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

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

Name of Debtor: Opus West Corporation

Case Number: 09-34356-hdh11

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

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

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

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

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

1. Amount of Claim as of Date Case Filed: $ $25,275,187.64

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
00615

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.

Broadstone Cypress

RECEIVED
NOV 09 2009
BMC GROUP

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

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

EXHIBIT A – ADDENDUM TO PROOF OF CLAIM (BROADSTONE CYPRESS) 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 to dated as of August 31, 2007 (as amended, the "Loan Agreement"), LaSalle Bank National Association ("LaSalle"), as the agent on behalf of itself, Regions Bank, and Associated Bank, National Association (collectively, the "Lenders"), agreed to make a loan to Broadstone Cypress, L.P. ("Broadstone Cypress"), as Borrower, in the original principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and No/100 Dollars ($27,323,000.00) (the "Loan"). The purpose of the Loan was to provide financing for the development and construction of improvements on the Property (as defined herein).

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

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

a. Promissory Notes given by Broadstone Cypress to Agent in the aggregate amount of $27,323,000.00 (as amended, the "Notes").

b. That certain Amended and Restated Commercial Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing[1] executed by Broadstone Cypress to Tim Redding, an individual, for the benefit of Agent and recorded in the Official Records of Harris County, Texas (the "Official Records") on September 4, 2007, as Document No. 20070539527 (as amended, "Deed of Trust"). The Deed of Trust encumbers, among other things, certain real property located in Harris County, Texas, as more particularly described therein (the "Property"). The Deed of Trust, inclusive of all assignment and security provisions

[1] The original deed of trust was filed with respect to the acquisition loan that was made prior in time to the Loan. The acquisition loan is not a part of this proof of claim.

contained therein, gives Agent 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 consents and assignments dated as of August 31, 2007, collectively referred to herein as the "Consents and Assignments":

i. That certain Assignment of Rents and Leases executed by Broadstone Cypress in favor of Agent;

ii. That certain Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits, executed by Broadstone Cypress in favor of Agent;

iii. That certain Architect's Consent Agreement, executed by Broadstone Cypress and others in favor of Agent;

iv. That certain Assignment of Guaranty, executed by Broadstone Cypress in favor of Agent;

v. That certain Consent to Assignment of Guaranty and Estoppel dated as of August 31, 2007;

vi. That certain Consent of Development Manager, executed by Broadstone Cypress and others in favor of Agent;

vii. That certain Construction Consultant's Consent Agreement dated as of August 31, 2007; and

viii. That certain Contractor's Consent Agreement dated as of August 31, 2007.

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

e. A form UCC-1 financing statement was filed in the Harris County Property Records on September 4, 2007, as Filing No. 20070539529 naming Broadstone Cypress as debtor (the "Financing Statement"). The Financing Statement further perfected Agent's security interests in the Collateral.

5. Opus West Corporation, a Minnesota corporation, executed a Guaranty of Payment on October 31, 2007, wherein Opus West Corporation irrevocably and unconditionally guaranteed the obligations of Broadstone Cypress to Agent under the Loan.

6. Prior to the July 6, 2009 petition date of Opus West Corporation (the "Petition Date"), Broadstone Cypress defaulted under the terms of the Loan Documents. As a result of the events of default, Agent sent Broadstone Cypress default letters dated April 6 & 9, May 5, and June 16, 2009, notifying it of the various events of default that had occurred and demanding that

it pay all past-due amounts in accordance with the terms of the Loan Documents. Broadstone Cypress failed to cure the defaults under the Loan.

7. As of the Petition Date, the following liquidated, uncontested, and non-contingent amount was and is due and owing to Agent under the Loan Documents in an amount not less than **$25,275,187.64** (the "Liquidated Agent Claim Amount"), which consists of:

Principal	$24,946,077.28
Interest	$326,860.36
Prepetition Costs and Fess of Bank of America Attorney's Fees Inspection Fee	 $ 500.00 $ 1,750.00 $2,250.00
TOTAL:	**$25,275,187.64**

8. 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.	34.437633446%
Regions Bank	32.781183277%
Associated Bank, N.A.	32.781183277%

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

a. Regions Bank $ as-yet undetermined

b. Associated Bank, National Association $ as-yet undetermined

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

a. Post-Petition Interest. The amount of interest accruing on the outstanding principal amount of the Loan from the Petition Date to the date of payment of the Loan, at the rates and in the manner set forth in applicable Loan Documents;

