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.

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

☐ Check this box to indicate that this claim amends a previously filed claim.

Court Claim Number:_____ (*If known*)

Filed on:_____

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

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BMC GROUP

☐ 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: $ 36,908,168.53

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

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

Specify the priority of the claim.

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

☐ Wages, salaries, or commissions (up to $10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4).

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

☐ Up to $2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7).

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

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

Amount entitled to priority:

$_____

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

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

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

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

If the documents are not available, please explain:

Date: 11/09/2009

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

Dean M Lyons

DEAN M. LYONS
AUTHORIZED AGENT

FOR COURT USE ONLY

OPUS WEST
00608

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.

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 (HORIZON SCRIPPS RANCH)
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 September 27, 2007, by and among Opus West Corporation ("Opus West"), as Borrower, and LaSalle Bank National Association ("LaSalle"), as Lender (as amended, the "Loan Agreement"), and for valuable consideration, LaSalle agreed to make a loan to Opus West in the maximum principal amount of Thirty-Eight Million Five Hundred and No/100 Dollars ($38,500,000.00) (the "Loan"). The purpose of the Loan was to provide financing for the development and construction of improvements on the Property (as defined below).

3. In connection with the Loan, for valuable consideration, Opus West executed and delivered to LaSalle a Deed of Trust Note dated as of September 27, 2007, in the original principal amount of $38,500,000.00 (as amended, the "Original Note").

4. Effective April 30, 2008, LaSalle, as the agent on behalf of itself, Huntington National Bank, and Fidelity Bank (collectively, the "Lenders"), entered into that certain Assumption and Modification Agreement pursuant to which Sequoia Realty Limited Partnership ("Sequoia Realty") assumed the obligation for payment and performance under the Loan Agreement and modifying certain other provisions of the Loan Agreement (the "Sequoia Assumption Agreement").[1]

5. In connection with the Sequoia Assumption Agreement, for valuable consideration, Sequoia Realty executed those certain Promissory Notes in the aggregate amount of $38,500,000.00, as follows: $10,000,000.00 [Fidelity Bank] dated as of September 5, 2008; $14,250,000.00 [LaSalle] dated as of September 5, 2008; and $14,250,000.00 [Huntington National Bank] dated as of September 5, 2008 (collectively, the "Sequoia Notes").

6. 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.

[1] A Memorandum of Modification and Assumption dated as of April 30, 2008, was filed in the Official Records of San Diego County, California on April 30, 2008 as Document No. 2008-0231515.

7. All amounts claimed herein are further secured by perfected mortgages, security interests, and liens in and to the Property (as defined below) as described and granted in the Loan Agreement, Sequoia Assumption Agreement, the Note, the Sequoia Notes, and the following additional documents (the following described documents, together with any and all other or additional agreements, instruments, or other documents evidencing, securing, or otherwise relating to the Loans are hereinafter referred to collectively as the "Loan Documents"):

a. On March 21, 2008, Agent, Opus West, and certain other parties entered into a letter agreement that amended certain provisions of the Loan Documents relating to Opus West's agreement to maintain certain liquidity and net worth levels (the "Modification Agreement").

b. A Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing dated as of September 27, 2007, executed by Opus West, as Trustor, to First American Title Insurance Company, as Trustee, for the benefit of LaSalle, as Beneficiary, and recorded in the Official Records of San Diego County, California (the "Official Records") on September 27, 2007, as Document No. 2007-0630364, and amended pursuant to the Memorandum of Assumption, that certain Modification of Deed of Trust and Other Loan Documents, dated as of September 5, 2008, for the benefit of LaSalle as Agent for itself and the other Lenders, and that certain Memorandum of Modification of Deed of Trust and Other Loan Documents, and recorded in the Official Records on September 5, 2008, as Document No. 2008-0475731 (as amended, the "Deed of Trust"). The Deed of Trust encumbers, among other things, certain real property located in San Diego County, California, as more particularly described therein (the "Property"). The Deed of Trust, inclusive of all assignment and security provisions contained therein, gives the Agent, for itself and the other Lenders, a security interest in the Property, improvements, land, proceeds, leases, rents and all other interests (as more fully described therein) derived from and related to the Property (collectively, the "Collateral").

c. Those certain assignments dated as of September 27, 2007, collectively referred to herein as the "Assignments":

i. That certain Assignment of Rents and Leases, dated as of September 27, 2007 in favor of Agent;

ii. That certain Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits in favor Agent and recorded in the Official Records on September 27, 2007 as Document No. 2007-0630365.

d. Financing Statements.

i. UCC-1 Financing Statement filed on October 2, 007 with the Minnesota Secretary of State as No. 200718438287 naming Opus West as debtor and Agent as secured party;

ii. UCC-1 Financing Statement filed on April 30, 2008 in the Official Records as No. 2008-0231516 naming Sequoia Realty as debtor and Agent as secured party; and

iii. UCC-1 Financing Statement filed on May 08, 2008 in the Official Records as No. 2008-1667706 naming Sequoia Realty as debtor and Agent as secured party.

8. Opus West executed a Guaranty Agreement on April 30, 2008, wherein Opus West irrevocably and unconditionally guaranteed the obligations of Sequoia Realty to Agent, for itself and the other Lenders.

9. Prior to Opus West's July 6, 2009 petition date (the "Petition Date"), Sequoia Realty defaulted under the terms of the Loan Documents. As a result of the events of default, Agent sent Sequoia Realty default letters dated April 9 and May 5, 2009, notifying it of the various events of default that had occurred and demanding that Agent pay all past-due amounts in accordance with the terms of the Loan Documents. Sequoia Realty failed to cure the defaults under the Loan, and, as a result, Agent exercised its rights under the Loan Documents to accelerate the Loan and declare all outstanding amounts immediately due and payable.

10. On August 31, 2009, Agent sent Sequoia Realty an acceleration letter, notifying it of Agent's election to accelerate the Loan and demanding immediately repayment of all outstanding amounts (the "Notice of Default").

11. 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 **$36,908,168.53** (the "Liquidated Agent Claim Amount"), which consists of:

Principal	$36,852,617.97
Interest	$42,226.96
Prepetition Costs and Fees for Bank of America: Attorney's Fees	$13,323.60
TOTAL:	**$36,908,168.53**

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

	Pro-Rata Share
Bank of America, N.A.	37.01%
Fidelity Bank	25.97%
Huntington National Bank	37.01%
	100%

13. 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. Fidelity Bank $ as-yet undetermined

b. Huntington National Bank $ as-yet undetermined

14. 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.

15. As the amount of the claims asserted in paragraph 14 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 **$36,908,168.53 (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]

16. 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.

[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.

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

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

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

Date: November 9, 2009

Respectfully submitted,

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

THOMPSON & KNIGHT LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
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98 San Jacinto Boulevard, Suite 1900
Austin, Texas 78701
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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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OF BANK OF AMERICA, N.A., AGENT BANK

ATTACHMENT 1: Construction Loan Agreement dated September 27, 2007 by and between Opus West Corporation and LaSalle Bank National Association in the maximum principal amount of $38,500,000.00.

ATTACHMENT 2: Promissory Note dated September 27, 2007 in the original principal amount of $38,500,000.00.

ATTACHMENT 3: Assumption and Modification Agreement dated April 30, 2008 (the "Sequoia Assumption Agreement").

ATTACHMENT 4: Promissory Notes in the aggregate amount of $38,500,000.00, as follows: $10,000,000.00 [Fidelity Bank] dated September 5, 2008; $14,250,000.00 [LaSalle] dated September 5, 2008; and $14,250,000.00 [Huntington National Bank] dated September 5, 2008.

ATTACHMENT 5: Letter Agreement dated March 21, 2008 by and among LaSalle, Opus West, and certain other parties ("Modification Agreement").

ATTACHMENT 6: Construction Deed of Trust, Assignment, Security Agreement and Fixture Filing dated September 27, 2007, recorded in the Official Records of San Diego County, California on September 27, 2007, as Document No. 2007-0630364, and amended pursuant to the Memorandum of Modification and Assumption, that certain Modification of Deed of Trust and Other Loan Documents, dated as of September 5, 2008, and that certain Memorandum of Modification of Deed of Trust and Other Loan Documents recorded in the Official Records on September 5, 2008, as Document No. 2008-0475731.

ATTACHMENT 7: Assignment of Rents and Leases dated September 27, 2007.

ATTACHMENT 8: Assignment of Plans, Specifications, Construction and Service Contracts Licenses and Permits dated September 27, 2007.

ATTACHMENT 9: UCC-1 Financing Statement filed with the Minnesota Secretary of State on October 2, 2007, as Filing No. 200718438287; UCC-1 Financing Statement filed with San Diego County on April 30, 2008, as Filing No. 2008-0231516; and UCC-1 Financing Statement filed with Delaware Department of State on May 5, 2008, as Filing No. 2008667706.

ATTACHMENT 10: Guaranty Agreement dated April 30, 2008.

ATTACHMENT 11: Default Letters dated April 9 and May 5, 2009.

ATTACHMENT 12: Acceleration Notice dated August 31, 2009

ATTACHMENT 1

CONSTRUCTION LOAN AGREEMENT

dated September 27, 2007

by and between

OPUS WEST CORPORATION,
a Minnesota corporation, as Borrower

THE FINANCIAL INSTITUTIONS PARTY HERETO, as Co-Lenders (the "Banks")

and

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

San Diego, California

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EXHIBIT G – FORM OF REQUEST FOR ADVANCE

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT ("Agreement"), is made and entered into as of September 27, 2007, by and between **OPUS WEST CORPORATION**, a Minnesota corporation ("Borrower"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (in its individual capacity, together with any of its successors and assigns as agent, "LaSalle"), for itself and any other financial institutions that are or may from time to time become parties hereto (together with LaSalle, in its capacity as lender, and their respective successors and assigns, the "Banks").

RECITALS:

A. Borrower owns fee title to the property described in **Exhibit A** attached hereto ("Land") and proposes to construct on the Land three office buildings comprising, in the aggregate, approximately 157,800 square feet of office space ("Improvements") and any and all improvements not on the Land which are required to be in place to make use of the Improvements ("Offsite Improvements"; the Improvements and the Offsite Improvements are collectively referred to herein as the "Project").

B. Borrower has applied to the Banks for the Loans (as hereinafter defined) for the purpose of financing Borrower's construction of the Project, and the Banks are willing to make the Loans 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:

Adjusted Tangible Net Worth: The sum of all items which, in accordance with 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.

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

Affiliate Debt. All non-contingent liabilities owed by Borrower to Affiliates of Borrower.

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.

Agent's Consultant: Eckland Consultants Inc. or any other persons or entities that Agent may, from time to time, select.

Applicable Margin: With respect to LIBOR Loans, two percent (2.00%) per annum and with respect to Base Rate Loans, zero percent (0%) per annum.

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 (or Extended Maturity Date, as applicable) the Available Commitment shall equal zero.

Available Funds: As defined in Section 7.5 hereof.

Bank(s): As defined in the Preamble.

Base Rate: At any time, the greater of the Federal Funds Rate plus one-half of one percent (0.50%) and 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 on which LaSalle is open for commercial banking business in Chicago, Illinois.

Commitment: With respect to any Bank, such Bank's commitment to make Loans under this Agreement. The initial amount of each Bank's 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 Commitment of each Bank at such time. The maximum Commitment Amount is equal to Thirty Eight Million Five Hundred Thousand and no/100 Dollars ($38,500,000.00).

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

Completion Date: October 15, 2008.

Construction Commencement Date: October 15, 2007.

Construction Contracts: Any Contract or Subcontract for the construction of the Project.

Construction Disbursement: A disbursement of Loan Proceeds for construction of the Project.

Contractor: Opus West Construction Corporation, a Minnesota corporation.

Contractor's Fee: The fee to the Contractor in the amount of $995,224.00 which shall not be paid until such time as the Loans and all amounts due Banks under any of the Loan Documents are paid in full.

County: San Diego County, California.

Debt Service: For any Quarter, the sum of all scheduled principal and interest payments on the Loan and any other indebtedness of the Borrower that is due and payable during such Quarter based upon (i) an outstanding principal balance of the Loan of $38,500,000, (ii) a twenty-five (25) year amortization schedule and (iii) an interest rate equal to the greater of (A) seven percent (7.0%) per annum or (B) the yield to maturity percentage (the "Current Yield") for the United States Treasury Security actively traded United States Treasury bond, bill or note (the "Treasury Security") closest in maturity to the tenth anniversary of the date of calculation as published by *The Wall Street Journal* on the fifth Business Day preceding the date of calculation, **plus** one and one-half percent (1.50%) plus the corresponding swap spread as published in Bloomberg's Financial Markets Commodities News on the second (2nd) Business Day preceding the Maturity Date (or if not so published, Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine such spread). If publication of (A) *The Wall Street Journal*, or (B) the Current Yield of the United States Treasury Security in *The Wall Street Journal* is discontinued, the Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine the Current Yield.

Debt Service Coverage Ratio: The ratio of Operating Cash Flow to Debt Service.

Deed of Trust: As defined in Section 5.1(b) hereof.

Default Rate: As defined in Section 4.1 hereof.

Developer Fee: The developer's fee in the amount of $1,267,666.00 provided in the Project Budget which shall not be paid until such time as the Loans and all amounts due Banks under any of the Loan Documents are paid in full.

Environmental Laws: As defined in the Environmental Indemnity Agreement of even date herewith from Borrower in favor of Agent (the "Environmental Indemnity Agreement").

Equity Requirements: $5,023,198 of which $2,760,308 shall be in the form of cash and the balance in the form of deferred developer and contractor fees.

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.

Federal Funds Rate: For any day, a fluctuating interest rate equal for each day during such period 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 binding and conclusive absent manifest error.

Final Disbursement: As defined in Section 7.12 hereof.

Financial Covenants: As defined in Section 8.14 hereof.

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

GAAP: Generally accepted accounting principals, consistently applied.

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

Hard Costs: The direct costs of building and improving the Improvements, including the construction, bricks, mortar, steel and other items generally considered construction costs under construction industry practice and delineated as hard costs in the Project Budget.

Hard Cost Contract: A contract for the furnishing of Hard Costs.

Hazardous Substances: As defined in the Environmental Indemnity Agreement.

Improvements: As defined in the Recitals to this Agreement.

In Balance: As defined in Section 7.5 hereof.

Indebtedness: All items, which in accordance with GAAP, would be included as liabilities on the consolidated balance sheet of Borrower other than Subordinated Affiliate Debt

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 or three months thereafter as selected by Borrower pursuant to Section 7.2; 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: That certain parcel or 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 incorporation and by-laws 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.

Leverage Ratio: The ratio of Indebtedness to Adjusted Tangible Net Worth

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 sole 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.

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

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 Loans.

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

Loan Opening: The first disbursement of the Loan Proceeds.

Loan Opening Date: September 27, 2007.

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

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 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: September 26, 2009, subject to one twelve (12) month extension to September 26, 2010 on the terms provided in Section 4.12 hereof.

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.

Offsite Improvements: As defined in the Recitals to this Agreement.

Operating Cash Flow: During any trailing three month period (a "Quarter"), all base rental income and other types of income approved by Agent received during the Quarter prior to the date of Agent's determination of Operating Cash Flow (the "Determination Date") pursuant to signed Leases arising from the ownership and operation of the Premises (excluding tenant security deposits and rent paid during such Period by any tenant for more than three months of rental obligations), less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description paid during such Quarter in connection with the leasing, management, operation, maintenance and repair of the Premises and of the personal property, fixtures, machinery, equipment, systems and apparatus located therein or used in connection therewith including management fees, but excluding (i) non-cash expenses, such as depreciation and amortization costs, (ii) state and federal income taxes, (iii) funded capital expenditures, (iv) debt service payable on the Loan, and (v) principal and interest payments on other loans expressly permitted by the Deed of Trust. In determining Operating Cash Flow, extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants, shall be deducted from income.

Outstanding Bank Debt: Without duplication, the aggregate of all of Borrower's indebtedness, obligations and other liabilities to banks and other financial institutions less Subordinated Affiliated Debt for or with respect to (A) borrowed money, (B) reimbursement obligations with respect to letters of credit or similar instruments for which have been drawn and (C) all other items which, in accordance with GAAP, would be included as liabilities on the consolidated balance sheet of Borrower.

Outstanding Bank Debt Ratio: The ratio of Outstanding Bank Debt to Adjusted Tangible Net Worth.

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: Detailed plans and specifications and/or project manual for the construction of the Project, which are prepared in accordance with the terms of the Architect's Contract and approved by Agent and Agent's Consultant, including any shop or field drawings made in furtherance thereof, together with any changes made therein which are permitted under the terms of this Agreement.

Premises: The Land and the Project.

Prime Rate: For any day, the rate of interest most recently announced by Agent at Chicago, Illinois as its prime or base rate. A certificate made by an officer of Agent

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 Agent as a general benchmark from which Agent determines the floating interest rates chargeable on various loans to borrowers with varying degrees of creditworthiness and Borrower acknowledges and agrees that Agent has made no representations whatsoever that the "Prime Rate" is the interest rate actually offered by Agent 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 changed by the Agent. The Agent shall not be obligated to give notice of any change in the Prime Rate.

Project: As defined in the Recitals to this Agreement.

Project Budget: The Project Budget attached to this Agreement as **Exhibit D**, or such budget 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 described on Schedule 3.1 attached hereto.

Quarter: As defined under "Operating Cash Flow" above.

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.

Remaining Subcontracts: Those Subcontracts which will not have been executed as of the Loan Opening Date, which are for work and materials not to exceed $500,000.

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

Required Banks: Banks having Pro Rata Shares aggregating Sixty-Six and Two-Thirds percent (66 2/3%) or more.

Soft Costs: Costs, other than Hard Costs in connection with construction of the Improvements, approved by Agent.

State: The state in which the Premises is located.

Subcontract: Any contract and/or purchase order between any Contractor or Subcontractor and any Subcontractor for the construction or equipping of the Project or

for the furnishing of labor or materials for all or any portion of the Project.

Subcontractor: Any person or entity having a contract with any Contractor or any Subcontractor for the construction, equipping or supplying by such Subcontractor of any portion of the Project.

Subordinated Affiliate Debt: All non-contingent liabilities owed by Borrower to one or more Affiliates of Borrower which are junior and subordinate to the liabilities of Borrower to the Banks.

Title Insurance Company: First American Title Insurance Company.

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 Loans are paid in full, Borrower will have 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 duly formed limited liability company 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 Legal Requirements; Borrower has not been convicted of a felony and there are no proceedings or 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 strictly 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 affecting the enforcement of creditors' rights generally); no basis presently exists for any claim against Agent or the Banks under this Agreement, under the Loan Documents or with respect to the Loans; 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 by Borrower pursuant to this Agreement or in connection with the

Loans and the construction, occupancy and use of the Project will **not**: (i) to Borrower's knowledge, violate any Legal Requirements, or (ii) conflict with, be inconsistent with, or result in any 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 under any contract or agreement to which it is a party, the effect of which default will materially adversely affect the performance by Borrower of its obligations pursuant to and as contemplated by the terms and provisions of this Agreement and/or the other Loan Documents;

(e) To Borrower's knowledge, no condition, circumstance, event, agreement, document, instrument, restriction, litigation or proceeding (or threatened litigation or proceeding or basis therefor) exists which could adversely affect the validity or priority of the liens and security interests granted to Agent under the Loan Documents, which could result in a Material Adverse Occurrence;

(f) The Land, the present use and occupancy of the Land, the Plans and Specifications, the construction of the Project and any Offsite Improvements pursuant to the Plans and Specifications and the use and occupancy of the Premises when the Project is completed, will not violate or conflict with any 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, 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 such approval from such party. In addition, and without limiting the foregoing, the Borrower shall (a) ensure that no person or entity who 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) To the knowledge of Borrower, and except as disclosed in the Environmental Reports, (i) the Land has never been used, and the Premises will not be used, for any activities which, directly or indirectly, involve the use, generation, treatment, storage, transportation or disposal of any Hazardous Materials, (ii) no Hazardous Materials exist now, and no Hazardous Materials will hereafter exist, on or under the Premises or in any surface waters or groundwaters on or under the Premises and (iii) the Premises and its existing and prior uses 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) To Borrower's knowledge, except as provided in the Environmental Report, there are no facilities on the Premises which are subject to reporting under any State laws 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. Except as disclosed in the Environmental Report, the Premises do not contain any underground storage tanks, except as provided in the Environmental Report;

(i) This Agreement and all budgets, schedules, opinions, certificates, confirmations, Contractor's statements, applications, rent rolls, affidavits, agreements, Construction Contracts, 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;

(j) Subject only to payment of fees reflected in the Project Budget, all utility and municipal services required for the construction, occupancy and operation of the Premises, including, but not limited to, water supply, storm and sanitary sewage disposal systems, cable services, gas, electric and telephone facilities are available or will be available for use and tap-on at the boundaries of the Land, and written permission has been obtained from the applicable utility companies or municipalities to connect the Project into each of said services;

(k) To Borrower's knowledge, subject only to payment of fees reflected in the Project Budget, all governmental permits and licenses required by applicable law to construct, occupy and operate the Premises and the Project will be validly issued and will be in full force prior to any applicable construction work or, if the present stage of construction of the Project does not allow the issuance of all such permits and licenses, then as the construction progresses Borrower shall promptly obtain such licenses and permits as and when they become available and the Borrower knows of no groups, organizations or people that are contesting the development, construction and/or use of the Project;

(l) The storm and sanitary sewage disposal system, water system, drainage system and all mechanical systems of the Premises do (or when constructed will) comply with all applicable laws, statutes, ordinances, rules and regulations, including, without limitation, all Environmental Laws. The applicable environmental protection agency, pollution control board and/or other governmental agencies having jurisdiction of the Premises will have, prior to completion of the Project, issued their permits for the construction, tap-on and operation of those systems, if required;

(m) All utility, parking, access (including curb-cuts and highway access), construction, recreational and other permits and easements required for the current stage of construction and use of the Premises have been granted and issued for the current stage of construction;

(n) When completed in accordance with the Plans and Specifications, except as shown in the Plans and Specifications, the Project will not encroach upon any building line, set back line, sideyard line, or any recorded or visible easement (or other easement of which Borrower is aware or has reason to believe may exist) which exists with respect to the Premises;

(o) the Plans and Specifications have been designed using generally accepted trade practices, are complete in all respects and contain all other details requisite for the Project which, when built and equipped in accordance therewith, shall be ready for the intended use thereof;

(p) In the aggregate, the Construction Contracts substantially cover all labor, material and equipment required by the Plans and Specifications or necessary to complete the Project, excepting only the labor, material and equipment to be provided pursuant to the Remaining Subcontracts;

(q) The Loans, including interest rate, fees and charges as contemplated hereby, are business loans; the Loans are exempted transactions under the Truth In Lending Act, 12 U.S.C. § 1601 et seq.; and the Loans do not, and when disbursed will not, violate the provisions of the usury laws of the State of Illinois, 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; and

(r) There are no Leases for use or occupancy of any part of the Premises and Borrower shall not enter into any Lease for all or any portion of the Premises without the prior written consent of Agent except that, without Agent's prior consent, Borrower may enter into Leases with tenants of acceptable credit worthiness, as reasonably determined by the Agent for terms of five (5) years or more at rental rates of at least 95% of Borrower's current proforma rental rates approved by Agent on a standard form of lease approved by Agent, provided Borrower delivers a copy of each such Lease to Agent.

2.2 **Continuation of Representations and Warranties.** The Borrower hereby covenants, warrants and agrees that the representations and warranties made in Section 2.1 hereof shall be and shall remain true and correct at the time of the Loan Opening and at all times thereafter so long as any part of the Loan 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 Loan and Borrower shall be entitled to thirty (30) days from the date Borrower becomes aware such representation or warranty is no longer correct to cure the matter which causes such representation or warranty to not be correct before an Event of Default shall be deemed to have occurred. Each Request For Advance shall constitute a reaffirmation that these representations and warranties are true as of the date of such Request For Advance and will be true on the date of the advance.

For purposes of this Agreement and all other Loan Documents, the words "knowledge", "to the best of Borrower's knowledge" or words of similar import shall mean the actual knowledge of Charles J. Vogel or Christopher Wood and their successors to their positions with

Borrower. Borrower represents and warrants that the foregoing individuals are the individuals within Borrower's organization familiar with and possess such knowledge regarding the Project.

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. Each such recordation shall constitute prima facie 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 Loans 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 Internal Revenue Code, or (iii) any government plan subject to state laws that are comparable to Title I of ERISA or Section 4975 of the Internal Revenue Code.

3.2 **Equity Requirements**. Borrower will contribute or will have contributed not less than $2,760,3008.00 of the Equity Requirements in cash on or before the Loan Opening Date, which amounts will be or have been disbursed to pay costs of the Project provided for in the Project Budget prior to any disbursement of Loan Proceeds. The remainder of the Equity Requirements shall be satisfied by deferral of the Contractor's fee in the amount of $995,224.00 and the developer fee in the amount of $1,267,666.00 until the Loan is repaid.

3.3 **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.

3.4 **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 or an event exists which, with notice or the passage of time would constitute an Event of Default.

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 sum of the Base Rate from time to time in effect plus the Applicable Margin 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 5% (the "Default Rate").

4.2 **Payment of Principal and Interest**.

(a) Through and including the Maturity Date, accrued interest on each Base Rate Loan and each LIBOR Loan shall be payable in arrears on the first Business Day of each calendar month and on the Maturity Date. 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.

(b) In the event the Maturity Date has been extended to the Extended Maturity Date, on the first Business Day of each calendar month through and including the Extended Maturity Date, Borrower shall make monthly payments of principal and interest in a fixed amount calculated by amortizing the outstanding principal balance of the Loans and any unfunded Commitment Amount over twenty-five (25) years at an annual interest rate equal to the greater of (i) seven percent (7.00%) and (ii) the Current Yield for the United States Treasury Security closest in maturity to the tenth anniversary of the date of calculation as published by *The Wall Street Journal* on the fifth Business Day preceding the date of calculation, plus one and one-half percent (1.50%) plus the corresponding swap spread as published in Bloomberg's Financial Markets Commodities News as of the Determination Date (or if not so published, Agent, in its sole discretion, shall designate

another daily financial or governmental publication of national circulation to be used to determine such spread). If publication of (A) *The Wall Street Journal*, or (B) the Current Yield of the United States Treasury Security in *The Wall Street Journal* is discontinued, the Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine the Current Yield.

(c) Borrower hereby authorizes and directs each Bank to disburse interest to itself 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 (i) upon disbursement of the Interest Reserve, interest shall be paid directly by the Borrower from sources other than the proceeds of a Loan, or (ii) if any portion of the Project is substantially complete and one or more tenants have commenced paying rent, then Borrower shall pay interest from Project cash flow after payment of actual operating expenses. To the extent there is insufficient cash flow available at the Project after payment of actual operating expenses, the Banks shall advance such shortfall to the extent available in the line item of the Project Budget allocated to interest.

(d) Prior to the occurrence of an Event of Default, 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 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.

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

(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.

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 $500,000 and an integral multiple thereafter of at least $250,000.

