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

UNITED STATES BANKRUPTCY COURT Northern District of Texas | **PROOF OF CLAIM**

Name of Debtor: Opus West Corporation

Case Number: 09-34356-hdh11

NOTE: *This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.*

Name of Creditor (the person or other entity to whom the debtor owes money or property): Bank of America, N.A., as agent for itself and the other Lenders

☐ 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:
Thompson & Knight LLP
c/o John S. Brannon
1722 Routh St., Suite 1500
Dallas, Texas 75201
Telephone number:
(214) 969-1700

Bank of America, N.A.
c/o Casey Carpenter
Vice-President, Real Estate Special Assets
333 S. Hope St., 11th Floor
Los Angeles, California 90071-1406

Name and address where payment should be sent (if different from above):
Bank of America, N.A.
c/o Casey Carpenter
Vice-President, Real Estate Special Assets
333 S. Hope St., 11th Floor
Los Angeles, California 90071-1406
Telephone number:
(213) 621-3604

☐ Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

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

1. Amount of Claim as of Date Case Filed: $ $25,277,233.84

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

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

☐ Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.

2. Basis for Claim: *See Addendum
(See instruction #2 on reverse side.)

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

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

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

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

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

Amount of arrearage and other charges as of time case filed included in secured claim,

if any: $_____ **Basis for perfection:** _____

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

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:

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.*

Date: 11/09/2009

Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.

Dean M Lyons

DEAN M. LYONS
AUTHORIZED AGENT

FOR COURT USE ONLY

OPUS WEST
00607

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

Arch Road Stockton

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NOV 09 2009
BMC GROUP

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

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

EXHIBIT A – ADDENDUM TO PROOF OF CLAIM (ARCH ROAD STOCKTON) OF BANK OF AMERICA, N.A., AGENT BANK

1. This proof of claim is made by Bank of America, N.A. ("Bank of America"), as Agent for itself and for two (2) other Lenders (as such terms are hereinafter defined).

2. Pursuant to that certain Construction Loan Agreement dated as of October 4, 2007 (as amended, the "Loan Agreement"), LaSalle Bank National Association ("LaSalle"), as the agent on behalf of itself, Sovereign Bank, and Raymond James Bank, FSB (collectively, the "Lenders") agreed to make a loan to Arch Road Limited Partnership ("Arch Road"), as Borrower, in the original principal amount of Fifty-Four Million Nine-Hundred Seventy-Five Thousand and No/100 Dollars ($54,975,000.00) (the "Loan"). The purpose of the Loan was to provide financing for the development and construction of improvements on the Property (as defined herein).

3. Bank of America is the successor in interest by merger to LaSalle and, accordingly, is the successor agent for itself and the other Lenders (in such capacity the "Agent") and as one of the Lenders.

4. The Loan is secured by perfected mortgages, security interests, and liens in and to the Property (as defined herein) as described and granted in the Loan Agreement and in the following additional documents (the following described documents, together with any and all other or additional agreements, instruments, or other documents evidencing, securing, or otherwise relating to the Loans are hereinafter referred to collectively as the "Loan Documents"):

a. Amended and Restated Promissory Notes made by Arch Road to each of the Lenders in the aggregate amount of $54,975,000.00 (collectively, as amended, the "Notes").[1]

b. A Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of October 4, 2007, executed by Arch Road to First American Title Insurance Company, as Trustee, for the benefit of Agent and recorded in the Official Records of San Joaquin County, California (the "Official Records") on October 8, 2007, as Document No. 2007-174143 (as amended, "Deed of Trust"). The Deed of Trust encumbers, among other things, certain real property located in San Joaquin County, California, as more particularly described therein (the "Property"). The Deed of Trust, inclusive of all assignment and security provisions contained therein, gives Agent a security interest in the Property,

[1] The Notes amend earlier promissory notes as stated therein.

improvements, land, proceeds, leases, rents and all other interests (as more fully described therein) derived from and related to the Property (collectively, the "Collateral").

c. Those certain certificates and assignments, each dated as of October 4, 2007, collectively referred to herein as the "Certificates and Assignments":

i. That certain Certificate of Representations, Warranties and Covenants executed by Arch Road and Opus West Corporation in favor of Agent, for itself and the other Lenders;

ii. That certain Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits, executed by Arch Road in favor of Agent for itself and the other Lenders;

iii. That certain Assignment of Sales Contracts, executed by Arch Road in favor of Agent, for itself and the other Lenders;

iv. That certain Assignment of Agreement to Construct and Acquire Public Facilities for Arch Road East Community Facilities District Bond No. 99-02 executed by Arch Road in favor of Agent, for itself and the other Lenders;

d. On March 21, 2008, Agent, Arch Road and certain other parties entered into a letter agreement that amended certain provisions of the Loan Agreement (the "Modification Agreement").

e. Financing Statements

i. A form UCC-1 financing statement was filed in the Delaware Department of State on October 5, 2007, as Filing No. 20073772968, naming Arch Road as debtor and Agent as secured party.

ii. A form UCC-1 financing statement was filed in the Official Records on October 8, 2007, as Filing No. 2007-174144, naming Arch Road as debtor and Agent as secured party. (collectively, the "Financing Statements"). The Financing Statements further perfected Agent's security interests in the Collateral.

5. Opus West Corporation, a Minnesota corporation, executed a Guaranty of Payment and Completion on October 4, 2007, wherein Opus West Corporation irrevocably and unconditionally guaranteed the obligations of Arch Road to the Agent and the other Lenders under the Loan.

6. Prior to the July 6, 2009 petition date of Opus West Corporation (the "Petition Date"), Arch Road defaulted under the terms of the Loan Documents. As a result of the events of default, Agent sent Arch Road a default letter dated April 9, 2009, notifying it of the various events of default that had occurred and demanding that it pay all past-due amounts in accordance with the terms of the Loan Documents. Arch Road failed to cure the defaults under the Loan.

7. As of the Petition Date, the following liquidated, uncontested, and non-contingent

amount was and is due and owing to Agent under the Loan Documents in an amount not less than **$25,277,233.84** (the "Liquidated Agent Claim Amount"), which consists of:

Principal	
Tranche A Tranche B	$18,149,080.54 $ 6,867,938.33 $25,017,018.87
Interest Tranche A Tranche B	 $177,003.74 $ 73,902.43 $250,906.17
Prepetition Costs and Fees of Bank of America Consulting Fees	$9,308.80
TOTAL:	**$25,277,233.84**

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

Tranche A

	Pro-Rata Share
Sovereign Bank	37.460913078%
Raymond James Bank, FSB	62.539086922%

Tranche B

Bank of America, N.A.	100.00%

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

a. Sovereign Bank $ as-yet undetermined

b. Raymond James Bank, FSB $ as-yet undetermined

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

a. Post-Petition Interest. The amount of interest accruing on the outstanding principal amount of the Loan from the Petition Date to the date of

payment of the Loan, at the rates and in the manner set forth in applicable Loan Documents;

b. Other Post-Petition Interest. The amount of interest accruing from the Petition Date on past-due installments of interest on the Loan to the date of payment of such installments, which accrues at the rates and in the manner set forth in the applicable Loan Documents; and

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

11. As the amount of the claims asserted in paragraph 10 hereof cannot, at this time, be reasonably calculated or estimated, the total amount of all claims set forth in this proof of claim currently (the "Final Claim Amount") is unliquidated, but is in no event less than the Liquidated Agent Claim Amount of **$25,277,233.84 (plus the Other Lender Costs)**. The Final Claim Amount of Bank of America, as Agent, may be in a greater amount than stated herein. The Agent, for itself and the other Lenders, does not waive any of its/their rights to recover all of the foregoing amounts by not asserting a specific dollar amount at this time.[2]

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

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

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

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

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

Date: November 9, 2009

Respectfully submitted,

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

THOMPSON & KNIGHT LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Telephone: 214/969-1700
Facsimile: 214/969-1751
E-mail: david.bennett@tklaw.com
E-mail: john.brannon@tklaw.com

Katharine Battaia Richter
Texas Bar No. 24046712
THOMPSON & KNIGHT LLP
98 San Jacinto Boulevard, Suite 1900
Austin, Texas 78701
Telephone: 512/469-6100
Facsimile: 512/482-5076
E-mail: katie.richter@tklaw.com

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

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

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

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BANK OF AMERICA, N.A., AGENT BANK

ATTACHMENT 1: Construction Loan Agreement dated October 4, 2007 by and among Arch Road Limited Partnership, LaSalle Bank National Association, Sovereign Bank, and Raymond James Bank, FSB in the original principal amount of $54,975,000.00.

ATTACHMENT 2: Amended and Restated Promissory Notes made by Arch Road to each of the Lenders in the aggregate amount of $54,975,000.00.

ATTACHMENT 3: Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated October 4, 2007 recorded in the Official Records of San Joaquin County, California on October 8, 2007, as Document No. 2007-174143.

ATTACHMENT 4: Certificate of Representations, Warranties and Covenants dated October 4, 2007.

ATTACHMENT 5: Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits dated October 4, 2007.

ATTACHMENT 6: Assignment of Sales Contracts dated October 4, 2007.

ATTACHMENT 7: Assignment of Agreement to Construct and Acquire Public Facilities dated October 4, 2007.

ATTACHMENT 8: Letter Agreement dated March 21, 2008 ("Modification Agreement").

ATTACHMENT 9: UCC-1 Financing Statement filed in the Delaware Department of State on October 5, 2007 as Filing No. 20073772968.

ATTACHMENT 10: UCC-1 Financing Statement filed with San Joaquin County on October 8, 2007 as Filing No. 2004-174144.

ATTACHMENT 11: Guaranty of Payment and Completion dated October 4, 2007.

ATTACHMENT 12: Default letter dated April 9, 2009.

ATTACHMENT 1

CONSTRUCTION LOAN AGREEMENT

dated as of October 4, 2007

by and between

ARCH ROAD LIMITED PARTNERSHIP
a Delaware limited partnership,
as Borrower

THE FINANCIAL INSTITUTIONS PARTY HERETO, as Co-Lenders

and

LASALLE BANK NATIONAL ASSOCIATION,
a national banking association, as Agent

Arch Road Industrial Park
Stockton, California

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CONSTRUCTION LOAN AGREEMENT

This **LOAN AGREEMENT** dated as of October 4, 2007 (the "Agreement"), is executed by and among **ARCH ROAD LIMITED PARTNERSHIP,** a Delaware limited partnership (the "Borrower"), the financial institutions that are or may from time to time become parties hereto and are described on Schedule 3.1 hereto (together with LaSalle and their respective successors and assigns, the "Banks") and **LASALLE BANK NATIONAL ASSOCIATION,** a national banking association (in its individual capacity, "LaSalle"), as agent for itself and the other Banks.

RECITALS:

A. Borrower is the owner of the property described in **Exhibit "A"** attached hereto.

B. Borrower has applied to the Banks for loans for the purpose of financing the costs and expenses associated with the acquisition, predevelopment and site work in developing the Land (as hereinafter defined) as an industrial park complex on approximately 473 acres of land and the Banks are willing to make the Loans (as hereinafter defined) upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, the parties hereto represent and agree as follows:

ARTICLE 1

INCORPORATION AND DEFINITIONS

1.1 **Incorporation and Definitions**. The foregoing recitals and all exhibits hereto are hereby made a part of this Agreement. The following terms shall have the following meanings in this Agreement:

Acquisition Agreement: That certain Agreement to Construct and Acquire Public Facilities for Arch Road East Community Facilities District No. 99-02, dated as of September 1, 2007 entered into by and between the City, the Arch Road District, and Borrower in connection with the Project, and any amendments and modifications thereto.

Affiliate: Any entity which, directly or indirectly, controls or is controlled by or is under common control with Borrower or Guarantor.

Agent: As of the date hereof, LaSalle in its capacity as agent for the Banks and any successor or assign of LaSalle in such capacity.

Allocated Loan Amount: Shall mean the number of acres or portions thereof measured in square feet to be released divided by the Usable Acres multiplied by the Commitment Amount.

Applicable Margin: With respect to LIBOR Loans, two and thirty-five one hundredths percent (2.35%) per annum.

Approved Sale Contract: A sales contract for any portion of the Project that has been specifically approved in writing by Agent, in Agent's reasonable discretion.

Arch Road District: The Arch Road East Community Facilities District No. 99-02.

Available Commitment: As to any Bank at any time, the difference between (A) the amount of such Bank's Commitment, and (B) the aggregate principal amount of all Loans theretofore made by such Bank, provided that upon the Maturity Date the Available Commitment shall equal zero.

Bank(s): As defined in the Preamble.

Base Rate: At any time, the greater of (a) the Federal Funds Rate plus one half of one percent (0.50%)or (b) the Prime Rate.

Base Rate Loan: Any Loan which bears interest at a rate determined by reference to the Base Rate.

Borrower: As defined in the Preamble.

Borrowing Date: Any Business Day specified in a Request for Advance as a date on which Borrower requests the Banks to make Loans hereunder.

Business Day: Any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Chicago, Illinois.

CFD Bonds: The Arch Road Community District Facilities Bonds to be issued by the City in the amount of Nineteen Million Sixty Five Thousand and 00/100 Dollars ($19,065,000.00), of which a portion of the proceeds of the sale thereof are to be utilized to pay or reimburse Borrower for certain infrastructure work and expenses by Borrower as developer under the Acquisition Agreement.

City: The City of Stockton, California, a municipal corporation of the State of California operating under a freeholder's charter.

Commitment: With respect to any Bank, such Bank's commitment to make Loans under this Agreement. The initial amount of each Bank's Commitment and Pro Rata Share of the Commitment Amount is set forth on Schedule 3.1 attached hereto.

Commitment Amount: At any time, the aggregate principal amount of the Loans outstanding at such time plus the sum of the Available Commitments of each Bank at such time. The maximum Commitment Amount is equal to Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00).

Commitment Fee: The commitment fee payable to Agent pursuant to that certain letter agreement, dated of even date herewith, between Agent and Borrower.

Contractor: A contractor selected by the Borrower in accordance with the terms of the Acquisition Agreement.

Deed of Trust: As defined in Section 5 hereof.

Default Rate: As defined in Section 4.1 hereof.

Engineer: Kier & Wright Civil Engineers & Surveyors, Inc.

Environmental Assessment: Means collectively the reports and matters listed on **Exhibit "G"** attached hereto.

Environmental Indemnity Agreement: As defined in Section 5 hereof.

Environmental Laws: As defined in the Environmental Indemnity Agreements.

Equity Requirement: The requirement that Borrower demonstrate a cash equity contribution to the Project in the amount of not less than $23,641,685.00.

ERISA: means the Employee Retirement Income Security Act of 1974.

Eurocurrency Reserve Percentage: With respect to any LIBOR Loan for any Interest Period, a percentage (expressed as a decimal) equal to the daily average during such Interest Period of the percentage in effect on each day of such Interest Period, as prescribed by the FRB, for determining the aggregate maximum reserve requirements applicable to "Eurocurrency Liabilities" pursuant to Regulation D or any other then applicable regulation of the FRB which prescribes reserve requirements applicable to "Eurocurrency Liabilities" as presently defined in Regulation D.

Event of Default: One or more of the events or occurrences referred to in Article 11 of this Agreement.

Extended Maturity Date: October 4, 2010.

Extension Fee: .125% of the outstanding principal balance of the Loans plus any unfunded Commitment Amount at the time Borrower exercises the option to extend the Loans to the Extended Maturity Date, if applicable.

Federal Funds Rate: For any day, a fluctuating interest rate for each day during such period equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Agent from three Federal funds brokers of

recognized standing selected by the Agent. The Agent's determination of such rate shall be presumed accurate in the absence of demonstrated error.

Final Disbursement: As defined in Section 7.5 hereof.

FRB: The Board of Governors of the Federal Reserve System or any successor thereof.

Fiscal Agent: The Bank of New York Trust Company, N.A.

Fiscal Agent Agreement: That certain Fiscal Agent Agreement dated as of September 1, 2007 by and between the City and Fiscal Agent.

General Partner: Stockton GP, L.L.C., a Delaware limited liability company, the general partner of Borrower.

Governmental Authority: Any federal, state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

Guarantor: Opus West Corporation, a Minnesota corporation, or a substitute guarantor as provided for in Section 8.16.

Hazardous Substances: As defined in the Environmental Indemnity Agreement.

Improvement Fund: The Improvement Fund established with Fiscal Agent pursuant to the Fiscal Agent Agreement.

Interest Period: As to any LIBOR Loan, the period commencing on the date such Loan is borrowed or continued as, or converted into, a LIBOR Loan and ending on the date one, two, three or six months thereafter as selected by Borrower pursuant to Section 7.2 or Section 4.4(b); provided that:

(i) each Interest Period occurring after the initial Interest Period of any LIBOR Loan shall commence on the day on which the preceding Interest Period for such LIBOR Loan expires;

(ii) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the following Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day;

(iii) any Interest Period that begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iv) Borrower may not select any Interest Period for a Loan which would extend beyond the scheduled Maturity Date.

Interest Reserve: As defined in Section 4.2 hereof.

Land: Those parcels of real estate legally described in **Exhibit "A"** to this Agreement, together with all improvements presently located thereon and all easements and other rights appurtenant thereto.

LaSalle: As defined in the Preamble.

Lease(s): Any and all leases, licenses or agreements for use of any part of the Premises.

Legal Requirements: As to any person or party, the certificate of formation and limited liability company agreement or other organizational or governing documents of such person or party, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such person or party or any of its property or to which such person or party or any of its property is subject.

LIBOR Loan: Any Loan which bears interest at a rate determined by reference to the LIBOR Rate (Reserve Adjusted).

LIBOR Office: With respect to any Bank, the office or offices of such Bank which shall be making or maintaining the LIBOR Loans of such Bank hereunder. A LIBOR Office of any Bank may be, at the option of such Bank, either a domestic or foreign office.

LIBOR Rate: With respect to any LIBOR Loan for any Interest Period, the per annum rate of interest at which United States dollar deposits in an amount comparable to the amount of such LIBOR Loan and for a period equal to the relevant Interest Period are offered in the London Interbank Eurodollar market at 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period (or three Business Days prior to the commencement of such Interest Period if banks in London, England were not open and dealing in offshore United States dollars on such second preceding Business Day), as displayed in the *Bloomberg Financial Markets* system (or other authoritative source selected by the Agent in its reasonable discretion).

LIBOR Rate (Reserve Adjusted): With respect to any LIBOR Loan for any Interest Period, a rate per annum equal to (A) the LIBOR Rate, divided by (B) a number determined by subtracting from 1.00 the Eurocurrency Reserve Percentage.

Loan Documents: This Agreement, the documents specified in Article 5 hereof and any other instruments evidencing, securing or guarantying obligations of any party under the Loan.

Loan Expenses: As defined in Section 7.2(d) hereof.

Loan Opening: The first disbursement of the Loan.

Loan Opening Date: October 4, 2007.

Loan Proceeds: All amounts advanced as part of the Loan, whether advanced directly to Borrower or otherwise.

Loans: The loans to be made by the Banks pursuant to this Agreement.

Material Adverse Occurrence: Any occurrence of whatsoever nature (including any adverse determination in any litigation, arbitration or governmental investigation or proceeding) which materially adversely affects the financial condition or operations of Borrower with respect to the Project or the Project itself or materially impairs the ability of Borrower or Guarantor to perform their respective obligations under the Loan Documents or the ability of Agent to enforce its rights or remedies under the Loan Documents.

Maturity Date: October 4, 2009, unless extended to the Extended Maturity Date pursuant to the terms of Section 4.12 below, in which case the Maturity Date shall be extended to the Extended Maturity Date.

Note(s): Collectively, the notes made by Borrower payable to each Bank in the aggregate amount of the Commitments and in the Form of **Exhibit "B"** hereto.

Permitted Exceptions: The title exceptions specified in **Exhibit "C"** hereto, together with such additional exceptions as may be approved in writing by Agent or are permitted by the terms hereof.

Plans and Specifications: The plans and specifications for the Project as reasonably approved by Agent in writing.

Premises: The Land and any improvements thereon.

Prime Rate: For any day, the rate of interest most recently publicly announced by LaSalle at Chicago, Illinois as its prime or base rate. A certificate made by an officer of LaSalle stating the Prime Rate in effect on any given day, for the purposes hereof, shall be conclusive evidence of the Prime Rate in effect on such day. The Prime Rate is a base reference rate of interest adopted by LaSalle as a general benchmark from which LaSalle determines the floating interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness and Borrower acknowledges and agrees that LaSalle has made no representations whatsoever that the Prime Rate is the interest rate actually offered by LaSalle to borrowers of any particular creditworthiness. The effective date of any change in the Prime Rate shall for purposes hereof be the date the Prime Rate is publicly changed by LaSalle. LaSalle shall not be obligated to give notice to Borrower of any change in the Prime Rate. If LaSalle shall issue more than one Prime Rate, for purposes hereof, the Prime Rate shall be the lowest such rate.

Project: The Land, together with various preliminary pre-development entitlement work and infrastructure work (including demolition costs, related soft costs, real estate taxes, design consultant fees, planning, architect's fees, interest reserve and contingency) in connection wth the proposed development of the Land and certain off-site improvement work required in connection with the development of the Premises.

Project Budget: The Project Budget attached to this Agreement as **Exhibit "D"**, or such budget and amendments thereto subsequently approved in writing by Borrower and Agent.

Project Costs: The costs of the Project as set forth in the Project Budget.

Pro Rata Share: As to any Bank at any time, the percentage which such Bank's Commitment then constitutes of the aggregate Commitments (or, at any time after the Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Bank's Loans then outstanding bears to the aggregate principal amount of the Loans then outstanding), as initially described on Schedule 3.1 attached hereto.

Regulatory Change: As to any Bank, the introduction of, or any change in any applicable law, treaty, rule, regulation or guideline or in the interpretation or administration thereof by any Governmental Authority or any central bank or other fiscal, monetary or other authority having jurisdiction over the Banks or their lending offices.

Request for Advance: As defined in Article 7.3 of this Agreement.

Required Banks: Banks having Pro Rata Shares aggregating one hundred percent (100%).

Roads: As defined in Article 7.4 of this Agreement.

Subdivision Agreement: That certain Subdivision Agreement between the City of Stockton, D. Bruce Fite, Marvin L. Oates, as Trustee of the Marvin L. Oates Trust dated March 7, 1995, as amended and restated December 20, 2001, Philip D. Oates, and OBF, a California general partnership, dated May 17, 2005 and recorded on May 24, 2005 as Document No. 2005-124538 in the San Jaoquin County Official Records.

Tesco Parcel: The portion of the Land so designated by the Borrower and Agent and subject to that certain Letter of Intent dated August 1, 2007 by and between Borrower and Fresh & Easy Neighborhood Market, Inc.

Title Insurance Company: First American Title Insurance Company.

Usable Acres: Four Hundred and Twenty Two (422) acres of the Land.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

2.1 **Representations and Warranties**. To induce the Banks to execute and perform this Agreement, Borrower hereby represents, covenants and warrants to the Banks as follows:

(a) At the Loan Opening and at all times thereafter until the Loan is paid in full, Borrower will have a good and indefeasible fee simple title to the Land subject only to the Permitted Exceptions and the lien of the Loan Documents;

(b) Borrower is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to conduct business in the State of California. Borrower has full power and authority to conduct its business as presently conducted, to develop the Project, to enter into this Agreement and to perform all of its duties and obligations under this Agreement and under the Loan Documents; such execution and performance have been duly authorized by all necessary partner approval. To the best of Borrower's knowledge, there are no investigations being conducted involving criminal activities of Borrower;

(c) This Agreement, the Notes, the Deed of Trust, the other Loan Documents and any other documents and instruments required to be executed and delivered by Borrower in connection with the Loans, when executed and delivered, will constitute the duly authorized, valid and legally binding obligations of the party required to execute the same and will be enforceable in accordance with their respective terms (except to the extent that enforceability may be affected or limited by applicable bankruptcy, insolvency and other similar debtor relief laws and principles of equity affecting the enforcement of creditors' rights generally); no basis presently exists for any claim against Agent under this Agreement, under the Loan Documents or with respect to the Loans; and enforcement of this Agreement and the Loan Documents is subject to no defenses of any kind;

(d) The execution, delivery and performance of this Agreement, the Notes, the Deed of Trust, the other Loan Documents and any other documents or instruments to be executed and delivered to Agent by Borrower pursuant to this Agreement or in connection with the Loans, the acquisition of the Premises, the occupancy and use of the Premises or the performance of the Project will not, to the best of Borrower's knowledge: (i) violate any Legal Requirements or (ii) conflict with, be inconsistent with, or result in any material breach or default of any of the terms, covenants, conditions or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which Borrower is a party or by which it may be bound. Borrower is not in default (without regard to grace or cure periods) under any contract or agreement to which it is a party which default would constitute a Material Adverse Occurrence;

(e) No condition, circumstance, event, agreement, document, instrument, restriction, known litigation or proceeding (or to the knowledge of Borrower, pending or threatened litigation or proceeding or basis therefor) exists which, if determined

adversely to Borrower would adversely affect the validity or priority of the liens and security interests granted Agent under the Loan Documents or constitute a Material Adverse Occurrence;

(f) To the best of Borrower's knowledge, the Land and the use and occupancy of the Premises will not violate or conflict in any material respect with any material applicable law, statute, ordinance, rule, regulation or order of any kind, including, without limitation, Environmental Laws, zoning, building, land use, noise abatement, occupational health and safety or other laws (subject to Borrower's right to contest set forth in Section 8.10 hereof), any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not and if a third-party is required under any covenants, conditions and restrictions of record or any other agreement to consent to the construction, use and/or operation of the Project, Borrower has obtained (or will obtain in a timely manner) such approval from such party to which such approval relates. In addition, and without limiting the foregoing, the Borrower shall (a) ensure that no person or entity owns a controlling interest in or otherwise controls the Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of any Loan Proceeds to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended;

(g) Except as provided in the Environmental Assessment or otherwise set forth in the Environmental Indemnity Agreement and to the best of Borrower's knowledge, (i) the Land has never been used for any activities which, directly or indirectly, involve the use, generation, treatment, storage, transportation or disposal of any Hazardous Substances in violation of applicable law, (ii) no Hazardous Substances exist now, on or under the Premises or in any surface waters or groundwaters on or under the Premises other than customary amounts used in the operation of the Project in compliance with applicable laws. The Premises, to Borrower's knowledge and except as disclosed by the Environmental Assessment, have at all times complied with and will comply with all Environmental Laws, and Borrower has not violated, and will not violate, any Environmental Laws;

(h) Except as provided in the Environmental Assessment, to the best of Borrower's knowledge, there are no facilities on the Premises which are subject to reporting under any laws of the State of California or Section 312 of the Federal Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11022), and federal regulations promulgated thereunder. To the best of Borrower's knowledge, the Premises do not contain any identified underground storage tanks;

(i) All financial statements submitted by Borrower to Agent in connection with the Loans are true and correct in all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied, and fairly

present the respective financial conditions and results of operations of the entities which are their subjects;

(j) This Agreement and all financial statements, and, to the best of Borrower's knowledge, all budgets, schedules, opinions, certificates, confirmations, applications, affidavits, agreements, and other materials submitted to Agent in connection with or in furtherance of this Agreement by or on behalf of Borrower fully and fairly state the matters with which they purport to deal, and neither misstate any material fact nor, separately or in the aggregate, fail to state any material fact necessary to make the statements made not misleading;

(k) The Loans, including interest rate, fees and charges as contemplated hereby, are business loans; and to the best of Borrower's knowledge, the Loans do not, and when disbursed will not, violate the provisions of the usury laws of the State of California, any consumer credit laws or the usury laws of any state which may have jurisdiction over this transaction, Borrower or any property securing the Loans;

(l) There are no leases for use or occupancy of any part of the Premises;

(m) The Acquisition Agreement is in full force and effect and has been duly authorized, executed and delivered by Borrower. Borrower has full power and authority to perform its duties and obligations under the Acquisition Agreement. Neither Borrower nor the to the best of Borrower's knowledge, any party to the Acquisition Agreement, is in default (without regard to grace or cure periods) under the Acquisition Agreement and to the best of Borrower's knowledge, no events exists which, with notice or the passage of time would constitute a default under the Acquisition Agreement; and

(n) The Subdivision Agreement is in full force and effect and has been duly assumed by Borrower. Borrower has full power and authority to perform its duties and obligations under the Subdivision Agreement. Neither Borrower nor the to the best of Borrower's knowledge, any party to the Subdivision Agreement, is in default under the Subdivision Agreement and to the best of Borrower's knowledge, no events exists which, with notice or the passage of time would constitute a default under the Subdivision Agreement.

For purposes of this Agreement and all Loan Documents, the phrase "to the best of Borrower's knowledge", "knowledge", or words of similar import shall mean be actual knowledge of Wade Lau, Vice President of the General Partner, Don Little, Vice President of the General Partner, and Charles Vogel, Senior Vice President of Guarantor, and their successors in their respective offices, and Borrower represents that the foregoing individuals are the representatives of Borrower most familiar with the Project.

2.2 **Continuation of Representations and Warranties.** The Borrower hereby covenants, warrants and agrees that except for representations and warranties made in Section 2.1 hereof that become untrue or incorrect in any material respect as a result of changes in facts over time, the representations and warranties made in Section 2.1 hereof shall be and shall remain true and correct in all material respects at the time of the Loan Opening and at all times

thereafter so long as any part of the Loans shall remain outstanding. If, as a result of changes in facts over time, a representation or warranty is no longer correct in all material respects, the Banks shall have the right to withhold further fundings of the Loans. In addition, if the breach of such representation or warranty results in a Material Adverse Occurrence, an Event of Default shall be deemed to have occurred unless, within thirty (30) days after Borrower learns of such breach, Borrower cures such breach. Each Request For Advance shall constitute a reaffirmation that these representations and warranties are true in all material respects, as of the date of such Request For Advance and will be true on the date of the advance.

ARTICLE 3

AMOUNT AND TERMS OF COMMITMENTS

3.1 **Agreement to Lend and to Borrow; Notes**.

(a) Subject to the conditions and upon the terms provided for in this Agreement, each Bank severally agrees to make Loans to Borrower in an aggregate principal amount not to exceed the amount of the Commitment of such Bank indicated on Schedule 3.1 hereto. The Loans may from time to time be (i) LIBOR Loans, (ii) Base Rate Loans, or (iii) a combination thereof, as determined by Borrower and notified to Agent in accordance with the terms hereof.

(b) The Loans made by each Bank shall be evidenced by a Note of Borrower, substantially in the form of **Exhibit "B"** hereto, with appropriate insertions therein as to payee, date and principal amount, payable to the order of such Bank. The date, amount and type of each advance and payment or prepayment of principal with respect thereto, each continuation thereof, each conversion of all or a portion thereof to another type and, in the case of LIBOR Loans, the length of each Interest Period with respect thereto shall be recorded by each Bank on its books and, (prior to any transfer of its Note or, at the discretion of each Bank, at any other time) endorsed by each Bank, on the schedules annexed to and constituting a part of its Note. Each such recordation shall constitute presumptive evidence of the accuracy of the information so recorded in the absence of manifest error. The Note of each Bank shall (i) be dated the date hereof or, if a Bank's interest is hereafter assigned, the effective date of such assignment, (ii) be stated to mature on the Maturity Date, and (iii) provide for the payment of interest in accordance with Article 4 hereof.

(c) No portion of any Loan shall be funded with plan assets of (i) any employee benefit plan subject to Title I of ERISA, (ii) any plan covered by Section 4975 of the Code, or (iii) any government plan subject to state laws that are comparable to Title I of ERISA or Section 4975 of the Code.

3.2 **Commitments Several**. The failure of any Bank to make a requested Loan on any date shall not relieve any other Bank of its obligation (if any) to make a Loan on such date, but no Bank shall be responsible for the failure of any other Bank to make any Loan to be made by such other Bank.

3.3 **Certain Conditions**. Notwithstanding any other provision of this Agreement, no Bank shall have an obligation to make any Loan or to permit the continuation of or any conversion into any LIBOR Loan, if an Event of Default exists and is continuing.

ARTICLE 4

PRINCIPAL, INTEREST; SPECIAL PROVISIONS FOR LIBOR LOANS

4.1 **Interest Rates**. Borrower promises to pay interest on the unpaid principal amount of each Loan for the period commencing on the date of such Loan until such Loan is paid in full as follows:

(a) at all times while such Loan is a Base Rate Loan, at a rate per annum equal to the Base Rate from time to time in effect; and

(b) at all times while such Loan is a LIBOR Loan, at a rate per annum equal to the sum of the LIBOR Rate (Reserve Adjusted) applicable to each Interest Period for such Loan plus the Applicable Margin from time to time in effect;

provided that at any time an Event of Default exists and is continuing, the interest rate applicable to each Loan shall be increased by five percent (5.00%) (the "Default Rate").

4.2 **Payment of Principal and Interest**.

(a) Accrued interest on each Base Rate Loan and each LIBOR Loan shall be payable in arrears on the first day of each calendar month and on the first day of the month in which the Maturity Date (or Extended Maturity Date, as the case may be) occurs.

(b) The outstanding principal balance on all Loans made by the Banks hereunder shall be due and payable in full on the Maturity Date if the Maturity Date is not extended to the Extended Maturity Date pursuant to Section 4.12, in which event the outstanding principal balance will be due on the Extended Maturity Date. After the Maturity Date or Extended Maturity Date, as applicable, accrued interest on all Loans shall be payable on demand.

(c) Borrower hereby authorizes and directs Agent to disburse to Banks interest on the dates interest payments are due from the undisbursed proceeds of the Loans in an amount not to exceed the line item in the Project Budget allocated for the payment of interest, which amount shall constitute an interest reserve (the "Interest Reserve") and which shall be withheld from the Borrower until disbursed by the Banks and which, when disbursed, shall constitute a Loan hereunder; provided, however, that upon disbursement of the Interest Reserve, interest shall be paid directly by the Borrower from sources other than the proceeds of a Loan.

(d) Prior to the occurrence of an Event of Default, and except as provided in the last sentence hereof, all payments and prepayments on account of the indebtedness evidenced by the Notes shall be applied as follows: (i) first, to fees, expenses, costs and

other similar amounts then due and payable to the Banks, (ii) second, to the extent not funded from the Interest Reserve, to accrued and unpaid interest on the principal balance of the Notes, (iii) third, to the payment of principal due in the month in which the payment or prepayment is made, if any, (iv) fourth, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents, (v) fifth, to any other amounts then due the Banks hereunder or under any of the Loan Documents, and (vi) last, to the unpaid principal balance of the Notes. After an Event of Default has occurred and is continuing, payments shall be applied as required under applicable law and in the absence of any such requirements, payments may be applied to amounts owed hereunder and under the Loan Documents in such order as Agent shall determine, in its sole discretion, subject to Section 4.7 hereof. Notwithstanding anything to the contrary hereinabove contained, payments received pursuant to the Acquisition Agreement and as partial release payments pursuant to Section 14.1 hereof shall be applied first to the unpaid principal balance of the Notes.

(e) All payments of principal (including prepayments) and accrued interest shall be paid by wire transfer or check in United States Dollars, to Agent, for the account of the Banks, at such place as Agent may from time to time direct, and in the absence of such direction, then at the offices of Agent at 135 South LaSalle Street, 12th Floor, Chicago, Illinois 60603. Payment made by check shall be deemed paid on the date Agent receives such check; provided, however, that if such check is subsequently returned to Agent unpaid due to insufficient funds or otherwise, the payment shall not be deemed to have been made and shall continue to bear interest until collected. Notwithstanding the foregoing, the final payment due under the Notes must be made by wire transfer or other immediately available funds.

(f) If any monthly installment payment of interest or principal due hereunder (other than an advance of interest payments by the Banks from the Interest Reserve as and when permitted hereunder and funds were available in the Interest Reserve for such purpose) is not made within five (5) days after such payment is due in accordance with the terms hereof, then, in addition to the payment of the amount so due, Borrower shall pay to Agent on demand a one-time "late charge" of four cents for each whole dollar so overdue to defray part of the cost of collection and handling such late payment. The late charge shall not apply to the principal payment due on the Maturity Date (or Extended Maturity Date, as the case may be) or upon acceleration of the Maturity Date (or Extended Maturity Date, as the case may be) upon the occurrence of an Event of Default. Borrower agrees that the damages to be sustained by the holder hereof for the detriment caused by any late payment are extremely difficult and impractical to ascertain, and that the amount of four cents for each one dollar due is a reasonable estimate of such damages, does not constitute interest, and is not a penalty.

(g) Base Rate Loans and LIBOR Loans may be prepaid either in whole or in part at any time and from time to time without penalty or premium upon three (3) days prior notice to Agent; provided, however, that if a LIBOR Loan is prepaid on a date other than the last day of the applicable Interest Period, it shall be accompanied by any amounts due under Section 4.11 hereof.

(h) All principal payments required to be made under Article 14 hereof, shall be applied in accordance with subsection (d) above.

(i) All proceeds received by Borrower from the Improvement Fund pursuant to the Acquisition Agreement and Fiscal Agent Agreement shall be paid to Agent and applied in accordance with subsection (d) above.

4.3 **Various Types of Loans; Setting and Notice of LIBOR Rates**.

(a) Each Loan shall be divided into tranches which are either a Base Rate Loan or a LIBOR Loan (each a "type" of Loan), as Borrower shall specify in the Request For Advance pursuant to Section 7.3 hereof. Base Rate Loans and LIBOR Loans may be outstanding at the same time, provided that not more than five (5) different tranches of LIBOR Loans shall be outstanding at any one time. All borrowings, conversions and repayments of Loans shall be effected so that each Bank will have a pro rata share (according to its Pro Rata Share) of all Loans. Each LIBOR Loan shall be in an aggregate amount of at least One Hundred Thousand and 00/100 Dollars ($100,000.00) unless outstanding funds not committed to LIBOR Loans (such as funds advanced for a current draw) or in expiring LIBOR Loans are less than such amount, in which case the LIBOR Loan shall be in the amount of all such available funds.

(b) The applicable LIBOR Rate for each Interest Period shall be determined by the Agent pursuant to the terms of this Agreement, and notice thereof shall be given by the Agent promptly to Borrower and each Bank. The Agent shall, upon written request of Borrower or any Bank, deliver to Borrower or such Bank a statement showing the computations used by the Agent in determining any applicable LIBOR Rate hereunder.

4.4 **Conversion and Continuation Procedures**.

(a) Borrower may elect from time to time to convert LIBOR Loans to Base Rate Loans by giving Agent at least three (3) Business Days prior irrevocable written notice of such election no later than 11:00 A.M. Chicago, Illinois time, provided that any such conversion of LIBOR Loans may only be made on the last day of an Interest Period with respect thereto or shall be subject to payment of all applicable breakage costs if paid prior thereto. Borrower may elect from time to time to convert Base Rate Loans to LIBOR Loans by giving Agent at least three Business Days prior irrevocable written notice of such election. Any such notice of conversion to LIBOR Loans shall specify the length of the initial Interest Period or Interest Periods therefor. Upon receipt of any such written notice, Agent shall promptly notify each Bank thereof. All or any part of outstanding LIBOR Loans and Base Rate Loans may be converted as provided herein, provided that (i) no Loan may be converted into a LIBOR Loan when any Event of Default has occurred and is continuing and Agent has or the Required Banks have determined that such a conversion is not appropriate, (ii) no Loan may be converted into a LIBOR Loan after the date that is one month prior to the Maturity Date and (iii) the conversion of LIBOR Loans is otherwise subject to the provisions governing LIBOR Loans set forth in Article 4 hereof.

(b) Any LIBOR Loans may be continued as such upon the expiration of the then current Interest Period with respect thereto by Borrower giving notice to Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, provided that no LIBOR Loan may be continued as such (i) when any Event of Default has occurred and is continuing and Agent has or the Required Banks have determined that such a continuation is not appropriate, or (ii) after the date that is one month prior to the Maturity Date and provided, further, that if Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Loans shall be automatically converted, at Agent's option, to either (x) LIBOR Loans having a one month Interest Period or (y) Base Rate Loans on the last day of such then expiring Interest Period.

4.5 **Computation of Interest and Fees**.

(a) Fees and interest shall be calculated on the basis of a 360 day year for the actual days elapsed in any portion of a month in which interest is due. Interest on Base Rate Loans and LIBOR Loans shall not exceed the maximum amount permitted under applicable law. Any change in the interest rate on a Loan resulting from a change in the Base Rate, or the Eurocurrency Reserve Percentage, shall become effective as of the opening of business on the day on which such change becomes effective. Agent shall as soon as practicable notify Borrower and the Banks of each determination of a LIBOR Rate.

(b) Each determination of an interest rate by Agent pursuant to any provision of this Agreement shall be conclusive and binding upon the parties hereto in the absence of manifest error.

4.6 **Inability to Determine Interest Rate**. If prior to the first day of any Interest Period, (a) Agent shall have reasonably determined (which determination shall be presumed correct, absent manifest error) that (i) the making or maintenance of any LIBOR Loan would violate any applicable governmental law, rule, regulation or directive, whether or not having the force of law, (ii) United States dollar deposits in the principal amount, and for periods equal to the Interest Period for funding any LIBOR Loan are not available in the London Interbank Eurodollar market in the ordinary course of business, or (iii) by reason of circumstances affecting the London Interbank Eurodollar market, adequate and fair means do not exist for ascertaining the LIBOR Rate to be applicable to the relevant LIBOR Loan, or (b) Agent shall have received notice from the Required Banks that the LIBOR Rate determined or to be determined for such Interest Period will not adequately and fairly reflect the cost to such Banks (as conclusively certified by such Banks) of making or maintaining their affected Loans during such Interest Period, Agent shall promptly give telecopy or telephonic notice thereof to Borrower and Banks as soon as practicable thereafter and, so long as such circumstances shall continue, (A) Agent shall select an impartial means of calculating interest hereunder in as close a manner to the calculation of the LIBOR Rate as contemplated by this Agreement as possible, such rate being referred to herein as a "Replacement LIBOR Rate," (B) no Bank shall be under any obligation to make any LIBOR Loans on a basis which is not available or convert any Base Rate Loans into unavailable LIBOR Loans, and (C) on the last day of the current Interest Period for

each LIBOR Loan, such Loan, unless then repaid in full or calculated in accordance with an available LIBOR Rate or a Replacement LIBOR Rate selected by Borrower, shall automatically convert to a Base Rate Loan or such LIBOR Loan as is available at Borrower's option, without further demand, presentment, protest or notice of any kind, all of which are hereby waived by the Borrower.

4.7 **Pro Rata Treatment and Payments**. Each borrowing by Borrower from the Banks hereunder, and each payment by Borrower on account of any fees hereunder, shall be made pro rata according to the respective Pro Rata Shares of the Banks. Each payment (including each prepayment) by Borrower on account of principal of and interest on the Loans shall be made pro rata according to the respective outstanding principal amounts of the Loans then held by the Banks. All payments (including prepayments) to be made by Borrower hereunder and under the Notes, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 1:00 P.M., Chicago, Illinois time, on the due date thereof. Agent shall distribute such payments to the Banks promptly upon receipt in like funds as received. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

4.8 **Illegality**. Notwithstanding any other provision herein, if Agent shall have reasonably determined that any Regulatory Change shall make it unlawful for any Bank to make or maintain LIBOR Loans as contemplated by this Agreement, Agent shall promptly give written notice of such determination to Borrower and each Bank and (A) the commitment of such Bank hereunder to make LIBOR Loans, continue LIBOR Loans as such and convert Base Rate Loans to LIBOR Loans shall forthwith be canceled to the extent unlawful and (B) unlawful LIBOR Loans then outstanding, if any, shall be converted automatically to Base Rate Loans on the respective last days of the then current Interest Periods with respect to such LIBOR Loans or within such earlier period as required by law. If any such conversion of a LIBOR Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, Borrower shall pay to each Bank such amounts, if any, as may be required pursuant to Subsection 4.11.

4.9 **Legal Requirements**.

(a) If any Regulatory Change made subsequent to the date hereof shall:

(i) subject any Bank to any tax of any kind whatsoever with respect to this Agreement, any Note or any LIBOR Loan made by it, or change the basis of taxation of payments to such Bank in respect thereof (except for Non-Excluded Taxes covered by Subsection 4.10 and changes in the rate, base, calculation, exemptions or exclusions of tax on the overall net income of such Bank);

(ii) impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by,

or any other acquisition of funds by, any office of such Bank which is not otherwise included in the determination of the LIBOR Rate; or

(iii) impose on such Bank any other condition regarding the LIBOR Loans or any Banks' funding thereof;

and the result of any of the foregoing is to increase the cost to such Bank, by an amount which such Bank in good faith deems to be material, of making, converting into, continuing or maintaining LIBOR Loans or to reduce any amount receivable hereunder in respect thereof, then, in any such case, Borrower shall promptly pay such Bank, upon its demand, any additional amounts necessary to compensate such Bank for such increased cost or reduced amount receivable; provided, however, Borrower's obligations to pay such additional sums shall be conditioned by Borrower being treated in the same manner as other borrowers of such Bank of similar size and circumstance, such that Borrower is not disproportionately bearing the cost of such Regulatory Changes as compared to other borrowers of such Bank.

(b) If any Bank shall have reasonably determined that any Regulatory Change regarding capital adequacy or in the interpretation or application thereof or compliance by such Bank or any corporation controlling such Bank with any request or directive regarding capital adequacy (whether or not having the force of law) from any Governmental Authority, in any such case made subsequent to the date hereof, does or shall have the effect of reducing the rate of return on such Bank's or such corporation's capital as a consequence of its obligations hereunder to a level below that which such Bank or such corporation could have achieved but for such change or compliance (taking into consideration such Bank's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Bank to be material, then from time to time, after submission by such Bank to Borrower (with a copy to Agent) of a written request therefor, together with reasonable supporting information sufficient for Borrower to verify such costs to such Bank, Borrower shall pay to such Bank such additional amount or amounts as will compensate such Bank for such reduction; provided, however, Borrower's obligations to pay such additional sums shall be conditioned by Borrower being treated in the same manner as other borrowers of such Bank of similar size and circumstance, such that Borrower is not disproportionately bearing the cost of such Regulatory Changes as compared to other borrowers of such Bank.

(c) If any Bank becomes entitled to claim any additional amounts pursuant to this subsection, it shall promptly notify Borrower, with a copy to Agent, of the event by reason of which it has become so entitled and shall furnish Borrower with reasonable supporting information sufficient for Borrower to verify such costs to such Bank, together with a certificate as to any additional amounts payable pursuant to this subsection and the calculation of such amounts submitted by such Bank to Borrower (with a copy to Agent). This covenant shall survive the termination of this Agreement and the payment of the Notes and all other amounts payable hereunder.

(d) Notwithstanding anything to the contrary contained in this subsection, Borrower shall not be required to pay any additional amounts to any Bank pursuant to

this subsection to the extent such additional amounts result from such Bank's negligence or willful misconduct, or violation of applicable banking or regulatory laws, rules and regulations.

4.10 **Taxes**.

(a) All payments made by Borrower under this Agreement and any Note shall be made free and clear of, and without deduction or withholding for or on account of, any present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, excluding net income taxes and franchise taxes (imposed in lieu of net income taxes), imposed on Agent or any Bank as a result of a present or former connection between Agent or such Bank and the jurisdiction of the Governmental Authority imposing such tax or any political subdivision or taxing authority thereof or therein (other than any such connection arising solely from Agent or such Bank having executed, delivered or performed its obligations or received a payment under, or enforced, this Agreement or any Notes). If any such non-excluded taxes, levies, imposts, duties, charges, fees, deductions or withholdings ("Non-Excluded Taxes") are required to be withheld from any amounts payable to Agent or any Bank hereunder or under any Notes, the amounts so payable to Agent or such Bank as reasonably verified to Borrower shall be increased to the extent necessary to yield to Agent or such Bank (after payment of all Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement, provided, however, that Borrower shall not be required to increase any such amounts payable to any Bank that is not organized under the laws of the United States of America or a state thereof if such Bank fails to comply with the requirements of paragraph (b) of this subsection. Whenever any Non-Excluded Taxes are payable by Borrower, as reasonably verified to Borrower, as promptly as possible thereafter Borrower shall send to Agent for its own account or for the account of such Bank, as the case may be, a certified copy of an original official receipt received by Borrower showing payment thereof. If Borrower fails to pay any Non-Excluded Taxes when due to the appropriate taxing authority or fails to remit to Agent the required receipts or other required documentary evidence, Borrower shall indemnify Agent and the Banks for any incremental taxes, interest or penalties that may become payable by Agent or any Bank as a result of any such failures. The agreements in this subsection shall survive the termination of this Agreement and the payment of the Notes and all other amounts payable hereunder. Notwithstanding anything to the contrary contained in this subsection, Borrower shall not be required to pay any additional amounts to any Bank pursuant to this subsection to the extent such additional amounts result from such Bank's negligence or willful misconduct or in violation of any applicable banking or regulatory laws, rules, and regulations.

(b) Each Bank that is not incorporated under the laws of the United States of America or a state thereof shall:

(i) deliver to Borrower and Agent (A) two duly completed copies of United States Internal Revenue Service Form 1001 or 4224, or successor

applicable form, as the case may be, and (B) an Internal Revenue Service Form W-8 or W-9, or successor applicable form, as the case may be;

(ii) deliver to Borrower and Agent two further copies of any such form or certification on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form previously delivered by it to Borrower; and

(iii) obtain such extensions of time for filing and complete such forms or certifications as may reasonably be requested by Borrower or Agent; unless in any such case an event (including, without limitation, any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise by required which renders all such forms inapplicable or which would prevent such Bank from duly completing and delivering any such form with respect to it and such Bank so advises Borrower and Agent. Such Bank shall certify (i) in the case of a Form 1001 or 4224, that it is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes and (ii) in the case of a Form W-8 or W-9, that it is entitled to an exemption from United States backup withholding tax. Each party that shall become a transferee pursuant to Section 10.1 shall, upon the effectiveness of the related transfer, be required to provide all of the forms and statements required pursuant to this subsection (b), provided that in the case of a Participant (as defined in Section 10.1 below), such Participant shall furnish all such required forms and statements to Bank from which the related participation shall have been purchased.

4.11 **LIBOR Loan Indemnification**. In the event a Bank incurs or sustains any loss or expense (collectively, "Make Whole Costs") as a consequence of (a) default by Borrower in making a borrowing of, conversion into or continuation of LIBOR Loans after Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by Borrower in making any prepayment after Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (c) the making of a prepayment of LIBOR Loans on a day which is not the last day of an Interest Period with respect thereto, and Borrower shall pay to such Bank an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid, or borrowed, converted or continued, for the period from the time of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of the failure to borrow, convert or continue, the Interest Period which would have commenced on the date of such failure) in each case the applicable rate of interest for such Loans provided herein (excluding, however, the Applicable Margin included thereon, if any) over (ii) the amount of interest (as reasonably defined by such Bank) which would have accrued to such Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank LIBOR market. This covenant shall survive the termination of this Agreement and the payment of the Notes and all other amounts due hereunder. Amounts payable pursuant to this subsection shall be paid to Agent for the account of the applicable Bank, upon the request of such Bank through Agent as reasonably determined by such Bank, based upon the assumption that such Bank funded its loan commitment for LIBOR Loans in the London Interbank Eurodollar market and using any

reasonable attribution or averaging methods which such Bank deems appropriate and practical, provided, however, that such Bank is not obligated to accept a deposit in the London Interbank Eurodollar market in order to charge interest on a LIBOR Loan at the LIBOR Rate. Such Bank shall provide reasonable verification of the method of calculating such amounts to Borrower upon written request from Borrower to Agent.

4.12 **Extension of Maturity Date.** Borrower shall have one (1) option to extend the Maturity Date of the Loans for one (1) year to the Extended Maturity Date by delivering to Agent written notice of Borrower's election to extend the Maturity Date not less than sixty (60) days prior to the Maturity Date (an "Extension Notice"), subject to fulfillment of the following conditions.

(a) No Event of Default shall have occurred and be continuing, and no event which, with the passage of time or the giving of notice or both, would become an Event of Default shall have occurred and be continuing, as of the date of the Extension Notice or the Maturity Date;

(b) Concurrently with delivery of the Extension Notice, Borrower shall have paid to Agent the Extension Fee;

(c) The Interest Reserve shall be sufficiently replenished by Borrower in an amount necessary to cover all interest on the Loans reasonably projected by Agent to be due and payable through the Extended Maturity Date, as reasonably determined and approved by Agent;

(d) As of the date of the Extension Notice and the Maturity Date, the Project shall be free from any liens and encumbrances, except for liens or encumbrances being insured over or being contested in accordance with the terms hereof, the Permitted Exceptions, or other matters approved in writing by Agent; and

(e) An updated appraisal, prepared by an appraiser acceptable to Agent, reflecting a "loan-to-value ratio" of no more than sixty-five percent (65%) shall be received by Agent. For purposes of this section, "loan-to-value ratio" shall mean the ratio, expressed as a percentage of: (a) the Commitment Amount to (b) the "as-is" appraised value of the Project, all as reasonably determined by Agent.

ARTICLE 5

LOAN DOCUMENTS

5.1 **Loan Documents**. As a condition precedent to the Loan Opening, Borrower agrees that it will deliver the following Loan Documents to Agent at least two (2) Business Days prior to the Loan Opening, all of which must be reasonably satisfactory to Agent and Agent's counsel in form, substance and execution:

(a) **Promissory Notes**. Promissory Notes executed by Borrower and made payable to the order of each Bank in the amount of its respective Commitment in the form of **Exhibit "B"** attached hereto.

(b) **Deed of Trust**. A Construction Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated as of even date herewith (the "Deed of Trust"), duly executed by Borrower to and for the benefit of Agent, conveying insurable title to the Land and granting a first lien on the Land and Improvements to Agent for the benefit of the Banks, to secure the Notes, the Loans and all obligations of Borrower in connection therewith.

(c) **[Intentionally Omitted]**.

(d) **Financing Statements**. Uniform Commercial Code Financing Statements as required by Agent to perfect all security interests granted by the Deed of Trust.

(e) **Environmental Indemnity Agreement**. An Environmental Indemnity Agreement dated as of even date herewith, executed by Borrower and Guarantor to and for the benefit of Agent, on behalf of the Banks ("Environmental Indemnity Agreement") whereby Borrower and Guarantor jointly and severally indemnify the Banks for certain loss, cost, damage or expense incurred as a result of environmental matters at the Premises.

(f) **Guaranty**. A Guaranty of Payment and Completion (the "Guaranty"), executed by Guarantor to and for the benefit of Agent, guaranteeing to Agent, on behalf of the Banks, payment of all amounts due in connection with the Loans and the completion of the Project.

(g) **Collateral Assignment of Acquisition Agreement**. A Collateral Assignment of the Acquisition Agreement executed by Borrower.

(h) **Other Loan Documents**. Such other documents and instruments as further security for the Loan as Agent may reasonably require.

