) any renewal, extension or modification which Beneficiary may grant with respect to any of the Obligations, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Beneficiary may grant with respect to the Premises or any portion thereof, or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Obligations.

(h) Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Premises or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully do so, (i) the benefit of all such laws, (ii) all notices of any Event of Default or of Beneficiary's or Trustee's election to exercise or actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (iii) any and all right to have the assets comprising the Premises marshaled upon any foreclosure of the lien hereof, and Trustor agrees that Beneficiary, Trustee or any court having jurisdiction to foreclose such lien may sell the Premises in part or as an entirety.

(i) Trustor and Trustee acknowledge and agree that some or all of any personal property collateral for the Indebtedness may at Beneficiary's sole election be sold pursuant to the power of sale contained in this Deed of Trust. Upon the occurrence of an Event of Default, Beneficiary may proceed at its election, in any sequence: (i) to

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dispose of any personal property collateral separately from the sale of real property in accordance with the Code; (ii) to dispose of some or all of the Premises and the personal property Collateral in any combination consisting of both real and personal property together in one or more sales to be held in accordance with the provisions of the Code; and (iii) to exercise any remedies of a secured party under the Code or any other applicable law. Trustor further agrees that (1) Beneficiary's election to proceed against the items of real property and any items of personal property separately or together in any order whatsoever shall not, in any way, affect or waive Beneficiary's rights and remedies under the Code, this Deed of Trust or other Loan Documents, and (2) any proceeds received by Beneficiary from the disposition of any such personal property collateral shall not operate or be deemed a cure of any Event of Default under this Deed of Trust, and such proceeds may be applied to the Indebtedness in such order or manner as Beneficiary may determine in its sole and absolute discretion, including, without limitation, in inverse order of maturity.

(j) Without limiting any of the remedies provided in the Loan Documents, Trustor acknowledges and agrees that any warranty, representation, agreement, covenant or other provision contained in any Loan Document respecting any environmental condition at or around the Premises is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by the Trustor relating to the real property security (the "Environmental Provisions"), and that Trustor's failure to comply with the Environmental Provisions is a breach of contract such that Beneficiary shall have the remedies provided under Section 736 of the California Code of Civil Procedure ("Section 736") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure. Other than the remedy provided under Section 736, all remedies provided for by the Loan Documents are separate and distinct causes of action that are not abrogated, modified, limited or otherwise affected by the remedies provided under Section 736(a) of the California Code of Civil Procedure.

19. **Appointment of Receiver.** Upon or at any time after the filing of a complaint to foreclose this Deed of Trust, the court in which such complaint is filed shall, upon petition by Beneficiary, appoint a receiver for the Premises in accordance with the Act. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Trustor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Beneficiary hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times

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when Trustor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Deed of Trust, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

20. Intentionally Omitted.

21. Application of Income Received by Beneficiary. Beneficiary, in the exercise of the rights and powers hereinabove conferred upon it, shall have full power to use and apply the avails, rents, issues and profits of the Premises to the payment of or on account of the following, in such order as Beneficiary may determine:

(a) to the payment of the operating expenses of the Premises, including cost of management and leasing thereof (which shall include compensation to Beneficiary and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of taxes and special assessments now due or which may hereafter become due on the Premises; and

(c) to the payment of any Indebtedness, including any deficiency which may result from any foreclosure sale.

22. Compliance with California Deed of Trust Foreclosure Law.

(a) If any provision in this Deed of Trust shall be inconsistent with any provision of the Act, provisions of the Act shall take precedence over the provisions of this Deed of Trust, but shall not invalidate or render unenforceable any other provision of this Deed of Trust that can be construed in a manner consistent with the Act.

(b) If any provision of this Deed of Trust shall grant to Trustee and/or Beneficiary (including Trustee and/or Beneficiary acting as a Beneficiary-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 19 of this Deed of Trust any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Beneficiary or in such receiver under the Act in the absence of said

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provision, Beneficiary and such receiver shall be vested with the powers, rights and remedies granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Beneficiary which are of the type referred to in the Act, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 12, 17 or 29 of this Deed of Trust, shall be added to the Indebtedness and/or by the judgment of foreclosure.

All references to Beneficiary in this Section shall include Trustee acting for or on behalf of Beneficiary.

23. **Rights Cumulative.** Each right, power and remedy herein conferred upon Trustee and/or Beneficiary is cumulative and in addition to every other right, power or remedy, express or implied, given now or hereafter existing under any of the Loan Documents or at law or in equity, and each and every right, power and remedy herein set forth or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by Beneficiary, and the exercise or the beginning of the exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy, and no delay or omission of Trustee and/or Beneficiary in the exercise of any right, power or remedy accruing hereunder or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein.

24. **Beneficiary's Right of Inspection.** Beneficiary and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times upon not less than twenty-four (24) hours prior notice to Trustor, and access thereto, subject to the rights of tenants in possession, shall be permitted for that purpose.

25. **Release Upon Payment and Discharge of Trustor's Obligations.** Upon payment of all sums secured by this Deed of Trust and any other sums due to Beneficiary in connection with the Loan Documents, and upon the performance of all of Trustor's other obligations under the Loan Documents, and provided that no Event of Default has occurred, Beneficiary shall release this Deed of Trust at Trustor's sole cost and expense.

26. **Notices.** Any notices, communications and waivers under this Deed of Trust shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

To Beneficiary: LaSalle Bank National Association
135 South LaSalle Street, Suite 1225
Chicago, Illinois 60603
Attention: Thomas Jeffery, Senior Vice President

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With a copy to: Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60603
Attn: Michael S. Kurtzon, Esq.

With a copy to Chicago Title Insurance Company
Trustee: 105 Lake Forest Way, Suite A1
Folsom, California 95630

To Trustor: Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Attn: Senior Vice President, Real Estate, Finance & Sales

With a copy to: Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Attn: Legal Department

With a copy to: Luce, Forward, Hamilton & Scripps LLP
600 West Broadway
Suite 2600
San Diego, California 92101-3391
Attn: Dave Hymer, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

27. **Waiver of Rights.** The Trustor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing, the Trustor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Beneficiary but will suffer and permit the

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execution of every such right, power and remedy as though no such law or laws had been made or enacted.

28. Contests. Notwithstanding anything to the contrary herein contained, Trustor shall have the right to contest by appropriate legal proceedings diligently prosecuted any Taxes imposed or assessed upon the Premises or which may be or become a lien thereon and any mechanics', materialmen's or other liens or claims for lien upon the Premises (all herein called "Contested Liens"), and no Contested Liens shall constitute an Event of Default hereunder, if, but only if:

(a) Trustor shall forthwith give notice of any Contested Lien to Beneficiary at the time the same shall be asserted;

(b) Trustor shall either pay under protest or deposit with Beneficiary the full amount (herein called "Lien Amount") of such Contested Lien, together with such amount as Beneficiary may reasonably estimate as interest or penalties which might arise during the period of contest; provided that in lieu of such payment Trustor may furnish to Beneficiary a bond or title indemnity in such amount and form, and issued by a bond or title insuring company, as may be satisfactory to Beneficiary;

(c) Trustor shall diligently prosecute the contest of any Contested Lien by appropriate legal proceedings having the effect of staying the foreclosure or forfeiture of the Premises, and shall permit Beneficiary to be represented in any such contest and shall pay all expenses incurred, in so doing, including fees and expenses of Beneficiary's counsel (all of which shall constitute so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand);

(d) Trustor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Trustor, or (ii) forthwith upon demand by Beneficiary if, in the opinion of Beneficiary, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Trustor shall fail so to do, Beneficiary may, but shall not be required to, pay all such Contested Liens and Lien Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Beneficiary to obtain the release and discharge of such liens; and any amount expended by Beneficiary in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Beneficiary may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

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29. Expenses Relating to Note and Deed of Trust.