(b) The applicable LIBOR Rate for each Interest Period shall be determined by the Agent, 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 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 (3) 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 (or Extended Maturity Date as applicable), 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 otherwise permitted under the terms of Article 4 of this Agreement, such Loans shall be automatically converted to 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 determined (which determination shall be conclusive, absent manifest error) that (i) the making or maintenance of any LIBOR Loan would violate any applicable law, rule, regulation or directive, whether or not having the force of law, (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

Bank) of making or maintaining their affected Loans during such Interest Period, Agent shall give telecopy or telephonic notice thereof to Borrower and Banks as soon as practicable thereafter and, so long as such circumstances shall continue (i) no Bank shall be under any obligation on the last day of the current Interest Period for each LIBOR Loan to make a new LIBOR Loan, and such Loan shall, unless then repaid in full, automatically convert to a Base Rate Loan, 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 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 give 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 and (b) the 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 Section 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 Section 4.10 and changes in the rate 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.

(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, Borrower shall pay to such Bank such additional amount or amounts as will compensate such Bank for such reduction.

(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. A certificate as to any additional amounts payable pursuant to this subsection submitted by such Bank to Borrower (with a copy to Agent) shall be conclusive in the absence of manifest error. 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 gross negligence or willful misconduct.

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 Note). 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 Note, the amounts so payable to Agent or such Bank 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 Section. Whenever any Non-Excluded Taxes are payable by 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.

(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 Section, provided that in the case of a Participant such Participant shall furnish all such required forms and statements to the Bank from which the related participation shall have been purchased.

4.11 **LIBOR Loan Indemnification**. Borrower agrees to indemnify each Bank and to hold each Bank harmless from any loss or expense which such Bank may sustain or incur 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. Such indemnified amount shall include any and all costs, expenses, penalties and charges incurred by the Banks as a result thereof, plus 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 certificate of deposit market, the eurodollar deposit market, or other appropriate money market selected by such Bank. 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 Section shall be paid to Agent for the account of the applicable Bank, upon the request of such Bank through Agent and a determination of any Bank as to the amounts payable pursuant to this Section shall be conclusive absent manifest error, based upon the assumption that such Bank funded its loan commitment for LIBOR Loans in the London Interbank Eurodollar market 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.

4.12 **Extension of Maturity Date**. Subject to satisfaction of all the following conditions, Borrower may extend the Maturity Date for twelve (12) months to September 26, 2010 (the "Extended Maturity Date"):

(a) No Event of Default has occurred and is continuing as of the date Borrower exercises its right to extend the Maturity Date, or on the original Maturity Date;

(b) Borrower delivers to Agent written notice of the exercise of its extension right not less than forty-five (45) days prior to the original Maturity Date;

(c) Borrower pays Agent a loan extension fee in the amount set forth in the letter agreement of even date herewith between Agent and Borrower;

(d) Borrower has obtained a final (if obtainable) or temporary certificate of occupancy for the Premises issued by the applicable governmental authorities; and

(e) The Debt Service Coverage Ratio for the Project, based upon Operating Cash Flow and Debt Service projected by Agent for the twelve (12) months commencing on the Maturity Date, shall be not less than 1.0 to 1.0 on the basis of the outstanding principal balance of the Loans plus any unfunded Commitments.

ARTICLE 5

LOAN DOCUMENTS

5.1 **Loan Documents**. As a condition precedent to the Loan Opening, except as otherwise provided below, Borrower has delivered the following Loan Documents to Agent at, all of which must be satisfactory to Agent and Agent's counsel in form, substance and execution:

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

(b) **Commercial Deed of Trust**. A Commercial Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing ("Deed of Trust") duly executed by Borrower and conveying good and indefeasible title to the Land and granting a first priority 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) **Assignment of Rents and Leases**. A first collateral assignment from Borrower to Agent, for the benefit of the Banks, of all rents, leases and profits of the Premises as security for the Notes, and, if Agent so requires, specific collateral assignments of any particular Leases bearing the consent to the assignment of the lessee whose Lease is so assigned.

(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**. An environmental indemnity agreement from Borrower to Agent, on behalf of the Banks, whereby Borrower indemnifies the

Banks for any loss, cost, damage or expense incurred as a result of environmental matters at the Premises.

(f) **Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits**. A collateral assignment to Agent of Borrower's rights in and to the Architect's Contract, all service contracts and other contracts affecting the Premises and Borrower's interest in any permits, including building permits, licenses, plans and specifications and tests related to the construction, use and operation of the Project, together with consent agreements from the Contractor, Architect and other professional parties 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.

(g) **Collateral Assignments**. Collateral assignments of such agreements, leases, contracts and other rights or interests of Borrower with respect to the Project as Agent may reasonably request, which shall include, without limitation, agreements with respect to the parking at the Premises.

(h) **Other Loan Documents**. Such other documents and instruments as further security for the Loans 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 (except as otherwise expressly provided below), Borrower has furnished the following to Agent 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 1992 Construction Loan Policy issued on the date of the Loan Opening by the Title Insurance Company to Agent in the full amount of the Loans, insuring the Deed of Trust to be a valid first, prior and paramount lien upon the fee title to the Premises subject only to the Permitted Exceptions and to customary exceptions for pending disbursements of the Loans ("Construction Title Insurance Policy"). The Construction 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 to the extent available in the State of California: (i) An ALTA Modified Form 3.1 (plans and specifications) (including compliance with parking requirements) which must state the intended use of the Project when completed in accordance with the Plans and Specifications is a "permitted use" under the governing zoning ordinance; (ii) Access Endorsement; (iii) One Tax Parcel Endorsement; (iv) if the Land consists of more than one subparcel, Contiguity Endorsement; (v) Environmental Lien Endorsement; (vi) Variable Rate Endorsement; (vii) Pending Disbursements Endorsement; (viii) Survey Endorsement (ix) Modified Comprehensive Endorsement No. 1; (x) Doing Business Endorsement; (xi)

Creditor's Rights Endorsement; and (xii) such other endorsements as Agent may require. If required by any Agent, Borrower shall procure reinsurance with companies and in amounts satisfactory to the Agent.

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

(i) the proposed location (and, in the event of prior construction, the location) of all foundations, driveways, parking areas, number of parking spaces, fences and other improvements on the Land including the Project;

(ii) the location (and recording numbers, to the extent recorded) of all visible or recorded easements (including appurtenant easements), water courses, drains, sewers, public and private roads (including the names and widths thereof and recording numbers for the dedications thereof), other rights of way, and curb cuts, if any, within, adjacent to or serving the Premises or to which the Premises are subject, and the proposed location of any such easements to be granted; that the same are, and after construction of the Project and granting of easements will be, unobstructed; and that all portions of the Project will have direct access to dedicated public roads;

(iii) the location of the servient estate of any easements, if the Land is the dominant estate thereunder;

(iv) the common street address of the Premises and the dimensions, boundaries and acreage or square footage of the Land;

(v) that all foundations and other structures under construction or to be constructed pursuant to the Plans and Specifications, and all other improvements on the Land, are placed within the lot and building lines and in compliance with all deed restrictions, recorded plats, other restrictions of record and ordinances relating to the location thereof (and, to the extent that any deed restrictions, recorded plats, other restrictions of record or ordinances require any structure to be set back specified distances from any line, showing said line and the measured distance of said structure, or the proposed location of said structure, from said line);

(vi) that there are no encroachments onto the Land from improvements located on adjoining property;

(vii) the location and course of all utility lines;

(viii) if the Premises comprise more than one parcel, interior lines and other data sufficient to insure contiguity; and

(ix) such additional information which may be required by Agent or the Title Insurance Company.

The Survey shall be made in accordance with (i) the current survey standards of the American 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. 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 the laws and standards enumerated above, shall include the legal description of the Premises and shall run in favor of Borrower, Agent and the Title Insurance Company. After the Survey has been delivered, Borrower shall furnish supplemental surveys showing the Foundation Work for the Project and showing additional improvements placed on the Premises from time to time as Agent may request, as well as two (2) copies of a final as-built survey on completion of construction showing the location of all improvements on the Land and otherwise complying with the foregoing requirements.

(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 30 day (except for nonpayment of premium, in which case, a 10 day) notice of cancellation clause in favor of Agent. Duplicate policies or certificates of insurance shall be delivered to and held by Agent as further security for the payment of the Notes and any other obligations arising under the Loan Documents, with evidence of renewal coverage delivered to Agent at least 15 days before the expiration date of any policy.

(d) **Utilities; Licenses; Permits**. Evidence satisfactory to Agent to be delivered prior to any Construction Disbursement that:

(i) all utility and municipal services required for the construction, occupancy and operation of the Premises are available for use and tap-on at the Premises, subject only to payment of fees included in the Project Budget, or will be available after construction thereof as provided in the Construction Contracts, subject only to payment of costs and fees included in the Project Budget;

(ii) all permits, licenses and governmental approvals ("Permits"), including a building permit issued by the appropriate governmental authority authorizing construction of the Project in accordance with the Plans and Specifications and including tap-on permits, required by applicable law to construct, occupy and operate the Premises have been issued, are in full force and all fees therefor have been fully paid or, if the stage of construction of the Project does not allow the issuance of all such Permits, then Borrower shall provide evidence, satisfactory to Agent that as the construction progresses Borrower will

promptly obtain and deliver to Agent such Permits as and when they become available;

(iii) the storm and sanitary sewage disposal system, the water system and all mechanical systems serving the Premises do (or when constructed will) comply with all applicable laws, ordinances, rules and regulations, including Environmental Laws and the applicable environmental protection agency, pollution control board and/or other governmental agencies having jurisdiction of the Premises have issued their permits for the construction and operation thereof; and

(iv) all utility, parking, access (including curb-cuts and highway access), construction, recreational and other easements and Permits required for the construction and use of the Premises have been granted or issued, or if the stage of construction of the Project does not allow the issuance of all such easement and Permits, then Borrower shall provide evidence satisfactory to Agent that as the construction progresses, Borrower will promptly obtain and deliver to Agent such easements and Permits as and when they are required to be obtained or issued;

which evidence shall include a certificate of the Architect or opinion of Borrower's counsel reciting the above matters and listing (and reciting that there are so listed) all such services, permits, licenses and easements, together with copies of all Permits and all utility letters, licenses and grants of easements.

(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 Report**. A written report ("Environmental Report") prepared at Borrower's sole cost and expense by an independent professional environmental consultant approved by Agent in its sole and absolute discretion. The Environmental Report shall be subject to the approval of the Agent in its sole and absolute discretion. If the Environmental Report 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 Report") 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 Report prepared pursuant to this requirement shall be subject to the approval of the Agent, in its sole and absolute discretion.

(g) **Appraisal**. An appraisal addressed to Agent and satisfactory to the Banks prepared by a certified or licensed appraiser who is approved by Agent. The appraisal must show an "as stabilized" appraised value of the Premises, assuming completion of the Project in accordance with the Plans and Specifications, such that the ratio of the Commitment Amount to the appraised value of the Premises shall be no more than eighty percent (80%) and the ratio of the Commitment Amount to cost shall be no more than eighty-eight and five tenths percent (88.5%).

(h) **Documents of Record**. Copies of all covenants, conditions, restrictions, easements and matters of record which affect 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) **Plans and Specifications**. Three (3) complete sets of detailed Plans and Specifications for the Project, including all changes to the date of submission thereof, showing identification thereof by the Architect and generally consistent with any preliminary plans theretofore submitted to Agent, together with evidence satisfactory to Agent that the Plans and Specifications have been approved by the Contractor and tenants under Leases if and to the extent applicable. The Plans and Specifications must be reasonably satisfactory to Agent in all respects and must be approved in writing by Agent. Borrower shall deliver three (3) complete sets of the final Plans and Specifications for the Project upon completion of such Plans and Specifications.

(k) **Borrower's Attorney's Opinion**. An opinion of Borrower's counsel addressing such issues as Agent may request, including the following propositions and questions of law, that:

(i) Borrower is a duly organized limited liability company under the laws of the state of its organization and is qualified to do business in the State;

(ii) Borrower has all necessary legal right, power and authority to conduct its business, to develop the Project and to enter into and perform its obligations under this Agreement and the Loan Documents;

(iii) all necessary corporate, shareholder, membership, partnership approvals, resolutions and directions have been obtained for the development of the Project and the execution of this Agreement and the Loan Documents;

(iv) the execution and delivery of this Agreement and the Loan Documents and the performance thereunder by Borrower will comply with all

applicable law and will not violate or conflict with the instruments under which Borrower is organized or any applicable contracts or agreements; and

(v) the Loan Documents and this Agreement have been duly and validly executed and delivered, are enforceable in accordance with their respective terms (subject to bankruptcy laws and laws pertaining to the exercise of creditors' rights generally) and are subject to no defenses of any kind.

(l) **Organizational Documents**. With respect to the Borrower, a current Certificate of Good Standing for Borrower from the state of organization and from the State, a certified copy of the Certificate of Organization and Operating Agreement, including all amendments thereto, for Borrower and a notarized incumbency certificate showing specimen signatures for all officers of Borrower executing any Loan Documents, and certified copies of resolutions by appropriate parties authorizing execution and delivery of the Loan Documents and, if necessary, certified copies of resolutions authorizing execution and delivery of the Loan Documents.

(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.

(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 Loans or the Project have been paid in full in cash.

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

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

(q) **Architect's Certificate**. An Architect's Certificate in the form attached hereto as **Exhibit E**;

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

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

(t) **Architect's Contract**. A certified copy of the executed Architect's Contract, which shall be in a format and of a scope which is commensurate with industry practice for projects of a similar size and nature, conform to applicable terms of this Agreement, and which must be satisfactory to Agent and Agent's counsel in all material respects.

(u) **Construction Schedule**. A schedule ("Construction Schedule") in form and content satisfactory to Agent which, among other things, sets forth dates for commencement and completion of all phases of the Project, indicates the time for performance of the work to be accomplished under the Construction Contracts or the Subcontracts, and includes a statement from the Contractor that, in its best professional

judgment, the Construction Schedule is realistic and can be adhered to, subject to an Excusable Delay (as defined herein) in completing the Project in accordance with the Plans and Specifications. An "Excusable Delay" means a delay, not to exceed a total of thirty (30) consecutive days, caused by unusually adverse weather conditions which have not been taken into account in the Construction Schedule, fire, earthquake or other acts of God, strikes, lockouts, acts of public enemy, riots or insurrections or any other unforeseen circumstances or events beyond the reasonable control of Borrower (except financial circumstances or events which may be resolved by the payment of money), and as to which Borrower notifies Agent in writing within ten (10) days after Borrower is actually aware of such occurrence; provided, however, no Excusable Delay shall suspend or abate any obligation of Borrower or any other person to pay any money nor may an Excusable Delay extend construction or any other obligation beyond the Maturity Date.

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

(w) **Agent's Consultant Report**. A written report(s) prepared at Borrower's expense by Agent's Consultant, which report(s) shall be based upon an evaluation and/or investigation of specific factors and shall describe in detail the investigation and evaluations, as well as the findings. The report(s) shall include the evaluation of the Plans and Specifications and their compliance with governmental regulations; and the evaluation of the mechanical, electrical and plumbing systems to be installed in the Project and the adequacy of design and operation of the systems for their intended uses and any other matters required by Agent.

(x) **Construction Escrow Agreement**. A construction loan escrow agreement to be prepared by counsel for Agent establishing a construction escrow ("Construction Escrow") with an escrowee satisfactory to Agent through which all advances of the loan for construction costs will be disbursed, which Construction Escrow shall require delivery to Agent and the Title Insurance Company prior to each Construction Disbursement of such documents regarding the Construction Disbursement as Agent and Title Insurance Company may require, including, without limitation, the documents specified in Section 7.3 hereof.

(y) **Hard Cost Contracts**. Copies, certified by Borrower, of fully executed Subcontracts or Subcontracts which are fully negotiated but not yet executed for not less than 50% of all Hard Costs of the Project performed by Subcontractors not affiliated with Borrower. Within ninety (90) days of the Loan Opening Date, Borrower shall furnish Agent certified, fully executed Subcontracts covering an aggregate of 50% of the Hard Costs of the Project. Within one hundred eighty (180) days of the Loan Opening Date, Borrower shall furnish Agent certified, fully executed copies of additional Subcontracts for Hard Costs Contracts which bring the total for all remaining Subcontracts for Hard Costs of the Project to 100%, excluding such Subcontracts for Hard Costs as are typically not contracted for by that time.

(z) **Subordinated Affiliate Debt**. In each case in which Affiliate Debt exists, Borrower shall cause each such Affiliate to deliver a subordination agreement

satisfactory to Agent, in Agent's sole discretion, whereby the Affiliate Debt shall be subordinated in all respect to the Loans and all rights and liens of Banks under the Loan Documents.

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

(bb) **Additional Documents**. Such other papers and documents regarding Borrower or the Project as Agent may 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. 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) the Loan is In Balance;

(c) Agent shall be satisfied as to the continuing accuracy of the Project Budget;

(d) no Event of Default has occurred under this Agreement or under any Loan Document, and no event, circumstance or condition has occurred or exists which, with the passage of time or the giving of notice, would constitute a Event of Default under this Agreement or under the Loan Documents;

(e) no litigation or proceedings are pending or threatened (including proceedings under Title 11 of the United States Code) against Borrower, the Project or the Contractor, which litigation or proceedings, in the judgment of Agent, could

materially affect the Project or Borrower's obligations hereunder or under any of the Loan Documents;

(f) no event, circumstance or condition exists or has occurred which, in Agent's reasonable judgment, could prevent the completion of the Project by the Completion Date, except as otherwise previously disclosed in writing to Agent;

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

(h) if the proposed disbursement is a Construction Disbursement, the additional requirements of Section 7.3 hereof have been satisfied.

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 and Agent's Consultant by 2:00 p.m. (Chicago 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) all Project Costs to be paid 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 supporting documentation and Agent's Consultant's monthly report. Provided all conditions to an advance of Loan Proceeds have been satisfied or waived, 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 Section 14.10 hereof prior to 11:00 A.M., Chicago time on the date requested by Borrower in funds immediately available to Agent. Each borrowing will be made available to Borrower by Agent depositing the aggregate amounts made available to Agent by the Banks through the Construction Escrow, or at Agent's option, Agent may advance such funds by payment directly to any third party to whom an amount is payable. 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 by direct payment to third parties 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 any contractor or 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 time, on the Business Day of such proposed borrowing (it being understood that any such notice received after 1:00 P.M., Chicago time, on any Business Day shall be deemed to have been received the immediately following Business Day), such Bank agrees to pay and the Borrower agrees to repay to Agent 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 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 find a replacement Bank 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 Loans 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) all fees and disbursements of architects, engineers and consultants engaged by Borrower and Agent, including the fees and disbursements of the Architect, Agent's Consultant and Agent's insurance consultant; (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 or other insurance premiums; (vii) if not paid by Borrower within thirty (30) days of receipt of invoices for the following, all fees and disbursements of legal counsel engaged by Agent in connection with the origination and administration of the Loans and all fees and disbursements of legal counsel engaged by the Agent on behalf of the Banks in connection with the 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 to 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").

(e) No disbursement of Loan Proceeds shall be made at any time that the Loan is not In Balance. Any disbursement of Loan Proceeds must be made for payment of the Project Costs in accordance with the Project Budget. Subject to the provisions herein, no amendment of the Project Budget shall be made without Agent's prior written consent, which, as to amendments including Project Costs other than the interest reserve shall not be unreasonably withheld, conditioned or delayed. No reallocation of line items within the Project Budget shall be made unless (A) Borrower can demonstrate to Agent's 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 and (B) except that Borrower may reallocate any line item in an amount not to exceed $100,000.00 as to any one item or $250,000.00 in the aggregate provided the Loan remains In Balance.

7.3 **Documents Required for Each Construction Disbursement**. At least ten (10) Business Days prior to, and as a condition of, each "Construction Disbursement", Borrower shall furnish to Agent and to Agent's Consultant the following documents covering such disbursement:

(a) Borrower's disbursement request ("Request For Advance"), in the form attached hereto as **Exhibit G**, 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 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 the Contractor and/or Subcontractors who have performed work on the Project and indicating what payment requests, if any, have been received by Borrower from the Contractor or the Subcontractors but have not yet been approved by Borrower for payment;

(ii) no Event of Default, or condition or event which, with the giving of notice or passage of time, or both, would constitute an 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;

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

(v) all amounts shown as previous payments on the current disbursement request have been paid to the parties entitled to such payment;

(vi) approval by Borrower of all work and materials for which a payment is then due and for which disbursement of the Loan is thereby requested;

(vii) that all work and materials theretofore furnished for the Project conform with the Plans and Specifications; and

(viii) the Loan is In Balance.

(b) A certificate as to completion and payment authorization in form reasonably approved by Agent, properly executed by the Contractor and approved by Agent's Consultant;

(c) Owner's and Contractor's sworn statements and if requested by Agent or the Title Insurance Company, waivers of lien, covering all work for which disbursement is to be made to a date specified therein, and covering all work done on the Premises, to a reasonably current date, otherwise paid for or to be paid for by Borrower or any other person, all in compliance with the mechanics' lien laws of the State and with the requirements of Agent, Agent's Consultant and the Title Insurance Company (for issuance of interim title endorsements covering such disbursement), together with such invoices, (or items over $25,000.00) contracts or other supporting data as Agent, Agent's Consultant or the Title Insurance Company may require;

(d) Endorsements to the Construction Title Insurance Policy to cover the amount and date of the Construction Disbursement (whether into escrow or otherwise) insuring that the Deed of Trust is a first, prior and paramount 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 of the proceeds of the Loan), that nothing has intervened to affect the validity or priority of the Deed of Trust, insuring against mechanics' lien claims for work performed prior to the date covered by such continuation, and containing a mechanics' lien interim certification to cover the amount of the Loan then disbursed (including the current Construction Disbursement); those endorsements may be delivered to Agent concurrently with the disbursement of the Loan Proceeds which are the subject of those endorsements;

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

(f) If necessary as a result of delays in construction or changes in circumstances, an updated Construction Schedule, including a statement from each of the Contractor and the Architect that, in their best professional judgment, the Construction Schedule, as updated, is realistic and can be adhered to in completing the Project in accordance with the Plans and Specifications;

(g) An updated Schedule of all Leases and sale contracts entered into by Borrower in connection with the Premises;

(h) A report from Agent's Consultant, in form and substance satisfactory to the Agent; and

(i) Such other schedules, certificates, documents and other materials as Agent or Agent's Consultant may reasonably request.

7.4 **[Intentionally Omitted]**.

7.5 **Loans In Balance**. Notwithstanding anything to the contrary contained in this Agreement, it is expressly understood and agreed that the Loan at all times shall be In Balance. The Loans shall be deemed to be In Balance only if the total of the Available Funds, in Agent's reasonable judgment, shall equal or exceed the aggregate of: (i) the amount required to pay interest on the Loans to the Maturity Date; (ii) the amounts to be paid as retainage to persons who have supplied labor, services or materials to the Project including, without limitation, the Contractors, the Architect and all Subcontractors; (iii) the amount required, in Agent's reasonable judgment, for a contingency reserve; and (iv) the amount necessary to pay for all unpaid costs not referred to in subsections (i), (ii) or (iii) incurred or to be incurred in the completion of the construction of the Project and operation of the Project until the Maturity Date, including the cost of purchase and installation of all fixtures and equipment and all work required to finish or improve any portion of the Premises to be leased, if any. As used herein, the term "Available Funds" shall mean:

(a) the undisbursed proceeds of the Loans, net of any unpaid accrued interest on the Loans for which there are insufficient amounts in the Interest Reserve to pay; plus

(b) any other amounts deposited by Borrower pursuant to this Section 7.5 and then held by Agent.

Borrower agrees if for any reason the Loan is not In Balance, then until the Loan becomes In Balance, Borrower will pay from its own funds up to the amount by which the Loan is out of balance, the Project Costs thereafter due, provided, however, that Agent shall have the right, upon ten (10) days request by the Agent to require Borrower to deposit with Agent cash or an irrevocable letter of credit in the form and a sight draft issued by a bank reasonably acceptable to Agent in an amount which will place the Loan In Balance, which deposit shall first be held in an interest bearing account and then be exhausted before any further disbursement of the proceeds of the Loan shall be made. No interest shall be payable on such amounts.

7.6 **[Intentionally Omitted].**

7.7 **[Intentionally Omitted].**

7.8 **Escrow Payouts**. So long as no Event of Default has occurred and is continuing, all disbursements hereunder shall be made to Borrower and Borrower will cause the Contractor and Subcontractors to comply with the requirements of the Title Insurance Company in order to enable the Title Insurance Company to issue to Agent interim mechanics' lien certifications, make disbursements and obtain necessary sworn statements and waivers of lien.

7.9 **Consultants**. In connection with the transactions contemplated hereby, Agent shall have the right (but not the duty) to employ such consultants, including Agent's Consultant, as it may deem appropriate from time to time, to (a) review and make recommendations regarding the Plans and Specifications, the Project Budget and the Construction Schedule, (b) inspect the Premises from time to time to insure that the same are being duly constructed and equipped as herein provided, (c) review and make recommendations regarding any elements of a request for disbursement, (d) obtain information and documentation respecting the Project, attend meetings respecting the Project and formulate reports for Agent pertaining to the Project and (e) perform such other services as Agent from time to time may require, all solely on behalf of Agent. The costs and disbursements of such consultants shall be deemed "Loan Expenses." Neither Agent nor any such consultants shall be deemed to have assumed any responsibility to, or be liable to, Borrower with respect to any actions taken or omitted by Agent or such consultants pursuant to this Section. Notwithstanding the aforesaid or anything else provided in this Agreement to the contrary, Borrower shall not be entitled to rely on any statements or actions of Agent's Consultant or any of Agent's other consultants and neither the Agent's Consultant nor any other consultant retained by Agent shall have the power or authority to grant any consents or approvals or bind Agent in any manner, absent confirmation by Agent of the accuracy of the information conveyed by such consultant to Borrower.

7.10 **Retainages**. Disbursement of the available proceeds of the Loan shall be limited to an amount equal to the percentage thereof required by the terms of the Construction Contracts, but in no event shall Agent be obligated in respect of any Construction Contract to disburse in excess of ninety percent (90%) of the value (as certified by Agent's Consultant), of the materials and labor incorporated in the Project from time to time pursuant to such Construction Contract until 50% of the amount of applicable Improvements have been completed, after which one hundred percent (100%) of such remaining value may disbursed from time to time. Final disbursement as to each such Construction Contract may be made upon satisfactory completion of such Contract. Contracts for materials, soft costs, general conditions or self-performed work shall not be subject to retainage. When Subcontracts are substantially complete, retainage applicable to such Subcontracts shall be released.

7.11 **Stored and Unincorporated Materials**. In no event shall any disbursement for materials purchased by Borrower and not yet installed or incorporated into the Project be made unless the materials involved have been delivered to the Land or stored and Borrower has provided Agent with satisfactory evidence of security, insurance both during storage and transit and suitable storage. Borrower shall provide Agent, in connection with such materials, a copy of

a bill of sale or other evidence of title in Borrower. Borrower shall provide Agent, Architect and any applicable governmental agency or testing authority having jurisdiction over the Project with access to inspect, test or otherwise examine such stored and unincorporated materials.