ARTICLE 6

CONDITIONS TO LOAN OPENING

6.1 **Conditions to Loan Opening**. As a condition precedent to the Loan Opening, or, as specifically set forth below, as a condition precedent to a Disbursement, Borrower shall furnish the following to Agent at least two (2) days prior to the Loan Opening or at such time as is set forth below, all of which must be strictly satisfactory to Agent and Agent's counsel in form, content and execution:

(a) **Title Insurance Policy**. At the Loan Opening, an ALTA Construction Loan Policy—2006 issued on the date of the Loan Opening by the Title Insurance Company to Agent in the full amount of the Loan, insuring the Deed of Trust to be a valid first, lien upon the fee title to the Premises subject only to the Permitted Exceptions and to customary exceptions for pending disbursements of the Loan (the "Title Insurance Policy"). The Title Insurance Policy must specifically insure Agent for claims and questions related to claims for mechanics' or materialmen's liens and contain the following endorsements: (i) an ALTA Endorsement Form 3.0 which must specifically

state that the intended use of the Project is a "permitted use" under the governing zoning ordinance; (ii) location endorsement; (iii) usury and violations of consumer credit laws endorsement; (iv) access endorsement; (v) one tax parcel endorsement; (vi) if the Land consists of more than one subparcel, contiguity endorsement; (vii) environmental lien endorsement; (viii) creditor's rights endorsement; (ix) variable rate endorsement, if applicable; (x) Comprehensive Endorsement No. 1; (xi) doing business endorsement; and (xii) such other endorsements as Agent may require.

(b) **Survey**. A plat of survey (the "Survey") of the Land made by a land surveyor licensed in the State of California, which Survey must be reasonably satisfactory to the Agent.

The Survey shall be made in accordance with (i) the current survey standards of the American Land Title Association and American Congress on Surveying and Mapping including items 1, 2, 3, 4, 6, 7(a) and (b), 8, 9, 10, 11(a) and (b) and 13 of Table A thereof and (ii) the laws of the State of California. To the extent that there is any conflict or inconsistency among the Survey standards described above, the more restrictive standard shall apply. The Survey shall be dated not later than sixty (60) days prior to the Loan Opening, and shall bear a proper certificate by the surveyor, which certificate shall recite compliance with standards enumerated above, shall include the legal description of the Premises and shall run in favor of Borrower, Agent and the Title Insurance Company.

(c) **Insurance Policies**. Borrower shall, during the term of this Agreement, procure at its expense and keep in force the insurance coverages required by the Deed of Trust. In addition, all insurance shall be in form, content and amounts approved by Agent and written by an insurance company or companies licensed to do business in the state in which the Premises are located and domiciled in the United States or a governmental agency or instrumentality approved by Agent. The policies for such insurance shall have attached thereto standard mortgagee clauses in favor of and permitting Agent to collect any and all proceeds payable thereunder and shall include a thirty (30) day (except for nonpayment of premium, in which case, a ten (10) day) notice of cancellation clause in favor of Agent. Certificates of insurance (and upon request, a copy of the policies) shall be delivered to and held by Agent as further security for the payment of the Note and any other obligations arising under the Loan Documents, with evidence of renewal coverage delivered to Agent at least thirty (30) days before the expiration date of any policy.

(d) **Permits**. At least ten (10) days prior to submittal of a Request for Advance (as defined in Section 7.3), evidence satisfactory to Agent that all permits, licenses and governmental approvals (collectively, the "Permits") have been issued by the appropriate Governmental Authority authorizing construction of the portions of the Project for which such Request for Advance is applicable.

(e) **Geotechnical Report**. A geotechnical report prepared by a licensed soil engineer satisfactory to Agent showing the locations of all borings, containing boring logs for all borings together with recommendations for the design of the foundations, paved areas and underground utilities for the Project, confirming that there are no mining

facilities, sink holes or voids beneath the Land, confirming that no conditions exist which could cause subsidence of any portion of the Land and showing no state of facts which could adversely affect the Project.

(f) **Environmental Assessment**. A written report (the "Environmental Assessment") prepared at Borrower's sole cost and expense by an independent professional environmental consultant approved by Agent in its reasonable discretion. The Environmental Assessment shall be subject to the reasonable approval of the Agent in its sole and absolute discretion. If the Environmental Assessment reveals contamination or conditions warranting further investigation in order to establish baseline data, the Agent may require, in its sole and absolute discretion, a written report (also referred to herein as the "Environmental Assessment") based on additional testing and investigation in order to define the source and extent of the contamination or to establish baseline data, as well as to provide relevant detailed information on the area's geological and hydrogeological conditions. Any additional Environmental Assessment prepared pursuant to this requirement shall be subject to the approval of the Agent, in its sole and absolute discretion. Agent acknowledges receipt and approval of such Environmental Assessment.

(g) **Appraisal**. An appraisal addressed and satisfactory to the Agent, prepared by a certified or licensed appraiser who is approved by Agent. The appraisal must show an appraised value of the Premises, assuming completion of the Project, such that the ratio of the Commitment Amount to the appraised value of the Premises shall be no more than seventy-five percent (75.00%).

(h) **Documents of Record**. Copies of all covenants, conditions, restrictions, easements and matters of record which encumber the Premises.

(i) **Searches**. A report from the appropriate filing officers of the state and county in which the Land is located, indicating that no judgments, tax or other liens, security interests, leases of personalty, financing statements or other encumbrances (other than Permitted Exceptions and liens and security interests in favor of Agent) are of record or on file encumbering any portion of the Land, and that there are no judgments, tax liens, pending litigation or bankruptcy actions outstanding with respect to Borrower.

(j) **Borrower's Attorney's Opinion**. An opinion of Borrower's counsel in form and substance reasonably acceptable to Agent.

(k) **Organizational Documents**. A copy of the limited partnership agreement governing Borrower, certified by the General Partner as being a true and correct copy and as otherwise unmodified and in full force and effect, together with a current Certificate of Good Standing for Borrower and Guarantor from the state of organization and the State of California, a certified copy of the Certificate of Formation or equivalent, including all amendments thereto, for Borrower and Guarantor, an incumbency certificate showing specimen signatures for the officers of the General Partner of Borrower and the officers of Guarantor executing any Loan Documents and certified copies of resolutions from the

General Partner and controlling member of Guarantor authorizing execution and delivery of the Loan Documents.

(l) **Acquisition Agreement**. A copy of the Acquisition Agreement.

(m) **Real Estate Taxes**. Copies of the most recent real estate tax bills for the Land and evidence satisfactory to Agent that the Land is separately assessed for real estate taxing purposes which may consist of a title insurance endorsement.

(n) **Broker**. Evidence satisfactory to Agent that all brokers' commissions or fees due and payable prior to the Loan Opening Date with respect to the Loan or the Project have been paid in full in cash.

(o) **Commitment Fee**. Borrower shall have paid to the Agent the Commitment Fee

(p) **Ordinances**. Copies of all ordinances and resolutions adopted by the City of Stockton approving the issuance of the CFD Bonds and authorizing the Acquistion Agreement.

(q) **Additional Documents**. Such other papers and documents regarding Borrower or the Project as Agent may reasonably require.

6.2 **Termination of Agreement**. Borrower agrees that all conditions precedent to the Loan Opening will be complied with on or prior to the Loan Opening Date. If all of the conditions precedent to the Loan Opening hereunder shall not have been performed on or before the Loan Opening Date, the Banks may, at their option at any time thereafter and prior to the Loan Opening, terminate this Agreement and all of their obligations hereunder by giving a written notice of termination from Agent to Borrower. In the event of such termination, Borrower shall pay all Loan Expenses which have accrued or been charged as of the Loan Opening Date.

ARTICLE 7

DISBURSEMENTS

7.1 **Conditions Precedent to Disbursement of Loan Proceeds**. The Loan Opening shall be made at such time as all of the conditions and requirements of this Agreement required to be performed by Borrower or other parties prior to the Loan Opening have been satisfied or performed, unless the same shall have been waived in writing by Agent; but in no event shall the Loan Opening occur later than the Loan Opening Date. At the Loan Opening, the Banks shall disburse funds necessary to pay any Loan Expenses then due; provided, however, that in no event shall the initial disbursement of the Loan exceed sixty percent (60%) of the "as-is" appraised value of the Land. No disbursement of Loan Proceeds shall be made by the Banks to Borrower at any time unless:

(a) all conditions precedent to that disbursement under the Loan Documents have been satisfied unless the same shall have been waived in writing by Agent;

(b) no Event of Default has occurred under this Agreement or under any Loan Document, and no monetary default or non-monetary default of which Agent has notified Borrower and which Borrower is not diligently remedying has occurred and is continuing;

(c) no litigation or proceedings are pending or threatened (including proceedings under Title 11 of the United States Code) against Borrower or the Project, which litigation or proceedings, in the reasonable judgment of Agent if determined adversely would constitute a Material Adverse Occurrence;

(d) all representations and warranties made by Borrower to the Banks herein and otherwise in connection with the Loans continue to be accurate in all material respects; and

(e) Agent has received a monthly report from an inspecting engineer or a consultant engaged by Agent at Borrower's expense, certifying that all of the proceeds of the Loan disbursed to date have been utilized for the Project in accordance with the Project Budget and that the Project is being constructed in accordance with the Plans and Specifications and with applicable law.

(f) Borrower shall have contributed the Equity Requirements for the Project. The amount of the Equity Requirements represented by the Land and any improvements thereon shall be valued at the cost to the Borrower of the Land and such improvements, unless otherwise approved by Agent. Agent shall not be required to accept any portion of the Equity Requirements in a form other than cash, with the exception of the Land and such improvements, if any.

7.2 **Borrowing Procedures**.

(a) Borrower shall submit a Request for Advance (appropriately completed and including all documentation required to be attached thereto pursuant to Section 7.3 hereof) to Agent by 2:00 p.m. Chicago, Illinois time not less than ten (10) Business Days prior to the Borrowing Date specified therein requesting that the Banks make Loans on the Borrowing Date and specifying (i) the amount to be borrowed, and (ii) the amount of Project Costs to be paid or reimbursed to Borrower with such advance, including any retainage to be paid. Not less than three (3) Business Days prior to the Borrowing Date Borrower shall notify Agent in writing (which written notice may be sent via telecopy or email) whether the Loans are to be LIBOR Loans, Base Rate Loans, or a combination thereof, and if the Loans are to be entirely or partly LIBOR Loans, the respective amounts of each such type of Loan and the respective lengths of the initial Interest Periods therefor. If Borrower selects a LIBOR Loan and the borrowing is not made on the Borrowing Date for any reason, Borrower shall be liable for any amounts payable pursuant to Section 4.11 hereof. Agent, no later than two (2) Business Days prior to the date an advance is to be made, shall (i) notify each Bank thereof and (ii) send to each Bank a copy of Borrower's Request For Advance together with all required supporting documentation. Provided all conditions to an advance of Loan Proceeds have been satisfied, as determined by Agent, each Bank will make the amount of its Pro Rata Share

of each borrowing available to Agent for the account of Borrower at the Chicago office of Agent specified in Subsection 14.10 hereof prior to 11:00 A.M., Chicago, Illinois time on the date requested by Borrower in funds immediately available to Agent. Each borrowing will be made available to Borrower by Agent paying the aggregate amounts made available to Agent by the Banks directly to the Borrower. The execution of this Agreement by Borrower constitutes an irrevocable authorization to Agent and the Banks to advance Loan Proceeds as provided in this Section. No further authorization shall be necessary to warrant such direct advances. All sums advanced shall reduce the Available Commitment, shall be evidenced by the Notes and shall be secured by the Loan Documents. The Banks shall have no obligation to make advances of the Loan Proceeds more often than once in each calendar month, provided that the Banks may make an additional advance each calendar month to pay interest as provided in Section 4.2. Agent shall give Borrower written notice of monthly interest advances (provided that such notice shall not be a condition to such advance). Neither the Banks nor Agent shall have any obligation to see to the disposition of any direct payments to the Contractor or any other person.

(b) Unless Agent shall have been notified by any Bank prior to the date of any proposed borrowing that such Bank does not intend to make available to the Agent the Loan on such date, Agent may assume that such Bank has made the Loan available to the Agent on such date and Agent in its sole discretion may, but shall not be obligated to, make available to the Borrower a corresponding amount on such date. If such corresponding amount is not in fact made available to Agent by such Bank by 1:00 P.M., Chicago, Illinois time, on the Business Day of such proposed borrowing (it being understood that any such notice received after 1:00 P.M., Chicago, Illinois time, on any Business Day shall be deemed to have been received the immediately following Business Day), such Bank agrees to pay within two Business Days of demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to the Borrower by Agent until the date such amount is paid or repaid to Agent, at the interest rate applicable to such borrowing. If such Bank shall pay to Agent such amount, such amount so paid shall constitute such Bank's Loan, and if both such Bank and the Borrower shall have paid and repaid, respectively, such corresponding amount, Agent shall promptly pay over to the Borrower such corresponding amount in same day funds, but the Borrower shall remain obligated for all interest thereon to the extent not already paid by the Borrower pursuant to the preceding sentence. Nothing in this Section 7.2(b) shall be deemed to relieve any Bank of its obligation hereunder to make its Loan on any date specified in any borrowing notice.

(c) If a Bank (a "Defaulting Bank") defaults in making any advance or paying any other sum due and payable by it hereunder, such sum together with interest thereon at the interest rate applicable to such borrowing from the date such amount was due until repaid (such sum and interest thereon as aforesaid referred to, collectively, as the "Bank Default Obligation") shall be payable by the Defaulting Bank (i) to any Bank which elects, at its sole option (and with no obligation to do so), to fund the amount which the Defaulting Bank failed to fund or (ii) to Agent or any other Bank which under the terms of this Agreement is entitled to reimbursement from the Defaulting Bank for the amounts advanced or expended. Notwithstanding any provision hereof to the contrary, until such

time as a Defaulting Bank has repaid the Bank Default Obligation in full, all amounts which would otherwise be distributed to the Defaulting Bank shall instead be applied first to repay the Bank Default Obligation (to be applied first to interest at the Federal Funds Rate and then to principal) until the Bank Default Obligation has been repaid in full (whether by such application or by cure by the Defaulting Bank), whereupon such Bank shall no longer be a Defaulting Bank. Any interest collected from Borrower on account of principal advanced by any Bank(s) on behalf of a Defaulting Bank shall be paid to the Bank(s) who made such advance and shall be credited against the Defaulting Bank's obligation to pay interest on the amount advanced at the Federal Funds Rate. If no other Bank funds the amount which the Defaulting Bank was obligated to fund, then a portion of the Defaulting Bank's indebtedness hereunder equal to the Bank Default Obligation shall be subordinated to the indebtedness of Borrower to the Banks (other than the Defaulting Bank) and shall be repaid only after payment in full of all other indebtedness hereunder. The provisions of this Section shall apply and be effective regardless of whether an Event of Default occurs and is then continuing, and notwithstanding (i) any other provision of this Agreement to the contrary or (ii) any instruction of Borrower as to its desired application of payments. Additionally, a Defaulting Bank's right to vote on matters which are subject to the consent or approval of the Required Banks (other than the Defaulting Bank) shall be suspended until it ceases to be a Defaulting Bank, and during any such period in which a Defaulting Bank's voting rights have been suspended the Required Banks shall be the requisite percentage of all other entities comprising the Banks. Agent shall be entitled to (i) withhold or set off, and to apply to the payment of the Bank Default Obligation any amounts to be paid to such Defaulting Bank under this Agreement, and (ii) bring an action or suit against such Defaulting Bank in a court of competent jurisdiction to recover the Bank Default Obligation and, to the extent such recovery would not fully compensate Bank (other than the Defaulting Bank) for the Defaulting Bank's breach of this Agreement, to collect damages. In addition, the Defaulting Bank shall indemnify, defend and hold Agent and each of the other Banks harmless from and against any and all claims, actions, liabilities, damages, costs and expenses (including attorneys' fees and expenses), plus interest thereon at the Default Rate, for funds advanced by Agent or any other Bank on account of the Defaulting Bank or any other damages such entities may sustain by reason of the Defaulting Bank's failure or refusal to abide by its obligations under this Agreement. If a Bank becomes a Defaulting Bank, Borrower may (i) exercise any available rights and remedies against such Defaulting Bank whether at law or equity and (ii) find a replacement Bank or other lender (which other lender may be an Affiliate) and require the Defaulting Bank to assign its interests to such replacement in accordance with the terms of Section 10.1 of this Agreement provided that there shall be deducted from the amount that would otherwise be paid to the Defaulting Bank an amount equal to the Bank Default Obligation.

(d) Borrower hereby requests and authorizes Agent to make advances directly to itself for payment and reimbursement of all interest charges, costs and expenses incurred by Agent in connection with the Loans, including, but not limited to, (i) interest due on the Loan and any points, loan fees, service charges, commitment fees or other fees due to Agent in connection with the Loans; (ii) all title examination, survey, escrow, filing, search, recording and registration fees and charges; (iii) if not paid by Borrower within thirty (30) days of receipt of invoices for the following, all fees and disbursements

of architects, engineers and consultants engaged by Borrower and/or Agent, including the fees and disbursements of the Agent's insurance consultant, if any; (iv) all documentary stamp and other taxes and charges imposed by law on the issuance or recording of any of the Loan Documents; (v) all appraisal fees; (vi) all title, casualty, liability, payment, performance or other insurance or bond premiums, if any; (vii) if not paid by Borrower within thirty (30) days of receipt of invoices for the following, all reasonable fees and disbursements of legal counsel engaged by Agent in connection with the origination and administration of the Loans and all reasonable fees and disbursements of legal counsel engaged by the Agent on behalf of the Banks in connection with the successful enforcement of this Agreement or any of the Loan Documents, which shall also include reasonable attorneys' fees and time charges of attorneys who may be employees of the Agent or any affiliate of the Agent; and (viii) any amounts required to be paid by Borrower under this Agreement, the Deed of Trust or any Loan Document after the occurrence of an Event of Default (all of which are herein referred to as "Loan Expenses") Notwithstanding anything to the contrary set forth herein, Borrower shall not be obligated to pay any attorneys fees or costs of any Banks other than Agent in connection with any participation, syndication, assignment or other transaction among Agent and the Banks.

(e) Any disbursement of Loan Proceeds must be made for payment of the Project Costs as set forth in the Project Budget. Except as set forth below, no amendment of the Project Budget shall be made without Agent's prior written consent which shall be deemed given if Agent does not object within ten (10) Business Days of receipt of Borrower's request. No reallocation of line items within the Project Budget shall be made unless (A) Borrower can demonstrate to Agent's reasonable satisfaction that (i) sufficient funds remain in the line item from which the amount is to be reallocated to pay all Project Costs which may be paid from that line item; and (ii) no line items in the Project Budget (other than the line item to which the reallocation is sought) are required, in Agent's reasonable judgment, to be increased. Agent shall respond to any such request by either approving or disapproving with specific reasons therefor, in either case within ten (10) Business Days after receipt of written request therefor addressed to Agent's loan officer having primary responsibility for the Loan and specifically referring to such ten (10) day approval period, and if Agent fails to respond in such time period, such reallocation shall be deemed approved. Notwithstanding the foregoing to the contrary, Borrower, without Agent's approval, except for interest, may reallocate up to $250,000, as to any line item, and $750,000, in the aggregate.

7.3 **Documents Required for Each Disbursement**. As a condition precedent to any "Disbursement", all of the conditions precedent to disbursement under Section 7.1 shall be satisfied and, at least ten (10) Business Days prior to, and as a condition of, each Disbursement, Borrower shall furnish to Agent the following documents covering such disbursement:

(a) Borrower's disbursement request (a "Request For Advance"), in the form attached hereto as **Exhibit "F"**, which shall, among other things, specify the amount of the requested disbursement (exclusive of interest), direct the Banks to disburse such funds in accordance with this Agreement and the disbursement instructions contained in

such Request for Advance, and certify to Agent and the Banks, as of the date of the applicable request for disbursement, that:

(i) the total amount of each request for disbursement (exclusive of interest) represents the actual amount payable to a third party who has performed work on the Project and indicating what payment requests, if any, have been received by Borrower from a third party but have not yet been approved by Borrower for payment;

(ii) no Event of Default, exists and is continuing under this Agreement;

(iii) the representations and warranties contained in Article 2 of this Agreement are true and correct in all material respects;

(iv) Borrower has received no notice and has no knowledge of any liens or claims of lien either filed or threatened in writing against the Premises except the liens of Agent and those which are specifically identified in writing to Agent and those being contested by Borrower and insured over in the manner provided herein;

(v) all amounts shown as previous payments on the current disbursement request have been or will be paid to the parties entitled to such payment except as specifically identified to Agent and if being withheld for commercially reasonable reasons; and

(vi) Borrower has approved all work and materials for which disbursement of the Loans is thereby requested subject to final inspection and punchlist.

(b) Endorsements to the Title Insurance Policy to cover the date of the Disbursement (whether into escrow or otherwise) confirming that the Deed of Trust is a first lien on the Land subject only to Permitted Exceptions (and to exceptions and objections in the usual form relating to the issuance of a mortgage title insurance policy, which by their nature cannot be waived or removed until the Final Disbursement and liens contested in accordance with the terms of the Loan Documents), that nothing has intervened to affect the validity or priority of the Deed of Trust; such endorsements may be delivered to Agent concurrently with the disbursement of the Loan Proceeds which are the subject of those endorsements; and

(c) Such other papers and documents as the Title Insurance Company may require for the issuance of endorsements to the Title Insurance Policy for each disbursement of Loan Proceeds.

7.4 **Conditions to Disbursements for Hard Costs**. As a condition precedent to any Disbursement for hard costs associated with the Project, all of the conditions precedent to a Disbursement under Sections 7.1 and 7.3 shall be satisfied and:

(a) Borrower shall deliver to Agent a copy of the executed Contractor's contract, Engineer's contract, and any other contracts, which shall be in a format and of a scope which is commensurate with industry practice for projects of a similar size and nature to the Project, conform to applicable terms of this Agreement, and which must be satisfactory to Agent and Agent's counsel in all respects;

(b) Borrower shall deliver to Agent copies of the Plans and Specifications for the Project.

(c) Borrower shall deliver to Agent an Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits executed by Borrower to and for the benefit of Agent, assigning to Agent on behalf of the Banks all of Borrower's rights in and to the general construction contract or construction management agreement, and all other contracts to which Borrower is a party affecting the Premises and Borrower's interest in any permits, including building permits, licenses, the Plans and Specifications and tests related to the construction, use and operation of the Project, together with consent agreements from the Contractor and Engineer consenting to the assignment and agreeing to continue performance under their respective contracts on behalf of Agent if Agent shall exercise its rights under the Assignment;

(d) Borrower shall deliver to Agent collateral assignments of such agreements, contracts and other rights or interests of Borrower with respect to the Project as Agent may reasonably request; and

(e) In addition to the requirements above, and as an express condition precedent to any Disbursement for hard costs associated with the Roads (as defined below):

(i) Borrower shall deliver to Agent construction contracts, satisfactory to Agent, for seventy five percent (75%) of the total costs budgeted by Borrower for the construction of (i) the Newcastle Road extension and (ii) the new road to be built on the Land providing access to Mariposa Road (collectively, the "Roads"); and

(ii) Agent shall receive a cost-review report, satisfactory to Agent, from an inspecting engineer or a consultant engaged by Agent, at Borrower's expense, relative to the construction of the Roads.

7.5 **Payouts**. Unless an Event of Default occurs, all disbursements of the Loans shall be made directly to Borrower.

7.6 **Expenses and Advances Secured by Deed of Trust**. Any and all advances or payments made by the Banks hereunder, from time to time, and any amounts expended by Agent pursuant to this Agreement and all other Loan Expenses, as and when advanced, shall be deemed to have been disbursed as part of the Loans and be and become secured and guaranteed by the Loan Documents to the same extent and effect as if the terms and provisions of this Agreement were set forth therein, whether or not the aggregate of such indebtedness shall exceed the face amount of the Note.

7.7 **Acquiescence not a Waiver**. To the extent that Agent may have acquiesced (whether intentionally or unintentionally) in the Borrower's failure to comply with and satisfy any condition precedent to the Loan Opening, to any Disbursement or to any disbursement of Loan Proceeds, such acquiescence shall not constitute a waiver by Agent of any condition precedent set forth in this Agreement, and Agent at any time thereafter may require the Borrower to comply with and satisfy all conditions and requirements of this Agreement.

7.8 **Agent's Action for Agent's Own Protection Only**. The authority herein conferred upon Agent and any action taken by Agent or its agents or employees in making inspections of the Premises, attending regularly scheduled Project meetings, procuring sworn statements and waivers of lien will be taken by Agent and by its agents or employees for their own protection and that of the Banks only, and Agent nor its agents or employees shall be deemed to have assumed any responsibility to Borrower or any other person or entity with respect to any such action herein authorized or taken by them or with respect to the proper construction and equipping of the Project or prevention of claims for mechanics' or materialmen's liens.

ARTICLE 8

FURTHER AGREEMENTS OF BORROWER

8.1 **Project Work**. Borrower agrees that all work performed by Borrower on the Premises will be performed free and clear of all liens and encumbrances (excepting only (i) the lien of real estate taxes and assessments not due, (ii) any liens and encumbrances of Agent, (iii) any other Permitted Exceptions and (iv) any mechanics' liens contested in good faith and insured over as provided herein and (v) in a good and workmanlike manner with materials of high quality, substantially in accordance with any and all covenants, conditions and restrictions of record, and applicable building, zoning and other laws and ordinances including, without limitation, Environmental Laws.

8.2 **Mechanics' Liens, Taxes and Contest Thereof**. Borrower agrees that it will not suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Premises and will promptly (within thirty (30) days after their attachment) discharge the same in case of the filing of any claims for lien or proceedings for the enforcement thereof, and will pay all special assessments which have been placed in collection and all real estate taxes and assessments of every kind (regardless of whether the same are payable in installments) upon the Premises, before the same become delinquent; provided, however, that Borrower shall have the right to contest in good faith and with reasonable diligence the validity of any such lien, claim, tax or assessment as permitted by the Deed of Trust. If Borrower shall fail promptly either to discharge or to contest claims, taxes or assessments asserted or give security or indemnity in the manner provided in the Deed of Trust, or having commenced to contest the same, and having given such security or indemnity shall fail to prosecute such contest with diligence, so required by the Deed of Trust, or upon the adverse conclusion of any such contest, to cause any judgment or decree to be satisfied and lien to be released, then and in any such event Agent may, at its election (but shall not be required to), procure the release and discharge of any such claim and any judgment or decree thereon and, further, in its sole discretion, effect any settlement or compromise of the same. Any amounts so expended by Agent, including premiums paid or

security furnished in connection with the issuance of any surety bonds, shall be deemed to constitute disbursement of the proceeds of the Loan hereunder. In settling, compromising, discharging any claim for lien, tax or assessment, Agent shall not be required to inquire into the validity or amount thereof.

8.3 **Furnishing Information**. Borrower will:

(a) promptly supply Agent and each Bank with such information concerning Borrower's assets, liabilities and affairs, as Agent may reasonably request from time to time hereafter which shall include, without necessity of any request by Agent, as soon as available and in no event later than one hundred twenty (120) days after the close of each fiscal year, financial statements of Borrower showing the results of operations of the Premises and consisting of a balance sheet, cash flow statement, and statement of income and expense prepared in accordance with GAAP (with the exception of, in the case of quarterly reports, the presentation requirements of Financial Accounting Standard No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets") and signed by an officer of Borrower;

(b) promptly notify Agent and each Bank of any condition or event which constitutes (or which, with the giving of notice or lapse of time, or both, would constitute) an Event of Default, and of a Material Adverse Occurrence; and

(c) upon reasonable notice, permit Agent or any of their agents or representatives to have access to and to examine all books and records regarding the Premises at any time or times hereafter during business hours.

All information provided to Agent from Borrower pursuant to this Section 8.3 shall be promptly shared with each Bank, and any reasonable requests made by each Bank for additional information shall be requested of the Borrower, as the case may be, on behalf of the Banks. The Banks shall use reasonable efforts to maintain the confidentiality of such information, subject to the right to provide such information to third parties to the extent (A) required by (i) laws, statutes and regulations, (ii) governmental bodies and regulators, (iii) court or administrative order, (iv) purchasers of interests in the Loans, or (B) necessary for the Banks' attorneys, auditors and other agents.

8.4 **Excess Indebtedness**. Borrower agrees to pay to Agent on demand the amount by which the principal balance outstanding under the Notes, at any time, may exceed the Commitment Amount.

8.5 **Compliance with Covenants; Prohibition Against Additional Recordings**. Borrower will comply with all recorded covenants affecting the Premises. Except as provided in Section 8.9 below, Borrower will not record or voluntarily permit to be recorded any document, instrument, agreement or other writing against the Land or Improvements without the prior written consent of Agent which shall not be unreasonably withheld, delayed or conditioned (which shall be deemed given if a request for consent with copies of the proposed documents is not responded to within ten (10) Business Days of submittal to Agent).

8.6 **Project Accounts**. Borrower will set up and maintain all operating accounts and other accounts related to the Project with Agent and shall maintain monthly minimum balances sufficient to cover demand deposit account activities.

8.7 **Distributions**. Borrower shall not make any distributions to its members, partners or shareholders, as the case may be, of any revenue received by or on behalf of Borrower from the operation and ownership of the Project, if an Event of Default has occurred and is continuing.

8.8 **Further Assurance**. Borrower, on request of Agent, from time to time, will execute and deliver such documents as may be necessary to perfect and maintain perfected as valid liens upon the Premises and the personal property located thereon, the liens granted to Agent pursuant to this Agreement or any of the other Loan Documents, and to fully consummate the transactions contemplated by this Agreement.

8.9 **Easements.** Borrower shall have the right to grant, and Agent shall consent in writing to, commercially reasonable easements consistent with the intended development of the Project and as may be required to comply with the Acquisition Agreement.

8.10 **Right to Contest**. Borrower may contest the application or validity of any law, statute, ordinance, rule or regulation imposed by a Governmental Authority on the Premises or Borrower, provided that (i) such contest is in accordance with applicable law, (ii) neither the Premises, or any part thereof, nor any interest therein, shall be in any danger of being sold, forfeited, lost or materially interfered with, or is subject to any lien which is not promptly discharged by payment or bond, unless Borrower shall have furnished such security, if any, as may be required in the proceedings or reasonably requested by Agent, and (iii) all expenses incurred in connection with such contest shall be paid by Borrower.

8.11 **Vertical Construction**. Without Agent's prior written consent, Borrower shall not perform any construction of buildings at the Premises except to the extent required by the Subdivision Agreement or Acquisition Agreement.

8.12 **Limited Partnership Agreement**. The limited partnership agreement of Borrower shall not, without the prior written consent of Agent, be amended or modified if such amendment or modification would constitute a Material Adverse Occurrence.

8.13 **Continuing Existence**. Borrower, without the prior written consent of Agent, shall not permit itself to be dissolved or its existence terminated.

8.14 **No Defenses**. There are no conditions, events or circumstances existing, or any litigation, arbitrations, governmental or administrative proceedings, actions, examinations, claims or demands pending, to Borrower's knowledge or threatened affecting Borrower or the Premises, or which would constitute a Material Adverse Occurrence.

8.15 **Other Agreements**. Borrower agrees that it will comply with all of the terms and conditions contained in the Acquisition Agreement, the Subdivision Agreement, and any other agreements executed by Borrower in connection with the CFD Bonds and shall promptly notify Agent of any default thereunder.

8.16 **Substitute Guarantor**. Agent agrees that Opus Corporation, a Minnesota corporation, ("Opus") or another substitute guarantor satisfactory to all of the Banks in their sole and absolute discretion will be an acceptable substitute guarantor for Guarantor; provided that the following conditions are satisfied: (i) Opus or such other approved substitute guarantor executes a guaranty in favor of Agent in form and substance substantially similar to the Guaranty and (ii) Agent receives such documents, instruments and legal opinions in respect to Opus or such other substitute guarantor as Agent requires to confirm, among other things, the due authorization, execution and enforceability of such substitute guaranty.

ARTICLE 9

CASUALTIES AND CONDEMNATION

9.1 **Application of Insurance Proceeds and Condemnation Awards**. The proceeds of any insurance policies collected or claims as a result of any loss or damage to any portion of the Project resulting from fire, vandalism, malicious mischief or any other casualty or physical harm and any awards, judgments or claims resulting from the exercise of the power of condemnation or eminent domain shall be applied, as provided in the Deed of Trust and any adjustment of any claims under policies of insurance shall be as provided in the Deed of Trust.

ARTICLE 10

ASSIGNMENTS, SALE AND ENCUMBRANCES

10.1 Bank Assignments, Participations.

(a) **Assignments**. Any Bank may, with the prior written consent of Agent, at any time assign and delegate to one or more commercial banks or other financial institutions (any such entity to which such an assignment and delegation is to be made being herein called an "Assignee") all or any fraction of such Bank's Commitment (which assignment and delegation shall be of a constant, and not a varying, percentage of all the assigning Bank's Loans and Commitment) in a minimum aggregate amount equal to the lesser of (i) the amount of the assigning Bank's Pro Rata Share of the Commitment Amount and (ii) $5,000,000.00; provided that Borrower and the Agent shall be entitled to continue to deal solely and directly with such Bank in connection with the interests so assigned and delegated to an Assignee until the date when all of the following conditions shall have been met:

(i) five Business Days (or such lesser period of time as Agent and the assigning Bank shall agree) shall have passed after written notice of such assignment and delegation, together with payment instructions, addresses and related information with respect to such Assignee, shall have been given to the Borrower and Agent by such assigning Bank and the Assignee,

(ii) the assigning Bank and the Assignee shall have executed and delivered to Borrower and the Agent an assignment agreement substantially in the form of **Exhibit "E"** (an "Assignment Agreement"), together with any documents

required to be delivered thereunder, which Assignment Agreement shall have been accepted by Agent, and

(iii) except in the case of an assignment by a Bank to one of its affiliates, the assigning Bank or the Assignee shall have paid Agent a processing fee of Three Thousand Five Hundred and 00/100 Dollars ($3,500.00).

From and after the date on which the conditions described above have been met, (A) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned and delegated to such Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Bank hereunder, and (B) the assigning Bank, to the extent that rights and obligations hereunder have been assigned and delegated by it pursuant to such Assignment Agreement, shall be released from its obligations hereunder arising from and after the effective date of such assignment. Within five Business Days after effectiveness of any assignment and delegation, Borrower shall execute and deliver to Agent (for delivery to the Assignee and the assigning Bank, as applicable) a new Note in the principal amount of the Assignee's Pro Rata Share of the Commitment Amount and, if the assigning Bank has retained a Commitment hereunder, a replacement Note in the principal amount of the Pro Rata Share of the Commitment Amount retained by the assigning Bank (such Note to be in exchange for, but not in payment of, the predecessor Note held by such assigning Bank). Each such Note shall be dated the effective date of such assignment. The assigning Bank shall mark the predecessor Note "exchanged" and deliver it to Borrower. Accrued interest on that part of the predecessor Note being assigned shall be paid as provided in the Assignment Agreement. Accrued interest and fees on that part of the predecessor Note not being assigned shall be paid to the assigning Bank. Accrued interest and accrued fees shall be paid at the same time or times provided in the predecessor Note and in this Agreement. Any attempted assignment and delegation not made in accordance with this Section 10.1.(A) shall be null and void.

(b) **Participations**. Any Bank may at any time sell to one or more commercial banks or other financial institutions participating interests in any Loan owing to such Bank, the Note held by such Bank, the Commitment of such Bank or any other interest of such Bank hereunder (any Person purchasing any such participating interest being herein called a "Participant"). In the event of a sale by a Bank of a participating interest to a Participant, (i) such Bank shall remain the holder of its Note for all purposes of this Agreement, (ii) Borrower and Agent shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations hereunder, and (iii) all amounts payable by Borrower shall be determined as if such Bank had not sold such participation and shall be paid directly to such Bank. No Participant shall have any direct or indirect voting rights hereunder and Participants shall not have the right to further participate their interests. Each Bank agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Bank enters into with any Participant. Borrower agrees that if amounts outstanding under this Agreement and the Notes are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement or any Note; provided that such right of setoff shall

be subject to the obligation of each Participant to share with the Banks, and the Banks agree to share with each Participant, as provided herein. Borrower also agrees that each Participant shall be entitled to the benefits of Article 4 hereof as if it were a Bank (provided that no Participant shall receive any greater compensation pursuant to such Article 4 than would have been paid to the Participant if no participation had been sold).

10.2 **Prohibition of Assignments and Encumbrances by Borrower**. Except as expressly provided in the Deed of Trust or Section 8.2 hereof, Borrower, without the prior written consent of Agent, shall not create, effect, consent to, attempt, contract for, agree to make, suffer or permit any Prohibited Transfer (as defined in the Deed of Trust).

ARTICLE 11

EVENTS OF DEFAULT BY BORROWER

11.1 **Event of Default Defined**. The occurrence of any one or more of the following shall constitute an "Event of Default," and any Event of Default which may occur hereunder shall constitute an Event of Default under each of the other Loan Documents:

(a) Borrower fails to pay (i) any installment of principal or interest payable pursuant to the Note (other than any installment of interest payable directly by the Banks to themselves from the Interest Reserve as provided herein) within seven (7) days from the date when due, or (ii) any other amount payable to the Banks pursuant to the Notes, this Agreement or any of the other Loan Documents within seven (7) days after receipt of written notice that any such payment is due in accordance with the terms hereof or thereof;

(b) Borrower fails to perform or cause to be performed within the applicable grace, notice and cure period therefor any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower under the Note, this Agreement or any of the other Loan Documents not otherwise described in Sections 11.1(a), or (c) through (l); provided, however, that if the Note, this Agreement or other applicable Loan Document does not provide for a specific grace, notice or cure period, and further provided that if such failure by its nature can be cured, then provided that the continued operation and safety and the value of the Premises are not materially impaired, threatened or jeopardized, Borrower shall have a period (the "Cure Period") of thirty (30) days after Borrower obtains actual knowledge of such failure (which shall mean the actual knowledge of Wade Lau, Vice President of General Partner, Don Little, Vice President of General Partner, or Chuck Vogel, Vice President of Guarantor, or their respective successor) or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for forty-five (45) additional days, but in no event shall the Cure Period be longer than seventy-five (75) days in the aggregate;

(c) The existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Agreement or any of the other Loan Documents or of any statement or certification as to facts delivered to Agent by Borrower or Guarantor which is inaccurate or untrue in any material respect when delivered and remains so for thirty (30) days thereafter;

(d) The occurrence of a Prohibited Transfer;

(e) Borrower or any Guarantor (i) files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or (ii) seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Borrower or (iii) all or any substantial part of the assets of Borrower or Guarantor or any of the Premises; or all or a substantial part of the assets of Borrower or any Guarantor are attached, seized, subjected to a writ or distress warrant or are levied upon, and in the case of subsection (iii) only, the same is not released or discharged within sixty (60) days;

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

(g) The occurrence of the dissolution or winding-up, as applicable, of Borrower or Guarantor, unless in the case of the Guarantor, within the ninety (90) day period immediately following such dissolution, winding-up (i) Guarantor provides Agent with a substitute guarantor whose creditworthiness and real estate experience and skills are comparable to th ose of the original guarantor and who is otherwise acceptable to Agent in Agent's sole discretion and (ii) such substitute guarantor executes a guaranty in favor of Agent in form and substance substantially similar to the Guaranty;

(h) Any judgment or order requiring payment of monies in excess of $250,000, which is not covered by insurance, shall be rendered against Borrower, and such judgment or order shall remain unsatisfied or undischarged and in effect for thirty (30) consecutive days without a stay of enforcement or execution thereof or posting of bond pending appeal;

(i) The occurrence of an "Event of Default" under any of the Notes, Deed of Trust or any of the other Loan Documents; or

(j) The occurrence of a default by Borrower, not cured within any applicable cure period, under the Subdivision Agreement or the Acquisition Agreement.

ARTICLE 12

AGENT'S REMEDIES UPON EVENT OF DEFAULT

12.1 **Remedies Conferred upon Agent**. Upon the occurrence of any Event of Default, Agent, in addition to all remedies conferred upon Agent by law and by the terms of the Note, the Deed of Trust and the other Loan Documents, may, and at the direction of the Required Banks shall, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any others:

(a) Take possession of the Premises and complete the construction and equipping of the Project and do anything required, necessary or advisable in Agent's sole judgment to fulfill the obligations of Borrower hereunder, including the rights to avail itself of or procure performance of existing construction contracts, to let any contracts with the same contractors, subcontractors or others and to employ watchmen to protect the Premises from injury. Without restricting the generality of the foregoing and for the purposes aforesaid, Agent may perform the following actions:

(i) use unadvanced Loan Proceeds or to advance funds in excess of the face amount of the Notes to complete the Project;

(ii) retain or employ new contractors, subcontractors, architects, engineers and inspectors;

(iii) without inquiring into and without respect to the validity thereof, to pay, settle or compromise all existing bills and claims which may be liens, or to avoid such bills and claims becoming liens, against the Premises or any portion of the Premises or as may be necessary or desirable for the completion of the construction and equipping of the Project or for the clearance of title to the Premises;

(iv) prosecute and defend actions or proceedings in connection with the Premises;

(v) do any and every act which Borrower might do in its own behalf with respect to the Premises;

(b) Withhold further disbursement of the proceeds of the Loan and terminate any of its obligations to Borrower;

(c) Declare the Notes to be due and payable forthwith, without presentment, demand, protest or other notice of any kind, all of which Borrower hereby expressly waives and

(d) Exercise or pursue any other remedy or cause of action permitted at law or in equity or under this Agreement or any other Loan Document, including, but not limited to, foreclosure of the Deed of Trust and enforcement of all Loan Documents.

12.2 **Setoff Rights**. In addition to any rights of setoff that Agent and/or the Banks may have under applicable law, Agent and/or the Banks with prior notice to Borrower, may appropriate and apply to the payment of the Note or of any sums due under this Agreement any and all balances, deposits, credits, accounts, certificates of deposit, instruments or money of Borrower then or thereafter in the possession of Agent, any Bank or any Participant of any Bank.

12.3 **Right of Banks to Make Advances to Cure Event of Defaults; Obligatory Advances**. If Borrower shall fail to perform any of its covenants or agreements herein or in any of the other Loan Documents contained, Agent, upon not less than ten (10) days prior written notice (except in case of an emergency) may (but shall not be required to) perform any of such covenants and agreements, and any amounts expended by Agent in so doing, and any amounts expended by Agent pursuant to Section 12.1 hereof and any amounts advanced by the Banks pursuant to this Agreement shall be deemed advanced by the Banks under an obligation to do so regardless of the identity of the person or persons to whom said funds are disbursed. Loan Proceeds advanced by the Banks to complete the Project in accordance with the provisions of this Agreement, and subject to Section 12.1 above, to protect their security for the Loan are deemed to be obligatory advances hereunder and shall constitute additional indebtedness payable on demand and evidenced and secured by the Loan Documents.

12.4 **Attorneys' Fees**. Borrower will pay Agent's reasonable attorneys' fees and costs in connection with the negotiation, preparation, and administration of this Agreement and will pay the Agent's reasonable attorneys' fees and costs in connection with the administration and, if Agent is the prevailing party, enforcement of this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, if at any time or times hereafter Agent employs counsel for advice or other representation with respect to any matter concerning Borrower, this Agreement, the Premises or the Loan Documents or if the Agent employs one or more counsel to protect, collect, lease, sell, take possession of, or liquidate any of the Premises, or to attempt to enforce or protect any security interest or lien or other right in any of the Premises or under any of the Loan Documents, or to enforce any rights of the Banks or obligations of Borrower or any other person, firm or corporation which may be obligated to the Banks by virtue of this Agreement or under any of the Loan Documents or any other agreement, instrument or document, heretofore or hereafter delivered to Agent in furtherance hereof, then in any such event, all of the reasonable attorneys' fees arising from such services, and any expenses, costs and charges relating thereto, shall constitute an additional indebtedness owing by Borrower to the Banks payable on demand and evidenced and secured by the Loan Documents provided that Agent is the prevailing party in any such matter. Notwithstanding anything to the contrary set forth herein, Borrower shall not be obligated to pay any attorneys' fees or costs of any Bank other than LaSalle Bank National Association in connection with any participation, syndication, assignment or other transactions among Agent and Banks.

12.5 **No Waiver**. No failure by Agent to exercise, or delay by Agent in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement and in the Loan Documents are cumulative and not exclusive of each other or of any right or remedy provided at law or in equity. No notice to or demand on Borrower in any case, in itself, shall entitle Borrower to any other or further notice or demand in similar or other

circumstances or constitute a waiver of the rights of Agent to any other or further action in any circumstances without notice or demand.

12.6 **Default Rate**. From and after the date of any Event of Default until the date on which such Event of Default is cured or waived, interest on funds outstanding hereunder shall accrue at the Default Rate and be payable on demand. The failure of Agent to charge interest at the Default Rate shall not be evidence of the absence of an Event of Default or waiver of an Event of Default by Agent.

ARTICLE 13

THE AGENT

13.1 **Appointment and Authorization**.

(a) Each Bank hereby irrevocably (subject to Section 13.10) appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Bank, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" herein and in other Loan Documents with reference to the Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties.

(b) Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible to any other bank or borrower for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

(c) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation this Article 13, Borrower shall deal exclusively with and shall be entitled to rely upon Agent in all matters in respect of the Loan, including, without limitation, consents, approvals and loan disbursements and no Bank shall deal with Borrower in any matters in respect of the Loan, including, without limitation, consents, approvals and loan disbursements.

13.2 **Successor Agent**. Agent may resign as Agent upon thirty (30) days notice to the Banks. If Agent resigns under this Agreement, the Required Banks shall, with (so long as no

Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among the Banks a successor agent for the Banks. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Banks and Borrower, a successor agent from among the Banks. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 13 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Banks shall perform all of the duties of the Agent hereunder until such time, if any, as the Required Banks appoint a successor agent as provided for above.

13.3 **Actions Requiring Consent and Approval**.

(a) Agent may amend or waive any of the provisions of this Agreement or any of the other Loan Documents, or consent to any departure by any party to the Loan Documents therefrom which amendment, waiver or consent is intended to be within Agent's discretion or determination, or otherwise in Agent's reasonable determination shall not result in a material adverse change. Otherwise, no such amendment, waiver or consent shall be effective unless in writing, signed by the Required Banks, and Borrower or the applicable party to the Loan Documents, as the case may be, and acknowledged by Agent and each such waiver or consent shall be effective only in the specific instance and Required Banks consent shall be required for the following:

(i) Agent shall not, without the prior approval or consent of the Required Banks, appoint a successor Agent, provided that no Bank shall unreasonably withhold or delay its consent to the appointment of a successor Agent and further provided that nothing contained in this Section 13.2 shall limit the rights of Agent under Section 13.9 in the event a successor Agent is not appointed within thirty (30) days of the retiring Agent giving notice of its resignation; and

(ii) Waive any Event of Default on the part of the Borrower or any Guarantor;

(iii) Extend the Maturity Date (except upon the exercise by Borrower of its right to extend under Section 4.13 above) or forgive all or any portion of the principal amount of the Loans or any accrued interest thereon, or any other amendment of this Agreement or the other Loan Documents which would reduce the underlying interest rate or the rate at which fees are calculated or forgive any loan fee, or extend the time of payment of any principal, interest or fees;

(iv) Amend the recourse provisions in the Guaranty;

(v) Modify the percentage specified in the definition of Required Banks except as provided in Section 7.2(c) above;

(vi) Increase the amount of the Loans or any Commitment;

(vii) Amend this Section 13.2(a);

(viii) Amend any of the conditions to the Loan Opening set forth in Article 6 of this Agreement;

(ix) Release all or any portion of any collateral for the Loans except in accordance with the terms and provisions of Section 13.10 hereof or any other Loan Document; and

(x) Consent to any additional indebtedness of Borrower secured by all or any portion of the Premises, except as may be provided for in the Loan Documents.

(b) No provision of Article 13 or other provision of this Agreement affecting the Agent in its capacity as such shall be amended, modified or waived without the written consent of the Agent. No provision of this Agreement relating to the rights or duties of the Required Banks in their capacities as such shall be amended, modified or waived without the consent of the Required Banks.

(c) In addition to the required consents or approvals referred to in subsections (a), (b) and (c) above, Agent may, but shall not be required to, at any time request instructions from the Required Banks in accordance with the provisions of subsection (f) below with respect to any actions or approvals which, by the terms of this Agreement or of any of the Loan Documents, Agent is permitted or required to take or to grant without instructions from the Required Banks, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever for refraining from taking any action or withholding any approval under any of the Loan Documents until it shall have received such instructions from the Required Banks. Without limiting the foregoing, no Bank shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Required Banks. Agent shall promptly notify each Bank at any time that the Required Banks have instructed Agent to act or refrain from acting pursuant hereto.

(d) If an Event of a Default occurs hereunder or under any of the Loan Documents, Agent may make the determination to accelerate the Loan and exercise or refrain from exercising remedies hereunder (and Agent shall do so at the written direction of the Required Banks). Notwithstanding the foregoing, Agent may take any action it deems to be necessary from time to time to protect the collateral.

(f) Each Bank authorizes and directs Agent to enter into the Loan Documents other than this Agreement. Each Bank agrees that any action taken by Agent at the direction or with the consent of the Required Bank in accordance with the provisions of this Agreement or any other Loan Document, and the exercise by Agent at the direction or with the consent of the Required Banks of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Banks, except for actions specifically requiring the approval of all of the Banks. All communications from Agent to the Banks requesting a Bank's determination, consent, approval or disapproval (i) shall be given in the form of a written notice to each Bank, (ii) shall be accompanied by a description of the matter or item as to which such determination, approval, consent or disapproval is requested, or shall advise each Bank where such matter or item may be inspected, or shall otherwise describe the matter or issue to be resolved, (iii) shall include, if reasonably requested and to the extent not previously provided written materials and a summary of all oral information provided to Agent by Borrower in respect of the matter or issue to be resolved, and (iv) shall include Agent's recommended course of action or determination in respect thereof. Each Bank shall reply promptly, but in any event within ten (10) Business Days after receipt of the request therefor from Agent (the "Bank Reply Period"). Unless written notice to Agent that a Bank objects to the recommendation or determination of Agent (together with a written explanation of the reasons behind such objection) is received by Agent within the Bank Reply Period, such party shall be deemed to have approved of or consented to such recommendation or determination. With respect to decisions requiring the approval of the Required Banks or all of the Banks, Agent shall submit its recommendation or determination for approval of or consent to such recommendation or determination to each Bank and upon receiving the required approval or consent shall, to the extent feasible, follow the course of action or determination recommended by Agent or such other course of action recommended by the Required Banks, and each non-responding party shall be deemed to have concurred with such recommended course of action.

(g) Until such time as Borrower is otherwise instructed in writing by the Agent, Borrower may rely on the direction, consent or approval of Agent as the direction, consent or approval of the Banks.

13.4 **Liability of Agent**. None of Agent nor any of its directors, officers, employees or agents shall (i) be liable to any other Bank for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except to the extent resulting from its own negligence or willful misconduct in connection with the duties expressly set forth herein as determined by a final, non-appealable judgment by a court of competent jurisdiction), or (ii) be responsible in any manner to any of the Banks or any Participant for any recital, statement, representation or warranty made by Borrower, Guarantor, or any member, partner, shareholder or officer of Borrower or Guarantor, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any lien, mortgage or security interest

therein), or for any failure of Borrower or any other party to any Loan Document to perform its obligations hereunder or thereunder. Agent shall not be under any obligation to any Bank to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the properties, books or records of Borrower.

13.5 **Reliance by Agent**. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper person or party, and upon advice and statements of legal counsel (including counsel to Borrower), independent accountants and other experts selected by the Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the Required Banks as it deems appropriate and, if it so requests, confirmation from the Banks of their obligation to indemnify the Agent against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. As against any other Bank, Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Banks and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Banks. For purposes of determining compliance with the conditions specified in Section 13, each Bank that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Bank unless the Agent shall have received written notice from such Bank prior to the proposed Loan Opening Date specifying its objection thereto.

13.6 **Notice of Default**. Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of the Banks, unless Agent shall have received written notice from a Bank or Borrower referring to this Agreement, describing such Event of Default and stating that such notice is a "notice of default". Agent will notify the Banks of its receipt of any such notice. Agent shall take such action with respect to such Event of Default as may be requested by the Required Banks in accordance with this Section 13; provided that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as it shall deem advisable or in the best interest of the Banks.

13.7 **Credit Decision**. Each Bank acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and Guarantor, shall be deemed to constitute any representation or warranty by Agent to any Bank as to any matter, including whether the Agent has disclosed material information in its possession. Each Bank represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and Guarantor, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Bank also represents that it will, independently and without reliance upon Agent and based

on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly herein required to be furnished to the Banks by Agent, Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of Borrower which may come into the possession of the Agent.

13.8 **Bank Indemnification**. Whether or not the transactions contemplated hereby are consummated, the Banks shall indemnify upon demand Agent and its directors, officers, employees and agents (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), pro rata, for, from and against any and all actions, causes of action, suits, losses, liabilities, damaged and expenses, including attorneys' fees and expenses (collectively, the "Indemnified Liabilities"); provided that no Bank shall be liable for any payment to Agent of any portion of the Indemnified Liabilities to the extent determined by a final, non-appealable judgment by a court of competent jurisdiction to have resulted from Agent's negligence or willful misconduct. No action taken in accordance with the directions of the Required Banks shall constitute negligence or willful misconduct for purposes of this Agreement. Without limitation of the foregoing, each Bank shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Loan Expenses) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, any or all of the Loan Documents, termination of this Agreement and the resignation or replacement of the Agent. Notwithstanding the foregoing (a) Agent shall only be entitled to receive legal fees in any litigation arising from this Agreement or any of the other Loan Documents if Agent is the prevailing party in such litigation and (b) Borrower shall not be liable for consequential or indirect damages hereunder or under the indemnification provisions of any other Loan Document except to the extent arising from third party claims against an indemnified party.

13.9 **Agent in Individual Capacity**. LaSalle and its affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with Borrower and Guarantor as though LaSalle were not Agent hereunder and without notice to or consent of the Banks. The Banks acknowledge that, pursuant to such activities, LaSalle or its affiliates may receive information regarding Borrower or Guarantor (including information that may be subject to confidentiality obligations in favor of Borrower or Guarantor) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), LaSalle and its affiliates shall have the same rights and powers under this Agreement as any other Bank and may exercise the same as though LaSalle were not

the Agent, and the terms "Bank" and "Banks" include LaSalle and its affiliates, to the extent applicable, in their individual capacities.

13.10 **Successor Agent**. Agent may resign as Agent upon 30 days' notice to the Banks. If Agent resigns under this Agreement, the Required Banks shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among the Banks a successor agent for the Banks. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Banks and Borrower, a successor agent from among the Banks. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 13 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Banks shall perform all of the duties of the Agent hereunder until such time, if any, as the Required Banks appoint a successor agent as provided for above. No resignation by Agent shall diminish any obligation, liabilities or duties Agent may have to Borrower arising or accruing prior to such resignation.

13.11 **Collateral Matters**. The Banks irrevocably authorize Agent, at its option and in its discretion, to release any lien granted to or held by Agent under any Loan Document (i) upon termination of the Commitments and payment in full of all Loans and all other obligations of Borrower hereunder; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any disposition permitted hereunder; or (iii) if approved, authorized or ratified in writing by all of the Banks.

13.12 **Agent May File Proofs of Claim**. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Borrower or Guarantor, the Agent (irrespective of whether the principal of any Loans shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, and all other obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Banks and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Banks and the Agent and their respective agents and counsel and all other amounts due the Banks and the Agent hereunder) allowed in such judicial proceedings; and

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

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

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Bank any plan of reorganization, arrangement, adjustment or composition affecting the Loans or the rights of any Bank or to authorize the Agent to vote in respect of the claim of any Bank in any such proceeding.