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

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

11. As the amount of the claims asserted in paragraph 10 hereof cannot, at this time, be reasonably calculated or estimated, the total amount of all claims set forth in this proof of claim currently (the "Final Claim Amount") is unliquidated, but is in no event less than the Liquidated Agent Claim Amount of **$25,275,187.64 (plus the Other Lender Costs)**. The Final Claim Amount of Bank of America, as Agent, may be in a greater amount than stated herein. The Agent, for itself and the other Lenders, does not waive any of its/their rights to recover all of the foregoing amounts by not asserting a specific dollar amount at this time.[2]

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

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

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

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

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

Date: November 9, 2009

Respectfully submitted,

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

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

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

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

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

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

TABLE OF CONTENTS TO
EXHIBIT A – ADDENDUM TO PROOF OF CLAIM (BROADSTONE CYPRESS) OF BANK OF AMERICA, N.A., AGENT BANK

ATTACHMENT 1: Construction Loan Agreement dated August 31, 2007 by and among Broadstone Cypress, L.P., LaSalle Bank National Association, Regions Bank, Associated Bank, and National Association in the original principal amount of $27,323,000.00.

ATTACHMENT 2: Promissory Notes in the aggregate amount of $27,323,000.00.

ATTACHMENT 3: Amended and Restated Commercial Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing recorded in the Official Records of Harris County, Texas on September 4, 2007, as Document No. 20070539527.

ATTACHMENT 4: Assignment of Rents and Leases dated August 31, 2007.

ATTACHMENT 5: Assignment of Plans, Specifications, Construction and Service Contracts, Licenses and Permits dated August 31, 2007.

ATTACHMENT 6: Architect's Consent Agreement dated August 31, 2007.

ATTACHMENT 7: Assignment of Guaranty dated August 31, 2007.

ATTACHMENT 8: Consent to Assignment of Guaranty and Estoppel dated August 31, 2007.

ATTACHMENT 9: Consent of Development Manager dated August 31, 2007.

ATTACHMENT 10: Construction Consultant's Consent Agreement dated as of August 31, 2007.

ATTACHMENT 11: Contractor's Consent Agreement dated as of August 31, 2007.

ATTACHMENT 12: Letter Agreement dated March 21, 2008 ("Modification Agreement").

ATTACHMENT 13: UCC-1 financing statement was filed in the Harris County Property Records on September 4, 2007, as Filing No. 20070539529.

ATTACHMENT 14: Guaranty of Payment on October 31, 2007.

ATTACHMENT 15: Default Notices dated April 6, April 9, May 5, and June 16, 2009.

ATTACHMENT 1

CONSTRUCTION LOAN AGREEMENT

dated August 31, 2007

by and between

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

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

and

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

312 Unit Luxury Garden Apartments
Cypress, Texas

TABLE OF CONTENTS

Article		Page
ARTICLE 1	INCORPORATION AND DEFINITIONS	1
1.1	Incorporation and Definitions	1
ARTICLE 2	REPRESENTATIONS AND WARRANTIES	9
2.1	Representations and Warranties	9
2.2	Continuation of Representations and Warranties	12
ARTICLE 3	AMOUNT AND TERMS OF COMMITMENTS	12
3.1	Agreement to Lend and to Borrow; Notes	12
3.2	Equity Requirements	13
3.3	Commitments Several	13
3.4	Certain Conditions	13
ARTICLE 4	PRINCIPAL, INTEREST; SPECIAL PROVISIONS FOR LIBOR LOANS	13
4.1	Interest Rates	13
4.2	Payment of Principal and Interest	14
4.3	Various Types of Loans; Setting and Notice of LIBOR Rates	16
4.4	Conversion and Continuation Procedures	16
4.5	Computation of Interest and Fees	17
4.6	Inability to Determine Interest Rate	17
4.7	Pro Rata Treatment and Payments	17
4.8	Illegality	18
4.9	Legal Requirements	18
4.10	Taxes	19
4.11	LIBOR Loan Indemnification	20
4.12	Extension of Maturity Date	21
ARTICLE 5	LOAN DOCUMENTS	22
5.1	Loan Documents	22
ARTICLE 6	CONDITIONS TO LOAN OPENING	23
6.1	Conditions to Loan Opening	23
6.2	Termination of Agreement	30
ARTICLE 7	DISBURSEMENTS	30

