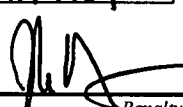


UNITED STATES BANKRUPTCY COURT Northern District of Texas		PROOF OF CLAIM
Name of Debtor: Opus West Corporation		Case Number: 09-34356-hdh11
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative 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): Guaranty Bank		☐ Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (If known) Filed on: _____
Name and address where notices should be sent: John C. Leininger Bryan Cave, LLP 2200 Ross Ave., Suite 3300, Dallas, Texas 75201 Telephone number: (214) 721-8000		
Name and address where payment should be sent (if different from above): RECEIVED NOV 10 2009 BMC GROUP Telephone number:		
1. Amount of Claim as of Date Case Filed: <u>\$ UNLIQUIDATED</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. ☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount. Specify the priority of the claim. ☐ Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). ☐ Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4). ☐ Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). ☐ Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). ☐ Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). ☐ Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: \$ _____ *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: <u>Guaranty of Affiliate Debt</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____ 3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other Describe: Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		
Date: <u>11/9/09</u>  John Leininger Attorney For Guaranty Bank		FOR COURT USE ONLY  OPUS WEST 00581

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both.

GUARANTY

THIS GUARANTY (this "**Guaranty**") is executed as of November 1, 2007 by OPUS WEST CORPORATION, a Minnesota corporation ("**Guarantor**", whether one or more), in favor of GUARANTY BANK, a federal savings bank ("**Lender**").

1. **Definitions.** Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement of even date herewith executed between Borrower and Lender (the "**Loan Agreement**"). The following terms have the meanings assigned.

"Borrower" means Opus West LP, a Delaware limited partnership.

"Completion Obligations" means all covenants, agreements and other obligations of Borrower under the Loan Documents which relate to the construction of the Improvements including the obligation to (a) construct and complete the Improvements in accordance with the Loan Documents and (b) pay all expenses, charges, costs and fees of or relating to the requirements of subpart (a) immediately preceding, including, without limitation, all permitting fees, licensing fees, utility expenses, all insurance expenses during the construction period, penalties, charges and amounts payable to all architects, engineers, construction managers, contractors, subcontractors, tenants and material suppliers engaged in connection with any of the foregoing and any additional costs, such as overtime charges, necessary to so complete the Improvements on a timely basis in accordance with the Loan Documents and in any event on or before the Completion Date.

"Enforcement Costs" means all costs, reasonable attorneys' fees, legal expenses and other costs incurred or expended by Lender in collecting or enforcing any of the Guaranteed Obligations or due to any default in the performance of the Guaranteed Obligations or in enforcing any right granted hereunder or under the Loan Documents.

"Guaranteed Obligations" means all (a) Indebtedness, (b) Obligations, (c) Enforcement Costs, and (d) Completion Obligations.

"Interest" means all accrued and unpaid interest on the Principal Amount.

"Obligations" means all covenants, agreements and other obligations of Borrower under the Loan Documents.

"Principal Amount" has the meaning assigned such term in the Note.

2. **Inducement.** Guarantor has an economic investment or interest in Borrower, and an interest in the success of the Property, and Lender's agreement to make the Loan is of substantial benefit to Guarantor.

3. Guaranteed Obligations.

(a) In order to induce Lender to make the Loan to Borrower, Guarantor absolutely, unconditionally and irrevocably guarantees and agrees to pay and perform the Guaranteed Obligations.

(b) If Lender shall have requested Guarantor to perform the Completion Obligations pursuant to Section 11(i), Guarantor will be entitled to requisition and draw all of the undisbursed Loan proceeds intended to be used for the construction of the Improvements pursuant to the Project Budget (but not in excess of the committed amount of the Loan), together with any Borrower's Deposit. Lender shall disburse such funds for the purpose of, and to the extent necessary for, performance of the Completion Obligations, provided that: (i) Guarantor shall be performing the Completion Obligations or causing the performance of the same with due diligence; (ii) Guarantor shall have made all required deposits into the Borrower's Deposit and all other deposits required under the Loan Agreement; (iii) all disbursements of Loan proceeds to Guarantor shall be secured by the Loan Documents with the same priority as all previous advances of Loan proceeds to Borrower; (iv) Guarantor shall have cured all continuing Events of Default, provided that Guarantor shall not be required to cure any non-monetary Event of Default which is personal to Borrower and therefore not susceptible to cure by Guarantor; and (v) Guarantor shall otherwise comply with the provisions of the Loan Agreement concerning the performance of the Completion Obligations including the requirements for Draw Requests and disbursement of proceeds of the Loan.

4. Waivers. GUARANTOR EXPRESSLY WAIVES PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF DEMAND AND OF DISHONOR AND NONPAYMENT OF THE GUARANTEED OBLIGATIONS, NOTICE OF INTENTION TO ACCELERATE THE MATURITY OF THE GUARANTEED OBLIGATIONS OR ANY PART THEREOF, NOTICE OF ACCELERATION OF THE MATURITY OF THE GUARANTEED OBLIGATIONS OR ANY PART THEREOF, NOTICE OF DISPOSITION OF COLLATERAL, THE DEFENSE OF IMPAIRMENT OF COLLATERAL, THE RIGHT TO A COMMERCIALLY REASONABLE SALE OF COLLATERAL, PROTEST AND NOTICE OF PROTEST, DILIGENCE IN COLLECTING, AND THE BRINGING OF SUIT AGAINST ANY OTHER PARTY. LENDER SHALL BE UNDER NO OBLIGATION TO NOTIFY GUARANTOR OF ITS ACCEPTANCE HEREOF OR OF ANY ADVANCES MADE OR CREDIT EXTENDED ON THE FAITH HEREOF OR THE FAILURE OF BORROWER TO PAY ANY OF THE GUARANTEED OBLIGATIONS AS IT MATURES OR ANY DEFAULT IN THE PERFORMANCE OF ANY OF THE GUARANTEED OBLIGATIONS, OR TO USE DILIGENCE IN PRESERVING THE LIABILITY OF ANY PERSON ON THE GUARANTEED OBLIGATIONS OR IN BRINGING SUIT TO ENFORCE COLLECTION OR PERFORMANCE OF THE GUARANTEED OBLIGATIONS. GUARANTOR WAIVES ALL DEFENSES GIVEN TO SURETIES OR GUARANTORS AT LAW OR IN EQUITY OTHER THAN THE ACTUAL PAYMENT AND PERFORMANCE OF THE GUARANTEED OBLIGATIONS AND ALL DEFENSES BASED UPON QUESTIONS AS TO THE VALIDITY, LEGALITY OR

**ENFORCEABILITY OF THE GUARANTEED OBLIGATIONS AND AGREES THAT
GUARANTOR SHALL BE PRIMARILY LIABLE HEREUNDER.**

5. No Impairment of Guaranty. Lender, without authorization from or notice to Guarantor and without impairing, modifying, changing, releasing, limiting or affecting the liability of Guarantor hereunder, may from time to time at its discretion and with or without valuable consideration, alter, compromise, accelerate, renew, extend or change the time or manner for the payment of any or all of the Guaranteed Obligations, increase or reduce the rate of interest thereon, take and surrender security, exchange security by way of substitution, or in any way it deems necessary take, accept, withdraw, subordinate, alter, amend, modify or eliminate security, add or release or discharge endorsers, guarantors, or other obligors, make changes of any sort whatever in the Guaranteed Obligations or in the terms of payment or performance of the Guaranteed Obligations, or in the manner of doing business with Borrower, or settle or compromise with Borrower or any other person or persons liable on the Guaranteed Obligations on such terms as it may see fit, and may apply all moneys received from Borrower or others, or from any security held (whether held under a security instrument or not), in such manner upon the Guaranteed Obligations (whether then due or not) as it may determine to be in its best interest, without in any way being required to marshal securities or assets or to apply all or any part of such moneys upon any particular part of the Guaranteed Obligations. It is specifically agreed that Lender is not required to retain, hold, protect, exercise due care with respect thereto, perfect security interests in or otherwise assure or safeguard any security for the Guaranteed Obligations; no failure by Lender to do any of the foregoing and no exercise or nonexercise by Lender of any other right or remedy of Lender shall in any way affect any of Guarantor's obligations hereunder or any security furnished by Guarantor or give Guarantor any recourse against Lender.

6. Events Affecting Borrower. The liability of Guarantor hereunder shall not be modified, changed, released, limited or impaired in any manner whatsoever on account of any or all of the following, whether or not with notice to or consent of Guarantor: (a) the incapacity, death, disability, dissolution or termination of Guarantor, Borrower, Lender or any other person or entity; (b) the failure by Lender to file or enforce a claim against the estate (either in administration, bankruptcy or other proceeding) of Borrower or any other person or entity; (c) recovery from Borrower or any other person or entity becomes barred by any statute of limitations or is otherwise prevented; (d) any defenses, set offs or counterclaims which may be available to Borrower or any other person or entity; (e) any transfer or transfers of any of the property covered by the Loan Documents; (f) any release or discharge by operation of law of Borrower, any co-guarantor or any other person (other than Guarantor) primarily or secondarily liable for the payment or performance of the Guaranteed Obligations or any part thereof; (g) any modifications, extensions, amendments, consents, releases or waivers with respect to the Loan Documents, or this Guaranty; (h) any failure of Lender to give any notice to Guarantor of any Event of Default under the Loan Documents, or this Guaranty; (i) Guarantor is or becomes liable for any indebtedness owing by Borrower to Lender other than under this Guaranty; or (j) any impairment, modification, change, release or limitation of the liability of, or stay of actions or lien enforcement proceedings against, Borrower, its property, or its estate in bankruptcy resulting from the operation of any present or future provision of the Federal Bankruptcy Code (the "Bankruptcy Code") or other similar federal or state statute, or from the decision of any court.