ARTICLE 14

SALE OF PARCELS AND RELEASE PRICES

14.1 **Sale of Parcels**. Provided that no Event of Default exists under the Loan Documents, Borrower shall have the right to enter into Approved Sales Contracts for the sale of portions of the Project, subject to the terms and conditions set forth below:

(a) If a parcel of the Project is sold to Guarantor or an Affiliate, the Agent shall receive as a partial release price the greater of: (i) the product of the number of Usable Acres of the Project or portions thereof measured in square feet to be sold multiplied by the Allocated Loan Amount, or (ii) an amount which, when paid to reduce the outstanding principal balance of the Loans, will cause the ratio of the Commitment Amount to the "as is" value of the remaining portions of the Project to be no more than seventy five percent (75%), as determined by Agent;

(b) Except as provided in subsection (c) below, if a parcel of the Project is sold to a party, which is not the Guarantor or an Affiliate, the Agent shall receive as a partial release price an amount equal to the product of the number of Usable Acres of the Project or portions thereof measured in square feet to be sold multiplied by the Allocated Loan Amount multiplied by one hundred fifteen percent (115%);

(c) If the Tesco Parcel is sold substantially in accordance with the terms and provisions of that certain draft purchase and sale agreement dated September 11, 2007 and identified as draft no. 101021854.9 (the "Tesco Draft Contract") to be executed by Borrower and Fresh & Easy Neighborhood Market, Inc., and the closing occurs within one hundred twenty (120) days of the Loan Opening Date, the Agent shall receive as a partial release price an amount equal to the product of the number of Usable Acres of the Project or portions thereof measured in square feet to be sold multiplied by the Allocated Loan Amount multiplied by one hundred five percent (105%). Agent hereby approves the terms of the Tesco Draft Contract and the delineation of the Tesco Parcel shown on the draft lot line adjustment attached as **Exhibit "H"** hereto;

(d) Borrower shall obtain all necessary zoning variances so that the portion of the Project remaining after any release contemplated hereunder shall comply with all

zoning, subdivision and platting laws and regulations, including ingress, egress and access between the portion of the Project released and the portion of the Project remaining, setbacks, ratio of square footage of improvements to the size of the remaining portion of the Project, adequate parking, landscape buffers and signage;

(e) To the extent the Land is not divided into separate parcels for purposes of conveyances pursuant to appropriate plat maps approved by the applicable Governmental Authority, the remaining portions of the Project must constitute separate parcels of land that may be conveyed without the necessity of re-platting or further Governmental Approvals and operated independently from the parcel released. In connection therewith, any easements or agreements necessary to service and operate the remaining portions of the Project and the released parcel must be recorded in form and content acceptable to Agent and its counsel.

(f) Borrower shall deliver or caused to be delivered to Agent an endorsement to Agent's Title Insurance Policy, satisfactory to Agent, insuring the Deed of Trust as a first lien on the remaining portion of the Project, subject to the Permitted Exceptions, insuring all easements that benefit the remaining portions of the Project. None of the easements benefiting the remaining portion of the Project shall be subject to any prior lien or charge. Borrower shall furnish to the Title Company any plats of survey and other documents required by the Title Company in order to remove the survey exception from the endorsement; and

(g) Borrower shall pay all fees and costs in connection with the foregoing requirements, including without limitation all fees and costs, including reasonable attorneys' fees, incurred by Agent in connection with the same.

Agent shall not unreasonably withhold, delay or condition its approval of lot line adjustments and parcel maps for the sales of parcels of the Land.

14.2 **Partial Reconveyances from Lien of Deed of Trust**. Upon the satisfaction of the terms and conditions set forth in Section 14.1 above, Agent shall deliver to Borrower an instrument, which if duly recorded, would operate to reconvey the Usable Acres of the Project being released from the lien of the Deed of Trust. Upon satisfaction of the terms and conditions set forth in the Acquisition Agreement, Agent shall deliver to Borrower an instrument, which if duly recorded, would operate to reconvey any portions of the Project which are to be dedicated or conveyed to the City under the Acquisition Agreement from the lien of the Deed of Trust and other Loan Documents.

ARTICLE 15

MISCELLANEOUS

15.1 **Time is of the Essence**. Borrower agrees that time is of the essence in all of its covenants under this Agreement.

15.2 **Agent's Determination of Facts**. Agent and/or Banks at all times shall be free to establish independently to its or their satisfaction and in its or their reasonable discretion the

existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Agreement.

15.3 **Prior Agreements**. This Agreement and the other Loan Documents, and any other documents or instruments executed pursuant thereto or contemplated thereby, shall represent the entire, integrated agreement between the parties hereto with respect to construction of the Project not yet in place, and shall supersede all prior negotiations, representations or agreements pertaining thereto, either oral or written. This Agreement and any provision hereof shall not be modified, amended, waived or discharged in any manner other than by a written amendment executed by all parties to this Agreement.

15.4 **Disclaimer by Banks**. Neither Agent nor any of the Banks shall be liable to any contractor, subcontractor, architect, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with construction of the Project. Neither Agent nor any of the Banks shall be liable for any debts or claims accruing in favor of any such parties against Borrower or against the Premises. Borrower is not or shall not be an agent of Agent or the Banks for any purposes, and neither Agent nor the Banks are venture partners with Borrower in any manner whatsoever. Neither Agent nor the Banks shall be deemed to be in privity of contract with any contractor, subcontractor, architect or provider of services on or to the Premises, nor shall any payment of funds directly to a contractor, subcontractor, architect or provider of services be deemed to create any third party beneficiary status or recognition of same by Agent or any Bank unless and until Agent or such Bank expressly assumes such status in writing. No contractor, subcontractor, architect, supplier, laborer, architect, engineer or other party shall be deemed to be a third party beneficiary of this Agreement or any of the Loan Documents. Approvals granted by Agent or the Banks for any matters covered under this Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

15.5 **Borrower Indemnification**. Borrower agrees to indemnify and defend Agent and its officers, directors and employees, acting in their capacities as such ("Indemnitees") from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, deficiencies, interest, judgments, costs or expenses incurred by them or any of them, including amounts paid in settlement, court costs, and reasonable fees and disbursements of counsel incurred in connection with any investigation, litigation or other proceeding, arising out of or by reason of any investigation, litigation or other proceeding brought or threatened, arising out of or by reason of their execution of any Loan Document and the transaction contemplated thereby or the development, construction and operation of the Project, including, but not limited to, any use effected or proposed to be effected by Borrower of the advances of the Loan Proceeds, but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the negligence or willful misconduct of the relevant Indemnitee. Any Indemnitee seeking indemnification under this Section will notify Borrower of any event requiring indemnification within thirty (30) Business Days following such Indemnitee's receipt of written notice of commencement of any action or proceeding, or such Indemnitee's obtaining actual knowledge of the occurrence of any other event giving rise to a claim for indemnification hereunder; provided, however, that the failure to notify Borrower will not relieve Borrower of any liability that it may have to the Indemnitees except to the extent that Borrower demonstrates that the defense of such

indemnified matter is actually prejudiced by the failure to give such notice. Borrower will assume the defense of any such action or proceeding using counsel of its choice; provided that:

(a) such counsel is reasonably satisfactory to such Indemnitee;

(b) if such Indemnitee is Agent or its affiliate, settlement of, or an adverse judgment with respect to, such claim is not, in the good faith judgment of such Indemnitee, likely to establish a precedential custom or practice materially adverse to the continuing business interests of such Indemnitee;

(c) Borrower shall conduct the defense of such claim actively and diligently;

(d) no conflict of interest has arisen which would prevent counsel for Borrower from also representing such Indemnitee, including because the defendants in any action include both such Indemnitee and Borrower;

(e) Borrower will not consent to the entry of any judgment or enter into any settlement with respect to such claim without the prior written consent of such Indemnitee (not to be withheld unreasonably); and

(f) Borrower shall keep the Indemnitee reasonably apprised of the status of such defense or settlement, including providing copies of all correspondence to and from the other side and all pleadings filed or received.

Such Indemnitee may retain separate co-counsel and participate in the defense of such claim, and, so long as Borrower is conducting the defense of such claim in accordance with the foregoing requirements, the costs and expenses of such co-counsel and participation shall be solely the Indemnitee's responsibility. So long as Borrower is conducting such defense in accordance with the foregoing requirements, the Indemnitee will not consent to the entry of any judgment or enter into any settlement with respect to such claim without the prior written consent of Borrower with respect to such claim (not to be withheld unreasonably).

If Borrower fails to satisfy any of the above conditions to Borrower's defense, such Indemnitee (and its counsel) may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, such claim in any manner it may reasonably deem appropriate (and such Indemnitee need not consult with, or obtain any consent from, Borrower in connection therewith) and Borrower will reimburse such Indemnitee promptly and periodically for the costs of defending against such claim (including reasonable attorneys' fees and expenses) and Borrower will remain responsible for any loss which such Indemnitee may suffer resulting from, arising out of, relating to, in the nature of, or caused by such claim to the fullest extent provided for and required by this Agreement.

15.6 **Erection of Sign**. Upon the request of Agent, Borrower shall, at its cost and expense, add to Borrower's sign on the Premises (which shall be satisfactory to Borrower and Agent and conform to applicable law) in a conspicuous location Agent's identification and logo indicating that the construction financing for the Project has been arranged through and supplied by Agent.

15.7 **Captions**. The captions and headings of various Articles and Sections of this Agreement and exhibits pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

15.8 **Inconsistent Terms and Partial Invalidity**. In the event of any inconsistency among the terms hereof (including incorporated terms), or between such terms and the terms of any other Loan Document, Agent may elect which terms shall govern and prevail. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, in any circumstances, is adjudicated by a court of competent jurisdiction to be invalid, the validity of the remainder of this Agreement shall be construed as if such invalid part were never included herein.

15.9 **Gender and Number**. Any word herein which is expressed in the masculine or neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural number shall be deemed, whenever appropriate in the context, to include the singular and the plural.

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

To Agent:	LaSalle Bank National Association 135 South LaSalle Street, Suite 1225 Chicago, Illinois 60603 Attention: Commercial Real Estate Division
With copies to:	LaSalle Bank National Association 135 South LaSalle Street, Suite 1425 Chicago, Illinois 60603 Attention: Commercial Real Estate Syndications
and:	Schwartz Cooper Chartered 180 North LaSalle Street Suite 2700 Chicago, Illinois 60601 Attn: Michael S. Kurtzon, Esq.
To a Bank:	See notice addresses set forth on Schedule 3.1 hereto.
To Borrower:	Arch Road Limited Partnership c/o Stockton GP, L.L.C. 10350 Bren Road West Minnetonka, Minnesota 55343 Attn: Wade Lau, Vice President

With a copy to:

Opus L.L.C.
10350 Bren Road West
Minnetonka, Minnesota 55343
Attn: Legal Department

And

Briggs and Morgan PA
2200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
Attn: Charles R. Haynor, Esq.

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

15.11 **Effect of Agreement**. The submission of this Agreement and the Loan Documents to Borrower for examination does not constitute a commitment or an offer by Agent to make a commitment to lend money to Borrower; this Agreement shall become effective only upon execution by Banks and delivery hereof by Agent to Borrower.

15.12 **Governing Law**. This Agreement has been negotiated, executed and delivered at Chicago, Illinois, and shall be construed and enforced in accordance with the laws of the State of Minnesota, without reference to the choice of law or conflicts of law principles of the State of Minnesota.

15.13 **Waiver of Defenses**. OTHER THAN CLAIMS BASED UPON THE FAILURE OF AGENT TO ACT IN A COMMERCIALLY REASONABLE MANNER AND THE STATUTE OF LIMITATIONS, BORROWER, ON BEHALF OF ITSELF AND GUARANTOR, WAIVES EVERY PRESENT AND FUTURE DEFENSE (OTHER THAN THE DEFENSE OF PAYMENT IN FULL OR THE STATUTE OF LIMITATIONS), CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH BORROWER MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION BY AGENT OR THE OTHER BANKS IN ENFORCING THIS AGREEMENT. PROVIDED THAT AGENT AND THE OTHER BANKS ACT IN GOOD FAITH, THE BORROWER RATIFIES AND CONFIRMS WHATEVER AGENT OR THE OTHER BANKS MAY DO PURSUANT TO THE TERMS OF THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR AGENT AND THE OTHER BANKS GRANTING ANY FINANCIAL ACCOMMODATION TO BORROWER.

15.14 **Consent to Jurisdiction**. TO INDUCE BANKS TO ACCEPT THE NOTES, BORROWER, AGENT AND THE BANKS (BY THE ACCEPTANCE HEREOF) EACH IRREVOCABLY AGREES THAT, SUBJECT TO THE AGENT'S SOLE AND ABSOLUTE

ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE LOAN DOCUMENTS WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS OR MINNEAPOLIS, MINNESOTA. BORROWER, AGENT AND THE BANKS (BY ACCEPTANCE HEREOF) EACH HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS OR MINNEAPOLIS, MINNESOTA, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

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

15.16 **Counterparts; Facsimile Signatures**. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed Loan Documents maintained by Agent shall be deemed to be originals thereof.

15.17 **Permanent Financing**. Borrower hereby grants to LaSalle a right of first offer with respect to providing any construction, permanent or other financing sought by Borrower in connection with the Project (the "Right of First Offer"). Accordingly, Borrower hereby agrees that if at any time, Borrower desires to obtain any construction, permanent or other financing in connection with the Project, Borrower shall notify LaSalle in writing ("Borrower's Notice"). Borrower and LaSalle (negotiating in good faith) shall, for a period of ten (10) days after LaSalle's receipt of Borrower's Notice, attempt to enter into a loan commitment mutually acceptable to LaSalle and Borrower (the "Loan Commitment"). In the event LaSalle (a) refuses to exercise its Right of First Offer by notifying Borrower, in writing, of such refusal within ten (10) days of receipt of Borrower's Notice, or (b) LaSalle and Borrower are unable, within the 10 day period following LaSalle's exercise of its Right of First Offer, to execute and deliver a Loan Commitment, then, in either event, Borrower shall thereafter be free to obtain any construction,

permanent or other financing from another lender on such terms and conditions as Borrower in its sole and absolute discretion shall elect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Banks and Borrower have caused this Loan agreement to be executed as of the day and year first above written.

BORROWER:

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: Wade C. Lau
Its: Vice President

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: _____
Name: _____
Title: _____

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: _____
Name: _____
Title:

IN WITNESS WHEREOF, the Banks and Borrower have caused this Loan agreement to be executed as of the day and year first above written.

BORROWER:

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By:_____
Name: _____
Its:_____

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: _____
Name: Don Broderick
Title: Senior Vice President

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: _____
Name: Don Broderick
Title: Senior Vice President

SCHEDULE 3.1

THE BANKS AND COMMITMENTS

BANK	COMMITMENT	PRO RATA SHARE [Note: To be determined to nine (9) decimal points.]
LaSalle Bank National Association 135 South La Salle Street Chicago, Illinois 60603 Attn: Don Broderick	$54,975,000.00	100%

EXHIBIT "A"

THE LAND

PARCEL A:

BEING A PORTION OF THAT CERTAIN TRACT OF LAND LYING IN SECTIONS 69,70,79 AND 80 OF C. M. WEBER GRANT EL RANCHO DEL CAMPO DE LOS FRANCESES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID POINT BEING DISTANT WESTERLY 243.20 FEET MEASURED ALONG SAID NORTHERLY BOUNDARY LINE FROM THE NORTHEAST CORNER OF SECTION 27; THENCE ALONG THE SOUTHWESTERLY LINE OF THAT CERTAIN 2.967 ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM WILLIAM LADD SALMON TO THE COUNTY OF SAN JOAQUIN RECORDED NOVEMBER 25, 1949 IN BOOK OF OFFICIAL RECORDS, BOOK 1083, PAGE 296, SAN JOAQUIN COUNTY RECORDS, THE FOLLOWING COURSES:

ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1045.60 FEET THROUGH A CENTER ANGLE OF 56° 06' 21" [THE LONG CHORD OF WHICH BEARS NORTH 56° 59' 10" WEST 983.46 FEET] AN ARC DISTANCE OF 1023.89 FEET; THENCE NORTH 28° 56' 00" WEST 328.59 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 965.60 FEET THROUGH A CENTRAL ANGLE OF 19° 28' 29" [THE LONG CHORD OF WHICH BEARS NORTH 38° 40' 15" WEST 326.63 FEET] AN ARC DISTANCE OF 328.21 FEET, MORE OR LESS TO A POINT IN THE SOUTHWESTERLY RIGHT OF WAY LINE OF MARIPOSA ROAD [80 FEET WIDE] PER O.D.P.H. ON NOVEMBER 6, 1861; LAST SAID POINT BEING THE MOST WESTERLY CORNER OF SAID 2.967 ACRE PARCEL; THENCE ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 52° 59' 40" WEST 1155.00 FEET, MORE OR LESS; THENCE CONTINUING ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 60° 23' 40" WEST 3015.48 FEET; THENCE LEAVING LAST SAID RIGHT OF WAY LINE SOUTH 18° 26' 00" EAST 1975.71 FEET; THENCE SOUTH 71° 49' 30" WEST 1622.55 FEET; THENCE SOUTH 18° 26' 30" EAST 959.71 FEET TO A POINT IN SAID NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 89° 39' 56" EAST 5343.87 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION BY GRANT DEED RECORDED DECEMBER 31, 2002, INSTRUMENT NO. 2002-237858, OFFICIAL RECORDS AND RE-RECORDED MARCH 17, 2004, INSTRUMENT NO. 2004-053393, OFFICIAL RECORDS COUNTY OF SAN JOAQUIN.

PARCEL B:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4; A DISTANCE OF 1543.25 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE SOUTH 89° 33' 40" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 792.4 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 0° 51' EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2653.3 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 475.6 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY AS PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS WHICH POINT IS THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST PARALLEL WITH SAID WEST LINE OF NORTHWEST 1/4, A DISTANCE OF 1067.59 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750.0 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE NORTH 89° 33' 40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1864.8 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 0° 44' 40" EAST ALONG THE EAST LINE OF SAID NORTHWEST 1/4; A DISTANCE 2650.43 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89° 30' WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2222.3 FEET TO A POINT THAT IS NORTH 89° 30' EAST A DISTANCE OF 430.0 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4: THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 568.86 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY, PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 75° 42' WEST ALONG THE NORTHERLY LINE OF SAID SURVEY TO THE POINT OF BEGINNING.

PARCEL D:

PARCEL DI:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27 AS SAID IRON PIN IS SHOWN ON SURVEY MADE BY ROBERT ANGERMEIER FILED IN BOOK OF SURVEYS, BOOK 10, PAGE 86, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST A DISTANCE OF 490.0 FEET; THENCE NORTH 89° 28' EAST PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 380.0 FEET; THENCE SOUTH 0° 51' EAST A DISTANCE OF 490.0 FEET TO A POINT IN THE SOUTH LINE OF SAID NORTHWEST ¼; THENCE SOUTH 89° 28' WEST ALONG SAID SOUTH LINE OF THE NORTHWEST ¼, A DISTANCE OF 380.0 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO VERA E. SMITH AS EXECUTRIX OF WILLIAM L. SALMON, DECEASED BY INSTRUMENT RECORDED FEBRUARY 6, 1969 IN BOOK OF OFFICIAL RECORDS, BOOK 3275, PAGE 236, SAN JOAQUIN COUNTY RECORDS.

PARCEL DII:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27, NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE SOUTHWEST CORNER OF THE LANDS CONVEYED BY WILLIAM L. SALMON AND LYDIA A. SALMON TO HERNER B. PAULSON AND WINIFRED O. PAULSON AS PER DEED RECORDED APRIL 12, 1957 IN BOOK OF OFFICIAL RECORDS, BOOK 1962, PAGE 187, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 0° 51' WEST ALONG THE WEST LINE OF SAID PAULSON LANDS, A DISTANCE OF 490.0 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89° 28' EAST ALONG THE NORTH LINE OF SAID PAULSON LANDS, A DISTANCE OF 58.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 28' EAST ALONG SAID NORTH LINE OF PAULSON LANDS, A DISTANCE OF 321.39 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 0° 51' WEST A DISTANCE OF 78.64 FEET; THENCE SOUTH 75° 42' WEST A DISTANCE OF 330.45 FEET TO THE POINT OF BEGINNING.

PARCEL E:

PARCEL 1, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL F:

PARCEL 3, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL G:

PARCEL 4, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL H:

COMMENCING AT THE COMMON CORNER OF SECTIONS 58, 59, 68 AND 69 OF C.M. WEBER'S GRANT, "EL RANCHO DEL CAMPO DE LOS FRANCESES"; THENCE SOUTHWESTERLY ALONG THE SECTION LINE BETWEEN SECTIONS 58 AND 59, 13.68 CHAINS; THENCE SOUTHWESTERLY PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 59 AND 69 OF SAID GRANT TO A POINT WHICH IS DISTANT FROM THE SOUTH LINE OF SAID WEBER GRANT, NORTH 17° 30' WEST, 838.7 FEET, AND BEING THE TRUE POINT OF BEGINNING OF THE PROPERTY HEREINAFTER DESCRIBED; THENCE FROM SAID POINT OF BEGINNING SOUTH 17° 30' EAST, 838.7 FEET TO THE SOUTH LINE OF WEBER GRANT; THENCE ALONG SAID SOUTH GRANT LINE SOUTH 89° 25' EAST, 2557.1 FEET TO THE SOUTHEAST CORNER OF SURVEY NO. 2358; THENCE ALONG THE EAST LINE OF SURVEY 2358 AND THE EAST LINE OF THE WEST 1/3 OF SECTION 69 OF C.M. WEBER'S GRANT, NORTH 17° 30' WEST, 1632.42 FEET TO THE POINT; THENCE SOUTH 72° 30' WEST, 2430.8 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

TAX IDENTIFICATION NUMBERS:

179-220-06
179-220-27
179-220-28
181-100-01
181-100-02
181-100-05
181-110-17
181-110-19
181-110-20

EXHIBIT "B"

FORM OF NOTE

$_____ Date: ____ __, 2007
Chicago, Illinois Maturity Date: _____ __, 2009

FOR VALUE RECEIVED, **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of _____ (the "Bank") at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Loan Agreement dated as of October 4, 2007, executed by and among the Borrower, certain financial institutions (including the Bank) and the Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

The Borrower further promises to pay interest on the unpaid principal amount of all Loans outstanding from time to time, at the rate(s) and at the time(s) set forth in the Loan Agreement. The outstanding principal amount of all Loans shall be repaid by the Borrower on the Maturity Date, or Extended Maturity Date, as applicable, unless payable sooner pursuant to the provisions of the Loan Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America. The Loans made by the Bank and all payments on account of the principal and interest thereof, shall be recorded on the books and records of the Agent and the principal balance as shown on such books and records shall be rebuttably presumptive evidence of the principal amount owing hereunder, subject to reasonable verification by the Borrower.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Loan Agreement, to which Loan Agreement reference is hereby made for a statement of the terms and provisions under which this Note may or must be paid prior to the Maturity Date or Extended Maturity Date, as applicable, or pursuant to which the Maturity Date, or Extended Maturity Date, as applicable, may be accelerated. The holder of this Note is entitled to all of the benefits and security provided for in the Loan Agreement.

Except for such notices as may be expressly required under the Loan Documents, the Borrower waives presentment, demand, notice, protest, and all other demands, or notices, in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and assents to any extension or postponement of the time of payment or the exercise of any right or remedy by Agent or any holder of this Note. No failure to exercise, and no delay in exercising, any rights under any of the Loan Documents by the Agent of any holder of this Note shall operate as a waiver of such rights.

This Note shall be governed and construed in accordance with the laws of the State of Minnesota applicable to contracts made and to be performed entirely within such State.

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

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By:_____
Name: _____
Its:_____

EXHIBIT "C"

PERMITTED EXCEPTIONS

THE FOLLOWING ARE THE PERMITTED TITLE EXCEPTIONS PER THE PRO FORMA LOAN POLICY NO. 315226 ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY:

EXCEPTION NUMBERS 1-9, INCLUSIVE, 11-16(A)-(F), INCLUSIVE AND 17 AS SET FORTH ON SCHEDULE B – PART I

EXHIBIT "D"

PROJECT BUDGET

Sources ($000's)		% Total	Uses ($000's)		% Total	$/Acre
			Land			
LBNA Debt	***$ 54,975,000***	70%	Site Acquisition	55,000,000	70%	$116,034
Borrower Equity	23,641,685	30%	Infrastructure Costs	14,904,372	19%	$31,444
			Real Estate Taxes	1,300,000	2%	$2,743
			Financing Fee	412,313	1%	$870
			Interest Reserve [1]	***7,000,000***	9%	$14,768
Total Sources	$ 78,616,685	100%	**Total Uses**	$ 78,616,685	100%	$165,858

EXHIBIT "E"

FORM OF ASSIGNMENT AND ACCEPTANCE

Reference is made to the Loan agreement dated as of October 4, 2007 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Loan Agreement") among (i) Arch Road Limited Partnership, a Delaware limited partnership (the "Borrower"), (ii) the several banks and financial institutions from time to time parties to the Agreement (collectively, the "Banks") and (iii) LaSalle Bank National Association, as agent for the Banks (in such capacity the "Agent"). Terms defined in the Loan Agreement are used herein with the same meaning. This Assignment and Acceptance, between the Assignor (as identified on Schedule 1 hereto) and the Assignee (as identified on Schedule 1 hereto) is dated as of the Effective Date (as specified on Schedule 1 hereto, the "Effective Date").

The Assignor hereby irrevocably sells and assigns to the Assignee without recourse to the Assignor, and the Assignee hereby irrevocably purchases and assumes from the Assignor, without recourse to the Assignor, as of the Effective Date, the interest (the "Assigned Interest") in and to the Assignor's rights and obligations under the Loan Agreement with respect to the credit facility contained in the Loan Agreement (the "Assigned Facility"), in a principal amount and percentage of the credit facility as set forth in Schedule 1.

The Assignor (a) makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with the Loan Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Agreement, any other Loan Document or any other instrument or document furnished pursuant thereto, other than that it has not created any adverse claim upon the interest being assigned by it hereunder and that such interest is free and clear of any adverse claim; (b) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under the Loan Agreement or any other Loan Document or any other instrument or document furnished pursuant hereto or thereto; and (c) attaches the Note held by it evidencing the Assigned Facility and requests that Agent exchange such Note for a new Note payable to the Assignor (if the Assignor has retained any interest in the Assigned Facility) and a new Note payable to the Assignee in the respective amounts which reflect the assignment being made hereby (and after giving effect to any other assignments which have become effective on the Effective Date).

The Assignee (a) represents and warrants that it is legally authorized to enter into this Assignment and Acceptance; (b) confirms that it has received a copy of the Loan Documents, together with copies of the financial statements delivered pursuant thereto and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance; (c) agrees that it will, independently and without reliance upon the Assignor, Agent or any other person which has become a Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Agreement; (d) appoints and authorizes Agent to take such action as agent on its behalf and to exercise such

powers under the Loan Agreement as are delegated to Agent by the terms thereof, together with such powers as are incidental thereto; and (e) agrees that it will be bound by the provisions of the Loan Agreement and will perform in accordance with its terms all the obligations which by the terms of the Loan Agreement are required to be performed by it as a Bank including, if it is organized under the laws of a jurisdiction outside the United States, its obligation pursuant to Subsection 4.10 of the Loan Agreement to deliver the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee's exemption from United States withholding taxes with respect to all payments to be made to the Assignee under the Loan Agreement, or such other documents as are necessary to indicate that all such payments are subject to such tax at a rate reduced by an applicable tax treaty.

This Agreement is conditioned upon the acceptance of Agent pursuant to the Loan Agreement. The execution of this Agreement by Agent is evidence of this consent. Following the execution of this Assignment and Acceptance, it will be delivered to Agent for acceptance by it pursuant to Subsection 10.1 of the Loan Agreement, effective as of the Effective Date (which shall not, unless otherwise agreed to by Agent, be earlier than five Business Days after the date of acceptance and recording by Agent of the executed Assignment and Acceptance).

Upon such acceptance and recording, from and after the Effective Date, Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignee whether such amounts have accrued prior to the Effective Date or accrue subsequent to the Effective Date. The Assignor and the Assignee shall make all appropriate adjustments in payments by Agent for period prior to the Effective Date or with respect to the making of this Assignment directly between themselves.

From and after the Effective Date (a) the Assignee shall be a party to the Loan Agreement and, with respect to the Assigned Interest, have the rights and obligations of a Bank thereunder and under the other Loan Documents and shall be bound by the provisions thereof, and (b) the Assignor shall, with respect to the Assigned Interest, relinquish its rights and be released from its obligations under the Loan Agreement.

This Assignment and Acceptance shall be governed by and construed in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment and Acceptance to be executed on Schedule 1 hereto by their respective duly authorized officers.

ASSIGNOR:

By:_____
Name:_____
Title:_____

ASSIGNEE:

By:_____
Name:_____
Title:_____

ACCEPTED BY AGENT

LASALLE BANK NATIONAL ASSOCIATION,
as Agent

By:_____
Name:_____
Title:_____

SCHEDULE 1
TO
ASSIGNMENT AND ACCEPTANCE

NAME OF ASSIGNOR:_____

NAME OF ASSIGNEE:_____

EFFECTIVE DATE OF ASSIGNMENT:_____

PRINCIPAL AMOUNT ASSIGNED (ASSIGNEE'S COMMITMENT):	ASSIGNEE'S PRO RATA SHARE IN LOAN
$_____	_____%

EXHIBIT "F"

FORM OF REQUEST FOR ADVANCE

LaSalle Bank National Association, as Agent
135 South LaSalle Street
Chicago, Illinois 60603
Attention: Construction Loan Administration

PROJECT NAME: _____ (the "Project")
BORROWER: _____ (the "Borrower")
DRAW NO: _____

Reference is hereby made to that certain Loan agreement dated as of October 4, 2007 (the "Loan Agreement"), executed by and among the Borrower, the Banks and LaSalle Bank National Association, as Agent (the "Agent"). Capitalized words and phrases used herein without definition shall have the respective meanings ascribed to such words and phrases in the Loan Agreement.

(1) Pursuant to the Loan Agreement, the Borrower hereby requests a Disbursement in the amount of $_____. The Borrower acknowledges that the approval of this Disbursement by the Agent is subject to all of the terms and conditions precedent for the disbursement of Loan proceeds, including, without limitation, verification of the matters set forth in this Loan Advance Requisition and the availability of Loan Proceeds. The Borrower acknowledges that that no funds shall be disbursed by Agent or the other Banks in connection with any portion of the Project for which a payoff amount has been quoted by the Agent to a title company.

(2) The Borrower agrees to provide, if requested by the Agent, a Vendor Payee List (Sworn Owner's Statement), showing the name and the amount currently due each party to whom the Borrower is obligated for labor, material and/or services supplied. This information would be provided in support of the disbursements requested in this Loan Advance Requisition.

(3) The Borrower hereby represents, warrants and covenants with the Agent and the other Banks as follows:

a. all conditions precedent to the disbursement have been satisfied, including, without limitation, performance of all of the then pending obligations of Borrower under the Loan Agreement and the other Loan Documents;

b. subject to Section 2.2 of the Loan Agreement, all representations and warranties made by the Borrower to the Agent and Banks in the Loan Agreement and otherwise in connection with the Loan continue to be accurate in all material respects;

c. no Event of Default, exists and is continuing under the Loan Agreement or under any Loan Document;

d. the Borrower has received no notice and has no knowledge of any litigation, proceedings (including proceedings under Title 11 of the United States Code), liens or claims of lien, either filed or threatened against the Borrower, any Guarantor, the Project, the Premises, except the liens of the Agent and those which are specifically identified in writing to the Agent; and

e. all Disbursements advanced by the Agent and the other Banks to the Borrower for labor, materials and/or services furnished prior to this draw request have been or will be paid to the parties entitled to such payment, and all Loan proceeds so disbursed have been used for the purposes set forth in the Loan Agreement.

(4) Disbursement of the Loan proceeds requested hereby may be subject to the receipt by the Agent of a certificate from the issuing Title Insurance Company stating that no claims have been filed of record which adversely affects the title except liens insured over by the Title Insurance Company.

(5) The Borrower hereby agrees and acknowledges that this request is made for the purpose of inducing the Agent and the other Banks to make a Disbursement to the Borrower and, the Agent and Banks are relying upon the accuracy of such matters in making such Disbursement, and the Borrower certifies that the statements made herein and in any documents submitted herewith are true and correct.

(6) The Borrower requests that this draw be funded and that the funds be disbursed into the Construction Escrow No. _____ at _____ or deposited to the following account number _____ at _____.

(ii) the total amount of each request for disbursement (exclusive of interest) represents the actual amount payable to a third party who has performed work on the Project and indicating what payment requests, if any, have been received by Borrower from a third party but have not yet been approved by Borrower for payment;

(iii) Borrower has received no notice and has no knowledge of any liens or claims of lien either filed or threatened in writing against the Premises except the liens of Agent and those which are specifically identified in writing to Agent and those being contested by Borrower and insured over in the manner provided herein;

(iv) all amounts shown as previous payments on the current disbursement request have been or will be paid to the parties entitled to such payment except as specifically identified to Agent and if being withheld for commercially reasonable reasons; and

Borrower has approved all work and materials for which a payment is then due and for which disbursement of the Loans is thereby requested subject to final inspection and punchlist.

IN WITNESS WHEREOF, the Borrower has executed this Loan Advance Requisition as of _____, 200__.

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By:_____
Name: _____
Its:_____

EXHIBIT "G"

LIST OF ENVIRONMENTAL ASSESSMENTS

1. Worker Awareness Training And Pre-Construction Survey For Giant Garter Snakes At Arch Road Units 3 And 4 "Newcastle Road And Arch Road Culvert Sites", Stockton, California prepared by Moore Biological Consultants dated August 15, 2007.

2. Habitat Assessment And/Or Pre-Construction Survey At Arch Road Units 3 And 4 "Newcastle Road And Arch Road Culvert Sites", Stockton, California prepared by Moore Biological Consultants dated August 6, 2007.

3. Phase I Cultural Resources Assessment prepared by Michael Brandman Associates dated July 26, 2007.

4. Results Of A Biological Due Diligence Survey For The Approximate 460-Acre Arch Road Project Site In The City Of Stockton, San Joaquin County, California prepared by Michael Brandman Associates dated July 23, 2007.

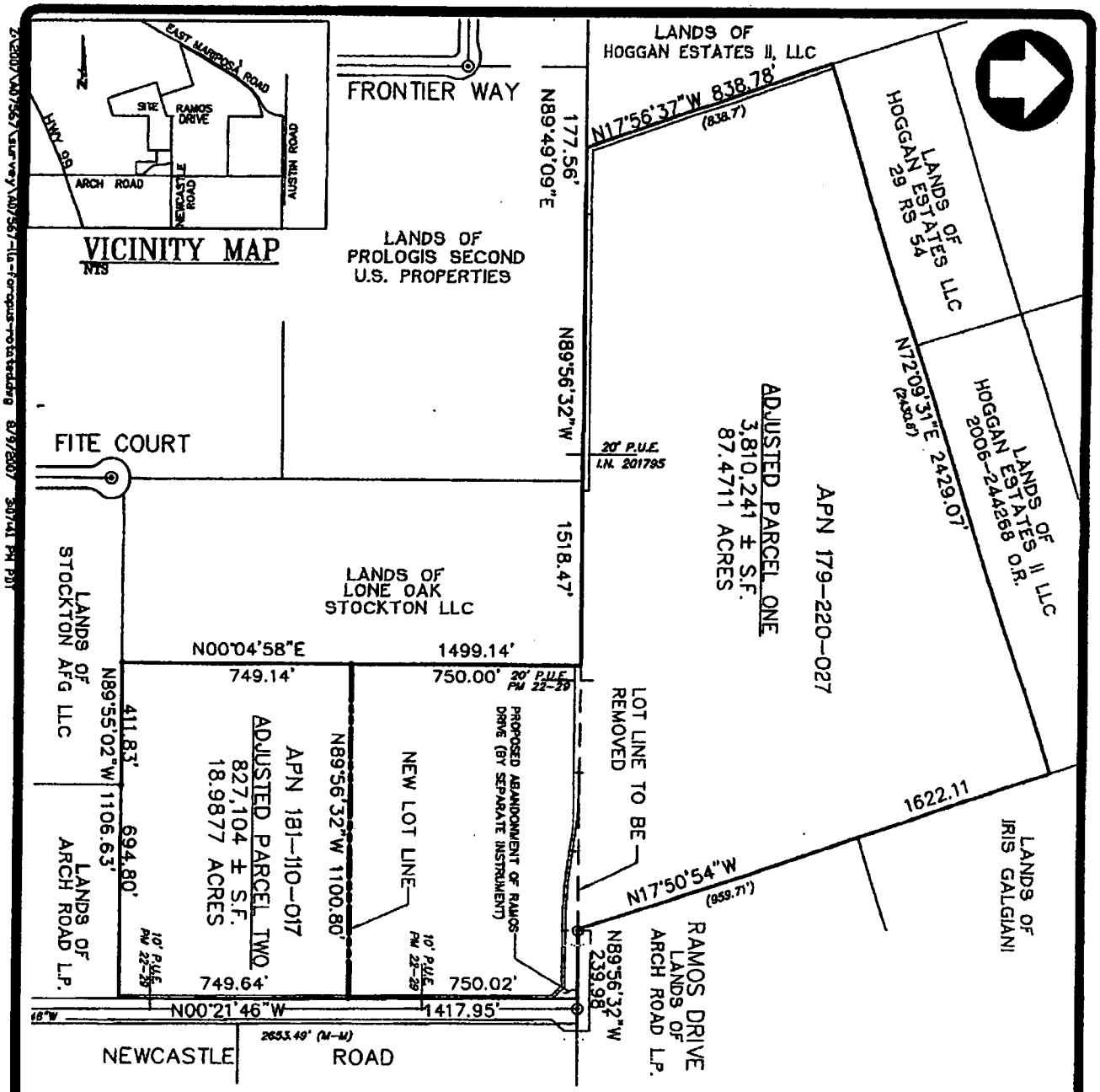
5. Phase I And Screening Level Phase II Environmental Site Assessment Report prepared by GeoTrans, Inc. dated July 5, 2007.

6. RE: Asbestos And Lead Investigation prepared by Acumen dated June 28, 2007.

EXHIBIT "H"

DRAFT TESCO LOT LINE ADJUSTMENT

[see attached]



BASIS OF BEARINGS

THE BEARING OF NORTH 0° 21' 46" WEST TAKEN ON THE CENTER LINE OF NEWCASTLE ROAD AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005, IN BOOK 23 OF PARCEL MAPS AT PAGE 118, OFFICIAL RECORDS OF SAN JOAQUIN COUNTY WAS TAKEN AS THE BASIS FOR ALL BEARINGS SHOWN HEREON.

LEGEND

PROJECT BOUNDARY
ADJOINER BOUNDARY
EASEMENT

NO.	REV. DATE	BY	APRVD.

DWG. BY CHK
CK. BY ACM
SCALE 1" = 500

DRAFT LOT LINE ADJUSTMENT
ARCH ROAD LIMITED PARTNERSHIP
CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA

CITY OF STOCKTON
DEPARTMENT OF PUBLIC WORKS

APPROVED BY

CITY ENGINEER

DATE

DRAWING NO. A07567-LLA

ATTACHMENT 2

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 24th DAY OF OCTOBER, 2007 AND, TOGETHER WITH THAT CERTAIN AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO LASALLE BANK, NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION ("LASALLE") IN THE PRINCIPAL AMOUNT OF $29,975,000.00 AMEND, RESTATE, AND SUPERSEDE THAT CERTAIN PROMISSORY NOTE DATED OCTOBER 4, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF $54,975,000.00 FROM BORROWER TO LASALLE (THE "ORIGINAL NOTE"). THIS NOTE IS NOT A NOVATION, BUT A MODIFICATION AND RESTATEMENT OF THE ORIGINAL NOTE.

AMENDED AND RESTATED PROMISSORY NOTE

$25,000,000.00
Chicago, Illinois

Date: October 24th, 2007
Maturity Date: October 4, 2009

FOR VALUE RECEIVED, **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of **RAYMOND JAMES BANK, FSB** (the "Bank") at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) Twenty Five Million and 00/100 Dollars ($25,000,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Loan Agreement dated as of October 4, 2007, executed by and among the Borrower, certain financial institutions (including the Bank) and the Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

The Borrower further promises to pay interest on the unpaid principal amount of all Loans outstanding from time to time, at the rate(s) and at the time(s) set forth in the Loan Agreement. The outstanding principal amount of all Loans shall be repaid by the Borrower on the Maturity Date, or Extended Maturity Date, as applicable, unless payable sooner pursuant to the provisions of the Loan Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America. The Loans made by the Bank and all payments on account of the principal and interest thereof, shall be recorded on the books and records of the Agent and the principal balance as shown on such books and records shall be rebuttably presumptive evidence of the principal amount owing hereunder, subject to reasonable verification by the Borrower.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Loan Agreement, to which Loan Agreement reference is hereby made for a statement of the terms and provisions under which this Note may or must be paid prior to the Maturity Date or Extended Maturity Date, as applicable, or pursuant to which the Maturity Date, or Extended Maturity Date, as applicable, may be accelerated. The holder of this Note is entitled to all of the benefits and security provided for in the Loan Agreement.

Except for such notices as may be expressly required under the Loan Documents, the Borrower waives presentment, demand, notice, protest, and all other demands, or notices, in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and assents to any extension or postponement of the time of payment or the exercise of any right or remedy by Agent or any holder of this Note. No failure to exercise, and no delay in exercising, any rights under any of the Loan Documents by the Agent of any holder of this Note shall operate as a waiver of such rights.

This Note shall be governed and construed in accordance with the laws of the State of Minnesota applicable to contracts made and to be performed entirely within such State.

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

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: Wade C. Lau
Its: Vice President

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 24 DAY OF DECEMBER, 2007 AND, TOGETHER WITH THAT CERTAIN AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO LASALLE BANK, NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION ("LASALLE") IN THE PRINCIPAL AMOUNT OF $15,000,000.00 AMEND, RESTATE, AND SUPERSEDE THAT CERTAIN AMENDED AND RESTATED PROMISSORY NOTE DATED OCTOBER 24, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF $29,975,000.00 FROM BORROWER TO LASALLE (THE "ORIGINAL NOTE"). THIS NOTE IS NOT A NOVATION, BUT A MODIFICATION AND RESTATEMENT OF THE ORIGINAL NOTE.

AMENDED AND RESTATED PROMISSORY NOTE

$14,975,000.00
Chicago, Illinois

Date: December 24, 2007
Maturity Date: October 4, 2009

FOR VALUE RECEIVED, **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of **SOVEREIGN BANK** (the "Bank") at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) Fourteen Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($14,975,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Loan Agreement dated as of October 4, 2007, executed by and among the Borrower, certain financial institutions (including the Bank) and the Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

The Borrower further promises to pay interest on the unpaid principal amount of all Loans outstanding from time to time, at the rate(s) and at the time(s) set forth in the Loan Agreement. The outstanding principal amount of all Loans shall be repaid by the Borrower on the Maturity Date, or Extended Maturity Date, as applicable, unless payable sooner pursuant to the provisions of the Loan Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America. The Loans made by the Bank and all payments on account of the principal and interest thereof, shall be recorded on the books and records of the Agent and the principal balance as shown on such books and records shall be rebuttably presumptive evidence of the principal amount owing hereunder, subject to reasonable verification by the Borrower.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Loan Agreement, to which Loan Agreement reference is hereby made for a statement of the terms and provisions under which this Note may or must be paid prior to the Maturity Date or Extended Maturity Date, as applicable, or pursuant to which the Maturity Date, or Extended Maturity Date, as applicable, may be accelerated. The holder of this Note is entitled to all of the benefits and security provided for in the Loan Agreement.

Except for such notices as may be expressly required under the Loan Documents, the Borrower waives presentment, demand, notice, protest, and all other demands, or notices, in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and assents to any extension or postponement of the time of payment or the exercise of any right or remedy by Agent or any holder of this Note. No failure to exercise, and no delay in exercising, any rights under any of the Loan Documents by the Agent of any holder of this Note shall operate as a waiver of such rights.

This Note shall be governed and construed in accordance with the laws of the State of Minnesota applicable to contracts made and to be performed entirely within such State.

IN WITNESS WHEREOF, the Borrower has executed this Amended and Restated Promissory Note as of the date set forth above.

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: Wade C. Lau
Its: Vice President

LBNA / Commercial

5964471495

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 24 DAY OF DECEMBER, 2007 AND, TOGETHER WITH THAT CERTAIN AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO SOVEREIGN BANK IN THE PRINCIPAL AMOUNT OF $14,975,000.00 AMEND, RESTATE, AND SUPERSEDE THAT CERTAIN AMENDED AND RESTATED PROMISSORY NOTE DATED OCTOBER 24, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF $29,975,000.00 FROM BORROWER TO LASALLE BANK NATIONAL ASSOCIATION (THE "ORIGINAL NOTE"). THIS NOTE IS NOT A NOVATION, BUT A MODIFICATION AND RESTATEMENT OF THE ORIGINAL NOTE.

AMENDED AND RESTATED PROMISSORY NOTE

$15,000,000.00
Chicago, Illinois

Date: December 24, 2007
Maturity Date: October 4, 2009

FOR VALUE RECEIVED, **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of **LASALLE BANK NATIONAL ASSOCIATION** (the "Bank") at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) Fifteen Million and 00/100 Dollars ($15,000,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Loan Agreement dated as of October 4, 2007, executed by and among the Borrower, certain financial institutions (including the Bank) and the Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"). Capitalized words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

The Borrower further promises to pay interest on the unpaid principal amount of all Loans outstanding from time to time, at the rate(s) and at the time(s) set forth in the Loan Agreement. The outstanding principal amount of all Loans shall be repaid by the Borrower on the Maturity Date, or Extended Maturity Date, as applicable, unless payable sooner pursuant to the provisions of the Loan Agreement. Payments of both principal and interest are to be made in lawful money of the United States of America. The Loans made by the Bank and all payments on account of the principal and interest thereof, shall be recorded on the books and records of the Agent and the principal balance as shown on such books and records shall be rebuttably presumptive evidence of the principal amount owing hereunder, subject to reasonable verification by the Borrower.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, the Loan Agreement, to which Loan Agreement reference is hereby made for a statement of the terms and provisions under which this Note may or must be paid prior to the Maturity Date or Extended Maturity Date, as applicable, or pursuant to which the Maturity Date, or Extended Maturity Date, as applicable, may be accelerated. The holder of this Note is entitled to all of the benefits and security provided for in the Loan Agreement.

Except for such notices as may be expressly required under the Loan Documents, the Borrower waives presentment, demand, notice, protest, and all other demands, or notices, in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and assents to any extension or postponement of the time of payment or the exercise of any right or remedy by Agent or any holder of this Note. No failure to exercise, and no delay in exercising, any rights under any of the Loan Documents by the Agent of any holder of this Note shall operate as a waiver of such rights.

This Note shall be governed and construed in accordance with the laws of the State of Minnesota applicable to contracts made and to be performed entirely within such State.

IN WITNESS WHEREOF, the Borrower has executed this Amended and Restated Promissory Note as of the date set forth above.

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: Wade C. Lau
Its: Vice President

ATTACHMENT 3

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

Upon recordation return to:

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: James J. Ginsburg, Esq.
NCS-315226-SA2/RH

Doc #: 2007-174143
10/8/07 10:04 AM
Page: 1 of 49 Fee: $174.00
Gary W. Freeman
San Joaquin County Recorders
Paid By:

CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

by

ARCH ROAD LIMITED PARTNERSHIP
a Delaware limited partnership

to

FIRST AMERICAN TITLE INSURANCE COMPANY

for the benefit of

LASALLE BANK NATIONAL ASSOCIATION,
a national banking association, as Agent

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EXHIBITS

EXHIBIT A - Legal Description
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CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS CONSTRUCTION DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Instrument") is made as of the 4th day of October, 2007 by **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership, whose mailing address is c/o Stockton GP, L.L.C., 10350 Bren Road West, Minnetonka, Minnesota 55343 ("Borrower"), to **FIRST AMERICAN TITLE INSURANCE COMPANY**, whose mailing address is 5 First American Way, Santa Ana, California 92707 ("Trustee"), for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, whose mailing address is 135 South LaSalle Street, Chicago, Illinois 60603, its successors and assigns, as Agent for itself and other Banks (as defined in the Loan Agreement referenced below) ("Agent").

RECITALS:

Pursuant to the terms and conditions of that certain Construction Loan Agreement of even date herewith (as amended, restated or replaced from time to time) by and among Borrower, Agent, as agent for the Banks (the "Loan Agreement"), the Banks have agreed to make loans to Borrower in the aggregate principal amount of Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00) (the "Loans"). The Loans shall be evidenced by that certain Promissory Note in the principal amount of $54,975,000.00 in favor of LaSalle Bank National Association, as a Bank, of even date herewith (as amended, restated or replaced from time to time, and any replacement notes executed in connection with any syndication of the Loans, collectively, the "Note") and due on October 4, 2009, subject to extension to October 4, 2010 pursuant to the Loan Agreement (the "Maturity Date"), except as may be accelerated pursuant to the terms hereof or of the Note, the Loan Agreement or any other Loan Document (as defined in the Loan Agreement). All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

A condition precedent to Banks making the Loans to Borrower is the execution and delivery by Borrower of this Instrument.

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

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants, conveys and assigns unto Trustee, IN TRUST, WITH POWER OF SALE, AND RIGHT TO ENTRY AND POSSESSION, all of Borrower's estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in and to the

following property (referred to collectively herein as "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

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

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

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

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

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

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Borrower and forming a part of or used in connection with the Real Estate or the Improvements; it being mutually agreed that all of the property owned by Borrower that is placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be

fixtures, a part of the realty, and security for the Indebtedness (as hereinafter defined); notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Instrument and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code of the State of California in effect from time to time) (the "Code"), this Instrument shall constitute a security agreement, creating a security interest in such goods, as collateral for the benefit of Agent, as a secured party, and Borrower, as Debtor, all in accordance with the Code; and

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

TOGETHER WITH all of Borrower's accounts now owned or hereafter created or acquired as relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Borrower: (i) accounts, contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to the Borrower arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Borrower's rights in, to and under all purchase orders for goods, services or other property; (iii) the Borrower's rights to any goods, services or other property represented by any of the foregoing; and (iv) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and, to the extent assignable, all warranties, guarantees, permits and licenses in favor of Borrower with respect to the Premises;

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

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

FOR THE PURPOSE OF SECURING: (i) the payment of the Loans and all interest, late charges, LIBOR breakage charges, interest rate swap or hedge expenses (if any), and other indebtedness evidenced by or owing under the Note, any of the other Loan Documents (except for the Environmental Indemnity Agreement as that term is defined in the Loan Agreement) any

interest rate swap or hedge agreement now or hereafter entered into between Borrower and Agent, together with any extensions, modifications, renewals or refinancings of any of the foregoing; (ii) the performance and observance of the covenants, conditions, agreements, representations, warranties and other liabilities and obligations of Borrower to or benefiting Agent which are evidenced or secured by or otherwise provided in the Note, this Instrument or any of the other Loan Documents (except for the Environmental Indemnity Agreement); and (iii) the reimbursement to Agent and the Banks of any and all sums incurred, expended or advanced by Agent and the Banks pursuant to any term or provision of or constituting additional indebtedness under or secured by this Instrument, any of the other Loan Documents, any interest rate swap or hedge agreement, with interest thereon as provided herein or therein (collectively, "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. **Title**. Borrower represents, warrants and covenants that (a) Borrower is the holder of the fee simple title to the Premises, to the best of Borrower's knowledge, free and clear of all liens and encumbrances, except those liens and encumbrances of record and those in favor of or for the benefit of Agent and as otherwise described on Exhibit B attached hereto ("Permitted Exceptions"); and (b) Borrower has legal power and authority to grant, bargain, sell, and convey the Premises.

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

(a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, provided proceeds of insurance are available or sufficient for the purpose;

(b) keep the Premises in good condition and repair, without waste, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien (subject to Borrower's right to contest liens as permitted by the terms of Paragraph 28 hereof);

(c) pay when due (subject to any applicable grace or cure periods) the Indebtedness in accordance with the terms of the Loan Agreement and the other Loan Documents and duly perform and observe all of the terms, covenants and conditions to be observed and performed by Borrower under the Note, the Loan Agreement, this Instrument and the other Loan Documents;

(d) pay when due (subject to any applicable grace or cure periods) any indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory

evidence of the discharge of such lien to the Agent (subject to Borrower's right to contest liens as permitted by the terms of Paragraph 28 hereof);

(e) complete within a reasonable time any Improvements in accordance with the Loan Agreement;

(f) comply with all material requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof, subject to the right to contest contained in the Loan Agreement;

(g) obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under this Instrument;

(h) except as provided in the Loan Agreement, make no material alterations in the Premises or demolish any portion of the Premises without Agent's prior written consent (which consent shall not unreasonably be withheld), except as required by law or municipal ordinance;

(i) except as permitted by the Loan Agreement, suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Agent's prior written consent;

(j) pay when due all operating costs of the Premises;

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

(l) cause the Premises at all times to be operated in compliance with all federal, state, local and municipal environmental, health and safety laws, statutes, ordinances, rules and regulations.

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

4. **Tax Deposits**. Upon the occurrence and during the continuance of an Event of Default and at Agent's request, Borrower shall deposit with Agent, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of the most recent

ascertainable annual Taxes on the Premises. Upon the occurrence and during the continuance of an Event of Default and at Agent's request, Borrower shall also deposit with Agent an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment of annual Taxes, as estimated by Agent. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. So long as no Event of Default shall exist, Agent shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from Borrower) or shall release sufficient funds to Borrower for the payment thereof. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, Borrower shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Agent. Agent, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof.

5. **Agent's Interest In and Use of Deposits**. Upon an Event of Default that is continuing, Agent may, at its option, apply any monies at the time on deposit pursuant to Paragraph 4 hereof to cure an Event of Default or to pay any of the Indebtedness in such order and manner as Agent may elect. If such deposits are used to cure an Event of Default or pay any of the Indebtedness, Borrower shall immediately, upon demand by Agent, deposit with Agent an amount equal to the amount expended by Borrower from the deposits. When the Indebtedness has been fully paid, any remaining deposits shall be returned to Borrower. Such deposits are hereby pledged as additional security for the Indebtedness and shall not be subject to the direction or control of Borrower. Agent shall not be liable for any act or omission taken in good faith or pursuant to the instruction of either Borrower or any agent of Borrower.

6. **Insurance**.

(a) Borrower shall at all times maintain the insurance coverages in accordance with the terms and provisions described on Exhibit C attached hereto and made a part hereof, and such other insurance as Agent may from time to time reasonably require. If upon written request of Agent, Borrower fails to provided Agent with evidence of such insurance, Agent may purchase insurance at Borrower's expense to cover Agent's interest in the Premises. The insurance may, but need not, protect Borrower's interest. The coverages that Agent purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Premises. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained insurance as required by this Instrument. If Agent purchases insurance for the Premises, Borrower will be responsible for the costs of such insurance,

including, without limitation, interest and any other charges which Agent may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

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

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

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

9. **Assignment of Lease and Rents.** Borrower shall not enter into any Lease of the Premises or any part thereof without the prior written consent of the Agent.