7.1 Conditions Precedent to Disbursement of Loan Proceeds 30
7.2 Borrowing Procedures 31
7.3 Documents Required for Each Construction Disbursement 34
7.4 Intentionally Omitted 36
7.5 Loans In Balance 36
7.6 Foundation Work 36
7.7 Agent's Verification of Contracts 37
7.8 Escrow Payouts 37
7.9 Consultants 37
7.10 Retainages 38
7.11 Stored and Unincorporated Materials 39
7.12 Final Disbursement 39
7.13 Expenses and Advances Secured by Deed of Trust 40
7.14 Acquiescence not a Waiver 40
7.15 Agent's Action for Agent's Own Protection Only 40
ARTICLE 8 FURTHER AGREEMENTS OF BORROWER 41
8.1 Construction of Project 41
8.2 Changes in Plans and Specifications and Contracts; Extras 41
8.3 Mechanics' Liens, Taxes and Contest Thereof 41
8.4 Fixtures and Personal Property 42
8.5 Proceedings to Enjoin or Prevent Construction 42
8.6 Event of Defaults Under Construction Contracts 42
8.7 Furnishing Information 43
8.8 Excess Indebtedness 44
8.9 Compliance with Covenants; Prohibition Against Additional Recordings 44
8.10 Project Accounts 44
8.11 Distributions 44
8.12 Further Assurance 44
8.13 Notices Regarding Liens 44
8.14 Deferred General Contractor, Developer and Construction Management Fees 44
ARTICLE 9 CASUALTIES AND CONDEMNATION 45
9.1 Application of Insurance Proceeds and Condemnation Awards 45

ARTICLE 10 ASSIGNMENTS, SALE AND ENCUMBRANCES 45
10.1 Bank Assignments, Participations 45
10.2 Prohibition of Assignments and Encumbrances by Borrower 46
ARTICLE 11 EVENTS OF DEFAULT BY BORROWER 47
11.1 Event of Default Defined 47
ARTICLE 12 AGENT'S REMEDIES UPON EVENT OF DEFAULT 49
12.1 Remedies Conferred upon Agent 49
12.2 Setoff Rights 50
12.3 Right of Banks to Make Advances to Cure Event of Defaults; Obligatory Advances 50
12.4 Attorneys' Fees 51
12.5 No Waiver 51
12.6 Default Rate 51
ARTICLE 13 THE AGENT 51
13.1 Appointment and Authorization 51
13.2 Actions Requiring Consent and Approval 52
13.3 Liability of Agent 54
13.4 Reliance by Agent 55
13.5 Notice of Default 55
13.6 Credit Decision 55
13.7 Bank Indemnification 56
13.8 Agent in Individual Capacity 56
13.9 Successor Agent 57
13.10 Collateral Matters 57
13.11 Agent May File Proofs of Claim 57
ARTICLE 14 MISCELLANEOUS 58
14.1 Time is of the Essence 58
14.2 Agent's Determination of Facts 58
14.3 Prior Agreements 58
14.4 Disclaimer by Banks 58
14.5 Borrower Indemnification 59
14.6 Erection of Sign 59
14.7 Captions 59

14.8 Inconsistent Terms and Partial Invalidity 59
14.9 Gender and Number 60
14.10 Notices 60
14.11 Effect of Agreement 61
14.12 Governing Law 61
14.13 Waiver of Defenses 61
14.14 Consent to Jurisdiction 61
14.15 Waiver of Jury Trial 62
14.16 Counterparts; Facsimile Signatures 62

SCHEDULES

Schedule 3.1 - Commitments

EXHIBITS

EXHIBIT A – THE LAND
EXHIBIT B – FORM OF NOTE
EXHIBIT C – PERMITTED EXCEPTIONS
EXHIBIT D – PROJECT BUDGET
EXHIBIT E – ARCHITECT'S CERTIFICATE
EXHIBIT F – FORM OF ASSIGNMENT AND ACCEPTANCE
EXHIBIT G – FORM OF REQUEST FOR ADVANCE
EXHIBIT H - SUBCONTRACTOR SCHEDULE

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT ("Agreement"), is made and entered into as of August 31, 2007, by and between **BROADSTONE CYPRESS, L.P.**, a Delaware limited partnership ("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 is the owner of the property described in **Exhibit A** attached hereto ("Land") and proposes to construct on the Land two (2) and three (3) story, class "A" garden style luxury rental apartment buildings consisting of a total of approximately 312 units ("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 refinancing LaSalle's existing land loan to Borrower and constructing 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:

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: The persons or entities that Agent may, from time to time, select.