7. Subordination. Guarantor expressly subordinates its rights to payment of any indebtedness owing from Borrower to Guarantor, whether now existing or arising at any time in the future, to the prior right of Lender to receive or require payment in full of the Guaranteed Obligations and until payment in full of the Guaranteed Obligations (and including interest accruing on the Note after any petition under the Bankruptcy Code, which post petition interest Guarantor agrees shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in proceedings under the Bankruptcy Code generally), Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor or any security for such indebtedness. If Guarantor should receive any such payment, satisfaction or security for any indebtedness of Borrower to Guarantor, Guarantor agrees forthwith to deliver the same to Lender in the form received, endorsed or assigned as may be appropriate for application on account of, or as security for, the Guaranteed Obligations and until so delivered, agrees to hold the same in trust for Lender.

8. Waiver of Right of Subrogation. To the fullest extent permitted by law, Guarantor waives all rights at law or in equity to seek subrogation, contribution, indemnification or any other form of reimbursement or repayment from Borrower or any other guarantor of, or any other party secondarily liable for, the payment or performance of the Guaranteed Obligations until the Guaranteed Obligations have been paid and performed in full.

9. No Usury. It is the intent of Guarantor and Lender in the execution and acceptance of this Guaranty to contract in strict compliance with applicable usury law. In furtherance thereof, Guarantor and Lender stipulate and agree that none of the terms and provisions contained in this Guaranty, or in any other instrument now or hereafter executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; Guarantor shall never be obligated or required to pay interest on the Indebtedness at a rate in excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this Section shall control over all other provisions of this Guaranty, and any other instruments now or hereafter executed in connection herewith or any other oral or written agreement which may be in apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges if the maturity of the Guaranteed Obligations is accelerated. If the maturity of the Note shall be accelerated for any reason or if the principal of the Note is paid prior to the end of the term of the Note, and as a result thereof the interest received from Guarantor for the actual period of existence of the loan evidenced by the Note exceeds the amount of interest at the applicable maximum lawful rate under applicable law, Lender shall, at its option, either refund to Guarantor the amount of such excess or credit the amount of such excess against the principal balance of the Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. If Lender contracts for, charges or receives any amount or amounts and/or any other thing of value from Guarantor which are determined to constitute interest which would increase the effective interest rate on the Guaranteed Obligations to a rate in excess of that permitted to be charged by applicable law, all such amounts determined to constitute interest in excess of the lawful rate shall, upon such determination, at the option of Lender, be either immediately returned to Guarantor or credited against the principal balance of the Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By

execution of this Guaranty, Guarantor acknowledges that Guarantor believes the Guaranteed Obligations to be non usurious and agrees that if, at any time, Guarantor should have reason to believe that the Guaranteed Obligations is in fact usurious, Guarantor will give Lender notice of such condition and Guarantor agrees that Lender shall have sixty (60) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this Section shall mean the laws of the State of Texas or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

10. Representations and Warranties. Guarantor hereby represents and warrants to Lender as follows:

(a) Guarantor is solvent, is not bankrupt and has no outstanding liens, garnishments, bankruptcies or court actions which could render Guarantor insolvent or bankrupt, and there has not been filed by or against Guarantor a petition in bankruptcy or a petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, custodian or liquidator with respect to Guarantor or any substantial portion of Guarantor's property, reorganization, arrangement, rearrangement, composition, extension, liquidation or dissolution or similar relief under the Bankruptcy Code or any state law.

(b) All reports, financial statements, financial data and other data which have been or may hereafter be furnished by Guarantor to Lender in connection with this Guaranty are or shall be true and correct in all material respects and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading and do or shall fairly represent the financial condition of Guarantor as of the dates and the results of Guarantor's operations for the periods for which the same are furnished, and no material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Guarantor.

(c) The execution, delivery and performance of this Guaranty do not contravene, result in the breach of or constitute a default under any obligation or agreement to which Guarantor is a party or by which Guarantor or any of its properties may be bound or affected and do not violate or contravene any law, order, decree, rule or regulation to which Guarantor is subject.

(d) There are no judicial or administrative actions, suits or proceedings pending or, to the best of Guarantor's knowledge, threatened against or affecting Guarantor or any of its properties or involving the validity, enforceability or priority of this Guaranty.

(e) Guarantor is duly organized and legally existing under the laws of the state of its formation.

(f) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws applicable to

creditors' rights or the collection of debtors' obligations generally; the execution and delivery of, and performance under, this Guaranty are within Guarantor's powers and have been duly authorized by all requisite action and are not in contravention of the powers of Guarantor's organizational documents.

(g) Guarantor's U.S. employer or tax identification number (Social Security Number) is 86-0811533.

11. Covenants and Agreements. Guarantor absolutely and unconditionally covenants and agrees with Lender as follows:

(a) If Borrower does not or is unable so to pay or perform the Guaranteed Obligations for any reason, including, without limitation, liquidation, dissolution, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, sale of all or substantially all assets, reorganization, arrangement, composition, or readjustment of, or other similar proceedings affecting the status, composition, identity, existence, assets or obligations of Borrower, or the disaffirmance or termination of any of the Guaranteed Obligations in or as a result of any such proceeding, Guarantor shall pay and perform the Guaranteed Obligations and no such occurrence shall in any way affect Guarantor's obligations hereunder.

(b) If for any reason whatsoever (including but not limited to ultra vires, lack of authority, illegality, force majeure, act of God or impossibility) the Guaranteed Obligations cannot be enforced against Borrower, such unenforceability shall in no manner affect the liability of Guarantor hereunder and Guarantor shall be liable hereunder notwithstanding that Borrower may not be liable for such Guaranteed Obligations and to the same extent as Guarantor would have been liable if such Guaranteed Obligations had been enforceable against Borrower.

(c) Should the status of Borrower change, this Guaranty shall continue and also cover the Guaranteed Obligations of Borrower under the new status according to the terms hereof.

(d) If any payment by Borrower to Lender is held to constitute a preference under the bankruptcy laws, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower to Lender shall not constitute a release of Guarantor from any liability hereunder, but Guarantor agrees to pay such amount to Lender upon demand and this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment or payments.

(e) Guarantor shall not have (i) the right to the benefit of, or to direct the application of, any security held by Lender (including the property covered by the Loan Documents), any right to enforce any remedy which Lender now has or hereafter may have against Borrower, or any right to participate in any security now or hereafter held by Lender, or (ii) any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation or other right or remedy of Guarantor against Borrower or

against any security resulting from the exercise or election of any remedies by Lender (including the exercise of the power or right of sale under the Loan Documents), or any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation, from any cause, of the liability of Borrower.

(f) The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any right, title or interest (whether by way of subrogation or otherwise) in and to any of the Guaranteed Obligations or any proceeds thereof, or any security therefor, unless and until the full amount owing to Lender on the Guaranteed Obligations has been fully paid, but when the same has been fully paid, Guarantor shall be subrogated as to any payments made by it to the rights of Lender against Borrower and/or any endorsers, sureties or other guarantors.

(g) Lender shall not be required to pursue any other remedies before invoking the benefits of the guaranties contained herein, and specifically it shall not be required to make demand upon or institute suit or otherwise pursue its remedies against Borrower or any surety other than Guarantor or to proceed against or give credit for any security now or hereafter existing for the payment of any of the Guaranteed Obligations. Lender may maintain an action on this Guaranty without joining Borrower therein and without bringing a separate action against Borrower.

(h) Guarantor shall at all times maintain (a) unencumbered cash and/or marketable securities in an amount of not less than \$2,000,000 (the "**Liquidity Requirement**") in the form of (i) cash on hand or on deposit in commercial banks operating in the United States, (ii) readily marketable securities issued by the United States, (iii) readily marketable commercial paper rated A-1 by Standard & Poor's corporation (or a similar rating by any similar organization that rates commercial paper), (iv) certificates of deposit issued by commercial banks operating in the United States with maturities of one (1) year or less, and (v) publicly traded stocks and bonds, and (b) a tangible net worth of at least \$75,000,000 (the "**Net Worth Requirement**"). The net worth of Guarantor will be calculated in accordance with generally accepted accounting principles, except that in computing net worth, any notes or obligations receivable from any affiliates or Guarantor-related parties which are determined by Lender, in its good faith business judgment, to be inadequately secured shall be given no value as assets. Guarantor will provide Lender with satisfactory evidence confirming compliance with the foregoing requirements promptly after the close of each quarter-annual period in the form of the Compliance Certificate attached as Schedule I to the Loan Agreement. In the event that Guarantor at any time fails to comply with the Liquidity Requirement or the Net Worth Requirement, then Guarantor shall have a period of ten (10) calendar days after receipt of written notice from Lender of such non-compliance in which to cure such non-compliance.

(i) If the Completion Obligations are not timely performed in accordance with the Loan Documents, Lender may elect, in its sole and absolute discretion, to (i) require Guarantor to satisfy the Completion Obligations; or (ii) cause the satisfaction of the Completion Obligations in which event Guarantor will fully indemnify and hold harmless Lender for, from and against all loss, cost, damage, expense or liability that

Lender may suffer in respect of Lender's exercise of its rights under this Guaranty and the performance of the Completion Obligations **INCLUDING LENDER'S NEGLIGENCE AND/OR STRICT LIABILITY**, except to the extent that the same may result from the misconduct or gross negligence of Lender or any of its employees or agents.