7.12 **Final Disbursement**. Subject to Section 7.10, the Banks will advance to Borrower, for payment of Project Costs only and in accordance with the Project Budget, the full amount of the Loan not theretofore disbursed ("Final Disbursement") when the following conditions shall have been complied with, provided that such compliance shall have occurred prior to the Completion Date, prior to the original Maturity Date and no Event of Default then exists:

(a) The Borrower and Agent's Consultant certify in writing to Agent that the Project has been fully and satisfactorily completed substantially in accordance with the Plans and Specifications;

(b) The Contractor has supplied Agent and the Title Insurance Company with final sworn statements and full and complete waivers of all mechanics' lien claims;

(c) Agent has received a Loan Policy ("Policy") by the Title Insurance Company in the full amount of the Loans insuring that the Deed of Trust is a valid first, prior and paramount lien on the Premises, subject only to the Permitted Exceptions, which Policy shall (i) be free of all exceptions and objections relating to any right to assert claims for mechanics' liens on account of labor and/or materials theretofore furnished to the Premises, (ii) an endorsement deleting any exceptions related to completion of the Improvements and pending disbursements, and (iii) include any endorsements that Agent may reasonably request;

(d) Borrower shall have furnished to Agent permanent insurance (or other appropriate insurance) in form and amount and with companies satisfactory to Agent in accordance with the requirements of the Deed of Trust;

(e) Borrower shall have furnished Agent a final certificate of occupancy or its equivalent and all other governmental licenses and permits required to use, occupy and operate the Premises as contemplated from appropriate governmental authorities;

(f) Borrower shall have furnished a final plat of survey locating the completed Project, including all paving, driveways, fences and other exterior improvements and otherwise in compliance with Section 6.1(b) hereof;

(g) All fixtures and equipment required for the operation of the Premises shall have been installed free and clear of all liens, title retention agreements and security interests except security interests granted to Agent;

(h) Agent shall have received reports from the Title Insurance Company or the appropriate filing offices of the state and county in which the Premises are 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 and no other party), are of record or on file encumbering any portion of the Premises, and that there are no judgments or tax liens outstanding in respect to Borrower;

(i) Borrower shall have furnished copies of any additional Leases which were not delivered to Agent prior to the Loan Opening together with subordination, non-disturbance and attornment agreements and estoppel certificates from tenants thereunder, in form and substance satisfactory to Agent; and

(j) All other requirements of this Agreement shall have been complied with.

7.13 **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, together with Agent's Consultant's fees and attorneys' fees, if any, and all other Loan Expenses, as and when advanced or incurred, 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 Notes.

7.14 **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 Construction 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.

7.15 **Agent's Action for Agent's Own Protection Only**. The authority herein conferred upon Agent and any action taken by Agent or Agent's Consultant or their agents or employees in making inspections of the Premises, attending regularly scheduled Project meetings, procuring sworn statements and waivers of lien, approving Subcontracts and approving Plans and Specifications will be taken by Agent and Agent's Consultant and by their agents or employees for their own protection and that of the Banks only, and neither Agent nor Agent's Consultant nor their 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, performance of Construction Contracts or prevention of claims for mechanics' or materialmen's liens.

ARTICLE 8

FURTHER AGREEMENTS OF BORROWER

8.1 **Construction of Project**. Borrower agrees that the Project will be constructed and fully equipped free and clear of all liens and encumbrances (excepting only (i) the lien of

real estate taxes and assessments not delinquent, (ii) any liens and encumbrances of Agent, (iii) any other Permitted Exceptions and (iv) liens being contested in the manner provided in the Loan Documents), in a good and workmanlike manner, substantially in accordance with the Plans and Specifications, any and all covenants, conditions and restrictions of record, and applicable building, zoning and other laws and ordinances including, without limitation, Environmental Laws on or before the Completion Date, as the same may be extended for Unavoidable Delays (but in all cases no later than sixty (60) days prior to the Maturity Date). If Agent disapproves any portion of the construction or equipping of the Premises on the basis that such construction or equipping does not substantially conform to the Plans and Specifications, Borrower, within thirty (30) days after such disapproval, shall commence to correct the condition so disapproved, and thereafter will diligently complete such correction. Borrower agrees that all materials contracted or purchased for construction of the Project and all labor hired or contracted for with respect to the Project and paid for with Loan Proceeds will be used and employed solely on or in connection with the Project and for no other purpose.

8.2 **Changes in Plans and Specifications and Contracts; Extras**. Borrower agrees that except for de minimus changes, no changes will be made in the Plans and Specifications, no change will be made in any Construction Contract, and no extras will be allowed to any Contractor or Subcontractor, except upon the written approval of the same by Agent; provided, however, Borrower may make changes in the Plans and Specifications or in the Construction Contracts, or allow such extras, without first obtaining such approval thereof, if (a) Borrower notifies Agent in writing of such change within a reasonable period of time thereafter; (b) to the extent approval is required of the Borrower under such documents, Borrower obtains the approval of all parties to the Construction Contract proposed to be modified, the tenants under all Leases of the Premises, if any, affected by the proposed modification, and all sureties whose approval is required; (c) the structural integrity of the Project is not impaired; (d) the square footage of the Project is not reduced except by de minimus amounts; (e) no default in any obligations to any other party, including any governmental authority, results from such changes; (f) the cost of or reduction resulting from no one such change or extra exceeds One Hundred Thousand Dollars ($100,000.00) and the aggregate changes in cost of all such changes and extras does not exceed Two Hundred Fifty Thousand Dollars ($250,000.00); and (g) the Loan remains In Balance.

8.3 **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 if the right to contest such matters is expressly granted in 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 or to maintain such indemnity or security 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 Loans hereunder. In settling, compromising, discharging or providing indemnity or security for any claim for lien, tax or assessment, Agent shall not be required to inquire into the validity or amount thereof.

8.4 **Fixtures and Personal Property**. Except for a security interest granted to Agent, Borrower agrees that all of the personal property, fixtures, attachments, furnishings and equipment delivered in connection with the construction, equipping or operation of the Project will be kept free and clear of all chattel mortgages, vendor's liens, and all other liens, claims, encumbrances and security interests whatsoever, and that Borrower will be the absolute owner of said personal property, fixtures, attachments and equipment. Borrower, on request, will furnish Agent with satisfactory evidence of such ownership, and of the terms of purchase and payment therefor.

8.5 **Proceedings to Enjoin or Prevent Construction**. If any proceedings are filed or are threatened to be filed seeking to (a) enjoin or otherwise prevent or declare invalid or unlawful the construction, occupancy, maintenance or operation of the Project or any portion thereof; (b) adversely affect the validity or priority of the liens and security interests granted Agent hereby; or (c) which would result in a Material Adverse Occurrence, then Borrower will notify Agent of such proceedings and within two (2) business days following Borrower's notice of such proceedings, Borrower will cause such proceedings to be contested in good faith. Without limiting the generality of the foregoing, Borrower will resist the entry or seek the stay of any temporary or permanent injunction that may be entered, and diligently prosecute or defend itself in all such proceedings.

8.6 **Event of Defaults Under Construction Contracts**. Borrower will not suffer or permit any breach or default to occur in any of the obligations of Borrower under the Construction Contracts nor suffer or permit the same to terminate by reason of any failure of Borrower to meet any requirement thereof including those with respect to any time limitation within which the Project is to be completed and available for occupancy; Borrower will keep the Construction Contracts in full force and effect and promptly notify Agent of any default thereunder; Borrower will comply with all conditions of the Construction Contracts and will execute all documents necessary for the consummation of the transactions contemplated thereby.

8.7 **Furnishing Information**. Borrower will:

(a) cooperate with Agent in arranging for inspections by representatives of Agent or Agent's Consultant of the progress of construction from time to time;

(b) promptly supply Agent with such information concerning Borrower's assets, liabilities and affairs, as Agent may reasonably request from time to time hereafter;

(c) as soon as available and in no event later than ninety (90) days after the close of each fiscal year, and within sixty (60) days of the end of each fiscal quarter, income and expense statements and rent roll for the Premises prepared in accordance with generally accepted accounting principles and certified by an officer of Borrower;

(d) promptly supply Agent with such information concerning its 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, and within sixty (60) days of the end of each fiscal quarter, financial statements of Borrower showing the results of operations of the Premises and consisting of a balance sheet and statement of income prepared in accordance with generally accepted accounting principles (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 certified by an officer of Borrower;

(e) within one hundred twenty (120) days after the close of each fiscal year, and within sixty (60) days of the end of each fiscal quarter, supply Agent with compliance certificates evidencing Borrower's compliance with the Financial Covenants set forth herein;

(f) 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 any Material Adverse Occurrence in the financial condition of Borrower;

(g) once tenants are in occupancy of the Premises, within forty-five (45) days after the close of each fiscal year, and within thirty (30) days after the end of each fiscal quarter, supply Agent with occupancy reports which shall include the name of the each lessee, the expiration date of each Lease, and the rental amount for each demised space;

(h) **[Intentionally Omitted]**;

(i) maintain a standard and modern system of accounting in accordance with generally accepted accounting principles, consistently applied;

(j) upon reasonable prior written notice, permit Agent, Agent's Consultants 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; and

(k) upon reasonable prior written notice, permit Agent or Agent's Consultants to copy and make abstracts from any and all of said books and records.

All information provided to Agent from Borrower pursuant to this Section 8.7 shall be promptly shared with each Bank, and any reasonable requests made by each Bank for additional information shall be requested of the Borrower, on behalf of the Banks.

8.8 **Excess Indebtedness**. Borrower agrees to pay to Agent on demand the amount by which the indebtedness hereunder, at any time, may exceed the Commitment Amount.

8.9 **Compliance with Covenants; Prohibition Against Additional Recordings**. Borrower will comply with all recorded covenants affecting the Premises. Borrower will not record or permit to be recorded any document, instrument, agreement or other writing against the Land or Improvements without the prior written consent of Agent.

8.10 **Project Accounts**. Borrower will set up and maintain all operating accounts and other accounts related to the Project with Agent.

8.11 **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 ownership and operation of the Premises if an Event of Default has occurred and is continuing.

8.12 **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.

8.13 **Deferred Developer and Contractor's Fee**. Borrower shall defer payment of the $1,267,666.00 Development Fee and the $995,224.00 Contractor's Fee provided in the Project Budget to be paid to Borrower or any Affiliate of Borrower until such time as the Loans and all amounts due Agent under any of the Loan Documents are paid in full.

8.14 **Borrower Financial Covenants**. Borrower shall at all times during the term of the Loan comply with the following covenants (collectively, the "Financial Covenants"):

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

(b) Borrower 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).

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

(d) From the date hereof through March 31, 2008, Borrower shall maintain an Outstanding Bank Debt Ratio equal to or less than 5.0:1.0. At all times after March 31, 2008, Borrower shall maintain an Outstanding Bank Debt Ratio equal to or less than 4.0:1.0. Borrower's Outstanding Bank Debt Ratio shall be calculated at of the end of each fiscal quarter and fiscal year.

(e) [Intentionally Omitted].

8.15 **[Intentionally Omitted].**

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 to reduce the outstanding balance of the Loans or to rebuild and restore the Project, as provided in the Deed of Trust. Borrower shall not settle and adjust any claims under policies of insurance without Agent's prior written consent, except 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) $10,000,000.00; 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 F** (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 $3,500.

From and after the date on which the conditions described above have been met, (x) 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 (y) 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, (x) such Bank shall remain the holder of its Note for all purposes of this Agreement, (y) Borrower and Agent shall continue to deal solely and directly with such Bank in connection with such Bank's rights and obligations hereunder, and (z) 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, 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" as said term is used herein, 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 Notes within five (5) Business Days of the date when due, or (ii) any other amount payable to the Banks under the Notes, this Agreement or any of the other Loan Documents within five (5) business days after receipt of written notice of the date when any 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 this Agreement not otherwise described in Sections 11.1(a), or (c) through (r); provided, however, that if this Agreement 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 so long as the continued operation and safety and the value of the Premises are not materially impaired, threatened or jeopardized, Borrower shall have a period ("Cure Period") of thirty (30) days after Borrower obtains actual knowledge of such failure (which shall mean the actual knowledge of Charles J. Vogel or Christopher Wood or their successors to their positions with Borrower) 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, which remains inaccurate or untrue in any material respect when discovered and remains so for thirty (30) days after written notice from Agent to Borrower thereof;

(d) The reasonable good faith disapproval by Agent of any construction work and failure of Borrower to commence correction to the satisfaction of Agent within thirty (30) days after receipt of and diligently complete the same;

(e) [Intentionally deleted];

(f) The termination of the Development Agreement or the Architect's Contract without Agent's prior written consent;

(g) The occurrence of a Prohibited Transfer;

(h) The finding by a court of competent jurisdiction of any collusion, fraud, dishonesty or bad faith by or with the knowing acquiescence of Borrower or which in any way relates to or affects the Loans or the Project;

(i) Failure by Borrower to deposit with Agent funds required to maintain the Loan In Balance within the time and in the manner described in Section 7.5 of this Agreement;

(j) The occurrence of a Material Adverse Occurrence;

(k) Borrower (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 of all or any substantial part of the property of Borrower or any of the Premises; or all or a substantial part of the assets of Borrower are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

(l) The commencement of any involuntary petition in bankruptcy against Borrower or the institution against Borrower 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, which shall remain undismissed or undischarged for a period of sixty (60) days;

(m) The dissolution, termination or merger of Borrower;

(n) The occurrence of an "Event of Default" under the Notes or any of the other Loan Documents;

(o) In the event the Maturity Date is extended to the Extended Maturity Date, the Debt Service Coverage Ratio for the Project shall at any time be less than 1.20 to 1.00; or

(p) Borrower fails to comply with any of the covenants set forth in Section 8.14.

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 Notes, 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, Borrower hereby appoints and constitutes Agent as Borrower's lawful attorney-in-fact with full power of substitution in the Premises to perform the following actions:

(i) to complete construction of the Project in the name of Borrower;

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

(iii) to make changes in the Plans and Specifications which Agent deems necessary or appropriate to complete the Project;

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

(v) 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;

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

(vii) to do any and every act which Borrower might do in its own behalf with respect to the Premises, it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked;

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

(c) Declare the Notes to be due and payable forthwith without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action; 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, without notice of any kind to Borrower, may appropriate and apply to the payment of the Notes 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 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 to protect their security for the Loans are 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 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 (including any bankruptcy proceeding) 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 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.

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 13.9) 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.

13.2 **Actions Requiring Consent and Approval**. 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 for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct.

(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 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 non-monetary Event of Default on the part of the Borrower.

(b) Agent shall not undertake any of the following actions without the prior approval or consent of each Bank:

(i) Extend the Maturity Date (except as in accordance with the terms of this Agreement) 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;

(ii) [Intentionally Deleted[;

(iii) Modify the percentage specified in the definition of Required Banks;

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

(v) Amend this Section 13.2(b);

(vi) Waive a monetary default under the Loan Documents;

(vii) 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;

(viii) Consent to any additional indebtedness of Borrower secured by all or any portion of the Property, except as may be provided for in the Loan Documents; and

(ix) Modify any Financial Covenants of Borrower.

(c) 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.

(d) 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 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.

(e) 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 or the Required Banks, Borrower may rely on the direction, consent or approval of Agent as the direction, consent or approval of the Banks.

13.3 **Liability of Agent**. None of Agent nor any of its directors, officers, employees or agents shall (i) be liable to any Banks 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 gross 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 or any member, partner, shareholder or officer of Borrower 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.

13.4 **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. 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.

13.5 **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 (i) 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" or (ii) actual notice of an Event 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 Article 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.

13.6 **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, 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 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.

13.7 **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, from and against any and all actions, causes of action, suits, losses, liabilities, damaged and expenses, including attorneys' fees and expenses ARISING OUT OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREIN (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 gross negligence or willful misconduct. No action taken in accordance with the directions of the Required Banks shall constitute gross 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.

13.8 **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 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 (including information that may be subject to confidentiality obligations in favor of Borrower) 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.

13.9 **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.

13.10 **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 the Banks.

13.11 **Agent May File Proofs of Claim**. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other similar judicial proceeding relative to Borrower, 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

MISCELLANEOUS

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

14.2 **Agent's Determination of Facts**. Agent and/or any Bank at all times shall be free to establish independently to its or their satisfaction and in its or their sole and absolute discretion the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Agreement.

14.3 **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.

14.4 **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 and 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.

14.5 **Borrower Indemnification**. **TO THE FULLEST EXTENT PERMITTED BY LAW, BORROWER HEREBY AGREES TO PROTECT, INDEMNIFY, DEFEND AND SAVE HARMLESS AGENT AND THE BANKS AND THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITY, EXPENSE OR DAMAGE OF ANY KIND OR NATURE AND FROM ANY SUITS, CLAIMS OR DEMANDS, INCLUDING LEGAL FEES AND**

EXPENSES ON ACCOUNT OF ANY MATTER OR THING OR ACTION OR FAILURE TO ACT BY AGENT OR BANKS, WHETHER OR NOT IN LITIGATION, ARISING OUT OF THIS AGREEMENT OR IN CONNECTION HEREWITH UNLESS SUCH SUIT, CLAIM OR DAMAGE IS CAUSED SOLELY BY ANY ACT, OMISSION OR WILLFUL MALFEASANCE OF AGENT OR BANKS, THEIR DIRECTORS, OFFICERS, AGENTS AND AUTHORIZED EMPLOYEES. THIS INDEMNITY IS NOT INTENDED TO EXCUSE AGENT OR BANKS FROM PERFORMING HEREUNDER. THIS OBLIGATION ON THE PART OF BORROWER SHALL SURVIVE THE CLOSING OF THE LOANS, THE REPAYMENT THEREOF AND ANY CANCELLATION OF THIS AGREEMENT. BORROWER SHALL PAY, AND HOLD THE BANKS HARMLESS FROM, ANY AND ALL CLAIMS OF ANY BROKERS, FINDERS OR AGENTS CLAIMING A RIGHT TO ANY FEES IN CONNECTION WITH ARRANGING THE FINANCING CONTEMPLATED HEREBY. THE BANKS HEREBY REPRESENT THAT THEY HAVE NOT EMPLOYED A BROKER OR OTHER FINDER IN CONNECTION WITH THE LOANS. BORROWER REPRESENTS AND WARRANTS THAT NO BROKERAGE COMMISSIONS OR FINDER'S FEES ARE TO BE PAID IN CONNECTION WITH THE LOANS.

14.6 **Erection of Sign**. Upon the request of Agent, Borrower shall, at its sole cost and expense, erect a sign on the Premises reasonably satisfactory to Agent in a conspicuous location at Borrower's reasonable discretion indicating that the construction financing for the Project has been arranged through and supplied by the Banks.

14.7 **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.

14.8 **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.

14.9 **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.

14.10 **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) 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: Don Broderick Senior Vice President
With a copy to:	LaSalle Bank National Association Suite 1425 135 South LaSalle Street Chicago, Illinois 60603 Attn: 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:	Opus West Corporation 2555 East Camelback Road Suite 800 Phoenix, Arizona 85016 Attn: Senior Vice President, Real Estate, Finance & Sales
With copy to:	Opus West Corporation 2555 East Camelback Road Suite 800 Phoenix, Arizona 85016 Attn: Legal Department
And:	Luce, Forward, Hamilton & Scripps LLP 600 West Broadway Suite 2600 San Diego, California 92101-3391 Attn: Dave Hymer, Esq.

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

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

14.11 **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 and delivery hereof by Agent to Borrower.

14.12 **Governing Law**. This Agreement 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 California.

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

14.14 **Consent to Jurisdiction**. **TO INDUCE BANKS TO ACCEPT THE NOTES, 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 LOAN DOCUMENTS WILL BE LITIGATED IN COURTS HAVING SITUS IN COOK COUNTY, ILLINOIS OR SAN DIEGO COUNTY, CALIFORNIA. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN COOK COUNTY, ILLINOIS, 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.**

14.15 **Waiver of Jury Trial**. **BORROWER, AGENT AND 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 BANKS OR ANY OTHER PERSON INDEMNIFIED UNDER THIS AGREEMENT ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

14.16 **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 deemed to be originals thereof.

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[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Banks and Borrower have caused these presents to be executed the day and year first above written.

BORROWER:

OPUS WEST CORPORATION, a Minnesota corporation

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

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: D B K
Name: DON BRODERICK
Its: SVP

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: D B K
Name: DON BRODERICK
Its: SVP

PARK NATIONAL BANK, a

By:
Name:
Its:

SCHEDULE 3.1

THE BANKS AND COMMITMENTS

BANK	COMMITMENT	PRO RATA SHARE
LaSalle Bank National Association 135 South LaSalle Street Suite 1225 Chicago, Illinois 60603 Attn: Don Broderick, Senior Vice President	$38,500,000.00	100%

EXHIBIT A

THE LAND

PARCEL I:

Lot 4 of Scripps Ranch Business Park Phase III, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12130 filed in the Office of the County Recorder of San Diego County, July 27, 1988; and as further defined in that certain Certificate of Correction recorded August 23, 1989 as Instrument No. 89-452514, of Official Records.

PARCEL II:

An easement for ingress, egress, construction, operation and maintenance of a monument sign as contained in that certain "Grant of Easement" recorded November 5, 1999, as Instrument No. 1999-0740198, of Official Records.

APN: 319-170-23-00

ADDRESS:

San Diego, California

EXHIBIT B

FORM OF NOTES

PROMISSORY NOTE

$38,500,000.00 Date: _____, 2007
Chicago, Illinois Maturity Date: _____, 2009

FOR VALUE RECEIVED, OPUS WEST CORPORATION., a Minnesota corporation (the "Borrower"), hereby promises to pay to the order of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (the "Bank"), at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date or Extended Maturity Date, as applicable (as such terms are defined in the hereinafter referred to Loan Agreement), the lesser of (i) Thirty Eight Million Five Hundred Thousand and 00/100 DOLLARS ($38,500,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Construction Loan Agreement dated as of the date hereof, 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 (i) 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 and (ii) make principal repayments as 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.

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 any other indulgence. 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 Illinois applicable to contracts made and to be performed entirely within such State.

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

OPUS WEST CORPORATION, a Minnesota corporation, its Manager

By:_____
Name:_____
Title: _____

EXHIBIT C

PERMITTED EXCEPTIONS

The following are the Permitted Exceptions per Pro Forma Policy No. NCS-317607-SD issued by First American Title Insurance Company:

Exceptions 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 as set forth on Schedule B, Part I together with Exceptions 1 and 2 as set forth on Schedule B, Part II.

EXHIBIT D

PROJECT BUDGET

Sources		% Total	Uses		% Total	$ per SF
Construction Loan	$ *38,500,000*	88.5%	Land	$ 10,000,000	23.0%	$63.34
Borrower Equity	2,760,308	6.3%	Base Building Cost	16,587,063	38.1%	$105.06
			TI & LC	9,190,112	21.1%	$58.21
			Government Charges	828,319	1.9%	$5.25
			Facility Benefit Assessment Fee	699,637	1.6%	$4.43
			Interim Loan Cost	430,923	1.0%	$2.73
			Interest Reserve	2,376,528	5.5%	$15.05
			Real Estate Taxes	137,726	0.3%	$0.87
			Other [1]	210,000	0.5%	$1.33
			Contingency	800,000	1.8%	$5.07
Sub-Total	41,260,308	94.8%	Sub-Total	41,260,308	94.8%	$261.33
Future Project CF	2,262,890	5.2%	General Contract Fee [2]	995,224	2.3%	$6.30
			Development Fee [2]	1,267,666	2.9%	$8.03
Total Sources	$ 43,523,198	100.0%	**Total Uses**	$ 43,523,198	100.0%	$275.67

[1] Other includes closing costs, survey, soil, environmental, property mapping, legal, advertising and marketing

EXHIBIT E

ARCHITECT'S CERTIFICATE

Re: Construction Loans in the aggregate principal amount of $38,500,000.00 (collectively, the "Loans") by tbe Banks (as defined in the Loan Agreement referenced herein), pursuant to the terms of that certain Construction Loan Agreement ("Loan Agreement") dated as of _____ __, 2007 by and among LaSalle Bank National Association, as Agent for itself and the Banks ("Agent"), the Banks and Opus West Corporation, a Minnesota corporation, for construction of a 157,000 square foot office building located in San Diego, San Diego County, California ("Project").

The undersigned, _____ ("**Architect**"), has entered into that certain agreement dated as of _____ __, _____ with Opus Architects and Engineers, Inc. (the "**Contract**"). The undersigned hereby certifies to the Agent that pursuant to the Contract the undersigned has designed the Project and will perform certain other services, as provided in the Contract.

The undersigned, using the standard of professional care customary in the San Diego metropolitan area and the State of California, hereby certifies to Agent as follows:

(a) The firm has professional liability insurance in the amount of $1,000,000.00;

(b) The following permits or governmental agency approvals will be required for the construction and occupancy of the building:

	Issuing Agency	Date Issued
Excavation Permit	_____	_____
Foundation Permit	_____	_____
Building Permit	_____	_____
EPA - Water	_____	_____
EPA - Sewer	_____	_____
EPA - Air	_____	_____
MWRD - Sewer	_____	_____
Water Pollution Control	_____	_____
Toll Highway Permit	_____	_____
Cert. of Occupancy - Bldg.	_____	_____

(c) All permits, licenses and governmental approvals necessary for commencement of construction of the Project have been issued or, if the progress of construction does not yet require issuance thereof, Architect does not know of any reason why such permits, licenses or approvals may not be issued upon application therefore;

(d) In the aggregate, the Plans and Specifications prepared by Architect pursuant to the Contract ("Plans") contain all detail necessary to provide for construction of the Project;

(e) The Plans are in substantial compliance with all applicable building, zoning, environmental and land use laws, statutes, codes and regulations necessary to obtain a building permit;

(f) The Plans are complete in all material respects and contain all requisite detail for building the Project;

(g) Subject to force majeure, the undersigned knows of no reason why the Project will not be completed and ready to be occupied by _____;

(h) To the best of our knowledge, adequate ingress and egress to the Project over public streets, rights of way and easements will be available after completion of construction of the Project in accordance with the Plans;

(i) To the best of our knowledge, storm and sanitary sewage disposal systems are or shall be available to service the Project and such systems do (or when constructed will) comply with all applicable environmental, pollution control and ecological laws, ordinances, rules and regulations, and in addition the applicable environmental protection agency, pollution control board and/or other governmental agencies having jurisdiction of the Project have issued their permits for the construction of the Project, or if the stage of construction of the Project does not allow for such issuance, then such permits shall be issued if and when such portion of the Project is constructed in accordance with the Plans; and

(j) To the best of our knowledge, all utilities necessary for the operation of the Project are available at the boundaries of the Project. If utility services must be brought to site, please explain: _____

_____

_____

_____.

The undersigned acknowledges that the Agent and the Banks are relying on this Certificate in agreeing to make the Loans.

Date: _____, 2006

Langdon Wilson, Inc.