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

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

11. **Effect of Changes in Laws Regarding Taxation**. If any law is enacted after the date hereof requiring (a) the deduction of any lien on the Premises from the value thereof for the purpose of taxation, or (b) the imposition upon Agent of the payment of the whole or any part of the Taxes, charges or liens herein required to be paid by Borrower, or (c) a change in the method of taxation of mortgages, deeds of trust, or debts secured by mortgages or deeds of trust or Agent's interest in the Premises, or the manner of collection of Taxes, so as to affect this Instrument or the Indebtedness or the holders thereof, then Borrower, upon demand by Agent, shall pay such Taxes or charges, or reimburse Agent therefor; provided, however, that Borrower shall not be deemed to be required to pay any income or franchise taxes of Agent. Notwithstanding the foregoing, if in the opinion of counsel for Agent it is or may be unlawful to require Borrower to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Agent may declare all of the Indebtedness to be due and payable within ninety (90) days.

12. **Agent's Performance of Defaulted Acts and Expenses Incurred by Agent**. If an Event of Default has occurred, Agent may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient by Agent, and may, but need not, make full or partial payments of principal or interest on prior liens, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Borrower in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Agent in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Borrower to Agent, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Loan Agreement) then in effect. In addition to the foregoing, but subject to the conditions and limitations set forth in Paragraph 28 of this Instrument, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Agent in connection with (a) sustaining the lien of this Instrument or its priority, (b) protecting or enforcing any of Agent's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Instrument, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Instrument, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Borrower to Agent, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and

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

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

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

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

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

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

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

(f) Upon an Event of Default hereunder, Agent shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Borrower can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Agent shall be entitled to hold, maintain, preserve and prepare the

Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Borrower's right of redemption in satisfaction of Borrower's obligations, as provided in the Code. Agent may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Agent may require Borrower to assemble the Collateral and make it available to Agent for its possession at a place to be designated by Agent which is reasonably convenient to both parties. Agent will give Borrower at least thirty (30) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Borrower hereinafter set forth at least thirty (30) days before the time of the sale or disposition. Agent may buy at any public sale. Agent may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Agent so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Agent, shall be applied against the Indebtedness in such order or manner as Agent shall select in accordance with applicable laws. Agent will promptly pay to Borrower any surplus realized on such disposition.

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

(h) This Instrument is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Borrower (Debtor) and Agent (Secured Party) are set forth below in Section 26 hereof. This Instrument is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located.

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

(j) Borrower represents and warrants that:

(i) Borrower is the record owner of the Premises;

(ii) Borrower's chief executive office is located in the State of Arizona;

(iii) Borrower's state of formation is the State of Delaware;

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

(v) Borrower's organizational identification number in the State of Delaware is 4378147.

(k) Borrower agrees that:

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

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

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

14. **Restrictions on Transfer.**

(a) Borrower, without the prior written consent of Agent, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). Unless otherwise permitted under the Loan Documents, any conveyance, sale, assignment, lease, transfer, lien, pledge, mortgage, security interest or other encumbrance or alienation (or any agreement to do any of the foregoing) of any of the following properties or interests shall constitute a "Prohibited Transfer":

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

(ii) All or any part of the partnership interests of Borrower; or

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

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

in each case whether any such conveyance, sale, assignment, lease, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation is effected directly, indirectly (including the nominee agreement), voluntarily or involuntarily, by operation of law or otherwise; provided, however, that notwithstanding anything to the contrary in this Instrument, the foregoing provisions of this Paragraph 14 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current Taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, (iv) to Leases permitted by the terms of the Loan Documents, if any, (v) any transfers of membership interests in ODP Stockton, L.L.C., a Delaware limited liability company ("ODP Stockton") permitted by the ODP Stockton Limited Liability Company Agreement so long as Opus Properties, L.L.C., a Delaware limited liability company or an affiliate of Opus Properties, L.L.C., is the managing member or a replacement managing member acceptable to Agent replaces Opus Stockton Properties, L.L.C., (vi) to a transfer of the Premises in a transaction in which the Loans will be paid off or to any "private fund" transaction (i.e., transfer to an Opus Real Estate acquisition and investment fund), or (vii) transfers of a portion of the Premises to the City of Stockton pursuant to the Acquisition Agreement (as defined in the Loan Agreement).

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

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

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

15. **Single Asset Entity**. Borrower shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Premises, or become a shareholder of or a member or partner in any entity which acquires any property other than the Premises, until such time as the Indebtedness has been fully repaid. Borrower covenants until such time as the Indebtedness has been fully repaid:

(a) To maintain its assets and financial statements separate from and not commingled with any of those of any other person or entity;

(b) To conduct its own business in its own name, pay its own liabilities out of its own funds;

(c) To hold itself out as a separate entity and observe all organizational formalities;

(d) Not to guarantee or become obligated for the debts of any other entity or person or hold out its credits as being available to satisfy the obligations of others, including not acquiring obligations or securities of its partners, members or shareholders;

(e) Not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity;

(f) Intentionally Omitted;

(g) Neither Borrower nor any constituent party of Borrower will seek the dissolution or winding up, in whole or in part, of Borrower, nor will Borrower merge with or be consolidated into any other entity;

(h) Intentionally Omitted;

(i) Borrower now has and will hereafter have no debts or obligations other than normal accounts payable in the ordinary course of business, this Instrument, the Loans, the Acquisition Agreement (as defined in the Loan Agreement), and the other contracts and agreements necessary to complete the Project (as defined in the Loan Agreement); and any other indebtedness or other obligation of Borrower has been paid in full prior to or through application of proceeds from the funding of the Loans.

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

(a) Borrower fails to pay (i) any installment of principal or interest payable pursuant to the Loan Agreement within five (5) business days of the date when due, or (ii) any other amount payable to Agent under the Note, the Loan Agreement, this Instrument or any of the other Loan Documents within five (5) business days after receipt of written notice such payment is due in accordance with the terms hereof or thereof;

(b) Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower under the Note, the Loan Agreement, this Instrument or any of the other Loan Documents; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by the Instrument or any of the other Loan Documents and the value of the Premises are not materially impaired, threatened or jeopardized, then Borrower shall have a period ("Cure Period") of thirty

(30) days after Borrower obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period, provided further that if Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for forty-five (45) additional days, but in no event shall the Cure Period be longer than seventy-five (75) days in the aggregate; or

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

17. **Foreclosure; Expense of Litigation**.

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise and shall not be paid when due or within an applicable cure period, Agent shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Instrument. In the event of a foreclosure sale, Agent is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Agent may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

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

18. **Remedies**.

(a) Subject to such notice and cure periods as provided by Division 3, Part 4, Title XIV, Chapter 2 (Mortgages) of the California Civil Code, as amended from time to

time, upon the occurrence of any Event of Default, Agent may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Premises, by Agent itself or otherwise, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Agent may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Agent:

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

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

(iii) with or without entry, to the extent permitted, and pursuant to the procedures provided by, applicable law, institute proceedings for the foreclosure of this Instrument for the Indebtedness then due and payable;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) To the extent permitted by applicable law, Agent may resort to any remedies and the security given by this Instrument or the other Loan Documents in whole

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

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

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

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

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

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

19. **Appointment of Receiver**. Upon or at any time after the filing of a complaint to enforce this Instrument or any of the other Loan Documents, the court in which such complaint is filed shall, upon petition by Agent, appoint a receiver for the Premises, and Borrower hereby irrevocably consents to the appointment of such receiver(s). Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Agent hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of

redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Instrument, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

20. **Intentionally Omitted.**

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

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

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

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

22. **Compliance with California Deed of Trust Foreclosure Law.**

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

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

or in such receiver under applicable law in the absence of said provision, Agent and such receiver shall be vested with the powers, rights and remedies granted under the applicable law to the full extent permitted by law.

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

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

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

24. **Agent's Right of Inspection**. Agent and its representatives shall have the right to inspect the Premises and the books and records with respect thereto at all reasonable times and upon reasonable advance notice, and access thereto shall be permitted for that purpose.

25. **Acceptance of Late and Partial Payments**. The acceptance by Agent of the payment of any sum or the performance of any other obligation secured by this Instrument after its due date shall not constitute a waiver of the right to require prompt payment or performance when due of all other and future sums and obligations so secured, or to declare an Event of Default for any failure to so pay or perform, or to proceed with foreclosure or sale for any other Event of Default then existing. The acceptance by Agent of the payment of a portion of any sum, or the partial performance of any other obligation, secured by this Instrument at such time that the same is due and/or payable in its entirety shall neither cure nor excuse the Event of Default caused by failure to pay the whole of such installment or otherwise fully perform such obligation, or affect any notice of default recorded prior to such acceptance, unless such notice of default is expressly revoked in writing by Agent. Such acceptance shall not constitute a waiver of Agent's rights to require full payment or performance when due of all other and future sums or other obligations so secured. Upon payment of all sums secured by this Instrument and any other sums due to Agent and Banks in connection with the Loan Documents, and upon the performance of all of Borrower's other obligations under the Loan Documents, provided that no Event of Default has occurred and is continuing and the Banks have no further obligation to make advances under the Loan Documents, Agent shall release this Instrument at Borrower's

sole cost and expense. Agent shall release portions of the Premises encumbered by this Instrument upon the sale of such portions of the Premises in accordance with the terms in the Loan Agreement.

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

To Agent:	LaSalle Bank National Association 135 South LaSalle Street, Suite 1225 Chicago, Illinois 60603 Attn: Commercial Real Estate Division
With a copy to:	LaSalle Bank National Association 135 South LaSalle Street, Suite 1225 Chicago, Illinois 60603 Attn: Commercial Real Estate Syndications
With a copy to:	Schwartz Cooper Chartered 180 North LaSalle Street, Suite 2700 Chicago, Illinois 60603 Attn: Michael S. Kurtzon, Esq.
To Borrower:	Arch Road Limited Partnership c/o Stockton GP, L.L.C. 10350 Bren Road West Minnetonka, Minnesota 55343 Attn: Vice President
With a copy to:	Opus, L.L.C. 10350 Bren Road West Minnetonka, Minnesota 55343 Attn: Legal Department
With a copy to:	Briggs and Morgan, P.A. 2200 IDS Center 80 South 8th Street Minneapolis, Minnesota 55402 Attn: Charles R. Haynor, Esq.

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight,

express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

27. **Waiver of Rights**. The Borrower hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or appraisement of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to decree, judgment or order of any court of competent jurisdiction; or, after such sale or sales, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof; and without limiting the foregoing.

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

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

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

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

(d) Borrower shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Borrower, or (ii) forthwith upon demand by Agent if, in the opinion of Agent, and notwithstanding any such contest, the Premises shall be in jeopardy or in danger of being forfeited or foreclosed; provided that if Borrower shall fail so to do, Agent may, but shall not be required to, pay all such Contested Liens and Lien

Amounts and interest and penalties thereon and such other sums as may be necessary in the judgment of the Agent to obtain the release and discharge of such liens; and any amount expended by Agent in so doing shall be so much additional Indebtedness bearing interest at the Default Rate until paid, and payable upon demand; and provided further that Agent may in such case use and apply monies deposited as provided in subsection (b) above and may demand payment upon any bond or title indemnity furnished as aforesaid.

With respect to challenges to the validity or applicability of governmental requirements to the Premises or Borrower, Borrower may contest such matters in the manner set forth in Section 8.10 of the Loan Agreement.

29. **Expenses Relating to Note and Instrument.**

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

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

(ii) May make preparations following the occurrence of an Event of Default hereunder for the commencement of any suit for the foreclosure hereof or to collect the Indebtedness evidenced by or owing under the Note or any of the other Loan Documents, which may or may not be actually commenced;

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

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

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

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

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

30. **Intentionally Omitted**.

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

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

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

34. **Indemnity**. Borrower agrees to indemnify and defend Agent and the Banks (and their officers and directors, acting in their capacities as such) (collectively, "Indemnitees") from, and hold each of them harmless against, any and all losses, liabilities, claims, damages, deficiencies, interest, judgments, costs or expenses incurred by them or any of them, including amounts paid in settlement, court costs, and reasonable fees and disbursements of counsel incurred in connection with any investigation, litigation or other proceeding, arising out of or by reason of any investigation, litigation or other proceeding brought or threatened, arising out of or by reason of their execution of any Loan Document and the transaction contemplated thereby or

the development, construction and operation of the Premises, including, but not limited to, any use effected or proposed to be effected by Borrower of the proceeds of the Loan, but excluding any such losses, liabilities, claims, damages or expenses incurred by reason of the negligence or willful misconduct of the relevant Indemnitee. Any Indemnitee seeking indemnification under this Section will notify Borrower of any event requiring indemnification within thirty (30) Business Days following such Indemnitee's receipt of written notice of commencement of any action or proceeding, or such Indemnitee's obtaining actual knowledge of the occurrence of any other event giving rise to a claim for indemnification hereunder; provided, however, that the failure to notify Borrower will not relieve Borrower of any liability that it may have to the Indemnitees except to the extent that Borrower demonstrates that the defense of such indemnified matter is actually prejudiced by the failure to give such notice. Borrower will assume the defense of any such action or proceeding using counsel of its choice; provided that:

(a) such counsel is reasonably satisfactory to such Indemnitee;

(b) if such Indemnitee is Agent or its affiliate, settlement of, or an adverse judgment with respect to, such claim is not, in the good faith judgment of such Indemnitee, likely to establish a precedential custom or practice materially adverse to the continuing business interests of such Indemnitee;

(c) Borrower shall conduct the defense of such claim actively and diligently;

(d) no conflict of interest has arisen which would prevent counsel for Borrower from also representing such Indemnitee, including because the defendants in any action include both such Indemnitee and Borrower;

(e) Borrower will not consent to the entry of any judgment or enter into any settlement with respect to such claim without the prior written consent of such Indemnitee (not to be withheld unreasonably); and

(f) Borrower shall keep the Indemnitee reasonably apprised of the status of such defense or settlement, including providing copies of all correspondence to and from the other side and all pleadings filed or received.

Such Indemnitee may retain separate co-counsel and participate in the defense of such claim, and, so long as Borrower is conducting the defense of such claim in accordance with the foregoing requirements, the costs and expenses of such co-counsel and participation shall be solely the Indemnitee's responsibility. So long as Borrower is conducting such defense in accordance with the foregoing requirements, the Indemnitee will not consent to the entry of any judgment or enter into any settlement with respect to such claim without the prior written consent of Borrower with respect to such claim (not to be withheld unreasonably).

If Borrower fails to satisfy any of the above conditions to Borrower's defense, such Indemnitee (and its counsel) may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, such claim in any manner it may reasonably deem

appropriate (and such Indemnitee need not consult with, or obtain any consent from, Borrower in connection therewith) and Borrower will reimburse such Indemnitee promptly and periodically for the costs of defending against such claim (including reasonable attorneys' fees and expenses) and Borrower will remain responsible for any loss which such Indemnitee may suffer resulting from, arising out of, relating to, in the nature of, or caused by such claim to the fullest extent provided for and required by this Instrument.

35. **Intentionally Omitted**.

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

37. **Miscellaneous**.

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

(b) **Invalidity of Provisions; Governing Law**. **IN THE EVENT THAT ANY PROVISION OF THIS INSTRUMENT IS DEEMED TO BE INVALID BY REASON OF THE OPERATION OF LAW, OR BY REASON OF THE INTERPRETATION PLACED THEREON BY ANY ADMINISTRATIVE AGENCY OR ANY COURT, THE BORROWER AND AGENT SHALL NEGOTIATE AN EQUITABLE ADJUSTMENT IN THE PROVISIONS OF THE SAME IN ORDER TO EFFECT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PURPOSE OF THIS INSTRUMENT AND THE VALIDITY AND ENFORCEABILITY OF THE REMAINING PROVISIONS, OR PORTIONS OR APPLICATIONS THEREOF, SHALL NOT BE AFFECTED THEREBY AND SHALL REMAIN IN FULL FORCE AND EFFECT. THIS INSTRUMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN CALIFORNIA. IN THE EVENT THAT ANY PROVISION OR CLAUSE OF THIS INSTRUMENT OR THE NOTE CONFLICTS WITH APPLICABLE LAW, SUCH CONFLICT SHALL NOT AFFECT OTHER PROVISIONS OF THIS INSTRUMENT OR ANY OF THE LOAN DOCUMENTS WHICH CAN BE GIVEN EFFECT WITHOUT THE CONFLICTING PROVISION, AND TO THIS END THE PROVISIONS OF THIS INSTRUMENT ARE DECLARED TO BE SEVERABLE.**

(c) **Intentionally Omitted**.

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

(e) **Option of Agent to Subordinate**. At the option of Agent, this Instrument shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to any and all Leases of all or any part of the Premises upon the execution by Agent of a unilateral declaration to that effect and the recording thereof in the Office of the Recorder of Deeds in and for the county wherein the Premises are situated.

(f) **Agent in Possession**. Nothing herein contained shall be construed as constituting Agent an Agent in possession in the absence of the actual taking of possession of the Premises by Agent pursuant to this Instrument.

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

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

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

(j) **Consent to Jurisdiction**. **TO INDUCE BANKS TO ACCEPT THE NOTE, BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS INSTRUMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN SAN JOAQUIN, CALIFORNIA. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN SAN JOAQUIN, CALIFORNIA, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.**

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

(l) **Complete Agreement**. This Instrument, the Loan Agreement, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both Borrower and Agent.

(m) **Substitute Trustee**. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except Trustee's gross negligence or willful misconduct. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Premises for debts contracted or liability or damages incurred in the management or operation of the Premises. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other

monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by it hereunder.

Trustee may resign by giving notice of such resignation in writing to Agent. If Trustee shall die, resign or become disqualified from acting, or shall fail or refuse to exercise its powers hereunder when requested by Agent so to do, or if for any reason and without cause Agent shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Agent shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the aforenamed Trustee. Upon appointment by Agent, any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with the same effect as if originally named as Trustee herein.

(n) **Conflict**. In the event of any inconsistency among the terms hereof (including incorporated terms), and the terms of the Loan Agreement or any other Loan Document, Agent may elect which terms shall govern and prevail.

(o) **Construction Loan**. The Note evidences a debt created by one or more disbursements made by the Banks to Borrower to finance the cost of the construction of certain Improvements upon the Real Estate in accordance with the provisions of the Loan Agreement and this Instrument is a construction deed of trust. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Instrument and made a part hereof, and an Event of Default under any of the conditions or provisions of the Loan Agreement shall constitute a default hereunder. Upon the occurrence of any such Event of Default, the holder of the Note may at its option declare the Indebtedness immediate due and payable, or complete the construction of said Improvements and enter into the necessary contracts therefor, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Default Rate. In the event of a conflict between the terms of the Loan Agreement and this Instrument, the provisions of the Loan Agreement shall apply and take precedence over this Instrument.

(p) **Future Advances**. This Instrument is given to secure not only the existing Indebtedness, but also such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from the Banks, their successors or assigns, by the then record owner of the Premises, when evidenced by a promissory note which, by its terms, is secured hereby (it being contemplated by the Borrower and the Banks that such future indebtedness may be incurred). Notwithstanding anything to the contrary herein contained, any sum or amount which may, pursuant to the terms hereof, be added to the Indebtedness, shall, at the option of Agent, be deemed a "future advance" within the meaning of this section.

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

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IN WITNESS WHEREOF, Borrower has executed and delivered this Instrument the day and year first above written.

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: **Wade C. Lau**
Its: **Vice President**

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

This instrument was acknowledged before me on the 2nd day of October, 2007 by Wade C. Lau, the Vice President of Stockton GP, L.L.C., a Delaware limited liability company, the General Partner of Arch Road Limited Partnership, a Delaware limited partnership, on behalf of said limited partnership.

Stephanie L McMillin
NOTARY PUBLIC SIGNATURE

Stephanie L. McMillin
Printed Name of Notary Public

My Commission Expires: 1/31/2011

(SEAL)

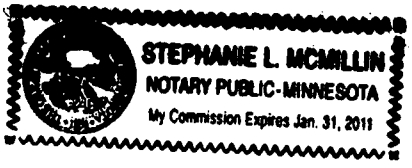

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL A:

BEING A PORTION OF THAT CERTAIN TRACT OF LAND LYING IN SECTIONS 69,70,79 AND 80 OF C. M. WEBER GRANT EL RANCHO DEL CAMPO DE LOS FRANCESES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID POINT BEING DISTANT WESTERLY 243.20 FEET MEASURED ALONG SAID NORTHERLY BOUNDARY LINE FROM THE NORTHEAST CORNER OF SECTION 27; THENCE ALONG THE SOUTHWESTERLY LINE OF THAT CERTAIN 2.967 ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM WILLIAM LADD SALMON TO THE COUNTY OF SAN JOAQUIN RECORDED NOVEMBER 25, 1949 IN BOOK OF OFFICIAL RECORDS, BOOK 1083, PAGE 296, SAN JOAQUIN COUNTY RECORDS, THE FOLLOWING COURSES:

ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1045.60 FEET THROUGH A CENTER ANGLE OF 56° 06' 21" [THE LONG CHORD OF WHICH BEARS NORTH 56° 59' 10" WEST 983.46 FEET] AN ARC DISTANCE OF 1023.89 FEET; THENCE NORTH 28° 56' 00" WEST 328.59 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 965.60 FEET THROUGH A CENTRAL ANGLE OF 19° 28' 29" [THE LONG CHORD OF WHICH BEARS NORTH 38° 40' 15" WEST 326.63 FEET] AN ARC DISTANCE OF 328.21 FEET, MORE OR LESS TO A POINT IN THE SOUTHWESTERLY RIGHT OF WAY LINE OF MARIPOSA ROAD [80 FEET WIDE] PER O.D.P.H. ON NOVEMBER 6, 1861; LAST SAID POINT BEING THE MOST WESTERLY CORNER OF SAID 2.967 ACRE PARCEL; THENCE ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 52° 59' 40" WEST 1155.00 FEET, MORE OR LESS; THENCE CONTINUING ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 60° 23' 40" WEST 3015.48 FEET; THENCE LEAVING LAST SAID RIGHT OF WAY LINE SOUTH 18° 26' 00" EAST 1975.71 FEET; THENCE SOUTH 71° 49' 30" WEST 1622.55 FEET; THENCE SOUTH 18° 26' 30" EAST 959.71 FEET TO A POINT IN SAID NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 89° 39' 56" EAST 5343.87 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION BY GRANT DEED RECORDED DECEMBER 31, 2002, INSTRUMENT NO. 2002-237858,

OFFICIAL RECORDS AND RE-RECORDED MARCH 17, 2004, INSTRUMENT NO. 2004-053393, OFFICIAL RECORDS COUNTY OF SAN JOAQUIN.

PARCEL B:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4; A DISTANCE OF 1543.25 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE SOUTH 89° 33' 40" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 792.4 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 0° 51' EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2653.3 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 475.6 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY AS PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS WHICH POINT IS THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST PARALLEL WITH SAID WEST LINE OF NORTHWEST 1/4, A DISTANCE OF 1067.59 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750.0 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE NORTH 89° 33' 40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1864.8 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 0° 44' 40" EAST ALONG THE EAST LINE OF SAID NORTHWEST 1/4; A DISTANCE 2650.43 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89° 30' WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2222.3 FEET TO A POINT THAT IS NORTH 89° 30' EAST A DISTANCE OF 430.0 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4: THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 568.86 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY, PER BOOK OF SURVEYS,

BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 75° 42' WEST ALONG THE NORTHERLY LINE OF SAID SURVEY TO THE POINT OF BEGINNING.

PARCEL D:

PARCEL DI:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27 AS SAID IRON PIN IS SHOWN ON SURVEY MADE BY ROBERT ANGERMEIER FILED IN BOOK OF SURVEYS, BOOK 10, PAGE 86, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST A DISTANCE OF 490.0 FEET; THENCE NORTH 89° 28' EAST PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 380.0 FEET; THENCE SOUTH 0° 51' EAST A DISTANCE OF 490.0 FEET TO A POINT IN THE SOUTH LINE OF SAID NORTHWEST ¼; THENCE SOUTH 89° 28' WEST ALONG SAID SOUTH LINE OF THE NORTHWEST ¼, A DISTANCE OF 380.0 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO VERA E. SMITH AS EXECUTRIX OF WILLIAM L. SALMON, DECEASED BY INSTRUMENT RECORDED FEBRUARY 6, 1969 IN BOOK OF OFFICIAL RECORDS, BOOK 3275, PAGE 236, SAN JOAQUIN COUNTY RECORDS.

PARCEL DII:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27, NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE SOUTHWEST CORNER OF THE LANDS CONVEYED BY WILLIAM L. SALMON AND LYDIA A. SALMON TO HERNER B. PAULSON AND WINIFRED O. PAULSON AS PER DEED RECORDED APRIL 12, 1957 IN BOOK OF OFFICIAL RECORDS, BOOK 1962, PAGE 187, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 0° 51' WEST ALONG THE WEST LINE OF SAID PAULSON LANDS, A DISTANCE OF 490.0 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89° 28' EAST ALONG THE NORTH LINE OF SAID PAULSON LANDS, A DISTANCE OF 58.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 28' EAST ALONG SAID NORTH LINE OF PAULSON LANDS, A

DISTANCE OF 321.39 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 0° 51' WEST A DISTANCE OF 78.64 FEET; THENCE SOUTH 75° 42' WEST A DISTANCE OF 330.45 FEET TO THE POINT OF BEGINNING.

PARCEL E:

PARCEL 1, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL F:

PARCEL 3, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL G:

PARCEL 4, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL H:

COMMENCING AT THE COMMON CORNER OF SECTIONS 58, 59, 68 AND 69 OF C.M. WEBER'S GRANT, "EL RANCHO DEL CAMPO DE LOS FRANCESES"; THENCE SOUTHWESTERLY ALONG THE SECTION LINE BETWEEN SECTIONS 58 AND 59, 13.68 CHAINS; THENCE SOUTHWESTERLY PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 59 AND 69 OF SAID GRANT TO A POINT WHICH IS DISTANT FROM THE SOUTH LINE OF SAID WEBER GRANT, NORTH 17° 30' WEST, 838.7 FEET, AND BEING THE TRUE POINT OF BEGINNING OF THE PROPERTY HEREINAFTER DESCRIBED; THENCE FROM SAID POINT OF BEGINNING SOUTH 17° 30' EAST, 838.7 FEET TO THE SOUTH LINE OF WEBER GRANT; THENCE ALONG SAID SOUTH GRANT LINE SOUTH 89° 25' EAST, 2557.1 FEET TO THE SOUTHEAST CORNER OF SURVEY NO. 2358; THENCE ALONG THE EAST LINE OF SURVEY 2358 AND THE EAST LINE OF THE WEST 1/3 OF SECTION 69 OF C.M. WEBER'S GRANT, NORTH 17° 30' WEST, 1632.42 FEET TO THE POINT; THENCE SOUTH 72° 30' WEST, 2430.8 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

TAX IDENTIFICATION NUMBERS:

179-220-06
179-220-27
179-220-28
181-100-01
181-100-02
181-100-05
181-110-17
181-110-19
181-110-20

EXHIBIT B

PERMITTED EXCEPTIONS

THE FOLLOWING ARE THE PERMITTED TITLE EXCEPTIONS PER THE PRO FORMA LOAN POLICY NO. 315226 ISSUED BY FIRST AMERICAN TITLE INSURANCE COMPANY:

EXCEPTION NUMBERS 1-9, INCLUSIVE, 11-16(A)-(F), INCLUSIVE AND 17 AS SET FORTH ON SCHEDULE B – PART I

EXHIBIT C

INSURANCE REQUIREMENTS

GENERAL INFORMATION

1. All insurance policies referred to herein shall be in form and substance acceptable to LaSalle Bank National Association ("LaSalle").

2. LaSalle must receive evidence/certificates of insurance at least ten (10) business days prior to closing. Original policies must be provided to LaSalle as soon as they are available from insurers. Certified copies should be available within sixty (60) to ninety (90) days.

3. Proof of coverage must be on an ACORD 28 - EVIDENCE OF PROPERTY INSURANCE form. Liability insurance must be written on ACORD 25 or its equivalent. NOTE: Please remove any "endeavor to" and "but failure to mail such notice shall impose .... representatives" language as it relates to notices. Initials by an authorized representative should appear next to any deletions on the certificates.

4. All property policies shall contain a standard mortgage clause in favor of LaSalle and shall provide for a thirty (30) day written notice to LaSalle of any material change or cancellation. Certificates with disclaimers will NOT be accepted.

5. The Mortgagor must be the named insured.

6. Property & Builders Risk certificates must show LaSalle as First Mortgagee and Lender's Loss Payee as follows:

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

   (LaSalle may be shown as "Mortgagee and Lender's Loss Payee As Their Interests May Appear" until the insurance agent receives release of interest from the prior lender. At that time, the insurance policies will need to be endorsed to show LaSalle as First Mortgagee and Lender's Loss Payee).

7. The insured property must be identified as Arch Road Industrial Park, Stockton, California.

8. All insurance companies must have a Policy Rating of "A" and a Financial Rating of "VIII" from AM Best's Rating Guide.

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

SPECIFIC REQUIREMENTS

1. If the property policy is a blanket policy or limit, LaSalle must receive a schedule of the amount allocated to the property/rents or the amounts allocated to the property must be indicated on the certificate.

2. Coverage must be on an "all risk" (Special Perils), 100% replacement cost basis without deduction for foundations and footings, and WITHOUT co-insurance. The co-insurance must be waived or an Agreed Amount endorsement must be included and either "No Co-insurance" or "Agreed Amount" must be provided and indicated on the certificate.

3. Ordinance or Law coverage providing for demolition and increased cost of construction, must be provided and indicated on the certificate.

4. Other coverages such as earthquake, boiler and machinery (which includes the mechanics of the building, such as elevators), and flood will be required when these risks are present.

5. Rent Loss or Business Income coverage shall be in an amount equal to 100% of the projected annual rents or revenue with a minimum period of indemnity of 12 months, or such greater period as LaSalle may require. This coverage needs to be written on a Gross Rental Income, Gross Profits or Extended Period of Indemnity form, not on an actual loss sustained basis which may terminate as soon as the premises are tenantable or operational.

6. LaSalle must be named as an Additional Insured for all general liability coverage, with a minimum limit of $2,000,000 for any one occurrence.

ADDITIONAL REQUIREMENTS - CONSTRUCTION LOANS

1. Coverage must be All Risk Builders Risk Course of Construction, including earthquake and flood when these risks are present. The Builders Risk insurance amount must cover at least 100% of hard costs and 100% of the soft costs.

2. Under the Evidence of Property form, the builders risk coverage should make the following statement: "The General Contractor (name) and all subordinates of any tier are named insured with respect to builders' risk."

3. Rent coverage must be 100% of the anticipated annual rents (assuming full occupancy) written on a delayed income basis. The policy shall allow for partial or full occupancy.

4. Coverage should also include permission to occupy clause.

GENERAL CONTRACTOR INSURANCE REQUIREMENTS

GENERAL INFORMATION

1. All insurance policies referred to herein shall be in form and substance acceptable to LaSalle Bank National Association ("LaSalle").

2. LaSalle must receive evidence/certificates of insurance at least ten (10) business days prior to closing. Original policies must be provided to LaSalle as soon as they are available from insurers. Certified copies should be available within sixty (60) to ninety (90) days.

3. Liability insurance must be written on ACORD 25 or its equivalent. NOTE: Please remove any "endeavor to" and "but failure to mail such notice shall impose .... representatives" language as it relates to notices. Initials by an authorized representative should appear next to any deletions on the certificates.

4. All property policies shall contain a standard mortgage clause in favor of LaSalle and shall provide for a thirty (30) day written notice to LaSalle of any material change or cancellation. Certificates with disclaimers will NOT be accepted.

5. The Borrower must be named as additional insured.

6. The certificate holder must be shown as follows:

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

7. The insured property must be identified as Arch Road Industrial Park, Stockton, California.

8. All insurance companies must have a Policy Rating of "A" and a Financial Rating of "VIII" from AM Best's Rating Guide.

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

SPECIFIC REQUIREMENTS

1. LaSalle and the Borrower must be named as an Additional Insured for all general liability coverage, with a minimum limit of $2,000,000 for any one occurrence.

2. Contractor's Workers Compensation is required, including the "all state" endorsement, covering all employees working on the site.

EXHIBIT D

ADDITIONAL COLLATERAL

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

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

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

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

5. Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, and general intangibles including payment intangibles) of Borrower relating to or used in connection with the operation or maintenance of the Real Estate, whether now owned or hereafter acquired, or in which Borrower now has or shall hereafter acquire any right, title or interest whatsoever

(whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

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

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

ATTACHMENT 4

CERTIFICATE OF REPRESENTATIONS, WARRANTIES AND COVENANTS

THIS CERTIFICATE OF REPRESENTATIONS, WARRANTIES AND COVENANTS (this "Certificate") is entered into as of the 4th day of October, 2007, by **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership ("Borrower"), and **OPUS WEST CORPORATION**, a Minnesota corporation ("Guarantor") (Borrower and Guarantor are hereinafter referred to individually as an "Obligor" and jointly as the "Obligors"), for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement, as hereinafter defined) (the "Agent").

RECITALS:

A. Pursuant to the terms of that certain Construction Loan Agreement of even date herewith by and among Borrower, Agent, as agent, and the Banks (the "Loan Agreement"), the Banks have agreed to make loans in the aggregate principal amount of Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00) (collectively, the "Loans") to Borrower. The Loans are evidenced by that certain Promissory Note in the principal amount of Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00) in favor of LaSalle, as a Bank, of even date herewith (as amended, modified, restated or replaced from time to time, the "Note"), and shall be secured by, among other things, that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (as amended from time to time, the "Deed of Trust"), from Borrower in favor of Agent encumbering real property located in San Joaquin County, California, as described on Exhibit A attached hereto, together with the other collateral as described in the Deed of Trust (the real property and other collateral being collectively referred to as the "Premises") (capitalized terms used and not specifically defined herein shall bear the same meaning as in the Deed of Trust). The Loan Agreement, the Note, the Deed of Trust, this Certificate, and all of the other documents now or hereinafter executed in favor or for the benefit of the Agent or Banks which evidence, secure or are otherwise executed in connection with the Loans are hereinafter referred to collectively as the "Loan Documents".

B. A condition precedent to Banks' extension of the Loans to Borrower is the execution and delivery of this Certificate by the Obligors.

NOW, THEREFORE, as a material inducement to the Banks' extension of the Loans, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Obligor hereby represents, warrants and covenants to Agent as follows:

1. **Partnership Organization**. Borrower is a duly formed limited partnership under the laws of the State of Delaware, validly existing, in good standing and fully qualified to do business in the State of California and has full power and authority to execute the Loan Documents to which it is a party. The certificate of formation and limited partnership agreement of Borrower ("Partnership Agreement"), copies of which have been furnished to Agent, are in effect, and amendments thereto, and are the true, correct and complete documents relating to Borrower's creation and governance. Borrower and its partners have fully complied with all

applicable securities and other laws, ordinances and regulations in connection with the formation of Borrower and the sale and offer for sale of interests therein.

2. **Corporate Organization**. Guarantor is a duly formed corporation under the laws of the State of Minnesota, validly existing, in good standing and fully qualified to do business in the State of California. The Articles of Incorporation and By-Laws of Guarantor, certified copies of which have been furnished to Agent, are in effect, and are the true, correct and complete documents relating to Guarantor's creation and governance.

3. **Partnership Agreement and Interests**. The Partnership Agreement of Borrower shall not, without the prior written consent of Agent, be amended or modified if such amendment or modification could have a material adverse effect on Borrower's ability to perform its obligations under any of the Loan Documents, nor shall any partner of Borrower be released or discharged from its or his obligations under the Partnership Agreement, nor shall any partner of Borrower transfer, pledge or encumber in any way any partnership interest in Borrower or the right to receive income or proceeds from Borrower.

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

5. **Solvency**. The Obligors represent and warrant to Agent that they are able to pay their respective debts as such debts become due, and they have capital sufficient to carry on their respective present businesses and transactions and all businesses and transactions in which they are about to engage. Neither Borrower nor Guarantor (i) is bankrupt or insolvent, (ii) has made an assignment for the benefit of its or his respective creditors, (iii) has had a trustee or receiver appointed, (iv) has any bankruptcy, reorganization or insolvency proceedings instituted by or against it or him, or (v) shall be rendered insolvent by its or his execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.

6. **Defaults**. Execution and delivery of this Certificate and the Loan Documents do not and will not contravene, conflict with, violate or constitute a default under the Partnership Agreement or certificate of formation governing Borrower.

7. **Financial Information**. All financial statements submitted to Agent relating to Obligors and the Premises are true, complete and correct in all material respects. The financial statements have been prepared in accordance with generally accepted accounting principles consistently applied and fairly present the financial condition of the person or entity to which they pertain. The financial statements do not contain any untrue statement of a material fact or fail to state a fact material to such financial statements. No material adverse change has occurred in the financial condition or operations of any Obligor or the Premises since the respective dates of the most recent financial statements delivered to Agent.

8. **Authority**. Each Obligor has full power and authority to execute and deliver the Loan Documents to which it is a party and to perform its obligations set forth thereunder. Upon the execution and delivery hereof and thereof, this Certificate and the Loan Documents shall be

valid, binding and enforceable upon the Obligors. Execution and delivery of this Certificate or any of the other Loan Documents does not and will not contravene, conflict with, violate or constitute a default under any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which any Obligor is a party or is bound or which is binding upon or applicable to the Premises or any portion thereof.

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

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

11. **Successors**. The covenants, representations and warranties of the Obligors under this Certificate shall be binding upon and enforceable against them and their respective successors and permitted assigns and shall inure to the benefit of Agent and its successors and assigns.

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

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

14. **Distributions to Partners**. Borrower hereby covenants to Agent that it shall make no distributions to its partners of any revenue received by or on behalf of Borrower from the operation or ownership of the Premises if an Event of Default (as defined in the Loan Agreement) or an event with the passage of time, the giving of notice, or both, would constitute an Event of Default then exists.

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

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

17. **Consent to Jurisdiction. TO INDUCE THE BANKS TO ACCEPT THE NOTE, EACH OBLIGOR IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE NOTE AND THIS CERTIFICATE WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. EACH OBLIGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO OBLIGOR AT THE ADDRESS STATED IN THE LOAN DOCUMENTS AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.**

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

[SIGNATURE PAGE FOLLOWS]

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

BORROWER:

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: **Wade C. Lau**
Its: **Vice President**

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

By: _____
Name: _____
Title: _____

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

BORROWER:

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: _____
Its: _____

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

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

ATTACHMENT 5

ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, LICENSES AND PERMITS

THIS ASSIGNMENT is made and delivered as of this 4th day of October, 2007 by **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership ("Debtor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Secured Party").

RECITALS:

A. The Banks have agreed to make loans (collectively, the "Loans") to Debtor in the aggregate principal amount of Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00) in accordance with the terms, provisions and conditions of that certain Construction Loan Agreement by and among Debtor, Secured Party, as agent, and the Banks of even date herewith (as amended, modified, replaced or restated from time to time, "Loan Agreement"). The Loans are evidenced by that certain Promissory Note in the principal amount of $54,975,000.00 in favor of LaSalle Bank National Association, as a Bank, of even date herewith (as amended from time to time, the "Note").

B. The Note is secured, inter alia, by a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents, and Fixture Filing dated of even date herewith made by Debtor in favor of Secured Party (as amended from time to time "Deed of Trust"), covering certain real estate described in Exhibit "A" attached hereto and made a part hereof, including all buildings, structures and improvements now or hereafter constructed thereon ("Property") and by certain additional collateral as more particularly described in the Loan Agreement (the Loan Agreement, the Deed of Trust and all of the other documents and instruments evidencing, securing or otherwise executed in connection with the Loans, as amended from time to time are hereinafter collectively referred to as "Loan Documents"). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Loan Agreement.

C. The Banks required as a condition precedent to their making the Loans that Debtor enter into this Assignment and Debtor wishes to grant to Secured Party a security interest, mortgage, lien, encumbrance and charge upon the collateral more particularly hereinafter described.

NOW, THEREFORE, in consideration of the making of the Loans and as an inducement to the Banks to do so, and for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, Debtor and Secured Party agree as follows:

1. **Creation of Security Interest**. Debtor hereby grants to Secured Party a security interest in, and does hereby collaterally assign, pledge, mortgage, convey and set over unto Secured Party, any and all of Debtor's right, title and interest in, to and under the following (collectively, "Collateral"):

(a) all plans, specifications, surveys, architectural renderings and drawings, soil test reports, other reports or examinations of the Property, architectural contracts, engineering contracts, construction contracts, subcontracts and contracts with material suppliers;

(b) all service contracts, maintenance contracts, management agreements, warranties, guaranties and the right to use all names now or hereafter used by Debtor in connection with the Property;

(c) all permits, certificates, licenses, approvals, contracts, entitlements and authorizations, however characterized, issued or in any way furnished for the acquisition, construction, development, operation, use and occupancy of the Property, including without limitation, certificates of occupancy; and

(d) all claims, demands, judgments, insurance proceeds, rights of action, awards or damages, compensation and settlements resulting from the taking of all or any part of the Property under the power of eminent domain or for any damage (whether caused by such taking or casualty or otherwise) to all or any part of the Property;

which Debtor has, may have, or may subsequently directly or indirectly enter into, obtain or acquire in connection with the improvement, ownership, operation, leasing or maintenance of the Property, together with the proceeds of all of the foregoing.

2. **Debtor's Liabilities**. This Assignment is made and given as collateral security for the prompt payment when due of any and all indebtedness, including Indebtedness as defined in the Deed of Trust, obligations and liabilities of Debtor to Secured Party, and evidenced by or secured by or otherwise provided in the Loan Agreement, the Note, the Deed of Trust and/or any of the other Loan Documents, all of which have been made by Debtor with or for the benefit of Secured Party, whether such indebtedness, obligations or liabilities are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several, due or to become due, howsoever created, evidenced or arising and howsoever acquired by Secured Party, and any and all renewals, extensions or refinancings thereof (all of the foregoing are hereinafter collectively referred to as "Liabilities"). Upon full payment, performance and observance by Debtor of all Liabilities, this Assignment and the lien or charge created hereby or resulting herefrom shall automatically cease to exist.

3. **Representations, Warranties and Covenants of Debtor**. Debtor represents, warrants and covenants to Secured Party that:

(a) Except as permitted under the terms of the Loan Documents, Debtor shall not sell, transfer, assign, pledge, encumber or mortgage all or any portion of the Collateral or any interest therein without the prior written consent of Secured Party, or permit anything to be done that may materially impair the value of any of the Collateral or the security intended to be afforded by this Assignment. Debtor shall not amend, modify or terminate any of the documents or instruments constituting part of the Collateral without the prior written consent of Secured Party.

(b) Debtor authorizes Secured Party to file any financing statement or other document or procure any documents and pay any connected costs, expenses and fees, including court costs and reasonable attorneys' fees, necessary to protect the security interest under this Assignment against the rights, interests or claims of third parties.

(c) Debtor shall reimburse Secured Party for all reasonable costs, expenses and fees, including court costs and reasonable attorneys' fees, incurred for any action taken by Secured Party to remedy an Event of Default (as such term is hereinafter defined) of Debtor under this Assignment, including without limitation, expenses incurred pursuant to Paragraphs 6(c) and 6(d) below, together with interest on all said amounts at an annual rate equal to the Default Rate (as defined in the Loan Agreement) from and after the date which is ten days after Secured Party demands reimbursement until the date reimbursed by Debtor.

(d) Debtor represents, warrants and covenants to Secured Party that so long as any of the Liabilities remain unpaid, Debtor shall remain liable for all costs, fees and expenses which may be or become due and payable by Debtor under the Collateral and for all responsibilities of the ownership of the Property.

(e) Debtor agrees to take reasonable efforts to enforce performance by the other party to each document, instrument, agreement or contract constituting the Collateral of each and every material obligation, covenant, condition and agreement to be performed by such other party.

(f) Debtor has not performed any act which might prevent Debtor from performing its obligations hereunder or which might prevent Secured Party from enforcing its rights pursuant to the terms and provisions hereof.

(g) Until the Liabilities are paid in full, Debtor agrees promptly to deliver to Secured Party true, complete and correct copies of each agreement or contract comprising the Collateral.

4. **Limitation of Secured Party's Liability**. Notwithstanding anything to the contrary contained in any of the Collateral, the interest of Debtor therein is assigned and transferred to Secured Party by way of collateral security only, the Secured Party by its acceptance hereof shall not be deemed to have assumed or become liable for any of the obligations or liabilities of Debtor under the Collateral, whether provided for by the terms thereof, arising by operation of law or otherwise. Debtor hereby acknowledges that Debtor shall remain liable for the due performance of Debtor's obligations under the documents, instruments, agreements and contracts constituting the Collateral to the same extent as though this Assignment had not been made. It is expressly intended, understood and agreed that this Assignment, the Loan Agreement, the Note, the Deed of Trust, and the other Loan Documents are made and entered into for the sole protection and benefit of Secured Party and Debtor, and their respective successors and assigns (but in the case of assigns of Debtor, only to the extent permitted hereunder), and no other person or persons shall have any right of action hereunder or rights to the proceeds of the Loans at any time; that no third party shall under any circumstances be entitled to any equitable lien on the undisbursed proceeds of the Loans at any time. The

relationship between Secured Party and Debtor is solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender and borrower.

5. **Events of Default**. An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Debtor of any of the covenants, agreements, representations, warranties or other provisions hereof that is not cured within thirty (30) days after written notice from Secured Party to Debtor, or (b) any other Event of Default described in the Loan Agreement, the Note, the Deed of Trust or any of the other Loan Documents. An Event of Default under this Assignment shall constitute an Event of Default under the Loan Agreement, the Note, the Deed of Trust and the other Loan Documents.

6. **Remedies**. At any time upon or following the occurrence of any one or more Events of Default hereunder, Secured Party shall without any further notice or any demand to Debtor: (a) be entitled to declare all indebtedness secured hereby and by the Note and the other Loan Documents to be immediately due and payable; (b) exercise any and all rights and remedies provided hereunder or under the other Loan Documents, as well as all remedies available at law and in equity; (c) cure any default in such manner and to such extent as Secured Party may deem reasonably necessary to protect the security hereof, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Secured Party, and also the right to perform and discharge each and every obligation, covenant and agreement of Debtor under any of the documents, instruments, agreements and contracts constituting the Collateral, and in connection therewith, to pay necessary costs and expenses, employ counsel and incur and pay attorneys' fees and expenses; and/or (d) either in person or by agent, with or without bringing any action or proceedings, or by a receiver to be appointed by a court at any time hereafter, enforce any of the documents, instruments, agreements or contracts constituting the Collateral for its own benefit.

7. **Waiver and Indemnity**. Debtor hereby agrees that no liability shall be asserted or enforced by Debtor against Secured Party in its exercise of the powers and rights herein granted, all such liability being hereby expressly waived and released by Debtor. Debtor hereby agrees to indemnify, defend and hold Secured Party harmless from and against any and all liability, expense, cost or damage which Secured Party may incur by reason of act or omission of either Debtor under any of the documents, instruments or agreements constituting the Collateral. Notwithstanding anything contained herein to the contrary, the waiver and indemnification contained in this Paragraph 7 shall not apply to any instance in which Secured Party has committed gross negligence or willful misconduct.

8. **Notices**. All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Loan Agreement.

9. **Miscellaneous**. This Assignment and all rights and liabilities hereunder and in and to any and all Collateral shall inure to the benefit of Secured Party and its successors and assigns, and shall be binding upon Debtor and its members, successors and permitted assigns. This Assignment and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Minnesota. All

provisions of this Assignment shall be deemed valid and enforceable to the extent permitted by law. Any provision or provisions of this Assignment which are held unenforceable, invalid or contrary to law by a court of competent jurisdiction, shall be of no force or effect, and in such event each and all of the remaining provisions of this Assignment shall subsist and remain and be fully effective according to the terms of this Assignment as though such invalid, unenforceable or unlawful provision or provision had not been included in this Assignment. Time is of the essence of this Assignment, the headings of paragraphs in this Assignment are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

10. **WAIVER OF RIGHT TO TRIAL BY JURY. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DEBTOR AND SECURED PARTY, BY ITS ACCEPTANCE OF THIS ASSIGNMENT, KNOWINGLY AND VOLUNTARILY MUTUALLY (A) WAIVE THE RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION, CLAIM, COUNTERCLAIM, CROSS-CLAIM, THIRD-PARTY CLAIM, DISPUTE, DEMAND, SUIT OR PROCEEDING ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS ASSIGNMENT, THE LOAN AGREEMENT, THE NOTE, THE DEED OF TRUST, ANY OF THE OTHER LOAN DOCUMENTS, OR THE LOANS EVIDENCED OR SECURED THEREBY, OR ANY RENEWAL, EXTENSION OR MODIFICATION THEREOF, OR ANY CONDUCT OF ANY PARTY RELATING THERETO, AND (B) AGREE THAT ANY SUCH ACTION, CLAIM, SUIT OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY. BORROWER AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST SECURED PARTY OR THE BANKS OR ANY OTHER PERSON INDEMNIFIED UNDER THIS AGREEMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.**

[Signature Page Follows]

IN WITNESS WHEREOF, Debtor has caused this Assignment to be executed as of the date first above written.

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: **Wade C. Lau**
Its: **Vice President**

EXHIBIT A

THE LAND

PARCEL A:

BEING A PORTION OF THAT CERTAIN TRACT OF LAND LYING IN SECTIONS 69,70,79 AND 80 OF C. M. WEBER GRANT EL RANCHO DEL CAMPO DE LOS FRANCESES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID POINT BEING DISTANT WESTERLY 243.20 FEET MEASURED ALONG SAID NORTHERLY BOUNDARY LINE FROM THE NORTHEAST CORNER OF SECTION 27; THENCE ALONG THE SOUTHWESTERLY LINE OF THAT CERTAIN 2.967 ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM WILLIAM LADD SALMON TO THE COUNTY OF SAN JOAQUIN RECORDED NOVEMBER 25, 1949 IN BOOK OF OFFICIAL RECORDS, BOOK 1083, PAGE 296, SAN JOAQUIN COUNTY RECORDS, THE FOLLOWING COURSES:

ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1045.60 FEET THROUGH A CENTER ANGLE OF 56° 06' 21" [THE LONG CHORD OF WHICH BEARS NORTH 56° 59' 10" WEST 983.46 FEET] AN ARC DISTANCE OF 1023.89 FEET; THENCE NORTH 28° 56' 00" WEST 328.59 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 965.60 FEET THROUGH A CENTRAL ANGLE OF 19° 28' 29" [THE LONG CHORD OF WHICH BEARS NORTH 38° 40' 15" WEST 326.63 FEET] AN ARC DISTANCE OF 328.21 FEET, MORE OR LESS TO A POINT IN THE SOUTHWESTERLY RIGHT OF WAY LINE OF MARIPOSA ROAD [80 FEET WIDE] PER O.D.P.H. ON NOVEMBER 6, 1861; LAST SAID POINT BEING THE MOST WESTERLY CORNER OF SAID 2.967 ACRE PARCEL; THENCE ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 52° 59' 40" WEST 1155.00 FEET, MORE OR LESS; THENCE CONTINUING ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 60° 23' 40" WEST 3015.48 FEET; THENCE LEAVING LAST SAID RIGHT OF WAY LINE SOUTH 18° 26' 00" EAST 1975.71 FEET; THENCE SOUTH 71° 49' 30" WEST 1622.55 FEET; THENCE SOUTH 18° 26' 30" EAST 959.71 FEET TO A POINT IN SAID NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 89° 39' 56" EAST 5343.87 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION BY GRANT DEED RECORDED DECEMBER 31, 2002, INSTRUMENT NO. 2002-237858, OFFICIAL RECORDS AND RE-RECORDED MARCH 17, 2004, INSTRUMENT NO. 2004-053393, OFFICIAL RECORDS COUNTY OF SAN JOAQUIN.

PARCEL B:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4; A DISTANCE OF 1543.25 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE SOUTH 89° 33' 40" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 792.4 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 0° 51' EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2653.3 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 475.6 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY AS PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS WHICH POINT IS THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST PARALLEL WITH SAID WEST LINE OF NORTHWEST 1/4, A DISTANCE OF 1067.59 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750.0 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE NORTH 89° 33' 40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1864.8 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 0° 44' 40" EAST ALONG THE EAST LINE OF SAID NORTHWEST 1/4; A DISTANCE 2650.43 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89° 30' WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2222.3 FEET TO A POINT THAT IS NORTH 89° 30' EAST A DISTANCE OF 430.0 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4: THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 568.86 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY, PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 75° 42' WEST ALONG THE NORTHERLY LINE OF SAID SURVEY TO THE POINT OF BEGINNING.

PARCEL D:

PARCEL DI:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27 AS SAID IRON PIN IS SHOWN ON SURVEY MADE BY ROBERT ANGERMEIER FILED IN BOOK OF SURVEYS, BOOK 10, PAGE 86, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST A DISTANCE OF 490.0 FEET; THENCE NORTH 89° 28' EAST PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 380.0 FEET; THENCE SOUTH 0° 51' EAST A DISTANCE OF 490.0 FEET TO A POINT IN THE SOUTH LINE OF SAID NORTHWEST ¼; THENCE SOUTH 89° 28' WEST ALONG SAID SOUTH LINE OF THE NORTHWEST ¼, A DISTANCE OF 380.0 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO VERA E. SMITH AS EXECUTRIX OF WILLIAM L. SALMON, DECEASED BY INSTRUMENT RECORDED FEBRUARY 6, 1969 IN BOOK OF OFFICIAL RECORDS, BOOK 3275, PAGE 236, SAN JOAQUIN COUNTY RECORDS.

PARCEL DII:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27, NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE SOUTHWEST CORNER OF THE LANDS CONVEYED BY WILLIAM L. SALMON AND LYDIA A. SALMON TO HERNER B. PAULSON AND WINIFRED O. PAULSON AS PER DEED RECORDED APRIL 12, 1957 IN BOOK OF OFFICIAL RECORDS, BOOK 1962, PAGE 187, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 0° 51' WEST ALONG THE WEST LINE OF SAID PAULSON LANDS, A DISTANCE OF 490.0 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89° 28' EAST ALONG THE NORTH LINE OF SAID PAULSON LANDS, A DISTANCE OF 58.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 28' EAST ALONG SAID NORTH LINE OF PAULSON LANDS, A DISTANCE OF 321.39 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 0° 51' WEST A DISTANCE OF 78.64 FEET; THENCE SOUTH 75° 42' WEST A DISTANCE OF 330.45 FEET TO THE POINT OF BEGINNING.