(a) Trustor will pay all expenses, charges, costs and fees relating to the Loan or necessitated by the terms of the Note, this Deed of Trust or any of the other Loan Documents, including without limitation, Trustee's and Beneficiary's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Note, this Deed of Trust and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Deed of Trust and all federal, state, county and municipal taxes, and other taxes (provided Trustor shall not be required to pay any income or franchise taxes of Beneficiary), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Note and this Deed of Trust. Trustor recognizes that, during the term of this Deed of Trust, Beneficiary:

(i) May be involved in court or administrative proceedings, including, without restricting the foregoing, foreclosure, probate, bankruptcy, creditors' arrangements, insolvency, housing authority and pollution control proceedings of any kind, to which Beneficiary shall be a party by reason of the Loan Documents or in which the Loan Documents or the Premises are involved directly or indirectly;

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof, which may or may not be actually commenced;

(iii) May make preparations following the occurrence of an Event of Default hereunder for, and do work in connection with, Beneficiary's taking possession of and managing the Premises, which event may or may not actually occur;

(iv) May make preparations for and commence other private or public actions to remedy an Event of Default hereunder, which other actions may or may not be actually commenced;

(v) May enter into negotiations with Trustor or any of its agents, employees or attorneys in connection with the existence or curing of any Event of Default hereunder, the sale of the Premises, the assumption of liability for any of the Indebtedness or the transfer of the Premises in lieu of foreclosure; or

(vi) May enter into negotiations with Trustor or any of its agents, employees or attorneys pertaining to Beneficiary's approval of actions taken or proposed to be taken by Trustor which approval is required by the terms of this Deed of Trust.

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(b) All expenses, charges, costs and fees described in this Paragraph 29 shall be so much additional Indebtedness, shall bear interest from the date so incurred until paid at the Default Rate and shall be paid, together with said interest, by Trustor forthwith upon demand.

30. **Financial Statements.** The Trustor represents and warrants that the financial statements for the Trustor and the Premises previously submitted to the Beneficiary are true, complete and correct in all material respects, disclose all actual and contingent liabilities of the Trustor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of the Trustor or the Premises from the dates of said financial statements until the date hereof. The Trustor shall furnish to the Beneficiary such financial information regarding the Trustor, its constituent partners or members, as the case may be, and the Premises as the Beneficiary may from time to time reasonably request, which shall include, without any further request therefor, (i) quarterly financial statements for the Premises and Trustor including a balance sheet, statement of income and rent roll for the Premises (if applicable), no later than sixty (60) days after the end of each fiscal quarter, all in form, scope and detail satisfactory to the Beneficiary and certified by the chief financial officer or other appropriate officer, partner or member of the Trustor, and (ii) annual audited financial statements for the Trustor and the Premises, no later than one-hundred twenty (120) days after the end of each year, together with an unqualified accountant's opinion in a form satisfactory to the Beneficiary.

31. **Statement of Indebtedness.** Trustor, within seven days after being so requested by Beneficiary, shall furnish a duly acknowledged written statement setting forth the amount of the debt secured by this Deed of Trust, the date to which interest has been paid and stating either that no offsets or defenses exist against such debt or, if such offsets or defenses are alleged to exist, the nature thereof.

32. **Further Deed of Trusts.** Upon request of Beneficiary, Trustor shall execute, acknowledge and deliver all such additional instruments and further assurances of title and shall do or cause to be done all such further acts and things as may reasonably be necessary fully to effectuate the intent of this Deed of Trust and of the other Loan Documents.

33. **Additional Indebtedness Secured.** All persons and entities with any interest in the Premises or about to acquire any such interest should be aware that this Deed of Trust secures more than the stated principal amount of the Note and interest thereon; this Deed of Trust secures any and all other amounts which may become due under the Note or any other document or instrument evidencing, securing or otherwise affecting the Indebtedness, including, without limitation, any and all amounts expended by Beneficiary to operate, manage or maintain the Premises or to otherwise protect the Premises or the lien of this Deed of Trust.

34. **Indemnity.** Trustor hereby covenants and agrees that no liability shall be asserted or enforced against Beneficiary in the exercise of the rights and powers granted to

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Beneficiary in this Deed of Trust, and Trustor hereby expressly waives and releases any such liability. Trustor shall indemnify and save Beneficiary harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Beneficiary at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Beneficiary may or does become a party, either as plaintiff or as a defendant, by reason of this Deed of Trust or for the purpose of protecting the lien of this Deed of Trust; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Beneficiary in accordance with the terms of this Deed of Trust; provided, however, that Trustor shall not be obligated to indemnify or hold Beneficiary harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Beneficiary. All costs provided for herein and paid for by Beneficiary shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Beneficiary and with interest thereon from the date incurred by Beneficiary until paid at the Default Rate.

35. Subordination of Property Manager's Lien. Any property management agreement for the Premises entered into hereafter with a property manager shall contain a provision whereby the property manager agrees that any and all mechanics' lien rights that the property manager or anyone claiming by, through or under the property manager may have in the Premises shall be subject and subordinate to the lien of this Deed of Trust and shall provide that Beneficiary may terminate such agreement at any time after the occurrence and continuation of an Event of Default hereunder. A short form of such property management agreement, at Beneficiary's request, shall be recorded with the Recorder of Deeds of the county where the Premises are located. In addition, if the property management agreement in existence as of the date hereof does not contain a subordination provision, Trustor shall cause the property manager under such agreement to enter into a subordination of the management agreement with Beneficiary, in recordable form, whereby such property manager subordinates present and future lien rights and those of any party claiming by, through or under such property manager to the lien of this Deed of Trust.

36. Compliance with Environmental Laws. Trustor acknowledges that concurrently herewith Trustor has executed and delivered to Beneficiary an Environmental Indemnity Agreement ("Indemnity") pursuant to which Trustor has fully indemnified Beneficiary for certain environmental matters concerning the Premises, as more particularly described therein. The provisions of the Indemnity are hereby incorporated herein and this Deed of Trust shall secure the obligations of Trustor thereunder. Trustor agrees to abide by all of the provisions of the Indemnity.

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37. Miscellaneous.

(a) Successors and Assigns. This Deed of Trust and all provisions hereof shall be binding upon and enforceable against Trustor and its assigns and other successors. This Deed of Trust and all provisions hereof shall inure to the benefit of Beneficiary, its successors and assigns and any holder or holders, from time to time, of the Note.

(b) Invalidity of Provisions; Governing Law. THIS INSTRUMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN CALIFORNIA. IN THE EVENT THAT ANY PROVISION OR CLAUSE OF THIS INSTRUMENT OR THE NOTE CONFLICTS WITH APPLICABLE LAW, SUCH CONFLICT SHALL NOT AFFECT OTHER PROVISIONS OF THIS INSTRUMENT OR ANY OF THE LOAN DOCUMENTS WHICH CAN BE GIVEN EFFECT WITHOUT THE CONFLICTING PROVISION, AND TO THIS END THE PROVISIONS OF THIS INSTRUMENT ARE DECLARED TO BE SEVERABLE.

(c) Municipal Requirements. Trustor shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Deed of Trust to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Trustor hereby assigns to Beneficiary any and all rights to give consent for all or any portion of the Premises or any interest therein to be so used. Similarly, no building or other improvement on the Premises shall rely on any premises not subject to the lien of this Deed of Trust or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Trustor which would result in a violation of any of the provisions of this subparagraph shall be void.

(d) Rights of Tenants. Beneficiary shall have the right and option to commence a civil action to foreclose this Deed of Trust and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Beneficiary. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Trustor as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(e) Option of Beneficiary to Subordinate. At the option of Beneficiary, this Deed of Trust shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all leases of all or any part of the Premises upon the execution

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by Beneficiary of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) **Beneficiary in Possession**. Nothing herein contained shall be construed as constituting Beneficiary a Beneficiary in possession in the absence of the actual taking of possession of the Premises by Beneficiary pursuant to this Deed of Trust.

(g) **Relationship of Beneficiary and Trustor**. Beneficiary shall in no event be construed for any purpose to be a partner, joint venturer, agent or associate of Trustor or of any lessee, operator, concessionaire or licensee of Trustor in the conduct of their respective businesses, and, without limiting the foregoing, Beneficiary shall not be deemed to be such partner, joint venturer, agent or associate on account of Beneficiary becoming a Beneficiary in possession or exercising any rights pursuant to this Deed of Trust, any of the other Loan Documents, or otherwise. The relationship of Trustor and Beneficiary hereunder is solely that of debtor/creditor.