Alliance Guarantor: Alliance Residential Holdings, LLC, an Arizona limited liability company.

Applicable Margin: With respect to LIBOR Loans, one and ninety five-hundredths percent (1.95%) per annum and with respect to Base Rate Loans, zero percent (0%) per annum.

Architect: Steinberg Design Collaborative, LLP

Architect's Contract: The contract between Architect and Borrower dated January 8, 2007, for preparation of the Plans and Specifications, if any.

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.

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%) or 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 Twenty-Seven Million Three Hundred Twenty-Three Thousand and no/100 Dollars ($27,323,000.00).

Completion Date: September 1, 2009.

Construction Commencement Date: September 1, 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.

Construction Escrow: As defined in Section 7.4(g) hereof.

Construction Management Fee: The fee to the Borrower in the amount of $354,000.00 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.

Contractor: Alliance Residential Builders, LP, a Delaware limited partnership.

County: Harris, Texas.

Debt Service: For any Year 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 Year based upon (i) an outstanding principal balance of the Loan of $27,323,000.00, (ii) a thirty (30) year amortization schedule and (iii) an interest rate equal to the greater of (A) seven percent (7%) 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 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.

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 $1,140,200.00 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.

Engineer: LJA Engineering.

Engineer's Contract: The contract between Borrower and Engineer for engineering services for the Project.

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: $3,725,900.00, $1,231,700.00 of which shall be in the form of cash and the balance shall consist of the General Contractor's Fee, Construction Management Fee and Developer Fee.

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.

Foundation Work: As defined in Section 7.6 hereof.

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

General Contractor's Fee: The fee to the Contractor in the amount of $1,000,000.00 which may be paid to the Contractor at any time so long as such fee is not paid out of Loan Proceeds.

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.

Guarantor: Collectively, Opus West and the Alliance Guarantor.

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.

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.

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: August 31, 2007.

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

Maturity Date: August 31, 2010, subject to one twelve (12) month extension to August 31, 2011 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.

MUD Contract: That certain Development Financing Agreement between Harris County Municipal Utility District No. 391 and Borrower dated as of April 24, 2007.

MUD Proceeds: All reimbursements and other proceeds payable to Borrower pursuant to the terms of the MUD Contract.

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

Operating Cash Flow: During any Period, all rental income received by Borrower from the ownership and operation of the Premises (excluding tenant security deposits and rent paid during such Period by any tenant for more than one month of rental obligations) during the Period ending on the date of Lender's determination of the Debt Coverage Ratio (the "Determination Date") pursuant to signed leases under which the tenants have taken possession as of the Determination Date, less the sum of all costs, taxes, expenses and disbursements of every kind, nature or description payable during such Period 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 and (iv) principal and interest payable on the Loan. In determining Operating Cash Flow, such items as (a) extraordinary items of income, such as those resulting from casualty or condemnation or lease termination payments of tenants due for any periods other than the month in which the determination of Operating Cash Flow is made, shall be deducted from income and (b) real estate taxes and insurance premiums shall be treated as expenses to the extent of an annualized amount based upon the amount of the most recent bill for real estate taxes and insurance premiums (regardless of whether the same shall have been paid or have become due and payable during such Period).

Opus West: Opus West Corporation, a Minnesota corporation.

Opus West Guaranty: As defined in Section 5.1(e).

Period: Any three month period.

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.

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.

Reimbursements Account: As defined in Section 4.2(d).

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.

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 Banks.