By:_____
Name:_____
Its:_____

Address:

_____
_____
_____

EXHIBIT F

FORM OF ASSIGNMENT AND ACCEPTANCE

Reference is made to the Construction Loan Agreement dated as of _____ ___, 2007 (as the same may be amended, modified or supplemented from time to time in accordance with its terms, the "Loan Agreement") among (i) OPUS WEST CORPORATION, a Minnesota corporation ("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 Notes held by it evidencing the Assigned Facility and requests that Agent exchange such Notes 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 financial statements 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 Section 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 its consent. Following the execution of this Assignment and Acceptance, it will be delivered to Agent for acceptance by it and recording by Agent pursuant to Section 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 the 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, a national banking 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 G

FORM OF REQUEST FOR ADVANCE

LOAN ADVANCE REQUISITION

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

PROJECT NAME: Scripps Ranch (the "Project")
BORROWER: OPUS WEST CORPORATION, a Minnesota corporation (the "Borrower")
DRAW NO: _____

Reference is hereby made to that certain Construction Loan Agreement dated as of _____ ___, 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 Construction Disbursement in the amount of _____. The Borrower acknowledges that the approval of this Construction Disbursement by the Agent is subject to all of the terms and conditions precedent for the disbursement of Loan Proceeds, including, without limitation, inspection of the Project, verification of the matters set forth in this Loan Advance Requisition and the availability of Loan Proceeds. The Borrower acknowledges that no funds shall be disbursed by Agent or 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 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) 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;

(c) no Event of Default has occurred under the Loan Agreement or under any Loan Document, and no event, circumstance or condition has occurred or exists which, with the passage of time or the giving of notice, would constitute an Event of Default under the Loan Agreement or under the other Loan Documents;

(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, the Project, the Contractor or the Premises, except the liens of the Agent and those which are specifically identified in writing to the Bank, except as otherwise previously disclosed in writing to Agent;

(e) no event, circumstance or condition exists or has occurred which could delay or prevent the completion of the Project by the Completion Date, except as otherwise previously disclosed in writing to Agent;

(f) all Construction Disbursements advanced by the Agent and Banks to the Borrower for labor, materials and/or services furnished prior to this draw request have been 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;

(g) all work and materials furnished to date for the Project conform with the Plans and Specifications, and the Borrower has approved all work and materials for which a payment is now due and for which this Construction Disbursement is being requested;

(h) the total amount of the requested Construction Disbursement represents the actual amount payable to the Contractor and/or Subcontractors who have performed work on the Project, and all of the Construction Disbursement requested hereby will be used as payment for the work on the Project described on the attached documentation and for no other reason;

(i) all change orders or changes to the Plans and Specifications or the Schedule of Values have been submitted to and approved by Agent; and

(j) the Loans are In Balance (including, without limitation, any change orders approved by the Bank).

4. Disbursement of the Loan Proceeds requested hereby may be subject to (a) the receipt by the Agent of a certificate from the issuing Title Company stating that no claims have been filed of record which adversely affects the title, and (b) approval from the Agent's Inspecting Architect/Consultant.

5. The amount of change orders in dispute between the Borrower and the General Contractor (or any Subcontractor) is $_____.

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

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

IN WITNESS WHEREOF, the Borrower has executed this Loan Advance Requisition as of _____, 2007.

OPUS WEST CORPORATION, a Minnesota corporation

By:_____
Name:_____
Its:_____

ATTACHMENT 2

IV

LBNA / Commercial

8275533840

PROMISSORY NOTE

$38,500,000.00
Chicago, Illinois

Date: September 27, 2007
Maturity Date: September 26, 2009

FOR VALUE RECEIVED, **OPUS WEST CORPORATION**, a Minnesota corporation (the "Borrower"), hereby promises to pay to the order of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (the "Bank"), at the principal office of LaSalle Bank National Association, in its capacity as agent, (the "Agent") in Chicago, Illinois, on or before the Maturity Date or Extended Maturity Date, as applicable (as such terms are defined in the hereinafter referred to Loan Agreement), the lesser of (i) Thirty Eight Million Five Hundred Thousand and 00/100 Dollars ($38,500,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Construction Loan Agreement dated as of the date hereof, 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 (i) 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 and (ii) make principal repayments as 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.

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 any other indulgence. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

OPUS WEST CORPORATION, a Minnesota corporation

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

ATTACHMENT 3

ASSUMPTION AND MODIFICATION AGREEMENT (Scripps Ranch)

The parties to this Assumption and Modification Agreement ("Agreement") dated and effective as of April 30, 2008 (the "Modification Date") are LASALLE BANK NATIONAL ASSOCIATION, a national banking association ("Lender") as Agent for itself and the other Lenders under the hereinafter defined Loan Agreement, SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership ("Borrower") and each other person who executes this Agreement as provided herein. For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Background. Lender owns the promissory note dated September 27, 2007 originally made by OPUS WEST CORPORATION, a Minnesota corporation ("Original Borrower") payable to the order of Lender in the principal face amount of $38,500,000.00, which promissory note evidenced a loan ("Loan") made to Original Borrower and is, as it may have been renewed, extended, amended, or supplemented by one or more documents, if any, dated before the Modification Date, herein called the "Note." As of the date hereof, Lender is the only "Lender" under the Loan Documents. The security for the Note includes (without limitation) the Construction Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated September 27, 2007 executed by Original Borrower and recorded September 27, 2007 in the public records of San Diego County, California at Recording No. 2007-0630364, as it may have been renewed, extended, amended or supplemented by one or more documents, if any, dated before the Modification Date, reference being here made thereto and the recording thereof for all purposes (the "Deed of Trust"). The Loan was made pursuant to the Construction Loan Agreement between Original Borrower and Lender dated September 27, 2007, as it may have been renewed, extended, amended or supplemented by one or more documents, if any, dated before the Modification Date, herein called the "Loan Agreement." Any and all documents evidencing, securing or pertaining to the Loan, including, without limitation, that Environmental Indemnity Agreement dated September 27, 2007 (the "Environmental Agreement"), executed by Original Borrower, as they may have been or may be amended, modified, restated, replaced and supplemented from time to time, including without limitation by that financial covenant side letter dated March 21, 2008, are herein called the "Loan Documents." Capitalized terms used but not otherwise defined herein shall have the meanings assigned in the Loan Agreement.

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

2.1 Borrower hereby assumes the obligation for payment of the indebtedness evidenced by the Note and for the performance of all covenants, conditions, provisions and agreements under the Loan Agreement, the Deed of Trust and the other Loan Documents.

2.2 Borrower hereby covenants, promises and agrees (i) to pay the Note at the times, in the manner and in all other respects as therein provided or as it may be modified in writing between the obligor and the holder thereof; (ii) to perform each and all of the covenants, conditions, provisions and agreements in the Loan Agreement, the Deed of Trust and the other

Loan Documents to be performed by Original Borrower from and after the date of the effectiveness of this Agreement, at the time, in the manner and in all other respects as therein provided, except to the extent specifically modified by this Agreement; and (iii) to be bound by each and every term, condition and provision of the Note, the Loan Agreement, the Deed of Trust and the other Loan Documents, except to the extent specifically modified in this Agreement, as though such documents and instruments had originally been made, executed and delivered by Borrower.

Notwithstanding anything herein to the contrary, Lender acknowledges that the architect's contract and certain construction contracts and subcontracts relating to the construction of the Improvements have not been assigned by Original Borrower to Borrower and instead continue to be held by Original Borrower for purposes of its completion obligations for the shell portion of the Improvements (collectively, the "Unassigned Construction Documents"). Accordingly, Borrower makes no representations or covenants regarding ownership or performance of the Unassigned Construction Documents. Notwithstanding anything herein to the contrary, Original Borrower shall continue to be bound by all Loan Documents relating to the Unassigned Construction Documents and shall perform all obligations with respect thereto.

2.3 Subject to the satisfaction of the conditions precedent to the effectiveness of this Agreement, Lender hereby releases and discharges Original Borrower, from any further liability as a borrower (but not as a guarantor) under the Loan Documents (other than the Environmental Agreement) from and after the date of the effectiveness of this Agreement. This release shall not in any way modify, alter or affect (i) rights and liabilities arising in connection with any other loans, agreements or other obligations, if any, between Lender and Original Borrower, (ii) the liability and obligations of any other person or entity under the Loan Documents, or (iii) the liability of Original Borrower under the Environmental Agreement. Borrower and Original Borrower shall be jointly and severally liable for all of the obligations of "Borrower" under the Environmental Agreement. No other party except Original Borrower shall be entitled to any benefit, either expressly or by implication, from this release or be a beneficiary hereof.

2.4 In consideration of the consents, releases and the modifications contained herein, Original Borrower shall become a guarantor of the Loan and Borrower's obligations under the Loan Documents and Original Borrower and Borrower shall execute or cause to be executed and delivered, in form and substance satisfactory to Lender (i) a Guarantee Agreement (the "Guarantee Agreement") executed by Original Borrower, guaranteeing the Loan, (ii) a Memorandum of Assumption and Modification, and (iii) such other documents as required herein or that Lender may reasonably require to effect the purposes hereof. In addition, Borrower shall provide Lender with an endorsement to Lender's existing title insurance policy insuring the Deed of Trust in form and substance satisfactorily to Lender insuring that the Deed of Trust continues to be a first and prior lien on the property, encumbered thereby.

2.5 The following definitions in Section 1.1 of the Loan Agreement are hereby amended in their entirety to read as follows:

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

Affiliate Debt: All non-contingent liabilities owed by Guarantor to Affiliates of Guarantor.

Debt Service: For any Quarter, the sum of all scheduled principal and interest payments on the Loan and any other indebtedness of the Borrower under the Loan that is due and payable during such Quarter based upon (i) an outstanding principal balance of the Loan of $38,500,000, (ii) a twenty-five (25) year amortization schedule and (iii) an interest rate equal to the greater of (A) seven percent (7.0%) per annum or (B) the yield to maturity percentage (the "Current Yield") for the United States Treasury Security actively traded United States Treasury bond, bill or note (the "Treasury Security") closest in maturity to the tenth anniversary of the date of calculation as published by *The Wall Street Journal* on the fifth Business Day preceding the date of calculation, **plus** one and one-half percent (1.50%) **plus** the corresponding swap spread as published in Bloomberg's Financial Markets Commodities News on the second (2nd) Business Day preceding the Maturity Date (or if not so published, Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine such spread). If publication of (A) *The Wall Street Journal*, or (B) the Current Yield of the United States Treasury Security in *The Wall Street Journal* is discontinued, the Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine the Current Yield.

Indebtedness: All items, which in accordance with GAAP, would be included as liabilities on the consolidated balance sheet of Guarantor other than Subordinated Affiliate Debt.

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 Guarantor or 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.

Subordinated Affiliate Debt: 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 Lender.

Tangible Net Worth: 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: 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).

2.6 The following new definition is hereby added to Section 1.1 of the Loan Agreement:

Guarantor: OPUS WEST CORPORATION, a Minnesota corporation.

2.7 The following definitions are deleted from Section 1.1 of the Loan Agreement in their entirety: Adjusted Tangible Net Worth, Outstanding Bank Debt and Leverage Ratio.

2.8 Each reference to the term "Borrower" in Sections 8.7(d) and (e) is hereby amended to be a reference to "Guarantor."

2.9 Section 8.14 of the Loan Agreement is hereby amended in its entirety to read as follows:

8.14 Financial Covenants. Borrower shall at all times during the term of the Loan cause Guarantor to comply with the following covenants (collectively, the "Financial Covenants"):

(a) 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).

(b) 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.

2.10 Sections 11.1(k), (l), (m) and (p) of the Loan Agreement are hereby amended in their entirety to read as follows:

(k) Borrower or 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 Guarantor or

of all or any substantial part of the property of Borrower or Guarantor or any of the Premises; or all or a substantial part of the assets of Borrower or Guarantor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

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

(m) The dissolution, termination or merger of Borrower or Guarantor;

(p) Guarantor fails to comply with any of the covenants set forth in Section 8.14.

2.11 New Borrower Organization. Section 2.1 of the Loan Agreement, Section 1 of the Certificate of Representations, Warranties and Covenants, and all other similar provisions of the Loan Documents are modified to reflect that Borrower is a limited partnership under the laws of the State of Delaware and is qualified to do business in the State of California. Section 2.2 of the Loan Agreement is modified by deleting Charles J. Vogel and Christopher Wood from the knowledge group of Original Borrower and replacing such persons with Luz Campa and Wade Lau as the knowledge group for Borrower.

2.12 Representations of Borrower. Lender acknowledges that any and all representations made or to be made by Borrower under the Loan Documents from and after the Modification Date (including, without limitation, the representations regarding financial condition and financial statements set forth in the Certificate of Representations, Warranties and Covenants and any representations to be made by Borrower under future draw certificates) shall be construed to be made by Borrower with respect to itself only (and not with respect to Original Borrower) and with respect only to the period from and after the Modification Date.

2.13 Fixture Filing Modification. Section 13(j) of the Deed of Trust is hereby modified in its entirety to read as follows:

(j) Trustor represents and warrants that:

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

(ii) Trustor's chief executive office is located in the State of Minnesota;

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

(iv) Trustor's exact legal name is Sequoia Realty Limited Partnership; and

(v) Trustor's organizational identification number is 4508801.

2.14 Address for Notices to Borrower. All Loan Documents are modified to reflect the following addresses for all notices to Borrower:

Sequoia Realty Limited Partnership
c/o Sequoia Realty, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Vice President

With a copy to: Opus, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Legal Department

All other terms of the Loan Documents remain unchanged.

3. Present Balance of Note. Original Borrower and Lender hereto acknowledge and agree that (i) the outstanding principal balance of the Loan as of the Modification Date is $17,763,441.77, and (ii) all interest due with respect to the Loan has been paid through March 31, 2008, with the next regular payment due on May 1, 2008. Lender and Original Borrower represent and agree that, to the best of their respective knowledge, as of the Modification Date, there are no defaults under the Note or any other Loan Documents.

4. Ratification; Controlling Agreement; Applicable Law. The modified Loan Documents, and other documents, assignments, transfers, liens and security rights pertaining to it are hereby ratified and confirmed as valid, subsisting and continuing in full force and effect as modified hereby. Borrower promises to pay the Note to the order of Lender in accordance with its terms. This Agreement does not waive any default or any right of Lender including but not limited to any rights Lender may have against any person not a party hereto.

5. No Usury. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Lender to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Section shall control every other covenant and agreement in this Agreement and the other Loan Documents. If applicable state or federal law should at any time be judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Loan, or if Lender's exercise of the option to accelerate the maturity date of the Note, or if any prepayment by Borrower results in Borrower having paid any interest in excess of that permitted by applicable law, then it is Lender's express intent that all excess amounts theretofore collected by Lender shall be credited on the principal balance of

the Note and all other indebtedness and the provisions of the Note and the other Loan Documents shall immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the maximum lawful rate from time to time in effect and applicable to the Loan for so long as the Loan is outstanding.

6. WAIVER OF JURY TRIAL. THE PARTIES HERETO WAIVE TRIAL BY JURY IN RESPECT OF ANY DISPUTE AND ANY ACTION ON SUCH DISPUTE. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE PARTIES HERETO, AND THE PARTIES HERETO HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT. THE PARTIES HERETO ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. EACH PARTY HERETO FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

7. Notice of Final Agreement. This Agreement is the entire agreement between the parties with respect to modifications of documents provided for herein and supersedes all prior conflicting or inconsistent agreements, consents and understandings relating to such subject matter.

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

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN PARTIES.

EXECUTED to be effective as of the Modification Date.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association, as Agent for itself and other Lenders

By:_____
Name: Edgardo Martinez
Title: Vice President

BORROWER:

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

BY: SEQUOIA REALTY, L.L.C., a Delaware limited liability company, General Partner

By:_____
Name:_____
Title:_____

THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN PARTIES.

EXECUTED to be effective as of the Modification Date.

LENDER:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association, as Agent for itself and other Lenders

By:_____
Name:_____
Title:_____

BORROWER:

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

BY: SEQUOIA REALTY, L.L.C., a Delaware limited liability company, General Partner

By: L Campa
Name: Luz Campa
Title: Vice President

CONSENT AND AGREEMENT

The foregoing is hereby consented and agreed to as of the 30th day of April, 2008.

OPUS WEST CORPORATION, a Minnesota corporation

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

ORIGINAL BORROWER

ATTACHMENT 4

PROMISSORY NOTE

$10,000,000.00 Date: September 5, 2008
Chicago, Illinois Maturity Date: September 27, 2009

FOR VALUE RECEIVED, **SEQUOIA REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of **FIDELITY BANK**, a Federal Saving Bank, (the "Bank"), at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date or Extended Maturity Date, as applicable (as such terms are defined in the hereinafter referred to Loan Agreement), the lesser of (i) Ten Million and 00/100 Dollars ($10,000,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Construction Loan Agreement dated as of September 27, 2007, executed by and among OPUS WEST CORPORATION, a Minnesota corporation, 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.

Pursuant to that certain Assumption and Modification Agreement (Scripps Ranch) dated April 30, 2008 between Agent and the Borrower, the Borrower assumed the obligations for payment of the indebtedness evidenced by the Note and the performance of all covenants, conditions, provisions and agreements under the Loan Agreement and the other Loan Documents.

The Borrower further promises to (i) 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 and (ii) make principal repayments as 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.

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 any other indulgence. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: **SEQUOIA REALTY, L.L.C.**, a Delaware limited liability company, General Partner

By: _____
Name: Thomas W. Roberts
Title: Vice President

 821553840

LBNA / Commercial

THIS AMENDED AND RESTATED PROMISSORY NOTE AMENDS, RESTATES AND REPLACES IN ITS ENTIRETY THAT CERTAIN PROMISSORY NOTE DATED SEPTEMBER 27, 2007 IN THE PRINCIPAL AMOUNT OF $38,500,000.00 MADE BY OPUS WEST CORPORATION IN FAVOR OF LASALLE BANK NATIONAL ASSOCIATION BUT DOES NOT CONSTITUTE A NOVATION.

AMENDED AND RESTATED PROMISSORY NOTE

$14,250,000.00 Date: September 5, 2008
Chicago, Illinois Maturity Date: September 27, 2009

FOR VALUE RECEIVED, **SEQUOIA REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association (the "Bank"), at the principal office of LaSalle Bank National Association, in its capacity as agent, (the "Agent") in Chicago, Illinois, on or before the Maturity Date or Extended Maturity Date, as applicable (as such terms are defined in the hereinafter referred to Loan Agreement), the lesser of (i) Fourteen Million Two Hundred Fifty Thousand and 00/100 Dollars ($14,250,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Construction Loan Agreement dated as of September 27, 2007, executed by and among OPUS WEST CORPORATION, a Minnesota corporation, 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.

Pursuant to that certain Assumption and Modification Agreement (Scripps Ranch) dated April 30, 2008 between Agent and the Borrower, the Borrower assumed the obligations for payment of the indebtedness evidenced by the Note and the performance of all covenants, conditions, provisions and agreements under the Loan Agreement and the other Loan Documents.

The Borrower further promises to (i) 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 and (ii) make principal repayments as 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.

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 any other indulgence. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: **SEQUOIA REALTY, L.L.C.**, a Delaware limited liability company, General Partner

By: _____
Name: Thomas W. Roberts
Title: Vice President

 8275533840

LBNA / Commercial

PROMISSORY NOTE

$14,250,000.00 Date: September 5, 2008
Chicago, Illinois Maturity Date: September 27, 2009

FOR VALUE RECEIVED, **SEQUOIA REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership (the "Borrower"), hereby promises to pay to the order of **THE HUNTINGTON NATIONAL BANK**, a national banking association, (the "Bank"), at the principal office of LaSalle Bank National Association (the "Agent") in Chicago, Illinois, on or before the Maturity Date or Extended Maturity Date, as applicable (as such terms are defined in the hereinafter referred to Loan Agreement), the lesser of (i) Fourteen Million Two Hundred Fifty Thousand and 00/100 Dollars ($14,250,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain Construction Loan Agreement dated as of September 27, 2007, executed by and among OPUS WEST CORPORATION, a Minnesota corporation, 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.

Pursuant to that certain Assumption and Modification Agreement (Scripps Ranch) dated April 30, 2008 between Agent and the Borrower, the Borrower assumed the obligations for payment of the indebtedness evidenced by the Note and the performance of all covenants, conditions, provisions and agreements under the Loan Agreement and the other Loan Documents.

The Borrower further promises to (i) 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 and (ii) make principal repayments as 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.

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 any other indulgence. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: **SEQUOIA REALTY, L.L.C.**, a Delaware limited liability company, General Partner

By: _____
Name: Thomas W. Roberts
Title: Vice President

ATTACHMENT 5

HORIZON TECH / SCRIPPS RANCH

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

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

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With respect to the Opus RLC Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Commons at Chino Hills Construction Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Camarillo Ranch Agreement:

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

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

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

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 20 day of March, 2008

OPUS WEST LP, a Delaware limited partnership, Borrower

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

OPUS WEST LP, a Delaware limited partnership, Borrower

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

SHOPPES AT CHINO HILLS, INC., a Minnesota corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

By: 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 Agreement and the Pima Center Guaranty:

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

With respect to the Cypress Agreement and the Cypress Guaranty:

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

Acknowledged and Agreed to as of the 20 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: 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 Arch Road Construction Agreement and the Arch Road Construction Guaranty:

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

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Scripps Ranch Construction Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

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

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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
20 day of March, 2008

OPUS WEST CORPORATION, a Minnesota corporation

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

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

GUARANTOR

ATTACHMENT 6

5655

DOC # 2007-0630364

Recording Requested By:
First American Title
Nat'l Commercial Services

SEP 27, 2007 12:12 PM
OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH COUNTY RECORDER
FEES 169.00 WA'S 4
DA 1

Upon recordation return to:

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Michael S. Kurtzon, Esq.
NIS 317607

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PAGES: 47

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2007-0630364

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

by

OPUS WEST CORPORATION, a Minnesota corporation, Trustor

to

FIRST AMERICAN TITLE INSURANCE COMPANY, Trustor

for the benefit of

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

429796.3 044497-40056

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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 ("Deed of Trust") is made as of the 27th day of September, 2007 by **OPUS WEST CORPORATION**, a Minnesota corporation, whose mailing address is, 2555 East Camelback Road, Suite 800, Phoenix, Arizona 85016 ("Trustor"), 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 Beneficiary for itself and other Banks (as defined in the Loan Agreement referenced below) ("Beneficiary").

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 Trustor, Beneficiary, as agent for the Banks (the "Loan Agreement"), the Banks have agreed to make loans to Trustor in the aggregate principal amount of Thirty Eight Million Five Hundred Thousand and 00/100 Dollars ($38,500,000.00) (the "Loans"). The Loans shall be evidenced by that certain Promissory Note in the principal amount of $38,500,000.00 in favor of LaSalle Bank National Association, as a Bank, of even date herewith (as amended, restated or replaced from time to time, the "Note") and due on September 26, 2009, subject to extension to September 26, 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 the Banks making the Loans to Trustor is the execution and delivery by Trustor of this Deed of Trust.

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

Trustor, in consideration of the indebtedness herein recited and the trust herein created, irrevocably transfers, grants, conveys and assigns unto Trustee, IN TRUST, WITH POWER OF SALE, all of Trustor's estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in and to the following property (referred to collectively

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

THE REAL ESTATE located in the County of San Diego, 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 Trustor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Trustor in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Trustor or on its behalf (the "Improvements");

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

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

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

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Trustor and forming a part of or used in connection with the Real Estate or the Improvements, including, but without limitation, any and all air conditioners, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, coolers, curtains, dehumidifiers, disposals, doors, drapes, dryers, ducts, dynamos, elevators,

engines, equipment, escalators, exercise equipment, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing, pumps, radiators, ranges, recreational facilities, refrigerators, screens, security systems, shades, shelving, sinks, sprinklers, stokers, stoves, toilets, ventilators, wall coverings, washers, windows, window coverings, wiring, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Trustor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness (as hereinafter defined); notwithstanding the agreement hereinabove expressed that certain articles of property form a part of the realty covered by this Deed of Trust and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code 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, in Trustee for the benefit of Beneficiary, as a secured party, and Trustor, as Debtor, all in accordance with the Code; and

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

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

TOGETHER WITH all proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation

proceeds or the taking of the Premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Premises or proceeds of any sale, option or contract to sell the Premises or any portion thereof; and

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

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

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

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

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

1. Title. Trustor represents, warrants and covenants that (a) Trustor is the holder of the fee simple title to the Premises, free and clear of all liens and encumbrances, except those liens and encumbrances in favor of or for the benefit of Beneficiary and as otherwise described

on Exhibit B attached hereto ("Permitted Exceptions"); and (b) Trustor has legal power and authority to grant, bargain, sell, and convey the Premises. Trustor will warrant and forever defend unto Trustee and unto Beneficiary the title to the Premises against all claims and demands, subject only to the Permitted Exceptions.

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

(a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, whether or not proceeds of insurance are available or sufficient for the purpose;

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

(c) pay when due the Indebtedness in accordance with the terms of the 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 Trustor under the Note, the Loan Agreement, this Deed of Trust and the other Loan Documents;

(d) pay when due any Indebtedness which may be secured by a permitted lien or charge on the Premises on a parity with, superior to or inferior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Beneficiary (subject to Trustor's right to contest liens as permitted by the terms of Paragraph 28 hereof);

(e) complete within a reasonable time any Improvements now or at any time in the process of erection upon the Premises;

(f) comply with all requirements of law, municipal ordinances or restrictions and covenants of record with respect to the Premises and the use thereof;

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

(h) make no material alterations in the Premises or demolish any portion of the Premises without Beneficiary's prior written consent, except as required by law or municipal ordinance or as contemplated by the Loan Agreement;

(i) suffer or permit no change in the use or general nature of the occupancy of the Premises, without the Beneficiary's prior written consent;

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

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

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

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

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

4. **Tax Deposits**. Upon an Event of Default and at Beneficiary's request, Trustor shall deposit with Beneficiary, on the first day of each month until the Indebtedness is fully paid, a sum equal to one-twelfth (1/12th) of 105% of the most recent ascertainable annual Taxes on the Premises. If requested by Beneficiary, Trustor shall also deposit with Beneficiary an amount of money which, together with the aggregate of the monthly deposits to be made pursuant to the preceding sentence as of one month prior to the date on which the next installment of annual Taxes for the current calendar year become due, shall be sufficient to pay in full such installment

of annual Taxes, as estimated by Beneficiary. Such deposits are to be held without any allowance of interest and are to be used for the payment of Taxes next due and payable when they become due. So long as no Event of Default shall exist, Beneficiary shall, at its option, pay such Taxes when the same become due and payable (upon submission of appropriate bills therefor from Trustor) or shall release sufficient funds to Trustor for the payment thereof. If the funds so deposited are insufficient to pay any such Taxes for any year (or installments thereof, as applicable) when the same shall become due and payable, Trustor shall, within ten (10) days after receipt of written demand therefor, deposit additional funds as may be necessary to pay such Taxes in full. If the funds so deposited exceed the amount required to pay such Taxes for any year, the excess shall be applied toward subsequent deposits. Said deposits need not be kept separate and apart from any other funds of Beneficiary. Beneficiary, in making any payment hereby authorized relating to Taxes, may do so according to any bill, statement or estimate (a "Bill") procured from the appropriate public office without inquiry into the accuracy of such Bill or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. So long as no Event of Default exists and Trustor is not making the deposits set forth above in this Paragraph 4, upon Trustor's payment of any Taxes which are due and payable during the term of the Loan, Trustor shall provide Beneficiary with evidence reasonably satisfactory to Beneficiary that such Taxes have been duly paid, together with a copy of the Bill pertaining to any such payment made by Trustor.