(h) **Time of the Essence**. Time is of the essence of the payment by Trustor of all amounts due and owing to Beneficiary under the Note and the other Loan Documents and the performance and observance by Trustor of all terms, conditions, obligations and agreements contained in this Deed of Trust and the other Loan Documents.

(i) **No Merger**. The parties hereto intend that the Deed of Trust and the lien hereof shall not merge in fee simple title to the Premises, and if Beneficiary acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by Beneficiary as evidenced by an express statement to that effect in an appropriate document duly recorded, this Deed of Trust and the lien hereof shall not merge in the fee simple title and this Deed of Trust may be foreclosed as if owned by a stranger to the fee simple title.

(j) **California Judicial Reference**. If any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by any Loan Document, (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee or referees to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of Beneficiary, any such issues pertaining to a 'provisional remedy' as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) Trustor shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

(k) **Consent to Jurisdiction**. TO INDUCE BENEFICIARY TO ACCEPT THE NOTE, TRUSTOR IRREVOCABLY AGREES THAT, SUBJECT TO BENEFICIARY'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE

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NOTE AND THIS INSTRUMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN LOS ANGELES COUNTY, CALIFORNIA. TRUSTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN LOS ANGELES COUNTY, CALIFORNIA, WAIVES PERSONAL SERVICE OF PROCESS UPON TRUSTOR, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO TRUSTOR AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

(l) Waiver of Jury Trial. TRUSTOR AND BENEFICIARY (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (a) UNDER THIS INSTRUMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS INSTRUMENT OR (b) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS INSTRUMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. TRUSTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST BENEFICIARY OR ANY OTHER PERSON INDEMNIFIED UNDER THIS INSTRUMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

(m) Complete Agreement. This Deed of Trust, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Trustor and Beneficiary.

(n) Substitute Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except Trustee's gross negligence or willful misconduct. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Premises for debts contracted or liability or damages incurred in the management or operation of the Premises. All monies 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 monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by it hereunder.

Trustee may resign by giving notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting, or shall fail or refuse to

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exercise its powers hereunder when requested by Beneficiary so to do, or if for any reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforementioned Trustee. Upon appointment by Beneficiary, any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with the same effect as if originally named as Trustee herein.

38. **Assignment of Lease and Rents.** Trustor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto Beneficiary all right, title and interest of Trustor in, to and under the Leases of the Premises, whether now in existence or hereafter entered into, and all guaranties, amendments, extensions and renewals of said Leases and any of them, and all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Premises. Trustor represents, warrants, covenants and agrees with Beneficiary as follows:

(a) The sole ownership of the entire lessor's interest in the Leases is vested in Trustor, and Trustor has not, and shall not, perform any acts or execute any other instruments which might prevent Beneficiary from fully exercising its rights with respect to the Leases under any of the terms, covenants and/or conditions of this Deed of Trust.

(b) The Leases are and shall be valid and enforceable in accordance with their terms and have not been and shall not be materially altered, modified, amended, terminated, canceled, renewed or surrendered, except as approved in writing by Beneficiary. The terms and conditions of the Leases have not been and shall not be waived in any manner whatsoever, except as approved in writing by Beneficiary.

(c) Trustor shall not materially alter the term or the amount of rent payable under any Lease without prior written notice to Beneficiary and Beneficiary's prior written consent, which consent shall not be unreasonably withheld.

(d) To the best of Trustor's knowledge, there are no defaults now existing under any of the Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

(e) Trustor shall give prompt written notice to Beneficiary of any notice received by Trustor claiming that a material default has occurred under any of the Leases on the part of Trustor, together with a complete copy of any such notice.

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(f) Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the Leases.

(g) Trustor will not permit any Lease to become subordinate to any lien other than the lien of this Deed of Trust and the lien of real property taxes, special taxes and assessments which are not delinquent.

This assignment is absolute, is effective immediately, and is irrevocable by Trustor so long as the Indebtedness remains outstanding. Notwithstanding the foregoing, until a Notice is sent to Trustor in writing that an Event of Default has occurred (which notice is hereafter called a "Notice"), Trustor may receive, collect and enjoy the rents, income and profits accruing from the Premises.

Upon the occurrence of an Event of Default, Beneficiary may, at its option, after service of a Notice, receive and collect all such rents, income and profits from the Premises as they become due. Beneficiary shall thereafter continue to receive and collect all such rents, income and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings.

Trustor hereby irrevocably appoints Beneficiary its true and lawful attorney with power of substitution and with full power for Beneficiary in its own name and capacity or in the name and capacity of Trustor, from and after service of a Notice, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Premises, either in its own name or in the name of Trustor or otherwise, which Beneficiary may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits of and from the Premises. Lessees of the Premises are hereby expressly authorized and directed, following receipt of a Notice from Beneficiary, to pay any and all amounts due Trustor pursuant to the Leases to Beneficiary or such nominee as Beneficiary may designate in a writing delivered to and received by such lessees, and the lessees of the Premises are expressly relieved of any and all duty, liability or obligation to Trustor in respect of all payments so made.

Upon the occurrence of any Event of Default, from and after service of a Notice, Beneficiary is hereby vested with full power to use all measures, legal and equitable, deemed by it to be necessary or proper to enforce this Section and to collect the rents, income and profits assigned hereunder, including the right of Beneficiary or its designee, to enter upon the Premises, or any part thereof, and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of Trustor relating thereto, and Beneficiary may exclude Trustor, its agents and servants, wholly therefrom. Trustor hereby grants full power and authority to Beneficiary to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Premises and of any indebtedness or liability of Trustor to Beneficiary, including, but not limited, to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Improvements on the

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Premises or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of this Deed of Trust, and of principal and interest payments due from Trustor to Beneficiary on the Note and this Deed of Trust, all in such order as Beneficiary may determine. Beneficiary shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Trustor in the Leases. It is further understood that the assignment set forth in this Section shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Beneficiary, nor shall it operate to make Beneficiary liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Premises by any lessee under any of the Leases, or any other person, or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee or stranger.

39. **Permanent Financing.** Trustor agrees that in the event the Loan is refinanced, Trustor shall permit Beneficiary to offer a proposal for such refinancing upon Beneficiary's then-current underwriting standards at the same time Trustor accepts proposals from other banks or credit sources. In the event that Trustor shall solicit refinancing proposals from any other bank or credit source, Trustor shall give Beneficiary the right to offer to Trustor a proposal on similar or more favorable terms than other competing proposals within a reasonable time thereafter. Notwithstanding the foregoing, Trustor and Beneficiary hereby acknowledge that Beneficiary is under no obligation whatsoever to make any proposal to Trustor on any specific terms and conditions, and Trustor is under no obligation whatsoever to accept any refinancing proposal of Beneficiary and may accept a refinancing proposal of any other bank or credit source in Trustor's sole and absolute discretion.

40. **Partial Release.** Beneficiary hereby agrees to issue one (1) partial release (in addition to the partial releases of the restaurant pads described below) of this Deed of Trust provided the following conditions are satisfied:

(a) No Event of Default or any event or condition which with the giving of notice and passage of time would constitute an Event of Default has occurred;

(b) Concurrently with such partial release, Trustor pays to Beneficiary, as a principal repayment of the Loan, an amount sufficient to reduce the outstanding Loan balance such that the ratio of (i) the outstanding principal balance of the Loan plus the Loan Reserve (as defined in the Note) then held by Beneficiary to (ii) the Value of the remaining Real Estate encumbered by this Deed of Trust shall be no more than seventy percent (70%). For purposes of this calculation, the "Value" of the remaining Real Estate shall be determined by multiplying \$100.00 times the number of buildable square feet (as determined by Trustor and approved by Beneficiary in its sole and absolute discretion) planned to be constructed on such Real Estate;

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(c) Concurrently with such partial release Trustor shall deliver to Beneficiary a date down endorsement to its title policy, which: (i) amends the legal description of the Real Estate described therein to be the portion of the Premises which will remain encumbered by the Deed of Trust, (b) insures the first priority of the lien of the Deed of Trust, subject only to the Permitted Exceptions, and (c) dates down all of the endorsements contained in the Title Policy;

(d) Notwithstanding the foregoing, in the event Trustor desires to sell a restaurant pad, Beneficiary shall issue a partial release of the Deed of Trust encumbering such pad upon (i) payment to Beneficiary of an amount equal to 100% of the net sales price but in no event shall such net sales price be less than 95% of the gross sales price of such pad and (ii) delivery of the date down endorsement described in subsection (c) above.