(j) Notwithstanding anything to the contrary contained herein, in addition to all of Lender's other rights hereunder and under the other Loan Documents, whether or not Lender elects to complete the Improvements in accordance with Section 11(i) above, in its sole and absolute discretion in lieu of performing the Completion Obligations, Lender may require Guarantor to pay to Lender liquidated damages (the "**Liquidated Damages Payment**") in an amount equal to:

(i) all Project Costs (excluding Interest except to the extent Interest is a Guaranteed Obligation) which would otherwise have been incurred in connection with the construction and completion of the Improvements (even if Lender does not complete the construction of the Improvements) in accordance with the Loan Documents, less

(ii) an amount equal to the undisbursed Loan proceeds as of the date of election by Lender, excluding the undisbursed portion of the Interest Reserve Amount; less

(iii) any funds remaining in the Borrower's Deposit held by Lender.

For purposes of this subsection, Project Costs will be estimated by the Inspecting Architect. Any such amount estimated by the Inspecting Architect shall be conclusive and binding in the absence of manifest error for purposes of determining Guarantor's liability under this subsection, provided that the Inspecting Architect has made such estimate or determination in good faith. The Liquidated Damages Payment shall be due no later than fifteen (15) days following Lender's written demand therefor and shall bear interest at the Default Rate from the due date until paid. The Liquidated Damages payment shall be retained by Lender as liquidated damages, and not as a penalty, the parties agreeing the estimation of such cost of completion would be difficult to compute. The liability and obligations under this subsection will not be limited or restricted by the existence of any other Section of this Guaranty or by the terms of any other guaranty relating to the Loan.

12. Financial Statements and Reports. Guarantor will deliver to Lender the financial statements and reports as more particularly set forth in the Loan Agreement.

13. Joint and Several Liability. Where two or more persons or entities have executed this Guaranty, unless the context clearly indicates otherwise, all references herein to "Guarantor" shall mean the guarantors hereunder or either or any of them. All of the obligations and liability of said guarantors hereunder shall be joint and several. Suit may be brought against said guarantors, jointly and severally, or against any one or more of them, less than all, without impairing the rights of Lender against the other or others of said guarantors; and Lender may

compound with any one or more of said guarantors for such sums or sum as it may see fit and/or release such of said guarantors from all further liability to Lender for such indebtedness without impairing the right of Lender to demand and collect the balance of such indebtedness from the other or others of said guarantors not so compounded with or released; but it is agreed among said guarantors themselves, however, that such compounding and release shall in nowise impair the rights of said guarantors as among themselves.

14. Disputes Among Guarantors. Where two or more persons or entities have executed this Guaranty, to the extent any dispute exists at anytime between or among such parties as to any party's right to contribution or otherwise, Guarantor agrees to indemnify, defend and hold Lender harmless from and against any loss, damage, claim, demand, cost or other liability (including, without limitation, reasonable attorneys' fees, legal expenses and other costs) Lender may suffer as a result of such dispute.

15. Rights Cumulative. The rights of Lender are cumulative and shall not be exhausted by its exercise of any of its rights hereunder or otherwise against Guarantor or by any number of successive actions until and unless all Guaranteed Obligations have been paid, all Guaranteed Obligations have been performed and each of the obligations of Guarantor hereunder has been performed. The existence of this Guaranty shall not in any way diminish or discharge the rights of Lender under any prior or future guaranty agreement executed by Guarantor.

16. Security Interest. Guarantor hereby grants to Lender a security interest in all property of Guarantor now or hereafter in the possession or custody of or in transit to Lender for any purpose, including safekeeping, collection or pledge, for the account of Guarantor, or as to which Guarantor may have any right or power, shall be held by Lender subject to a lien and security interest in favor of Lender to secure payment and performance of all obligations and liabilities of Guarantor to Lender hereunder. The balance of every account of Guarantor with, and each claim of Guarantor against, Lender existing from time to time shall be subject to a lien and subject to set-off against any and all liabilities of Guarantor to Lender, and Lender may, at any time and from time to time at its option and without notice, appropriate and apply toward the payment of any of such liabilities the balance of each such account or claim of Guarantor against Lender. Guarantor hereby authorizes Lender to file any financing statement or financing statement amendment covering such property of Guarantor or relating to the security interest created herein without the signature of Guarantor, as debtor.

17. Notices. Any notice, request, demand or other communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

To Lender: Guaranty Bank
 8333 Douglas Avenue
 Dallas, Texas 75225
 Attention: Commercial Real Estate Lending Division

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

With a copy to: Opus Corporation
2555 E. Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attention: Legal Department

With a copy to: Greenberg Traurig LLP
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Attention: Susan G. Mitchell

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

18. APPLICABLE LAW. THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF GUARANTOR HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO TEXAS' PRINCIPLES OF CONFLICTS OF LAW) AND THE LAW OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN SUCH STATE.

19. CONSENT TO FORUM. GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN DALLAS, TEXAS (OR ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY WHERE ANY PORTION OF THE PROPERTY COVERED BY THE SECURITY INSTRUMENT IS LOCATED) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OF THE LOAN DOCUMENTS, AND GUARANTOR HEREBY AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY STATE OR FEDERAL COURT SITTING IN DALLAS, TEXAS (OR ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY WHERE ANY PORTION OF THE PROPERTY COVERED BY THE SECURITY INSTRUMENT IS LOCATED) MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO GUARANTOR AT THE ADDRESS OF GUARANTOR FOR THE GIVING OF NOTICES HEREUNDER, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

20. WAIVER OF JUDICIAL PROCEDURAL MATTERS. GUARANTOR AND LENDER HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING IN CONNECTION WITH THIS GUARANTY, ANY AND EVERY RIGHT THEY MAY HAVE TO A TRIAL BY JURY.

21. Counterparts. This Guaranty may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

22. No Modification. This Guaranty may only be modified, waived, altered or amended by a written instrument or instruments executed by the party against which enforcement of said action is asserted. Any alleged modification, waiver, alteration or amendment which is not so documented shall not be effective as to any party.

23. Successors and Assigns; Gender; Unenforceability of Certain Provisions, Headings. The terms, provisions, covenants and conditions hereof shall be binding upon Guarantor and the heirs, devisees, representatives, successors and assigns of Guarantor and shall inure to the benefit of Lender and all transferees, credit participants, successors, assignees and/or endorsees of Lender. Within this Guaranty, words of any gender shall be held and construed to include any other gender and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. A determination that any provision of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Guaranty to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances. The headings in this Guaranty are for convenience only and will not limit or otherwise affect any of the terms hereof.

24. Final Agreement. IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, THE PARTIES ACKNOWLEDGE THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first set forth above.

REMAINDER OF PAGE INTENTIONALLY BLANK
SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE OF GUARANTOR TO
GUARANTY

OPUS WEST CORPORATION,
a Minnesota corporation

By: _____

Name: _____

Title: _____

Charles Vogel

Charles Vogel

Senior Vice President

STATE OF ARIZONA

§

§

COUNTY OF MARICOPA

§

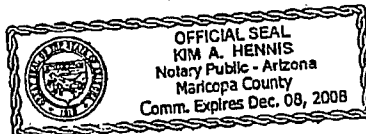
This instrument was acknowledged before me on October 29, 2007, by
Charles Vogel, the Senior Vice President of
OPUS WEST CORPORATION, a Minnesota corporation, on behalf of said corporation.

Notary Public - State of Arizona

My Commission Expires:

12/08/08

Printed Name of Notary Public



WHEN RECORDED RETURN TO:

THOMPSON & KNIGHT L.L.P.
1700 PACIFIC AVENUE
SUITE 3300
DALLAS, TEXAS 75201-4693
ATTENTION: JEANNE M. BURTON

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

ASSUMPTION AND MODIFICATION AGREEMENT

This ASSUMPTION AND MODIFICATION AGREEMENT (this "Agreement") dated effective as of July __, 2008, by and among (i) OPUS WEST LP, a Delaware limited partnership ("Original Borrower"), (ii) OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor"), and (iii) OPUS REAL ESTATE TX VII LC, L.P., a Delaware limited partnership ("Substitute Borrower") (each of the foregoing parties in (i) through (iii) above herein sometimes called "Loan Parties" or "Loan Party", as the context may require), and (v) GUARANTY BANK, a federal savings bank ("Lender");

WITNESSETH:

WHEREAS, the following documents have previously been executed and delivered by Original Borrower to Lender relating to a loan (the "Loan") from Lender to Original Borrower in the original principal amount of \$16,492,990, each dated November 1, 2007:

- A. Loan Agreement (the "Loan Agreement");
- B. Promissory Note (the "Note") in the stated principal sum of the Loan;
- C. Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Security Instrument") covering certain real property and personal property described therein (the "Property"), recorded at File No. 2007-0394151, Real Property Records of Dallas County, Texas; and
- D. Environmental Indemnity Agreement (herein so called);

the instruments described above and all other documents evidencing, securing or otherwise executed in connection with the Loan, including the Guaranty described below, being herein collectively called the "**Loan Documents**";

WHEREAS, Guarantor has guaranteed certain obligations of Original Borrower pursuant to the Guaranty (the "**Guaranty**") of even date with the Note in favor of Lender;

WHEREAS, Original Borrower and Substitute Borrower have requested that Lender (a) consent to the conveyance by Original Borrower of its entire interest in the Property to Substitute Borrower, and (b) the release of Original Borrower from all liability under the Loan Documents for matters arising from and after the date hereof, and Lender is willing to do so on the terms and conditions herein set forth; and

WHEREAS, effective as of the date hereof, Original Borrower has conveyed and transferred the Property to Substitute Borrower; and

WHEREAS, Lender is the owner and holder of the Note and Substitute Borrower is the owner of the Property;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Defined Terms.** Capitalized terms not otherwise defined herein shall have the same definition as set forth in the Loan Agreement. This Agreement constitutes a "Loan Document".