PARCEL E:

PARCEL 1, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL F:

PARCEL 3, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL G:

PARCEL 4, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR

THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL H:

COMMENCING AT THE COMMON CORNER OF SECTIONS 58, 59, 68 AND 69 OF C.M. WEBER'S GRANT, "EL RANCHO DEL CAMPO DE LOS FRANCESES"; THENCE SOUTHWESTERLY ALONG THE SECTION LINE BETWEEN SECTIONS 58 AND 59, 13.68 CHAINS; THENCE SOUTHWESTERLY PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 59 AND 69 OF SAID GRANT TO A POINT WHICH IS DISTANT FROM THE SOUTH LINE OF SAID WEBER GRANT, NORTH 17° 30' WEST, 838.7 FEET, AND BEING THE TRUE POINT OF BEGINNING OF THE PROPERTY HEREINAFTER DESCRIBED; THENCE FROM SAID POINT OF BEGINNING SOUTH 17° 30' EAST, 838.7 FEET TO THE SOUTH LINE OF WEBER GRANT; THENCE ALONG SAID SOUTH GRANT LINE SOUTH 89° 25' EAST, 2557.1 FEET TO THE SOUTHEAST CORNER OF SURVEY NO. 2358; THENCE ALONG THE EAST LINE OF SURVEY 2358 AND THE EAST LINE OF THE WEST 1/3 OF SECTION 69 OF C.M. WEBER'S GRANT, NORTH 17° 30' WEST, 1632.42 FEET TO THE POINT; THENCE SOUTH 72° 30' WEST, 2430.8 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

TAX IDENTIFICATION NUMBERS:

179-220-06
179-220-27
179-220-28
181-100-01
181-100-02
181-100-05
181-110-17
181-110-19
181-110-20

ATTACHMENT 6

ASSIGNMENT OF SALES CONTRACTS

THIS ASSIGNMENT ("Assignment") made as of October 4, 2007, by **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership ("Assignor"), to **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Assignee").

RECITALS:

A. Assignor has executed, and will hereafter execute, certain sales contracts (collectively the "Contracts") for the sale of certain parcels (collectively, the "Parcels") of the real property located in San Jaoquin, California, and more particularly described on Exhibit "A" attached hereto and made a part hereof.

B. The Banks have agreed to make certain loans in the aggregate amount of Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00) (the "Loans") to Assignor pursuant to the terms of a Construction Loan Agreement bearing even date herewith by and between Assignor and Assignee ("Loan Agreement"), in part to pay for certain site work on and development of the Parcels. The Loans shall be evidenced by, among other things, that certain Promissory Note of even date herewith (as amended, restated or replaced from time to time, "Note") made by Assignor and payable to Assignee in the principal amount of the Loans. The Loans are secured by a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing (the "Deed of Trust"), made by the Assignor encumbering certain real estate described on Exhibit "A" and by other security.

C. As a material consideration and inducement for the Banks to make the Loans to Assignor, Assignee has required this Assignment.

NOW, THEREFORE, in consideration of the foregoing, acknowledged to be true and correct by Assignor, and of the covenants, conditions and agreements herein after contained and as a material inducement for the Banks to make the Loans to Assignor, Assignor and each of them agree as follows:

1. Assignor hereby assigns, transfers and sets over unto Assignee all of the rights of Assignor under and pursuant to the Contracts and all deposits received thereunder, as additional security for each obligation of Assignor pursuant to the Note, the Deed of Trust, the Loan Agreement and each other document and instrument given to Assignee to evidence or secure the Loans (collectively, the "Obligations").

2. All Contracts in existence as of the date of this Assignment (collectively, the "Existing Contracts") are listed on Exhibit "B" hereto. To the knowledge of Assignor, (i) each of the Existing Contracts is in full force and effect, has not been modified and constitutes the entire agreement between Assignor and the purchaser thereunder (the "Purchaser") relating to the Parcel described therein; and (ii) no breach or default by Assignor or any Purchaser exists under any Existing Contract, and no event has occurred that, with the giving of notice, the passage of

time or both, would constitute such a breach or default. Assignor has not given to any Purchaser, nor has Assignor received from any Purchaser, any notice alleging any default under any Existing Contract or seeking to terminate any Existing Contract.

3. This Assignment is made and given as collateral security for and shall secure (i) the Note, (ii) the performance of all obligations, covenants, promises and agreements contained in the Deed of Trust and Loan Agreement and (iii) the payment of all reasonable expenses and charges, legal or otherwise, paid or incurred by the Assignee in realizing upon or protecting the indebtedness referred to in the foregoing clauses (i) and (ii) or any security therefor.

4. Notwithstanding the foregoing provisions making and establishing a present and absolute transfer and assignment of the Contracts, and so long as no Default or Event of Default shall exist under the Note, Loan Agreement or the Deed of Trust, the Assignor shall have the right and license to collect, use and enjoy the sums due or to become due under any Contracts as they become due.

5. The Assignor hereby further covenants that it will, upon request of the Assignee, execute and deliver such further instruments and do and perform such other acts and things as the Assignee may reasonably deem necessary or appropriate to more effectively vest in and secure to the Assignee the rights which are intended to be assigned to the Assignee hereunder.

6. Assignor covenants and agrees to observe and perform all of the obligations imposed on them under the Contracts and not to do or permit to be done anything to impair the security thereof, not to further assign or encumber its rights under the Contracts or its rights to the sums due or to become due thereunder and not suffer or permit any of the Contracts to be subordinated to any other liens or encumbrances whatsoever, any such subordination to be null and void unless done with the written consent of Assignee. Assignor further covenants and agrees that it will, at the request of Assignee, submit the executed originals of all Contracts to Assignee.

7. The acceptance by the Assignee of this Assignment, with all of the rights, powers, privileges and authority so created, shall not obligate Assignee to perform or discharge any obligation, duty or liability of the Assignor under any Contract under or by reason of this Assignment. Assignee shall have no liability to Assignor or anyone for any action taken or omitted to be taken by it hereunder, except for its willful misconduct. Should the Assignee incur any liability, loss or damage under or by reason of this Assignment or for any action taken by the Assignee hereunder, or in defense against any claim or demand whatsoever which may be asserted against the Assignee arising out of any Contract, the amount thereof, including reasonable costs, expenses and reasonable attorneys' fees, together with interest thereon at the Default Rate (as such term is defined in the Loan Agreement) shall be secured by this Assignment and by the Deed of Trust, and the Assignor shall reimburse the Assignee therefor immediately upon demand.

8. This Assignment is solely for the benefit and protection of the Assignee and its successors and assigns. Assignee shall have no obligation to exercise any of the foregoing rights, powers, privileges or remedies in any event. The power of attorney given herein is a

power coupled with an interest and shall be irrevocable so long as any part of the Obligations of Assignor to Assignee remains unpaid or unperformed.

9. The delivery of this Assignment to the Assignee shall not effect the release of any collateral now or hereafter held by Assignee as security for the Obligations, nor shall the taking of additional security for the Obligations hereafter effect a release or termination of this Assignment, or of any terms or provisions hereof.

10. This Assignment and the rights and obligations of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Illinois.

11. The term "Assignor" as used in this Assignment shall refer to all such persons jointly and severally, and all promises, agreements, covenants, waivers, consents, representations, warranties and other provisions in this Assignment are made by and shall be binding upon each and every such undersigned person, jointly and severally.

12. Time is of the essence hereof. This Assignment shall be binding upon Assignor and its successors and assigns, and shall inure to the benefit of the Assignee and its successors and assigns, but is not intended to confer upon any person other than the parties hereto and their respective successors and assigns any rights, privileges, powers or remedies as third-party beneficiary or otherwise.

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IN WITNESS WHEREOF, the Assignor has executed this Assignment the day and year first above written.

ASSIGNOR:

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: **Wade C. Lau**
Its: **Vice President**

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL A:

BEING A PORTION OF THAT CERTAIN TRACT OF LAND LYING IN SECTIONS 69,70,79 AND 80 OF C. M. WEBER GRANT EL RANCHO DEL CAMPO DE LOS FRANCESES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID POINT BEING DISTANT WESTERLY 243.20 FEET MEASURED ALONG SAID NORTHERLY BOUNDARY LINE FROM THE NORTHEAST CORNER OF SECTION 27; THENCE ALONG THE SOUTHWESTERLY LINE OF THAT CERTAIN 2.967 ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM WILLIAM LADD SALMON TO THE COUNTY OF SAN JOAQUIN RECORDED NOVEMBER 25, 1949 IN BOOK OF OFFICIAL RECORDS, BOOK 1083, PAGE 296, SAN JOAQUIN COUNTY RECORDS, THE FOLLOWING COURSES:

ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1045.60 FEET THROUGH A CENTER ANGLE OF 56° 06' 21" [THE LONG CHORD OF WHICH BEARS NORTH 56° 59' 10" WEST 983.46 FEET] AN ARC DISTANCE OF 1023.89 FEET; THENCE NORTH 28° 56' 00" WEST 328.59 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 965.60 FEET THROUGH A CENTRAL ANGLE OF 19° 28' 29" [THE LONG CHORD OF WHICH BEARS NORTH 38° 40' 15" WEST 326.63 FEET] AN ARC DISTANCE OF 328.21 FEET, MORE OR LESS TO A POINT IN THE SOUTHWESTERLY RIGHT OF WAY LINE OF MARIPOSA ROAD [80 FEET WIDE] PER O.D.P.H. ON NOVEMBER 6, 1861; LAST SAID POINT BEING THE MOST WESTERLY CORNER OF SAID 2.967 ACRE PARCEL; THENCE ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 52° 59' 40" WEST 1155.00 FEET, MORE OR LESS; THENCE CONTINUING ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 60° 23' 40" WEST 3015.48 FEET; THENCE LEAVING LAST SAID RIGHT OF WAY LINE SOUTH 18° 26' 00" EAST 1975.71 FEET; THENCE SOUTH 71° 49' 30" WEST 1622.55 FEET; THENCE SOUTH 18° 26' 30" EAST 959.71 FEET TO A POINT IN SAID NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 89° 39' 56" EAST 5343.87 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION BY GRANT DEED RECORDED DECEMBER 31, 2002, INSTRUMENT NO. 2002-237858, OFFICIAL RECORDS AND RE-RECORDED MARCH 17, 2004, INSTRUMENT NO. 2004-053393, OFFICIAL RECORDS COUNTY OF SAN JOAQUIN.

PARCEL B:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4; A DISTANCE OF 1543.25 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE SOUTH 89° 33' 40" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 792.4 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 0° 51' EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2653.3 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 475.6 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY AS PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS WHICH POINT IS THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST PARALLEL WITH SAID WEST LINE OF NORTHWEST 1/4, A DISTANCE OF 1067.59 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750.0 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE NORTH 89° 33' 40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1864.8 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 0° 44' 40" EAST ALONG THE EAST LINE OF SAID NORTHWEST 1/4; A DISTANCE 2650.43 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89° 30' WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2222.3 FEET TO A POINT THAT IS NORTH 89° 30' EAST A DISTANCE OF 430.0 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4: THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 568.86 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY, PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 75° 42' WEST ALONG THE NORTHERLY LINE OF SAID SURVEY TO THE POINT OF BEGINNING.

PARCEL D:

PARCEL DI:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27 AS SAID IRON PIN IS SHOWN ON SURVEY MADE BY ROBERT ANGERMEIER FILED IN BOOK OF SURVEYS, BOOK 10, PAGE 86, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST A DISTANCE OF 490.0 FEET; THENCE NORTH 89° 28' EAST PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 380.0 FEET; THENCE SOUTH 0° 51' EAST A DISTANCE OF 490.0 FEET TO A POINT IN THE SOUTH LINE OF SAID NORTHWEST ¼; THENCE SOUTH 89° 28' WEST ALONG SAID SOUTH LINE OF THE NORTHWEST ¼, A DISTANCE OF 380.0 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO VERA E. SMITH AS EXECUTRIX OF WILLIAM L. SALMON, DECEASED BY INSTRUMENT RECORDED FEBRUARY 6, 1969 IN BOOK OF OFFICIAL RECORDS, BOOK 3275, PAGE 236, SAN JOAQUIN COUNTY RECORDS.

PARCEL DII:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27, NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE SOUTHWEST CORNER OF THE LANDS CONVEYED BY WILLIAM L. SALMON AND LYDIA A. SALMON TO HERNER B. PAULSON AND WINIFRED O. PAULSON AS PER DEED RECORDED APRIL 12, 1957 IN BOOK OF OFFICIAL RECORDS, BOOK 1962, PAGE 187, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 0° 51' WEST ALONG THE WEST LINE OF SAID PAULSON LANDS, A DISTANCE OF 490.0 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89° 28' EAST ALONG THE NORTH LINE OF SAID PAULSON LANDS, A DISTANCE OF 58.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 28' EAST ALONG SAID NORTH LINE OF PAULSON LANDS, A DISTANCE OF 321.39 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 0° 51' WEST A DISTANCE OF 78.64 FEET; THENCE SOUTH 75° 42' WEST A DISTANCE OF 330.45 FEET TO THE POINT OF BEGINNING.

PARCEL E:

PARCEL 1, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL F:

PARCEL 3, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL G:

PARCEL 4, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL H:

COMMENCING AT THE COMMON CORNER OF SECTIONS 58, 59, 68 AND 69 OF C.M. WEBER'S GRANT, "EL RANCHO DEL CAMPO DE LOS FRANCESES"; THENCE SOUTHWESTERLY ALONG THE SECTION LINE BETWEEN SECTIONS 58 AND 59, 13.68 CHAINS; THENCE SOUTHWESTERLY PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 59 AND 69 OF SAID GRANT TO A POINT WHICH IS DISTANT FROM THE SOUTH LINE OF SAID WEBER GRANT, NORTH 17° 30' WEST, 838.7 FEET, AND BEING THE TRUE POINT OF BEGINNING OF THE PROPERTY HEREINAFTER DESCRIBED; THENCE FROM SAID POINT OF BEGINNING SOUTH 17° 30' EAST, 838.7 FEET TO THE SOUTH LINE OF WEBER GRANT; THENCE ALONG SAID SOUTH GRANT LINE SOUTH 89° 25' EAST, 2557.1 FEET TO THE SOUTHEAST CORNER OF SURVEY NO. 2358; THENCE ALONG THE EAST LINE OF SURVEY 2358 AND THE EAST LINE OF THE WEST 1/3 OF SECTION 69 OF C.M. WEBER'S GRANT, NORTH 17° 30' WEST, 1632.42 FEET TO THE POINT; THENCE SOUTH 72° 30' WEST, 2430.8 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

TAX IDENTIFICATION NUMBERS:

179-220-06
179-220-27
179-220-28
181-100-01
181-100-02
181-100-05
181-110-17
181-110-19
181-110-20

EXHIBIT "B"

EXISTING CONTRACTS

None

ATTACHMENT 7

ASSIGNMENT OF AGREEMENT TO CONSTRUCT AND ACQUIRE PUBLIC FACILITIES FOR ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT BOND NO. 99-02

This **ASSIGNMENT OF AGREEMENT TO CONSTRUCT AND ACQUIRE PUBLIC FACILITIES FOR ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT BOND NO. 99-02** dated as of October 4, 2007 (the "Assignment"), is executed by **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, as agent for itself and the other Banks (as defined in the Loan Agreement referenced below) (the "Agent").

RECITALS:

A. The Banks have agreed to make certain loans (the "Loans") to the Borrower in an amount not to exceed Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00) in accordance with the terms, provisions and conditions of that certain Construction Loan Agreement dated as of even date herewith, executed by and between the Borrower, the Agent, and the Banks (the "Loan Agreement"). The Loans are evidenced by that certain Promissory Note dated even date herewith in the principal amount of the Loans, executed by the Borrower and made payable to the order of the Agent (the "Note").

B. The Note is secured by, among other things, that certain Construction Deed of Trust, Security Agreement, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated as of even date herewith, executed by the Borrower to and for the benefit of the Agent (the "Deed of Trust"; the Loan Agreement, the Note, the Deed of Trust and all of the other documents and instruments evidencing, securing or otherwise executed in connection with the Loans are hereinafter collectively referred to as the "Loan Documents"), which Deed of Trust encumbers certain real estate described in Exhibit "A" attached hereto and made a part hereof, including all buildings, structures and improvements now or hereafter constructed thereon (the "Property") and by certain additional collateral as more particularly described in the Loan Agreement. All capitalized terms used herein and not otherwise defined shall have the meaning assigned thereto in the Loan Agreement.

C. The Borrower has entered into (i) that certain Agreement to Construct and Acquire Public Facilities for Arch Road East Community Facilities District No. 99-02 dated September 1, 2007 with the City of Stockton, California, a municipal corporation of the State of California operating under a freeholder's charter (the "City") and the Arch Road East Community Facilities District No. 99-02 (the "District") (the "Agreement to Construct") and (ii) that certain Fiscal Agent Agreement dated September 1, 2007 with the City and the District (the "Fiscal Agreement"). The Agreement to Construct and the Fiscal Agreement, as the same may be amended from time to time, are hereinafter referred to as the "Agreements".

D. Pursuant to the Agreements, the Borrower has agreed to, among other things, perform certain predevelopment site-work and to make certain infrastructure improvements to

the Property (collectively, the "Improvements") and the City and the District have agreed to issue and to sell certain bonds to reimburse the Borrower for the cost of the Improvements.

E. The Banks require as a condition precedent to its making the Loan that the Borrower enter into this Assignment and the Borrower wishes to grant to the Agent a security interest, mortgage, lien, encumbrance and charge upon the collateral more particularly described hereinafter.

NOW, THEREFORE, in consideration of the making of the Loan and as an inducement to the Banks to do so, and for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the Borrower hereby agrees with the Agent as follows:

AGREEMENTS:

1. Creation of Security Interest. The Borrower hereby grants to the Agent a security interest in, and does hereby collaterally assign, pledge, mortgage, convey and set over unto the Agent, any and all of the Borrower's right, title and interest in, to and under the Agreements, which the Borrower has, may have, or may subsequently directly or obtain, together with the proceeds of all of the foregoing.

2. Borrower's Liabilities. This Assignment is made and given as collateral security for the prompt payment when due of any and all indebtedness, obligations and liabilities of the Borrower to the Agent, and evidenced by or secured by or otherwise provided in the Loan Documents, all of which have been made by the Borrower with or for the benefit of the Agent, whether such indebtedness, obligations or liabilities are now existing or hereafter created, direct or indirect, absolute or contingent, joint or several, due or to become due, howsoever created, evidenced or arising and howsoever acquired by the Agent, and any and all renewals, extensions or refinancings thereof (all of the foregoing are hereinafter collectively referred to as the "Liabilities"). Upon full payment, performance and observance by the Borrower of all Liabilities, this Assignment and the lien or charge created hereby or resulting herefrom shall automatically cease to exist.

3. Borrower's Representations, Warranties and Covenants. The Borrower represents, warrants and covenants to the Agent that:

(a) That attached hereto as Exhibit "B" are true and correct copies of the Agreements.

(b) The Borrower shall not sell, transfer, assign, pledge, or encumber the Agreements or any interest therein without the prior written consent of the Agent. The Borrower shall not amend, modify or terminate the Agreements without the prior written consent of the Agent.

(c) The Borrower hereby irrevocably authorizes the Agent at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto without the signature of the Borrower relating to the Agreements. The Borrower shall sign and execute alone or with the Agent any other document or

procure any documents and pay any connected costs, expenses and fees, including court costs and reasonable attorneys' fees, necessary to protect the security interest under this Assignment against the rights, interests or claims of third parties.

(d) The Borrower shall reimburse the Agent for all reasonable costs, expenses and fees, including court costs and reasonable attorneys' fees, incurred for any action taken by the Agent to remedy an "Event of Default" (as hereinafter defined) of the Borrower under this Assignment, including without limitation, expenses incurred pursuant to Sections 6(c) and 6(d) below, together with interest on all said amounts at a per annum rate equal to the Default Rate (as defined in the Loan Agreement) from and after the date which is ten (10) days after the Agent demands reimbursement until the date reimbursed by the Borrower.

(e) The Borrower will punctually and promptly perform all covenants, agreements and conditions required to be performed by the Borrower under this Assignment and the Agreements.

(f) The Borrower agrees to take reasonable efforts to enforce performance by the City, the District, and any other party to the Agreements and to enforce every material obligation, covenant, condition and agreement to be performed by such other party under the Agreements.

(g) The Borrower has not performed any act which might prevent the Borrower from performing its obligations hereunder or under the Agreements or which might prevent the Agent from enforcing its rights pursuant to the terms and provisions hereof.

(h) The Borrower shall promptly notify Agent of (i) any notices received by Borrower from the City, the District, or any other party in connection with the Agreements, and shall deliver a copy of the same to Agent and (ii) any CFD Bond (as defined in the Loan Agreement) proceeds received by Borrower.

4. Limitation of Agent's Liability. Notwithstanding anything to the contrary contained in any document, instrument, or agreement, the interests of the Borrower in and under the Agreements are assigned and transferred to the Agent by way of collateral security only, and the Agent by its acceptance hereof shall not be deemed to have assumed or become liable for any of the obligations or liabilities of the Borrower under the Agreements, whether provided for by the terms thereof, arising by operation of law or otherwise. The Borrower hereby acknowledges that the Borrower shall remain liable for the due performance of the Borrower's obligations under the Agreements to the same extent as though this Assignment had not been made. It is expressly intended, understood and agreed that this Assignment, the Loan Agreement, the Note, the Deed of Trust, and the other Loan Documents are made and entered into for the sole protection and benefit of the Agent and the Borrower, and their respective successors and assigns (but in the case of assigns of the Borrower, only to the extent permitted hereunder), and no other person or persons shall have any right of action hereunder or rights to the proceeds of the Loans at any time; that no third party shall under any circumstances be entitled to any equitable lien on

the undisbursed proceeds of the Loans at any time. The relationship between the Agent and the Borrower is solely that of a lender and borrower, and nothing contained herein shall in any manner be construed as making the parties hereto partners or joint venturers or creating any other relationship other than lender and borrower.

5. Events of Default. An Event of Default shall occur under this Assignment upon the occurrence of (a) a breach by the Borrower of any of the covenants, agreements, representations, warranties or other provisions contained herein that is not cured within the applicable grace or cure period, if any, set forth in the Loan Agreement, (b) any other Event of Default described in the Loan Agreement, the Note, the Deed of Trust or any of the other Loan Documents, or (c) a default, after the expiration of any applicable grace or cure periods, under the Agreements. An Event of Default under this Assignment shall constitute an Event of Default under the Loan Agreement, the Note, the Deed of Trust and the other Loan Documents.

6. Remedies. At any time upon or following the occurrence of any one or more Events of Default hereunder, the Agent shall without any further notice or any demand to the Borrower: (a) be entitled to declare all indebtedness secured hereby and by the Note and the other Loan Documents to be immediately due and payable; (b) exercise any and all rights and remedies provided hereunder or under the other Loan Documents, as well as all remedies available at law and in equity; (c) cure any default in such manner and to such extent as the Agent may deem reasonably necessary to protect the security hereof, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Agent, and also the right to perform and discharge each and every obligation, covenant and agreement of the Borrower under the Agreements, and in connection therewith, to pay necessary costs and expenses, employ counsel and incur and pay attorneys' fees and expenses; and/or (d) either in person or by agent, with or without bringing any action or proceedings, or by a receiver to be appointed by a court at any time hereafter, enforce any of the Agreements for its own benefit.

7. Waiver and Indemnity. The Borrower hereby agrees that no liability shall be asserted or enforced by the Borrower against the Agent in its exercise of the powers and rights herein granted, all such liability being hereby expressly waived and released by the Borrower. The Borrower hereby agrees to indemnify, defend and hold the Agent harmless from and against any and all liability, expense, cost or damage which the Agent may incur by reason of any act or omission of either the Borrower or any other party under any of the Agreements. Notwithstanding anything contained herein to the contrary, the waiver and indemnification contained in this section shall not apply to any instance in which the Agent has committed gross negligence or willful misconduct.

8. Notices. All notices and demands which are required or permitted to be given or served hereunder shall be deemed sufficiently served when delivered or mailed in the manner and to the persons described in the Loan Agreement.

9. Miscellaneous. This Assignment and all rights and liabilities hereunder and in and to any of the Agreements shall inure to the benefit of the Agent and its successors and assigns, and shall be binding upon the Borrower and its successors and permitted assigns. This

Assignment and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of California. All provisions of this Assignment shall be deemed valid and enforceable to the extent permitted by law. Any provision or provisions of this Assignment which are held unenforceable, invalid or contrary to law by a court of competent jurisdiction, shall be of no force or effect, and in such event each and all of the remaining provisions of this Assignment shall subsist and remain and be fully effective according to the terms of this Assignment as though such invalid, unenforceable or unlawful provision or provision had not been included in this Assignment. Time is of the essence of this Assignment, the headings of sections in this Assignment are for convenience only and shall not be construed in any way to limit or define the content, scope or intent of the provisions hereof.

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

11. Facsimile Signatures. Receipt of an executed signature page to this Assignment by facsimile or other electronic transmission shall constitute effective delivery thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Borrower has caused this Assignment to be executed and delivered as of the date first above written.

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____

Name: Wade C. Lau

Its: Vice President

EXHIBIT "A"

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL A:

BEING A PORTION OF THAT CERTAIN TRACT OF LAND LYING IN SECTIONS 69,70,79 AND 80 OF C. M. WEBER GRANT EL RANCHO DEL CAMPO DE LOS FRANCESES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID POINT BEING DISTANT WESTERLY 243.20 FEET MEASURED ALONG SAID NORTHERLY BOUNDARY LINE FROM THE NORTHEAST CORNER OF SECTION 27; THENCE ALONG THE SOUTHWESTERLY LINE OF THAT CERTAIN 2.967 ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM WILLIAM LADD SALMON TO THE COUNTY OF SAN JOAQUIN RECORDED NOVEMBER 25, 1949 IN BOOK OF OFFICIAL RECORDS, BOOK 1083, PAGE 296, SAN JOAQUIN COUNTY RECORDS, THE FOLLOWING COURSES:

ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1045.60 FEET THROUGH A CENTER ANGLE OF 56° 06' 21" [THE LONG CHORD OF WHICH BEARS NORTH 56° 59' 10" WEST 983.46 FEET] AN ARC DISTANCE OF 1023.89 FEET; THENCE NORTH 28° 56' 00" WEST 328.59 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 965.60 FEET THROUGH A CENTRAL ANGLE OF 19° 28' 29" [THE LONG CHORD OF WHICH BEARS NORTH 38° 40' 15" WEST 326.63 FEET] AN ARC DISTANCE OF 328.21 FEET, MORE OR LESS TO A POINT IN THE SOUTHWESTERLY RIGHT OF WAY LINE OF MARIPOSA ROAD [80 FEET WIDE] PER O.D.P.H. ON NOVEMBER 6, 1861; LAST SAID POINT BEING THE MOST WESTERLY CORNER OF SAID 2.967 ACRE PARCEL; THENCE ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 52° 59' 40" WEST 1155.00 FEET, MORE OR LESS; THENCE CONTINUING ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 60° 23' 40" WEST 3015.48 FEET; THENCE LEAVING LAST SAID RIGHT OF WAY LINE SOUTH 18° 26' 00" EAST 1975.71 FEET; THENCE SOUTH 71° 49' 30" WEST 1622.55 FEET; THENCE SOUTH 18° 26' 30" EAST 959.71 FEET TO A POINT IN SAID NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 89° 39' 56" EAST 5343.87 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION BY GRANT DEED RECORDED DECEMBER 31, 2002, INSTRUMENT NO. 2002-237858, OFFICIAL RECORDS AND RE-RECORDED MARCH 17, 2004, INSTRUMENT NO. 2004-053393, OFFICIAL RECORDS COUNTY OF SAN JOAQUIN.

PARCEL B:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4; A DISTANCE OF 1543.25 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE SOUTH 89° 33' 40" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 792.4 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 0° 51' EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2653.3 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 475.6 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY AS PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS WHICH POINT IS THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST PARALLEL WITH SAID WEST LINE OF NORTHWEST 1/4, A DISTANCE OF 1067.59 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750.0 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE NORTH 89° 33' 40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1864.8 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 0° 44' 40" EAST ALONG THE EAST LINE OF SAID NORTHWEST 1/4; A DISTANCE 2650.43 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89° 30' WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2222.3 FEET TO A POINT THAT IS NORTH 89° 30' EAST A DISTANCE OF 430.0 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4: THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 568.86 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY, PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 75° 42' WEST ALONG THE NORTHERLY LINE OF SAID SURVEY TO THE POINT OF BEGINNING.

PARCEL D:

PARCEL DI:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27 AS SAID IRON PIN IS SHOWN ON SURVEY MADE BY ROBERT ANGERMEIER FILED IN BOOK OF SURVEYS, BOOK 10, PAGE 86, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST A DISTANCE OF 490.0 FEET; THENCE NORTH 89° 28' EAST PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 380.0 FEET; THENCE SOUTH 0° 51' EAST A DISTANCE OF 490.0 FEET TO A POINT IN THE SOUTH LINE OF SAID NORTHWEST ¼; THENCE SOUTH 89° 28' WEST ALONG SAID SOUTH LINE OF THE NORTHWEST ¼, A DISTANCE OF 380.0 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO VERA E. SMITH AS EXECUTRIX OF WILLIAM L. SALMON, DECEASED BY INSTRUMENT RECORDED FEBRUARY 6, 1969 IN BOOK OF OFFICIAL RECORDS, BOOK 3275, PAGE 236, SAN JOAQUIN COUNTY RECORDS.

PARCEL DII:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27, NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE SOUTHWEST CORNER OF THE LANDS CONVEYED BY WILLIAM L. SALMON AND LYDIA A. SALMON TO HERNER B. PAULSON AND WINIFRED O. PAULSON AS PER DEED RECORDED APRIL 12, 1957 IN BOOK OF OFFICIAL RECORDS, BOOK 1962, PAGE 187, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 0° 51' WEST ALONG THE WEST LINE OF SAID PAULSON LANDS, A DISTANCE OF 490.0 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89° 28' EAST ALONG THE NORTH LINE OF SAID PAULSON LANDS, A DISTANCE OF 58.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 28' EAST ALONG SAID NORTH LINE OF PAULSON LANDS, A DISTANCE OF 321.39 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 0° 51' WEST A DISTANCE OF 78.64 FEET; THENCE SOUTH 75° 42' WEST A DISTANCE OF 330.45 FEET TO THE POINT OF BEGINNING.

PARCEL E:

PARCEL 1, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL F:

PARCEL 3, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL G:

PARCEL 4, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS

EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL H:

COMMENCING AT THE COMMON CORNER OF SECTIONS 58, 59, 68 AND 69 OF C.M. WEBER'S GRANT, "EL RANCHO DEL CAMPO DE LOS FRANCESES"; THENCE SOUTHWESTERLY ALONG THE SECTION LINE BETWEEN SECTIONS 58 AND 59, 13.68 CHAINS; THENCE SOUTHWESTERLY PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 59 AND 69 OF SAID GRANT TO A POINT WHICH IS DISTANT FROM THE SOUTH LINE OF SAID WEBER GRANT, NORTH 17° 30' WEST, 838.7 FEET, AND BEING THE TRUE POINT OF BEGINNING OF THE PROPERTY HEREINAFTER DESCRIBED; THENCE FROM SAID POINT OF BEGINNING SOUTH 17° 30' EAST, 838.7 FEET TO THE SOUTH LINE OF WEBER GRANT; THENCE ALONG SAID SOUTH GRANT LINE SOUTH 89° 25' EAST, 2557.1 FEET TO THE SOUTHEAST CORNER OF SURVEY NO. 2358; THENCE ALONG THE EAST LINE OF SURVEY 2358 AND THE EAST LINE OF THE WEST 1/3 OF SECTION 69 OF C.M. WEBER'S GRANT, NORTH 17° 30' WEST, 1632.42 FEET TO THE POINT; THENCE SOUTH 72° 30' WEST, 2430.8 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

TAX IDENTIFICATION NUMBERS:

179-220-06
179-220-27
179-220-28
181-100-01
181-100-02
181-100-05
181-110-17
181-110-19
181-110-20

EXHIBIT "B"

COPIES OF AGREEMENTS

[see attached]

AGREEMENT TO CONSTRUCT AND ACQUIRE PUBLIC FACILITIES FOR ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT NO. 99-02

THIS AGREEMENT, dated as of September 1, 2007 (the "Agreement"), is by and between the CITY OF STOCKTON, CALIFORNIA, a municipal corporation of the State of California operating under a freeholder's charter (the "City"), ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT NO. 99-02 (the "District") and ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership (the "Developer").

RECITALS:

A. Pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code, as amended (the "Act"), the City has formed and established the District as a legally constituted governmental entity to provide funding for the costs of (1) the construction and/or acquisition of certain rights-of-way and off-site public facilities (the "Facilities"), more particularly described in Resolution No. 99-0508 adopted by the City Council on November 2, 1999, including those Facilities set forth in Exhibit A, hereto attached, and (2) the formation of the District and the issuance of up to $60,000,000 of special tax bonds (the "Bonds") under the Act to provide financing for the Facilities and to refund outstanding indebtedness of the District.

B. Developer is the owner of all land currently within the District.

C. The City and the District have determined that the acquisition of the Facilities pursuant to this Agreement will provide a public purpose by permitting the earlier installation of needed public Facilities than could be achieved without such acquisition.

D. Developer shall cause to be constructed and installed, in accordance with City's regulations and any applicable development agreement, the portion of the Facilities to be financed by the Bonds.

E. The principal amount of the Bonds proposed to be issued and sold will not exceed $60,000,000, and the City expects that it will issue a series of the Bonds on or about September 6, 2007 in the principal amount of $19,065,000 (the "2007 Bonds"), approximately $10,000,000 of which will be deposited to an improvement fund to pay costs of the Facilities.

COVENANTS:

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. Each of the parties hereto represents and warrants, each to the other, that the above recitals are true and correct.

2. Sale of Bonds. The City shall continue to completion all necessary proceedings pursuant to the Act for the sale and delivery of the 2007 Bonds; provided that each step in the proceedings and the principal amount and timing of sale of the 2007 Bonds shall in all respects be subject to the approval of the City Council or its designee, and nothing contained herein shall be construed as requiring the City to issue any of the Bonds for the District, or subject the City

or the District to pecuniary liability therefor, or to relieve the Developer from its duty to perform its obligations under other agreements, land use regulations or subdivision requirements relating to the Facilities, which obligations are and shall remain independent of the Developer's rights and obligations under this Agreement.

The City, in connection with this Agreement, is proceeding with the issuance and delivery of the initial series of the Bonds. The City agrees to consider the issuance of additional series of the Bonds upon the written request of the Developer subject to the following: (a) the Developer shall provide the City with a deposit in an amount sufficient to pay all non contingent costs of the City necessary to consider the issuance of such additional Bonds (including but not limited to appraisal costs and City staff costs), subject to reimbursement of such amount so advanced by the Developer from the proceeds of the additional Bonds, when and if issued and as permitted under the Act; (b) the additional Bonds shall satisfy all of the requirements for "Parity Bonds" under and as such term is defined in the Fiscal Agent Agreement; (c) the landowners in the CFD shall assist the City in preparation of any disclosure agreement as deemed appropriate by the City in connection with the offer and sale of such additional Bonds and the execution of any related disclosure certificate; and (d) the timing of sale and principal amount of such additional Bonds shall be determined by the City upon consultation with the Developer. It is expected that the City and the Developer will enter into an amendment to this Agreement in connection with each additional series of Bonds that are issued, to add to the list of Facilities in Exhibit A hereto those Facilities to be funded from the proceeds of each such additional series of the Bonds.

3. Use of Bonds Proceeds.

(a.) Bond Proceeds. The proceeds of the Bonds will be deposited, held, invested and disbursed as provided in the Fiscal Agent Agreement pursuant to which the Bonds are issued (the "Fiscal Agent Agreement"). A portion of the proceeds of each series of the Bonds will be set aside under the Fiscal Agent Agreement in a separate improvement fund (the "Project Fund"). Moneys in the Project Fund will be withdrawn therefrom, in accordance with the provisions of the Fiscal Agent Agreement and this Agreement, to pay for all or a portion of the costs of the acquisition of the Facilities from the Developer, and incidental expenses, all as determined by City and as herein and in the Fiscal Agent Agreement provided.

(b.) Facilities to be Acquired. Pursuant to the provisions hereof, City agrees to accept the Facilities upon their completion (other than those Facilities, if any, to be conveyed to other public entities or regulated public utilities pursuant hereto), provided that they are constructed in accordance with this Agreement. As to those Facilities to be conveyed to such other public entities or utilities, although payment for same will be made by City from the Project Fund, such Facilities shall be conveyed to and accepted by such other public entities or utilities in accordance with their policies and procedures. Before Facilities can be accepted all necessary rights-of-way and utility easements must be acquired and conveyed to the City.

The obligation by City, on behalf of City and such other public entities and utilities, to pay for the acquisition of the Facilities, and incidental expenses, is limited to moneys in the Project Fund. It is recognized that the amount of moneys in the Project Fund available to pay for the acquisition of the Facilities, and incidental expenses, may be less than the total cost thereof.

4. Reimbursement to Developer. Upon completion of the sale and delivery of the Bonds, the City shall reimburse, without interest, the Developer or its written designee, solely from amounts in the Project Fund and then only to the extent available for such purpose and permitted under the Act, the amount of any costs paid from any Developer advances hereunder. If for any reason the Bonds are not issued, neither the District nor the City shall have

any obligation to reimburse the Developer for any costs and expenses advanced or paid from the Developer's funds.

Any short-fall between the total cost of the Facilities, including expenses incidental thereto, and the amount available in the Project Fund, resulting in an insufficient amount of moneys available to fully reimburse the Developer for its costs to construct the Facilities and pay incidental expenses, shall be deemed a contribution by the Developer toward the cost of the Facilities and the incidental expenses.

The Developer agrees to construct, or cause to be constructed, all of the Facilities, and to convey them, along with all interests in real property necessary for the operation, maintenance and ownership thereof, to the City or appropriate other public entity or utility. The Developer agrees to complete the construction of all of the Facilities regardless whether the cost of such construction exceeds the amount of moneys in the Project Fund available therefor. In no event shall any shortfall described herein become a debt of City or of District or any of their officers or employees.

5. Acquisition and Construction of and Payment for Facilities.

(a.) Plans and Specifications. The Developer represents that it has or will obtain approval by all appropriate local, State and federal agencies and all City departments of the plans and specification for the Facilities and that all of the Facilities have been or will be constructed by the Developer in full compliance with all current standards deemed by the City Engineer to be applicable to the construction of the Facilities.

(b.) Competitive Bidding. The Developer covenants that all contracts to be awarded pursuant to this Agreement shall be awarded to the contractor who is the lowest responsible bidder on that particular contract, after notice inviting sealed bids is given as required for public works projects by law.

(c.) Prevailing Wages. The Developer covenants that. with respect to the construction of the Facilities, it will assure complete compliance with any applicable law or regulation for the payment of prevailing wages. Or, in the alternative, Developer will execute a hold harmless and indemnity agreement assuring the City and District of no risk associated with any litigation, claim, administrative action or other challenge to the non-payment of prevailing wages to workers, including costs of defense by attorneys of the City's choosing, and secured by a letter of credit or other security sufficient to the satisfaction of the City Attorney.

(d.) Insurance. With respect to the construction of the Facilities, Developer shall furnish to City a certificate or certificates of insurance, with an insurance carrier acceptable to City in a form satisfactory to City, evidencing insurance consistent with the provisions hereof. Each certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after City shall receive notification of such cancellation or reduction by registered mail.

The minimum insurance coverage shall be as follows:

The required coverages and verification of coverage set forth in the "General Provisions" of the City's Standard Specifications are included herein by this reference as though set forth in full. This insurance shall directly protect City as well as Developer and its agents. The insurer shall assume the defense of City, its officers, employees and agents from suits, actions. damages or claims of every type and description to which they may be subjected or put by reason of, or resulting from the construction or installation of the Facilities. The insurance policy shall expressly state that the above terms are in effect.

Each policy of insurance shall be placed with insurers with a Best's rating of no less than A: VII, and specify that:

(i) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as if those separate policies had been issued to each insured, and

(ii) It acts as primary insurance and that no insurances held by Developer or City shall be called upon to cover either in full or in part, any loss covered under the policy.

If Developer fails to maintain such insurance, City may, among its other options, take out insurance to cover damages of the above mentioned classes for which City might be held liable on account of Developer failing to pay such damages, and recover the amount of the premiums for such insurance from Developer or retain such amount from any moneys due the Developer under this Agreement. Failure of City to obtain insurance shall in no way relieve Developer from any of its responsibilities under this Agreement. The provisions of this paragraph shall be in addition to, and not in lieu of, indemnification insurance requirements imposed under any governmental approval or permit, or imposed by any financing mechanism participated in by Developer in connection with its obligations under this Agreement.

Developer shall also furnish or cause to be furnished evidence satisfactory to the City that any contractor with whom it has contracted for the work carries Worker's Compensation Insurance as set forth in the "General Provisions."

(e.) Purchase Price. The amount to be paid by the City for the Facilities (hereafter the "Purchase Price"), shall be determined by the City Engineer and shall not exceed the cost thereof, including the reasonable cost of appurtenant facilities and of preparing plans and specifications as well as the construction contracts and all costs of construction reasonably determined by the City Engineer to be eligible under the Act to be part of the Purchase Price, such as fees and costs incurred in obtaining permits, licenses, rights-of-way or easements, the costs of change orders, engineering, legal, fiscal and inspection fees, project management, construction administration, technical studies and land acquisition costs constituting a part of the Facilities. The Purchase Price may include the Developer's interest costs for any portion of the Facilities as to which the Developer made expenditures prior to the availability of the Bond proceeds.

The Developer shall provide any documentation substantiating the cost of the Facilities reasonably requested by the City Engineer. There shall be a presumption of reasonableness as to costs incurred under a construction contract entered into by the Developer as a result of a call for bids, provided that no extraordinary limitations or requirements (such as short time frame) are imposed by the Developer of the performance of such contract.

(f.) Inspection and Acceptance. The Facilities shall be promptly accepted and the Purchase Price promptly paid from amounts in the Project Fund if completed substantially in accordance with the approved plans and specifications for such Facilities. The Facilities shall be subject at all reasonable times prior to their acquisition to inspection by the City Engineer, which inspection shall be accomplished in a timely manner. Prior to acceptance of any Facilities by the City, the Developer shall provide as-built drawings or other similar plans and specifications of such Facilities in form reasonably acceptable to the City Engineer, along with evidence satisfactory to the City Engineer that all costs of the Facilities have been fully paid by the Developer to the party or parties entitled to be paid for such costs. All warranties, guarantees or other evidence of contingent obligations of third persons with respect to such Facilities shall be delivered to the City Engineer prior to acceptance thereof.

(g.) Warranty Bond. Developer shall provide to City security of at least ten percent (10%) of the cost of the Facilities to guarantee and warrant the work for one (1) year following the date of such acceptance of the work. The surety on said bond shall be an admitted surety as determined by the Insurance Commissioner of the State of California and shall be certified pursuant to Article 2 (commencing with Section 12070) of Chapter 1 of Part 4 of Division 2 of the California Insurance Code and authorized to transact business in the State of California, and the form thereof shall be satisfactory to the City Attorney. The security guaranteeing that the completed work remains satisfactory during the required I-year warranty period shall be released upon correction by Developer of any defects in the work existing at the end of the warranty period.

(h.) Payments to Developer. Rights-of-way/easements must be conveyed by Developer to City before payment is made. The Developer may request in writing a payment of the Purchase Price of any Facilities provided for herein. Such requests shall be accompanied by vouchers supported by invoices and copies of checks in payment of the costs thereof. Such payments shall be made only in the amount determined reasonable by the City Engineer with respect to the Facilities to be acquired, as specified in a cost certificate completed by the City Engineer. Any such Facilities to be acquired by the City must be completed in accordance with the approved plans and specifications. Any Facility to be accepted by the City must be in such condition that it is ready for use by the City or the public as determined by the City Engineer. If requested by the City Engineer, the Developer shall prepare and execute a Notice of Completion acceptable to the City Engineer and record such notice in the office of the Recorder of San Joaquin County, California, and cause its contractor to provide lien releases in form acceptable to the City Engineer for all the Facilities. Prior to final payment hereunder, Developer shall submit for audit canceled checks for all prior payments.

The City Engineer, in his sole discretion, shall determine whether, and to what degree, any item of the Facilities can be acquired from the Developer in segment smaller than the entire Facilities. The purchase price of each specific segment to be acquired shall be determined by the City Engineer in accordance with Section 5(e.) above; provided, however, the aggregate purchase price for all segments related to such Facilities shall not exceed the value of such segment, and aggregate purchase price for all such Facilities shall not exceed the amounts shown in Exhibit A for the total construction cost and construction contingency.

If any of the Facilities to be acquired hereunder were or are financed, in whole or in part, from the proceeds of any loan secured by a mortgage or deed of trust upon any of Developer's lands within the District, and in the absence of contrary written instructions by any mortgagee or beneficiary of such mortgagee or deed of trust, the Purchase Price shall be paid to the Developer and to such mortgagee or beneficiary, as their interest may appear.

(i.) City Fees. All City fees (i.e., plan check fee, inspection fee, administrative fees, etc.) shall be paid by the Developer at such time as required by the City Engineer. The Developer will be reimbursed from amounts in the Project Fund for such fees.

(j.) Ownership and Transfer of Facilities. The provision or conveyance of the Facilities to the City shall take place as follows:

(i) Land (Fee or Easement). Developer shall transfer to the City the appropriate rights, title and interest in and to any land to be acquired. Developer agrees to execute and deliver to City those documents required to complete the transfer of acceptable title (as defined herein) to the land. Acceptable title means title to the land delivered free and clear of all liens, encumbrances, assessments, easements or leases, whether any such item is recorded or unrecorded, and taxes, except those matters which are determined

by the City Engineer in his reasonable discretion not to interfere with the intended use of the land and therefore are not required to be cleared from the title. Completion of transfer shall be evidenced by the recordation of an acceptance of the interest(s) in the land by the City Council or its designee.

(ii) Facilities Constructed on Land Owned by Developer. If Facilities are located on land owned by Developer, then Developer shall retain the title to such land and the Facilities constructed thereon until the land and Facilities are acquired by City pursuant to this Agreement. Until title to the land and Facilities are acquired by City, the Developer shall maintain the land and Facilities in good and safe condition. Transfer of title to the land and the Facilities thereon shall be in accordance with clause (i) above.

(iii) Facilities Constructed on Land Owned by City in Fee or Easement. If Facilities are located on land on which the City holds fee title or easement rights, the Developer shall request an encroachment permit in accordance with City codes and regulations to enter that land for purposes related to the construction and maintenance (prior to acquisition by the City hereunder) of such Facilities. Upon completion of construction of any such Facilities, the City Engineer shall inspect the Facilities and if approved by the City Engineer, City shall give written notice of its acceptance of the Facilities.

(iv) Personal Property. If the Developer provides any personal property in the Facilities to be acquired hereunder, transfer by the Developer to the City shall be accomplished by a Bill of Sale.

(v) Funds. If the Developer provides funds for Facilities, the providing of such funds to the City shall be acknowledged by a written receipt from the City.

6. Indemnification and Hold Harmless. The Developer shall assume the defense of, indemnify and save harmless the City, the District and their officers, directors, employees and agents, and each and every one of them, from and against all third-party actions, damages, claims, losses or expenses of every type and description to which they may be subjected or put, including payment of attorneys' fees and costs, by reason of, or arising out of, this Agreement, the Developer's design, the engineering and construction of the Facilities, if any, and any claims of persons employed by Developer to construct the Facilities. No provision of this Agreement shall in any way limit the extent of the responsibility of the Developer for payment of damages resulting from the operations of the Developer or its contractors, nor shall the existence of any policy of insurance in any way limit Developer's indemnity obligation hereunder.

7. Audit. The City Engineer shall have the right, during normal business hours and upon the giving of ten (10) days written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer in constructing any of the Facilities.

8. Relationship to Public Works. The parties hereto agree that this Agreement is for the acquisition of Facilities by the City from amounts in the Project Fund and is not, nor is it intended to be, a public works contract. In performing this Agreement, the Developer is an independent contractor and not the agent of the City or the District. Neither the City nor the District shall have the responsibility for payment to any contractor or supplier of the Developer. Notwithstanding the foregoing, the Developer understands that it may be subject to certain public contract requirements as provided by law.

9. Attorney's Fees. In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be

entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorney's fees.

10. Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or 72 hours following deposit of the same in any United States Post Office in California, registered or certified mail, postage prepaid, addressed as follows:

Developer:
Arch Road Limited Partnership
c/o Opus West Corporation
6160 Stoneridge Mall Road, Suite 360
Pleasanton, CA 94588

City or District:
City of Stockton
Attn.: City Engineer
Public Works Department
City Hall
425 North El Dorado Street
Stockton, CA 95202-1997

Each party may change its address for delivery of notice by delivering written notice of such change of address to the other party.

11. Bonds - Tax Exemption. Its is contemplated that the interest on the Bonds to be issued by the City in order to finance the acquisition of the Facilities from the Developer will be excluded from gross incomes of the Bond owners for federal incomes of the Bond owners tax purposes. Notwithstanding anything in this Agreement to the contrary, the City shall not be required to take any action hereunder that, in the opinion of bond counsel to the City, would result in the Bonds being classified by the United States Department of the Treasury as "arbitrage bonds" or that otherwise would result in the interest on the Bonds being included in the gross incomes of the Bond owners for federal incomes of the Bond owners tax purposes. Moreover, the parties recognize that a change in or regulatory interpretation of the federal tax laws could, in the opinion of bond counsel, require that revisions hereto may be necessary or appropriate in order that the Bonds not be classified as "arbitrage bonds" or otherwise result in the interest on the Bonds being included in the gross incomes of the Bond owners for federal incomes of the Bond owners tax purposes.

In the event the City receives such an opinion, this Agreement shall be modified to such an extent as is required to preserve the tax-exempt status of the interest on the Bonds.

12. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonable possible.

13. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

14. Limited Liability. Any and all obligations of the City arising out of or related to this Agreement are the special and limited obligations of the City payable only from amounts in the Project Fund or from other funds of the District to the extent such may become legally available. In no event shall the City be obligated to advance any of its own funds hereunder. No Councilmember, staff member or agent of the City shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

16. Amendments. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

17. Expiration. This Agreement shall, unless extended by the City at its sole discretion, terminate after the expiration of 36 months from the date of issuance of the last series of the Bonds, as such date is determined by the City Council in the event that less than all of the $60,000,000 authorized principal amount of the Bonds are issued.

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

CITY OF STOCKTON, for itself and on behalf of ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT NO. 99-02

By: _____
City Manager

ARCH ROAD LIMITED PARTNERSHIP,
a Delaware limited partnership

By: Stockton GP, L.L.C.,
a Delaware limited liability company,
its general partner

By: _____

Name: _____

Title: _____

19011.05:J9550

EXHIBIT A

ARCH ROAD EAST
COMMUNITY FACILITIES DISTRICT 99-02
2007 BOND SERIES FACILITIES

SUMMARY OF FACILITIES

	Budget Allocation
NEWCASTLE EXTENSION TO MARIPOSA ROAD TIE IN	$ 6,800,000
NEW ROAD	5,200,000
CULVERT, ARCH &NEWCASTLE	1,000,000
MARIPOSA WATER LINE EXTENSION	800,000
UTILITY STUBS	400,000
STORM WATER DETENTION POND EXCAVATION/FENCING	250,000
TRAFFIC SIGNAL	500,000
DEMO OF EXISTING STRUCTURES	50,000
TOTAL	$15,000,000

DETAILED BUDGET

NEW CASTLE ROAD IMPROVEMENTS
EXTENSION FROM EXISTING NEWCASTLE ROAD TO MARIPOSA ROAD TIE IN

UTILITIES						
SEWER						
	SIZE	QTY	UNIT	$/QTY	COST	
PIPE	12	300	LF	70	$21,000	
PIPE	18	1650	LF	90	$148,500	
PIPE	24	2200	LF	125	$275,000	
MANHOLE		10	EA	7000	$70,000	
						$514,500
STORM						
	SIZE	QTY	UNIT	$/QTY		
PIPE	60	2500	LF	180	$450,000	
PIPE	54	1650	LF	135	$222,750	
MANHOLE	48	17	EA	8500	$144,500	
						$817,250
WATER						
	SIZE	QTY	UNIT	$/QTY		
PIPE	12	1970	LF	75	$147,750	
	16	2180	LF	60	$130,800	
		4150				$278,550
JOINT TRENCH						
		QTY	UNIT	$/QTY		
MAIN TRENCH		4150	LF	175	$725,250	
MISC CROSSINGS		10	EA	15000	$150,000	
						$876,250
STREET LIGHTING						
		QTY	UNIT	$/QTY		
		11	EA	25000	$275,000	
						$275,000
TOPSIDE, 160' PAVEMENT, 2' C&G, 5' SW						
EARTHWORK		1	LS	30000	$30,000	
PAVING (INCLUDES AGG, LIME)		4150	LF	540	$2,241,000	
STRIPING/SIGNAGE		1	LS	15500	$15,500	
CURB & GUTTER		8300	LF	50	$415,000	
SIDEWALK		8300	LF	120	$996,000	
CULVERT CROSSINGS		1	EA	350000	$350,000	
						$4,047,500
TOTAL						$6,809,050

NEW ROAD IMPROVEMENTS
EXTENSION FROM ARCH ROAD TO NEWCASTLE EXTENSION

UTILITIES

SEWER

	SIZE	QTY	UNIT	$/QTY	COST	
PIPE	12	200	LF	70	$14,000	
PIPE	18	1350	LF	90	$121,500	
PIPE	24	1350	LF	125	$168,750	
MANHOLE		8	EA	7000	$56,000	
						$360,250

STORM

	SIZE	QTY	UNIT	$/QTY		
PIPE	60	2000	LF	180	$360,000	
PIPE	54	800	LF	135	$108,000	
MANHOLE	48	13	EA	7500	$97,500	
						$565,500

WATER

	SIZE	QTY	UNIT	$/QTY		
PIPE	12	1470	LF	75	$110,250	
	16	1330	LF	60	$79,800	
						$190,050

JOINT TRENCH

	QTY	UNIT	$/QTY		
MAIN TRENCH	2800	LF	175	$490,000	
MISC CROSSINGS	9	EA	15000	$135,000	
PG&E FEE ALLOWANCE	1	LS	255000	$255,000	
					$880,000

STREET LIGHTING

	QTY	UNIT	$/QTY		
	7	EA	25500	$178,500	
					$178,500

TOPSIDE, 160' PAVEMENT, 2' C&G, 5' SW

EARTHWORK	1	LS	30000	$30,000	
PAVING (INCLUDES AGG, LIME)	2800	LF	600	$1,680,000	
STRIPING/SIGNAGE	1	LS	15500	$15,500	
CURB & GUTTER	5600	LF	50	$280,000	
SIDEWALK	5600	LF	120	$672,000	
CULVERT CROSSINGS	1	EA	350000	$350,000	
					$3,027,500
TOTAL					$5,201,800

CULVERT CONSTRUCTION IN ARCH AND NEWCASTLE

	SIZE	QTY	UNIT	$/QTY	COST	
CIP CONCRETE STRUCTURES		2	EA	225000	$450,000	
PIPE	24	150	LF	150	$22,500	
EARTHWORK		1	LS	150000	$150,000	
PAVING (INCLUDES AGG, LIME)		150	LF	400	$60,000	
STRIPING/SIGNAGE		1	LS	5000	$5,000	
CURB &GUTTER		8300	LF	25	$207,500	
SIDEWALK		150	LF	100	$15,000	
MISC METALS		1	LS	90000	$90,000	
					TOTAL	$1,000,000

MARIPOSA WATER LINE EXTENSION

	SIZE	QTY	UNIT	$/QTY	COST	
PIPE	20	5000	LF	120	$600,000	
EARTHWORK		1	LS	20000	$20,000	
PAVING		5000	LF	35	$175,000	
STRIPING/SIGNAGE		1	LS	5000	$5,000	
					TOTAL	$800,000

UTILITY STUBS

	SIZE	QTY	UNIT	$/QTY	COST	
WATER		20	EA	1500	$30,000	
SEWER		20	EA	1500	$30,000	
STORM		20	EA	1000	$20,000	
JOINT TRENCH		500	LF	600	$300,000	
APPURTENANCES		1	LS	20000	$20,000	
					TOTAL	$400,000

EXCAVATION OF BASIN N-3

	SIZE	QTY	UNIT	$/QTY	COST	
EARTHWORK		15000	CY	16	$240,000	
FENCING		1	LS	10000	$10,000	
					TOTAL	$250,000

TRAFFIC SIGNAL

	SIZE	QTY	UNIT	$/QTY	COST	
EQUIPMENT		1	LS	350000	$350,000	
CONTROLS		1	LS	125000	$125,000	
EARTHWORK/PAVING		1	LS	25000	$25,000	
					TOTAL	$500,000

FISCAL AGENT AGREEMENT

by and between

CITY OF STOCKTON, CALIFORNIA

and

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Fiscal Agent

Dated as of September 1, 2007

Relating to:
$19,065,000
City of Stockton
Arch Road East Community Facilities District No. 99-02
2007 Special Tax Bonds

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EXHIBIT A – FORM OF BOND

FISCAL AGENT AGREEMENT

THIS FISCAL AGENT AGREEMENT (the "Agreement"), dated as of September 1, 2007, is by and between the City of Stockton, California, a municipal corporation duly organized and existing under the laws of the State of California (the "City") for and on behalf of the Arch Road East Community Facilities District No. 99-02, City of Stockton, San Joaquin County, California (the "District"), and The Bank of New York Trust Company, N.A., a national banking association, duly organized and existing under the laws of the United States of America with a corporate trust office located in San Francisco, California, as fiscal agent (the "Fiscal Agent").