Title Insurance Company: Stewart Title of Houston, as agent for Stuart Title Warranty 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 partnership under the laws of the State of Delaware and is qualified to conduct business in the State of Texas. 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 this Loan, 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) 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) No condition, circumstance, event, agreement, document, instrument, restriction, litigation or proceeding (or to the knowledge of Borrower, threatened in writing litigation or proceeding or basis therefor) exists which could (i) adversely affect the validity or priority of the liens and security interests granted Agent under the Loan Documents; (ii) adversely affect the ability of Borrower to complete the Project (or applicable portion thereof) prior to the earlier of (A) the date required in any Lease and (B) the Completion Date; (iii) materially adversely affect the ability of Borrower to perform its obligations under the Loan Documents; or (iv) constitute an Event of Default under any of the Loan Documents or an event which, with the giving of notice, the passage of time or both, would constitute such an Event of Default;

(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) Except as provided in the Environmental Report, 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 Substances. Except as provided in the Environmental Report, no Hazardous Substances exist now, and no Hazardous Substances will hereafter exist, on or under the Premises or in any surface waters or groundwaters on or under the Premises. The Premises and its existing and prior uses, to Borrower's knowledge, 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, except as provided in the Environmental Report;

(h) 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. The Premises do not contain any underground storage tanks, except as provided in the Environmental Report;

(i) All financial statements submitted by Borrower to Agent in connection with this Loan are true and correct in all material respects, have been prepared on a modified cash basis, and fairly present the respective financial conditions and results of operations of the entities which are their subjects;

(j) This Agreement and all financial statements, 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;

(k) 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;

(l) 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;

(m) 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;

(n) 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 or will be granted and issued prior to commencement of the applicable portion of the Project and use of the Premises;

(o) 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;

(p) 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;

(q) In the aggregate, the Construction Contracts 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;

(r) 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;

(s) There are no Leases for use or occupancy of any part of the Premises; and

(t) All documents and materials delivered or to be delivered to Agent in connection with the Loans are or will be true, complete and correct.

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. 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.

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, but only during the Commitment Period. 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 shall contribute not less than $1,231,700.00 of the Equity Requirements in cash on the Loan Opening Date, which amounts shall be disbursed to pay costs of the Project provided for in the Project Budget prior to any disbursement of Loan Proceeds. Agent shall not be required to accept any portion of the balance of the Equity Requirements in a form other than cash, the Contractor's Fee and Developer Fee or other proven injections of cash for budgeted costs, and such improvements, if any.

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 and disbursed 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 and disbursed 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 4.13, 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, in addition to monthly payments of interest as provided herein, on the date of each payment of interest, Borrower shall make monthly payments of principal in a fixed amount calculated by amortizing the outstanding principal balance of the Loans and any unfunded Commitments over thirty (30) years at an annual interest rate equal to the greater of (i) seven percent (7.0%) and (ii) 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.

(h) All MUD Proceeds shall be immediately paid to Agent as a prepayment of the outstanding principal balance of the Notes. In the event that the Borrower has not submitted an application for MUD Proceeds and otherwise satisfied each of the conditions to reimbursement under Article 2 of the MUD Contract or such MUD Proceeds will not be payable as otherwise provided in Article 2 of the MUD Contract, within twenty-four (24) months following the Loan Opening Date, as determined by Agent, Borrower shall be required to make a mandatory repayment of principal under the Notes in the amount of $2,018,095.00 on or before thirty (30) months following the Loan Opening Date.

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, 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 Subsection 4.11.

4.9 **Legal Requirements**.

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

(i) subject any Bank to any tax of any kind whatsoever with respect to this Agreement, any Note or any LIBOR Loan made by it, or change the basis of taxation of payments to such Bank in respect thereof (except for Non-Excluded Taxes covered by Subsection 4.10 and changes in the rate 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 subsection. 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 indemnification may be an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid, or borrowed, converted or continued, for the period from the time of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of the failure to borrow, convert or continue, the Interest Period which would have commenced on the date of such failure) in each case the applicable rate of interest for such Loans provided herein (excluding, however, the Applicable Margin included thereon, if any) over (ii) the amount of interest (as reasonably defined by such Bank) which would have accrued to such Bank on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank LIBOR market. This covenant shall survive the termination of this Agreement and the payment of the Notes and all other amounts due hereunder. Amounts payable pursuant to this 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 August 31, 2011 (the "Extended Maturity Date"):

(a) No Event of Default or event, circumstance or condition which, with the passage of time or the giving of notice, would constitute an 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 as set forth in the Fee Letter of even date herewith;

(d) A final Certificate of Occupancy has been issued by the applicable governmental authority for all residential units within the Premises;

(e) The Debt Service Coverage Ratio for the Project, based upon Operating Cash Flow and Debt Service projected by Agent for the immediate Period prior to the Maturity Date, shall be not less than 1.0 to 1.0 on the basis of the Commitment Amount of $27,323,000.00.