2. **Consent to Transfer to Substitute Borrower.** Lender hereby consents to the transfer by Original Borrower of its entire interest in the Property to Substitute Borrower and waives its option to accelerate the indebtedness evidenced by the Note or to otherwise declare an Event of Default (as defined in the Loan Agreement) on account of such transfer. The foregoing consent is made without prejudice to Lender's rights with respect to any further conveyance of the Property or any interest therein. From and after the date hereof, all references in the Loan Documents to "Borrower" shall mean Substitute Borrower. Lender hereby acknowledges and agrees that Substitute Borrower is deemed to be an "Affiliate" of Guarantor as defined in Section 9.30 of the Loan Agreement.

3. **Assumption of Obligations by Substitute Borrower.** Except as set forth in Section 6 below, Substitute Borrower hereby assumes and promises to keep and perform all covenants and obligations in the Loan Documents originally to be performed by Original Borrower.

4. **Release of Original Borrower.** Lender hereby agrees that Original Borrower shall have no obligation or liability under the Loan Documents from and after the date of this Agreement, provided that such release shall not cover any such obligation or liability accruing up to and including the date of this Agreement or any of the obligations of Original Borrower contained in this Agreement.

5. **No Release of Guarantor.** Guarantor hereby acknowledges and agrees that notwithstanding anything contained in this Agreement to the contrary, Guarantor's liability under the Guaranty shall continue in full force and effect with respect to the obligations of Substitute Borrower under the Loan Documents with the same effect as though Substitute Borrower had originally been named in the Guaranty and the other Loan Documents.

6. **Modification of Loan Agreement.** The Loan Agreement is hereby modified as follows:

(a) Section 4.1(n) of the Loan Agreement is hereby amended by adding the following language at the end thereof:

Notwithstanding anything contained in the Loan Documents to the contrary, the requirement to deliver annual financial statements which have been certified by an independent certified public accountant shall only apply to the extent that Borrower obtains audited financial statements. Otherwise, Borrower's annual financial statements shall be prepared and certified as to accuracy by a representative of Borrower reasonably acceptable to Lender.

(b) Section 7.1(m) is hereby deleted in its entirety and the following language is substituted therefor:

(m) **Events Affecting Other Parties** - any of the events referred to in subheadings (d), (e), (f), (g), (h), (j), to the extent not adequately reserved under generally accepted accounting principles, (k), or (t) shall occur with respect to Guarantor and shall not be remedied within the time set forth in said subheadings; provided, however, upon the occurrence of any such events, prior to exercising its remedies under the Loan Documents, Lender shall give Borrower written notice thereof and Borrower shall have the option, but not the obligation, to cure such default by providing Lender with a guaranty (the "**Additional Guaranty**") in the same form as the Guaranty from an entity acceptable to Lender in its sole discretion on or before the expiration of thirty (30) days from the date of such notice. Upon receipt of the Additional Guaranty within the foregoing time period, all defaults or Events of Default related solely to Guarantor shall be deemed waived by Lender and any future default under the Guaranty shall not constitute an Event of Default under the other Loan Documents; or

7. **Management of the Property.** Notwithstanding anything in this Agreement or the Loan Documents to the contrary, Lender acknowledges and agrees that Original Borrower and Substitute Borrower may terminate the existing management agreement with respect to the Property (if any). The provisions of Section 4.1(cc) of the Loan Agreement shall govern the execution of any future management agreements for the Property.

8. **Loan Balance.** Substitute Borrower and Lender hereby acknowledge that the unpaid balance of the Note, as of the date hereof is \$9,448,737.79 with interest paid up to and including June 30, 2008. The amount of \$7,044,252.21 remains available to be funded under the Loan in accordance with the terms of the Loan Documents.

9. **Release of Lender.** Loan Parties hereby release, remise, acquit and forever discharge Lender, together with its employees, agents, representatives, consultants, attorneys, fiduciaries, servants, officers, directors, partners, predecessors, successors and assigns, subsidiary corporations, parent corporations, and related corporate divisions (all of the foregoing hereinafter called the "**Released Parties**"), from any and all actions and causes of action, judgments, executions, suits, debts, claims, demands, liabilities, obligations, damages and expenses of any and every character, known or unknown, direct and/or indirect, at law or in equity, of whatsoever kind or nature, whether heretofore or hereafter accruing, for or because of any matter or things done, omitted or suffered to be done by any of the Released Parties (but not for the gross negligence or willful misconduct of any of the Released Parties) prior to and including the date hereof, and in any way directly or indirectly arising out of or in any way connected to this Agreement or any instrument evidencing or securing the Loan, or any of the transactions associated therewith, or the Property, including specifically but not limited to claims of usury. **THE FOREGOING RELEASE INCLUDES ACTIONS AND CAUSES OF ACTION, JUDGMENTS, EXECUTIONS, SUITS, DEBTS, CLAIMS, DEMANDS, LIABILITIES, OBLIGATIONS, DAMAGES AND EXPENSES ARISING AS A RESULT OF THE NEGLIGENCE OF ONE OR MORE OF THE RELEASED PARTIES.**

10. **Representations of Substitute Borrower.** Substitute Borrower hereby represents and warrants that (a) Substitute Borrower is the lawful owner of fee simple title to the Property; (b) the Loan Documents and this Agreement constitute the legal, valid and binding obligations of Substitute Borrower enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws applicable to creditors' rights or the collection of debtors' obligations generally; (c) the execution and delivery of this Agreement by Substitute Borrower does not contravene, result in a breach of or constitute a default under any deed to secure debt, mortgage, loan agreement, indenture or other contract, agreement or undertaking to which Substitute Borrower is a party or by which Substitute Borrower or any of its properties may be bound (nor would such execution and delivery constitute such a default with the passage of time or the giving of notice or both) and to Substitute Borrower's knowledge, does not violate or contravene any law, order, decree, rule or regulation to which Substitute Borrower is subject; (d) to the best of Substitute Borrower's knowledge, there exists no uncured default under the Loan Documents; (e) Substitute Borrower agrees to indemnify and hold Lender harmless against any loss, claim, damage, liability or expense (including without limitation reasonable attorneys' fees actually incurred) incurred as a result of any representation or warranty made by Substitute Borrower herein proving to be untrue in any material respect; (f) Substitute Borrower is duly formed and legally existing under the laws of the state of its formation and is qualified to do business in the state where the Property is located; (g) Substitute Borrower has all requisite power and all governmental certificates of authority, licenses, permits, qualifications and other documentation to own, lease and operate its properties and to carry on its business as now conducted and as contemplated to be conducted; and (h) Substitute Borrower is not acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to or otherwise associated with, any of the persons or entities referred to or described in Executive Order 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism, as amended).

11. **Representations of Guarantor.** Guarantor hereby represents and warrants that (a) this Agreement constitutes the legal, valid and binding obligations of Guarantor enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws applicable to creditors' rights or the collection of debtors' obligations generally; (b) the execution and delivery of this Agreement by Guarantor does not contravene, result in a breach of or constitute a default under any deed to secure debt, mortgage, loan agreement, indenture or other contract, agreement or undertaking to which Guarantor is a party or by which Guarantor or any of its properties may be bound (nor would such execution and delivery constitute such a default with the passage of time or the giving of notice or both) and to Guarantor's knowledge does not violate or contravene any law, order, decree, rule or regulation to which Guarantor is subject; and (c) Guarantor agrees to indemnify and hold Lender harmless against any loss, claim, damage, liability or expense (including without limitation reasonable attorneys' fees actually incurred) incurred as a result of any representation or warranty made by Guarantor herein proving to be untrue in any material respect.

12. **Representations and Agreements of Lender.**

(a) To Lender's knowledge, there is no continuing Event of Default (as defined in the Loan Agreement) under the Loan Documents as of the date hereof.

(b) Notwithstanding any provision in the Loan Documents to the contrary, Lender acknowledges and agrees that the name "Opus" and any derivative thereof is specifically excluded from the definition of "Collateral" in the Security Instrument.

(c) Notwithstanding any provision in the Loan Documents to the contrary, neither Opus Real Estate USA VII, L.L.C., a Delaware limited liability company, nor any limited partner of Substitute Borrower (the "**Exculpated Parties**"), shall have personal liability for the payment of the Loan or for the performance or observance of the covenants, representations and warranties of Borrower or Substitute Borrower contained in the Loan Documents and Lender agrees not to seek any damages or personal money judgment against Exculpated Parties for any default under the Loan Documents. Nothing herein contained shall prevent or shall be construed to prevent Lender from exercising and enforcing (i) any other remedy allowed at law or equity or by any statute or by the terms of the Loan Documents or (ii) any guaranty or indemnification made by an Exculpated Party in connection with the Loan.

13. **Additional Documentation.** Loan Parties, upon request from Lender, agree to execute such other and further documents as may be reasonably necessary or appropriate to consummate the transactions contemplated herein or to perfect the liens and security interests intended to secure the payment of the Loan.