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

6. **Insurance**.

(a) Trustor shall at all times keep all buildings, improvements, fixtures and articles of personal property now or hereafter situated on the Premises insured against loss or damage by fire and such other hazards as may reasonably be required by Beneficiary, in accordance with the terms, coverages and provisions described on Exhibit C attached hereto and made a part hereof, and such other insurance as Beneficiary may from time to time reasonably require; provided, however, Trustor shall not be required to obtain property insurance until such time as improvements are located on the Real Estate. Unless Trustor provides Beneficiary evidence of the insurance

coverages required hereunder, Beneficiary may purchase insurance at Trustor's expense to cover Beneficiary's interest in the Premises. The insurance may, but need not, protect Trustor's interest. The coverages that Beneficiary purchases may not pay any claim that Trustor makes or any claim that is made against Trustor in connection with the Premises. Trustor may later cancel any insurance purchased by Beneficiary, but only after providing Beneficiary with evidence that Trustor has obtained insurance as required by this Deed of Trust. If Beneficiary purchases insurance for the Premises, Trustor will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Beneficiary may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Trustor may be able to obtain on its own.

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

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

both would constitute an Event of Default, then exists. If insurance proceeds are made available to Trustor by Beneficiary as hereinafter provided, Trustor shall repair, restore or rebuild the damaged or destroyed portion of the Premises so that the condition and value of the Premises are substantially the same as the condition and value of the Premises prior to being damaged or destroyed. Any insurance proceeds applied on account of the unpaid principal balance of the Note shall be subject to any Make Whole Costs described in the Note. In the event of foreclosure of this Deed of Trust, all right, title and interest of Trustor in and to any insurance policies then in force shall pass to the purchaser at the foreclosure sale.

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

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

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

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

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

(c) prior to each disbursement of any such proceeds, Beneficiary shall be furnished with a statement of Beneficiary's architect (the cost of which shall be borne by Trustor), certifying the extent of the repair and restoration completed to the date thereof, and that such repairs,

restoration, and rebuilding have been performed to date in conformity with the plans and specifications approved by Beneficiary and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Beneficiary shall be furnished with appropriate evidence of payment for labor or materials furnished to the Premises, and total or partial lien waivers substantiating such payments.

(iii) If Trustor shall fail to restore, repair or rebuild the Improvements within a time deemed reasonably satisfactory by Beneficiary, then Beneficiary, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Trustor, or (b) declare an Event of Default. If insurance proceeds shall exceed the amount necessary to complete the repair, restoration or rebuilding of the Improvements, such excess shall be applied on account of the Indebtedness irrespective of whether such Indebtedness is then due and payable without payment of any premium or penalty.

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

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

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

10. **Effect of Extensions of Time and Other Changes**. If the payment of the Indebtedness or any part thereof is extended or varied, if any part of any security for the payment of the Indebtedness is released, if the rate of interest charged under the Note is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Trustor, shall be held to assent to such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Beneficiary, notwithstanding such extension, variation, release or change.

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

12. **Beneficiary's Performance of Defaulted Acts and Expenses Incurred by Beneficiary**. If an Event of Default has occurred, Beneficiary may, but need not, make any payment or perform any act herein required of Trustor in any form and manner deemed expedient by Beneficiary, and may, but need not, make full or partial payments of principal or interest on prior encumbrances, if any, and purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises or consent to any tax or assessment or cure any default of Trustor in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Beneficiary in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Trustor to Beneficiary, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Loan

Agreement) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Beneficiary in connection with (a) sustaining the lien of this Deed of Trust or its priority, (b) protecting or enforcing any of Beneficiary's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Note, this Deed of Trust, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Note, this Deed of Trust, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Trustor to Beneficiary, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Trustor to Beneficiary, and shall be additional Indebtedness evidenced by the Note and secured by this Deed of Trust. Beneficiary's failure to act shall never be considered as a waiver of any right accruing to Beneficiary on account of any Event of Default. Should any amount paid out or advanced by Beneficiary hereunder, or pursuant to any agreement executed by Trustor in connection with the 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 Beneficiary shall be subrogated to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and indebtedness, regardless of whether said liens, charges and indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

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

(a) Trustor (being the Debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral and has rights in and the power to transfer the Collateral, subject to no liens, charges or encumbrances other than the lien hereof, other

liens and encumbrances benefiting Beneficiary and no other party, and liens and encumbrances, if any, expressly permitted by the other Loan Documents.

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

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

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

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

(f) Upon an Event of Default hereunder, Beneficiary shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Trustor can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Beneficiary shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Trustor's right of redemption in satisfaction of Trustor's obligations, as provided in the Code. Beneficiary may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Beneficiary may require Trustor to assemble the Collateral and make it available to Beneficiary for its possession at a place to be designated by Beneficiary which is reasonably convenient to both parties. Beneficiary will give Trustor at least ten (10) days' notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail or equivalent, postage prepaid, to the address of Trustor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Beneficiary may buy at any public sale. Beneficiary may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Beneficiary so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Beneficiary, shall be applied against the Indebtedness in such order or manner as Beneficiary shall select. Beneficiary will account to Trustor for any surplus realized on such disposition.

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

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

(i) To the extent permitted by applicable law, the security interest created hereby is specifically intended to cover all Leases between Trustor or its agents as lessor, and various tenants named therein, as lessee, including all extended terms and all

extensions and renewals of the terms thereof, as well as any amendments to or replacement of said Leases, together with all of the right, title and interest of Trustor, as lessor thereunder.

(j) Trustor represents and warrants that:

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

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

(iii) Trustor's state of formation is the State of Minnesota;

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

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

(k) Trustor agrees that:

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

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

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

14. **Restrictions on Transfer.**

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

(i) The Premises or any part thereof or interest therein, excepting only sales or other dispositions of Collateral (herein called "Obsolete Collateral") no longer useful in connection with the operation of the Premises, provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced

by Collateral of at least equal value and utility which is subject to the lien hereof with the same priority as with respect to the Obsolete Collateral;

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

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

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

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

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

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

(b) In determining whether or not to make the Loans, Beneficiary evaluated the background and experience of Trustor and its partners/officers in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Beneficiary's security for the Note. Trustor and its partners/officers are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the 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. Trustor recognizes that Beneficiary is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Trustor. Trustor further recognizes that any secondary junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note; (b) could result in acceleration and foreclosure by any such junior encumbrances which would force Beneficiary to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Beneficiary come into possession thereof with the intention of selling same; and (d) would impair Beneficiary's right to accept a deed in lieu of foreclosure, as a foreclosure by Beneficiary would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Beneficiary's security, both of repayment and of value of the Premises; (ii) giving Beneficiary the full benefit of its bargain and contract with Trustor; (iii) allowing Beneficiary to raise the interest rate and collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Trustor agree that if this Paragraph 14 is deemed a restraint on alienation, that it is a reasonable one.

15. **Intentionally Omitted**.

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

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

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

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

(d) Trustor files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or 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 seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Trustor or of all or any substantial part of the property of Trustor or all or a substantial part of the assets of Trustor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within sixty (60) days;

(e) the commencement of any involuntary petition in bankruptcy against Trustor or the institution against Trustor of any reorganization, arrangement, composition, readjustment, dissolution, liquidation or similar proceedings under any

present or future federal, state or other statute or law, or the appointment of a receiver, trustee or similar officer for all or any substantial part of the property of Trustor which shall remain undismissed or undischarged for a period of sixty (60) days;

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

(g) the occurrence of a Prohibited Transfer;

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

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

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

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

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

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

probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Trustor, with interest thereon until paid at the Default Rate and shall be secured by this Deed of Trust.

18. **Remedies**.

(a) Subject to such notice and cure periods set forth in Section 16 above, upon the occurrence and during the continuance of any Event of Default, Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Trustor and in and to the Premises, by Beneficiary itself or otherwise, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Beneficiary may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Beneficiary:

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

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

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

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

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

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

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

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

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

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

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

(b) The proceeds of any sale made under or by virtue of this Section 18, together with any other sums which then may be held by Beneficiary under this Deed of

Trust, whether under the provisions of this section or otherwise, shall be applied by Beneficiary in accordance with the provisions of this Deed of Trust.

(c) Upon any sale made under or by virtue of this Section 18, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, (i) it shall not be necessary for Trustee to be physically present at or to have constructive possession of the Premises (Trustor shall deliver to Trustee any portion of the Premises not actually or constructively possessed by Trustee immediately upon demand by Trustee), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if Trustee had been actually present and delivered to purchaser at such sale, (ii) Trustee is hereby irrevocably appointed the true and lawful attorney of Trustor, in Trustor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Premises and rights so sold and for that purpose Trustee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Trustor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereby, it being agreed that such power of attorney shall be coupled with an interest, (iii) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Trustor, (iv) each recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Obligations, advertisement and conduct of such sale in the manner provided herein and otherwise by law, and appointment of any successor Trustee hereunder, (v) any prerequisites to the validity of such sale shall be conclusively presumed to have been performed, (vi) the receipt of Trustee or other party making the sale shall be a sufficient discharge to the purchaser or purchasers for his or their purchase money and no such purchaser or purchasers, or his or their assigns or personal representatives, shall thereafter be obligated to see to the application of such purchase money or be in any way answerable for any loss, misapplication or nonapplication thereof, and (vii) to the fullest extent permitted by law, Trustor shall be completely and irrevocably divested of all of its right, title, interest, claim, equity, equity of redemption, and demand whatsoever, either at law or in equity, in and to the property sold and such sale shall be a perpetual bar both at law and in equity against Trustor, and against all other persons claiming or to claim the property sold or any part thereof, by, through or under Trustor. Beneficiary may bid for and acquire the Premises or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Beneficiary is authorized to deduct under this Deed of Trust.

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

Beneficiary and Trustee hereunder, but such Liens, rights, powers and remedies of Beneficiary and Trustee shall continue unimpaired as before.

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

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

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

(h) Trustor agrees to the full extent permitted by law that if an Event of Default occurs, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Premises or any portion thereof or the final and absolute putting into possession thereof, immediately after such

sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully do so, (i) the benefit of all such laws, (ii) all notices of any Event of Default or of Beneficiary's or Trustee's election to exercise or actual exercise of any right, remedy or recourse provided for under the Loan Documents, and (iii) any and all right to have the assets comprising the Premises marshaled upon any foreclosure of the lien hereof, and Trustor agrees that Beneficiary, Trustee or any court having jurisdiction to foreclose such lien may sell the Premises in part or as an entirety.

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

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

not abrogated, modified, limited or otherwise affected by the remedies provided under Section 736(a) of the California Code of Civil Procedure.

19. **Appointment of Receiver**. Upon or at any time after the filing of a complaint to foreclose this Deed of Trust, the court in which such complaint is filed shall, upon petition by Beneficiary, appoint a receiver for the Premises in accordance with the Laws. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Trustor at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Beneficiary hereunder or any other holder of the Note may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Trustor, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period, including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Deed of Trust, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

20. **Intentionally Omitted**.

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

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

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

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

22. **Compliance with California Law.**

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

(b) If any provision of this Deed of Trust shall grant to Trustee and/or Beneficiary (including Trustee and/or Beneficiary acting as a beneficiary-in-possession) or a receiver appointed pursuant to the provisions of Paragraph 19 of this Deed of Trust any powers, rights or remedies prior to, upon or following the occurrence of an Event of Default which are more limited than the powers, rights or remedies that would otherwise be vested in Beneficiary or in such receiver under applicable law in the absence of said provision, Beneficiary 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 Beneficiary which are of the type referred to in the Laws, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in Paragraph 12, 17 or 29 of this Deed of Trust, shall be added to the Indebtedness and/or by the judgment of foreclosure.

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

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

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

25. **Release Upon Payment and Discharge of Trustor's Obligations**. Upon payment of all sums secured by this Deed of Trust and any other sums due to Beneficiary in connection with the Loan Documents, and upon the performance of all of Trustor's other

obligations under the Loan Documents, and provided that no Event of Default has occurred and is continuing, Beneficiary shall release this Deed of Trust at Trustor's sole cost and expense.

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

To Beneficiary:	LaSalle Bank National Association 135 South LaSalle Street, Suite 1260 Chicago, Illinois 60603 Attn: Don Broderick, Senior Vice President
With a copy to:	Schwartz Cooper Chartered 180 North LaSalle Street Suite 2700 Chicago, Illinois 60603 Attn: Michael S. Kurtzon, Esq.
With a copy to Trustee:	First American Title Insurance Company 2100 5th Avenue San Diego, California 92101 Attn:
To Trustor:	Opus West Corporation 2555 East Camelback Road, Suite 800 Phoenix, Arizona 85016 Attn: Senior Vice President, Real Estate, Finance & Sales
With a copy to:	Opus West Corporation 2555 East Camelback Road, Suite 800 Phoenix, Arizona 85016 Attn: Legal Department
With a copy to:	Luce, Forward, Hamilton & Scripps LLP 600 West Broadway Suite 2600 San Diego, California 92101-3391 Attn: Dave Hymer, Esq.

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

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

27. **Waiver of Rights**. The Trustor hereby covenants and agrees that it will not at any time insist upon or plead, or in any manner claim or take any advantage of, any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force providing for the valuation or 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, the Trustor will not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power remedy herein or otherwise granted or delegated to the Beneficiary but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted.

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

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

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

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

(d) Trustor shall pay such Contested Lien and all Lien Amounts together with interest and penalties thereon (i) if and to the extent that any such Contested Lien shall be determined adverse to Trustor, or (ii) forthwith upon demand by Beneficiary if, in the

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

29. **Expenses Relating to Note and Deed of Trust.**

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

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

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

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

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

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

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

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

30. **Financial Statements**. Trustor represents and warrants that the financial statements for Trustor and the Premises previously submitted to Beneficiary are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Trustor or relating to the Premises and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of Trustor or the Premises from the dates of said financial statements until the date hereof. Trustor shall furnish to Beneficiary such financial information regarding Trustor and the Premises as Beneficiary may from time to time reasonably request, which shall include, without any further request therefor, the financial statements required to be delivered pursuant to the Loan Agreement.

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

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

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

34. **Indemnity**. Trustor hereby covenants and agrees that no liability shall be asserted or enforced against Beneficiary in the exercise of the rights and powers granted to Beneficiary in this Deed of Trust, and Trustor hereby expressly waives and releases any such liability. Trustor shall indemnify and save Beneficiary harmless from and against any and all liabilities, obligations, losses, damages, claims, costs and expenses (including reasonable attorneys' fees and court costs) (collectively, "Claims") of whatever kind or nature which may be imposed on, incurred by or asserted against Beneficiary at any time by any third party which relate to or arise from: (a) any suit or proceeding (including probate and bankruptcy proceedings), or the threat thereof, in or to which Beneficiary may or does become a party, either as plaintiff or as a defendant, by reason of this Deed of Trust or for the purpose of protecting the lien of this Deed of Trust; (b) the offer for sale or sale of all or any portion of the Premises; and (c) the ownership, leasing, use, operation or maintenance of the Premises, if such Claims relate to or arise from actions taken prior to the surrender of possession of the Premises to Beneficiary in accordance with the terms of this Deed of Trust; provided, however, that Trustor shall not be obligated to indemnify or hold Beneficiary harmless from and against any Claims directly arising from the gross negligence or willful misconduct of Beneficiary. All costs provided for herein and paid for by Beneficiary shall be so much additional Indebtedness and shall become immediately due and payable upon demand by Beneficiary and with interest thereon from the date incurred by Beneficiary until paid at the Default Rate.

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

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

37. **Miscellaneous**.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) **Complete Agreement**. This Deed of Trust, the 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 Trustor and Beneficiary.

(n) **Substitute Trustee**. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatsoever, except Trustee's gross negligence or willful misconduct. Trustee shall not be personally liable in case of entry by it or anyone acting by virtue of the powers herein granted it upon the Premises for debts contracted or liability or damages incurred in the management or operation of the Premises. All monies received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by it hereunder.

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

(o) **Construction Loan**. The Note evidences a debt created by one or more disbursements made by the Banks to Trustor 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 Deed of Trust is a construction deed of trust. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Deed of Trust 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 Deed of Trust, the provisions of the Loan Agreement shall apply and take precedence over this Deed of Trust.

(p) **Future Advances**. This Deed of Trust 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 Trustor 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 Beneficiary, be deemed a "future advance" within the meaning of this section.

38. **Assignment of Leases and Rents**. Trustor, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto Beneficiary all right, title and interest of Trustor in, to and under the Leases of the Premises, whether now in existence or hereafter entered into, and all guaranties, amendments,

extensions and renewals of said Leases and any of them, and all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Premises. Trustor represents, warrants, covenants and agrees with Beneficiary as follows:

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

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

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

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

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

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

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

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

Upon the occurrence of an Event of Default, Beneficiary may, at its option, after service of a Notice, receive and collect all such rents, income and profits from the Premises as they become due. Beneficiary shall thereafter continue to receive and collect all such rents, income

and profits, as long as such default or defaults shall exist, and during the pendency of any foreclosure proceedings.

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

Upon the occurrence of any Event of Default, from and after service of a Notice, Beneficiary is hereby vested with full power to use all measures, legal and equitable, deemed by it to be necessary or proper to enforce this Section and to collect the rents, income and profits assigned hereunder, including the right of Beneficiary or its designee, to enter upon the Premises, or any part thereof, and take possession of all or any part of the Premises together with all personal property, fixtures, documents, books, records, papers and accounts of Trustor relating thereto, and Beneficiary may exclude Trustor, its agents and servants, wholly therefrom. Trustor hereby grants full power and authority to Beneficiary to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Premises and of any indebtedness or liability of Trustor to Beneficiary, including, but not limited, to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the Improvements on the Premises or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of this Deed of Trust, and of principal and interest payments due from Trustor to Beneficiary on the Note and this Deed of Trust, all in such order as Beneficiary may determine. Beneficiary shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Trustor in the Leases. It is further understood that the assignment set forth in this Section shall not operate to place responsibility for the control, care, management or repair of the Premises, or parts thereof, upon Beneficiary, nor shall it operate to make Beneficiary liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Premises by any lessee under any of the Leases, or any other person, or for any dangerous or defective condition of the Premises or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any lessee, licensee, employee or stranger.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON FOLLOWING PAGE]

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

OPUS WEST CORPORATION, a Minnesota corporation

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

5697

CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGMENT

State of ARIZONA
County of MARICOPA
On this 24th day of SEPT, 2007, before me,

CHRISTIE R. UERKVITZ, ADMIN. ASST.
Name, Title of Officer

personally appeared CHARLES VOGEL
Name(s) of Signer(s)

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

WITNESS my hand and official seal.

Christie R. Uerkvitz
SIGNATURE OF NOTARY

Notary Public State of Arizona
Maricopa County
Christie R Uerkvitz
My Commission Expires
08/31/2010

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

CAPACITY CLAIMED BY SIGNER

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

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

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

_____

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

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
TITLE OR TYPE OF DOCUMENT _____
NUMBER OF PAGES _____ DATE OF DOCUMENT _____
SIGNER(S) OTHER THAN NAMED ABOVE _____
Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL I:

Lot 4 of Scripps Ranch Business Park Phase III, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12130 filed in the Office of the County Recorder of San Diego County, July 27, 1988; and as further defined in that certain Certificate of Correction recorded August 23, 1989 as Instrument No. 89-452514, of Official Records.

PARCEL II:

An easement for ingress, egress, construction, operation and maintenance of a monument sign as contained in that certain "Grant of Easement" recorded November 5, 1999, as Instrument No. 1999-0740198, of Official Records.

APN: 319-170-23-00

ADDRESS:

San Diego, California

EXHIBIT B

PERMITTED EXCEPTIONS

The following are the Permitted Exceptions per Pro Forma Policy No. NCS-317607-SD issued by First American Title Insurance Company:

Exceptions 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 as set forth on Schedule B, Part I together with Exceptions 1 and 2 as set forth on Schedule B, Part II.

EXHIBIT C

INSURANCE REQUIREMENTS

GENERAL INFORMATION

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

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

3. Proof of coverage must be on an ACORD 28 - EVIDENCE OF PROPERTY INSURANCE form. Liability insurance must be written on ACORD 25S or its equivalent. NOTE: Please remove any "endeavor to" and "but failure to mail such notice shall 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 Trustor must be the named insured.

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

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

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

7. The insured property must be identified as San Diego, County of San Diego, 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.

Recording Requested By:
FIRST AMERICAN TITLE
National Commercial Services

When recorded, return to:

Quarles & Brady LLP
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004-2391
Attention: Matthew Mehr, Esq.

NCS-349053

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APR 30, 2008 2:34 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES 22.00

PAGES: 5

MEMORANDUM OF MODIFICATION AND ASSUMPTION
(Scripps Ranch)

DATE: April 30, 2008

PARTIES: Original Trustor: OPUS WEST CORPORATION, a Minnesota corporation

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

Assuming Trustor: SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

Assuming Trustor Address: c/o Sequoia Realty, L.L.C.
10350 Bren Road West
Minnetonka, Minnesota 55343
Attention: Vice President

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

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

(a) The promissory note (the "Note") or other indebtedness secured by the Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing, dated September 27, 2007, by Original Trustor, as trustor, for the benefit of Lender, as beneficiary, recorded in the records of the County of San Diego, State of California (the "Deed of Trust") at Recorder's No. 2007-0630364, has been modified by that certain Assumption and Modification

Agreement of even date herewith between Assuming Trustor and Lender (the "Assumption Agreement").

(b) Pursuant to the Assumption Agreement, Assuming Trustor has assumed the obligation for payment of the indebtedness evidenced by the Note, for the performance of all covenants, conditions, provisions and agreements under the Deed of Trust and that Construction Loan Agreement dated September 27, 2007 by and between Original Trustor and Lender as modified by the Assumption Agreement.

(c) For purposes of Section 13(j) of the Deed of Trust: (i) Assuming Trustor is the record owner of the Premises (as that term is defined in the Deed of Trust); (ii) Assuming Trustor's chief executive office is located in the State of Minnesota; (iii) Assuming Trustor's state of formation is Delaware; (iv) Assuming Trustor's exact legal name is Sequoia Realty Limited Partnership; and (v) Assuming Trustor's organizational identification number if 4508801.

(d) This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Memorandum to physically form one document.

OPUS WEST CORPORATION, a Minnesota corporation

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

ORIGINAL TRUSTOR

STATE OF ARIZONA)
) ss.
County of Maricopa)

On April 28, 2008 before me, Gwenda F. Farrell personally appeared Charles Vogel who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

Gwenda F. Farrell
(Signature)

(Seal) OFFICIAL SEAL
GWENDA F. FARRELL
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Comm. Expires May 7, 2010

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

BY: SEQUOIA REALTY, L.L.C., a Delaware limited liability company, General Partner

By: _____
Name: Luz Campa
Title: Vice President

ASSUMING TRUSTOR

STATE OF MINNESOTA)
) ss.
County of Hennepin)

On April 28, 2008 before me, Stephanie L. McMillin personally appeared Luz Campa who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

Witness my hand and official seal.

_____ [Seal]
(Signature)

STEPHANIE L. MCMILLIN
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2011

MODIFICATION OF DEED OF TRUST AND OTHER LOAN DOCUMENTS

THIS MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 5th day of September, 2008, by and between **SEQUOIA REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership ("Borrower") and **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) ("Agent").

RECITALS:

A. The Banks have heretofore made a construction loan (the "Loan") to OPUS WEST CORPORATION, a Minnesota corporation ("Opus West") in the principal amount of Thirty Eight Million Five Hundred Thousand and 00/100 Dollars ($38,500,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of September 27, 2007 between Opus West and Agent, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated September 27, 2007, in the principal amount of the Loan made payable by Opus West to the order of Agent ("Note").

B. The Loan is secured by (i) a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated September 27, 2007 from Opus West to Agent recorded with the Recorder of Deeds in San Diego County, California (the "Recorder's Office") on September 27, 2007 as Document No. 2007-0630364 ("Deed of Trust"), which Deed of Trust encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated September 27, 2007 from Opus West to Agent and recorded in the Recorder's Office on September 27, 2007 as Document No. 2007-0630365 (the "Assignment of Leases"); (iii) that certain Environmental Indemnity Agreement dated September 27, 2007 from Opus West to Agent (the "Indemnity Agreement"); and (iv) certain other loan documents (the Note, the Deed of Trust, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. Pursuant to that certain Assumption and Modification Agreement (Scripps Ranch) dated April 30, 2008 between Agent and Borrower (the "Assumption Agreement"), Borrower assumed the obligations for payment of the indebtedness evidenced by the Note and the performance of all covenants, conditions, provisions and agreements under the Loan Agreement, the Deed of Trust and the other Loan Documents.

D. A Memorandum of Assumption and Modification dated April 30, 2008 by and among Agent, Opus West and Borrower was recorded in the Recorder's Office on April 30, 2008 as Document No. 2008-0231515.

E. The Loan is further secured by that certain Guaranty Agreement (Scripps Ranch) dated April 30, 2008 from Opus West to Agent (the "Guaranty").

F. Borrower desires to amend the Loan Documents as set forth herein.

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Agent to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Cash Equity**. Borrower shall contribute the amount of Two Million Two Hundred Seventy Seven Thousand Two Hundred Thirty Seven and 00/100 Dollars ($2,277,237.00) in cash as an addition to the Equity Requirements (as defined in the Loan Agreement) by paying costs of the Project related to the tenant improvements required by the Lockheed Lease (as defined below) at the time such costs are incurred, and Borrower shall deliver evidence of such payments in the form of paid invoices or lien waivers acceptable to Agent.

2. **Completion Date**. The definition of "Completion Date" set forth in the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"October 15, 2008, except with respect to the tenant improvements to be made by Borrower pursuant to that certain lease dated May 23, 2008 (the "Lockheed Lease") between Borrower and Lockheed Martin Corporation ("Lockheed"), which shall be completed by the date by which such tenant improvements must be completed as provided in the Lockheed Lease."

3. **Debt Service**. The definition of "Debt Service" set forth in the Loan Agreement, as amended by Section 2.5 of the Assumption Agreement, is hereby deleted in its entirety and replaced with the following:

"For any Quarter, the sum of all principal and interest payments on the Loan and any other indebtedness of the Borrower that is due and payable during such Quarter based upon (i) the outstanding principal balance of the Loan, (ii) a thirty (30) year amortization schedule and (iii) an interest rate equal to the greater of (A) seven and one-half percent (7.5%) per annum or (B) the yield to maturity percentage (the "Current Yield") for the United States Treasury Security actively traded United States Treasury bond, bill or note (the "Treasury Security") closest in maturity to the tenth anniversary of the date of calculation as published by *The Wall Street Journal* on the fifth Business Day preceding the date of calculation, **plus** two and one-quarter percent (2.25%) plus the corresponding swap spread as published in Bloomberg's Financial Markets Commodities News on the second (2nd) Business Day preceding the Maturity Date (or if not so published, Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine such spread). If publication of (A) *The Wall Street Journal*, or (B) the Current Yield of the United States Treasury Security in *The Wall Street Journal* is discontinued, the Agent, in its sole discretion, shall designate another daily financial or governmental publication of national circulation to be used to determine the Current Yield."