(e) Notwithstanding anything herein to the contrary, in the event a parcel of Real Estate, other than a restaurant pad, is sold to an entity not owned or controlled or under common control with Trustor, Beneficiary may require an additional principal repayment of the Loan as a condition to releasing the lien of this Deed of Trust. Such required principal repayment shall be determined by Beneficiary in its sole and absolute discretion.

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IN WITNESS WHEREOF, Trustor has executed and delivered this Deed of Trust the
day and year first above written.

OPUS WEST CORPORATION, a Minnesota
corporation

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

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CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGMENT

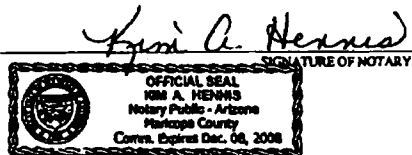
State of ARIZONA
County of MARICOPA
On this 21 day of December, 2006, before me,

Kimi A. Hennis Notary Public
(Name, Title or Office)

personally appeared Charles Vogel
(Name(s) of Signer(s))

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



*** OPTIONAL SECTION ***

CAPACITY CLAIMED BY SIGNER

Through statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document

- ☐ INDIVIDUAL
☐ CORPORATE OFFICERS(S)
☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

***** OPTIONAL SECTION *****

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

TITLE OR TYPE OF DOCUMENT _____
NUMBER OF PAGES _____ DATE OF DOCUMENT _____
SIGNER(S) OTHER THAN NAMED ABOVE _____

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL 1:

LOT 9 OF TRACT NO. 46799-03, IN THE CITY OF WESTLAKE VILLAGE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1247 PAGES 7 THROUGH 11 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OF THE OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, MEASURED, VERTICALLY, FROM THE SURFACE OF SAID LAND, WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF SAID LAND NOR INTO THAT PORTION OF THE SUBSURFACE THEREOF LYING ABOVE A DEPTH OF 500 FEET, MEASURED VERTICALLY FROM SAID SURFACE AS GRANTED TO AMERICAN-HAWAIIAN STEAMSHIP COMPANY, RECORDED APRIL 28, 1996 AS INSTRUMENT NO. 3963 IN BOOK D-3928 PAGE 542, OFFICIAL RECORDS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR ACCESS, INGRESS AND EGRESS, AS DEFINED AND CREATED BY THAT CERTAIN DOCUMENT ENTITLED "EASEMENT AGREEMENT", DATED SEPTEMBER 22, 2004 EXECUTED BY WESTLAKE HHG HOTEL DEVELOPMENT, LP, A TEXAS LIMITED PARTNERSHIP, RUSSELL RANCH ROAD, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND RICHLAND WESTLAKE LTD, A FLORIDA LIMITED PARTNERSHIP DOING BUSINESS IN CALIFORNIA AS RICHLAND WESTLAKE, L.P. SUBJECT TO ALL THE TERMS, PROVISIONS AND CONDITIONS THEREIN CONTAINED, RECORDED SEPTEMBER 29, 2004 AS INSTRUMENT NO. 04-2499298

APN: 2054-030-089

ADDRESS:

Westlake Village, California

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EXHIBIT B

PERMITTED EXCEPTIONS

The following are the Permitted Exceptions per Pro Forma Policy No. 601024076-X49 issued by
Chicago Title Insurance Company:

Exceptions A, B, 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 21, 23 and 24
as set forth on Schedule B, Part I together with Exceptions 29 and 30 as set forth
on Schedule B, Part II.

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EXHIBIT C

INSURANCE REQUIREMENTS

GENERAL INFORMATION

1. All insurance policies referred to herein shall be in form and substance acceptable to LaSalle Bank National Association ("LaSalle").
2. LaSalle must receive evidence/certificates of insurance at least ten (10) business days prior to closing. Original policies must be provided to LaSalle as soon as they are available from insurers. Certified copies should be available within sixty (60) to ninety (90) days.
3. Proof of coverage must be on an ACORD 28 - EVIDENCE OF PROPERTY INSURANCE form. Liability insurance must be written on ACORD 25S or its equivalent. NOTE: Please remove any "endeavor to" and "but failure to mail such notice shall imposerepresentatives" language as it relates to notices. Initials by an authorized representative should appear next to any deletions on the certificates.
4. All property policies shall contain a standard mortgage clause in favor of LaSalle and shall provide for a thirty (30) day written notice to LaSalle of any material change or cancellation. Certificates with disclaimers will NOT be accepted.
5. The Trustor must be the named insured.
6. Property & Builders Risk certificates must show LaSalle as First Mortgagee and Loss Payee as follows:

LaSalle Bank National Association
135 South La Salle Street
Chicago, Illinois 60603
Attention: Commercial Real Estate Division

(LaSalle may be shown as "Mortgagee and Loss Payee As Their Interests May Appear" until the insurance agent receives release of interest from the prior lender. At that time, the insurance policies will need to be endorsed to show LaSalle as First Mortgagee and Loss Payee).
7. The insured property must be identified as Westlake Village, Los Angeles County, California.
8. All insurance companies must have a Policy Rating of "A" and a Financial Rating of "VIII" from AM Best's Rating Guide.

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9. The insurance documentation must be signed by an authorized representative of the Insurer.

SPECIFIC REQUIREMENTS

1. If the property policy is a blanket policy or limit, LaSalle must receive a schedule of the amount allocated to the property/rents or the amounts allocated to the property must be indicated on the certificate.
2. Coverage must be on an "all risk" (Special Perils), 100% replacement cost basis without deduction for foundations and footings, and WITHOUT co-insurance. The co-insurance must be waived or an Agreed Amount endorsement must be included and either "No Co-insurance" or "Agreed Amount" must be provided and indicated on the certificate.
3. Ordinance or Law coverage providing for demolition and increased cost of construction, must be provided and indicated on the certificate.
4. Other coverages such as earthquake, boiler and machinery (which includes the mechanics of the building, such as elevators), and flood will be required when these risks are present.
5. Rent Loss or Business Income coverage shall be in an amount equal to 100% of the projected annual rents or revenue with a minimum period of indemnity of 12 months, or such greater period as LaSalle may require. This coverage needs to be written on a Gross Rental Income, Gross Profits or Extended Period of Indemnity form, not on an actual loss sustained basis which may terminate as soon as the premises are tenantable or operational.
6. LaSalle must be named as an Additional Insured for all general liability coverage, with a minimum limit of \$2,000,000 for any one occurrence.

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ATTACHMENT 6

This page is part of your document - DO NOT DISCARD

	20070026472	Pages: 013
		
Recorded/Filed in Official Records Recorder's Office, Los Angeles County, California		Fees: Taxes: \$54.00 Other: \$0.00 Paid: \$0.00 \$54.00
01/05/07 AT 08:00AM		TitleCompany

TITLE(S) :

LEAD SHEET

FEE	D.T.T.
CODE 20	
CODE 19	
CODE 9	

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM IS NOT TO BE DUPLICATED

RECORDING REQUESTED BY:

Chicago Title Company

WHEN RECORDED MAIL TO:

Michael D. Rothstein, Esq.
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

01/09/07
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20070026472

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

Assignment of Rents and Leases

TITLE ORDER NO.: 601024076-X49

ESCROW NO.: 603823383-M19

This document was prepared by,
and after recording, return to:

Michael D. Rothstein, Esq.
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

This space reserved for Recorders use only.