14. **Default.** If any Loan Party shall fail to keep or perform any of the covenants or agreements contained herein or if any statement, representation or warranty contained herein is false, misleading or erroneous in any material respect, after expiration of the applicable notice and cure period set forth in the Loan Documents, Substitute Borrower shall be deemed to be in default under the Loan Documents and Lender shall be entitled at its option to exercise any and

all of the rights and remedies granted pursuant to the Loan Documents or to which Lender may otherwise be entitled, whether at law or in equity. Lender acknowledges and agrees that, to the best of Lender's knowledge, there exists no default or Event or Default by Original Borrower under the Loan Documents.

15. **Recordation; Endorsement to Mortgagee Title Policy.** Contemporaneously herewith, Lender shall deliver this Agreement for recording in the appropriate records of the county where the Property is located at Loan Parties' expense and Loan Parties shall, at their sole cost and expense, obtain and deliver to Lender an endorsement or amendment to Lender's existing Mortgagee Policy of Title Insurance insuring the lien of the Security Instrument as modified hereby, in form and content acceptable to Lender, stating that the company issuing said policy will not claim that policy coverage has terminated or that policy coverage has been reduced, solely by reason of the execution of this Agreement.

16. **Ratification of Loan Documents.** Except as provided herein, the terms and provisions of the Loan Documents shall remain unchanged and shall remain in full force and effect. The Loan Documents, as modified and amended hereby, are hereby ratified and confirmed in all respects. To Substitute Borrower's knowledge, all liens, security interests, mortgages and assignments granted or created by or existing under the Loan Documents continue, unabated, in full force and effect, to secure Substitute Borrower's obligation to repay the Note. All references in any of the Loan Documents to the Loan Documents shall hereafter refer to the Loan Documents, as amended hereby.

17. **Validity of Liens and Security Interests; No Offset.** Loan Parties (to the extent each is a party thereto) hereby acknowledge that the liens, security interests and assignments created and evidenced by the Loan Documents, as modified hereby, are valid and subsisting. Loan Parties further acknowledge and agree that there are no offsets, claims or defenses to the Loan Documents.

18. **Integration.** This Agreement supersedes and merges all prior and contemporaneous promises, representations and agreements with respect to the matters set forth herein. No modification of this Agreement or any waiver of rights hereunder shall be effective unless made by supplemental agreement, in writing, executed by Lender and Loan Parties. Lender and Loan Parties further agree that this Agreement may not in any way be explained or supplemented by a prior, existing or future course of dealings between the parties or by any prior, existing, or future performance between the parties pursuant to this Agreement or otherwise.

19. **Notice.** Any notice or communication required or permitted hereunder shall be given in accordance with the provisions of the Loan Agreement with respect to Loan Parties (excluding Guarantor) and Lender and in accordance with the Guaranty with respect to Guarantor and Lender. The address of "Borrower" as set forth in the Loan Agreement is hereby amended to read as follows:

Borrower: Opus Real Estate TX VII LC2, L.P.
10350 Bren Road West
Minnetonka, Minnesota 55343

Attention: Vice President

With copies to: Opus, L.L.C.
10350 Bren Road West
Minnetonka, Minnesota 55353
Attention: Legal Department

Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55343
Attention: Charles R. Haynor, Esq.

20. **Costs and Expenses.** Contemporaneously with the execution and delivery hereof, Loan Parties shall pay, or cause to be paid, all costs and expenses incident to the preparation hereof and the consummation of the transactions specified herein, including without limitation title insurance policy endorsement charges, recording fees and fees and expenses of legal counsel to Lender.

21. **Severability.** If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained.

22. **Time of the Essence.** It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement.

23. **Counterparts.** This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

24. **Successors and Assigns.** The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

25. **APPLICABLE LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO TEXAS' PRINCIPLES OF CONFLICTS OF LAW) AND THE LAW OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN THE STATE OF TEXAS.

26. **Notice of Final Agreement.** Loan Parties and Lender hereby take notice of and agree to the following:

A. PURSUANT TO SUBSECTION 26.02(b) OF THE TEXAS BUSINESS AND COMMERCE CODE, A LOAN AGREEMENT IN WHICH THE AMOUNT INVOLVED THEREIN EXCEEDS \$50,000 IN VALUE IS NOT ENFORCEABLE UNLESS THE AGREEMENT IS IN WRITING AND SIGNED BY THE PARTY TO BE BOUND OR BY THAT PARTY'S AUTHORIZED REPRESENTATIVE.

B. PURSUANT TO SUBSECTION 26.02(c) OF THE TEXAS BUSINESS AND COMMERCE CODE, THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE LOAN DOCUMENTS SHALL BE DETERMINED SOLELY FROM THE LOAN DOCUMENTS, AND ANY PRIOR ORAL AGREEMENTS BETWEEN THE PARTIES ARE SUPERSEDED BY AND MERGED INTO THE LOAN DOCUMENTS.

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

IN WITNESS WHEREOF, this Agreement is executed as of the date set forth in the notary blocks but is effective as of the day and year first above written.

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SIGNATURE PAGES FOLLOW

**SIGNATURE PAGE OF ORIGINAL BORROWER TO
ASSUMPTION AND MODIFICATION AGREEMENT**

OPUS WEST LP, a Delaware limited partnership

By: OPUS WEST CORPORATION, a Minnesota
corporation, General Partner

By: _____

Name: Charles J. Vogel

Title: Senior Vice President

STATE OF ARIZONA §

COUNTY OF MARICOPA §

This instrument was acknowledged before me on July 16, 2008, by Charles J. Vogel, the Senior Vice President of Opus West Corporation, a Minnesota corporation, on behalf of said corporation, in its capacity as general partner of Opus West LP, a Delaware limited partnership.

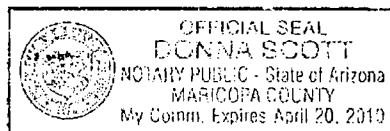
My Commission Expires:

4-20-2010

Notary Public - State of Arizona

DONNA SCOTT

Printed Name of Notary Public



**SIGNATURE PAGE OF SUBSTITUTE BORROWER TO
ASSUMPTION AND MODIFICATION AGREEMENT**

OPUS REAL ESTATE TX VII LC, L.P., a Delaware
limited partnership

By: OPUS REAL ESTATE USA VII, L.L.C., a
Delaware limited liability company, General Partner

By:

Name:

Wade C. Lau

Title:

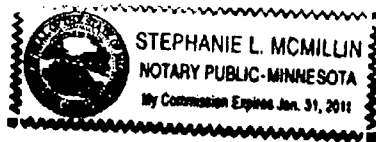
Vice President

STATE OF MINNESOTA §

§

COUNTY OF HENNEPIN §

This instrument was acknowledged before me on July 17, 2008, by
Wade C. Lau, the Vice President of
Opus Real Estate USA VII, L.L.C., a Delaware limited liability company, on behalf of said
limited liability company, in its capacity as general partner of Opus real Estate TX VII LC, L.P.,
a Delaware limited partnership.



Stephanie L. McMillin
Notary Public - State of Minnesota

SIGNATURE PAGE OF GUARANTOR TO
ASSUMPTION AND MODIFICATION AGREEMENT

OPUS WEST CORPORATION, a Minnesota
corporation

By: _____

Name: Charles J. Vogel

Title: Senior Vice President

STATE OF ARIZONA §

COUNTY OF MARICOPA §

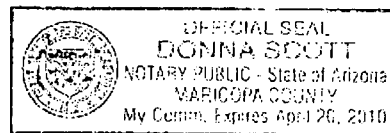
This instrument was acknowledged before me on July 16, 2008, by Charles J. Vogel,
Senior Vice President of Opus West Corporation, a Minnesota corporation, on behalf of said
corporation.

My Commission Expires:

4-20-2010

Notary Public - State of Arizona

Donna Scott
Printed Name of Notary Public



**SIGNATURE PAGE OF LENDER TO
ASSUMPTION AND MODIFICATION AGREEMENT**

GUARANTY BANK, a federal savings bank

By: _____

Name: Greg Hudnall

Title: Senior Vice President

STATE OF TEXAS

§

COUNTY OF DALLAS

§

§

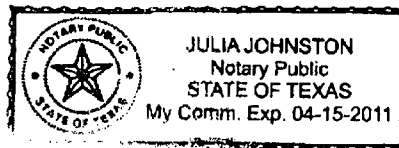
This instrument was acknowledged before me on July 11, 2008 by Greg Hudnall, Senior Vice President of Guaranty Bank, a federal savings bank, on behalf of said federal savings bank.

Notary Public, State of Texas

My Commission expires:

[Printed name]

4/15/2011



GUARANTY

THIS GUARANTY (this "Guaranty") is executed as of April 19, 2007 by OPUS WEST CORPORATION, a Minnesota corporation ("Guarantor", whether one or more), in favor of GUARANTY BANK, a federal savings bank ("Lender").

1. Definitions. Capitalized terms not otherwise defined herein shall have the meaning set forth in the Loan Agreement of even date herewith executed between Borrower and Lender (the "Loan Agreement"). The following terms have the meanings assigned.

"Borrower" means Opus West LP, a Delaware limited partnership.