RECITALS:

WHEREAS, the City Council of the City has formed the District under the provisions of the Mello-Roos Community Facilities Act of 1982, as amended (Section 53311 *et seq.* of the California Government Code) (the "Act") and Resolution No. 99-0508 of the City Council of the City adopted on November 2, 1999; and

WHEREAS, the City Council of the City, as the legislative body with respect to the District, is authorized under the Act to levy special taxes to pay for the costs of facilities eligible to be financed by the District and to authorize the issuance of bonds, including bonds to refund any bonds of the City for the District, secured by said special taxes under the Act; and

WHEREAS, on December 2, 1999, the City, for and on behalf of the District, issued $2,085,000 aggregate initial principal amount of its City of Stockton Arch Road East Community Facilities District No. 99-02 Special Tax Bonds Series 1999 (the "1999 Bonds"), the net proceeds of which were used to finance facilities eligible to be funded by the District; and

WHEREAS, on February 21, 2002, the City, for and on behalf of the District, issued $6,200,000 aggregate initial principal amount of its City of Stockton Arch Road East Community Facilities District No. 99-02 Special Tax Bonds Series 2002 (collectively with the 1999 Bonds, the "Prior Bonds"), the net proceeds of which were used to provide additional financing for the facilities eligible to be funded by the District; and

WHEREAS, due to favorable interest rates in the financial markets, the City Council has determined to refund the Prior Bonds in full and to provide funds for additional improvements authorized to be financed by the District; and

WHEREAS, under the provisions of the Act, on August 14, 2007, the City Council of the City adopted its Resolution No. 07-0352 (the "Resolution"), which resolution, among other matters, authorized the issuance of the City of Stockton Arch Road East Community Facilities District No. 99-02 2007 Special Tax Bonds (the "2007 Bonds") to provide moneys to defease and refund the Prior Bonds and to provide funds for additional improvements authorized to be financed by the District, and said resolution provided that the issuance of the Bonds would be in accordance with this Agreement, and authorized the execution hereof; and

WHEREAS, it is in the public interest and for the benefit of the City, the District, the persons responsible for the payment of special taxes and the owners of the 2007 Bonds that the City enter into this Agreement to provide for the issuance of the 2007 Bonds, the

disbursement of proceeds of the 2007 Bonds, the disposition of the special taxes securing the 2007 Bonds and the administration and payment of the 2007 Bonds; and

WHEREAS, the City has determined that all things necessary to cause the 2007 Bonds, when authenticated by the City for the District and issued as in the Act, the Resolution and this Agreement provided, to be legal, valid and binding and special obligations of the City for the District in accordance with their terms, and all things necessary to cause the creation, authorization, execution and delivery of this Agreement and the creation, authorization, execution and issuance of the 2007 Bonds, subject to the terms hereof, have in all respects been duly authorized.

AGREEMENT:

NOW, THEREFORE, in consideration of the covenants and provisions herein set forth and for other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree as follows:

ARTICLE I

STATUTORY AUTHORITY AND DEFINITIONS

Section 1.01. Authority for this Agreement. This Agreement is entered into pursuant to the provisions of the Act and the Resolution.

Section 1.02. Agreement for Benefit of Bondowners. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the Owners. All of the Bonds (as defined in Section 1.03), without regard to the time or times of their issuance or maturity, shall be of equal rank without preference, priority or distinction of any of the Bonds over any other thereof, except as expressly provided in or permitted by this Agreement. The Fiscal Agent may become the owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Fiscal Agent.

Section 1.03. Definitions. Unless the context otherwise requires, the terms defined in this Section 1.03 shall, for all purposes of this Agreement, of any Supplemental Agreement, and of any certificate, opinion or other document herein mentioned, have the meanings herein specified. All references herein to "Articles", "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement, and the words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof.

"Acquisition Agreement – Bonds" means the Agreement to Construct and Acquire Facilities for Arch Road East Community Facilities District No. 99-02, dated as of September 1, 2007, among the City, the District and Arch Road Limited Partnership, as originally executed by the parties thereto and as it may be amended from time in accordance with its terms.

"Acquisition Agreement – Prior Bonds" means the Agreement to Construct and Acquire Facilities for Arch Road East Community Facilities District No. 99-02 Special Tax Bonds Series 2001, dated as of November 1, 2001, among the City, the District and Buzz Oates Construction Limited Partnership, as originally executed by the parties thereto and as it may be amended from time in accordance with its terms.

WHAT HAPPENS TO THIS AGREEMENT.

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Sections 53311 et seq. of the California Government Code.

"Administrative Expenses" means any or all of the following: the fees and expenses of the Fiscal Agent (including any fees or expenses of its counsel), the expenses of the City in carrying out its duties hereunder (including, but not limited to, the levying and collection of the Special Taxes, and the foreclosure of the liens of delinquent Special Taxes) including the fees and expenses of its counsel, an allocable share of the salaries of City staff related thereto and a proportionate amount of City general administrative overhead related thereto, any amounts paid by the City from its general funds pursuant to Section 6.02, any amounts paid or payable to any persons or entities employed by the City in connection with the discharge of any of the City's obligations hereunder (including, but not limited to, the calculation of the levy of the Special Taxes, foreclosures with respect to delinquent taxes, and the calculation of amounts subject to rebate to the United States), any fees or expenses of the Escrow Bank and any costs incurred by the City under or in connection with the Escrow Agreement, and all other costs and expenses of the City or the Fiscal Agent

incurred in connection with the discharge of their respective duties hereunder or in connection with the refunding of the Prior Bonds and, in the case of the City, in any way related to the administration of the District. Administrative Expenses shall include any such expenses incurred in prior years but not yet paid.

"Administrative Expense Fund" means the fund by that name established by Section 3.05(A) hereof.

"Agreement" means this Fiscal Agent Agreement, as it may be amended or supplemented from time to time by any Supplemental Agreement adopted pursuant to the provisions hereof.

"Annual Debt Service" means, for each Bond Year, the sum of (i) the interest due on the Outstanding Bonds in such Bond Year, assuming that the Outstanding Bonds are retired as scheduled (including by reason of mandatory sinking account redemptions described in Section 2.03(A)(ii)), and (ii) the principal amount of the Outstanding Bonds due in such Bond Year (including by reason of mandatory sinking account redemptions described in Section 2.03(A)(ii)).

"Auditor" means the auditor/tax collector of the County.

"Authorized Officer" means the City Manager, City Director of Administrative Services, City Clerk, or any other officer or employee authorized by the City Council of the City or by an Authorized Officer to undertake the action referenced in this Agreement as required to be undertaken by an Authorized Officer.

"Bond Counsel" means (i) Quint & Thimmig LLP, or (ii) any attorney or other firm of attorneys acceptable to the City and nationally recognized for expertise in rendering opinions as to the legality and tax-exempt status of securities issued by public entities.

"Bond Fund" means the fund by that name established by Section 4.02(A) hereof.

"Bond Register" means the books for the registration and transfer of Bonds maintained by the Fiscal Agent under Section 2.08 hereof.

"Bond Year" means the one-year period beginning on September 1st in each year and ending on the day prior to September 1st in the following year except that the first Bond Year shall begin on the Closing Date and end on August 31, 2007.

"Bonds" means the 2007 Bonds and any Parity Bonds at any time Outstanding under this Agreement or any Supplemental Agreement.

"Business Day" means any day other than (i) a Saturday or a Sunday or (ii) a day on which banking institutions in the state in which the Fiscal Agent has its corporate trust office are authorized or obligated by law or executive order to be closed.

"Capitalized Interest Account" means the account by that name established within the Bond Fund by Section 4.02(A) hereof.

"City" means the City of Stockton, California.

"Closing Date" means September 6, 2007, being the date upon which there is a physical delivery of the 2007 Bonds in exchange for the amount representing the purchase price of the 2007 Bonds by the Original Purchaser.

"Code" means the Internal Revenue Code of 1986 as in effect on the date of issuance of the 2007 Bonds or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the date of issuance of the 2007 Bonds, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement (City), executed by the City and MuniFinancial as the initial Dissemination Agent, dated the Closing Date, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

"Costs of Issuance" means items of expense payable or reimbursable directly or indirectly by the City and related to the authorization, sale and issuance of the 2007 Bonds and the refunding and defeasance of the Prior Bonds, which items of expense shall include, but not be limited to, printing costs, costs of reproducing and binding documents, closing costs, filing and recording fees, initial fees and charges of the Fiscal Agent including its first annual administration fee, fees and expenses of Fiscal Agent's counsel, expenses incurred by the City in connection with the issuance of the 2007 Bonds and the defeasance and redemption of the Prior Bonds, special tax consultant fees and expenses, Bond (underwriter's) discount, legal fees and charges, including bond counsel, financial consultants' fees, charges for execution, transportation and safekeeping of the 2007 Bonds and other costs, charges and fees in connection with the foregoing.

"Costs of Issuance Fund" means the fund by that name established by Section 3.06(A) hereof.

"County" means the County of San Joaquin, California.

"DTC" means The Depository Trust Company, New York, New York, and its successors and assigns.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which relate to principal which has been retired before the beginning of such period.

"Depository" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository pursuant to Section 2.13.

"District" means the Arch Road East Community Facilities District No. 99-02, City of Stockton, San Joaquin County, California, formed pursuant to the Act and the Resolution of Formation.

"District General Fund" means the fund so described in the second paragraph of Section 3.04(B)(i).

"District Value" means the market value, as of the date of the appraisal described below and/or the date of the most recent County real property tax roll, as applicable, of all parcels of real property in the District subject to the levy of the Special Taxes and not delinquent in the payment of any Special Taxes then due and owing, including with respect to such nondelinquent parcels the value of the then existing improvements and any facilities to be constructed or acquired with the proceeds of any proposed series of Parity Bonds, as determined with respect to any parcel or group of parcels by reference to (i) an

appraisal performed within six (6) months of the date of issuance of any proposed Parity Bonds by an MAI appraiser (the "Appraiser") selected by the City, or (ii), in the alternative, the assessed value of all such nondelinquent parcels and improvements thereon as shown on the then current County real property tax roll available to the Finance Director. It is expressly acknowledged that, in determining the District Value, the City may rely on an appraisal to determine the value of some or all of the parcels in the District and/or the most recent County real property tax roll as to the value of some or all of the parcels in the District. Neither the City nor the Finance Director shall be liable to the Owners, the Original Purchaser or any other person or entity in respect of any appraisal provided for purposes of this definition or by reason of any exercise of discretion made by any Appraiser pursuant to this definition.

"Escrow Agreement" means the Escrow Agreement, dated as of August 1, 2007, by and between the City and the Escrow Bank.

"Escrow Bank" means The Bank of New York Trust Company, N.A., in its capacity as escrow bank under the Escrow Agreement.

"Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is the Local Agency Investment Fund of the State of California but only if at all times during which the investment is held its yield is reasonably expected to be equal to or greater than the yield on a reasonably comparable direct obligation of the United States.

"Federal Securities" means any of the following which are non-callable and which at the time of investment are legal investments under the laws of the State of California for funds held by the Fiscal Agent, as shall be certified in an Officer's Certificate to the Fiscal Agent:

(i) direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the United States Department of the Treasury) and obligations, the payment of principal of and interest on which are directly or indirectly guaranteed by the United States of America, including, without limitation, such of the foregoing which are commonly referred to as "stripped" obligations and coupons; or

(ii) any of the following obligations of the following agencies of the United States of America: (a) direct obligations of the Export-Import Bank, (b) certificates of beneficial ownership issued by the Farmers Home Administration, (c) participation certificates issued by the General Services Administration, (d) mortgage-backed bonds or pass-through obligations issued and guaranteed by the Government National Mortgage Association, (e) project notes issued by the United States

Department of Housing and Urban Development, and (f) public housing notes and bonds guaranteed by the United States of America.

"Finance Director" means the Director of Administrative Services of the City, or other officer of the City acting in the capacity as chief financial officer of the City, or any designee of such officer.

"Fiscal Agent" means the Fiscal Agent appointed by the City and acting as an independent fiscal agent with the duties and powers herein provided, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 7.01.

"Fiscal Year" means the twelve-month period extending from July 1 in a calendar year to June 30 of the succeeding year, both dates inclusive.

"Improvement Fund" means the fund by that name established by Section 3.07.

"Information Services" means Financial Information, Inc.'s "Daily Called Bond Service", 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Mergent/FIS, Inc., 5250-77 Center Drive, Charlotte, North Carolina 28217, Attention: Called Bond Dept.; Kenny S&P, 55 Water Street, New York, New York 10041, Attention: Notification Department; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such services providing information with respect to called bonds as the City may designate in an Officer's Certificate delivered to the Fiscal Agent.

"Interest Payment Dates" means March 1 and September 1 of each year, commencing March 1, 2008.

"Maximum Annual Debt Service" means the largest Annual Debt Service for any Bond Year after the calculation is made through the final maturity date of any Outstanding Bonds.

"Officer's Certificate" means a written certificate of the City signed by an Authorized Officer of the City.

"Ordinance" means any ordinance of the City levying the Special Taxes, as it may be amended or amended and restated from time to time.

"Original Purchaser" means Westhoff, Cone & Holmsteadt, the first purchaser of the Bonds from the City.

"Outstanding", when used as of any particular time with reference to Bonds, means (subject to the provisions of Section 8.04) all Bonds except: (i) Bonds theretofore canceled by the Fiscal Agent or surrendered to the Fiscal Agent for cancellation; (ii) Bonds paid or deemed to have been paid within the meaning of Section 9.03; and (iii) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City pursuant to this Agreement or any Supplemental Agreement.

"Owner" or "Bondowner" means any person who shall be the registered owner of any Outstanding Bond.

"Parity Bonds" means bonds issued by the City for the District on a parity with any then Outstanding Bonds pursuant to Section 2.14 hereof.

"Participating Underwriter" shall have the meaning ascribed thereto in the Continuing Disclosure Agreement.

"Permitted Investments" means the following, but only to the extent that the same are acquired at Fair Market Value and are otherwise eligible legal investments of the City:

(a) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest, and which have a maximum term to maturity not to exceed three years.

(b) Registered state warrants or treasury notes or bonds of the State of California (the "State"), including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the State or by a department, board, agency, or authority of the State, which are rated in one of the two highest short-term or long-term rating categories by either Moody's Investors Service or Standard and Poor's Ratings Group, and which have a maximum term to maturity not to exceed three years.

(c) Time certificates of deposit or negotiable certificates of deposit issued by a state or nationally chartered bank or trust company, or a state or federal savings and loan association which may include the Fiscal Agent and its affiliates; provided, that the certificates of deposit shall be one or more of the following: continuously and fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, and/or continuously and fully secured by securities described in subdivision (a) or (b) of this definition of Permitted Investments which shall have a market value, as determined on a marked-to-market basis calculated at least weekly, and exclusive of accrued interest, or not less than 102 percent of the principal amount of the certificates on deposit.

(d) Commercial paper which at the time of purchase is of "prime" quality of the highest ranking or of the highest letter and numerical rating as provided by either Moody's Investors Service or Standard and Poor's Ratings Group, which commercial paper is limited to issuing corporations that are organized and operating within the United States of America and that have total assets in excess of five hundred million dollars ($500,000,000) and that have an "A" or higher rating for the issuer's debentures, other than commercial paper, by either Moody's Investors Service or Standard and Poor's Ratings Group, provided that purchases of eligible commercial paper may not exceed 180 days' maturity nor represent more than 10 percent of the outstanding commercial paper of an issuing corporation. Purchases of commercial paper may not exceed 20 percent of the total amount invested pursuant to this definition of Permitted Investments.

(e) A repurchase agreement with a state or nationally charted bank or trust company or a national banking association or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, provided that all of the following conditions are satisfied: (1) the agreement is secured by any one or more of the securities described in subdivision (a) of this definition of Permitted Investments, (2) the underlying securities are required by the repurchase agreement to be held by a bank, trust company, or primary dealer having a combined capital and surplus of at least one hundred million dollars ($100,000,000) and which is independent of the issuer of the repurchase agreement, and (3) the underlying securities are maintained at a market

value, as determined on a marked-to-market basis calculated at least weekly, of not less than 103 percent of the amount so invested.

(f) An investment agreement or guaranteed investment contract with, or guaranteed by, a financial institution the long-term unsecured obligations of which are rated "AA" or better by Moody's Investors Service and Standard and Poor's Ratings Group at the time of initial investment. The investment agreement shall be subject to a downgrade provision with at least the following requirements: (1) the agreement shall provide that within five business days after the financial institution's long-term unsecured credit rating has been withdrawn, suspended, other than because of general withdrawal or suspension by Moody's Investors Service or Standard and Poor's Ratings Group from the practice of rating that debt, or reduced below "AA-" by Standard and Poor's Ratings Group or below "Aa3" by Moody's Investors Service (these events are called "rating downgrades") the financial institution shall give notice to the City and, within the five-day period, and for as long as the rating downgrade is in effect, shall deliver in the name of the City or the Fiscal Agent to the City or the Fiscal Agent federal securities allowed as investments under subdivision (a) of this definition of Permitted Investments with aggregate current market value equal to at least 105 percent of the principal amount of the investment agreement invested with the financial institution at that time, and shall deliver additional allowed federal securities as needed to maintain an aggregate current market value equal to at least 105 percent of the principal amount of the investment agreement within three days after each evaluation date, which shall be at least weekly, (2) the agreement shall provide that, if the financial institution's long-term unsecured credit rating is reduced below "A3" by Moody's Investors Service or below "A-" by Standard and Poor's Ratings Group, the Fiscal Agent or the City may, upon not more than five business days' written notice to the financial institution, withdraw the investment agreement, with accrued but unpaid interest thereon to the date, and terminate the agreement.

(g) The Local Agency Investment Fund of the State of California.

(h) Investments in a money market fund (including any funds of the Fiscal Agent or its affiliates) rated in the highest rating category (without regard to plus (+) or minus (-) designations) by Moody's or S&P.

(i) Any other lawful investment for City funds.

"Principal Office" means the corporate trust office of the Fiscal Agent as identified pursuant to Section 9.06 hereof; provided, however, for the purpose of maintenance of the Registration Books and surrender of Bonds for payment, transfer or exchange such term means the office at which the Fiscal Agent conducts its corporate agency business, or such other or additional offices as may be designated by the Fiscal Agent.

"Prior Bonds" means, collectively, the City of Stockton Arch Road East Community Facilities District No. 99-02 Special Tax Bonds Series 1999, and the City of Stockton Arch Road East Community Facilities District No. 99-02 Special Tax Bonds Series 2002.

"Proceeds" when used with reference to the 2007 Bonds, means the initial principal amount of the 2007 Bonds, plus accrued interest and premium, if any, less original issue discount and less proceeds from the sale of the 2007 Bonds deposited in the Reserve Fund.

"Project" means the facilities eligible to be funded by the District.

"Qualified Reserve Fund Credit Instrument" means an irrevocable standby or direct-pay letter of credit or surety bond issued by a commercial bank or insurance company and deposited with the Fiscal Agent pursuant to Section 4.04(H), provided that all of the following requirements are met: (a) the long-term credit rating or claims paying ability of such bank or insurance company is in one of the two highest rating categories by S&P and Moody's; (b) such letter of credit or surety bond has a term of at least twelve (12) months; (c) such letter of credit or surety bond has a stated amount at least equal to the portion of the Reserve Requirement with respect to which funds are proposed to be released pursuant to Section 4.04(H); and (d) the Fiscal Agent is authorized pursuant to the terms of such letter of credit or surety bond to draw thereunder for the purpose of making payments required pursuant to Section 4.04.

"Rate and Method of Apportionment" means the Rate, Method of Apportionment and Manner of Collection of Special Tax for the District, as in effect from time to time.

"Rating Category" means one of the two highest rating categories then in effect under the rating systems of Moody's Investors Service or Standard and Poor's Ratings Group, a division of McGraw-Hill, without regard to plus or minus sign or numerical or other qualifying designation.

"Record Date" means the fifteenth day of the month next preceding the month of the applicable Interest Payment Date, whether or not such fifteenth (15th) day is a Business Day.

"Refunding Bonds" means bonds issued by the City for the District the net proceeds of which are used to refund all or a portion of the then Outstanding Bonds; provided that the debt service on the Refunding Bonds in any Bond Year is not in excess of the debt service on the Bonds being refunded and the final maturity of the Refunding Bonds is not later than the final maturity of the Bonds being refunded.

"Refunding Fund" means the fund by that name created by and held by the Escrow Bank pursuant to the Escrow Agreement.

"Registration Books" means the records maintained by the Fiscal Agent pursuant to Section 2.08 for the registration and transfer of ownership of the Bonds.

"Regulations" means temporary and permanent regulations promulgated under the Code.

"Reserve Fund" means the fund by that name established pursuant to Section 4.03(A) hereof.

"Reserve Requirement" means, as of any date of calculation, an amount equal to the lessor of (i) Maximum Annual Debt Service, (ii) one hundred twenty-five percent (125%) of average Annual Debt Service, or (iii) ten percent (10%) of the initial principal amount of the Bonds issued hereunder. The Reserve Requirement as of the Closing Date is $1,841,970.85.

"Resolution" means Resolution No. 07-0352, authorizing the issuance of the 2007 Bonds, adopted by the City Council of the City of the City on August 14, 2007.

"Resolution of Formation" means Resolution No. 99-0508, adopted by the City Council of the City on November 2, 1999.

"Securities Depositories" means The Depository Trust Company, 55 Water Street, 50th Floor, New York, New York 10041-0099 Attention: Call Notification Department, Fax

(212) 855-7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the City may designate in an Officer's Certificate delivered to the Fiscal Agent.

"Special Tax Fund" means the fund by that name established by Section 3.04(A) hereof.

"Special Tax Prepayments" means the proceeds of any prepayments of Special Taxes received by the City, as calculated pursuant to the Rate and Method of Apportionment, less any administrative fees or penalties collected as part of any such prepayment.

"Special Tax Prepayments Account" means the account by that name established within the Bond Fund by Section 4.02(A) hereof.

"Special Tax Revenues" means the proceeds of the Special Taxes received by the City, including any scheduled payments and any prepayments thereof, interest and penalties thereon and proceeds of the redemption or sale of property sold as a result of foreclosure of the lien of the Special Taxes to the amount of said lien, but shall not include interest and penalties on foreclosure of the lien of Special Taxes in excess of the rate of interest payable on the Bonds.

"Special Taxes" means the special taxes levied within the District pursuant to the Act, the Ordinance and this Agreement.

"Supplemental Agreement" means an agreement the execution of which is authorized by a resolution which has been duly adopted by the City under the Act and which agreement is amendatory of or supplemental to this Agreement, but only if and to the extent that such agreement is specifically authorized hereunder.

"Tax Consultant" means Economic and Planning Systems Inc. or another independent financial or tax consultant retained by the City for the purpose of computing the Special Taxes.

"2007 Account" means the account by that name within the Improvement Fund, established by Section 3.07.

"2007 Bonds" means the City of Stockton Arch Road East Community Facilities District No. 99-02 2007 Special Tax Bonds at any time Outstanding under this Agreement.

"2002 Account" means the account by that name within the Improvement Fund, established by Section 3.07.

ARTICLE II

THE BONDS

Section 2.01. Principal Amount; Designation. 2007 Bonds in the aggregate principal amount of Nineteen Million Sixty-Five Thousand Dollars ($19,065,000) are hereby authorized to be issued by the City for the District under and subject to the terms of the Resolution and this Agreement, the Act and other applicable laws of the State of California. The 2007 Bonds shall be designated the "City of Stockton Arch Road East Community Facilities District No. 99-02 2007 Special Tax Bonds."

Section 2.02. Terms of Bonds. The 2007 Bonds shall be issued in fully registered form without coupons in denominations of $5,000 or any integral multiple in excess thereof. The 2007 Bonds shall be dated the Closing Date, shall be in the principal amounts, shall mature on September 1 in the years and shall bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates per annum as follows:

Maturity Date (September 1)	Principal Amount	Interest Rate
2010	$ 30,000	4.500%
2011	55,000	4.625
2012	80,000	4.750
2013	110,000	4.750
2014	140,000	4.875
2015	170,000	5.000
2016	205,000	5.000
2017	240,000	5.000
2018	275,000	5.125
2019	315,000	5.250
2020	360,000	5.375
2021	410,000	5.500
2027	3,675,000	5.850
2037	13,000,000	5.875

Interest on the 2007 Bonds shall be payable on each Interest Payment Date to the person whose name appears on the registration books maintained by the Fiscal Agent as the Owner thereof as of the Record Date immediately preceding each such Interest Payment Date, such interest to be paid by check of the Fiscal Agent mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owner at the address of such Owner as it appears on the registration books maintained by the Fiscal Agent as of the preceding Record Date. Principal of and premium (if any) on any 2007 Bond shall be paid by check upon presentation and surrender thereof, at maturity or the prior redemption thereof, at the Principal Office of the Fiscal Agent. The principal of and interest and premium (if any) on the 2007 Bonds shall be payable in lawful money of the United States of America.

Each 2007 Bond shall bear interest from the Interest Payment Date next preceding the date of authentication thereof, unless (a) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it shall bear interest from such Interest Payment Date; or (b) it is authenticated on or before February 15, 2008, in which event it shall bear interest from the Closing Date; *provided, however*, that if, as of the date of authentication of any 2007 Bond, interest thereon is in default, such 2007 Bond shall bear

interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

"CUSIP" identification numbers shall be imprinted on the Bonds, but such numbers shall not constitute a part of the contract evidenced by the Bonds, and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the City or the Fiscal Agent to use such CUSIP numbers in any notice to Owners shall not constitute any violation of the City's contract with such Owners and shall not impair the effectiveness of any such notice.

All Bonds paid by the Fiscal Agent pursuant to this Article shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon written request of the City, issue a certificate of destruction thereof to the City.

Section 2.03. Redemption.

(A) Redemption Dates. (i) The 2007 Bonds are subject to redemption prior to their stated maturities on any Interest Payment Date, as a whole or in part, from the proceeds of prepayments of Special Taxes (and corresponding transfers from the Reserve Fund pursuant to Section 4.03(F)) or from any other available funds, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed) as set forth below, together with accrued interest thereon to the date fixed for redemption:

Redemption Dates	Redemption Prices
Any Interest Payment Date from March 1, 2008 to and including March 1, 2017	103%
September 1, 2017 and March 1, 2018	102
September 1, 2018 and March 1, 2019	101
September 1, 2019 and any Interest Payment Date thereafter	100

Notwithstanding the foregoing, any redemption of the Bonds pursuant to this Section 2.03(A)(i) prior to September 1, 2017 shall be made solely from amounts in the Bond Fund as a result of transfers from the Special Tax Prepayments Account pursuant to Section 4.02(B)(ii) and the Reserve Fund pursuant to Section 4.03(F).

(ii) The 2007 Bonds maturing on September 1, 2027 are subject to mandatory sinking payment redemption in part on September 1, 2022, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

Redemption Date (September 1)	Sinking Payments
2022	$460,000
2023	515,000
2024	575,000
2025	640,000
2026	705,000
2027 (maturity)	780,000

The 2007 Bonds maturing on September 1, 2037, are subject to mandatory sinking payment redemption in part on September 1, 2028, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

Redemption Date (September 1)	Sinking Payments
2028	$ 855,000
2029	940,000
2030	1,025,000
2031	1,120,000
2032	1,220,000
2033	1,325,000
2034	1,440,000
2035	1,560,000
2036	1,690,000
2037 (maturity)	1,825,000

The amounts in the foregoing tables shall be reduced to the extent practicable so as to maintain substantially level debt service on the Bonds, as a result of any prior partial redemption of the 2007 Bonds pursuant to Section 2.03(A)(i) above, as specified in writing by the Finance Director to the Fiscal Agent.

(B) Notice to Fiscal Agent. The City shall give the Fiscal Agent written notice of its intention to redeem 2007 Bonds pursuant to subsection (A)(i) above not less than forty-five (45) days prior to the applicable redemption date, or such lesser number of days as the Fiscal Agent shall allow.

(C) Priority of Redemption. Whenever provision is made in this Agreement for the redemption of less than all of the 2007 Bonds or any given portion thereof, the Fiscal Agent shall select the 2007 Bonds to be redeemed, from all 2007 Bonds or such given portion thereof not previously called for redemption, so as to maintain substantially level debt service on the Bonds, and within a maturity by lot in any manner which the Fiscal Agent in its sole discretion shall deem appropriate and fair. For purposes of such selection, all 2007 Bonds shall be deemed to be comprised of separate $5,000 portions and such portions shall be treated as separate 2007 Bonds which may be separately redeemed.

(D) Purchase of Bonds in lieu of Redemption. In lieu of redemption under Section 2.03(A) above, moneys in the Bond Fund may be used and withdrawn by the Fiscal Agent for purchase of Outstanding 2007 Bonds, upon the filing with the Fiscal Agent of an Officer's Certificate requesting such purchase prior to the selection of 2007 Bonds for redemption, at public or private sale as and when, and at such prices (including brokerage and other charges) as such Officer's Certificate may provide, but in no event may 2007 Bonds be purchased at a price in excess of the principal amount thereof, plus interest accrued to the date of purchase.

(E) Redemption Procedure by Fiscal Agent. The Fiscal Agent shall cause notice of any redemption to be mailed by first class mail, postage prepaid, at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Securities Depositories and to one or more Information Services (or by such other means as permitted by such services), and to the respective registered Owners of any 2007 Bonds designated for redemption, at their addresses appearing on the Bond registration books in the Principal

Office of the Fiscal Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice, or any defect therein, shall not affect the validity of the proceedings for the redemption of such 2007 Bonds.

Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, shall designate the CUSIP numbers and Bond numbers of the Bonds to be redeemed by giving the individual CUSIP number and Bond number of each Bond to be redeemed or shall state that all Bonds between two stated Bond numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption, shall state as to any Bond called in part the principal amount thereof to be redeemed, and shall require that such Bonds be then surrendered at the Principal Office of the Fiscal Agent for redemption at the said redemption price, and shall state that further interest on such Bonds will not accrue from and after the redemption date.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall, to the extent practicable, bear the CUSIP number identifying, by issue and maturity, of the Bonds being redeemed with the proceeds of such check or other transfer.

Upon surrender of Bonds redeemed in part only, the City shall execute and the Fiscal Agent shall authenticate and deliver to the registered Owner, at the expense of the City, a new Bond or Bonds, of the same series and maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

(F) Effect of Redemption. From and after the date fixed for redemption, if funds available for the payment of the principal of, and interest and any premium on, the Bonds so called for redemption shall have been deposited in the Bond Fund, such Bonds so called shall cease to be entitled to any benefit under this Agreement other than the right to receive payment of the redemption price, and no interest shall accrue thereon on or after the redemption date specified in such notice.

All Bonds redeemed and purchased by the Fiscal Agent pursuant to this Section shall be canceled by the Fiscal Agent. The Fiscal Agent shall destroy the canceled Bonds and, upon written request of the City, issue a certificate of destruction thereof to the City.

Section 2.04. Form of Bonds. The 2007 Bonds, the form of Fiscal Agent's certificate of authentication and the form of assignment to appear thereon, shall be substantially in the forms, respectively, set forth in Exhibit A attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Agreement, the Resolution and the Act.

Section 2.05. Execution of Bonds. The Bonds shall be executed on behalf of the City by the facsimile signatures of its Mayor and City Clerk who are in office on the date of adoption of this Agreement or at any time thereafter, and the seal of the City shall be impressed, imprinted or reproduced by facsimile signature thereon. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the owner, such signature shall nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the owner. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond shall be the proper officers of the City although at the nominal date of such Bond any such person shall not have been such officer of the City.

Only such Bonds as shall bear thereon a certificate of authentication in substantially the form set forth in Exhibit A executed manually and dated by the Fiscal Agent, shall be valid or obligatory for any purpose or entitled to the benefits of this Agreement, and such certificate of authentication of the Fiscal Agent shall be conclusive evidence that the Bonds registered hereunder have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Agreement.

Section 2.06. Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the books required to be kept pursuant to the provisions of Section 2.08 by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation, accompanied by delivery of a duly written instrument of transfer in a form approved by the Fiscal Agent. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such transfer shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such transfer any tax or other governmental charge required to be paid with respect to such transfer.

Whenever any Bond or Bonds shall be surrendered for transfer, the City shall execute and the Fiscal Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

No transfers of Bonds shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption.

Section 2.07. Exchange of Bonds. Bonds may be exchanged at the Principal Office of the Fiscal Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same series and maturity. The cost for any services rendered or any expenses incurred by the Fiscal Agent in connection with any such exchange shall be paid by the City. The Fiscal Agent shall collect from the Owner requesting such exchange any tax or other governmental charge required to be paid with respect to such exchange.

No exchanges of Bonds shall be required to be made (i) fifteen days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption.

Section 2.08. Bond Register. The Fiscal Agent will keep or cause to be kept, at its Principal Office sufficient books for the registration and transfer of the Bonds which books shall show the series number, date, amount, rate of interest and last known owner of each Bond and shall at all times be open to inspection by the City during regular business hours upon reasonable notice; and, upon presentation for such purpose, the Fiscal Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the ownership of the Bonds as hereinbefore provided.

The City and the Fiscal Agent will treat the Owner of any Bond whose name appears on the Bond register as the absolute Owner of such Bond for any and all purposes, and the City and the Fiscal Agent shall not be affected by any notice to the contrary. The City and the Fiscal Agent may rely on the address of the Bondowner as it appears in the Bond register for any and all purposes.

Section 2.09. Temporary Bonds. The Bonds may be initially issued in temporary form exchangeable for definitive Bonds when ready for delivery. The temporary Bonds may be printed, lithographed or typewritten, shall be of such authorized denominations as

may be determined by the City, and may contain such reference to any of the provisions of this Agreement as may be appropriate. Every temporary Bond shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Bonds. If the City issues temporary Bonds it will execute and furnish definitive Bonds without delay and thereupon the temporary Bonds shall be surrendered, for cancellation, in exchange for the definitive Bonds at the Principal Office of the Fiscal Agent or at such other location as the Fiscal Agent shall designate, and the Fiscal Agent shall authenticate and deliver in exchange for such temporary Bonds an equal aggregate principal amount of definitive Bonds of authorized denominations. Until so exchanged, the temporary bonds shall be entitled to the same benefits under to this Agreement as definitive Bonds authenticated and delivered hereunder.

Section 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the City, at the expense of the Owner of said Bond, shall execute, and the Fiscal Agent shall authenticate and deliver, a new Bond of like tenor and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Fiscal Agent of the Bond so mutilated. Every mutilated Bond so surrendered to the Fiscal Agent shall be canceled by it and destroyed by the Fiscal Agent. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Fiscal Agent and, if such evidence be satisfactory to it and indemnity for the City and the Fiscal Agent satisfactory to the Fiscal Agent shall be given, the City, at the expense of the Owner, shall execute, and the Fiscal Agent shall authenticate and deliver, a new Bond of like tenor and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen. The City may require payment of a sum not exceeding the actual cost of preparing each new Bond delivered under this Section and of the expenses which may be incurred by the City and the Fiscal Agent for the preparation, execution, authentication and delivery. Any Bond delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Agreement with all other Bonds issued pursuant to this Agreement.

Section 2.11. Limited Obligation. All obligations of the City under this Agreement and the Bonds shall be special obligations of the City, payable solely from the Special Tax Revenues and the funds pledged therefore hereunder. Neither the faith and credit nor the taxing power of the City (except to the limited extent set forth herein) or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

Section 2.12. No Acceleration. The principal of the Bonds shall not be subject to acceleration hereunder. Nothing in this Section shall in any way prohibit the prepayment or redemption of Bonds under Section 2.03 hereof, or the defeasance of the Bonds and discharge of this Agreement under Section 9.03 hereof.

Section 2.13. Book-Entry Only System. DTC shall act as the initial Depository for the Bonds. One Bond for each maturity of the Bonds shall be initially executed, authenticated, and delivered as set forth herein with a separate fully registered certificate (in print or typewritten form). Upon initial execution, authentication, and delivery, the ownership of the Bonds shall be registered in the Registration Books kept by the Fiscal Agent for the Bonds in the name of Cede & Co., as nominee of DTC or such nominee as DTC shall appoint in writing.

The representatives of the City and the Fiscal Agent are hereby authorized to take any and all actions as may be necessary and not inconsistent with this Indenture to qualify

the Bonds for the Depository's book-entry system, including the execution of the Depository's required representation letter.

With respect to Bonds registered in the Registration Books in the name of Cede & Co., as nominee of DTC, neither the City nor the Fiscal Agent shall have any responsibility or obligation to any broker-dealer, bank, or other financial institution for which DTC holds Bonds as Depository from time to time (the "DTC Participants") or to any person for which a DTC Participant acquires an interest in the Bonds (the "Beneficial Owners"). Without limiting the immediately preceding sentence, neither the City nor the Fiscal Agent shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Bonds, (ii) the delivery to any DTC Participant, any Beneficial Owner, or any other person, other than DTC, of any notice with respect to the Bonds, including any notice of redemption, (iii) the selection by the Depository of the beneficial interests in the Bonds to be redeemed in the event the City elects to redeem the Bonds in part, (iv) the payment to any DTC Participant, any Beneficial Owner, or any other person, other than DTC, of any amount with respect to the principal of or interest on the Bonds, or (v) any consent given or other action taken by the Depository as Owner of the Bonds; except that so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, any Beneficial Owner of $1,000,000 or more in aggregate principal amount of any series of Bonds who has filed a written request to receive notices, containing such Beneficial Owner's name and address, with the Fiscal Agent shall be provided with all notices relating to such Bonds by the Fiscal Agent.

Except as set forth above, the Fiscal Agent may treat as and deem DTC to be the absolute Owner of each Bond for which DTC is acting as Depository for the purpose of payment of the principal of and interest on such Bonds, for the purpose of giving notices of redemption and other matters with respect to such Bonds, for the purpose of registering transfers with respect to such Bonds, and for all purposes whatsoever. The Fiscal Agent shall pay all principal of and interest on the Bonds only to or upon the order of the Owners as shown on the Registration Books, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to the principal of and interest on the Bonds to the extent of the sums or sums so paid.

No person other than an Owner, as shown on the Registration Books, shall receive a physical Bond. Upon delivery by DTC to the Fiscal Agent of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.06 hereof, references to "Cede & Co." in this Section 2.13 shall refer to such new nominee of DTC.

DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving written notice to the Fiscal Agent during any time that the Bonds are Outstanding, and discharging its responsibilities with respect thereto under applicable law. The City may terminate the services of DTC with respect to the Bonds if it determines that DTC is unable to discharge its responsibilities with respect to the Bonds or that continuation of the system of book-entry transfers through DTC is not in the best interest of the Beneficial Owners, and the City shall mail notice of such termination to the Fiscal Agent.

Upon the termination of the services of DTC as provided in the previous paragraph, and if no substitute Depository willing to undertake the functions hereunder can be found which is willing and able to undertake such functions upon reasonable or customary terms, or if the City determines that it is in the best interest of the Beneficial Owners of the Bonds that they be able to obtain certificated Bonds, the Bonds shall no longer be restricted to being registered in the Registration Books of the Fiscal Agent in the name of Cede & Co., as

nominee of DTC, but may be registered in whatever name or name the Owners shall designate at that time, in accordance with Section 2.06.

To the extent that the Beneficial Owners are designated as the transferee by the Owners, in accordance with Section 2.06 the Bonds will be delivered to such Beneficial Owners as soon as practicable.

Section 2.14. Issuance of Parity Bonds. The City may issue one or more series of Bonds, in addition to the 2007 Bonds authorized under Section 2.01 hereof, by means of a Supplemental Agreement and without the consent of any Bondowners, upon compliance with the provisions of this Section 2.14. Any such Bonds that comply with the requirements of this Section 2.14 shall be Parity Bonds, and such Parity Bonds shall constitute Bonds hereunder and shall be secured by a lien on the Special Tax Revenues and funds pledged for the payment of the Bonds hereunder on a parity with all other Bonds Outstanding hereunder. The City may issue the Parity Bonds subject to the following specific conditions precedent:

(A) Current Compliance. The City shall be in compliance on the date of issuance of the Parity Bonds with all covenants set forth in this Agreement and all Supplemental Agreements.

(B) Payment Dates. The Supplemental Agreement providing for the issuance of such Parity Bonds shall provide that interest thereon shall be payable on March 1 and September 1, and principal thereof shall be payable on September 1 in any year in which principal is payable (provided that there shall be no requirement that any Parity Bonds pay interest on a current basis).

(C) Funds and Accounts; Reserve Fund Deposit. The Supplemental Agreement providing for the issuance of such Parity Bonds may provide for the establishment of separate funds and accounts, and shall provide for a deposit to the Reserve Fund in an amount necessary so that the amount on deposit therein, following the issuance of such Parity Bonds, is equal to the Reserve Requirement.

(D) Value-to-Lien Ratio. The District Value shall be at least three times the sum of: (i) the aggregate principal amount of all Bonds then Outstanding, plus (ii) the aggregate principal amount of the series of Parity Bonds proposed to be issued, plus (iii) the aggregate principal amount of any fixed assessment liens on the parcels in the District subject to the levy of Special Taxes, plus (iv) a portion of the aggregate principal amount of any and all other community facilities district bonds then outstanding and payable at least partially from special taxes to be levied on parcels of land within the District (the "Other District Bonds") equal to the aggregate principal amount of the Other District Bonds multiplied by a fraction, the numerator of which is the amount of special taxes levied for the Other District Bonds on parcels of land within the District, and the denominator of which is the total amount of special taxes levied for the Other District Bonds on all parcels of land against which the special taxes are levied to pay the Other District Bonds (such fraction to be determined based upon the maximum special taxes which could be levied in the year in which maximum annual debt service on the Other District Bonds occurs), based upon information from the most recent available Fiscal Year.

(E) The Special Tax Coverage. The City shall obtain a certificate of a Tax Consultant to the effect that the amount of the maximum Special Taxes that may be levied in each Fiscal Year, less an amount sufficient to pay annual Administrative Expenses (as determined by the Finance Director), shall be at least one hundred ten

percent (110%) of the total Annual Debt Service for each such Fiscal Year on the Bonds and the proposed Parity Bonds.

(F) Officer's Certificate. The City shall deliver to the Fiscal Agent an Officer's Certificate certifying that the conditions precedent to the issuance of such Parity Bonds set forth in subsections (A), (B), (C), (D) and (E) of this Section 2.14 have been satisfied. In delivering such Officer's Certificate, the Authorized Officer that executes the same may conclusively rely upon such certificates of the Fiscal Agent, the Tax Consultant and others selected with due care, without the need for independent inquiry or certification.

Notwithstanding the foregoing, the City may issue Refunding Bonds as Parity Bonds without the need to satisfy the requirements of clauses (D) and (E) above, and without limitation on the number of series of such Refunding Bonds; and, in connection therewith, the Officer's Certificate in clause (F) above need not make reference to said clauses (D) and (E).

Nothing in this Section 2.14 shall prohibit the City from issuing bonds or otherwise incurring debt secured by a pledge of Special Tax Revenues subordinate to the pledge thereof under Section 4.01 of this Agreement.

ARTICLE III

ISSUANCE OF 2007 BONDS

Section 3.01. Issuance and Delivery of 2007 Bonds. ~~At any time after the~~ execution of this Agreement, the City may issue the 2007 Bonds for the District in the aggregate principal amount set forth in Section 2.01 and deliver the 2007 Bonds to the Original Purchaser. The Authorized Officers of the City are hereby authorized and directed to deliver any and all documents and instruments necessary to cause the issuance of the 2007 Bonds in accordance with the provisions of the Act, the Resolution and this Agreement, to authorize the payment of Costs of Issuance and costs of the refunding of the Prior Bonds from the proceeds of the 2007 Bonds and to do and cause to be done any and all acts and things necessary or convenient for delivery of the 2007 Bonds to the Original Purchaser.

Section 3.02. Application of Proceeds of Sale of 2007 Bonds. (A) The proceeds of the purchase of the 2007 Bonds by the Original Purchaser (being $18,374,100.35) shall be paid to the Fiscal Agent, who shall forthwith set aside, pay over and deposit such proceeds on the Closing Date as follows (for record keeping purposes, the Fiscal Agent may establish such accounts as may be necessary to reflect such transfer of proceeds):

(i) deposit in the Reserve Fund $1,841,970.85, which amount is equal to the Reserve Requirement as of the Closing Date;

(ii) deposit in the Costs of Issuance Fund an amount equal to $195,863.63;

(iii) transfer to the Escrow Bank for deposit by the Escrow Bank in the Refunding Fund an amount equal to $4,148,043.13;

(iv) ~~deposit in the 2007 Account of the Improvement Fund an amount equal to $10,000,000.00; and~~

(v) deposit in the Capitalized Interest Account of the Bond Fund an amount equal to $2,188,222.74.

(B) In addition to the foregoing, on the Closing Date the Finance Director shall transfer or cause to be transferred certain moneys held with respect to the Prior Bonds and/or the District as follows:

(i) transfer from the expense account held with respect to the Prior Bonds to the Finance Director for deposit by the Finance Director in the Administrative Expense Fund, all amounts on deposit in such expense account and any other funds held for the benefit of the Prior Bonds and not referenced in Sections 3.02(B)(ii) or (iii) below;

(ii) transfer from the project fund held with respect to the Prior Bonds to the Fiscal Agent for deposit by the Fiscal Agent in the 2002 Account of the Improvement Fund, all amounts on deposit in such project fund; and

(iii) transfer from the redemption account, the interest expense account, the special tax fund and the prepayment account held with respect to the Prior Bonds, to the Escrow Bank for deposit by the Escrow Bank in the Refunding Fund, $36,759.80 of the amount on deposit in such fund and accounts.

Section 3.03. Validity of 2007 Bonds. The validity of the authorization and issuance of the Bonds shall not be dependent upon the performance by any person of his obligation with respect to the Project.

Section 3.04. Special Tax Fund.

(A) Establishment of Special Tax Fund. There is hereby established as a separate fund to be held by the Finance Director, the Arch Road East Community Facilities District No. 99-02 Special Tax Fund, to the credit of which the City shall deposit, as soon as ~~practicable following receipt, all Special Tax Revenues received by the City and any amounts required by Section 3.02(B) hereof to be deposited therein.~~

Notwithstanding the foregoing,

(i) any Special Tax Revenues constituting payment of the portion of the Special Tax levy for Administrative Expenses shall be deposited by the Finance Director in the Administrative Expense Fund;

(ii) any Special Tax Revenues constituting the collection of delinquencies in payment of Special Taxes shall be separately identified by the Finance Director and shall be disposed of by first, for transfer to the Fiscal Agent for deposit by the Fiscal Agent in the Bond Fund to be used to pay any past due debt service on the Bonds; second, for transfer to the Fiscal Agent for deposit by the Fiscal Agent in the Reserve Fund to the extent needed to increase the amount then on deposit in the Reserve Fund up to the then Reserve Requirement; and third, to be held in the Special Tax Fund for use as described in Section 3.04(B) below; and

(iii) any proceeds of Special Tax Prepayments shall be separately identified by the Finance Director and shall be transferred to the Fiscal Agent for deposit by the Fiscal Agent in the Special Tax Prepayments Account established pursuant to Section 4.02(A); and

~~Moneys in the Special Tax Fund shall be held in trust by the City for the benefit of the City and the Owners of the Bonds, shall be disbursed as provided below and, pending and disbursement, shall be subject to a lien in favor of the Owners of the Bonds and the City.~~

(B) Disbursements. From time to time as needed to pay the obligations of the District, but no later than the Business Day before each Interest Payment Date, the Finance Director shall withdraw from the Special Tax Fund and transfer the following amounts in the following order of priority (i) to the Bond Fund an amount, taking into account any amounts then on deposit in the Bond Fund and any expected transfers from the Reserve Fund, the Capitalized Interest Account and the Special Tax Fund to the Bond Fund pursuant to Sections 4.02(B)(iii), 4.03(C), (E) and (G), and 3.04(A)(ii), such that the amount in the Bond Fund equals the principal (including any sinking payment), premium, if any, and interest due on the Bonds on the next Interest Payment Date, and (ii) to the Reserve Fund an amount, taking into account amounts then on deposit in the Reserve Fund, such that the amount in the Reserve Fund is equal to the Reserve Requirement.

On each September 1, commencing September 1, 2008, following transfers to the Bond Fund and the Reserve Fund, if any, required on such date pursuant to the foregoing provisions of this Section 3.04(B), ~~any moneys remaining on deposit in the Special Tax Fund shall be withdrawn therefrom by the Finance Director and deposited by the Finance Director to the City of Stockton Arch Road East Community Facilities~~ District No. 99-02

Community Facilities District Fund, which fund is hereby established in the treasury of the City (referred to herein as the "District General Fund"), to be used for any lawful purpose of the District in accordance with the Act.

(C) Investment. Moneys in the Special Tax Fund shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from investment of amounts in the Special Tax Fund shall be retained in the Special Tax Fund to be used for the purposes thereof.

Section 3.05. Administrative Expense Fund.

(A) Establishment of Administrative Expense Fund. There is hereby established as a separate fund to be held by the Finance Director, the Arch Road East Community Facilities District No. 99-02 Administrative Expense Fund, to the credit of which deposits shall be made as required by Sections 3.02(B)(i), 3.04(B) and 3.06(B). Moneys in the Administrative Expense Fund shall be held in trust by the Finance Director for the benefit of the City, and shall be disbursed as provided below.

(B) Disbursement. Amounts in the Administrative Expense Fund shall be withdrawn by the Finance Director and paid to the City or its order upon receipt by the Finance Director of an Officer's Certificate stating the amount to be withdrawn, that such amount is to be used to pay an Administrative Expense, and the nature of such Administrative Expense. Amounts transferred to the Administrative Expense Fund pursuant to Section 3.06(B) shall be used for purposes of such fund prior to using other available amounts therein.

Annually, on the last day of each Fiscal Year, the Finance Director shall withdraw any amounts then remaining in the Administrative Expense Fund in excess of $20,000.00 that have not been allocated to pay Administrative Expenses incurred but not yet paid, and which are not otherwise encumbered and transfer such amounts to the Special Tax Fund.

(C) Investment. Moneys in the Administrative Expense Fund shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from said investment shall be retained by the Finance Director in the Administrative Expense Fund to be used for the purposes of such fund.

Section 3.06. Costs of Issuance Fund.

(A) Establishment of Costs of Issuance Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Arch Road East Community Facilities District No. 99-02 2007 Special Tax Bonds, Costs of Issuance Fund, to the credit of which a deposit shall be made as required by clause (ii) of Section 3.02(A). Moneys in the Costs of Issuance Fund shall be held in trust by the Fiscal Agent and shall be disbursed as provided in subsection (B) of this Section for the payment or reimbursement of Costs of Issuance.

(B) Disbursement. Amounts in the Costs of Issuance Fund shall be disbursed from time to time to pay the Costs of Issuance, as set forth in a requisition containing respective amounts to be paid to the designated payees, signed by the Finance Director and delivered to the Fiscal Agent concurrently with the delivery of the Bonds. The Fiscal Agent shall pay all Costs of Issuance upon receipt of an invoice from any such payee which requests payment in an amount which is less than or equal to the amount set forth with respect to such payee in such requisition, or upon receipt of an Officer's Certificate requesting payment of Costs of Issuance not listed on the initial requisition delivered to the Fiscal Agent on the Closing Date. Each such Officer's Certificate shall be sufficient evidence to the

Fiscal Agent of the facts stated therein and the Fiscal Agent shall have no duty to confirm the accuracy of such facts. The Fiscal Agent shall maintain the Costs of Issuance Fund for a period of 120 days from the date of delivery of the Bonds and then shall transfer any moneys remaining therein, including any investment earnings thereon, to the Finance Director for deposit by the Finance Director in the Administrative Expense Fund.

(C) Investment. Moneys in the Costs of Issuance Fund shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from said investment shall be retained by the Fiscal Agent in the Costs of Issuance Fund to be used for the purposes of such fund.

Section 3.07. Improvement Fund.

(A) Establishment of Improvement Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Arch Road East Community Facilities District No. 99-02 Improvement Fund (the "Improvement Fund"), and, within said fund, two accounts designated the 2002 Account and the 2007 Account. Deposits shall be made to the 2002 Account pursuant to Section 3.01(B)(ii), and to the 2007 Account pursuant to Section 3.01(A)(iv). It is hereby acknowledged that the 2002 Account has been established to satisfy the obligations of the City and the District under the Acquisition Agreement – Prior Bonds, and the 2007 Account has been established to satisfy the obligations of the City and the District under the Acquisition Agreement – Bonds. Moneys in the Improvement Fund, including the accounts therein, shall be held in trust by the Fiscal Agent for the benefit of the City, and shall be disbursed for the payment or reimbursement of costs of the Project.