ASSIGNMENT OF RENTS AND LEASES

This ASSIGNMENT OF RENTS AND LEASES dated as of January 4, 2007 (the "Assignment"), is executed by **OPUS WEST CORPORATION**, a Minnesota corporation (the "Assignor"), whose address is 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016, to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns (the "Assignee")

RECITALS:

A. Assignee has agreed to loan to Assignor the principal amount of Twenty Eight Million Two Hundred Seventy Five Thousand and 00/100 Dollars (\$28,275,000.00) ("Loan"). Assignor is executing that certain Promissory Note of even date herewith in the amount of \$28,275,000.00 payable to the order of Assignee to evidence the Loan (as the same may be amended, modified, replaced or restated from time to time, the "Note").

B. A condition precedent to Assignee's making of the Loan to Assignor is the execution and delivery by Assignor of this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

AGREEMENTS:

1. Definitions. All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Deed of Trust, Security Agreement, Assignment of Rents and Leases, Fixture Filing and Financing Statement dated as of even date herewith, executed by the Assignor to and for the benefit of the Assignee (the "Deed of Trust").

2. Grant of Security Interest. The Assignor hereby grants, transfers, sets over and assigns to the Assignee, all of the right, title and interest of the Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of or from the land legally described in Exhibit "A" attached hereto and made a part hereof

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and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "Premises"), including, without limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (each, a "Lease" and collectively, the "Leases"), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is a present, absolute transfer and assignment of the foregoing interests to Assignee and is not an assignment for additional security. This Assignment is given to secure:

(a) the payment by the Assignor when due of (i) the indebtedness evidenced by the Note and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to the Assignee by the Assignor under or with respect to the Loan Documents (as defined in the Note); and (iii) all costs and expenses paid or incurred by the Assignee in enforcing its rights hereunder, including without limitation, court costs and reasonable attorneys' fees; and

(b) the observance and performance by the Assignor of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of the Assignor or any other obligor to or benefiting the Assignee which are evidenced or secured by or otherwise provided in the Note, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof.

3. Representations and Warranties of the Assignor. The Assignor represents and warrants to the Assignee that:

(a) this Assignment, as executed by the Assignor, constitutes the legal and binding obligation of the Assignor enforceable in accordance with its terms and provisions;

(b) the Assignor is the lessor under all Leases;

(c) there is no other existing assignment of the Assignor's entire or any part of its interest in or to any of the Leases, or any of the rents, issues, income or profits assigned hereunder, nor has the Assignor entered into any agreement to subordinate any of the Leases or the Assignor's right to receive any of the rents, issues, income or profits assigned hereunder;

(d) the Assignor has not executed any instrument or performed any act which may prevent the Assignee from operating under any of the terms and provisions hereof or which would limit the Assignee in such operation; and

(e) there are no defaults by the landlord and, to the Assignee's knowledge, there are no material defaults by tenants under any Leases.

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4. Covenants of the Assignor. The Assignor covenants and agrees that so long as this Assignment shall be in effect:

- (a) the Assignor shall not lease any portion of the Premises unless the Assignor obtains the Assignee's prior written consent to all aspects of such lease;
- (b) the Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor thereunder, and the Assignor shall not do or suffer to be done anything to impair the security thereof. The Assignor shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises;
- (c) the Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;
- (d) the Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;
- (e) the Assignor shall not materially modify the terms and provisions of any Lease, nor shall the Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without the Assignee's prior written consent;
- (f) the Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to the Assignor and the Assignee;
- (g) the Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;
- (h) the Assignor shall not waive or excuse the obligation to pay rent under any Lease;
- (i) the Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or

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guarantor thereunder, and shall pay all costs and expenses of the Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which the Assignee may appear;

(j) the Assignor shall give prompt notice to the Assignee of any notice of any material default by the lessor under any Lease received from any tenant or guarantor thereunder;

(k) the Assignor shall enforce the observance and performance of each covenant, term, condition and agreement contained in each Lease to be observed and performed by the tenants and guarantors thereunder and shall immediately notify the Assignee of any material breach by the tenant or guarantor under any such Lease;

(l) the Assignor shall not permit any of the Leases to become subordinate to any lien or liens other than liens securing the indebtedness secured hereby or liens for general real estate taxes and special taxes and assessments not delinquent;

(m) the Assignor shall not execute hereafter any Lease unless there shall be included therein a provision providing that the tenant thereunder acknowledges that such Lease has been assigned pursuant to this Assignment and agrees not to look to the Assignee as mortgagee, mortgagee in possession or successor in title to the Premises for accountability for any security deposit required by lessor under such Lease unless such sums have actually been received in cash by the Assignee as security for tenant's performance under such Lease; and

(n) If any tenant under any Lease is or becomes the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, the Assignor covenants and agrees that if any such Lease is so terminated or rejected, no settlement for damages shall be made without the prior written consent of the Assignee, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to the Assignor and the Assignee. The Assignor hereby assigns any such payment to the Assignee and further covenants and agrees that upon the request of the Assignee, it will duly endorse to the order of the Assignee any such check, the proceeds of which shall be applied in accordance with the provisions of Section 8 below.

5. Rights Prior to Default. Unless or until an Event of Default (as defined in Section 6) shall occur, the Assignor shall have the right to collect, at the time (but in no event more than thirty days in advance) provided for the payment thereof, all rents, issues, income and profits assigned hereunder, and to retain, use and enjoy the same. Upon the occurrence of an Event of Default, the Assignor's right to collect such rents, issues, income and profits shall immediately terminate without further notice thereof to the Assignor. The Assignee shall have the right to notify the tenants under the Leases of the existence of this Assignment at any time.

6. Events of Default. An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by the Assignor of any of the covenants, agreements,

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representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Deed of Trust, or (b) any other Event of Default described in the Note, the Deed of Trust or any of the other Loan Documents.

7. Rights and Remedies Upon Default. At any time upon or following the occurrence of any Event of Default, the Assignee, at its option, may exercise any one or more of the following rights and remedies without any obligation to do so, without in any way waiving such Event of Default, without further notice or demand on the Assignor, without regard to the adequacy of the security for the obligations secured hereby, without releasing the Assignor or any guarantor of the Note from any obligation, and with or without bringing any action or proceeding to foreclose the Deed of Trust or any other lien or security interest granted by the Loan Documents:

- (a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;
- (b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as the Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to the Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which the Assignee deems necessary or proper;
- (c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to the Assignee, without proof of default hereunder, upon receipt from the Assignee of written notice to thereafter pay all such rents and other amounts to the Assignee and to comply with any notice or demand by the Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and the Assignor shall facilitate in all reasonable ways the Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to the Assignee; and
- (d) Make any payment or do any act required herein of the Assignor in such manner and to such extent as the Assignee may deem necessary, and any amount so paid by the Assignee shall become immediately due and payable by the Assignor with interest thereon until paid at the Default Rate and shall be secured by this Assignment.
- (e) Exercise any other remedy available to it under any of the other Loan Documents, at law or in equity.

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8. Application of Proceeds. All sums collected and received by the Assignee out of the rents, issues, income and profits of the Premises following the occurrence of any one or more Events of Default shall be applied in accordance with applicable foreclosure law and, unless otherwise specified in such act, in such order as the Assignee shall elect in its sole and absolute discretion.

9. Limitation of the Assignee's Liability. The Assignee shall not be liable for any loss sustained by the Assignor resulting from the Assignee's failure to let the Premises or from any other act or omission of the Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. The Assignee shall not be obligated to observe, perform or discharge, nor does the Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of the Assignor under or by reason of this Assignment. The Assignor shall and does hereby agree to indemnify, defend (using counsel reasonably satisfactory to the Assignee) and hold the Assignee harmless from and against any and all liability, loss or damage which the Assignee may incur under any Lease or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against the Assignee by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall the Assignor be liable for any liability, loss or damage which the Assignor incurs as a result of the Assignee's gross negligence or willful misconduct. Should the Assignee incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by the Assignor with interest thereon at the Default Rate and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon the Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make the Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Deed of Trust, and no exercise by the Assignee of any of the rights set forth herein or in the Deed of Trust shall constitute or be construed as constituting the Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by the Assignee pursuant to the provisions hereof or of the Deed of Trust.