"Completion Obligations" means all covenants, agreements and other obligations of Borrower under the Loan Documents which relate to the construction of the Improvements including the obligation to (a) construct and complete the Improvements in accordance with the Loan Documents and (b) pay all expenses, charges, costs and fees of or relating to the requirements of subpart (a) immediately preceding, including, without limitation, all permitting fees, licensing fees, utility expenses, all insurance expenses during the construction period, penalties, charges and amounts payable to all architects, engineers, construction managers, contractors, subcontractors, tenants and material suppliers engaged in connection with any of the foregoing and any additional costs, such as overtime charges, necessary to so complete the Improvements on a timely basis in accordance with the Loan Documents and in any event on or before the Completion Date.

"Enforcement Costs" means all costs, reasonable attorneys' fees, legal expenses and other costs incurred or expended by Lender in collecting or enforcing any of the Guaranteed Obligations or due to any default in the performance of the Guaranteed Obligations or in enforcing any right granted hereunder or under the Loan Documents.

"Guaranteed Obligations" means all (a) Indebtedness, (b) Obligations, (c) Enforcement Costs, and (d) Completion Obligations.

"Interest" all accrued and unpaid interest on the Principal Amount.

"Obligations" means all covenants, agreements and other obligations of Borrower under the Loan Documents.

"Principal Amount" as defined in the Note.

2. Inducement. Guarantor has an economic investment or interest in Borrower, and an interest in the success of the Property, and Lender's agreement to make the Loan is of substantial benefit to Guarantor.

3. Guaranteed Obligations.

(a) In order to induce Lender to make the Loan to Borrower, Guarantor absolutely, unconditionally and irrevocably guarantees and agrees to pay and perform the Guaranteed Obligations.

(b) If Lender shall have requested Guarantor to perform the Completion Obligations pursuant to Section 11(i), Guarantor will be entitled to requisition and draw all of the undisbursed Loan proceeds intended to be used for the construction of the Improvements pursuant to the Project Budget (but not in excess of the committed amount of the Loan), together with any Borrower's Deposit. Lender shall disburse such funds for the purpose of, and to the extent necessary for, performance of the Completion Obligations, provided that: (i) Guarantor shall be performing the Completion Obligations or causing the performance of the same with due diligence; (ii) Guarantor shall have made all required deposits into the Borrower's Deposit and all other deposits required under the Loan Agreement; (iii) all disbursements of Loan proceeds to Guarantor shall be secured by the Loan Documents with the same priority as all previous advances of Loan proceeds to Borrower; (iv) Guarantor shall have cured all continuing Events of Default, provided that Guarantor shall not be required to cure any non-monetary Event of Default which is personal to Borrower and therefore not susceptible to cure by Guarantor; and (v) Guarantor shall otherwise comply with the provisions of the Loan Agreement concerning the performance of the Completion Obligations including the requirements for Draw Requests and disbursement of proceeds of the Loan.

4. Waivers. GUARANTOR EXPRESSLY WAIVES PRESENTMENT FOR PAYMENT, DEMAND, NOTICE OF DEMAND AND OF DISHONOR AND NONPAYMENT OF THE GUARANTEED OBLIGATIONS, NOTICE OF INTENTION TO ACCELERATE THE MATURITY OF THE GUARANTEED OBLIGATIONS OR ANY PART THEREOF, NOTICE OF ACCELERATION OF THE MATURITY OF THE GUARANTEED OBLIGATIONS OR ANY PART THEREOF, NOTICE OF DISPOSITION OF COLLATERAL, THE DEFENSE OF IMPAIRMENT OF COLLATERAL, THE RIGHT TO A COMMERCIALLY REASONABLE SALE OF COLLATERAL, PROTEST AND NOTICE OF PROTEST, DILIGENCE IN COLLECTING, AND THE BRINGING OF SUIT AGAINST ANY OTHER PARTY. LENDER SHALL BE UNDER NO OBLIGATION TO NOTIFY GUARANTOR OF ITS ACCEPTANCE HEREOF OR OF ANY ADVANCES MADE OR CREDIT EXTENDED ON THE FAITH HEREOF OR THE FAILURE OF BORROWER TO PAY ANY OF THE GUARANTEED OBLIGATIONS AS IT MATURES OR ANY DEFAULT IN THE PERFORMANCE OF ANY OF THE GUARANTEED OBLIGATIONS, OR TO USE DILIGENCE IN PRESERVING THE LIABILITY OF ANY PERSON ON THE GUARANTEED OBLIGATIONS OR IN BRINGING SUIT TO ENFORCE COLLECTION OR PERFORMANCE OF THE GUARANTEED OBLIGATIONS. GUARANTOR WAIVES ALL DEFENSES GIVEN TO SURETIES OR GUARANTORS AT LAW OR IN EQUITY OTHER THAN THE ACTUAL PAYMENT AND PERFORMANCE OF THE GUARANTEED OBLIGATIONS AND ALL DEFENSES BASED UPON QUESTIONS AS TO THE VALIDITY, LEGALITY OR

**ENFORCEABILITY OF THE GUARANTEED OBLIGATIONS AND AGREES THAT
GUARANTOR SHALL BE PRIMARILY LIABLE HEREUNDER.**

5. No Impairment of Guaranty. Lender, without authorization from or notice to Guarantor and without impairing, modifying, changing, releasing, limiting or affecting the liability of Guarantor hereunder, may from time to time at its discretion and with or without valuable consideration, alter, compromise, accelerate, renew, extend or change the time or manner for the payment of any or all of the Guaranteed Obligations, increase or reduce the rate of interest thereon, take and surrender security, exchange security by way of substitution, or in any way it deems necessary take, accept, withdraw, subordinate, alter, amend, modify or eliminate security, add or release or discharge endorsers, guarantors, or other obligors, make changes of any sort whatever in the Guaranteed Obligations or in the terms of payment or performance of the Guaranteed Obligations, or in the manner of doing business with Borrower, or settle or compromise with Borrower or any other person or persons liable on the Guaranteed Obligations on such terms as it may see fit, and may apply all moneys received from Borrower or others, or from any security held (whether held under a security instrument or not), in such manner upon the Guaranteed Obligations (whether then due or not) as it may determine to be in its best interest, without in any way being required to marshal securities or assets or to apply all or any part of such moneys upon any particular part of the Guaranteed Obligations. It is specifically agreed that Lender is not required to retain, hold, protect, exercise due care with respect thereto, perfect security interests in or otherwise assure or safeguard any security for the Guaranteed Obligations; no failure by Lender to do any of the foregoing and no exercise or nonexercise by Lender of any other right or remedy of Lender shall in any way affect any of Guarantor's obligations hereunder or any security furnished by Guarantor or give Guarantor any recourse against Lender.

6. Events Affecting Borrower. The liability of Guarantor hereunder shall not be modified, changed, released, limited or impaired in any manner whatsoever on account of any or all of the following, whether or not with notice to or consent of Guarantor: (a) the incapacity, death, disability, dissolution or termination of Guarantor, Borrower, Lender or any other person or entity; (b) the failure by Lender to file or enforce a claim against the estate (either in administration, bankruptcy or other proceeding) of Borrower or any other person or entity; (c) recovery from Borrower or any other person or entity becomes barred by any statute of limitations or is otherwise prevented; (d) any defenses, set offs or counterclaims which may be available to Borrower or any other person or entity; (e) any transfer or transfers of any of the property covered by the Loan Documents; (f) any release or discharge by operation of law of Borrower, any co-guarantor or any other person (other than Guarantor) primarily or secondarily liable for the payment or performance of the Guaranteed Obligations or any part thereof; (g) any modifications, extensions, amendments, consents, releases or waivers with respect to the Loan Documents, or this Guaranty; (h) any failure of Lender to give any notice to Guarantor of any Event of Default under the Loan Documents, or this Guaranty; (i) Guarantor is or becomes liable for any indebtedness owing by Borrower to Lender other than under this Guaranty; or (j) any impairment, modification, change, release or limitation of the liability of, or stay of actions or lien enforcement proceedings against, Borrower, its property, or its estate in bankruptcy resulting from the operation of any present or future provision of the Federal Bankruptcy Code (the "Bankruptcy Code") or other similar federal or state statute, or from the decision of any court.

7. Subordination. Guarantor expressly subordinates its rights to payment of any indebtedness owing from Borrower to Guarantor, whether now existing or arising at any time in the future, to the prior right of Lender to receive or require payment in full of the Guaranteed Obligations and until payment in full of the Guaranteed Obligations (and including interest accruing on the Note after any petition under the Bankruptcy Code, which post petition interest Guarantor agrees shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in proceedings under the Bankruptcy Code generally), Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor or any security for such indebtedness. If Guarantor should receive any such payment, satisfaction or security for any indebtedness of Borrower to Guarantor, Guarantor agrees forthwith to deliver the same to Lender in the form received, endorsed or assigned as may be appropriate for application on account of, or as security for, the Guaranteed Obligations and until so delivered, agrees to hold the same in trust for Lender.

8. Waiver of Right of Subrogation. To the fullest extent permitted by law, Guarantor waives all rights at law or in equity to seek subrogation, contribution, indemnification or any other form of reimbursement or repayment from Borrower or any other guarantor of, or any other party secondarily liable for, the payment or performance of the Guaranteed Obligations until the Guaranteed Obligations have been paid and performed in full.