(f) Borrower shall have made principal repayments under the Notes in the amount of $2,018,095.00 from MUD Proceeds or otherwise.

ARTICLE 5 LOAN DOCUMENTS

5.1 **Loan Documents**. As a condition precedent to the Loan Opening, except as otherwise provided below, Borrower agrees that it will deliver the following Loan Documents to Agent at least five (5) days prior to the Loan Opening, all of which must be satisfactory to Agent and Agent's counsel in form, substance and execution:

(a) **Promissory Notes**. Amended, Restated and Partially Consolidated 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**. An Amended and Restated 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) **Opus West Guaranty**. A Guaranty of Payment executed by Opus West guaranteeing to Lender payment of all amounts due in connection with the Loan.

(f) **Assignment of Guaranty**. An Assignment of Guaranty executed by Borrower in favor of Agent along with the Consent to Assignment of Guaranty and Estoppel executed by the Alliance Guarantor in favor of Agent guaranteeing completion of the Project pursuant to the terms of the Contract, in accordance with all applicable law and free of claims for mechanics' liens and materialmen's liens on or before the Completion Date.

(g) **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.

(h) **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, Engineer 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 upon an Event of Default.

(i) **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

(j) **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 shall furnish the following to Agent at least five (5) days prior to the Loan Opening or at such time as is set forth below, all of which must be strictly satisfactory to Agent and Agent's counsel in form, content and execution:

(a) **Title Insurance Policy**. At the Loan Opening, a Mortgagee Policy of Title Insurance – T-2 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 Texas: (i) Environmental Lien Endorsement; (ii) Variable Rate Endorsement; (iii) Pending Disbursements Endorsement; and (iv) 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. Evidence of Builders Risk Insurance shall be delivered to Agent on or before the date that vertical construction is commenced or the date that lumber is delivered to the Project, whichever is earlier, but in no event later than December 31, 2007.

(d) **Utilities; Licenses; Permits**. Evidence satisfactory to Agent 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 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 percent (88%).

(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 any existing 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 partnership 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 Limited Partnership and Partnership Agreement, including all amendments thereto, for Borrower an 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) **Hard Cost Contracts**. The schedule set forth on Exhibit H attached hereto (the "Subcontractor Schedule") which sets forth the Subcontractors with which Contractor has notified Borrower that subcontracts have been entered into. Borrower shall deliver to Agent (i) copies of specific contracts which Agent may reasonably request from time to time and (ii) a copy of the executed Contract with the Contractor, which contract sum payable under such Contract must be a "cost plus guaranteed maximum amount".

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

(q) **Engineer's Certificate**. An Engineer's Certificate on Agent's standard form;

(r) **Construction Contracts**. At the request of Agent, Copies of any executed Subcontracts for work and materials, including purchase orders for all fixtures and equipment to be installed in the Project, which shall conform to applicable terms of this Agreement, including, without limitation, provisions regarding retainage, changes in Plans and Specifications, change orders, extras and Construction Schedule and which shall be in a format and of a scope which is commensurate with industry practice for projects of a similar size and nature; provided that if such Construction Contracts do not cover all of the work necessary for completion of construction of the Project, including the installation of fixtures and equipment and work required for the operation of the Project, required to make leasable any portion of the Project intended to be leased, Borrower shall furnish detailed studies, designs, budgets and schedules, Construction Contracts and any other information that Agent reasonably shall require with respect to such additional work from responsible parties satisfactory to Agent. If the Banks elect to disburse any Loan Proceeds prior to execution of all Construction Contracts necessary to complete the Project, Agent may increase the amount of the Equity Requirements or require Borrower to deposit additional funds with Agent, as reasonably determined by Agent, to secure Borrower's ability to obtain the remaining Construction Contracts necessary to complete the Project within the Project Budget;

(s) **Architect's and Engineer's Contracts**. A copy of the executed Architect's Contract and Engineer'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;

(t) **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;

(u) **Construction Escrow Agreement**. If required by Agent, 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 Loans 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 request, including, without limitation, the documents specified in Section 7.3 hereof;

(v) **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. Notwithstanding the foregoing, the Agent's Consultant report may be delivered within forty-five (45) days of the Loan Opening Date; provided, however, unless otherwise agreed by Agent in its sole discretion, no Construction Disbursement shall be made until such time as the Agent's Consultant report has been delivered to and approved by Agent.