(B) Procedure for Disbursement. Disbursements from the accounts within the Improvement Fund shall be made by the Fiscal Agent upon receipt of an Officer's Certificate which shall: (a) set forth the amount required to be disbursed, the account from which the disbursement is to be made, the purpose for which the disbursement is to be made (which shall be (i) with respect to the 2002 Account, for payment of costs of the Project pursuant to the Acquisition Agreement – Prior Bonds, or to reimburse expenditures of the City or any other party for such Project costs previously paid; and (ii) with respect to the 2007 Account, for payment of costs of the Project pursuant to the Acquisition Agreement – Bonds, or to reimburse expenditures of the City or any other party for such Project costs previously paid), that the disbursement is a proper expenditure from the respective account of the Improvement Fund, and the person to which the disbursement is to be paid; and (b) certify that no portion of the amount then being requested to be disbursed was set forth in any Officer's Certificate previously filed requesting a disbursement. Each such Officer's Certificate submitted to the Fiscal Agent as described in this Section 4.02(B) shall be sufficient evidence to the Fiscal Agent of the facts stated therein, and the Fiscal Agent shall have no duty to confirm the accuracy of such facts.

(C) Investment. Moneys in the accounts within the Improvement Fund shall be invested and deposited in accordance with Section 6.01. Interest earnings and profits from the investment and deposit of amounts in the accounts within the Improvement Fund shall be retained in the respective accounts to be used for the purposes of the respective accounts.

(D) Closing of Improvement Fund. Upon receipt by the Fiscal Agent of an Officer's Certificate to the effect that all improvements to be funded from an account within the Improvement Fund have been completed or that no further withdrawals will be made from such account, any amounts remaining on deposit in such account shall be transferred by the Fiscal Agent to the Bond Fund to be used to pay Debt Service on the Bonds on the next

Interest Payment Date, and when no amounts remain on deposit in an account within the Improvement Fund such account shall be closed.

ARTICLE IV

SPECIAL TAX REVENUES; BOND FUND AND RESERVE FUND

Section 4.01. Pledge of Special Tax Revenues. The Bonds shall be secured by a first pledge of all of the Special Tax Revenues and all moneys deposited in the Bond Fund (including the Special Tax Prepayments Account and the Capitalized Interest Account therein), the Reserve Fund and, until disbursed as provided herein, in the Special Tax Fund. The Special Tax Revenues and all moneys deposited into said funds (except as otherwise provided herein) are hereby dedicated to the payment of the principal of, and interest and any premium on, the Bonds as provided herein and in the Act until all of the Bonds have been paid and retired or until moneys or Federal Securities have been set aside irrevocably for that purpose in accordance with Section 9.03.

Amounts in the Improvement Fund (including the accounts therein), the Administrative Expense Fund, the Costs of Issuance Fund, the Refunding Fund and the District General Fund, are not pledged to the repayment of the Bonds. The facilities financed by the District with the proceeds of the Prior Bonds, or with the proceeds of any Parity Bonds, are not in any way pledged to pay the debt service on the Bonds. Any proceeds of condemnation or destruction of any facilities financed by the District with the proceeds of the 2007 Bonds or of the Prior Bonds, or with the proceeds of any Parity Bonds, are not pledged to pay the debt service on the Bonds and are free and clear of any lien or obligation imposed hereunder.

Section 4.02. Bond Fund.

(A) Establishment of Bond Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Arch Road East Community Facilities District No. 99-02 Bond Fund to the credit of which deposits shall be made as required by Section 3.04(B), Section 4.03 and any other amounts required to be deposited therein by this Agreement or the Act. There is also hereby created in the Bond Fund a separate account held by the Trustee, the Capitalized Interest Account, to the credit of which a deposit shall be made pursuant to clause (v) of Section 3.02(A). There is also hereby created in the Bond Fund, a separate account held by the Fiscal Agent, the Special Tax Prepayments Account, to the credit of which deposits shall be made as provided in clause (iv) of the second paragraph of Section 3.04(A).

Moneys in the Bond Fund and the Special Tax Prepayments Account shall be held in trust by the Fiscal Agent for the benefit of the Owners of the Bonds, shall be disbursed for the payment of the principal of, and interest and any premium on, the Bonds as provided below, and, pending such disbursement, shall be subject to a lien in favor of the Owners of the Bonds.

(B) Disbursements. (i) Bond Fund Disbursements. On each Interest Payment Date, and following any transfers required pursuant to Sections 3.04(B), 4.02(B)(ii) and 4.03(C), (E) and (F) in connection with such Interest Payment Date, the Fiscal Agent shall withdraw from the Bond Fund and pay to the Owners of the Bonds the principal of, and interest and any premium, then due and payable on the Bonds, including any amounts due on the Bonds by reason of a redemption (including any mandatory sinking payment redemption) of the Bonds required by Sections 2.03(A).

In the event that amounts in the Bond Fund are insufficient for the purpose set forth in the preceding paragraph, the Fiscal Agent shall withdraw from the Reserve Fund to the extent of any funds therein amounts to cover the amount of such Bond Fund insufficiency. Amounts so withdrawn from the Reserve Fund shall be deposited by the Fiscal Agent in the Bond Fund.

If, after the foregoing transfers, there are insufficient funds in the Bond Fund to make the payments provided for in the first sentence of the first paragraph of this Section 4.02(B), the Fiscal Agent shall apply the available funds first to the payment of interest on the Bonds, then to the payment of principal due on the Bonds other than by reason of sinking payments, and then to payment of principal due on the Bonds by reason of sinking payments. Any sinking payment not made as scheduled shall be added to the sinking payment to be made on the next sinking payment date.

(ii) Special Tax Prepayments Account Disbursements. Moneys in the Special Tax Prepayments Account shall be transferred by the Fiscal Agent to the Bond Fund on the next date for which notice of redemption of Bonds can timely be given under Section 2.03(A)(i), and notice to the Fiscal Agent can timely be given under Section 2.03(E), and shall be used (together with any amounts transferred pursuant to Section 4.03(F)) to redeem Bonds on the redemption date selected in accordance with Section 2.03.

(iii) Capitalized Interest Account Disbursements. Moneys in the Capitalized Interest Account shall be transferred to the Bond Fund on the Business Day prior to each Interest Payment Date, in the amount equal to and to be used for the payment of interest on the Bonds due on the next succeeding Interest Payment Date; provided that no such transfer shall exceed the amount then on deposit in the Capitalized Interest Account. When no amounts remain on deposit in such account, the Capitalized Interest Account shall be closed.

(C) Investment. Moneys in the Bond Fund, the Capitalized Interest Account and the Special Tax Prepayments Account shall be invested in accordance with Section 6.01. Interest earnings and profits resulting from investment of amounts in the Bond Fund, the Capitalized Interest Account and the Special Tax Prepayments Account shall be retained in the Bond Fund, the Capitalized Interest Account and the Special Tax Prepayments Account, respectively, to be used for the purposes of such fund and accounts.

(D) State Reporting. If at any time the Fiscal Agent fails to pay principal and interest due on any scheduled payment date for the Bonds, or if funds are withdrawn from the Reserve Fund to pay principal and/or interest on the Bonds, the Fiscal Agent shall notify the City and the Finance Director in writing of such failure or withdrawal, and the Finance Director shall notify the California Debt Advisory Commission of such failure or withdrawal within 10 days of the failure to make such payment or the date of such withdrawal.

Section 4.03. Reserve Fund.

(A) Establishment of Reserve Fund. There is hereby established as a separate fund to be held by the Fiscal Agent, the Arch Road East Community Facilities District No. 99-02 Reserve Fund to the credit of which a deposit shall be made as required by Section 3.02(A)(i), and deposits shall be made as provided in Section 3.04(B). Moneys in the Reserve Fund shall be held in trust by the Fiscal Agent for the benefit of the Owners of the Bonds as a reserve for the payment of principal of, and interest and any premium on, the Bonds and shall be subject to a lien in favor of the Owners of the Bonds.

(B) Use of Reserve Fund. Except as otherwise provided in this Section, all amounts deposited in the Reserve Fund shall be used and withdrawn by the Fiscal Agent solely for the purpose of making transfers to the Bond Fund in the event of any deficiency at any time in the Bond Fund of the amount then required for payment of the principal of, and interest and any premium on, the Bonds or, in accordance with the provisions of this Section, for the purpose of redeeming Bonds from the Bond Fund.

(C) Transfer of Excess of Reserve Requirement. Whenever, on the Business Day before any Interest Payment Date, or on any other date at the request of the Finance Director, the amount in the Reserve Fund exceeds the Reserve Requirement, the Fiscal Agent shall provide written notice to the Finance Director of the amount of the excess and shall transfer an amount equal to the excess from the Reserve Fund to the Bond Fund to be used for the payment of interest on the Bonds on the next Interest Payment Date in accordance with Section 4.02.

(D) Transfer for Rebate Purposes. Amounts in the Reserve Fund shall be withdrawn, at the written request of the Finance Director, for purposes of making payment to the federal government to comply with Section 6.02.

(E) Transfer When Balance Exceeds Outstanding Bonds. Whenever the balance in the Reserve Fund exceeds the amount required to redeem or pay the Outstanding Bonds, including interest accrued to the date of payment or redemption and premium, if any, due upon redemption, the Fiscal Agent shall transfer the amount in the Reserve Fund to the Bond Fund to be applied, on the next succeeding Interest Payment Date to the payment and redemption, in accordance with Section 4.02 or 2.03, as applicable, of all of the Outstanding Bonds. In the event that the amount so transferred from the Reserve Fund to the Bond Fund exceeds the amount required to pay and redeem the Outstanding Bonds, the balance in the Reserve Fund shall be transferred to the City to be used for any lawful purpose of the City.

Notwithstanding the foregoing, no amounts shall be transferred from the Reserve Fund pursuant to this Section 4.03(E) until after (i) the calculation, pursuant to Section 6.02, of any amounts due to the federal government following payment of the Bonds and withdrawal of any such amount under Section 4.03(D) for purposes of making such payment to the federal government, and (ii) payment of any fees and expenses due to the Fiscal Agent.

(F) Transfer Upon Special Tax Prepayment. Whenever Special Taxes are prepaid and Bonds are to be redeemed with the proceeds of such prepayment pursuant to Sections 2.03(A)(i) and 4.02, a proportionate amount in the Reserve Fund (determined on the basis of the principal of Bonds to be redeemed and the then outstanding principal of the Bonds) shall be transferred by the Fiscal Agent to the Bond Fund to be applied to the redemption of the Bonds pursuant to Section 2.03(A)(i); provided, however, that no such transfer shall be made that would cause the balance in the Reserve Fund to be less than the Reserve Requirement to be in effect following such redemption.

(G) Investment. Moneys in the Reserve Fund shall be invested in accordance with Section 6.01. One Business Day before each Interest Payment Date, interest earnings and profits resulting from said investment shall be transferred by the Fiscal Agent to the Bond Fund to be used by the Fiscal Agent for the purposes of such fund, but any such transfer shall be made only to the extent that following such transfer the amount on deposit in the Reserve Fund equals the then Reserve Requirement.

(H) Substitution of Qualified Reserve Fund Credit Instrument. The City shall have the right at any time to release funds from the Reserve Fund, in whole or in part, by

tendering to the Fiscal Agent: (i) a Qualified Reserve Fund Credit Instrument, and (ii) an opinion of Bond Counsel stating that neither the release of such funds nor the acceptance of such Qualified Reserve Fund Credit Instrument will cause interest on the Bonds to become includable in gross income for purposes of federal income taxation. Upon tender of such items to the Fiscal Agent, and upon delivery by the City to the Fiscal Agent of a written calculation of the amount permitted to be released from the Reserve Fund (upon which calculation the Fiscal Agent may conclusively rely), the Fiscal Agent shall transfer such funds from the Reserve Fund to the City free and clear of the lien of this Agreement, for deposit by the City to District General Fund. The Fiscal Agent shall comply with all documentation relating to a Qualified Reserve Fund Credit Instrument as shall be required to maintain such Qualified Reserve Fund Credit Instrument in full force and effect and as shall be required to receive payments thereunder in the event and to the extent required to make any payment when and as required under Section 4.04.

At least fifteen (15) days prior to the expiration of any Qualified Reserve Fund Credit Instrument, the City shall be obligated either (i) to replace such Qualified Reserve Fund Credit Instrument with a new Qualified Reserve Fund Credit Instrument, or (ii) to deposit or cause to be deposited with the Fiscal Agent an amount of funds such that the amount on deposit in the Reserve Fund is equal to the Reserve Requirement (without taking into account such expiring Qualified Reserve Fund Credit Instrument). In the event that the City shall fail to take action as specified in clause (i) or (ii) of the preceding sentence, the Fiscal Agent shall, prior to the expiration thereof, draw upon the Qualified Reserve Fund Credit Instrument in full and deposit the proceeds of such draw in the Reserve Fund.

In the event that the Reserve Requirement shall at any time be maintained in the Reserve Fund in the form of a combination of cash and a Qualified Reserve Fund Credit Instrument, the Fiscal Agent shall apply the amount of such cash to make any payment required to be made from the Reserve Fund before the Fiscal Agent shall draw any moneys under such Qualified Reserve Fund Credit Instrument for such purpose. In the event that the Fiscal Agent shall at any time draw funds under a Qualified Reserve Fund Credit Instrument to make any payment then required to be made from the Reserve Fund, the Special Tax Revenues thereafter received by the Fiscal Agent, to the extent deposited to the Reserve Fund under Section 3.04(B), shall be used to reinstate the Qualified Reserve Fund Credit Instrument.

ARTICLE V

OTHER COVENANTS OF THE CITY

Section 5.01. Punctual Payment. The City will punctually pay or cause to be paid the principal of and interest and any premium on, the Bonds when and as due in strict conformity with the terms of this Agreement and any Supplemental Agreement, and it will faithfully observe and perform all of the conditions, covenants and requirements of this Agreement and all Supplemental Agreements and of the Bonds.

Section 5.02. Limited Obligation. The Bonds are limited obligations of the City on behalf of the District and are payable solely from and secured solely by the Special Tax Revenues and the amounts in the Bond Fund (including the Special Tax Prepayments Account therein), the Reserve Fund and the Special Tax Fund created hereunder.

Section 5.03. Extension of Time for Payment. In order to prevent any accumulation of claims for interest after maturity, the City shall not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and shall not, directly or indirectly, be a party to the approval of any such arrangement by purchasing or funding said claims for interest or in any other manner. In case any such claim for interest shall be extended or funded, whether or not with the consent of the City, such claim for interest so extended or funded shall not be entitled, in case of default hereunder, to the benefits of this Agreement, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest which shall not have been so extended or funded.

Section 5.04. Against Encumbrances. The City will not encumber, pledge or place any charge or lien upon any of the Special Tax Revenues or other amounts pledged to the Bonds superior to or on a parity with the pledge and lien herein created for the benefit of the Bonds, except as permitted by this Agreement.

Section 5.05. Books and Records. The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the Administrative Expense Fund and the Special Tax Fund and to the Special Tax Revenues. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Fiscal Agent and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

Section 5.06. Protection of Security and Rights of Owners. The City will preserve and protect the security of the Bonds and the rights of the Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the delivery of any of the Bonds by the City, the Bonds shall be incontestable by the City.

Section 5.07. Compliance with Law. The City will comply with all applicable provisions of the Act in administering the District.

Section 5.08. Private Activity Bond Limitation. The City shall assure that the proceeds of the 2007 Bonds are not so used as to cause the 2007 Bonds to satisfy the private business tests of section 141(b) of the Code or the private loan financing test of section 141(c) of the Code.

Section 5.09. Federal Guarantee Prohibition. The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the 2007 Bonds to be "federally guaranteed" within the meaning of section 149(b) of the Code.

Section 5.10. Collection of Special Tax Revenues. The City shall comply with all requirements of the Act so as to assure the timely collection of Special Tax Revenues, including without limitation, the enforcement of delinquent Special Taxes.

On or about July 1 of each year, the Fiscal Agent shall provide the Finance Director with a notice stating the amounts then on deposit in the Bond Fund and the Reserve Fund. The receipt of such notice by the Finance Director shall in no way affect the obligations of the Finance Director under the following three paragraphs. Upon receipt of such notice, the Finance Director shall communicate with the Auditor to ascertain the relevant parcels on which the Special Taxes are to be levied, taking into account any parcel splits during the preceding and then current year. In computing the amount of Special Taxes to be levied, the Finance Director shall take into account funds available in the Capitalized Interest Account, the Bond Fund, and the Special Tax Fund to make the payment of debt service on the Bonds due on the Interest Payment Dates occurring in the next calendar year, along with any transfers of investment earnings pursuant to Sections 4.03(C) or 4.03(G) to the Bond Fund expected to occur on such Interest Payment Date.

The Finance Director shall effect the levy of the Special Taxes from time to time during each Fiscal Year in accordance with the Ordinance. Specifically, the Finance Director shall compute the amount of Special Taxes to be so levied each Fiscal Year before the final date on which the Auditor will accept the transmission of the Special Tax amounts for the parcels within the District for inclusion on the next secured or unsecured, as applicable, real property tax roll. Upon the completion of the computation of the amounts of the levy, the Finance Director shall prepare or cause to be prepared, and shall transmit to the Auditor, such data as the Auditor requires to include the levy of the Special Taxes on the next real property tax roll. The Special Taxes so levied shall be payable and collected in the same manner and at the same time and in the same installment as the taxes on property levied on the tax roll are payable, and have the same priority, become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the general ad valorem taxes levied on the County tax roll.

In the event that the Finance Director determines to levy all or a portion of the Special Taxes by means of direct billing of the property owners within the District, the Finance Director shall, not less than forty-five (45) days prior to each Interest Payment Date, send bills to the property owners in the District for Special Taxes necessary to meet the financial obligations of the District due on the next Interest Payment Date said bills to specify that the amounts so levied shall be due and payable not less than thirty (30) days prior to such Interest Payment Date and shall be delinquent if not paid when due.

In any event, the City shall fix and levy the amount of Special Taxes within the District required for the timely payment of principal of and interest on any outstanding Bonds of the City becoming due and payable, including any necessary replenishment or expenditure of the Reserve Fund for the Bonds and an amount estimated to be sufficient to pay the Administrative Expenses, and shall take into account any prepayments of Special Taxes theretofore received by the City. The Special Taxes so levied shall not exceed the maximum amounts as provided in the Rate and Method of Apportionment of Special Taxes for the District.

The Finance Director is hereby authorized to employ consultants to assist in computing the levy of the Special Taxes hereunder and any reconciliation of amounts levied to amounts received. The fees and expenses of such consultants and the costs and expenses of the Finance Director (including a charge for City staff time) in conducting its duties hereunder shall be an Administrative Expense hereunder.

Section 5.11. Further Assurances. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement, and for the better assuring and confirming unto the Owners of the rights and benefits provided in this Agreement.

Section 5.12. No Arbitrage. The City shall not take, or permit or suffer to be taken by the Fiscal Agent or otherwise, any action with respect to the proceeds of the 2007 Bonds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the 2007 Bonds would have caused the 2007 Bonds to be "arbitrage bonds" within the meaning of section 148 of the Code.

Section 5.13. Maintenance of Tax-Exemption. The City shall take all actions necessary to assure the exclusion of interest on the 2007 Bonds from the gross income of the owners of the 2007 Bonds to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the date of issuance of the 2007 Bonds.

Section 5.14. Covenant to Foreclose. The City hereby covenants with and for the benefit of the Owners of the Bonds that it will order, and cause to be commenced as hereinafter provided, and thereafter diligently prosecute to judgment (unless such delinquency is theretofore brought current), an action in the superior court to foreclose the lien of any Special Tax or installment thereof not paid when due as provided in the following paragraph. The Finance Director shall notify legal counsel of any such delinquency of which it is aware, and such legal counsel shall commence, or cause to be commenced, such proceedings.

On or about July 1 of each Fiscal Year, the Finance Director shall compare the amount of Special Taxes theretofore levied in the District to the amount of Special Tax Revenues theretofore received by the City. Following such comparison, or if at any other time the Finance Director becomes aware of any delinquency in the payment of any Special Tax due and owing, the Finance Director shall, if any single parcel subject to the Special Tax in the District is delinquent in the payment of Special Taxes in the aggregate amount of $10,000.00 or more, send or cause to be sent a notice of delinquency (and a demand for immediate payment thereof) to the property owner within 10 days of becoming aware of such delinquency, and (if the delinquency remains uncured) foreclosure proceedings shall be commenced by the City within 30 days of such determination.

The Finance Director is hereby authorized to employ counsel to conduct any such foreclosure proceedings. The fees and expenses of any such counsel (including a charge for City staff time) in conducting foreclosure proceedings shall be an Administrative Expense hereunder.

Section 5.15. No Additional Bonds. Except as expressly provided in Section 2.14, the City shall not issue any additional bonds secured by a pledge of the Special Taxes or any amounts in any funds or amounts established hereunder.

Section 5.16. Yield of the Bonds. In determining the yield of the 2007 Bonds to comply with Section 5.12 and 6.02 hereof, the City will take into account redemption (including premium, if any) in advance of maturity based on the reasonable expectations of the City, as of the Closing Date, regarding prepayments of Special Taxes and use of prepayments for redemption of the 2007 Bonds, without regard to whether or not prepayments are received or Bonds redeemed.

Section 5.17. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement. Notwithstanding any other provision of this Agreement, failure of the City to comply with the Continuing Disclosure Agreement shall not be considered a default on the Bonds or a breach of any other provision of this Agreement; however, at the request of any Participating Underwriter or the holders of at least a majority of the aggregate principal amount of Outstanding Bonds, and in either case upon receipt of satisfactory indemnity by the Fiscal Agent (which indemnity shall include payment of its fees and expenses, including attorneys' fees), the Fiscal Agent shall, or in any event the Participating Underwriter or any Bondholder may, take such actions as may be necessary and appropriate to compel performance by the City, of its obligations under the Continuing Disclosure Agreement, including seeking mandate or specific performance by court order.

Section 5.18. Reduction of Special Taxes. The City covenants and agrees to not consent or conduct proceedings with respect to a reduction in the maximum Special Taxes that may be levied in the District below an amount, for any Fiscal Year, equal to 110% of the aggregate of the debt service due on the Bonds in such Fiscal Year, plus a reasonable estimate of Administrative Expenses for such Fiscal Year. It is hereby acknowledged that Bondowners are purchasing the Bonds in reliance on the foregoing covenant, and that said covenant is necessary to assure the full and timely payment of the Bonds.

Section 5.19. State Reporting Requirements. The following requirements shall apply to the Bonds, in addition to those requirements under Section 5.17:

(A) Annual Reporting. Not later than October 30 of each calendar year, beginning with the October 30 first succeeding the date of the Bonds, and in each calendar year thereafter until the October 30 following the final maturity of the Bonds, the Finance Director shall cause the following information to be supplied to CDIAC: (i) the principal amount of the Bonds Outstanding; (ii) the balance in the Reserve Fund; (iii) the balance, if any, in the Capitalized Interest Account; (iv) the number of parcels in the District which are delinquent in the payment of Special Taxes, the amount of each delinquency, the length of time delinquent and when foreclosure was commenced for each delinquent parcel; (v) the balance, if any, in the accounts within the Improvement Fund; and (vi) the assessed value of all parcels in the District subject to the levy of the Special Taxes as shown in the most recent equalized roll. The annual reporting shall be made using such form or forms as may be prescribed by CDIAC.

(B) Other Reporting. If at any time the Fiscal Agent fails to pay principal and interest due on any scheduled payment date for the Bonds, or if funds are withdrawn from the Reserve Fund to pay principal and interest on the Bonds, the Fiscal Agent shall notify the Finance Director of such failure or withdrawal in writing. The Finance Director shall notify CDIAC and the Original Purchaser of such failure or withdrawal within 10 days of such failure or withdrawal.

(C) Amendment. The reporting requirements of this Section 5.19 shall be amended from time to time, without action by the City or the Fiscal Agent, to reflect

any amendments to Section 53359.5(b) or Section 53359.5(c) of the Act. The Finance Director shall provide the Fiscal Agent with a copy of any such amendment. Notwithstanding the foregoing, any such amendment shall not, in itself, affect the City's obligations under Section 4 of the Continuing Disclosure Agreement.

(D) No Liability. None of the City and its officers, agents and employees, the Director of Finance or the Fiscal Agent shall be liable for any inadvertent error in reporting the information required by this Section 5.19.

The provisions of this Section 5.19 shall be amended to reflect any applicable change in Section 53359.5(b) or (c) of the Act, without any action by the City or the Fiscal Agent.

The Finance Director shall provide copies of any reports prepared pursuant to this Section 5.19 to any Bondowner upon the written request of a Bondowner and payment by the person requesting the information of the cost of the City to produce such information and pay any postage or other delivery cost to provide the same, as determined by the Finance Director. The term "Bondowner" for purposes of this Section 5.19 shall include any beneficial owner of the Bonds.

Section 5.20. Limits on Special Tax Waivers and Bond Tenders. The City covenants not to exercise its rights under the Act to waive delinquency and redemption penalties related to the Special Taxes or to declare Special Tax penalties amnesty program if to do so would materially and adversely affect the interests of the owners of the Bonds. The City further covenants not to permit the tender of Bonds in payment of any Special Taxes except upon receipt of a certificate of Tax Consultant that to accept such tender will not result in the City having insufficient Special Tax Revenues to pay the principal of and interest on the Bonds that will remain Outstanding following such tender.

Section 5.21. City Bid at Foreclosure Sale. The City will not bid at a foreclosure sale of property in respect of delinquent Special Taxes, unless it expressly agrees to take the property subject to the lien for Special Taxes imposed by the District and that the Special Taxes levied on the property are payable while the City owns the property.

ARTICLE VI

INVESTMENTS; DISPOSITION OF INVESTMENT PROCEEDS; LIABILITY OF THE CITY

Section 6.01. Deposit and Investment of Moneys in Funds. Moneys in any fund or account created or established by this Agreement and held by the Fiscal Agent shall be invested by the Fiscal Agent in Permitted Investments, as directed pursuant to an Officer's Certificate filed with the Fiscal Agent at least two (2) Business Days in advance of the making of such investments. The Officer's Certificate shall contain a certification to the Fiscal Agent that the investments being directed are Permitted Investments as required hereunder. In the absence of any such Officer's Certificate, the Fiscal Agent shall invest any such moneys in Permitted Investments described in clause (h) of the definition thereof. Moneys in any fund or account created or established by this Agreement and held by the Finance Director shall be invested by the Finance Director in any lawful investments that the City may make or in any Permitted Investment, which in any event by their terms mature prior to the date on which such moneys are required to be paid out hereunder. Obligations purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account, subject, however, to the requirements of this Agreement for transfer of interest earnings and profits resulting from investment of amounts in funds and accounts. Whenever in this Agreement any moneys are required to be transferred by the City to the Fiscal Agent, such transfer may be accomplished by transferring a like amount of Permitted Investments.

The Fiscal Agent or the Finance Director may act as principal or agent in the acquisition or disposition of any investment, and all investments may be made through the Fiscal Agent's investment department or that of its affiliates. The Fiscal Agent or its affiliates may act as sponsor, agent manager or depository with regard to any Permitted Investment. Neither the Fiscal Agent nor the Finance Director shall incur any liability for losses arising from any investments made pursuant to this Section.

Except as otherwise provided in the next sentence, the City shall direct or make investments hereunder such that all investments of amounts deposited in any fund or account created by or pursuant to this Agreement, or otherwise containing gross proceeds of the Bonds (within the meaning of section 148 of the Code) shall be acquired, disposed of, and valued (as of the date that valuation is required by this Agreement or the Code) at Fair Market Value. The City shall direct or make investments hereunder such that investments in funds or accounts (or portions thereof) that are subject to a yield restriction under applicable provisions of the Code and (unless valuation is undertaken at least annually) investments in the Reserve Fund shall be valued at their present value (within the meaning of section 148 of the Code).

Amounts in the 2002 Account of the Improvement Fund shall be invested in a manner so as not to violate the covenant in Section 5.12, and/or yield reduction payments shall be made in order to maintain such compliance.

Investments in any and all funds and accounts may be commingled in a separate fund or funds for purposes of making, holding and disposing of investments, notwithstanding provisions herein for transfer to or holding in or to the credit of particular funds or accounts of amounts received or held by the Fiscal Agent or the Finance Director hereunder, provided that the Fiscal Agent or the Finance Director, as applicable, shall at all

times account for such investments strictly in accordance with the funds and accounts to which they are credited and otherwise as provided in this Agreement.

The Fiscal Agent shall sell in a commercially reasonably manner, or present for redemption, any investment security whenever it shall be necessary to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund or account to which such investment security is credited and neither the Fiscal Agent nor the Finance Director shall be liable or responsible for any loss resulting from the acquisition or disposition of such investment security in accordance herewith.

The City acknowledges that regulations of the Comptroller of the Currency grant the City the right to receive brokerage confirmations of security transactions to be effected by the Fiscal Agent hereunder as they occur. The City specifically waives the right to receive such notification to the extent permitted by applicable law and agrees that it will instead receive monthly cash transactions statements which include detail for the investment transactions effected by the Fiscal Agent hereunder; provided, however, that the City retains its rights to, upon written request to the Fiscal Agent, receive brokerage confirmation on any investment transaction requested by the City.

Section 6.02. Rebate of Excess Investment Earnings to the United States. The City shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds. The City shall take appropriate action, including making yield reduction payments to the federal government, as necessary with respect to the investment of funds in the 2002 Account of the Improvement Fund, so as to maintain the tax-exempt status of interest on the Bonds and on the Prior Bonds.

The City shall direct the Fiscal Agent to withdraw such amounts from the Reserve Fund pursuant to Section 4.03(D) as necessary to make any required rebate payments, and pay such amounts to the federal government as required by the Code and the Regulations. In the event of any shortfall in amounts available to make such payments under Section 4.03(D), the Finance Director shall make such payment from any amounts available in the Administrative Expense Fund or from any other available funds of the City. Any fees or expenses incurred by the City under or pursuant to this Section 6.02 shall be Administrative Expenses.

In order to provide for the administration of this Section 6.02, the Finance Director may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Finance Director may deem appropriate and in addition, and without limitation of the provisions of Sections 7.01 and 7.02, the Finance Director may rely conclusively upon and be fully protected from all liability in relying upon the opinions, determinations, calculations and advice of such agents, attorneys and consultants employed hereunder.

The Fiscal Agent may rely conclusively upon the City's determinations, calculations and certifications required by this Section. The Fiscal Agent shall have no responsibility to independently make any calculation or determination or to review the City's calculations hereunder.

Section 6.03. Limited Obligation. The City's obligations hereunder are limited obligations of the City on behalf of the District and are payable solely from and secured solely by the Special Tax Revenues and the amounts in the Special Tax Fund, the Bond Fund and the Reserve Fund created hereunder.

Section 6.04. Liability of City. The City shall not incur any responsibility in respect of the Bonds or this Agreement other than in connection with the duties or obligations explicitly herein or in the Bonds assigned to or imposed upon it. The City shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful default. The City shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions covenants or agreements of the Fiscal Agent herein or of any of the documents executed by the Fiscal Agent in connection with the Bonds, or as to the existence of a default or event of default thereunder.

In the absence of bad faith, the City, including the Finance Director, may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the City and conforming to the requirements of this Agreement. The City, including the Finance Director, shall not be liable for any error of judgment made in good faith unless it shall be proved that it was negligent in ascertaining the pertinent facts.

No provision of this Agreement shall require the City to expend or risk its own general funds or otherwise incur any financial liability in the performance of any of its obligations hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The City may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The City may consult with counsel, who may be the City Attorney, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The City shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactory established, if disputed.

Whenever in the administration of its duties under this Agreement the City shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the City, be deemed to be conclusively proved and established by a certificate of the Fiscal Agent or other appropriate agent or consultant, and such certificate shall be full warrant to the City for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the City may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 6.05. Employment of Agents by City. In order to perform its duties and obligations hereunder, the City and/or the Finance Director may employ such persons or entities as it deems necessary or advisable. The City shall not be liable for any of the acts or omissions of such persons or entities employed by it in good faith hereunder, and shall be entitled to rely, and shall be fully protected in doing so, upon the opinions, calculations, determinations and directions of such persons or entities.

ARTICLE VII

THE FISCAL AGENT

Section 7.01. Appointment of Fiscal Agent. The Bank of New York Trust Company, N.A., at its corporate trust office in San Francisco, California is hereby appointed Fiscal Agent and paying agent for the Bonds. The Fiscal Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Fiscal Agent.

Any company or association into which the Fiscal Agent may be merged or converted or with which it may be consolidated or any company or association resulting from any merger, conversion or consolidation to which it shall be a party or any company or association to which the Fiscal Agent may sell or transfer all or substantially all of its corporate trust business, provided such company or association shall be eligible under the following paragraph of this Section, shall be the successor to such Fiscal Agent without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

The City may remove the Fiscal Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank, association or trust company having a combined capital (exclusive of borrowed capital) and surplus of at least Fifty Million Dollars ($50,000,000), and subject to supervision or examination by federal or state authority. If such bank, association or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 7.01, combined capital and surplus of such bank, association or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Fiscal Agent may at any time resign by giving written notice to the City and by giving to the Owners notice by mail of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Fiscal Agent by an instrument in writing. Any resignation or removal of the Fiscal Agent shall become effective only upon acceptance of appointment by the successor Fiscal Agent.

If no appointment of a successor Fiscal Agent shall be made pursuant to the foregoing provisions of this Section within forty-five (45) days after the Fiscal Agent shall have given to the City written notice or after a vacancy in the office of the Fiscal Agent shall have occurred by reason of its inability to act, the Fiscal Agent or any Bondowner may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. Said court may thereupon, after such notice, if any, as such court may deem proper, appoint a successor Fiscal Agent. Neither the City nor the Finance Director shall act as Fiscal Agent hereunder.

Section 7.02. Liability of Fiscal Agent. The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Fiscal Agent assumes no responsibility for the correctness of the same, or makes any representations as to the validity or sufficiency of this Agreement or of the Bonds, or shall incur any responsibility in respect thereof, other than in connection with the duties or obligations herein or in the Bonds assigned to or imposed upon it. The Fiscal Agent shall not be liable in connection with the performance of its duties hereunder,

except for its own negligence or willful default. The Fiscal Agent assumes no responsibility or liability for any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Bonds.

In the absence of bad faith, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Fiscal Agent and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions by which any provision hereof are specifically required to be furnished to the Fiscal Agent, the Fiscal Agent shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement. Except as provided above in this paragraph, Fiscal Agent shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith, reasonably and in accordance with the terms of this Agreement, upon any resolution, order, notice, request, requisition, Officer's Certificate, consent or waiver, certificate, statement, affidavit, or other paper or document which it shall in good faith reasonably believe to be genuine and to have been adopted or signed by the proper person or to have been prepared and furnished pursuant to any provision of this Agreement, and the Fiscal Agent shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

The Fiscal Agent shall not be liable for any error of judgment made in good faith by a responsible officer unless it shall be proved that the Fiscal Agent was negligent in ascertaining the pertinent facts.

No provision of this Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Fiscal Agent shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request or direction of any of the Owners pursuant to this Agreement unless such Owners shall have offered to the Fiscal Agent security or indemnity satisfactory to it against the fees, expenses and liabilities (including reasonable attorney's fees) which might be incurred by it in compliance with such request or direction.

The Fiscal Agent may become the owner of the Bonds with the same rights it would have if it were not the Fiscal Agent.

The Fiscal Agent shall not be bound to ascertain or inquire as to the performance or observance of any of the terms, conditions, covenants, or agreements of the City herein or of any of the documents executed by the City in connection with the Bonds, or as to the existence of a default or any event of default thereunder.

The Fiscal Agent shall not be considered in breach of or in default in its obligations hereunder or progress in respect thereto in the event of an unavoidable delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of a public enemy or terrorists, acts of a government, fires, floods, epidemics, quarantine restrictions, earthquakes, explosion, mob violence, riot, condemnation and unusually severe weather or any similar event and/or occurrence beyond the control of the Fiscal Agent.

The Fiscal Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar

unsecured electronic methods; provided, however, that, the Fiscal Agent shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Fiscal Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Fiscal Agent in its discretion elects to act upon such instructions, the Fiscal Agent's understanding of such instructions shall be deemed controlling. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Fiscal Agent, including without limitation the risk of interception and misuse by third parties, in accordance with and subject to Section 7.04.

Section 7.03. Information. The Fiscal Agent shall provide to the City such information relating to the Bonds and the funds and accounts maintained by the Fiscal Agent hereunder as the City shall reasonably request, including but not limited to quarterly statements reporting funds held and transactions by the Fiscal Agent.

The Fiscal Agent will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the Fiscal Agent, in which complete and correct entries shall be made of all transactions relating to the expenditure of amounts disbursed from the accounts within the Improvement Fund, the Bond Fund, the Special Tax Prepayments Account, the Capitalized Interest Account, the Reserve Fund and the Costs of Issuance Fund. Such books of record and accounts shall upon reasonable prior notice at all times during business hours be subject to the inspection of the City and the Owners of not less than ten percent (10%) of the principal amount of the Bonds then Outstanding, or their representatives duly authorized in writing.

Section 7.04. Notice to Fiscal Agent. The Fiscal Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, requisition, Officer's Certificate, consent, order, certificate, report, warrant, Bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Fiscal Agent may consult with counsel, who may be counsel to the City, with regard to legal questions, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Fiscal Agent shall not be bound to recognize any person as the Owner of a Bond unless and until such Bond is submitted for inspection, if required, and his title thereto satisfactorily established, if disputed.

Whenever in the administration of its duties under this Agreement the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of the City, and such certificate shall be full warrant to the Fiscal Agent for any action taken or suffered under the provisions of this Agreement or any Supplemental Agreement upon the faith thereof, but in its discretion the Fiscal Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

Section 7.05. Compensation, Indemnification. The City shall pay to the Fiscal Agent from time to time, promptly upon written request, reasonable compensation for all services rendered as Fiscal Agent under this Agreement, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Agreement, but the Fiscal Agent shall not have a lien therefor on any funds at any time held by it under this Agreement. The City further agrees, to the extent permitted by applicable law, to indemnify and save the Fiscal Agent, its officers, employees, directors and agents harmless against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or willful misconduct. The obligation of the City under this Section shall survive resignation or removal of the Fiscal Agent under this Agreement and payment of the Bonds and discharge of this Agreement, but any monetary obligation of the City arising under this Section shall be limited solely to amounts on deposit in the Administrative Expense Fund.

ARTICLE VIII

MODIFICATION OR AMENDMENT OF THIS AGREEMENT

Section 8.01. Amendments Permitted. This Agreement and the rights and obligations of the City and of the Owners of the Bonds may be modified or amended at any time by a Supplemental Agreement pursuant to the affirmative vote at a meeting of Owners, or with the written consent without a meeting, of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding, exclusive of Bonds disqualified as provided in Section 8.04. No such modification or amendment shall (i) extend the maturity of any Bond or reduce the interest rate thereon, or otherwise alter or impair the obligation of the City to pay the principal of, and the interest and any premium on, any Bond, without the express consent of the Owner of such Bond, or (ii) permit the creation by the City of any pledge or lien upon the Special Taxes superior to or on a parity with the pledge and lien created for the benefit of the Bonds (except as otherwise permitted by the Act, the laws of the State of California or this Agreement), or reduce the percentage of Bonds required for the amendment hereof. Any such amendment may not modify any of the rights or obligations of the Fiscal Agent without its written consent.

This Agreement and the rights and obligations of the City and of the Owners may also be modified or amended at any time by a Supplemental Agreement, without the consent of any Owners, only to the extent permitted by law and only for any one or more of the following purposes:

(A) to add to the covenants and agreements of the City in this Agreement contained, other covenants and agreements thereafter to be observed, or to limit or surrender any right or power herein reserved to or conferred upon the City;

(B) to make modifications not adversely affecting any outstanding series of Bonds of the City in any material respect;

(C) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained in this Agreement, or in regard to questions arising under this Agreement, as the City may deem necessary or desirable and not inconsistent with this Agreement, and which shall not adversely affect the rights of the Owners of the Bonds;

(D) to make such additions, deletions or modifications as may be necessary or desirable to assure the exclusion from gross income, for purposes of federal income taxation, of interest on the Bonds; and

(E) in connection with the issuance of Parity Bonds in accordance with the provisions of Section 2.14.

Section 8.02. Owners' Meetings. The City may at any time call a meeting of the Owners. In such event the City is authorized to fix the time and place of said meeting and to provide for the giving of notice thereof, and to fix and adopt rules and regulations for the conduct of said meeting.

Section 8.03. Procedure for Amendment with Written Consent of Owners. The City and the Fiscal Agent may at any time adopt a Supplemental Agreement amending the provisions of the Bonds or of this Agreement or any Supplemental Agreement, to the extent

that such amendment is permitted by Section 8.01, to take effect when and as provided in this Section. The City or the Fiscal Agent may obtain an opinion of Bond Counsel that such Supplemental Indenture complies with the provisions of this Article VIII, and the City and Fiscal Agent may rely conclusively upon such opinion. A copy of such Supplemental Agreement, together with a request to Owners for their consent thereto, shall be mailed by first class mail, by the Fiscal Agent to each Owner of Bonds Outstanding, but failure to mail copies of such Supplemental Agreement and request shall not affect the validity of the Supplemental Agreement when assented to as in this Section provided.

Such Supplemental Agreement shall not become effective unless there shall be filed with the Fiscal Agent the written consents of the Owners of at least sixty percent (60%) in aggregate principal amount of the Bonds then Outstanding (exclusive of Bonds disqualified as provided in Section 8.04) and a notice shall have been mailed as hereinafter in this Section provided. Each such consent shall be effective only if accompanied by proof of ownership of the Bonds for which such consent is given, which proof shall be such as is permitted by Section 9.04. Any such consent shall be binding upon the Owner of the Bonds giving such consent and on any subsequent Owner (whether or not such subsequent Owner has notice thereof) unless such consent is revoked in writing by the Owner giving such consent or a subsequent Owner by filing such revocation with the Fiscal Agent prior to the date when the notice hereinafter in this Section provided for has been mailed.

After the Owners of the required percentage of Bonds shall have filed their consents to the Supplemental Agreement, the City shall mail a notice to the Owners in the manner hereinbefore provided in this Section for the mailing of the Supplemental Agreement, stating in substance that the Supplemental Agreement has been consented to by the Owners of the required percentage of Bonds and will be effective as provided in this Section (but failure to mail copies of said notice shall not affect the validity of the Supplemental Agreement or consents thereto). Proof of the mailing of such notice shall be filed with the Fiscal Agent. A record, consisting of the papers required by this Section 8.03 to be filed with the Fiscal Agent, shall be proof of the matters therein stated until the contrary is proved. The Supplemental Agreement shall become effective upon the filing with the Fiscal Agent of the proof of mailing of such notice, and the Supplemental Agreement shall be deemed conclusively binding (except as otherwise hereinabove specifically provided in this Article) upon the City and the Owners of all Bonds at the expiration of sixty (60) days after such filing, except in the event of a final decree of a court of competent jurisdiction setting aside such consent in a legal action or equitable proceeding for such purpose commenced within such sixty-day period.

Section 8.04. Disqualified Bonds. Bonds owned or held for the account of the City, excepting any pension or retirement fund, shall not be deemed Outstanding for the purpose of any vote, consent or other action or any calculation of Outstanding Bonds provided for in this Article VIII, and shall not be entitled to vote upon, consent to, or take any other action provided for in this Article VIII. Upon written request, the City shall specify to the Fiscal Agent those Bonds disqualified pursuant to this Section 8.04. The Fiscal Agent may conclusively rely upon such request.

Section 8.05. Effect of Supplemental Agreement. From and after the time any Supplemental Agreement becomes effective pursuant to this Article VIII, this Agreement shall be deemed to be modified and amended in accordance therewith, the respective rights, duties and obligations under this Agreement of the City and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments, and all the terms and conditions of any such Supplemental Agreement shall be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

Section 8.06. Endorsement or Replacement of Bonds Issued After Amendments. The City may determine that Bonds issued and delivered after the effective date of any action taken as provided in this Article VIII shall bear a notation, by endorsement or otherwise, in form approved by the City, as to such action. In that case, upon demand of the Owner of any Bond Outstanding at such effective date and presentation of his Bond for that purpose at the Principal Office of the Fiscal Agent or at such other office as the City may select and designate for that purpose, a suitable notation shall be made on such Bond. The City may determine that new Bonds, so modified as in the opinion of the City is necessary to conform to such Owners' action, shall be prepared, executed and delivered. In that case, upon demand of the Owner of any Bonds then Outstanding, such new Bonds shall be exchanged at the Principal Office of the Fiscal Agent without cost to any Owner, for Bonds then Outstanding, upon surrender of such Bonds.

Section 8.07. Amendatory Endorsement of Bonds. The provisions of this Article VIII shall not prevent any Owner from accepting any amendment as to the particular Bonds held by him, provided that due notation thereof is made on such Bonds.

ARTICLE IX

MISCELLANEOUS

Section 9.01. Benefits of Agreement Limited to Parties. Nothing in this Agreement, expressed or implied, is intended to give to any person other than the City, the Fiscal Agent and the Owners, any right, remedy, claim under or by reason of this Agreement. Any covenants, stipulations, promises or agreements in this Agreement contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners and the Fiscal Agent.

Section 9.02. Successor is Deemed Included in All References to Predecessor. Whenever in this Agreement or any Supplemental Agreement either the City or the Fiscal Agent is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Agreement contained by or on behalf of the City or the Fiscal Agent shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 9.03. Discharge of Agreement. The City shall have the option to pay and discharge the entire indebtedness on all or any portion of the Bonds Outstanding in any one or more of the following ways:

(A) by well and truly paying or causing to be paid the principal of, and interest and any premium on, such Bonds Outstanding, as and when the same become due and payable;

(B) by depositing with the Fiscal Agent, in trust, at or before maturity, money which, together with the amounts then on deposit in the funds and accounts provided for in Sections 4.02 and 4.03 is fully sufficient to pay such Bonds Outstanding, including all principal, interest and redemption premiums; or

(C) by irrevocably depositing with the Fiscal Agent, in trust, cash and Federal Securities in such amount as the City shall determine as confirmed by Bond Counsel or an independent certified public accountant will, together with the interest to accrue thereon and moneys then on deposit in the fund and accounts provided for in Sections 4.02 and 4.03, be fully sufficient to pay and discharge the indebtedness on such Bonds (including all principal, interest and redemption premiums) at or before their respective maturity dates.

If the City shall have taken any of the actions specified in (A), (B) or (C) above, and if such Bonds are to be redeemed prior to the maturity thereof notice of such redemption shall have been given as in this Agreement provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, then, at the election of the City, and notwithstanding that any Bonds shall not have been surrendered for payment, the pledge of the Special Taxes and other funds provided for in this Agreement and all other obligations of the City under this Agreement with respect to such Bonds Outstanding shall cease and terminate. Notice of such election shall be filed with the Fiscal Agent. Notwithstanding the foregoing, the obligations of the City to pay or cause to be paid to the Owners of the Bonds not so surrendered and paid all sums due thereon, to pay all amounts owing to the Fiscal Agent pursuant to Section 7.05, and otherwise to assure that no action is taken or failed to be taken if such action or failure adversely affects the exclusion of interest

on the 2007 Bonds from gross income for federal income tax purposes (including the City's obligations under Section 6.02), shall continue in any event.

Upon compliance by the City with the foregoing with respect to all Bonds Outstanding, any funds held by the Fiscal Agent after payment of all fees and expenses of the Fiscal Agent, which are not required for the purposes of the preceding paragraph, shall be paid over to the City and any Special Taxes thereafter received by the City shall not be remitted to the Fiscal Agent but shall be retained by the City to be used for any purpose permitted under the Act.

Section 9.04. Execution of Documents and Proof of Ownership by Owners. Any request, declaration or other instrument which this Agreement may require or permit to be executed by Owners may be in one or more instruments of similar tenor, and shall be executed by Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same shall be proved by the registry books.

Any request, declaration or other instrument or writing of the Owner of any Bond shall bind all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Fiscal Agent in good faith and in accordance therewith.

Section 9.05. Waiver of Personal Liability. No Councilmember, officer, agent or employee of the City shall be individually or personally liable for the payment of the principal of, or interest or any premium on, the Bonds; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law.

Section 9.06. Notices to and Demands on City and Fiscal Agent. Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the Fiscal Agent to or on the City may be given or served by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the City with the Fiscal Agent) as follows:

City of Stockton
425 North El Dorado Street
Stockton, CA 95202-1997
Attention: Director of Administrative Services

Any notice or demand which by any provision of this Agreement is required or permitted to be given or served by the City to or on the Fiscal Agent may be given or served by being deposited postage prepaid in a post office letter box addressed (until another address is filed by the Fiscal Agent with the City) as follows:

The Bank of New York Trust Company, N.A.
550 Kearny Street, Suite 600
San Francisco, CA 94108
Attn: Corporate Trust Division

Section 9.07. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Agreement shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Agreement. The City hereby declares that it would have adopted this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid or unenforceable.

Section 9.08. Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Fiscal Agent in trust for the payment and discharge of the principal of, and the interest and any premium on, the Bonds which remains unclaimed for two (2) years after the date when the payments of such principal, interest and premium have become payable, if such moneys were held by the Fiscal Agent at such date, shall be repaid by the Fiscal Agent to the City as its absolute property free from any trust, and the Fiscal Agent shall thereupon be released and discharged with respect thereto and the Bond Owners shall look only to the City for the payment of the principal of, and interest and any premium on, such Bonds.

Section 9.09. Applicable Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of California applicable to contracts made and performed in the State of California.

Section 9.10. Conflict with Act. In the event of a conflict between any provision of this Agreement with any provision of the Act as in effect on the Closing Date, the provision of the Act shall prevail over the conflicting provision of this Agreement.

Section 9.11. Conclusive Evidence of Regularity. Bonds issued pursuant to this Agreement shall constitute conclusive evidence of the regularity of all proceedings under the Act relative to their issuance and the levy of the Special Taxes.

Section 9.12. Payment on Business Day. In any case where the date of the maturity of interest or of principal (and premium, if any) of the Bonds or the date fixed for redemption of any Bonds or the date any action is to be taken pursuant to this Agreement is other than a Business Day, the payment of interest or principal (and premium, if any) or the action need not be made on such date but may be made on the next succeeding day which is a Business Day with the same force and effect as if made on the date required and no interest shall accrue for the period after such date.

Section 9.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the City has caused this Agreement to be executed in its name and the Fiscal Agent has caused this Agreement to be executed in its name, all as of September 1, 2007.

CITY OF STOCKTON, for and on behalf of the ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT NO. 99-02, CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA

By: _____
City Manager

THE BANK OF NEW YORK TRUST COMPANY, N.A., as Fiscal Agent

By: _____
Assistant Vice President

19011.05:J9440

Section 16. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the City and the Escrow Bank have each caused this Agreement to be executed by their duly authorized officers all as of the date first above written.

CITY OF STOCKTON, for and on behalf of the ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT NO. 99-02, CITY OF STOCKTON, SAN JOAQUIN COUNTY, CALIFORNIA

By _____
City Manager

THE BANK OF NEW YORK TRUST COMPANY, N.A., as Escrow Bank

By _____
Assistant Vice President

19011.05:J9441

APPROVED AS TO FORM AND CONTENT

By _____
Deputy City Attorney

EXHIBIT A

FORM OF BOND

No. _____ $_____

UNITED STATES OF AMERICA
STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN
CITY OF STOCKTON
ARCH ROAD EAST COMMUNITY FACILITIES DISTRICT NO. 99-02
2007 SPECIAL TAX REFUNDING BOND

INTEREST RATE	MATURITY DATE	BOND DATE	CUSIP
	September 1, ____	September 6, 2007	

REGISTERED OWNER:

PRINCIPAL AMOUNT: DOLLARS

The City of Stockton (the "City") for and on behalf of the Arch Road East Community Facilities District No. 99-02, City of Stockton, San Joaquin County, California (the "District"), for value received, hereby promises to pay solely from the Special Tax (as hereinafter defined) to be collected in the District or amounts in the funds and accounts held under the Agreement (as hereinafter defined), to the registered owner named above, or registered assigns, on the maturity date set forth above, unless redeemed prior thereto as hereinafter provided, the principal amount set forth above, and to pay interest on such principal amount from the Bond Date shown above, or from the most recent Interest Payment Date (defined below) to which interest has been paid or duly provided for, semiannually on March 1 and September 1, commencing March 1, 2008 (each, an "Interest Payment Date"), at the interest rate set forth above, until the principal amount hereof is paid or made available for payment. The principal of this Bond is payable to the registered owner hereof in lawful money of the United States of America upon presentation and surrender of this Bond at the principal corporate trust office of The Bank of New York Trust Company, N.A. (the "Fiscal Agent"), or such other place as designated by the Fiscal Agent. Interest on this Bond shall be paid by check of the Fiscal Agent mailed on each Interest Payment Date to the registered owner hereof as of the close of business on the 15th day of the month preceding the month in which the Interest Payment Date occurs (the "Record Date") at such registered owner's address as it appears on the registration books maintained by the Fiscal Agent.

This Bond is one of a duly authorized issue of bonds in the aggregate principal amount of $19,065,000 approved by the City Council of the City on August 14, 2007 pursuant to the California Government Code (the "Act") for the purposes of refunding the City's Arch Road East Community Facilities District No. 99-02 Special Tax Bonds Series 1999 and the City's Arch Road East Community Facilities District No. 99-02 Special Tax Bonds Series 2002, and providing funds to finance improvements authorized to be funded by the District, and is one of the series of Bonds designated "City of Stockton Arch Road East Community Facilities District No. 99-02 2007 Special Tax Bonds" (the "Bonds"). The

creation of the Bonds and the terms and conditions thereof are provided for the Fiscal Agent Agreement, dated as of September 1, 2007, between the City and the Fiscal Agent (the "Agreement") and this reference incorporates the Resolution and the Agreement herein, and by acceptance hereof the owner of this Bond assents to said terms and conditions. The Resolution is adopted under and this Bond is issued under, and both are to be construed in accordance with, the laws of the State of California.

Pursuant to the Act, and the Agreement, the principal of and interest on this Bond are payable solely from the annual special tax authorized under the Mello-Roos Community Facilities Act of 1982 to be collected within the District (the "Special Tax") and certain funds held under the Agreement.

Interest on this Bond shall be payable from the interest payment date next preceding the date of authentication hereof, unless (i) it is authenticated on an interest payment date, in which event it shall bear interest for such Interest Payment Date, or (ii) such date of authentication is after a Record Date but on or prior to an Interest Payment Date, in which event interest will be payable from such Interest Payment Date, or (iii) such date of authentication is prior to the first Record Date, in which event interest will be payable from the Bond Date shown above; provided however, that if at the time of authentication of this Bond, interest is in default hereon, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment hereon.

Any tax for the payment hereof shall be limited to the Special Tax, except to the extent that provision for payment has been made by the City of Stockton, as may be permitted by law. The Bonds do not constitute obligations of the City of Stockton for which said City is obligated to levy or pledge, or has levied or pledged, general or special taxation other than described hereinabove. The City has covenanted for the benefit of the owners of the Bonds that it will commence and diligently pursue to completion appropriate foreclosure actions in the event of delinquencies of any Special Tax installments levied for payment of principal and interest as more particularly set forth in the Agreement.

The Bonds are subject to redemption prior to their stated maturities on any Interest Payment Date as a whole or in part, from the proceeds of prepayments of Special Taxes or any other available funds, at a redemption price (expressed as a percentage of the principal amount of the Bonds to be redeemed) as set forth below, together with accrued interest thereon to the date fixed for redemption:

Redemption Dates	Redemption Prices
Any Interest Payment Date from March 1, 2008 to and including March 1, 2017	103%
September 1, 2017 and March 1, 2018	102
September 1, 2018 and March 1, 2019	101
September 1, 2019 and any Interest Payment Date thereafter	100

Notwithstanding the foregoing, any redemption of the Bonds pursuant to the preceding paragraph prior to September 1, 2017, shall be made solely from amounts in the Bond Fund established under the Agreement as a result of transfers from the Special Tax Prepayment Account established pursuant to the Agreement and corresponding transfers from the Reserve Fund established under the Agreement.