9. No Usury. It is the intent of Guarantor and Lender in the execution and acceptance of this Guaranty to contract in strict compliance with applicable usury law. In furtherance thereof, Guarantor and Lender stipulate and agree that none of the terms and provisions contained in this Guaranty, or in any other instrument now or hereafter executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; Guarantor shall never be obligated or required to pay interest on the Indebtedness at a rate in excess of the maximum interest that may be lawfully charged under applicable law; and that the provisions of this Section shall control over all other provisions of this Guaranty, and any other instruments now or hereafter executed in connection herewith or any other oral or written agreement which may be in apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges if the maturity of the Guaranteed Obligations is accelerated. If the maturity of the Note shall be accelerated for any reason or if the principal of the Note is paid prior to the end of the term of the Note, and as a result thereof the interest received from Guarantor for the actual period of existence of the loan evidenced by the Note exceeds the amount of interest at the applicable maximum lawful rate under applicable law, Lender shall, at its option, either refund to Guarantor the amount of such excess or credit the amount of such excess against the principal balance of the Note then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. If Lender contracts for, charges or receives any amount or amounts and/or any other thing of value from Guarantor which are determined to constitute interest which would increase the effective interest rate on the Guaranteed Obligations to a rate in excess of that permitted to be charged by applicable law, all such amounts determined to constitute interest in excess of the lawful rate shall, upon such determination, at the option of Lender, be either immediately returned to Guarantor or credited against the principal balance of the Note then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By

execution of this Guaranty, Guarantor acknowledges that Guarantor believes the Guaranteed Obligations to be non usurious and agrees that if, at any time, Guarantor should have reason to believe that the Guaranteed Obligations is in fact usurious, Guarantor will give Lender notice of such condition and Guarantor agrees that Lender shall have sixty (60) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this Section shall mean the laws of the State of Texas or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

10. Representations and Warranties. Guarantor hereby represents and warrants to Lender as follows:

(a) Guarantor is solvent, is not bankrupt and has no outstanding liens, garnishments, bankruptcies or court actions which could render Guarantor insolvent or bankrupt, and there has not been filed by or against Guarantor a petition in bankruptcy or a petition or answer seeking an assignment for the benefit of creditors, the appointment of a receiver, trustee, custodian or liquidator with respect to Guarantor or any substantial portion of Guarantor's property, reorganization, arrangement, rearrangement, composition, extension, liquidation or dissolution or similar relief under the Bankruptcy Code or any state law.

(b) All reports, financial statements, financial data and other data which have been or may hereafter be furnished by Guarantor to Lender in connection with this Guaranty are or shall be true and correct in all material respects and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading and do or shall fairly represent the financial condition of Guarantor as of the dates and the results of Guarantor's operations for the periods for which the same are furnished, and no material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Guarantor.

(c) The execution, delivery and performance of this Guaranty do not contravene, result in the breach of or constitute a default under any obligation or agreement to which Guarantor is a party or by which Guarantor or any of its properties may be bound or affected and do not violate or contravene any law, order, decree, rule or regulation to which Guarantor is subject.

(d) There are no judicial or administrative actions, suits or proceedings pending or, to the best of Guarantor's knowledge, threatened against or affecting Guarantor or any of its properties or involving the validity, enforceability or priority of this Guaranty.

(e) Guarantor is duly organized and legally existing under the laws of the state of its formation.

(f) This Guaranty constitutes the legal, valid and binding obligation of Guarantor enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws applicable to

creditors' rights or the collection of debtors' obligations generally; the execution and delivery of, and performance under, this Guaranty are within Guarantor's powers and have been duly authorized by all requisite action and are not in contravention of the powers of Guarantor's organizational documents.

(g) Guarantor's U.S. employer or tax identification number (Social Security Number) is 86-0811533.

11. Covenants and Agreements. Guarantor absolutely and unconditionally covenants and agrees with Lender as follows:

(a) If Borrower does not or is unable so to pay or perform the Guaranteed Obligations for any reason, including, without limitation, liquidation, dissolution, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, sale of all or substantially all assets, reorganization, arrangement, composition, or readjustment of, or other similar proceedings affecting the status, composition, identity, existence, assets or obligations of Borrower, or the disaffirmance or termination of any of the Guaranteed Obligations in or as a result of any such proceeding, Guarantor shall pay and perform the Guaranteed Obligations and no such occurrence shall in any way affect Guarantor's obligations hereunder.

(b) If for any reason whatsoever (including but not limited to ultra vires, lack of authority, illegality, force majeure, act of God or impossibility) the Guaranteed Obligations cannot be enforced against Borrower, such unenforceability shall in no manner affect the liability of Guarantor hereunder and Guarantor shall be liable hereunder notwithstanding that Borrower may not be liable for such Guaranteed Obligations and to the same extent as Guarantor would have been liable if such Guaranteed Obligations had been enforceable against Borrower.

(c) Should the status of Borrower change, this Guaranty shall continue and also cover the Guaranteed Obligations of Borrower under the new status according to the terms hereof.

(d) If any payment by Borrower to Lender is held to constitute a preference under the bankruptcy laws, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower to Lender shall not constitute a release of Guarantor from any liability hereunder, but Guarantor agrees to pay such amount to Lender upon demand and this Guaranty shall continue to be effective or shall be reinstated, as the case may be, to the extent of any such payment or payments.

(e) Guarantor shall not have (i) the right to the benefit of, or to direct the application of, any security held by Lender (including the property covered by the Loan Documents), any right to enforce any remedy which Lender now has or hereafter may have against Borrower, or any right to participate in any security now or hereafter held by Lender, or (ii) any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation or other right or remedy of Guarantor against Borrower or

against any security resulting from the exercise or election of any remedies by Lender (including the exercise of the power or right of sale under the Loan Documents), or any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation, from any cause, of the liability of Borrower.

(f) The payment by Guarantor of any amount pursuant to this Guaranty shall not in any way entitle Guarantor to any right, title or interest (whether by way of subrogation or otherwise) in and to any of the Guaranteed Obligations or any proceeds thereof, or any security therefor, unless and until the full amount owing to Lender on the Guaranteed Obligations has been fully paid, but when the same has been fully paid, Guarantor shall be subrogated as to any payments made by it to the rights of Lender against Borrower and/or any endorsers, sureties or other guarantors.

(g) Lender shall not be required to pursue any other remedies before invoking the benefits of the guaranties contained herein, and specifically it shall not be required to make demand upon or institute suit or otherwise pursue its remedies against Borrower or any surety other than Guarantor or to proceed against or give credit for any security now or hereafter existing for the payment of any of the Guaranteed Obligations. Lender may maintain an action on this Guaranty without joining Borrower therein and without bringing a separate action against Borrower.

(h) Guarantor shall at all times maintain (a) unencumbered cash and/or marketable securities in an amount of not less than \$2,000,000 (the "Liquidity Requirement") in the form of (i) cash on hand or on deposit in commercial banks operating in the United States, (ii) readily marketable securities issued by the United States, (iii) readily marketable commercial paper rated A-1 by Standard & Poor's corporation (or a similar rating by any similar organization that rates commercial paper), (iv) certificates of deposit issued by commercial banks operating in the United States with maturities of one (1) year or less, and (v) publicly traded stocks and bonds, and (b) a tangible net worth of at least \$75,000,000 (the "Net Worth Requirement"). The net worth of Guarantor will be calculated in accordance with generally accepted accounting principles, except that in computing net worth, any notes or obligations receivable from any affiliates or Guarantor-related parties which are determined by Lender, in its good faith business judgment, to be inadequately secured shall be given no value as assets. Guarantor will provide Lender with satisfactory evidence confirming compliance with the foregoing requirements promptly after the close of each quarter-annual period in the form of the Compliance Certificate attached as Schedule I to the Loan Agreement. In the event that Guarantor at any time fails to comply with the Liquidity Requirement or the Net Worth Requirement, then Guarantor shall have a period of ten (10) calendar days after receipt of written notice from Lender of such non-compliance in which to cure such non-compliance.

(i) If the Completion Obligations are not timely performed in accordance with the Loan Documents, Lender may elect, in its sole and absolute discretion, to (i) require Guarantor to satisfy the Completion Obligations; or (ii) cause the satisfaction of the Completion Obligations in which event Guarantor will fully indemnify and hold harmless Lender for, from and against all loss, cost, damage, expense or liability that

Lender may suffer in respect of Lender's exercise of its rights under this Guaranty and the performance of the Completion Obligations **INCLUDING LENDER'S NEGLIGENCE AND/OR STRICT LIABILITY**, except to the extent that the same may result from the misconduct or gross negligence of Lender or any of its employees or agents.

(j) Notwithstanding anything to the contrary contained herein, in addition to all of Lender's other rights hereunder and under the other Loan Documents, whether or not Lender elects to complete the Improvements in accordance with Section 11(i) above, in its sole and absolute discretion in lieu of performing the Completion Obligations, Lender may require Guarantor to pay to Lender liquidated damages (the "**Liquidated Damages Payment**") in an amount equal to:

(i) all Project Costs (excluding Interest except to the extent Interest is a Guaranteed Obligation) which would otherwise have been incurred in connection with the construction and completion of the Improvements (even if Lender does not complete the construction of the Improvements) in accordance with the Loan Documents, less

(ii) an amount equal to the undisbursed Loan proceeds as of the date of election by Lender, excluding the undisbursed portion of the Interest Reserve Amount; less

(iii) any funds remaining in the Borrower's Deposit held by Lender.

For purposes of this subsection, Project Costs will be estimated by the Inspecting Architect. Any such amount estimated by the Inspecting Architect shall be conclusive and binding in the absence of manifest error for purposes of determining Guarantor's liability under this subsection, provided that the Inspecting Architect has made such estimate or determination in good faith. The Liquidated Damages Payment shall be due no later than fifteen (15) days following Lender's written demand therefor and shall bear interest at the Default Rate from the due date until paid. The Liquidated Damages payment shall be retained by Lender as liquidated damages, and not as a penalty, the parties agreeing the estimation of such cost of completion would be difficult to compute. The liability and obligations under this subsection will not be limited or restricted by the existence of any other Section of this Guaranty or by the terms of any other guaranty relating to the Loan.