4. **Extension of Maturity Date**. Section 4.12 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

"4.12 **Extension of Maturity Date**. Subject to satisfaction of all the following conditions, Borrower may extend the Maturity Date for twelve (12) months to September 26, 2010 (the "Extended Maturity Date"):

(a) No Event of Default has occurred and is continuing as of the date Borrower exercises its right to extend the Maturity Date, or on the original Maturity Date;

(b) Borrower delivers to Agent written notice of the exercise of its extension right not less than forty-five (45) days prior to the original Maturity Date;

(c) Borrower pays Agent a loan extension fee in the amount set forth in the letter agreement of even date herewith between Agent and Borrower;

(d) Borrower has obtained a final (if obtainable) or temporary certificate of occupancy for the Premises issued by the applicable governmental authorities; and

(e) Lockheed has taken occupancy of the premises contemplated by the Lockheed Lease and commenced the payment of rent.

5. **Leverage Ratio**. The definition of Leverage Ratio as set forth in Section 1.1 of the Loan Agreement and as deleted by Section 2.6 of the Assumption Agreement is hereby reinstated and amended as follows:

"**Leverage Ratio:** The ratio of Indebtedness to Tangible Net Worth."

6. **Borrower Financial Covenants**. Section 8.14 of the Loan Agreement, as amended by Section 2.9 of the Assumption Agreement, is hereby deleted in its entirety and replaced with the following:

"Borrower shall at all times during the term of the Loan cause Guarantor to comply with the following covenants (collectively, the "Financial Covenants"):

(a) Guarantor shall maintain during the term of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principals, and marketable securities ("Liquidity") of not less than Three Million and 00/100 Dollars ($3,000,000.00).

(b) Guarantor shall maintain during the term of the Loan at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Million and 00/100 Dollars ($100,000,000.00).

(c) From the date hereof through December 31, 2008, Guarantor shall maintain a Leverage Ratio equal to or less than 6.0:1.0. At all times after December 31, 2008, Borrower shall maintain a Leverage Ratio of equal to or less than 5.0:1.0.

Borrower's Leverage Ratio shall be calculated at of the end of each fiscal quarter and fiscal year.

7. **Events of Default by Borrower**.

(a) Section 11.1(o) of the Loan Agreement is hereby deleted in its entirety and replaced with the following: "In the event the Maturity Date is extended to the Extended Maturity Date, the Debt Service Coverage Ratio for the Project shall at any time be less than 1.11 to 1.00; or"

(b) The following is added as Section 11.1(q) of the Loan Agreement: "Borrower fails to perform or cause to be performed any obligation or observe any condition, covenant, term, agreement or provision required to be performed or observed by Borrower, after the expiration of any applicable notice and cure periods, under the Lockheed Lease, provided that such failure would allow Lockheed to terminate the Lockheed Lease."

8. **Lease Termination Fee.** Any and all termination fees received by Borrower with regard to the termination of the Borrower's lease with Lockheed Martin Corporation shall be paid to Agent and applied to the outstanding principal balance of the Loan.

9. **Commitment**. Schedule 3.1 attached to the Loan Agreement is hereby deleted in its entirety and replaced with Schedule 3.1 attached hereto as Exhibit B.

10. **Project Budget**. The Project Budget attached to the Loan Agreement as Exhibit D is hereby deleted in its entirety and replaced with the Project Budget attached hereto as Exhibit C.

11. **Reaffirmation of Guaranty**. Opus West ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Opus West in the Guaranty are, as of the date hereof, true and correct and Opus West does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Opus West, enforceable in accordance with its terms and Opus West has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

12. **Representations and Warranties of Borrower**. Borrower hereby represents, covenants and warrants to Agent as follows:

(a) The representations and warranties in the Loan Agreement, the Deed of Trust and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Deed of Trust) under the Note, the Deed of Trust or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Deed of Trust or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower or any other party whose financial statement has been delivered to Agent in connection with the Loan from the date of the most recent financial statement received by Agent.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

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

(g) The Loan is In Balance (as defined in Section 7.5 of the Loan Agreement) as of the date hereof.

13. **Title Policy**. As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause First American Title Insurance Company to issue an endorsement to Agent's Title Insurance Policy No. NCS-317607-SD (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Deed of Trust, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Agent.

14. **Expenses**. As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Agent in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

15. **Miscellaneous**.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

(b) This Agreement shall not be construed more strictly against Agent than against Borrower merely by virtue of the fact that the same has been prepared by counsel for Agent, it being recognized that Borrower and Agent have contributed substantially and materially to the preparation of this Agreement, and Borrower and Agent each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering

this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Agent, the same shall not be deemed to constitute Agent a venturer or partner of or in any way associated with Borrower nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower and Agent each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Agent; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Deed of Trust" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Deed of Trust and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

16. **Customer Identification - USA Patriot Act Notice; OFAC and Bank Secrecy Act**. Agent hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001) (the "Act"), and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Agent to identify Borrower in accordance with the Act. In addition, Borrower shall (a) ensure that no person who owns a controlling interest in or otherwise controls Borrower or any subsidiary of Borrower is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by

the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (b) not use or permit the use of the proceeds of the Loan to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (c) comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: _____
Name: STEPHEN M. HENTON
Title: SVP

BORROWER:

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: **SEQUOIA REALTY, L.L.C.**, a Delaware limited liability company, General Partner

By: _____
Name: _____
Title: _____

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By:_____
Name:_____
Title:_____

BORROWER:

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: **SEQUOIA REALTY, L.L.C.**, a Delaware limited liability company, General Partner

By:_____
Name: Thomas W. Roberts
Title: Vice President

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

By:_____
Name: Thomas W. Roberts
Title: President

EXHIBIT A

THE PROPERTY

PARCEL I:

Lot 4 of Scripps Ranch Business Park Phase III, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12130 filed in the Office of the County Recorder of San Diego County, July 27, 1988; and as further defined in that certain Certificate of Correction recorded August 23, 1989 as Instrument No. 89-452514, of Official Records.

PARCEL II:

An easement for ingress, egress, construction, operation and maintenance of a monument sign as contained in that certain "Grant of Easement" recorded November 5, 1999, as Instrument No. 1999-0740198, of Official Records.

APN: 319-170-23-00

ADDRESS:

San Diego, California

EXHIBIT B

SCHEDULE 3.1

THE BANKS AND COMMITMENTS

BANK	COMMITMENT	PRO RATA SHARE
LaSalle Bank National Association c/o Bank of America 201 E. Washington Street, 22nd Floor Phoenix, AZ 85004-2428 Attn: Stephen Fenton	$14,250,000.00	37.012987012%
The Huntington National Bank 41 South High Street – HC0840 Columbus, Ohio 43215 Attn: Ronald S. Content	$14,250,000.00	37.012987012%
Fidelity Bank 100 E. English Wichita, Kansas 67201 Attn: Michael E. Smith	$10,000,000.00	25.974025974%

EXHIBIT C

PROJECT BUDGET

DOC # 2008-0475731

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

SEP 05, 2008 2:21 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 78.00 WAYS: 6
PAGES: 9

This document prepared by and after recording return to:

Michael S. Kurtzon, Esq.
Dykema Gossett PLLC
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601

6313

NCS-317607
APN: 319-170-23-00

Address of Property: San Diego, California

MEMORANDUM OF MODIFICATION OF DEED OF TRUST AND OTHER LOAN DOCUMENTS

THIS MEMORANDUM OF MODIFICATION OF DEED OF TRUST AND LOAN DOCUMENTS (this "**Memorandum**") is made as of the 5TH day of September, 2008, by and between **SEQUOIA REALTY LIMITED PARTNERSHIP**, a Delaware limited partnership ("**Borrower**") and **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) ("**Agent**").

RECITALS:

A. The Banks have heretofore made a construction loan (the "**Loan**") to OPUS WEST CORPORATION, a Minnesota corporation ("**Opus West**") in the principal amount of Thirty Eight Million Five Hundred Thousand and 00/100 Dollars ($38,500,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of September 27, 2007 between Opus West and Agent, (the "**Loan Agreement**", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated September 27, 2007, in the principal amount of the Loan made payable by Opus West to the order of Agent ("**Note**").

B. The Loan is secured by (i) a Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated September 27, 2007 from Opus West to Agent recorded with the Recorder of Deeds in San Diego County, California (the "**Recorder's Office**") on September 27, 2007 as Document No. 2007-0630364 ("**Deed of Trust**"), which Deed of Trust encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("**Property**"), (ii) that certain Assignment of Rents and Leases dated September 27, 2007 from Opus West to Agent and recorded in the Recorder's Office on September 27, 2007 as Document No. 2007-0630365 (the "**Assignment of Leases**"); (iii) that certain Environmental Indemnity Agreement dated September 27, 2007 from Opus West to Agent (the "**Indemnity Agreement**"); and (iv) certain other loan documents (the Note, the Deed of Trust, the Assignment of Leases, the Indemnity Agreement, the other documents evidencing, securing and guarantying the

Loan, in their original form and as amended, are sometimes collectively referred to herein as the "**Loan Documents**").

C. Pursuant to that certain Assumption and Modification Agreement (Scripps Ranch) dated April 30, 2008 between Agent and Borrower (the "**Assumption Agreement**"), Borrower assumed the obligations for payment of the indebtedness evidenced by the Note and the performance of all covenants, conditions, provisions and agreements under the Loan Agreement, the Deed of Trust and the other Loan Documents.

D. A Memorandum of Assumption and Modification dated April 30, 2008 by and among Agent, Opus West and Borrower was recorded in the Recorder's Office on April 30, 2008 as Document No. 2008-0231515.

E. The Loan is further secured by that certain Guaranty Agreement (Scripps Ranch) dated April 30, 2008 from Opus West to Agent (the "**Guaranty**").

F. The Note, the Deed of Trust and the other Loan Documents have been modified by that certain Modification of Deed of Trust and Other Loan Documents of even date herewith between Borrower and Agent (the "**Modification Agreement**")..

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Agent to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Modification Agreement**. Pursuant to the Modification Agreement, the Note, the Deed of Trust and the other Loan Documents have been modified. This Memorandum is being recorded to give notice of the Modification Agreement and the terms and conditions contained therein. This Memorandum is not intended to modify or alter in any way the terms and conditions of the Modification Agreement.

2. **Counterparts**. This Memorandum may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Memorandum to physically form one document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: SIGNED IN COUNTERPART
Name:
Title:

BORROWER:

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: SEQUOIA REALTY, L.L.C., a Delaware limited liability company, General Partner

By:
Name: Thomas W. Roberts
Title: Vice President

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

By:
Name: Thomas W. Roberts
Title: President

CHICAGO\2508013.1
IDUSHE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By: _____
Name: STEPHEN M. FEALTON
Title: SVP

BORROWER:

SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

By: SEQUOIA REALTY, L.L.C., a Delaware limited liability company, General Partner

SIGNED IN COUNTERPART

By: _____
Name: _____
Title: _____

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

By: SIGNED IN COUNTERPART
Name: _____
Title: _____

CHICAGO\2508013.1
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6317

STATE OF Arizona }ss.

COUNTY OF Maricopa }

On September 2, 2008, before me, Robyn Roberts, a notary public, personally appeared Thomas W. Roberts who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Robyn Roberts

ROBYN ROBERTS
Notary Public – Arizona
Maricopa County
Expires 05/28/2012

(This area for official notarial seal)

Title of Document

Date of Document No. of Pages

Other signatures not acknowledged

CHICAGO\2508013.1
ID\SHE

STATE OF Arizona }ss.

COUNTY OF Maricopa }

On September 2, 2008, before me, Robyn Roberts, a notary public, personally appeared Thomas W. Roberts who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Robyn Roberts

ROBYN ROBERTS
Notary Public—Arizona
Maricopa County
Expires 05/28/2012

(This area for official notarial seal)

Title of Document

Date of Document No. of Pages

Other signatures not acknowledged

CHICAGO\2508013.1
IDUSHE

6319

STATE OF Arizona }ss.

COUNTY OF Maricopa }

On Sept. 3, 2008 before me, Nancy Alonzo, a notary public, personally appeared Stephen M. Fenton who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Nancy Alonzo

NANCY ALONZO
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
July 31, 2010

(This area for official notarial seal)

Title of Document

Date of Document No. of Pages

Other signatures not acknowledged

CHICAGO\2508013.1
ID\SHE

GOVERNMENT CODE 27361.7

I CERTIFY UNDER THE PENALTY OF PERJURY THAT THE NOTARY SEAL ON THE DOCUMENT TO WHICH THIS STATEMENT IS ATTACHED TO READS AS FOLLOWS:

NAME OF NOTARY:	Nancy Alonzo
COMMISSION NO.:	None
DATE COMMISSION EXPIRES:	July 31, 2010
MANUFACTURER/VENDOR NO.:	None
COUNTY WHERE BOND IS FILED:	Maricopa County, AZ

PLACE OF EXECUTION: SANTA ANA, CA

DATED: September 4, 2008

FIRST AMERICAN TITLE INSURANCE COMPANY

BY: Ron Cirella

EXHIBIT A

THE PROPERTY

PARCEL I:

Lot 4 of Scripps Ranch Business Park Phase III, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12130 filed in the Office of the County Recorder of San Diego County, July 27, 1988; and as further defined in that certain Certificate of Correction recorded August 23, 1989 as Instrument No. 89-452514, of Official Records.

PARCEL II:

An easement for ingress, egress, construction, operation and maintenance of a monument sign as contained in that certain "Grant of Easement" recorded November 5, 1999, as Instrument No. 1999-0740198, of Official Records.

APN: 319-170-23-00

ADDRESS:

San Diego, California

ATTACHMENT 7

5702

Recording Requested By:
First American Title
Nat'l Commercial Services

Upon recordation return to:

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Michael S. Kurtzon, Esq.
NCS 317607

F8
12P
2W
1Gn

DOC # 2007-0630365

SEP 27, 2007 12:12 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 48.00 WAYS: 2
PAGES: 12

This space reserved for Recorder's use only

2007-0630365

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is made and delivered effective as of the 27th day of September, 2007 by **OPUS WEST CORPORATION**, a Minnesota corporation ("Assignor"), 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) ("Assignee").

RECITALS:

A. Pursuant to the provisions of that certain Construction Loan Agreement of even date herewith among Assignor and Assignee (the "Loan Agreement"), the Banks have agreed to make loans to Assignor in the aggregate principal amount of up to Thirty Eight Million Five Hundred Thousand and 00/100 Dollars ($38,500,000.00) (the "Loans"). Assignor is executing a certain Promissory Note in the maximum principal amount of $38,500,000.00 (as the same may be amended, modified, replaced or restated from time to time, the "Note") made by Assignor to evidence the Loan.

B. A condition precedent to Banks' making of the Loans to Assignor is the execution and delivery by Assignor of this Assignment.

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

1. **Definitions**. All capitalized terms which are not defined herein shall have the meanings ascribed thereto in that certain Construction Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith from Assignor for the benefit of Assignee (as amended, modified, replaced or restated from time to time, "Deed of Trust") given as security for the Loans.

2. **Grant of Security Interest**. Assignor hereby grants, transfers, sets over and assigns to Assignee, for the benefit of the Banks, all of the right, title and interest of Assignor in and to (i) all of the rents, revenues, issues, profits, proceeds, receipts, income, accounts and other receivables arising out of or from the land legally described in Exhibit A attached hereto and made a part hereof and all buildings and other improvements located thereon (said land and improvements being hereinafter referred to collectively as the "Premises"), including, without

limitation, lease termination fees, purchase option fees and other fees and expenses payable under any lease; (ii) all leases and subleases (collectively, the "Leases"), now or hereafter existing, of all or any part of the Premises together with all guaranties of any of such Leases and all security deposits delivered by tenants thereunder, whether in cash or letter of credit; (iii) all rights and claims for damage against tenants arising out of defaults under the Leases, including rights to termination fees and compensation with respect to rejected Leases pursuant to Section 365(a) of the Federal Bankruptcy Code or any replacement Section thereof; and (iv) all tenant improvements and fixtures located on the Premises. This Assignment is an absolute transfer and assignment of the foregoing interests to Assignee given to secure:

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

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

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

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

(b) there are no Leases or occupancy agreements affecting the Premises other than the agreements described in Exhibit B attached hereto and made a part of this Agreement; and

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

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

(a) Except as provided in Section 2.1(r) of the Loan Agreement, Assignor shall not lease any portion of the Premises unless Assignor obtains Assignee's prior written consent to all aspects of such lease.

(b) Assignor shall observe and perform all of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the lessor

thereunder, and Assignor shall not do or suffer to be done anything to impair the security thereof. Assignor shall not (i) release the liability of any tenant under any Lease, (ii) consent to any tenant's withholding of rent or making monetary advances and off-setting the same against future rentals, (iii) consent to any tenant's claim of a total or partial eviction, (iv) consent to a tenant termination or cancellation of any Lease, except as specifically provided therein, or (v) enter into any oral leases with respect to all or any portion of the Premises;

(c) Assignor shall not collect any of the rents, issues, income or profits assigned hereunder more than thirty days in advance of the time when the same shall become due, except for security or similar deposits;

(d) Assignor shall not make any other assignment of its entire or any part of its interest in or to any or all Leases, or any or all rents, issues, income or profits assigned hereunder, except as specifically permitted by the Loan Documents;

(e) Assignor shall not materially modify the terms and provisions of any Lease, nor shall Assignor give any consent (including, but not limited to, any consent to any assignment of, or subletting under, any Lease, except as expressly permitted thereby) or approval, required or permitted by such terms and provisions or cancel or terminate any Lease, without Assignee's prior written consent; provided, however, that Assignor may cancel or terminate any Lease as a result of a material default by the tenant thereunder and failure of such tenant to cure the default within the applicable time periods set forth in the Lease;

(f) Assignor shall not accept a surrender of any Lease or convey or transfer, or suffer or permit a conveyance or transfer, of the premises demised under any Lease or of any interest in any Lease so as to effect, directly or indirectly, proximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of, any tenant thereunder; any termination fees payable under a Lease for the early termination or surrender thereof shall be paid jointly to Assignor and Assignee;

(g) Assignor shall not alter, modify or change the terms of any guaranty of any Lease, or cancel or terminate any such guaranty or do or permit to be done anything which would terminate any such guaranty as a matter of law;

(h) Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(i) Assignor shall, at its sole cost and expense, appear in and defend any and all actions and proceedings arising under, relating to or in any manner connected with any Lease or the obligations, duties or liabilities of the lessor or any tenant or guarantor thereunder, and shall pay all costs and expenses of Assignee, including court costs and reasonable attorneys' fees, in any such action or proceeding in which Assignee may appear;

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

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

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

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

(n) Once the tenants are in possession under the Leases, not less than thirty (30) days after the end of each calendar quarter, the Assignor shall deliver to the Assignee a certified rent roll for the Premises as of the last day of such period in a form reasonably satisfactory to Assignee.

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

6. **Events of Default**. An "Event of Default" shall occur under this Assignment upon the occurrence of (a) a breach by Assignor of any of the covenants, agreements, representations, warranties or other provisions hereof which is not cured or waived within the applicable grace or cure period, if any, set forth in the Deed of Trust or (b) any other Event of Default described in the Note, Deed of Trust or the other Loan Documents.

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

(a) Declare the unpaid balance of the principal sum of the Note, together with all accrued and unpaid interest thereon, immediately due and payable;

(b) Enter upon and take possession of the Premises, either in person or by agent or by a receiver appointed by a court, and have, hold, manage, lease and operate the same on such terms and for such period of time as Assignee may deem necessary or proper, with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Assignee, to make, enforce, modify and accept the surrender of Leases, to obtain and evict tenants, to fix or modify rents, and to do any other act which Assignee deems necessary or proper;

(c) Either with or without taking possession of the Premises, demand, sue for, settle, compromise, collect, and give acquittances for all rents, issues, income and profits of and from the Premises and pursue all remedies for enforcement of the Leases and all the lessor's rights therein and thereunder. This Assignment shall constitute an authorization and direction to the tenants under the Leases to pay all rents and other amounts payable under the Leases to Assignee, without proof of default hereunder, upon receipt from Assignee of written notice to thereafter pay all such rents and other amounts to Assignee and to comply with any notice or demand by Assignee for observance or performance of any of the covenants, terms, conditions and agreements contained in the Leases to be observed or performed by the tenants thereunder, and Assignor shall facilitate in all reasonable ways Assignee's collection of such rents, issues, income and profits, and upon request will execute written notices to the tenants under the Leases to thereafter pay all such rents and other amounts to Assignee;

(d) Make any payment or do any act required herein of Assignor in such manner and to such extent as Assignee may deem necessary, and any amount so paid by Assignee shall become immediately due and payable by Assignor with interest thereon until paid at the Default Rate (as defined in the Loan Agreement) and shall be secured by this Assignment;

(e) Exercise any other remedy available to it under any of the other Loan Documents, at law or in equity.

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

9. **Limitation of Assignee's Liability**. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Premises or from any other act or omission of Assignee in managing, operating or maintaining the Premises following the occurrence of an Event of Default. Assignee shall not be obligated to observe, perform or discharge, nor does Assignee hereby undertake to observe, perform or discharge any covenant, term, condition or agreement contained in any Lease to be observed or performed by the lessor thereunder, or any obligation, duty or liability of Assignor under or by reason of this Assignment. Assignor shall and does hereby agree to indemnify, defend (using counsel satisfactory to Assignee) and hold Assignee and the Banks harmless from and against any and all liability, loss or damage which Assignee or the Banks may incur under any Lease or under or by

reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against Assignee or the Banks by reason of any alleged obligation or undertaking on its part to observe or perform any of the covenants, terms, conditions and agreements contained in any Lease; provided, however, in no event shall Assignor be liable for any liability, loss or damage which Assignor incurs as a result of Assignee's and the Banks' gross negligence or willful misconduct. Should Assignee or the Banks incur any such liability, loss or damage under any Lease or under or by reason of this Assignment, or in the defense of any such claim or demand, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall become immediately due and payable by Assignor with interest thereon at the Default Rate (as defined in the Loan Agreement) and shall be secured by this Assignment. This Assignment shall not operate to place responsibility upon Assignee for the care, control, management or repair of the Premises or for the carrying out of any of the covenants, terms, conditions and agreements contained in any Lease, nor shall it operate to make Assignee responsible or liable for any waste committed upon the Premises by any tenant, occupant or other party, or for any dangerous or defective condition of the Premises, or for any negligence in the management, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, occupant, licensee, employee or stranger. Nothing set forth herein or in the Deed of Trust, and no exercise by Assignee of any of the rights set forth herein or in the Deed of Trust shall constitute or be construed as constituting Assignee a "mortgagee in possession" of the Premises, in the absence of the taking of actual possession of the Premises by Assignee pursuant to the provisions hereof or of the Deed of Trust.

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

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

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

13. **Severability**. If any provision of this Assignment is deemed to be invalid by reason of the operation of law, or by reason of the interpretation placed thereon by any administrative agency or any court, Assignee and Assignor shall negotiate an equitable

adjustment in the provisions of the same in order to effect, to the maximum extent permitted by law, the purpose of this Assignment and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby and shall remain in full force and effect.

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

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

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

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

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

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

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

ASSIGNOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS ASSIGNMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 9 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY ASSIGNOR OF ASSIGNEE AND BANKS FROM CLAIMS OR LOSSES ARISING AS A RESULT OF ASSIGNEE'S OR BANKS' OWN NEGLIGENCE.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURES APPEAR ON FOLLOWING PAGE]

5711

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

OPUS WEST CORPORATION, a Minnesota corporation

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

429800.2 044497-40056

5712

CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEDGMENT

State of ARIZONA
County of MARICOPA
On this 24th day of SEPT, 2007, before me,
CHRISTIE R. UERKVITZ, ADMIN ASST.
Name, Title of Officer

personally appeared CHARLES VOGEL
Name(s) of Signer(s)

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

WITNESS my hand and official seal.

Christie R Uerkvitz
SIGNATURE OF NOTARY

***** OPTIONAL SECTION *****
CAPACITY CLAIMED BY SIGNER
Through statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document

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

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

____

Notary Public State of Arizona
Maricopa County
Christie R Uerkvitz
My Commission Expires
08/31/2010

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

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
TITLE OR TYPE OF DOCUMENT ____________
NUMBER OF PAGES ________ DATE OF DOCUMENT ____________
SIGNER(S) OTHER THAN NAMED ABOVE ____________
Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

12

5713

EXHIBIT A

Legal Description of Premises

PARCEL I:

Lot 4 of Scripps Ranch Business Park Phase III, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12130 filed in the Office of the County Recorder of San Diego County, July 27, 1988; and as further defined in that certain Certificate of Correction recorded August 23, 1989 as Instrument No. 89-452514, of Official Records.

PARCEL II:

An easement for ingress, egress, construction, operation and maintenance of a monument sign as contained in that certain "Grant of Easement" recorded November 5, 1999, as Instrument No. 1999-0740198, of Official Records.

APN: 319-170-23-00

ADDRESS:

San Diego, California

ATTACHMENT 8

ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, LICENSES AND PERMITS

THIS ASSIGNMENT is made and delivered as of this 27th day of September, 2007 by **OPUS WEST CORPORATION**, a Minnesota corporation ("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 Thirty Eight Million Five Hundred Thousand and 00/100 Dollars ($38,500,000.00) 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 $38,500,000.00 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) 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 shall sign and execute alone or with Secured Party 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 will punctually and promptly perform all covenants, agreements and conditions required to be performed by it under this Assignment, the Loan Agreement, the Note, the Deed of Trust and the other Loan Documents, and all of the documents, instruments, agreements and contracts constituting the Collateral.

(e) Debtor represents, warrants and covenants to Secured Party that it is the sole owner of all right, title and interest of the owner under all of the documents, instruments, agreements and contracts constituting the Collateral, and agrees 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 under the Collateral and for all responsibilities of the ownership of the Property.

(f) 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.

(g) 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.

(h) 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.

(i) Any management agreement ("Management Agreement") which Debtor has previously entered into or may hereafter enter into with any person or entity with respect to the management of the Property either currently provides or shall provide, among other things, that Secured Party may terminate the Management Agreement at any time after the occurrence of an Event of Default and that any lien for management fees which such manager may have shall be subject and subordinate to the lien of the Deed of Trust. Debtor further covenants and agrees that Debtor shall not change the manager under the Management Agreement or amend or permit the amendment of the Management Agreement without the prior written consent of Secured Party.

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 the applicable grace or cure period, if any, set forth in the Loan Agreement, 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.