(w) **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.

(x) **Subordination of Lien**. An agreement from Contractor subordinating its statutory lien to the Deed of Trust.

(y) **Affidavit of Commencement**. Borrower, within ten (10) days after the Construction Commencement Date, but not before construction of the Improvements has actually begun, shall file in the appropriate records of the county in which the Land is situated, an Affidavit of Commencement, as specified in Section 53.124(c)(4) of the Texas Property Code, duly executed by Borrower and Contractor. The date of commencement of work set forth in such Affidavit of Commencement shall not be the date of or prior to the date on which the Deed of Trust was recorded.

(z) **MUD Contract**. A copy of the executed MUD Contract together with an assignment and consent to assignment thereof.

(aa) **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 in writing (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 in all material respects; 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 to 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), and Agent advances such amount of behalf of such Bank, 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, Engineer, 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) 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 strict accordance with the Project Budget. No amendment of the Project Budget shall be made without Agent's prior written consent. No reallocation of line items within the Project Budget shall be made unless 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 judgment, to be increased.

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;

(viii) all Construction Contracts, if requested by Agent, as then in effect, have been duly executed and delivered by all parties thereto and shall be effective, and Agent has received a true and fully executed copy of each such Construction Contract with an aggregate contract amount in excess of $100,000.00; and

(ix) 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 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, 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) An updated Survey of the Land, if requested by Agent, if material amounts of additional perimeter walls or ground level improvements have been added since the delivery of the Survey;

(f) 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;

(g) An updated Construction Schedule, if requested by Agent, 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;

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

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

(j) If the Foundation Work of the Project is completed, Agent shall have received and approved the documents described in Section 7.6 hereof; and

(k) 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 sole and absolute 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 sole and absolute judgment, for a contingency reserve; and (iv) the amount necessary to pay for all unpaid costs 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; plus

(c) the value of any portion of the Equity Requirements as may be then held in cash by Agent; for the purposes hereof, letters of credit shall not be treated as cash or a cash equivalent.

Borrower agrees if for any reason the Loans are not In Balance, Borrower, within ten (10) days after request by the Agent, will deposit with Agent cash in an amount which will place the Loans In Balance, which deposit shall first be exhausted before any further disbursement of the proceeds of the Loans shall be made. No interest shall be payable on such amounts.

7.6 **Foundation Work**. Upon completion of the foundations for the Project, Borrower shall, if requested by Agent, promptly deliver to Agent the materials specified below:

(a) a currently dated revision of the Survey showing all foundations of the Project in place and showing the location of any other subsurface work completed as of that date which constitutes part of the Project (the foundations and such subsurface work

are referred to herein as "Foundation Work") and showing no encroachments of the Foundation Work over any easements or lot lines and showing no violations of any building lines;

(b) At the request of Agent, Restrictions, Encroachments and Minerals Endorsement (T-19) to the Construction Title Insurance Policy dated after the date of completion of the Foundation Work bearing no exception or qualification as to the Foundation Work; and

(c) a certificate from the Architect stating that the Foundation Work and all other work in place conforms to the Plans and Specifications and identifying any portion of the Project consisting of subsurface work which has not yet been completed.

7.7 **Agent's Verification of Contracts**. Prior to the Loan Opening, and from time to time thereafter, Agent or the Title Insurance Company may forward to the Contractor and any or all Subcontractors listed on the Owner's Sworn Statement a contract verification to confirm the terms and amount of the Subcontract for the Contractor and each Subcontractor. If there is any discrepancy between the terms and amounts as shown by the Construction Contracts, the sworn statements, and the verifications, Agent may require, as a condition to further disbursements, that such discrepancies be eliminated to its satisfaction.

7.8 **Escrow Payouts**. All disbursements hereunder, at the option of Agent exercisable at any time, may be made through the Construction Escrow with the Title Insurance Company or any third party under the provisions of the Construction Escrow Agreement to which the Title Insurance Company, as escrowee, Borrower, Agent and such of the Contractor designated by Agent or by the Title Insurance Company will be parties. Borrower will cause the Contractor and Subcontractors to comply with the requirements of said escrowee in order to enable said escrowee 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**.