12. Financial Statements and Reports. Guarantor will deliver to Lender the financial statements and reports as more particularly set forth in the Loan Agreement.

13. Joint and Several Liability. Where two or more persons or entities have executed this Guaranty, unless the context clearly indicates otherwise, all references herein to "Guarantor" shall mean the guarantors hereunder or either or any of them. All of the obligations and liability of said guarantors hereunder shall be joint and several. Suit may be brought against said guarantors, jointly and severally, or against any one or more of them, less than all, without impairing the rights of Lender against the other or others of said guarantors; and Lender may

compromise with any one or more of said guarantors for such sums or sum as it may see fit and/or release such of said guarantors from all further liability to Lender for such indebtedness without impairing the right of Lender to demand and collect the balance of such indebtedness from the other or others of said guarantors not so compromised with or released; but it is agreed among said guarantors themselves, however, that such compromising and release shall in nowise impair the rights of said guarantors as among themselves.

14. Disputes Among Guarantors. Where two or more persons or entities have executed this Guaranty, to the extent any dispute exists at anytime between or among such parties as to any party's right to contribution or otherwise, Guarantor agrees to indemnify, defend and hold Lender harmless from and against any loss, damage, claim, demand, cost or other liability (including, without limitation, reasonable attorneys' fees, legal expenses and other costs) Lender may suffer as a result of such dispute.

15. Rights Cumulative. The rights of Lender are cumulative and shall not be exhausted by its exercise of any of its rights hereunder or otherwise against Guarantor or by any number of successive actions until and unless all Guaranteed Obligations have been paid, all Guaranteed Obligations have been performed and each of the obligations of Guarantor hereunder has been performed. The existence of this Guaranty shall not in any way diminish or discharge the rights of Lender under any prior or future guaranty agreement executed by Guarantor.

16. Security Interest. Guarantor hereby grants to Lender a security interest in all property of Guarantor now or hereafter in the possession or custody of or in transit to Lender for any purpose, including safekeeping, collection or pledge, for the account of Guarantor, or as to which Guarantor may have any right or power, shall be held by Lender subject to a lien and security interest in favor of Lender to secure payment and performance of all obligations and liabilities of Guarantor to Lender hereunder. The balance of every account of Guarantor with, and each claim of Guarantor against, Lender existing from time to time shall be subject to a lien and subject to set-off against any and all liabilities of Guarantor to Lender, and Lender may, at any time and from time to time at its option and without notice, appropriate and apply toward the payment of any of such liabilities the balance of each such account or claim of Guarantor against Lender. Guarantor hereby authorizes Lender to file any financing statement or financing statement amendment covering such property of Guarantor or relating to the security interest created herein without the signature of Guarantor, as debtor.

17. Notices. Any notice, request, demand or other communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

To Lender:	Guaranty Bank
	8333 Douglas Avenue
	Dallas, Texas 75225
	Attention: Commercial Real Estate Lending Division

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

With a copy to: Opus Corporation
2555 E. Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attention: Legal Department

With a copy to: Greenberg Traurig LLP
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201
Attention: Susan G. Mitchell

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been given and received either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.

18. **APPLICABLE LAW.** THIS GUARANTY AND THE RIGHTS AND OBLIGATIONS OF GUARANTOR HEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS (WITHOUT GIVING EFFECT TO TEXAS' PRINCIPLES OF CONFLICTS OF LAW) AND THE LAW OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN SUCH STATE.

19. **CONSENT TO FORUM.** GUARANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN DALLAS, TEXAS (OR ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY WHERE ANY PORTION OF THE PROPERTY COVERED BY THE SECURITY INSTRUMENT IS LOCATED) OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OF THE LOAN DOCUMENTS, AND GUARANTOR HEREBY AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY STATE OR FEDERAL COURT SITTING IN DALLAS, TEXAS (OR ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY WHERE ANY PORTION OF THE PROPERTY COVERED BY THE SECURITY INSTRUMENT IS LOCATED) MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO GUARANTOR AT THE ADDRESS OF GUARANTOR FOR THE GIVING OF NOTICES HEREUNDER, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

20. **WAIVER OF JUDICIAL PROCEDURAL MATTERS.** GUARANTOR AND LENDER HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING IN CONNECTION WITH THIS GUARANTY, ANY AND EVERY RIGHT THEY MAY HAVE TO A TRIAL BY JURY.

21. **Counterparts.** This Guaranty may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

22. **No Modification.** This Guaranty may only be modified, waived, altered or amended by a written instrument or instruments executed by the party against which enforcement of said action is asserted. Any alleged modification, waiver, alteration or amendment which is not so documented shall not be effective as to any party.

23. **Successors and Assigns; Gender; Unenforceability of Certain Provisions, Headings.** The terms, provisions, covenants and conditions hereof shall be binding upon Guarantor and the heirs, devisees, representatives, successors and assigns of Guarantor and shall inure to the benefit of Lender and all transferees, credit participants, successors, assignees and/or endorsees of Lender. Within this Guaranty, words of any gender shall be held and construed to include any other gender and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. A determination that any provision of this Guaranty is unenforceable or invalid shall not affect the enforceability or validity of any other provision and any determination that the application of any provision of this Guaranty to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances. The headings in this Guaranty are for convenience only and will not limit or otherwise affect any of the terms hereof.

24. **Final Agreement.** IN ACCORDANCE WITH SECTION 26.02 OF THE TEXAS BUSINESS AND COMMERCE CODE, THE PARTIES ACKNOWLEDGE THAT THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the date first set forth above.

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SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE OF GUARANTOR TO
GUARANTY

OPUS WEST CORPORATION,
a Minnesota corporation

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

STATE OF ARIZONA §
§
COUNTY OF MARICOPA §

This instrument was acknowledged before me on April 17, 2007, by
Charles Vogel, the Senior Vice President of
OPUS WEST CORPORATION, a Minnesota corporation, on behalf of said corporation.

Kim A. Hennis
Notary Public - State of Arizona

My Commission Expires:
12/08/08

Kim A. Hennis
Printed Name of Notary Public



#A13.

Modification Agreement

UNITED STATES BANKRUPTCY COURT Northern District of Texas**Notice of****Chapter 11 Bankruptcy Cases, Meeting of Creditors, & Deadlines**

Chapter 11 bankruptcy cases concerning the debtors listed below were filed on 7/6/09.

You may be a creditor of the debtors. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in these cases may be inspected at the bankruptcy clerk's office at the address listed below.

NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtors (names used by the debtors in the last 8 years, including married, maiden, trade, and address):

Opus West Corporation
2555 E Camelback Road, Suite 800
Phoenix, Arizona 85016
Tax ID No.: 86-0811533
Case No.: 09-34356

O. W. Commercial, Inc.
2555 E Camelback Road, Suite 800
Phoenix, Arizona 85016
Tax ID No.: 20-2789134
Case No.: 09-34363

Opus West Partners, Inc.
2555 E Camelback Road, Suite 800
Phoenix, Arizona 85016
Tax ID No.: 81-0545537
Case No.: 09-34373

Opus West Construction Corporation
2555 E Camelback Road, Suite 800
Phoenix, Arizona 85016
Tax ID No.: 41-0855917
Case No.: 09-34360

Opus West LP
2555 E Camelback Road, Suite 800
Phoenix, Arizona 85016
Tax ID No.: 81-0545535
Case No.: 09-34334

Attorneys for Opus West Corporation, Opus West Construction Corporation, and O. W. Commercial, Inc. (names and addresses):
Clifton R. Jessup, Jr.
Greenberg Traurig, LLP
2200 Ross Avenue, Suite 5200
Dallas, TX 75201
Telephone: 214-665-3600
Facsimile: 214-665-5938

Attorneys for Opus West Partners, Inc., and Opus West LP: (names and addresses):
Peter Franklin
Doug Skierski
Franklin Skierski Lovall Hayward, LLP
10501 N. Central Expressway, Suite 106
Dallas, TX 75231
Telephone: 214-702-4061
Facsimile: 214-723-5345

Meeting of Creditors

Date: August 12, 2009

Time: 2:00 P.M.

Location: Office of the U.S. Trustee, 1100 Commerce St., Room 976, Dallas, TX 75242

Deadline to File a Proof of Claim

Proof of claim must be received by the BMC Group, Debtors' Claims Agent, by the following deadline:

For all creditors (except a governmental unit): 11/9/09

For a governmental unit: _____

Claims Should be Sent to:**IF BY MAIL:**

Opus West Corporation, et al
c/o BMC Group
P.O. Box 3020
Chanhassen, MN 55317-3020

IF BY HAND OR OVERNIGHT COURIER:

Opus West Corporation, et al
c/o BMC Group
18750 Lake Drive East
Chanhassen, MN 55317

623 6737

Creditors with a Foreign Address:

A Creditor to whom this notice is sent at a foreign address should read the information under "claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:**Creditors May Not Take Certain Actions:**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtors and the debtors' property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtors can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:

1100 Commerce Street, Room 1254
Dallas, Texas 75242
Telephone number: 214-753-2000

For the Court:

Clerk of the Bankruptcy Court:
Tawana C. Marshall

Hours Open: Monday – Friday 8:30 AM – 4:30 PM