The Bonds maturing on September 1, 2027, are subject to mandatory sinking payment redemption in part on September 1, 2022 and on each September 1 thereafter to

maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

Redemption Date (September 1)	Sinking Payments
2022	$460,000
2023	515,000
2024	575,000
2025	640,000
2026	705,000
2027 (maturity)	780,000

The Bonds maturing on September 1, 2037 are subject to mandatory sinking payment redemption in part on September 1, 2028, and on each September 1 thereafter to maturity, by lot, at a redemption price equal to the principal amount thereof to be redeemed, together with accrued interest to the date fixed for redemption, without premium, from sinking payments as follows:

Redemption Date (September 1)	Sinking Payment
2028	$ 855,000
2029	940,000
2030	1,025,000
2031	1,120,000
2032	1,220,000
2033	1,325,000
2034	1,440,000
2035	1,560,000
2036	1,690,000
2037 (maturity)	1,825,000

Notice of redemption with respect to the Bonds to be redeemed shall be given to the registered owners thereof, in the manner, to the extent and subject to the provisions of the Agreement.

The Bonds are issuable as fully registered Bonds without coupons in denominations of $5,000 or any integral multiple thereof. Subject to the limitations and upon payment of the charges, if any, provided in the Agreement, Bonds may be exchanged at the Principal Office of the Fiscal Agent for a like aggregate principal amount and maturity of Bonds of other authorized denominations.

Each registration and transfer of registration of this Bond shall be entered by the Fiscal Agent in books kept by it for this purpose and authenticated by its manual signature upon the certificate of authentication endorsed hereon.

No transfer or exchange hereof shall be valid for any purpose unless made by the registered owner, by execution of the form of assignment endorsed hereon, and authenticated as herein provided, and the principal hereof, interest hereon and any redemption premium shall be payable only to the registered owner or to such owner's order. The Fiscal Agent shall require the registered owner requesting transfer or exchange to pay any tax or other governmental charge required to be paid with respect to such transfer or exchange. No transfer or exchange hereof shall be required to be made (i) fifteen

days prior to the date established by the Fiscal Agent for selection of Bonds for redemption or (ii) with respect to a Bond after such Bond has been selected for redemption.

The Agreement and the rights and obligations of the City thereunder may be modified or amended as set forth therein.

The Bonds are not general obligations of the City, but are limited obligations payable solely from the revenues and funds pledged therefor under the Agreement. Neither the faith and credit of the City or the State of California or any political subdivision thereof is pledged to the payment of the Bonds.

This Bond shall not become valid or obligatory for any purpose until the certificate of authentication and registration hereon endorsed shall have been dated and manually signed by the Fiscal Agent.

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Fiscal Agent for registration of transfer, exchange or payment, and any Bond issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required by law to exist, happen and be performed precedent to and in the issuance of this Bond have existed, happened and been performed in due time, form and manner as required by law, and that the amount of this Bond does not exceed any debt limit prescribed by the laws or Constitution of the State of California.

IN WITNESS WHEREOF, City of Stockton has caused this Bond to be dated the Bond Date shown above, to be signed by the facsimile signature of its Mayor and countersigned by the facsimile signature of its City Clerk.

CITY OF STOCKTON

BY: _____
Mayor

[S E A L]

ATTEST:_____
City Clerk

FISCAL AGENT'S CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the Resolution and the Agreement which has been authenticated on_____.

THE BANK OF NEW YORK TRUST COMPANY, N.A.,
as Fiscal Agent

By: _____
Authorized Signatory

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned do(es) hereby sell, assign and transfer unto

_____

_____

_____

(Name, address and Tax identification Number of Assignee)

the within-mentioned registered Bond and hereby irrevocably constitute(s) and appoint(s) _____ attorney, to transfer the same on the books of the Fiscal Agent with full power of substitution in the premises.

Dated: _____

Signatures Guaranteed:

_____

Note: Signature guarantee shall be made by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Fiscal Agent.

_____

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

ATTACHMENT 8

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

March 21, 2008

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

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

Ladies/Gentlemen:

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

(i) a Loan Agreement by and between Lender and OPUS, as borrower, dated July 28, 2003 (as amended from time to time, the "Opus RLC Agreement");

(ii) a Construction Loan Agreement by and between Lender and OPUS, as borrower, dated March 13, 2007 (as amended from time to time, the "Commons at Chino Hills Construction Agreement");

(iii) a Construction Loan Agreement by and between Lender and OPUS and O.W. COMMERCIAL, INC., a Delaware corporation, jointly and severally,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Guarantor hereby agrees as follows:

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

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

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

7. Section 13(B) of the Shoppes at Chino Hills Guaranty and the Freemont Tech Guaranty are hereby amended in their entirety to read as follows:

B. Guarantor hereby agrees as follows:

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

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars ($125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars ($100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (excluding goodwill, patents, trademarks, trade names,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) to furnish to Lender certified annual financial statements within one hundred twenty (120) days after the close of each fiscal year; and

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

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

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

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

13. Sections 8.14(a), (b), (c), (d), and (e) of the Scripps Ranch Construction Agreement are hereby amended in their entirety to read as follows:

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

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

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

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

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

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

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

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

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

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

16. The following definitions are hereby added to Section 1.1 of the Broadstone Galleria Construction Agreement:

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

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

17. Sections 8.13, 8.14, and 8.15 of the Broadstone Galleria Construction Agreement are hereby amended in their entirety to read as follows:

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

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

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

18. Section 8.16 of the Broadstone Galleria Construction Agreement is hereby deleted in its entirety.

19. The following definitions are hereby added to Section 1.1 of the Opus May RLC Agreement:

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

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

20. Sections 5.4(b), (c), and (d) of the Opus May RLC Agreement are hereby amended in their entirety to read as follows:

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

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

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

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

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

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

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

With respect to the Opus RLC Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Commons at Chino Hills Construction Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Camarillo Ranch Agreement:

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

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

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Highland Village Condos Agreement and the Highland Village Condos Guaranty:

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

OPUS WEST LP, a Delaware limited partnership, Borrower

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

OPUS WEST LP, a Delaware limited partnership, Borrower

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

SHOPPES AT CHINO HILLS, INC., a Minnesota corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

By: _____
Name: Charles Vogel
Title: Vice President

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

With respect to the Cypress Agreement and the Cypress Guaranty:

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

By: _____
Name: Charles Vogel
Title: Vice President

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

Acknowledged and Agreed to as of the 25 day of March, 2008

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

By: _____
Name: Charles Vogel
Title: Vice President

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

OPUS WEST CORPORATION, a Minnesota corporation

By: _____
Name: _____
Title: _____

BORROWER

Opus West Corporation
March 21, 2008
Page 32

With respect to the Scripps Ranch Construction Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

By: _____
Name: _____
Title: _____

BORROWER

Opus West Corporation
March 21, 2008
Page 33

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

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

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

Acknowledged and Agreed to as of the 2nd day of March, 2008

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

With respect to the Opus May RLC Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

By: [signature]
Name: [redacted]
Title: [redacted]

BORROWER

CONSENT AND AGREEMENT OF GUARANTOR

The undersigned ("Guarantor") executed guarantees in connection with one or more of the Loans described and defined in the foregoing letter agreement. The Guarantor hereby consents and agrees to the modifications and all other matters contained in the letter agreement and agrees that nothing contained in the letter agreement shall in any manner affect or impair any of the obligations or liabilities of the undersigned Guarantor to Lender. Each guaranty executed by the Guarantor in connection with one or more of the Loans is continued in full force and effect and remains unaffected and unchanged except to the extent specifically amended by this consent and agreement. All such guaranties are hereby ratified and reaffirmed and Guarantor specifically acknowledges the validity and enforceability thereof.

Dated as of March 20, 2008.

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

ATTACHMENT 9

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

UCC Direct
a Wolters Kluwer business

P. O. Box 29071
Glendale, CA 91209-9071

1233769

SS, DE

DELAWARE DEPARTMENT OF STATE
U.C.C. FILING SECTION
FILED 04:30 PM 10/05/2007
INITIAL FILING # 2007 3772968

SRV: 071090995

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: ARCH ROAD LIMITED PARTNERSHIP					
OR 1b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX		
1c. MAILING ADDRESS: 10350 BREN ROAD WEST	CITY: MINNETONKA	STATE: MN	POSTAL CODE: 55343	COUNTRY: USA	
1d. SEE INSTRUCTIONS: ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION: LP	1f. JURISDICTION OF ORGANIZATION: DELAWARE	1g. ORGANIZATIONAL ID #, if any: 4378147	☐ NONE	

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
OR 2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX		
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY	
2d. SEE INSTRUCTIONS: ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any	☐ NONE	

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR SP) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: LASALLE BANK NATIONAL ASSOCIATION				
OR 3b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX	
3c. MAILING ADDRESS: 135 SOUTH LASALLE STREET	CITY: CHICAGO	STATE: IL	POSTAL CODE: 60603	COUNTRY: USA

4. This FINANCING STATEMENT covers the following collateral:

THE COLLATERAL DESCRIBED ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF, INCLUDING ANY COLLATERAL LOCATED ON THE REAL ESTATE DESCRIBED ON EXHIBIT "A" ATTACHED HERETO.

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

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

SCC NO. 044497-40356 (MSK) TO BE FILED WITH DELAWARE COST CENTER 111-1111

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02) International Association of Commercial Administrators (IACA)

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL A:

BEING A PORTION OF THAT CERTAIN TRACT OF LAND LYING IN SECTIONS 69,70,79 AND 80 OF C. M. WEBER GRANT EL RANCHO DEL CAMPO DE LOS FRANCESES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID POINT BEING DISTANT WESTERLY 243.20 FEET MEASURED ALONG SAID NORTHERLY BOUNDARY LINE FROM THE NORTHEAST CORNER OF SECTION 27; THENCE ALONG THE SOUTHWESTERLY LINE OF THAT CERTAIN 2.967 ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM WILLIAM LADD SALMON TO THE COUNTY OF SAN JOAQUIN RECORDED NOVEMBER 25, 1949 IN BOOK OF OFFICIAL RECORDS, BOOK 1083, PAGE 296, SAN JOAQUIN COUNTY RECORDS, THE FOLLOWING COURSES:

ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1045.60 FEET THROUGH A CENTER ANGLE OF 56° 06' 21" [THE LONG CHORD OF WHICH BEARS NORTH 56° 59' 10" WEST 983.46 FEET] AN ARC DISTANCE OF 1023.89 FEET; THENCE NORTH 28° 56' 00" WEST 328.59 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 965.60 FEET THROUGH A CENTRAL ANGLE OF 19° 28' 29" [THE LONG CHORD OF WHICH BEARS NORTH 38° 40' 15" WEST 326.63 FEET] AN ARC DISTANCE OF 328.21 FEET, MORE OR LESS TO A POINT IN THE SOUTHWESTERLY RIGHT OF WAY LINE OF MARIPOSA ROAD [80 FEET WIDE] PER O.D.P.H. ON NOVEMBER 6, 1861; LAST SAID POINT BEING THE MOST WESTERLY CORNER OF SAID 2.967 ACRE PARCEL; THENCE ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 52° 59' 40" WEST 1155.00 FEET, MORE OR LESS; THENCE CONTINUING ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 60° 23' 40" WEST 3015.48 FEET; THENCE LEAVING LAST SAID RIGHT OF WAY LINE SOUTH 18° 26' 00" EAST 1975.71 FEET; THENCE SOUTH 71° 49' 30" WEST 1622.55 FEET; THENCE SOUTH 18° 26' 30" EAST 959.71 FEET TO A POINT IN SAID NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 89° 39' 56" EAST 5343.87 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION BY GRANT DEED RECORDED DECEMBER 31, 2002, INSTRUMENT NO. 2002-237858,

OFFICIAL RECORDS AND RE-RECORDED MARCH 17, 2004, INSTRUMENT NO. 2004-053393, OFFICIAL RECORDS COUNTY OF SAN JOAQUIN.

PARCEL B:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4; A DISTANCE OF 1543.25 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE SOUTH 89° 33' 40" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 792.4 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 0° 51' EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2653.3 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 475.6 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY AS PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS WHICH POINT IS THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST PARALLEL WITH SAID WEST LINE OF NORTHWEST 1/4, A DISTANCE OF 1067.59 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750.0 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE NORTH 89° 33' 40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1864.8 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 0° 44' 40" EAST ALONG THE EAST LINE OF SAID NORTHWEST 1/4; A DISTANCE 2650.43 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89° 30' WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2222.3 FEET TO A POINT THAT IS NORTH 89° 30' EAST A DISTANCE OF 430.0 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4: THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 568.86 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY, PER BOOK OF SURVEYS,

BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 75° 42' WEST ALONG THE NORTHERLY LINE OF SAID SURVEY TO THE POINT OF BEGINNING.

PARCEL D:

PARCEL DI:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27 AS SAID IRON PIN IS SHOWN ON SURVEY MADE BY ROBERT ANGERMEIER FILED IN BOOK OF SURVEYS, BOOK 10, PAGE 86, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST A DISTANCE OF 490.0 FEET; THENCE NORTH 89° 28' EAST PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 380.0 FEET; THENCE SOUTH 0° 51' EAST A DISTANCE OF 490.0 FEET TO A POINT IN THE SOUTH LINE OF SAID NORTHWEST ¼; THENCE SOUTH 89° 28' WEST ALONG SAID SOUTH LINE OF THE NORTHWEST ¼, A DISTANCE OF 380.0 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO VERA E. SMITH AS EXECUTRIX OF WILLIAM L. SALMON, DECEASED BY INSTRUMENT RECORDED FEBRUARY 6, 1969 IN BOOK OF OFFICIAL RECORDS, BOOK 3275, PAGE 236, SAN JOAQUIN COUNTY RECORDS.

PARCEL DII:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27, NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE SOUTHWEST CORNER OF THE LANDS CONVEYED BY WILLIAM L. SALMON AND LYDIA A. SALMON TO HERNER B. PAULSON AND WINIFRED O. PAULSON AS PER DEED RECORDED APRIL 12, 1957 IN BOOK OF OFFICIAL RECORDS, BOOK 1962, PAGE 187, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 0° 51' WEST ALONG THE WEST LINE OF SAID PAULSON LANDS, A DISTANCE OF 490.0 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89° 28' EAST ALONG THE NORTH LINE OF SAID PAULSON LANDS, A DISTANCE OF 58.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 28' EAST ALONG SAID NORTH LINE OF PAULSON LANDS, A

DISTANCE OF 321.39 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 0° 51' WEST A DISTANCE OF 78.64 FEET; THENCE SOUTH 75° 42' WEST A DISTANCE OF 330.45 FEET TO THE POINT OF BEGINNING.

PARCEL E:

PARCEL 1, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL F:

PARCEL 3, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL G:

PARCEL 4, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL H:

COMMENCING AT THE COMMON CORNER OF SECTIONS 58, 59, 68 AND 69 OF C.M. WEBER'S GRANT, "EL RANCHO DEL CAMPO DE LOS FRANCESES"; THENCE SOUTHWESTERLY ALONG THE SECTION LINE BETWEEN SECTIONS 58 AND 59, 13.68 CHAINS; THENCE SOUTHWESTERLY PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 59 AND 69 OF SAID GRANT TO A POINT WHICH IS DISTANT FROM THE SOUTH LINE OF SAID WEBER GRANT, NORTH 17° 30' WEST, 838.7 FEET, AND BEING THE TRUE POINT OF BEGINNING OF THE PROPERTY HEREINAFTER DESCRIBED; THENCE FROM SAID POINT OF BEGINNING SOUTH 17° 30' EAST, 838.7 FEET TO THE SOUTH LINE OF WEBER GRANT; THENCE ALONG SAID SOUTH GRANT LINE SOUTH 89° 25' EAST, 2557.1 FEET TO THE SOUTHEAST CORNER OF SURVEY NO. 2358; THENCE ALONG THE EAST LINE OF SURVEY 2358 AND THE EAST LINE OF THE WEST 1/3 OF SECTION 69 OF C.M. WEBER'S GRANT, NORTH 17° 30' WEST, 1632.42 FEET TO THE POINT; THENCE SOUTH 72° 30' WEST, 2430.8 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

TAX IDENTIFICATION NUMBERS:

179-220-06
179-220-27
179-220-28
181-100-01
181-100-02
181-100-05
181-110-17
181-110-19
181-110-20

EXHIBIT B

DESCRIPTION OF ADDITIONAL COLLATERAL

Debtor: **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership

Secured Party: **LASALLE BANK, NATIONAL ASSOCIATION**, a national banking association, as Agent

---

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

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

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

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

5. Any and all other personal property of any kind, nature or description, whether tangible or intangible (excluding any rights to the name Opus and any derivative thereof) including without limitation, any and all goods, contract rights, franchises, licenses, permits,

chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, letter-of-credit rights, supporting obligations, and general intangibles including payment intangibles of Debtor relating to or used in connection with the operation or maintenance of the Real Estate, whether now owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

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

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

ATTACHMENT 10

[redacted]

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

Doc #: 2007-174144
10/8/07 10:04 AM
Page: 1 of 8 Fee: $20.00
Gary W. Freeman
San Joaquin County Recorders
Paid By:

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Schwartz Cooper Chartered
180 North LaSalle St., Suite 2700
Chicago, Illinois 60601
Attn: James J. Ginsburg, Esq.

NCS-315226-SAJ/RH

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: **ARCH ROAD LIMITED PARTNERSHIP**

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

1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
10350 BREN ROAD WEST	MINNETONKA	MN	55343	USA

1d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
		LP	DELAWARE	4378147 ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: **LASALLE BANK NATIONAL ASSOCIATION**

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

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
135 SOUTH LASALLE STREET	CHICAGO	IL	60603	USA

4. This FINANCING STATEMENT covers the following collateral:

THE COLLATERAL DESCRIBED ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF, INCLUDING ANY COLLATERAL LOCATED ON THE REAL ESTATE DESCRIBED ON EXHIBIT "A" ATTACHED HERETO.

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☑ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] | 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [optional] [ADDITIONAL FEE] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

SCC NO. 044497-40356 (MSK) TO BE FILED IN SAN JOAQUIN COUNTY COST CENTER 111-1111

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL A:

BEING A PORTION OF THAT CERTAIN TRACT OF LAND LYING IN SECTIONS 69,70,79 AND 80 OF C. M. WEBER GRANT EL RANCHO DEL CAMPO DE LOS FRANCESES AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID POINT BEING DISTANT WESTERLY 243.20 FEET MEASURED ALONG SAID NORTHERLY BOUNDARY LINE FROM THE NORTHEAST CORNER OF SECTION 27; THENCE ALONG THE SOUTHWESTERLY LINE OF THAT CERTAIN 2.967 ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM WILLIAM LADD SALMON TO THE COUNTY OF SAN JOAQUIN RECORDED NOVEMBER 25, 1949 IN BOOK OF OFFICIAL RECORDS, BOOK 1083, PAGE 296, SAN JOAQUIN COUNTY RECORDS, THE FOLLOWING COURSES:

ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 1045.60 FEET THROUGH A CENTER ANGLE OF 56° 06' 21" [THE LONG CHORD OF WHICH BEARS NORTH 56° 59' 10" WEST 983.46 FEET] AN ARC DISTANCE OF 1023.89 FEET; THENCE NORTH 28° 56' 00" WEST 328.59 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 965.60 FEET THROUGH A CENTRAL ANGLE OF 19° 28' 29" [THE LONG CHORD OF WHICH BEARS NORTH 38° 40' 15" WEST 326.63 FEET] AN ARC DISTANCE OF 328.21 FEET, MORE OR LESS TO A POINT IN THE SOUTHWESTERLY RIGHT OF WAY LINE OF MARIPOSA ROAD [80 FEET WIDE] PER O.D.P.H. ON NOVEMBER 6, 1861; LAST SAID POINT BEING THE MOST WESTERLY CORNER OF SAID 2.967 ACRE PARCEL; THENCE ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 52° 59' 40" WEST 1155.00 FEET, MORE OR LESS; THENCE CONTINUING ALONG LAST SAID SOUTHWESTERLY RIGHT OF WAY LINE NORTH 60° 23' 40" WEST 3015.48 FEET; THENCE LEAVING LAST SAID RIGHT OF WAY LINE SOUTH 18° 26' 00" EAST 1975.71 FEET; THENCE SOUTH 71° 49' 30" WEST 1622.55 FEET; THENCE SOUTH 18° 26' 30" EAST 959.71 FEET TO A POINT IN SAID NORTHERLY BOUNDARY LINE OF SECTION 27 AND 28; THENCE ALONG SAID NORTHERLY BOUNDARY LINE NORTH 89° 39' 56" EAST 5343.87 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION CONVEYED TO THE BURLINGTON NORTHERN SANTA FE RAILWAY COMPANY, A DELAWARE CORPORATION BY GRANT DEED RECORDED DECEMBER 31, 2002, INSTRUMENT NO. 2002-237858,

OFFICIAL RECORDS AND RE-RECORDED MARCH 17, 2004, INSTRUMENT NO. 2004-053393, OFFICIAL RECORDS COUNTY OF SAN JOAQUIN.

PARCEL B:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4; A DISTANCE OF 1543.25 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE SOUTH 89° 33' 40" WEST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 792.4 FEET TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 0° 51' EAST ALONG THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2653.3 FEET TO THE POINT OF BEGINNING.

PARCEL C:

A PORTION OF THE NORTHWEST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4; THENCE NORTH 89° 30' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 50.0 FEET; THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 475.6 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY AS PER BOOK OF SURVEYS, BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS WHICH POINT IS THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST PARALLEL WITH SAID WEST LINE OF NORTHWEST 1/4, A DISTANCE OF 1067.59 FEET; THENCE NORTH 89° 33' 40" EAST A DISTANCE OF 750.0 FEET; THENCE NORTH 1° 14' 30" WEST A DISTANCE OF 1110.08 FEET TO THE NORTH LINE OF SAID NORTHWEST 1/4; THENCE NORTH 89° 33' 40" EAST ALONG THE NORTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 1864.8 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 0° 44' 40" EAST ALONG THE EAST LINE OF SAID NORTHWEST 1/4; A DISTANCE 2650.43 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 89° 30' WEST ALONG THE SOUTH LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 2222.3 FEET TO A POINT THAT IS NORTH 89° 30' EAST A DISTANCE OF 430.0 FEET FROM THE SOUTHWEST CORNER OF SAID NORTHWEST 1/4: THENCE NORTH 0° 51' WEST PARALLEL WITH THE WEST LINE OF SAID NORTHWEST 1/4, A DISTANCE OF 568.86 FEET TO A 3/4" IRON PIPE AS SAID PIPE IS SHOWN ON MAP OF SURVEY, PER BOOK OF SURVEYS,

BOOK 17, PAGE 35, SAN JOAQUIN COUNTY RECORDS; THENCE SOUTH 75° 42' WEST ALONG THE NORTHERLY LINE OF SAID SURVEY TO THE POINT OF BEGINNING.

PARCEL D:

PARCEL DI:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27 AS SAID IRON PIN IS SHOWN ON SURVEY MADE BY ROBERT ANGERMEIER FILED IN BOOK OF SURVEYS, BOOK 10, PAGE 86, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 0° 51' WEST A DISTANCE OF 490.0 FEET; THENCE NORTH 89° 28' EAST PARALLEL WITH THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 380.0 FEET; THENCE SOUTH 0° 51' EAST A DISTANCE OF 490.0 FEET TO A POINT IN THE SOUTH LINE OF SAID NORTHWEST ¼; THENCE SOUTH 89° 28' WEST ALONG SAID SOUTH LINE OF THE NORTHWEST ¼, A DISTANCE OF 380.0 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO VERA E. SMITH AS EXECUTRIX OF WILLIAM L. SALMON, DECEASED BY INSTRUMENT RECORDED FEBRUARY 6, 1969 IN BOOK OF OFFICIAL RECORDS, BOOK 3275, PAGE 236, SAN JOAQUIN COUNTY RECORDS.

PARCEL DII:

A PORTION OF THE NORTHWEST ¼ OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 7 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCE AT AN IRON PIN MARKING THE SOUTHWEST CORNER OF SAID NORTHWEST ¼ OF SECTION 27, NORTH 89° 28' EAST ALONG THE SOUTH LINE OF SAID NORTHWEST ¼, A DISTANCE OF 50.0 FEET TO THE SOUTHWEST CORNER OF THE LANDS CONVEYED BY WILLIAM L. SALMON AND LYDIA A. SALMON TO HERNER B. PAULSON AND WINIFRED O. PAULSON AS PER DEED RECORDED APRIL 12, 1957 IN BOOK OF OFFICIAL RECORDS, BOOK 1962, PAGE 187, SAN JOAQUIN COUNTY RECORDS; THENCE NORTH 0° 51' WEST ALONG THE WEST LINE OF SAID PAULSON LANDS, A DISTANCE OF 490.0 FEET TO THE NORTHWEST CORNER THEREOF; THENCE NORTH 89° 28' EAST ALONG THE NORTH LINE OF SAID PAULSON LANDS, A DISTANCE OF 58.61 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 89° 28' EAST ALONG SAID NORTH LINE OF PAULSON LANDS, A

DISTANCE OF 321.39 FEET TO THE NORTHEAST CORNER THEREOF; THENCE NORTH 0° 51' WEST A DISTANCE OF 78.64 FEET; THENCE SOUTH 75° 42' WEST A DISTANCE OF 330.45 FEET TO THE POINT OF BEGINNING.

PARCEL E:

PARCEL 1, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL F:

PARCEL 3, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL G:

PARCEL 4, AS SHOWN AND DELINEATED ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON MAY 24, 2005 IN BOOK 23 OF PARCEL MAPS AT PAGE 118, SAN JOAQUIN COUNTY RECORDS.

EXCEPTING THEREFROM ALL MINERALS AND MINERAL RIGHTS, INTEREST AND ROYALTIES, INCLUDING WITHOUT LIMITING THE GENERALITY THEREOF OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AS WELL AS METALLIC OR OTHER SOLID MINERALS, IN AND UNDER SAID PROPERTY; HOWEVER SANTA FE LAND IMPROVEMENT COMPANY OR ITS SUCCESSORS AND ASSIGNS SHALL NOT HAVE THE RIGHT FOR ANY PURPOSE WHATSOEVER TO ENTER UPON, INTO OR THROUGH THE SURFACE OF SAID PROPERTY IN CONNECTION THEREWITH AS EXCEPTION IN DEED FROM SANTA FE LAND IMPROVEMENT COMPANY RECORDED DECEMBER 31, 1986, RECORDER'S INSTRUMENT NO. 86110920, SAN JOAQUIN COUNTY RECORDS.

PARCEL H:

COMMENCING AT THE COMMON CORNER OF SECTIONS 58, 59, 68 AND 69 OF C.M. WEBER'S GRANT, "EL RANCHO DEL CAMPO DE LOS FRANCESES"; THENCE SOUTHWESTERLY ALONG THE SECTION LINE BETWEEN SECTIONS 58 AND 59, 13.68 CHAINS; THENCE SOUTHWESTERLY PARALLEL WITH THE SECTION LINE BETWEEN SECTIONS 59 AND 69 OF SAID GRANT TO A POINT WHICH IS DISTANT FROM THE SOUTH LINE OF SAID WEBER GRANT, NORTH 17° 30' WEST, 838.7 FEET, AND BEING THE TRUE POINT OF BEGINNING OF THE PROPERTY HEREINAFTER DESCRIBED; THENCE FROM SAID POINT OF BEGINNING SOUTH 17° 30' EAST, 838.7 FEET TO THE SOUTH LINE OF WEBER GRANT; THENCE ALONG SAID SOUTH GRANT LINE SOUTH 89° 25' EAST, 2557.1 FEET TO THE SOUTHEAST CORNER OF SURVEY NO. 2358; THENCE ALONG THE EAST LINE OF SURVEY 2358 AND THE EAST LINE OF THE WEST 1/3 OF SECTION 69 OF C.M. WEBER'S GRANT, NORTH 17° 30' WEST, 1632.42 FEET TO THE POINT; THENCE SOUTH 72° 30' WEST, 2430.8 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

TAX IDENTIFICATION NUMBERS:

179-220-06
179-220-27
179-220-28
181-100-01
181-100-02
181-100-05
181-110-17
181-110-19
181-110-20

EXHIBIT B

DESCRIPTION OF ADDITIONAL COLLATERAL

Debtor: **ARCH ROAD LIMITED PARTNERSHIP**, a Delaware limited partnership

Secured Party: **LASALLE BANK, NATIONAL ASSOCIATION**, a national banking association, as Agent

---

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

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

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

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

5. Any and all other personal property of any kind, nature or description, whether tangible or intangible (excluding any rights to the name Opus and any derivative thereof) including without limitation, any and all goods, contract rights, franchises, licenses, permits,

chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, letter-of-credit rights, supporting obligations, and general intangibles including payment intangibles of Debtor relating to or used in connection with the operation or maintenance of the Real Estate, whether now owned or hereafter acquired, or in which Debtor now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

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

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

ATTACHMENT 11

GUARANTY OF PAYMENT AND COMPLETION

This **GUARANTY OF PAYMENT AND COMPLETION** dated as of October 4, 2007 (this "Guaranty"), is executed by **OPUS WEST CORPORATION**, a Minnesota corporation (the "Guarantor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, as Agent for itself and the other Banks (as defined in the Loan Agreement as hereinafter defined) (the "Agent").

RECITALS:

A. The Banks have agreed to make loans in the aggregate principal amount of Fifty Four Million Nine Hundred Seventy Five Thousand and 00/100 Dollars ($54,975,000.00) (collectively, the "Loans") to Arch Road Limited Partnership, a Delaware limited partnership ("Borrower") pursuant to the terms and conditions of that certain Construction Loan Agreement dated as of even date herewith (the "Loan Agreement") between the Borrower, Agent, as agent, and the Banks. All terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

B. As a condition precedent to the Banks making the Loans to Borrower and in consideration thereof, the Banks have required the execution and delivery of (i) this Guaranty by Guarantor, (ii) that certain Promissory Note in the principal amount of $54,975,000.00 in favor of LaSalle Bank National Association, as a Bank, (as amended, modified, restated or replaced from time to time, and any replacement notes executed in connection with any syndication of the Loans, collectively, the "Note"), (iii) that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (as amended from time to time, "Deed of Trust") from Borrower for the benefit of Agent encumbering the real property, improvements and personalty described therein ("Premises"), and (viii) the other Loan Documents (as defined in the Loan Agreement).

C. Guarantor has indirect ownership interest in Borrower and, having a financial interest in the Premises, has agreed to execute and deliver this Guaranty to Agent.

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

AGREEMENTS:

1. Guaranty of Payment. The Guarantor hereby unconditionally, absolutely and irrevocably guaranties to the Banks the punctual payment when due whether at stated maturity or by acceleration or otherwise, the indebtedness and other obligations of the Borrower to the Banks evidenced by the Note and any other amounts that may become owing by the Borrower under the Loan Documents (such indebtedness, obligations and other amounts are hereinafter referred to as "Payment Obligations"). This Guaranty is a present and continuing guaranty of payment and not of collectability, and the Agent shall not be required to prosecute collection, enforcement or other remedies against the Borrower or any other guarantor of the Payment Obligations, or to enforce or resort to any collateral for the repayment of the Payment Obligations or other rights or remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason the Borrower shall fail or be unable to pay, punctually and fully, any

of the Payment Obligations, the Guarantor shall pay such obligations to the Agent in full immediately upon demand. One or more successive actions may be brought against the Guarantor, as often as the Agent deems advisable, until all of the Payment Obligations are paid and performed in full. The Payment Obligations, the Construction Obligations (as hereinafter defined) together with all other payment and performance obligations of the Guarantor hereunder, are referred to herein as the "Obligations".

2. Performance Guaranty.

(a) Subject to the Agent making funds available to Guarantor to the extent and in accordance with the provisions of Section 2(d) and subject to Section 2(e) below, the Guarantor absolutely, unconditionally and irrevocably undertakes and guarantees, for the benefit of the Agent and each and every present and future holder or holders of the Note or assignee or assignees of the Loan Documents, that all construction obligations of the Borrower for completion of the Project in accordance with the plans and specifications, and the Loan Documents and other performance obligations of the Borrower under the Loan Documents (referred to herein as the "Construction Obligations") shall be completed prior to the applicable completion date and in accordance with the other terms and conditions contained in the Loan Agreement, free and clear of any and all liens, charges, security interests and claims of any kind and nature whatsoever except as permitted by the Loan Agreement or being contested in good faith as provided in the Loan Agreement. Subject to the Agent making funds available to Guarantor to the extent and in accordance with the provisions of Section 2(d), the Guarantor shall cause the Construction Obligations to be performed, completed and paid for in the manner and at the applicable times required to be so performed, completed and paid for by the Borrower under the Loan Agreement, to the extent that the Borrower fails to do so at any and all applicable times.

(b) Upon the occurrence of an Event of Default which remains uncured by the Borrower under the Loan Documents, the Guarantor agrees, on not more than thirty (30) days written demand by the Agent (a "Demand Notice") to commence performance of the Construction Obligations and to diligently pursue performance thereof to completion, as described below. The Guarantor shall indemnify, defend (with counsel chosen by Guarantor and reasonably acceptable to Agent) and hold the Agent and Banks harmless for, from and against any and all loss, damage (excluding consequential, incidental, special or similar-type damages, except to the extent claimed by a third party), cost, expense, injury or liability the Agent or Banks may suffer or incur in connection with third party claims brought as a result of the performance of the Construction Obligations by the Guarantor except such loss, damage, cost, expense, injury or liability caused by Lender's or its agent's negligence or willful misconduct, provided Lender shall tender the defense of any such claim to Guarantor within a commercially reasonable period of time. If the Guarantor fails to commence and pursue diligently the performance of the Construction Obligations within thirty (30) days after its receipt of a Demand Notice, then either before or after pursuing any other remedy of the Agent against the Guarantor or the Borrower and regardless of whether the Agent shall ever pursue any such other remedy, the Agent shall have the right to complete the Construction Obligations, or call upon any other reputable parties to complete the Construction Obligations, in accordance

with the plans and specifications (as may be modified in accordance with the terms of the Loan Agreement) and shall have the right to expend such sums as the Agent in its discretion deems proper in order so to complete the Construction Obligations. During the course of any construction undertaken by the Agent or by any other party on behalf of the Agent, the Guarantor shall pay on demand any amounts due to any contractor, subcontractor and other material suppliers and for permits and licenses necessary to complete the Construction Obligations, without regard to any limitation on liability set forth herein. The Agent at any time may require the Guarantor to perform or supervise the performance of such work in lieu of the Agent or any party engaged by the Agent. The obligations of the Guarantor in connection with such work shall not be affected by any errors or omissions of the Borrower, the contractor, the architect, any subcontractor, or any agent or employee of any of them in design, supervision or performance of the work, it being understood that such risk is assumed by the Guarantor. Neither the completion of the Construction Obligations nor failure of said parties to complete the Construction Obligations shall relieve the Guarantor of any liabilities hereunder; rather, such liability shall be continuing, except as otherwise provided herein, and may be enforced by the Agent to the end that the Construction Obligations shall be completed timely as contemplated by the Loan Agreement, the Leases, and the plans and specifications, free of any liens except for those which are being contested in accordance with the terms of the Loan Agreement, and without loss, expense, injury or liability of any kind to the Agent and the Banks.

(c) For purposes of this Section 2, the Construction Obligations shall be deemed to be completed upon receipt by the Agent of (i) a certificate of completion from an inspecting architect, acceptable to Agent, attesting to substantial completion of the Construction Obligations, and (ii) construction date-down and interim mechanics' lien endorsements to the Title Policy, insuring the continuing validity and priority of the Deed of Trust for the full amount of the Loans theretofore disbursed, excepting only such items as shall be permitted under the Loan Agreement, and insuring over mechanics' and materialmen's liens arising (or which may arise) from work performed and materials supplied in connection with the construction of the Construction Obligations prior to the date of satisfaction of the conditions described in clauses (i) and (ii) above.

(d) Without in any way limiting the above obligations of the Guarantor, the Agent agrees, by acceptance of this Guaranty, so long as the Event of Default committed by Borrower did not involve fraud or willful misconduct, to make the undisbursed Loan proceeds available to the Guarantor, for the purposes set forth in the Loan Agreement and in accordance with the Project Budget (as defined in the Loan Agreement), subject to the following conditions:

(i) The Guarantor shall confirm to the Agent in writing that it intends to perform the Construction Obligations and shall have commenced and is diligently pursuing performance of the Construction Obligations.

(ii) The Guarantor shall cause the Loan to be and remain In Balance in accordance with the provisions of the Loan Agreement.

(iii) The Guarantor shall cure any Event of Default under the Loan Agreement or any other Loan Document, other than any Event of Default which by its nature is personal to the Borrower and is therefore not susceptible of cure by the Guarantor.

(iv) All disbursements of Loan Proceeds pursuant to this paragraph shall be subject to the terms and conditions of the Loan Agreement.

(v) Without limitation on any other requirement, each disbursement of Loan Proceeds pursuant to this paragraph shall be subject to the Guarantor furnishing to the Lender the endorsements to the Agent's title insurance policy that is required by the Loan Agreement, if available without any exclusion for creditors rights.

(e) Notwithstanding anything herein to the contrary, upon payment in full of the Payment Obligations, the Construction Obligations and this Guaranty shall automatically terminate and be of no further force and effect.

3. Representations and Warranties. The following shall constitute representations and warranties of the Guarantor, and the Guarantor hereby acknowledges that the Banks intend to make the Loans in reliance thereon:

(a) The Guarantor is not in default, and no event has occurred which, with the passage of time and/or the giving of notice, would constitute a default, under any agreement to which the Guarantor is a party, the effect of which will materially impair performance by the Guarantor of its obligations under this Guaranty. Neither the execution and delivery of this Guaranty nor compliance with the terms and provisions hereof will, to the best of Guarantor's knowledge, violate any applicable law, rule, regulation, judgment, decree or order, or will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which the Guarantor is a party or to which the Guarantor or the property of the Guarantor may be subject.

(b) There are no litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to the knowledge of the Guarantor, threatened that could adversely affect performance by the Guarantor of its obligations under this Guaranty.

(c) Neither this Guaranty nor any statement or certification as to facts previously furnished or required herein to be furnished to the Agent by the Guarantor, contains any material inaccuracy or untruth in any representation, covenant or warranty or omits to state a fact material to this Guaranty.

(d) All financial statements, and, to the best of Guarantor's knowledge, all budgets, schedules, opinions, certificates, confirmations, applications, affidavits, agreements and other materials submitted to Agent in connection with or in furtherance of this Guaranty by or on behalf of Guarantor fully and fairly state the matters with which they purport to deal, and neither misstate any material fact nor, separately, or in the

aggregate, fail to state any material fact necessary to make the statements made not misleading. For purposes of this subsection (d), "to the best of Guarantor's knowledge" shall mean the actual knowledge of Charles Vogel or Thomas Roberts and their replacements.

4. Continuing Guaranty. The Guarantor agrees that performance of the Obligations by the Guarantor shall be a primary obligation, shall not be subject to any counterclaim, set-off, abatement, deferment or defense (other than failure of the Agent to make funds available to the extent and in accordance with the provisions of Section 2(d) herein) based upon any claim that the Guarantor may have against the Agent or the Banks, the Borrower, any other guarantor of the Obligations or any other person or entity, and shall remain in full force and effect without regard to, and shall not be released, discharged or affected in any way by, any circumstance or condition (whether or not the Guarantor shall have any knowledge thereof), including without limitation:

(a) any lack of validity or enforceability of any of the Loan Documents;

(b) any termination, amendment, modification or other change in any of the Loan Documents, including, without limitation, any modification of the interest rate(s) described therein;

(c) any furnishing, exchange, substitution or release of any collateral securing repayment of the Loans, or any failure to perfect any lien in such collateral;

(d) any failure, omission or delay on the part of the Borrower, the Guarantor, any other guarantor of the Obligations or the Agent or the Banks to conform or comply with any term of any of the Loan Documents, except for delivery of the Demand Notice as provided in Section 2(b) hereof, or any failure of the Agent to give notice of any Event of Default (as defined in the Loan Agreement);

(e) any waiver, compromise, release, settlement or extension of time of payment or performance or observance of any of the obligations or agreements contained in any of the Loan Documents;

(f) any action or inaction by the Agent or the Banks under or in respect of any of the Loan Documents, any failure, lack of diligence, omission or delay on the part of the Agent or the Banks to perfect, enforce, assert or exercise any lien, security interest, right, power or remedy conferred on it in any of the Loan Documents, or any other action or inaction on the part of the Agent or the Banks, other than a defense of a failure of the Lender to make funds available to the extent and in accordance with the provisions of Section 2(d) hereof;

(g) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to the Borrower, the Guarantor or any other guarantor of the Obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(h) any merger or consolidation of the Borrower into or with any entity, or any sale, lease or transfer of any of the assets of the Borrower, the Guarantor or any other guarantor of the Obligations to any other person or entity;

(i) any change in the ownership of the Borrower or any change in the relationship between the Borrower, the Guarantor or any other guarantor of the Obligations, or any termination of any such relationship;

(j) any release or discharge by operation of law of the Borrower, the Guarantor or any other guarantor of the Obligations from any obligation or agreement contained in any of the Loan Documents other than discharge through payment in full of the Loans; or

(k) any other occurrence, circumstance, happening or event, whether similar or dissimilar to the foregoing and whether foreseen or unforeseen, which otherwise might constitute a legal or equitable defense or discharge of the liabilities of a guarantor or surety or which otherwise might limit recourse against the Borrower or the Guarantor to the fullest extent permitted by law, other than a defense of a failure of the Agent to make funds available to the extent and in accordance with the provisions of Section 2(d) hereof.

5. Waivers. The Guarantor expressly and unconditionally waives (i) notice of any of the matters referred to in Section 4 above, (ii) all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against the Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of non-payment under any of the Loan Documents and notice of any Event of Default or any failure on the part of the Borrower, the Guarantor or any other guarantor of the Obligations to perform or comply with any covenant, agreement, term or condition of any of the Loan Documents, (iii) any right to the enforcement, assertion or exercise against the Borrower, the Guarantor or any other guarantor of the Obligations of any right or remedy conferred under any of the Loan Documents, (iv) any requirement of diligence on the part of any person or entity, (v) to the fullest extent permitted by law and except as otherwise expressly provided in this Guaranty or the other Loan Documents, any claims based on allegations that Agent has failed to act in a commercially reasonable manner or failed to exercise Agent's so-called obligation of good faith and fair dealing, (vi) any requirement to exhaust any remedies or to mitigate the damages resulting from any default under any of the Loan Documents and (vii) any notice of any sale, transfer or other disposition of any right, title or interest of the Agent or the Banks under any of the Loan Documents.

6. Intentionally Omitted.

7. Subrogation Waiver. Until the Obligations are paid in full and all periods under applicable bankruptcy law for the contest of any payment by the Guarantor or the Borrower as a preferential or fraudulent payment have expired, the Guarantor knowingly, and with advice of counsel, waives, relinquishes, releases and abandons all rights and claims to indemnification, contribution, reimbursement and subrogation which the Guarantor may now or hereafter have by and from the Borrower and the successors and assigns of the Borrower, for any payments made by the Guarantor to the Agent, including, without limitation, any rights which might allow the

Borrower, the Borrower's successors, a creditor of the Borrower, or a trustee in bankruptcy of the Borrower to claim in bankruptcy or any other similar proceedings that any payment made by the Borrower or the Borrower's successors and assigns to the Agent was on behalf of or for the benefit of the Guarantor and that such payment is recoverable by the Borrower, a creditor or trustee in bankruptcy of the Borrower as a preferential payment, fraudulent conveyance, payment of an insider or any other classification of payment which may otherwise be recoverable from the Agent. It is acknowledged and agreed that the foregoing provision shall in no way apply to or limit Borrower's obligations to Guarantor under any development agreement or construction agreement by and between Borrower and Guarantor.

8. Reinstatement. The obligations of the Guarantor pursuant to this Guaranty shall continue to be effective or automatically be reinstated, as the case may be, if at any time payment of any of the Obligations or the obligations of the Guarantor under this Guaranty is rescinded or otherwise must be restored or returned by the Agent upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Guarantor or the Borrower or otherwise, all as though such payment had not been made.

9. Financial Statements. The Guarantor represents and warrants to the Agent that (a) the financial statements of the Guarantor previously submitted to the Agent are true, complete and correct in all material respects, disclose all actual and contingent liabilities, and fairly present the financial condition of the Guarantor, and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statements submitted or this Guaranty, and (b) no Material Adverse Occurrence (as defined in the Loan Agreement) has occurred in the financial statements from the dates thereof until the date hereof. The Guarantor shall promptly supply Agent, as soon as available and in no event later than one hundred twenty (120) days after the close of each fiscal year, audited financial statements of Guarantor, and within sixty (60) days of the end of each fiscal quarter, internally prepared financial statements of Guarantor, each showing the results of operations of the Guarantor and consisting of a balance sheet, cash flow statement, and statement of income and expense prepared in accordance with GAAP (with the exception, in the case of quarterly reports, of the presentation requirements of Financial Accounting Standards No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets) signed by an officer of Guarantor.

10. Intentionally Omitted.

11. Enforcement Costs. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding; (b) one or more attorneys is retained to represent the Agent or the Banks in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent the Agent or the Banks in any other proceedings whatsoever in connection with this Guaranty, then the Guarantor shall pay to the Agent upon demand all fees, costs and expenses incurred by the Agent or the Banks in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as the "Enforcement Costs"), in addition to all other amounts due hereunder.

12. Successors and Assigns; Joint and Several Liability. This Guaranty shall inure to the benefit of the Agent and its successors and assigns. This Guaranty shall be binding on the Guarantor and the successors and assigns of the Guarantor. It is agreed that the liability of the Guarantor hereunder is several and independent of any other guarantees or other obligations at any time in effect with respect to the Obligations or any part thereof and that the liability of the Guarantor hereunder may be enforced regardless of the existence, validity, enforcement or non-enforcement of any such other guarantees or other obligations.

13. No Waiver of Rights. No delay or failure on the part of the Agent to exercise any right, power or privilege under this Guaranty or any of the other Loan Documents shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance between the parties hereto. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.

14. Modification. The terms of this Guaranty may be waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. No amendment, modification, waiver or other change of any of the terms of this Guaranty shall be effective without the prior written consent of the Agent.

15. Joinder. Any action to enforce this Guaranty may be brought against the Guarantor without any reimbursement or joinder of the Borrower or any other guarantor of the Obligations in such action.

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

17. Applicable Law. This Guaranty is governed as to validity, interpretation, effect and in all other respects by laws and decisions of the State of Minnesota.

18. Notices. All notices, communications and waivers under this Guaranty shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

To Agent:

LaSalle Bank National Association
Suite 1225
135 South LaSalle Street
Chicago, Illinois 60603
Attn: Commercial Real Estate

with a copy to:	LaSalle Bank National Association Suite 1425 135 South LaSalle Street Chicago, Illinois 60603 Attn: Commercial Real Estate Syndications
with a copy to:	Schwartz Cooper Chartered 180 North LaSalle Street, Suite 2700 Chicago, Illinois 60601 Attn: Michael S. Kurtzon, Esq.
To Guarantor:	Opus West Corporation 2555 East Camelback Road, Suite 800 Phoenix, Arizona 85016-9267 Attn: Senior Vice President, Real Estate, Finance and Sales
with a copy to:	Opus West Corporation 2555 East Camelback Road, Suite 800 Phoenix, Arizona 85016-9267 Attn: Legal Department
with a copy to:	Briggs and Morgan PA 2200 IDS Center 80 South 8th Street Minneapolis, Minnesota 55402 Attn: Charles R. Haynor, Esq.

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

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

20. WAIVER OF DEFENSES. OTHER THAN CLAIMS BASED UPON THE FAILURE OF THE AGENT TO ACT IN A COMMERCIALLY REASONABLE MANNER, INCLUDING FAILING TO MAKE FUNDS AVAILABLE TO GUARANTOR IN ACCORDANCE WITH THE PROVISIONS OF SECTION 2(D) HEREOF, THE GUARANTOR WAIVES EVERY PRESENT AND FUTURE DEFENSE (OTHER THAN THE DEFENSE OF PAYMENT IN FULL OR BASED UPON THE STATUTE OF LIMITATIONS), CAUSE OF ACTION, COUNTERCLAIM OR SETOFF WHICH THE GUARANTOR OR THE BORROWER MAY NOW HAVE OR HEREAFTER MAY HAVE TO ANY ACTION BY AGENT IN ENFORCING THIS GUARANTY OR ANY OF THE LOAN DOCUMENTS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENT'S GRANTING ANY FINANCIAL ACCOMMODATION TO THE BORROWER.

21. WAIVER OF JURY TRIAL. THE GUARANTOR AND THE AGENT (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE GUARANTOR AGREES THAT THE GUARANTOR WILL NOT ASSERT ANY CLAIM AGAINST THE AGENT OR THE BANKS ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

22. Financial Covenants.

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

(i) Guarantor shall maintain an Adjusted Tangible Net Worth (as hereinafter defined) of at least Seventy Five Million and 00/100 Dollars ($75,000,000.00). Guarantor's Adjusted Tangible Net Worth shall be calculated as of the end of each fiscal quarter and fiscal year.

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

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

(iv) From the date hereof through March 31, 2008, Guarantor shall maintain an Outstanding Bank Debt Ratio (as hereinafter defined) equal to or less than 5.0:1.0. At all times after March 31, 2008, Guarantor shall maintain an

Outstanding Bank Debt Ratio equal to or less than 4.0:1.0. Guarantor's Outstanding Bank Debt Ratio shall be calculated at of the end of each fiscal quarter and fiscal year.

For purposes of this section, (i) "Adjusted Tangible Net Worth" shall mean the sum of all items which, in accordance with generally accepted accounting principals, consistently applied ("GAAP"), would be included as tangible assets plus Subordinated Affiliate Debt, less Indebtedness and all items which, in accordance with GAAP, would be included as minority interests, (ii) "Subordinated Affiliate Debt" shall mean all non-contingent liabilities owed by Guarantor to one or more Affiliates of Guarantor which are junior and subordinate to the liabilities of Guarantor to the Banks under the Note and Loan Documents, (iii) "Indebtedness" shall mean all items, which in accordance with GAAP, would be included as liabilities on the consolidated balance sheet of Guarantor other than Subordinated Affiliate Debt, (iv) "Leverage Ratio" shall mean the ratio of Indebtedness to Adjusted Tangible Net Worth, (v) "Outstanding Bank Debt" shall mean (without duplication) the aggregate of all of Guarantor's Indebtedness, obligations and other liabilities to banks and other financial institutions less Subordinated Affiliated Debt for or with respect to (A) borrowed money, (B) reimbursement obligations with respect to letters of credit or similar instruments for which have been drawn and (C) all other items which, in accordance with GAAP, would be included as liabilities on the consolidated balance sheet of Guarantor; and (vi) "Outstanding Bank Debt Ratio" shall mean the ratio of Outstanding Bank Debt to Adjusted Tangible Net Worth.

(b) Guarantor's failure to comply with all the Financial Covenants, after a period of thirty (30) days after Guarantor obtains actual knowledge of such failure or receives written notice of such failure to cure the same, shall constitute an Event of Default under the Loan Agreement and other Loan Documents, provided that if Guarantor is diligently attempting to effect such cure, the cure period shall be extended for forty-five (45) additional days.

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

OPUS WEST CORPORATION, a Minnesota corporation

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

ATTACHMENT 12

Quarles & Brady LLP

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

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

April 9, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Arch Road Limited Partnership
c/o Stockton GP, L.L.C.
10350 Bren Road West
Minnetonka, Minnesota 55343
Attn: Wade Lau, Vice President

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

RE: ***$54,975,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association and successor by merger to LaSalle Bank National Association, individually as a Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Arch Road Limited Partnership, a Delaware limited partnership ("Borrower")***

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of a default (the "Specified Default") under Section 22(a)(iii) of the Guaranty Of Payment And Completion dated October 4, 2007, executed by Opus West Corporation ("Guarantor") and delivered to the Banks (as amended, supplemented, or modified from time to time, the "Guaranty"). Borrower has informed Bank of America that, for the fiscal quarter ended December 31, 2008, Guarantor will fail to satisfy the Total Liabilities to Tangible Net Worth requirement of not exceeding 6.0 to 1.0 on a consolidated basis as required under the Section 22(a)(iii) of the Guaranty. If the Specified Default is not cured on or before May 9, 2009, the Specified Default will constitute an Event of Default under Section 11.1 of the Construction Loan Agreement dated October 4, 2007 between Borrower and Banks (the "Loan Agreement") and under the terms of certain promissory

notes made by Borrower and delivered to each Bank in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively as the "Loan Documents". If the Specified Default is not timely cured, interest at the Default Rate (as defined and provided for in, and calculated according to, Sections 4.1 and 12.6 of the Loan Agreement) will commence and accrue from and after May 10, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the Specified Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Banks, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent any Bank elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Bank of the Specified Default or performance or cure of the Specified Default by Borrower; constitute an amendment of any term or condition of any Loan Document; create an obligation of any Bank to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Banks' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Banks, hereby also reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Specified Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the Project is located. Each of the Banks may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

In the event the foregoing Specified Default is not cured on or before May 9, 2009: (i) Bank of America, on behalf of itself and the other Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest and other charges recoverable as a consequence of the Specified Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and the other Banks, is entitled to enforce the Banks' rights and remedies relating to its collateral, including, without limitation, appointment of a receiver and foreclosure.

Nothing in this letter or in the Banks' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Banks and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with

any default by Borrower, and Bank of America, on behalf of itself and the other Banks, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any Bank, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP

Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

Via UPS Overnight:
Opus L.L.C.
10350 Bren Road West
Minnetonka, Minnesota 55343
Attn: Legal Department

Via UPS Overnight:
Briggs and Morgan PA
2200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402
Attn: Charles R. Haynor, Esq.

Northern District of Texas
Claims Register

09-34356-hdh11 Opus West Corporation

Judge: Harlin DeWayne Hale **Chapter:** 11

Office: Dallas **Last Date to file claims:** 11/09/2009

Trustee: **Last Date to file (Govt):**

Creditor: (12791347) BANK OF AMERICA, N.A. c/o Casey Carpenter Vice President Real Estate Special Assets 333 S. Hope St., 11th Floor Los Angeles, CA 90071-1406	**Claim No: 71** *Original Filed Date*: 11/09/2009 *Original Entered Date*: 11/09/2009	*Status:* *Filed by:* CR *Entered by:* Richter, Katharine *Modified:*
Unsecured claimed: $25277233.84 **Total claimed: $25277233.84**		

History:

Details 71-1 11/09/2009 Claim #71 filed by BANK OF AMERICA, N.A., total amount claimed: $25277233.84 (Richter, Katharine)

Description: (71-1) Arch Road Stockton

Remarks: (71-1) But see Addendum for possible secured status

Claims Register Summary