10. No Waiver. Nothing contained in this Assignment and no act done or omitted to be done by the Assignee pursuant to the rights and powers granted to it hereunder shall be deemed to be a waiver by the Assignee of its rights and remedies under any of the Loan Documents. This Assignment is made and accepted without prejudice to any of the rights and remedies of the Assignee under the terms and provisions of such instruments, and the Assignee may exercise any of its rights and remedies under the terms and provisions of such instruments either prior to, simultaneously with, or subsequent to any action taken by it hereunder. The Assignee may take or release any other security for the performance of the obligations secured hereby, may release any party primarily or secondarily liable therefor, and may apply any other

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security held by it for the satisfaction of the obligations secured hereby without prejudice to any of its rights and powers hereunder.

11. Further Assurances. The Assignor shall execute or cause to be executed such additional instruments (including, but not limited to, general or specific assignments of such Leases as the Assignee may designate) and shall do or cause to be done such further acts, as the Assignee may request, in order to permit the Assignee to perfect, protect, preserve and maintain the assignment made to the Assignee by this Assignment.

12. Security Deposits. The Assignor acknowledges that the Assignee has not received for its own account any security deposited by any tenant pursuant to the terms of the Leases and that the Assignee assumes no responsibility or liability for any security so deposited.

13. Severability. If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, the Assignee and the Assignor shall negotiate an equitable adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

14. Successors and Assigns. This Assignment is binding upon the Assignor and its legal representatives, successors and assigns, and the rights, powers and remedies of the Assignee under this Assignment shall inure to the benefit of the Assignee and its successors and assigns.

15. Written Modifications. This Assignment shall not be amended, modified or supplemented without the written agreement of the Assignor and the Assignee at the time of such amendment, modification or supplement.

16. Duration. This Assignment shall become null and void at such time as the Assignor shall have paid the principal sum of the Note, together with all interest thereon, and shall have fully paid and performed all of the other obligations secured hereby and by the other Loan Documents.

17. Invalidity of Provisions; Governing Law. THIS ASSIGNMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN CALIFORNIA. IN THE EVENT THAT ANY PROVISION OR CLAUSE OF THIS ASSIGNMENT CONFLICTS WITH APPLICABLE LAW, SUCH CONFLICT SHALL NOT AFFECT OTHER PROVISIONS OF THIS ASSIGNMENT WHICH CAN BE GIVEN EFFECT WITHOUT THE CONFLICTING PROVISION, AND TO THIS END THE PROVISIONS OF THIS INSTRUMENT ARE DECLARED TO BE SEVERABLE.

18. Notices. All notices, demands, requests and other correspondence which are required or permitted to be given hereunder shall be deemed sufficiently given when delivered or mailed in the manner and to the addresses of the Assignor and the Assignee, as the case may be, as specified in the Deed of Trust.

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19. WAIVER OF TRIAL BY JURY. THE ASSIGNOR AND THE ASSIGNEE (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS (A) UNDER THIS ASSIGNMENT OR ANY RELATED AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS ASSIGNMENT OR (B) ARISING FROM ANY BANKING RELATIONSHIP EXISTING IN CONNECTION WITH THIS ASSIGNMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE ASSIGNOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST THE ASSIGNEE OR ANY OTHER PERSON INDEMNIFIED UNDER THIS ASSIGNMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

20. Power of Attorney. Borrower hereby irrevocably appoints Lender its true and lawful attorney with power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Borrower, from and after service of a notice of the occurrence of an Event of Default (as used in this paragraph, each a "Notice"), to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, either in its own name or in the name of Borrower or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits of and from the Property. Lessees of the Property are hereby expressly authorized and directed, following receipt of a Notice from Lender, to pay any and all amounts due Borrower pursuant to the Leases to Lender or such nominee as Lender may designate in a writing delivered to and received by such lessees, and the lessees of the Property are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

21. Leases. There are no leases or occupancy agreements that affect the Premises other than the agreements described on Exhibit B attached to and made a part of this Assignment.

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IN WITNESS WHEREOF, the Assignor has executed and delivered this Assignment of
Rents and Leases as of the day and year first above written.

OPUS WEST CORPORATION, a Minnesota
corporation

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

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CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGMENT

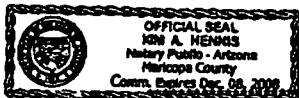
State of ARIZONA
County of MARICOPA
On this 21 day of December, 2006, before me,
Kimi A. Hennis, Notary Public

personally appeared Charles Vogel

☒ personally known to me - OR - ☐ proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument
the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

WITNESS my hand and official seal.

Kimi A. Hennis
SIGNATURE OF NOTARY



*** OPTIONAL SECTION ***

CAPACITY CLAIMED BY SIGNER

Through statute does not require the Notary to fill in
the data below, doing so may prove invaluable to
persons relying on the document

- ☐ INDIVIDUAL
☐ CORPORATE OFFICERS(S)
☐ PARTNER(S) ☐ LIMITED
☐ ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:

TITLE OR TYPE OF DOCUMENT: _____

NUMBER OF PAGES _____ DATE OF DOCUMENT _____

SIGNER(S) OTHER THAN NAMED ABOVE _____

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

LOT 9 OF TRACT NO. 46799-03, IN THE CITY OF WESTLAKE VILLAGE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1247 PAGES 7 THROUGH 11 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OF THE OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, MEASURED, VERTICALLY, FROM THE SURFACE OF SAID LAND, WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF SAID LAND NOR INTO THAT PORTION OF THE SUBSURFACE THEREOF LYING ABOVE A DEPTH OF 500 FEET, MEASURED VERTICALLY FROM SAID SURFACE AS GRANTED TO AMERICAN-HAWAIIAN STEAMSHIP COMPANY, RECORDED APRIL 28, 1996 AS INSTRUMENT NO. 3963 IN BOOK D-3928 PAGE 542, OFFICIAL RECORDS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR ACCESS, INGRESS AND EGRESS, AS DEFINED AND CREATED BY THAT CERTAIN DOCUMENT ENTITLED "EASEMENT AGREEMENT", DATED SEPTEMBER 22, 2004 EXECUTED BY WESTLAKE HHG HOTEL DEVELOPMENT, LP, A TEXAS LIMITED PARTNERSHIP, RUSSELL RANCH ROAD, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND RICHLAND WESTLAKE LTD, A FLORIDA LIMITED PARTNERSHIP DOING BUSINESS IN CALIFORNIA AS RICHLAND WESTLAKE, L.P. SUBJECT TO ALL THE TERMS, PROVISIONS AND CONDITIONS THEREIN CONTAINED, RECORDED SEPTEMBER 29, 2004 AS INSTRUMENT NO. 04-2499298

APN: 2054-030-089

ADDRESS:

Westlake Village, California

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A-1

ATTACHMENT 7

UCC FINANCING STATEMENT
~~FOR CREDITORS ONLY~~
(A FORM & FILING OF CONTRACT TO FILE)

Return To:
Paragon Document Research, Inc SS
PO Box 65216
ST. Paul, MN 55165
Ph. 651-222-6844

1. DENTON'S HONESTY FULLY REVEALED BY HIS OWN ACTS

2. ADDITIONAL DISTRICTS TO BE OPENED FULLY - Immediately upon receipt of the 2nd - or subsequent - payment.

2. SECURED PARTY'S NAME, ADDRESS, PHONE NUMBER, ETC. - [REDACTED]

4. This Participant hereby agrees to the following schedule:

S. ALTERNATIVE DESIGNATION	COUNTRY ISSUED	COMMENTS/DISPOSITION	EALIST NAME	BELLETRANE	NO. LSH	DONOR/PURCHASER
6.						

UCC FINANCING STATEMENT (FORM UCC1) (REV. 08/2002)

Filing NO: 200714975683

EXHIBIT A
LEGAL DESCRIPTION

PARCEL 1:

LOT 9 OF TRACT NO. 46799-03, IN THE CITY OF WESTLAKE VILLAGE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1247 PAGES 7 THROUGH 11 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OF THE OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, MEASURED, VERTICALLY, FROM THE SURFACE OF SAID LAND, WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF SAID LAND NOR INTO THAT PORTION OF THE SUBSURFACE THEREOF LYING ABOVE A DEPTH OF 500 FEET, MEASURED VERTICALLY FROM SAID SURFACE AS GRANTED TO AMERICAN-HAWAIIAN STEAMSHIP COMPANY, RECORDED APRIL 28, 1996 AS INSTRUMENT NO. 3963 IN BOOK D-3928 PAGE 542, OFFICIAL RECORDS.