OPUS WEST CORPORATION, a Minnesota corporation

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

EXHIBIT A

THE LAND

PARCEL I:

Lot 4 of Scripps Ranch Business Park Phase III, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12130 filed in the Office of the County Recorder of San Diego County, July 27, 1988; and as further defined in that certain Certificate of Correction recorded August 23, 1989 as Instrument No. 89-452514, of Official Records.

PARCEL II:

An easement for ingress, egress, construction, operation and maintenance of a monument sign as contained in that certain "Grant of Easement" recorded November 5, 1999, as Instrument No. 1999-0740198, of Official Records.

APN: 319-170-23-00

ADDRESS:

San Diego, California

ATTACHMENT 9

[redacted]

Filing NO: 200718438287
Filing Date: 2007/10/02
Filing Time: 3:16 PM
State of Minnesota
Processing Office: Secretary of Sta
Filed by: boono01

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

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

12262136

SS, MN

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME: OPUS WEST CORPORATION

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

1c. MAILING ADDRESS: 2555 EAST CAMELBACK ROAD, SUITE 800 | CITY: PHOENIX | STATE: AZ | POSTAL CODE: 85016 | COUNTRY: USA

1d. SEE INSTRUCTIONS | ADDL INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION: CORPORATION | 1f. JURISDICTION OF ORGANIZATION: MINNESOTA | 1g. ORGANIZATIONAL ID #, if any: 8Z-83 ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

2c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

2d. SEE INSTRUCTIONS | ADDL INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any ☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR SP) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: LASALLE BANK NATIONAL ASSOCIATION

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

3c. MAILING ADDRESS: 135 S. LASALLE STREET, SUITE 1225 | 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, INCLUDING ANY SUCH COLLATERAL LOCATED ON THE PROPERTY LEGALLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

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] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA
844437-48054 (MSIC) FILE WITH SOS OF MINNESOTA

FILING OFFICE COPY — UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/22/02)
NONJUDICIAL - 1998/93 C T Corporation System

Filing NO: 200718438287

EXHIBIT "B" TO UCC

COLLATERAL DESCRIPTION

DEBTOR: **OPUS WEST CORPORATION**

SECURED PARTY: **LASALLE BANK NATIONAL ASSOCIATION**

THE REAL ESTATE located in the County of San Diego, 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 Debtor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Debtor 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 Debtor or on its behalf (the "Improvements");

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

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in the Code hereinafter defined), security deposits, impounds, reserves, tax refunds and other rights to monies from the Premises and/or the businesses and operations conducted by Debtor thereon, to be applied against the Indebtedness (as defined in that certain Construction Deed of Trust by and between Debtor and Secured Party dated of even date herewith);

TOGETHER WITH all interest of Debtor 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 Debtor to collect the rentals under any such Lease;

Filing NO: 200718438287

TOGETHER WITH 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, 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, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Debtor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; and

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

TOGETHER WITH all of Debtor'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 Debtor: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to the Debtor arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Debtor's rights in, to and under all purchase orders for goods, services or other property; (iii) the Debtor's rights to any goods, services or other property represented by any of the foregoing; (iv) monies due to become due to the Debtor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Debtor); (v) "securities", "investment property," "financial assets," and "securities entitlements" (each as defined in the Code), and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing; and all warranties, guarantees, permits and licenses in favor of Debtor 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.

Filing NO: 200718438287

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

PARCEL I:

Lot 4 of Scripps Ranch Business Park Phase III, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12130 filed in the Office of the County Recorder of San Diego County, July 27, 1988; and as further defined in that certain Certificate of Correction recorded August 23, 1989 as Instrument No. 89-452514, of Official Records.

PARCEL II:

An easement for ingress, egress, construction, operation and maintenance of a monument sign as contained in that certain "Grant of Easement" recorded November 5, 1999, as Instrument No. 1999-0740198, of Official Records.

APN: 319-170-23-00

ADDRESS:

San Diego, California

DOC # 2008-0231516

APR 30, 2008 2:34 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 10.00

PAGES: 1

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Quarles & Brady LLP
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004
Attention: Matthew Mehr

F8
1P
1CON

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #
Document No. 2007-0530366 recorded 9/27/07 San Diego County

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. ☑

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☑ Debtor or ☐ Secured Party of record. Check only one of these two boxes.
Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☑ CHANGE name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party.
☐ DELETE name: Give record name to be deleted in item 6a or 6b.
☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME
OPUS WEST CORPORATION

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME
SEQUOIA REALTY LIMITED PARTNERSHIP

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

7c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
c/o Sequoia Realty, 10350 Bren Rd West	Minnetonka	MN	85004-2343	USA

7d. SEE INSTRUCTIONS	ADD'L INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION	7g. ORGANIZATIONAL ID #, if any
		limited partnershi	Delaware	4508801 ☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.
Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME
LaSalle Bank National Association

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

10. OPTIONAL FILER REFERENCE DATA

[redacted]

UCC FINANCING STATEMENT
FOLLOW INSTRUCTIONS (front and back) CAREFULLY

DELAWARE DEPARTMENT OF STATE
U.C.C. FILING SECTION
FILED 11:30 AM 05/08/2008
INITIAL FILING # 2008 1667706

SRV: 080527791

A. NAME & PHONE OF CONTACT AT FILER [optional]
Matthew Mehr, 602-229-5288

B. SEND ACKNOWLEDGEMENT TO: (Name and Address)

Quarles & Brady LLP
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004
Attention: Matthew Mehr

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (1a or 1b) – do not abbreviate or combine names

1a. ORGANIZATION'S NAME: SEQUOIA REALTY LIMITED PARTNERSHIP

OR

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

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

1d. TAX ID# SSN or EIN	ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION	1f. JURISDICTION OF ORGANIZATION	1g. ORGANIZATIONAL ID #, if any
51-0278211		limited partnership	Delaware	4508801 ☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME – insert only one debtor name (2a or 2b) – do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX

2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

2d. TAX ID# SSN or EIN	ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION	2f. JURISDICTION OF ORGANIZATION	2g. ORGANIZATIONAL ID #, if any
				☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) – insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME: BANK OF AMERICA, N.A., as Agent

OR

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

3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
Commercial Real Estate Banking Group, AZ1-200-22-17 201 East Washington Street, 22nd Floor Attn: N. Alonzo	Phoenix	AZ	85004-2343	USA

4. This FINANCING STATEMENT covers the following collateral:

THE COLLATERAL DESCRIBED ON EXHIBIT "B" ATTACHED HERETO, INCLUDING ANY SUCH COLLATERAL LOCATED ON THE PROPERTY LEGALLY DESCRIBED ON EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

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

6. ☐ This FINANCING STATEMENT is to be filed (for record) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(s) on Debtor(s) [ADDITIONAL FEE] [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA
Delaware Secretary State for Scripps Ranch

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

SCHEDULE "B" TO UCC

COLLATERAL DESCRIPTION

DEBTOR: SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership

SECURED PARTY: BANK OF AMERICA, N.A., a national banking association

THE REAL ESTATE located in the County of San Diego, 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 Debtor and on, or used in connection with the Real Estate or the improvements thereon, or in connection with any construction thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of the foregoing and all of the right, title and interest of Debtor 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 Debtor or on its behalf (the "Improvements");

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

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," including "health-care-insurance receivables," escrows, letter-of-credit rights (each as defined in the applicable Uniform Commercial Code (the "Code")), security deposits, impounds, reserves, tax refunds and other rights to monies from the Real Estate and Improvements and/or the businesses and operations conducted by Debtor thereon, to be applied against the Indebtedness (as defined in that certain Construction Deed of Trust by and between Debtor and Secured Party dated of even date herewith);

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

TOGETHER WITH 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,

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, whether or not the same are or shall be attached to the Real Estate or the Improvements in any manner; it being mutually agreed that all of the aforesaid property owned by Debtor and placed on the Real Estate or the Improvements, so far as permitted by law, shall be deemed to be fixtures, a part of the realty, and security for the Indebtedness; and

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

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

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 Real Estate and Improvements or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Real Estate and Improvements or proceeds of any sale, option or contract to sell the Real Estate and Improvements or any portion thereof.

EXHIBIT A

LEGAL DESCRIPTION OF REAL ESTATE

PARCEL I:

Lot 4 of Scripps Ranch Business Park Phase III, in the City of San Diego, County of San Diego, State of California, according to Map thereof No. 12130 filed in the Office of the County Recorder of San Diego County, July 27, 1988; and as further defined in that certain Certificate of Correction recorded August 23, 1989 as Instrument No. 89-452514, of Official Records.

PARCEL II:

An easement for ingress, egress, construction, operation and maintenance of a monument sign as contained in that certain "Grant of Easement" recorded November 5, 1999, as Instrument No. 1999-0740198, of Official Records.

APN: 319-170-23-00

ADDRESS:

San Diego, California

ATTACHMENT 10

GUARANTY AGREEMENT
(Scripps Ranch)

This Guaranty Agreement (this "Guaranty") is made as of the 30th day of April, 2008 by OPUS WEST CORPORATION, a Minnesota corporation (individually and collectively, jointly and severally, "Guarantor"), in favor of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, as Agent for itself and other Lenders (collectively together with its successors and assigns, "Lender").

RECITALS

Pursuant to that Assumption and Modification Agreement of even dated herewith (the "Assumption Agreement") between Lender and SEQUOIA REALTY LIMITED PARTNERSHIP, a Delaware limited partnership ("Borrower"), Borrower assumed the obligations of Guarantor under a loan (the "Loan") from Lender to Guarantor evidenced by one or more Promissory Notes dated September 27, 2007 in the aggregate principal face amount of THIRTY-EIGHT MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($38,500,000.00) made by Guarantor to the order of Lender, the obligation of Guarantor under which was assumed by Borrower pursuant to the Assumption Agreement (as the same has been assumed and modified and as may from time to time be amended, supplemented, restated or otherwise modified, the "Note"). Certain terms and conditions of the Loan are set forth in the Construction Loan Agreement dated September 27, 2007 among Guarantor and Lender (as the same has been assumed and modified and as may from time to time be amended, supplemented, restated or otherwise modified, the "Loan Agreement"). As a condition precedent to permitting the assumption of the Loan by Borrower, Lender has required that Guarantor execute and deliver this Guaranty to Lender. Any capitalized term used and not defined in this Guaranty shall have the meaning given to such term in the Loan Agreement.

AGREEMENTS

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in order to induce Lender to enter into the Assumption Agreement, Guarantor hereby guarantees to Lender the prompt and full payment and performance of the indebtedness and obligations described below in this Guaranty (collectively called the "Guaranteed Obligations"), this Guaranty being upon the following terms and conditions:

Section 1. Guaranty of Payment.

Guarantor hereby unconditionally and irrevocably guarantees to Lender the punctual payment when due, whether by lapse of time, by acceleration of maturity, or otherwise, of all principal, interest (including interest accruing after the commencement of any bankruptcy or insolvency proceeding by or against Borrower, whether or not allowed in such proceeding), prepayment premiums, fees, late charges, costs, expenses, indemnification indebtedness, and other sums of money now or hereafter due and owing, or which Borrower is obligated to pay, pursuant to the terms of the Note, the Loan Agreement, the Deed of Trust, the Environmental Indemnity Agreement, any application, agreement, note or other document executed and delivered solely in connection with any letter of credit, any swap contract related to or entered

into as part of the Loan Documents or any of the other Loan Documents or any swap contract, as the same may from time to time be amended, supplemented, restated or otherwise modified (collectively, the "Indebtedness"). The Indebtedness includes all costs and expenses incurred by Lender in seeking to enforce Lender's rights and remedies with respect to the Indebtedness, including court costs, costs of alternative dispute resolution and reasonable attorneys' fees, whether or not suit is filed or other proceedings are initiated thereon. This Guaranty covers the Indebtedness presently outstanding and the Indebtedness arising subsequent to the date hereof, including all amounts advanced by Lender in stages or installments. The guaranty of Guarantor as set forth in this Section 1 is a continuing guaranty of payment and not a guaranty of collection.

Section 2. Guaranty of Performance.

(a) Guarantor also hereby unconditionally and irrevocably guarantees to Lender the complete performance when due of all other obligations of Borrower under all of the Loan Documents, including, without limiting the generality of the foregoing all such obligations of Borrower to:

(i) Complete the construction of the Improvements in accordance with the requirements of the Loan Agreement;

(ii) Make all deposits required under the terms of the Loan Agreement and the other Loan Documents, as and when required;

(iii) Promptly pay in full and discharge all Taxes (as that term is defined in the Deed of Trust) prior to the day upon which the same shall become delinquent (subject to the terms of the Deed of Trust regarding permitted contests of such Taxes);

(iv) Pay, at or before the times required by the Loan Documents, the premiums on all policies of insurance required to be maintained under the terms of the Loan Documents; and

(v) Duly and punctually perform and observe all other terms, covenants and conditions of the Note, the Loan Agreement, the Deed of Trust, the Environmental Indemnity Agreement, any swap contract entered into in connection with the Loan and all other Loan Documents.

The foregoing obligations guaranteed under this Section 2(a) are defined as the "Guaranteed Performance Obligations." The Guaranteed Performance Obligations are included as part of the Guaranteed Obligations for all purposes of this Guaranty.

(b) Upon demand by Lender following the occurrence of an Event of Default, Guarantor will cause all Improvements to be completed in accordance with the requirements of the Loan Agreement and will pay all bills in connection therewith. If Lender shall have requested Guarantor to complete or cause the completion of construction of the Improvements or the renovation or equipping thereof, Guarantor shall be entitled to requisition and draw all of the

undisbursed Loan proceeds intended to be used for the construction of the Improvements pursuant to the Project Budget (but not in excess of the committed amount of the Loan), together with any deposits in the Borrower's deposit account made with respect to the construction of the Improvements pursuant to Section 7.5 of the Loan Agreement (the "Borrower's Deposit Account"). Lender shall disburse such funds for the purpose of, and to the extent necessary for, completing the construction of the Improvements in accordance with the Project Budget, provided that:

(i) Guarantor shall be performing the Guaranteed Performance Obligations or causing the performance of the same with due diligence;

(ii) Guarantor shall have made all required deposits into the Borrower's Deposit Account and all other deposits required under the Loan Agreement;

(iii) All such disbursements of Loan proceeds to Guarantor shall be secured by the Deed of Trust and any other collateral or security for the Loan with the same priority as all previous advances of Loan proceeds to Borrower;

(iv) Guarantor shall have cured all monetary and non-monetary defaults and Events of Default under the Loan, provided that Guarantor shall not be required to cure any non-monetary default or Event of Default which is personal to Borrower and therefore not susceptible to cure by Guarantor; and

(v) Guarantor shall otherwise comply with the provisions of the Loan Agreement governing draw requests and disbursement of the Loan.

(c) The liability and obligations under this Section 2 shall not be limited or restricted by the existence of, or any terms of, the guaranty of payment under Section 1.

Section 3. Primary Liability of Guarantor; Environmental Obligations.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance, and Guarantor shall be liable for the payment and performance of the Guaranteed Obligations as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any right to which Guarantor may otherwise have been entitled, whether existing under statute, at law or in equity, to require Lender to take prior recourse or proceedings against any collateral, security or person. It shall not be necessary Lender, in order to enforce such payment or performance by Guarantor, first to institute suit or pursue or exhaust any rights or remedies against Borrower or other person liable on such indebtedness or for such performance, or to enforce any rights against any security given to secure such indebtedness or performance, or to join Borrower or any other person liable for the payment or performance of the Guaranteed Obligations or any part thereof in any action to enforce this Guaranty, or to resort to any other means of obtaining payment or performance of

the Guaranteed Obligations; provided, however, that nothing herein contained shall prevent Lender from foreclosing the Deed of Trust or exercising any other right under the Loan Documents.

(b) Suit may be brought or demand may be made against Borrower or against any or all parties who have signed this Guaranty or any other guaranty covering all or any part of the Guaranteed Obligations, or against any one or more of them, separately or together, without impairing the rights of Lender against any party hereto.

(c) The liability of Guarantor or any other person hereunder for Guaranteed Obligations arising out of or related to the Environmental Indemnity Agreement shall not be limited or affected in any way by any provision in this Guaranty, the other Loan Documents or applicable law limiting the liability of Borrower, Guarantor or such other person, or Lender's recourse or rights to a deficiency judgment.

Section 4. Certain Agreements and Waivers by Guarantor.

(a) Guarantor agrees that neither Lender's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by any one or more of the following events, actions, facts, or circumstances, Guarantor waives any rights, claims or defenses arising from any such events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute, unconditional and irrevocable irrespective of:

(i) any limitation on the liability of, or recourse against, any other person in any Loan Document or arising under any law;

(ii) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration or that the obligations of Guarantor hereunder exceed or are more burdensome than those of Borrower under the other Loan Documents;

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

(iv) the operation of any statutes of limitation or other laws regarding the limitation of actions, all of which are hereby waived as a defense to any action or proceeding brought by Lender against Guarantor, to the fullest extent permitted by law;

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

(vi) any release, surrender, abandonment, exchange, alteration, sale or other disposition, subordination, deterioration,

waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations, or any impairment of Guarantor's recourse against any person or collateral;

(vii) whether express or by operation of law, any partial release of the liability of Guarantor hereunder (except to the extent expressly so released) or any complete or partial release of Borrower or any other person liable, directly or indirectly, for the payment or performance of any or all of the Guaranteed Obligations;

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

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

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

reasonable manner any collateral securing any or all of the Guaranteed Obligations;

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

(xii) the existence of any claim, counterclaim, set-off or other right that Guarantor may at any time have against Borrower, Lender, or any other person, whether or not arising in connection with this Guaranty, the Note, the Loan Agreement, the Environmental Agreement or any other Loan Document;

(xiii) the unenforceability of all or any part of the Guaranteed Obligations against Borrower, whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the persons creating the Guaranteed Obligations acted in excess of their authority, or because of a lack of validity or enforceability of or defect or deficiency in any of the Loan Documents, or because Borrower has any valid defense, claim or offset with respect thereto, or because Borrower's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Borrower or any other person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Borrower or any other party in any action to obtain payment or performance of any or all of the Guaranteed Obligations);

(xiv) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Borrower or any other person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to by Lender, or any action taken or omitted by Lender in any such proceedings, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender in any such proceedings or the taking and holding by Lender of any security for any such extension of credit;

(xv) any other condition, event, omission, action that would in the absence of this paragraph result in the release or discharge of the Guarantor from the performance or observance of any obligation, covenant or agreement contained in this Guaranty or any other agreement;

(xvi) any early termination of any of the Guaranteed Obligations;

(xvii) Lender's enforcement or forbearance from enforcement of the Guaranteed Obligations on a net or gross basis; or

(xviii) any liability, irregularity or unenforceability in whole or in part (including with respect to any netting provision) of any swap contract or any confirmation, instrument or agreement required thereunder or related thereto, or any transaction entered into thereunder, or any limitation on the liability of Borrower thereunder or any limitation on the method or terms of payment thereunder which may now or hereafter be caused or imposed in any manner whatsoever.

(b) In the event any payment by Borrower or any other person to Lender is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law, or if for any other reason Lender is required to refund such payment or pay the amount thereof to any other party, such payment by Borrower or any other party to Lender shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by Lender of this Guaranty or of Guarantor), as the case may be, with respect to, and this Guaranty shall apply to, any and all amounts so refunded by Lender or paid by Lender to another person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by Lender and any attorneys' fees, costs and expenses paid or incurred by Lender in connection with any such event.

(c) It is the intent of Guarantor and Lender that the obligations and liabilities of Guarantor hereunder are absolute, irrevocable and unconditional under any and all circumstances

and that until the Guaranteed Obligations are fully and finally paid and performed, and not subject to refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of a guarantor.

(d) Guarantor's obligations shall not be affected, impaired, lessened or released by loans, credits or other financial accommodations now existing or hereafter advanced by Lender to Borrower in excess of the Guaranteed Obligations. All payments, repayments and prepayments of the Loan, whether voluntary or involuntary, received by Lender from Borrower, any other person or any other source (other than from Guarantor pursuant to a demand by Lender hereunder), and any amounts realized from any collateral for the Loan, shall be deemed to be applied first to any portion of the Loan which is not covered by this Guaranty, and last to the Guaranteed Obligations, and this Guaranty shall bind Guarantor to the extent of any Guaranteed Obligations that may remain owing to Lender. Lender shall have the right to apply any sums paid by Guarantor to any portion of the Loan in Lender's sole and absolute discretion.

(e) If acceleration of the time for payment of any amount payable by Borrower under the Note, the Loan Agreement, any other Loan Document or any swap contract is stayed or delayed by any law or tribunal, all such amounts shall nonetheless be payable by Guarantor on demand by Lender.

(f) Guarantor further waives: (i) any defense to the recovery by Lender against Guarantor of any deficiency or otherwise to the enforcement of this Guaranty or any security for this Guaranty based upon Lender's election of any remedy against Guarantor or Borrower, including the defense to enforcement of this Guaranty (the so-called "Gradsky" defense) which, absent this waiver, Guarantor would have by virtue of an election by Lender to conduct a non-judicial foreclosure sale (also known as a "trustee's sale") of any real property security for the Indebtedness, it being understood by Guarantor that any such non-judicial foreclosure sale will destroy, by operation of California Code of Civil Procedure ("CCP") Section 580d, all rights of any party to a deficiency judgment against Borrower and, as a consequence, will destroy all rights that Guarantor would otherwise have (including the right of subrogation, the right of reimbursement, and the right of contribution) to proceed against Borrower, (ii) any defense or benefits that may be derived from CCP Sections 580a, 580b, 580d or 726, or comparable provisions of the laws of any other jurisdiction and all other anti-deficiency and one form of action defenses under the laws of California and any other jurisdiction; and (iii) any right to a fair value hearing under CCP Section 580a, or any other similar law, to determine the size of any deficiency owing (for which Guarantor would be liable hereunder) following a non-judicial foreclosure sale. Nothing in this subsection (f) shall operate to change, waive or affect the provisions of Section 19 hereof.

(g) Without limiting any other provision of this Guaranty, Guarantor waives all rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. This means, among other things:

(i) That Lender may collect from Guarantor without first foreclosing on any real or personal property collateral pledged by Borrower; and

(ii) If Lender forecloses on any real property collateral pledged by Borrower: (A) the amount of the Guaranteed Obligations may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Lender may collect from Guarantor even if Lender, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from Borrower.

This is an unconditional and irrevocable waiver of any rights and defenses that Guarantor may have because the Guaranteed Obligations are secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon CCP Sections 580a, 580b, 580d, or 726.

(h) Guarantor waives all rights and defenses arising out of an election of remedies by Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for the Guaranteed Obligations, has destroyed Guarantor's rights of subrogation and reimbursement against Borrower by operation of CCP Section 580d or otherwise.

(i) Guarantor waives Guarantor's rights of subrogation and reimbursement, including (i) any defenses Guarantor may have by reason of an election of remedies by Lender, and (ii) any rights or defenses Guarantor may have by reason of protection afforded to Borrower with respect to the Guaranteed Obligations pursuant to the anti-deficiency or other laws of California limiting or discharging Borrower's obligations, including CCP Sections 580a, 580b, 580d or 726.

(j) Guarantor waives notice of acceptance of this Guaranty, any rights, defenses and benefits that may be derived from Sections 2787 to 2855, inclusive, of the California Civil Code or comparable provisions of the laws of any other jurisdiction, and all other suretyship defenses Guarantor would otherwise have under the laws of California or any other jurisdiction.

(k) No provision or waiver in this Guaranty shall be construed as limiting the generality of any other provision or waiver contained in this Guaranty. All the waivers contained herein are irrevocable and unconditional and are intentionally and freely made by Guarantor.

Section 5. Subordination.

If, for any reason whatsoever, Borrower is now or hereafter becomes indebted to Guarantor:

(a) such indebtedness and all interest thereon and all liens, security interests and rights now or hereafter existing with respect to property of Borrower securing such indebtedness shall, at all times, be subordinate in all respects to the Guaranteed Obligations and to all liens, security interests and rights now or hereafter existing to secure the Guaranteed Obligations;

(b) Guarantor shall not be entitled to enforce or receive payment, directly or indirectly, of any such indebtedness of Borrower to Guarantor until the Guaranteed Obligations have been fully and finally paid and performed; provided,

however, that so long as no Entry of Default shall have occurred and be continuing, Guarantor shall not be prohibited from receiving such (i) reasonable management fees or reasonable salary from Borrower as Lender may find acceptable from time to time in its sole and absolute discretion, and (ii) distributions from Borrower in an amount equal to any income taxes imposed on Guarantor which are attributable to Borrower's income from the Land;

(c) Guarantor hereby assigns and grants to Lender a security interest in all such indebtedness and security therefor, if any, of Borrower to Guarantor now existing or hereafter arising, including any dividends and payments pursuant to debtor relief or insolvency proceedings referred to below. In the event of receivership, bankruptcy, reorganization, arrangement or other debtor relief or insolvency proceedings involving Borrower as debtor, Lender shall have the right to prove its claim in any such proceeding so as to establish its rights hereunder and shall have the right to receive directly from the receiver, trustee or other custodian (whether or not an Event of Default shall have occurred or be continuing under any of the Loan Documents), dividends and payments that are payable upon any obligation of Borrower to Guarantor now existing or hereafter arising, and to have all benefits of any security therefor, until the Guaranteed Obligations have been fully and finally paid and performed. If, notwithstanding the foregoing provisions, Guarantor should receive any payment, claim or distribution that is prohibited as provided above in this Section 5, Guarantor shall pay the same to Lender immediately, Guarantor hereby agreeing that it shall receive the payment, claim or distribution in trust for Lender and shall have absolutely no dominion over the same except to pay it immediately to Lender; and

(d) Guarantor shall promptly upon request of Lender from time to time execute such documents and perform such acts as Lender may require to evidence and perfect its interest and to permit or facilitate exercise of its rights under this Section 5, including execution and delivery of proofs of claim, further assignments and security agreements, and delivery to Lender of any promissory notes or other instruments evidencing indebtedness of Borrower to Guarantor. All promissory notes, accounts receivable ledgers or other evidences, now or hereafter held by Guarantor, of obligations of Borrower to Guarantor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under and is subject to the terms of this Guaranty.

Section 6. Other Liability of Guarantor or Borrower.

If Guarantor is or becomes liable, by endorsement or otherwise, for any indebtedness owing by Borrower to Lender other than under this Guaranty, such liability shall not be in any manner impaired or affected hereby, and the rights of Lender hereunder shall be cumulative of any and all other rights that Lender may have against Guarantor. If Borrower is or becomes indebted to Lender for any indebtedness other than or in excess of the Guaranteed Obligations, any payment received or recovery realized upon such other indebtedness of Borrower to Lender may be applied to such other indebtedness. This Guaranty is independent of (and shall not be limited by) any other guaranty now existing or hereafter given. Further, Guarantor's liability

under this Guaranty is in addition to any and all other liability Guarantor may have in any other capacity, including, if applicable, its capacity as a general partner.

Section 7. Lender Assigns; Disclosure of Information.

This Guaranty is for the benefit of Lender and Lender's successors and assigns, and in the event of an assignment of the Guaranteed Obligations, or any part thereof, the rights and benefits hereunder, to the extent applicable to the Guaranteed Obligations so assigned, may be transferred with such Guaranteed Obligations. Guarantor waives notice of any transfer or assignment of the Guaranteed Obligations or any part thereof. Lender may sell or offer to sell the Loan or interests therein to one or more assignees or participants. Guarantor shall execute, acknowledge and deliver any and all instruments reasonably requested by Lender in connection therewith, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to the Loan Documents as such person(s) would have if such person(s) were Lender hereunder. Lender may disclose to any such assignee or participant or prospective assignee or participant, to Lender's affiliates, including Banc of America Securities LLC, to any regulatory body having jurisdiction over Lender and to any other parties as necessary or appropriate in Lender's reasonable judgment, any information Lender now has or hereafter obtains pertaining to the Guaranteed Obligations, this Guaranty, or Guarantor, including information regarding any security for the Guaranteed Obligations or for this Guaranty, and/or credit or other information on Guarantor and/or any other person liable, directly or indirectly, for any part of the Guaranteed Obligations.

Section 8. Binding Effect; Joint and Several Liability.

This Guaranty is binding not only on Guarantor, but also on Guarantor's heirs, personal representatives, successors and assigns. Upon the death of Guarantor, if Guarantor is a natural person, this Guaranty shall continue against Guarantor's estate as to all of the Guaranteed Obligations, including that portion incurred or arising after the death of Guarantor and shall be provable in full against Guarantor's estate, whether or not the Guaranteed Obligations are then due and payable. If this Guaranty is signed by more than one person, then all of the obligations of Guarantor arising hereunder shall be jointly and severally binding on each of the undersigned, and their respective heirs, personal representatives, successors and assigns, and the term "Guarantor" shall mean all of such persons and each of them individually.

Section 9. Governing Law.

The validity, enforcement, and interpretation of this Guaranty, shall for all purposes be governed by and construed in accordance with the laws of the State of Arizona (without regard to its conflicts of law principles) and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws. All obligations of Guarantor hereunder are payable and performable at the place or places where the Guaranteed Obligations are payable and performable.

Section 10. Invalidity of Certain Provisions.

If any provision of this Guaranty or the application thereof to any person or circumstance shall, for any reason and to any extent, be declared to be invalid or unenforceable, neither the

remaining provisions of this Guaranty nor the application of such provision to any other person or circumstance shall be affected thereby, and the remaining provisions of this Guaranty, or the applicability of such provision to other persons or circumstances, as applicable, shall remain in effect and be enforceable to the maximum extent permitted by applicable law.

Section 11. Costs and Expenses of Enforcement.

Guarantor agrees to pay to Lender on demand all costs and expenses incurred by Lender in seeking to enforce Lender's rights and remedies under this Guaranty, including court costs, costs of alternative dispute resolution, and reasonable attorneys' fees, whether or not suit is filed or other proceedings are initiated hereon. All such costs and expenses incurred by Lender shall constitute a portion of the Guaranteed Obligations hereunder, shall be subject to the provisions hereof with respect to the Guaranteed Obligations and shall be payable by Guarantor on demand by Lender.

Section 12. No Usury.

It is not the intention of Lender or Guarantor to obligate Guarantor to pay interest in excess of that lawfully permitted to be paid by Guarantor under applicable law. Should it be determined that any portion of the Guaranteed Obligations or any other amount payable by Guarantor under this Guaranty constitutes interest in excess of the maximum amount of interest that Guarantor, in Guarantor's capacity as guarantor, may lawfully be required to pay under applicable law, the obligation of Guarantor to pay such interest shall automatically be limited to the payment thereof in the maximum amount so permitted under applicable law. The provisions of this Section shall override and control all other provisions of this Guaranty and of any other agreement between Guarantor and Lender.

Section 13. Representations, Warranties, and Covenants of Guarantor.

A. Until the Guaranteed Obligations are paid and performed in full and each and every term, covenant and condition of this Guaranty is fully performed, Guarantor hereby represents, warrants, and covenants that: (a) Guarantor has a financial interest in Borrower and will derive a material and substantial benefit, directly or indirectly, from the making of the Loan to Borrower and from the making of this Guaranty by Guarantor; (b) this Guaranty is duly authorized and valid, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which Guarantor is bound or affected; (d) unless Guarantor is a natural person, Guarantor is duly organized, validly existing, and in good standing under the laws of the state of its organization and has full power and authority to enter into and perform this Guaranty; (e) there is no litigation pending or, to the knowledge of Guarantor, threatened by or before any tribunal against or affecting Guarantor; (f) all financial statements and information heretofore furnished to Lender by Guarantor do, and all financial statements and information hereafter furnished to Lender by Guarantor will, fully and accurately present the condition (financial or otherwise) of Guarantor as of their dates and the results of Guarantor's operations for the periods therein specified, and, since the date of the most recent financial statements of Guarantor heretofore furnished to Lender, no material adverse

change has occurred in the financial condition of Guarantor, nor, except as heretofore disclosed in writing to Lender, has Guarantor incurred any material liability, direct or indirect, fixed or contingent; (g) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the property of Guarantor is an unreasonably small capital, and does not intend to incur or believe that it will incur debts that will be beyond its ability to pay as such debts mature; (h) Guarantor has read and fully understands the provisions contained in the Note, the Loan Agreement, the Deed of Trust, the Environmental Indemnity Agreement and the other Loan Documents. Guarantor further represents, warrants and covenants that if any swap contract shall at any time be in effect, (x) Guarantor has received and examined copies of each such swap contract, the observance and performance of which by Borrower is hereby guaranteed; (y) Guarantor will benefit from Lender's entering into each such swap contract and any transaction thereunder with Borrower, and Guarantor has determined that the execution and delivery by Guarantor of this Guaranty are necessary and convenient to the conduct, promotion and attainment of the business of Guarantor; and (z) Lender has no duty to determine whether any swap contract, or any other transaction relating to or arising under any swap contract, will be or has been entered into by Borrower for purposes of hedging interest rate, currency exchange rate, or other risks arising in its businesses or affairs and not for purposes of speculation, or is otherwise inappropriate for Borrower. Guarantor's representations, warranties and covenants are a material inducement to Lender to enter into the other Loan Indemnity Documents and any swap contract and shall survive the execution hereof and any bankruptcy, foreclosure, transfer of security or other event affecting Borrower, Guarantor, any other party, or any security for all or any part of the Guaranteed Obligations.

B. Guarantor hereby agrees as follows:

(i) to maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than 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).

Section 14. Notices.

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

Section 15. Cumulative Rights.

All of the rights and remedies of Lender under this Guaranty and the other Loan Documents are cumulative of each other and of any and all other rights at law or in equity, and the exercise by Lender of any one or more of such rights and remedies shall not preclude the simultaneous or later exercise by Lender of any or all such other rights and remedies. No single or partial exercise of any right or remedy shall exhaust it or preclude any other or further exercise thereof, and every right and remedy may be exercised at any time and from time to time. No failure by Lender to exercise, nor delay in exercising, any right or remedy shall operate as a waiver of such right or remedy or as a waiver of any Event of Default. No notice to or demand on Guarantor in any case shall of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right or remedy of Lender with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed and delivered by Lender to Guarantor.

Section 16. Term of Guaranty.

This Guaranty shall continue in effect until all the Guaranteed Obligations and all of the obligations of Guarantor to Lender under this Guaranty are fully and finally paid, performed and discharged and are not subject to any bankruptcy preference period or any other disgorgement.

Section 17. Financial Statements.

Guarantor agrees to provide to Lender, as and when required, the financial statements and other financial information required to be delivered to Lender with respect to Guarantor pursuant to the terms of the Loan Agreement and the other Loan Documents, in the form and detail required by the Loan Documents. Guarantor also agrees to provide to Lender such other and further financial information with respect to Guarantor as Lender shall from time to time request.

Section 18. Subrogation.

Guarantor shall not have any equitable, contractual or other right of subrogation under any of the Loan Documents or any right to participate in any security for the Guaranteed Obligations or any right to reimbursement, exoneration, contribution, indemnification or any similar rights, until the Guaranteed Obligations have been fully and finally paid, performed and discharged in accordance with Section 16 above, and Guarantor hereby waives all of such rights.

Section 19. Time of Essence.

Time shall be of the essence in this Guaranty with respect to all of Guarantor's obligations hereunder.

Section 20. Entire Agreement; Counterparts; Construction.

This Guaranty embodies the entire agreement between Lender and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty shall be effective upon execution by Guarantor and delivery to Lender. This Guaranty may not be modified, amended or superseded except in a writing signed by Lender and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded. This Guaranty has been executed in a number of identical counterparts, each of which shall be deemed an original for all purposes and all of which constitute, collectively, one agreement. As used herein, the words "include" and "including" shall be interpreted as if followed by the words "without limitation."

Section 21. Dispute Resolution.

(a) Arbitration. Except to the extent expressly provided below, any controversy, claim or dispute between or among the parties hereto, including any such controversy, claim or dispute arising out of or relating to (i) this Guaranty, (ii) any other Loan Document, (iii) any related agreements or instruments, or (iv) the transaction contemplated herein or therein (including any claim based on or arising from an alleged personal injury or business tort)

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

(b) Special Rules.

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

(ii) The arbitration shall be administered by AAA, who will appoint an arbitrator. If AAA is unwilling or unable to administer or legally precluded from administering the arbitration, or if AAA is unwilling or unable to enforce or legally precluded from enforcing any and all provisions of this Dispute Resolution Section, then any party to this Guaranty may substitute another arbitration organization that has similar procedures to AAA and that will observe and enforce any and all provisions of this Dispute Resolution Section. All Disputes shall be determined by one arbitrator; however, if the amount in controversy in a Dispute exceeds Five Million Dollars ($5,000,000), upon the request of any party, the Dispute shall be decided by three arbitrators (for purposes of this Guaranty, referred to collectively as the "arbitrator").

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

(iv) The judgment and the award, if any, of the arbitrator shall be issued within thirty (30) days of the close of the hearing. The arbitrator shall provide a concise written statement setting forth the reasons for the judgment and for the award, if any.

The arbitration award, if any, may be submitted to any court having jurisdiction to be confirmed and enforced, and such confirmation and enforcement shall not be subject to arbitration.

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

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

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

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

(c) Judicial Reference. If the Dispute arises from or relates to an obligation to Lender secured by real property located in the State of California, unless both Guarantor and Lender consent to submission of the Dispute to arbitration to be conducted as provided in subsections (a) and (b) above, the Dispute shall be resolved by judicial reference pursuant to CCP Sections 638 et seq. This provision constitutes a reference agreement between or among the parties as provided in CCP Section 638. The referee(s) shall be chosen by the parties under the auspices of AAA in the same manner as arbitrators are selected in proceedings administered under the AAA rules and procedures for the arbitration of financial services disputes. The referee (or the presiding referee of the panel) must be an active attorney or a retired judge. The award that results from the decision of the referee(s) shall be entered as a judgment in the court that appointed the referee, in accordance with the provisions of CCP Sections 644 and 645.

(d) Reservations of Rights. Nothing in this Guaranty shall be deemed to (i) limit the applicability of any otherwise applicable statutes of limitation and any waivers contained in this Guaranty, or (ii) apply to or limit the right of Lender (A) to exercise self help remedies such as (but not limited to) setoff, or (B) to foreclose judicially or nonjudicially against any real or personal property collateral, or to exercise judicial or nonjudicial power of sale of rights, (C) to obtain from a court provisional or ancillary remedies such as (but not limited to) injunctive relief, writ of possession, prejudgment attachment, or the appointment of a receiver, or (D) to pursue rights against a party to this Guaranty in a third-party proceeding in any action brought against

Lender in a state, federal or international court, tribunal or hearing body (including actions in specialty courts, such as bankruptcy and patent courts). Lender may exercise the rights set forth in clauses (A) through (D), inclusive, before, during or after the pendency of any arbitration or judicial reference proceeding brought pursuant to this Guaranty. Neither the exercise of self help remedies nor the institution or maintenance of an action for foreclosure or provisional or ancillary remedies shall constitute a waiver of the right of any party, including the claimant in any such action, to arbitrate, or submit to judicial reference, the merits of the Dispute occasioning resort to such remedies. No provision in the Loan Documents regarding submission to jurisdiction and/or venue in any court is intended or shall be construed to be in derogation of the provisions in any Loan Document for arbitration or judicial reference of any Dispute.

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

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

Section 22. Forum.

Guarantor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any state court or any United States federal court sitting in the State specified in the governing law section of this Guaranty and to the jurisdiction of any state court or any United States federal court sitting in the state in which any of the Land is located, over any Dispute. Guarantor hereby irrevocably waives, to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Guarantor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state court or any United States federal court sitting in the state specified in the governing law section of this Guaranty may be made by certified or registered mail, return receipt requested, directed to Guarantor at its address for notice set forth in this Guaranty, or at a subsequent address of which Lender received actual notice from Guarantor in accordance with the notice section of this Guaranty, and service so made shall be complete five (5) days after the same shall have been so mailed. Nothing herein shall affect the right of Lender to serve process in any manner permitted by law or limit the right of Lender to bring proceedings against Guarantor in any other court or jurisdiction.

Section 23. **WAIVER OF JURY TRIAL.**

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO RESOLVE ANY "DISPUTE" (FOR PURPOSES OF THIS SECTION, AS DEFINED ABOVE), BY JUDICIAL REFERENCE OR ARBITRATION AS SET FORTH IN THIS GUARANTY, GUARANTOR AND LENDER WAIVE TRIAL BY JURY IN RESPECT OF ANY SUCH "DISPUTE" AND ANY ACTION ON SUCH "DISPUTE." THIS WAIVER SHALL APPLY TO THE EXTENT ANY "DISPUTE" IS NOT SUBMITTED TO JUDICIAL REFERENCE OR ARBITRATION, OR IS DEEMED BY THE ARBITRATOR, REFEREE OR ANY COURT WITH JURISDICTION TO BE NOT REQUIRED TO BE DETERMINED BY JUDICIAL REFERENCE OR ARBITRATION, OR NOT SUSCEPTIBLE OF BEING SO DETERMINED. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR AND LENDER, AND GUARANTOR AND LENDER HEREBY REPRESENT THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON OR ENTITY TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THE LOAN DOCUMENTS. GUARANTOR AND LENDER ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

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

Address of Guarantor:

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

GUARANTOR:

OPUS WEST CORPORATION, a Minnesota corporation

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

Address of Lender:

LASALLE BANK NATIONAL
ASSOCIATION, a national banking
association
Commercial Real Estate Banking
Group, AZ1-200-22-17
201 East Washington Street, 22nd Floor
Phoenix, Arizona 85004-2343
Attention: N. Alonzo

ATTACHMENT 11

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

Sequoia Realty Limited Partnership
c/o Sequoia Realty, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Vice President

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Charles Vogel

RE: ***$38,500,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association, successor by merger to LaSalle Bank National Association, individually as a Lender and as Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Sequoia Realty Limited Partnership, as successor-in-interest to Opus West Corporation ("Borrower")***

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of an Event of Default (hereinafter, the "Event of Default") under Section 11.1(n) of the Construction Loan Agreement dated September 27, 2007 between Borrower and Bank of America, as amended by that certain Assumption And Modification Agreement effective as of April 30, 2008 (as amended, supplemented, or modified from time to time, the "Loan Agreement"), and the Promissory Note of even date therewith, made by Borrower and delivered to Bank of America, as amended by that certain Assumption And Modification Agreement effective as of April 30, 2008 (as amended, supplemented, or modified from time to time, the "Note"). The Loan Agreement, Note, and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents". Borrower has informed Bank of America that, for the fiscal quarter ended

December 31, 2008, Opus West Corporation ("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 Section 13(B)(iii) of that certain instrument entitled Guaranty Agreement dated April 30, 2008 (as amended, supplemented, or modified from time to time, the "Guaranty"). Guarantor's failure to meet the requirements of Section 13(B)(iii) of the Guaranty constitutes an immediate Event of Default under Section 11.1(n) of the Loan Agreement. 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 will accrue from and after April 10, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the above-described Event of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Lender of the Event of Default or performance or cure of the Event of Default by Borrower; constitute an amendment of any term or condition of any Loan Document; create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Lenders' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Event of Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

As a result of the Event of Default: (i) Bank of America, on behalf of itself and each of the Lenders, is entitled to the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition charges recoverable as a consequence of the Event of Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and the other Lenders, is entitled to enforce the Lenders' rights and remedies relating to the collateral, including, without limitation, appointment of receiver and foreclosure.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement

and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP

Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Legal Department

Quarles & Brady LLP

One Renaissance Square
Two North Central Avenue
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Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

May 5, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Sequoia Realty Limited Partnership
c/o Sequoia Realty, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Vice President

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Charles Vogel

RE: ***$38,500,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association, successor by merger to LaSalle Bank National Association, individually as a Lender and as Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Sequoia Realty Limited Partnership, as successor-in-interest to Opus West Corporation ("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 4.2(a) of the Construction Loan Agreement dated September 27, 2007 between Borrower and Bank of America, as amended by that certain Assumption And Modification Agreement effective as of April 30, 2008 (as amended, supplemented, or modified from time to time, the "Loan Agreement"), and the Promissory Note of even date therewith, made by Borrower and delivered to Bank of America, as amended by that certain Assumption And Modification Agreement effective as of April 30, 2008 (as amended, supplemented, or modified from time to time, the "Note"). The Loan Agreement, Note, and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents". Borrower is in default as the result of the Borrower's failure to make the installment payment of interest due on May 1, 2009 (the "Due Date") as required under the Loan

Agreement. If payment is not received in good funds on or before May 8, 2009, then such failure will constitute an Event of Default under the Loan Agreement. Late charges (as described in and calculated according to Section 4.2(f) of the Loan Agreement) will apply to the defaulted amounts. 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 continue to accrue on any and all amounts outstanding.

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 Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Lender of the Specified 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 Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Lenders' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby also reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Specified Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the Project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

In the event the foregoing Specified Default is not cured on or before May 8, 2009 by payment in full of all amounts due and owing under the Loan Agreement as of May 1, 2009, plus any and all accrued Default Rate interest, late charges, costs and fees (including attorneys' fees): (i) Bank of America, on behalf of itself and each of the Lenders, is entitled to the exercise of its 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, late charges and other charges recoverable as a consequence of the Specified Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and each of the Lenders, is entitled to enforce its rights and remedies relating to its collateral, including, without limitation, appointment of receiver and foreclosure. Please contact me for payment information relating to the Loan.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to Lenders and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and each of the Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

Opus West Corporation ("Guarantor") guaranteed the payment and performance of the Loan and Borrower's obligations under the Loan Documents under that certain instrument entitled Guaranty Agreement dated April 30, 2008 (the "Guaranty"). Demand is hereby made on Guarantor for prompt payment or performance of Borrower's obligations under the Specified Default described herein.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP

Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Legal Department

ATTACHMENT 12

Quarles & Brady LLP

One Renaissance Square
Two North Central Avenue
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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

August 31, 2009

ACCELERATION NOTICE

VIA UPS OVERNIGHT

Sequoia Realty Limited Partnership
c/o Sequoia Realty, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Vice President

RE: ***$38,500,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association, successor by merger to LaSalle Bank National Association, individually as a Lender and as Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Sequoia Realty Limited Partnership, as successor-in-interest to Opus West Corporation ("Borrower")***

Ladies and Gentlemen:

By default notice dated April 9, 2009 ("4/9/09 Default Notice"), Bank of America provided formal notice to Borrower that an Event of Default had occurred under the Loan Agreement and the Note. A copy of the 4/9/09 Default Notice is attached to this letter as **Exhibit A** and incorporated herein by this reference. Capitalized terms used in this letter without definition will have the meanings assigned thereto in the 4/9/09 Default Notice.

The Event of Default identified in the 4/9/09 Default Notice (the "4/9/09 Declared Default") continues to exist and additional defaults have occurred under the Loan Agreement. In particular, the following additional defaults have occurred:

(i) Borrower has failed to make the installment payments of interest due on the first Business Day of July 2009 and August 2009 as required under Section 4.2(a) of the Loan Agreement. All applicable cure periods with respect to Borrower's failure to make such installment payments of interest have passed and, accordingly, such failure constitute Events of Default under Section 11.1(a)(i) of the Loan Agreement (the "Interest Payment Defaults").

(ii) Borrower has failed to satisfy the requirements of Section 8.3 of the Loan Agreement by permitting mechanics liens and stop notice claims to be filed against the Premises and by failing to discharge such mechanics liens and stop notice claims within thirty days of their attachment. Borrower's failure to satisfy the requirements of Section 8.3 and to rectify such failure within thirty days constitutes an Event of Default under Section 11.1(b) of the Loan Agreement (the "Mechanics Liens Default").

(iii) Borrower has defaulted under the Construction Contracts by failing to pay approximately $1,400,000.00 to subcontractors and by failing to pay approximately $1,000,000.00 to the tenant of the Premises. By defaulting under the Construction Contracts, Borrower has defaulted under Section 8.6 of the Loan Agreement. All applicable cure periods with respect to Borrower's default under Section 8.6 have passed and, accordingly, Borrower's failure to satisfy the requirements of Section 8.6 constitutes an Event of Default under Section 11.1(b) of the Loan Agreement (the "Construction Contracts Defaults").

(iv) Opus West Corporation ("Guarantor") executed that certain Guaranty Agreement (Scripps Ranch) dated as of April 30, 2008 in favor of Lenders (the "Guaranty"). On July 6, 2009, Guarantor filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas. Guarantor's bankruptcy filing constitutes an Event of Default under Section 11.1(k) of the Loan Agreement (the "Bankruptcy Filing Default"). In addition, Guarantor's bankruptcy filing constitutes a Material Adverse Occurrence under Section 1.1 of the Loan Agreement and, accordingly, triggers a further Event of Default under Section 11.1(j) of the Loan Agreement (the "MAC Default", together with the 4/9/09 Declared Default, the Interest Payment Defaults, the Mechanics Liens Default, the Construction Contracts Defaults, and the MAC Default, the "Specified Events of Default").

As a result of the Specified Events of Default, Bank of America and the other Lenders are entitled to exercise their rights and remedies, at law and in equity, against Borrower and the collateral and, accordingly, Bank of America hereby declares all amounts due and owing to the Lenders under the Loan Documents (collectively, the "Obligations") to be immediately due and payable in full accordance with Section 12.1(c) of the Loan Agreement. Interest and other fees and charges (including without limitation attorneys' fees) continue to accrue as provided in the Loan Agreement and other Loan Documents. In order to obtain the full payoff amount as of any particular business day, please contact the undersigned.

On behalf of each of the Lenders, Bank of America hereby demands that Borrower immediately pay all of the Obligations owing as described above, with all additional interest, including without limitation all Default Rate interest, and other amounts that will accrue until payment in full is received by Bank of America. Payment in full of the Obligations must be made in readily available funds delivered to my

attention. Wire transfer instructions are available upon request to the undersigned. If full payment of the Obligations is not received immediately, Bank of America and/or any Lender may exercise all rights and remedies under the terms of the Loan Agreement and other Loan Documents.

Notwithstanding the existence of the above-described Specified Events of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Lender of the Specified Events of Default or performance or cure of the Specified Events of Default by Borrower; constitute an amendment of any term or condition of any Loan Document; create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Lenders' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby 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 Events of Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

As a result of the foregoing Specified Events of Default, Bank of America, on behalf of itself and each of the Lenders, is entitled to: (i) the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, the imposition of Default Rate interest and other charges recoverable as a consequence of the Specified Event of Default (including attorneys' fees and costs); and (ii) enforce the Lenders' rights and remedies relating to the collateral, including, without limitation, appointment of receiver and foreclosure.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

If you have any questions or concerns, please contact the undersigned.

Very truly yours,

QUARLES & BRADY LLP

Lori L. Winkelman

cc: Casey Carpenter, Bank of America (via e-mail)
Brian Sirower, Esq. (via e-mail)
Caroline Woolsey, Esq. (via e-mail)

Via UPS Overnight:
Opus, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Legal Department

EXHIBIT A

Quarles & Brady LLP

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Tel 602.229.5200
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Attorneys at Law in:
Phoenix and Tucson, Arizona
Naples, Florida
Chicago, Illinois
Milwaukee and Madison, Wisconsin

April 9, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Sequoia Realty Limited Partnership
c/o Sequoia Realty, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Vice President

Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Charles Vogel

RE: ***$38,500,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association, successor by merger to LaSalle Bank National Association, individually as a Lender and as Agent ("Bank of America"), and certain other financial institutions as Lenders (together with Bank of America, the "Lenders") to Sequoia Realty Limited Partnership, as successor-in-interest to Opus West Corporation ("Borrower")***

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of an Event of Default (hereinafter, the "Event of Default") under Section 11.1(n) of the Construction Loan Agreement dated September 27, 2007 between Borrower and Bank of America, as amended by that certain Assumption And Modification Agreement effective as of April 30, 2008 (as amended, supplemented, or modified from time to time, the "Loan Agreement"), and the Promissory Note of even date therewith, made by Borrower and delivered to Bank of America, as amended by that certain Assumption And Modification Agreement effective as of April 30, 2008 (as amended, supplemented, or modified from time to time, the "Note"). The Loan Agreement, Note, and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents". Borrower has informed Bank of America that, for the fiscal quarter ended

December 31, 2008, Opus West Corporation ("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 Section 13(B)(iii) of that certain instrument entitled Guaranty Agreement dated April 30, 2008 (as amended, supplemented, or modified from time to time, the "Guaranty"). Guarantor's failure to meet the requirements of Section 13(B)(iii) of the Guaranty constitutes an immediate Event of Default under Section 11.1(n) of the Loan Agreement. 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 will accrue from and after April 10, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the above-described Event of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Lenders, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent Bank of America or any of the other Lenders elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Lender of the Event of Default or performance or cure of the Event of Default by Borrower; constitute an amendment of any term or condition of any Loan Document; create an obligation of any Lender to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Lenders' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Lenders, hereby reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Event of Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the project is located. Each of the Lenders may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

As a result of the Event of Default: (i) Bank of America, on behalf of itself and each of the Lenders, is entitled to the exercise of the Lenders' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition charges recoverable as a consequence of the Event of Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and the other Lenders, is entitled to enforce the Lenders' rights and remedies relating to the collateral, including, without limitation, appointment of receiver and foreclosure.

Nothing in this letter or in Lenders' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Lenders and their affiliated entities under the Loan Agreement

and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and the other Lenders, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any of the Lenders, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP

Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus, L.L.C.
10350 Bren Road West
Minnetonka, MN 55343
Attn: Legal Department

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: 72** *Original Filed Date*: 11/09/2009 *Original Entered Date*: 11/09/2009	*Status:* *Filed by:* CR *Entered by:* Richter, Katharine *Modified:*

Unsecured claimed: $36908168.53

Total claimed: $36908168.53

History:

Details 72-1 11/09/2009 Claim #72 filed by BANK OF AMERICA, N.A., total amount claimed: $36908168.53 (Richter, Katharine)

Description: (72-1) Horizon Scripps Ranch

Remarks: (72-1) But see Addendum for possible secured status

Claims Register Summary