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APN: 2054-030-089

ADDRESS:

Westlake Village, California

Filing NO: 200714975683

EXHIBIT "B"

COLLATERAL DESCRIPTION

DEBTOR: OPUS WEST CORPORATION

SECURED PARTY: LASALLE BANK NATIONAL ASSOCIATION

Debtor hereby grants to Secured Party a security interest in and to the following:

1. All personal property of every nature whatsoever now or hereafter owned by Debtor and on, or used in connection with the Real Estate or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Debtor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Debtor or on its behalf;

2. Any and all rents, revenues, issues, profits, proceeds, income, royalties, accounts including health-care insurance receivables, escrows, reserves, impounds, security deposits and other rights to monies now owned or hereafter acquired and arising from or out of the Real Estate and/or the businesses and operations conducted by Debtor thereon;

3. All fixtures and articles of personal property now or hereafter owned by Debtor and forming a part of or used in connection with the Real Estate or the improvements thereon, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor;

4. All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Real Estate or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Real Estate or improvements thereon or proceeds of any sale, option or contract to sell the Real Estate or improvements thereon or any portion thereof;

5. Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, letter-of-credit rights,

Filing NO: 200714975683

supporting obligations, and general intangibles including payment intangibles) of Debtor relating to or used in connection with the operation or maintenance of the Real Estate, whether now owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

6. Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

7. All of the books and records pertaining to the foregoing;

ATTACHMENT 8

This page is part of your document - DO NOT DISCARD



20070026473

Pages
006

Recorded/Filed in Official Records
Recorder's Office, Los Angeles County
California

Fees
Taxes \$20.00
Other \$0.00
Paid \$0.00
\$20.00

01/05/07 AT 08:00AM

TitleCompany

TITLE(S) :



LEAD SHEET

FEE

D.T.T.

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM IS NOT TO BE DUPLICATED

RECORDING REQUESTED BY:

Chicago Title Company

WHEN RECORDED MAIL TO:

Michael D. Rothstein, Esq.
Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

01/03/07
2
20070026473

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

UCC-1

TITLE ORDER NO 601024076-X49

ESCROW NO 603823383-M19

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A NAME & PHONE OF CONTACT AT FILER (optional)

B SEND ACKNOWLEDGMENT TO (Name and Address)

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

OR **OPUS WEST CORPORATION**

1b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c MAILING ADDRESS

CITY

STATE POSTAL CODE

COUNTRY

2555 EAST CAMELBACK ROAD, STE. 800

PHOENIX

AZ 85016

USA

1d SEE INSTRUCTIONS

ADDL INFO RE
ORGANIZATION
DEBTOR

1e TYPE OF ORGANIZATION

1f JURISDICTION OF ORGANIZATION

1g ORGANIZATIONAL ID #, if any

CORPORATION

MINNESOTA

8Z-83

☐ 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 SEE INSTRUCTIONS

ADDL 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 SP) insert only one secured party name (3a or 3b)

3a ORGANIZATION'S NAME

OR **LASALLE BANK NATIONAL ASSOCIATION**

3b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c MAILING ADDRESS

CITY

STATE POSTAL CODE

COUNTRY

135 SOUTH LASALLE STREET

CHICAGO

IL 60603

USA

4 This FINANCING STATEMENT covers the following collateral:

**THE COLLATERAL SET FORTH ON THE ATTACHED EXHIBIT "B", INCLUDING ANY SUCH COLLATERAL
LOCATED ON THE REAL ESTATE DESCRIBED ON THE ATTACHED EXHIBIT "A".**

5 ALTERNATIVE DESIGNATION (if applicable) | LESSEE/LESSOR | CONSIGNEE/CONSIGNOR | BAILEE/BAILOR | SELLER/BUYER | AG LIEN | NON-UCC FILING

6 The FINANCING STATEMENT is to be filed (or record) in the REAL | 7 Check to REQUEST SEARCH REPORT(S) on Debtor(s) | 8 OPTIONAL FILER REFERENCE DATA

(44497-39259) MDR

TO BE FILED IN LOS ANGELES COUNTY, CA

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV 05/22/02)

CAUCC1FNAT 10/01/03 CFC Corporation System

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4

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9 NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a ORGANIZATION'S NAME

OR OPUS WEST CORPORATION

9b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME SUFFIX

10 MISCELLANEOUS

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11 ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME insert only one name (11a or 11b) - do not abbreviate or combine names

11a ORGANIZATION'S NAME

OR 11b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

11c MAILING ADDRESS

CITY

STATE POSTAL CODE

COUNTRY

11d SEE INSTRUCTIONS

ADDL INFO RE
ORGANIZATION
DEBTOR

11e TYPE OF ORGANIZATION

11f JURISDICTION OF ORGANIZATION

11g ORGANIZATIONAL ID #, if any

☐ NONE

12 ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)

12a ORGANIZATION'S NAME

OR 12b INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

12c MAILING ADDRESS

CITY

STATE POSTAL CODE

COUNTRY

13 This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as extracted collateral or is filed as a ☒ future filing

16 Additional collateral description

14 Description of real estate

SEE EXHIBIT "A" ATTACHED HERETO

15 Name and address of a RECORD OWNER of above described real estate
(if Debtor does not have a record interest)

17 Check only if applicable and check only one box

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18 Check only if applicable and check only one box

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured Home Transaction — effective 30 years

☐ Filed in connection with a Public Finance Transaction — effective 30 years

FILING OFFICE COPY — UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV 05/22/02)

UCC1Ad) - 09/2002 E.I. Systems (online)

07 0026473

Debtor: plus west corp. 5

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1:

LOT 9 OF TRACT NO. 46799-03, IN THE CITY OF WESTLAKE VILLAGE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 1247 PAGES 7 THROUGH 11 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OF THE OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 FEET, MEASURED, VERTICALLY, FROM THE SURFACE OF SAID LAND, WITHOUT, HOWEVER, ANY RIGHT TO ENTER UPON THE SURFACE OF SAID LAND NOR INTO THAT PORTION OF THE SUBSURFACE THEREOF LYING ABOVE A DEPTH OF 500 FEET, MEASURED VERTICALLY FROM SAID SURFACE AS GRANTED TO AMERICAN-HAWAIIAN STEAMSHIP COMPANY, RECORDED APRIL 28, 1996 AS INSTRUMENT NO. 3963 IN BOOK D-3928 PAGE 542, OFFICIAL RECORDS

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN AND VEHICULAR ACCESS, INGRESS AND EGRESS, AS DEFINED AND CREATED BY THAT CERTAIN DOCUMENT ENTITLED "EASEMENT AGREEMENT", DATED SEPTEMBER 22, 2004 EXECUTED BY WESTLAKE HHG HOTEL DEVELOPMENT, LP, A TEXAS LIMITED PARTNERSHIP, RUSSELL RANCH ROAD, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND RICHLAND WESTLAKE LTD, A FLORIDA LIMITED PARTNERSHIP DOING BUSINESS IN CALIFORNIA AS RICHLAND WESTLAKE, L.P. SUBJECT TO ALL THE TERMS, PROVISIONS AND CONDITIONS THEREIN CONTAINED, RECORDED SEPTEMBER 29, 2004 AS INSTRUMENT NO. 04-2499298

APN: 2054-030-089

ADDRESS:

Westlake Village, California

07 0026473

EXHIBIT "B"

COLLATERAL DESCRIPTION

DEBTOR: OPUS WEST CORPORATION
SECURED PARTY: LASALLE BANK NATIONAL ASSOCIATION

Debtor hereby grants to Secured Party a security interest in and to the following:

1. All personal property of every nature whatsoever now or hereafter owned by Debtor and on, or used in connection with the Real Estate or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Debtor in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Debtor or on its behalf;

2. Any and all rents, revenues, issues, profits, proceeds, income, royalties, accounts including health-care insurance receivables, escrows, reserves, impounds, security deposits and other rights to monies now owned or hereafter acquired and arising from or out of the Real Estate and/or the businesses and operations conducted by Debtor thereon;

3. All fixtures and articles of personal property now or hereafter owned by Debtor and forming a part of or used in connection with the Real Estate or the improvements thereon, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators, engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor;

4. All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Real Estate or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Real Estate or improvements thereon or proceeds of any sale, option or contract to sell the Real Estate or improvements thereon or any portion thereof;

5. Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, letter-of-credit rights,

07 0026473

Debtor, Quswest Corp.

7

supporting obligations, and general intangibles including payment intangibles) of Debtor relating to or used in connection with the operation or maintenance of the Real Estate, whether now owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

6 Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

7. All of the books and records pertaining to the foregoing

07 0026473

ATTACHMENT 9



One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Tel 602.229.5200
Fax 602.229.5690
www.quarles.com

*Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin*

April 2, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016
Attn: Senior Vice President, Real Estate, Finance & Sales

RE: \$28,275,000 Loan (the "Loan") made by Bank of America, N.A., as successor in interest to LaSalle Bank National Association ("Lender") to Opus West Corporation ("Borrower"); Westlake Village, CA

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(c) of the Promissory Note dated January 4, 2007 between Borrower and Lender, as amended by that certain Modification Agreement dated December 31, 2008 (as modified or amended from time to time, the "Note"). The Note and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents." The 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 Note). Late charges (as described in and calculated according to Section 4.4 of the Note) will apply to the Defaulted amounts. Interest at the Past Due Rate (provided in and calculated according to Section 2(c) of the Note) commenced accruing from and after the Maturity Date on any amounts outstanding as of such date.

Lender hereby reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the 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 Note 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, including, without limitation, Past Due Rate interest, late charges, costs and fees (including attorneys' fees): (i) Lender is entitled to

Opus West Corporation
April 2, 2009
Page 2

exercise its rights and remedies under the Loan Documents, at law and in equity, including, without limitation, the imposition of other 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 Note 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.

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:

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

Via UPS Overnight Delivery:

Luce, Forward, Hamilton & Scripps LLP
600 West Broadway, Suite 2600
San Diego, California 92101-3391
Attn: Dave Hymer, Esq.

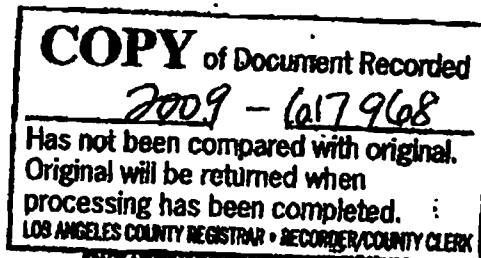
ATTACHMENT 10

APR 28 2009

RECORDING REQUESTED BY

AND RETURN TO:
FIDELITY NATIONAL TITLE
701 B STREET, SUITE 1700
SAN DIEGO, CA. 92101.

TS NO. 04 27 2009
ORDER NO.
APN: 2054-030-089



IMPORTANT NOTICE
NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice). This amount is \$ 28,768,306.03

as of April 27, 2009, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums. Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

C/O LAWYERS TITLE COMPANY
701 B STREET, SUITE 1700
SAN DIEGO, CA 92101
(619) 230-6367

If you have any questions you should contact a lawyer or the government agency which may have insured your loan. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST

Remember, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN THAT: LAWYERS TITLE COMPANY as authorized agent for Bank of America, N.A. under a Deed of Trust dated January 4, 2007, executed by **Opus West Corporation**, a Minnesota corporation as Trustor, to secure obligations in favor of **LaSalle Bank National Association**

as Beneficiary recorded on January 5, 2007

as Document 20070026471

of Official Records in the office of the Recorder of Los Angeles County, California, as more fully described on said Deed of Trust. Including one note(s) for the sum of \$ 28,275,000.00: that the beneficial interest under said Deed of Trust and the obligations secured thereby are presently held by the beneficiary; that a breach of, and default in, the obligations for which said Deed of Trust is security has occurred in that the payment has not been made of:

Failure to pay principal in the amount of \$28,275,000.00; and

Failure to pay late charges in the amount of \$141,375.00; and

Failure to pay interest in the amount of \$351,931.03

THE PROPERTY COVERED IN THIS NOTICE OF DEFAULT AND ELECTION TO SELL UNDER DEED OF TRUST INCLUDES ALL REAL PROPERTY AND PERSONAL PROPERTY, WHICH PERSONAL PROPERTY IS ALSO SECURITY FOR THE SAME ELECTION OF THE BENEFICIARY UNDER SAID DEED OF TRUST TO CAUSE A UNIFIED SALE TO BE MADE OF SAID REAL PROPERTY AND PERSONAL PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA UNIFORM COMMERCIAL CODE SECTION 9604(A)(1)(B);

AS A RESULT OF THE DEFAULTS STATED ABOVE, THE BENEFICIARY HEREBY ELECTS TO CONDUCT A UNIFIED FORECLOSURE SALE PURSUANT TO THE PROVISIONS OF THE CALIFORNIA COMMERCIAL CODE (SECTION 9604 (a) (1) (B)) AND TO INCLUDE IN THE NON-JUDICIAL FORECLOSURE OF THE ESTATE DESCRIBED IN THIS NOTICE OF DEFAULT AND ELECTION TO SELL ALL OF THE PERSONAL PROPERTY AND FIXTURES DESCRIBED IN (I) THE DEED OF TRUST, AND (II) THE UCC FINANCING STATEMENT, NAMING TRUSTOR AS DEBTOR AND BENEFICIARY AS SECURED PARTY, FILED IN THE OFFICE OF THE CALIFORNIA SECRETARY OF STATE;

THE BENEFICIARY RESERVES THE RIGHT TO REVOKE ITS ELECTION AS TO SOME OR ALL OF SAID PERSONAL PROPERTY AND/OR FIXTURES, OR TO ADD ADDITIONAL PERSONAL PROPERTY AND/OR FIXTURES TO THE ELECTION HEREIN EXPRESSED, AT BENEFICIARY'S SOLE ELECTION, FROM TIME TO TIME AND AT ANY TIME UNTIL THE CONSUMMATION OF THE TRUSTEE'S SALE TO BE CONDUCTED PURSUANT TO THE DEED OF TRUST AND THIS NOTICE OF DEFAULT AND ELECTION TO SELL.

That by reason thereof, the present beneficiary under such Deed of Trust, has executed and delivered to said Trustee, a written Declaration and Demand for Sale, and has deposited with said duly appointed Trustee, such Deed of Trust and all documents evidencing the obligations secured thereby, and has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.

DATED: April 27, 2009

Lawyers Title Company as authorized agent for
Bank of America, N.A. successor by merger to LaSalle Bank
National Association


David Z. Bark, as authorized agent

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):

<i>Creditor:</i> (12791347) BANK OF AMERICA, N.A. c/o Casey Carpenter Vice President Real Estate Special Assets 333 S. Hope St., 11th Floor Los Angeles, CA 90071-1406	Claim No: 66 <i>Original Filed</i> Date: 11/09/2009 <i>Original Entered</i> Date: 11/09/2009	<i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> Richter, Katharine <i>Modified:</i>
--	---	--

Unsecured claimed: \$29183816.33

Total claimed: \$29183816.33

History:

Details 66-1 11/09/2009 Claim #66 filed by BANK OF AMERICA, N.A., total amount claimed: \$29183816.33 (Richter, Katharine)

Description: (66-1) Westlake Village

Remarks: (66-1) But see Addendum for possible secured status

Claims Register Summary