(a) An amount equal to ten percent (10%) of the cost of construction of the Improvements shall be retained by Banks and shall be paid over by Banks to Borrower, provided that no lien claims are then filed against the Premises, when all of the following have occurred to the satisfaction of Banks:

(i) Agent has received a substantial completion certificate prepared by the Agent's Consultant and executed by Borrower and the Architect stating that the Improvements have been substantially completed in accordance with the Plans and Specifications, together with such other evidence that no mechanics or materialmen's liens or other encumbrances have been filed and remain in effect against the Premises; and

(ii) each applicable governmental authority shall have duly inspected and approved the Improvements and issued the appropriate permit, license or certificate to evidence such approval.

(b) Notwithstanding the foregoing, so long as no lien claims are then filed against the Premises and no Event of Default exists, the Banks shall release the retainage being held with respect to the following at such time as Agent shall have received (x) a substantial completion certificate prepared by the Agent's Consultant and executed by Borrower and the Architect stating that such work has been substantially completed in accordance with the Plans and Specifications and (y) final lien waivers from such Subcontractors performing the following work:

(i) Grading

(ii) Installation of underground utilities;

(iii) Paving;

(iv) Framing; and

(v) Roofing.

(c) Notwithstanding anything herein to the contrary, no retainage shall be held by the Banks for:

(i) the general conditions under the Contract;

(ii) windows, floor and roof trusses and components thereof and appliances purchased by the Contractor; and

(iii) lumber, drywall, interior trim material and electrical light fixtures purchased by Subcontractors.

7.11 **Stored and Unincorporated Materials**. No disbursement for materials purchased by Borrower but not yet installed or incorporated into the Project shall be made without Agent's prior approval of the conditions under which such materials are purchased and stored. In no event shall any such disbursement be made unless the materials involved have been delivered to the Land or stored with a bonded warehouseman, 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, together with a copy of UCC searches against Borrower and the warehouseman, if applicable, indicating no liens or claims which may affect such materials. 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 date that is thirty (30) days after the Completion Date but prior to the original Maturity Date and no Event of Default then exists and is continuing:

(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) include an endorsement deleting any exceptions related to completion of the Improvements and pending disbursements, and (iii) include a Restrictions, Encroachments, Minerals Endorsement (T-19) and 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; and

(i) 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) liens contested in accordance with Section 8.3 herein, and (iv) any other Permitted Exceptions), in a good and workmanlike manner with materials of high quality, 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. Borrower further agrees that such construction and equipping of the Project will be commenced on or before the Construction Commencement Date and the Project (or applicable portion thereof) will be prosecuted with due diligence and will be fully completed not later than the earlier to occur of (i) such date that is specified in any Lease or (ii) the Completion Date. If Agent disapproves any portion of the construction or equipping of the Premises, Borrower, within fifteen (15) 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 the Project and for no other purpose.

8.2 **Changes in Plans and Specifications and Contracts; Extras**. Borrower agrees that 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 of material changes in the Plans and Specifications in writing of such change within twenty-four (24) hours thereafter; (b) 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) no substantial change in architectural appearance is effected; (e) the square footage of the Project is not reduced other than a de minimis manner; (f) no default in any obligations to any other party, including any governmental authority, results from such changes; (g) the cost of or reduction resulting from no one such change or extra exceeds Fifty Thousand Dollars ($50,000.00) and the aggregate changes in cost of all such changes and extras does not exceed Two Hundred Fifty Thousand Dollars ($250,000.00); and (h) the Loans remain 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) materially adversely affect the financial condition of Borrower or the ability of Borrower to complete the Project, 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 vigorously contested in good faith, and in the event of an adverse ruling or decision, prosecute all allowable appeals therefrom. 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 use its best efforts to bring about a favorable and speedy disposition of 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 material conditions of the Construction Contracts and will execute all documents necessary for the consummation of the transactions contemplated thereby.

8.7 **Furnishing Information**. Borrower and Opus West, as applicable, 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; which shall include, without necessity of any request by Agent, 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, unaudited financial statements of Borrower showing the results of operations of the Premises and consisting of a balance sheet, cash flow statement and statement of income and expense prepared on a modified cash basis and signed by an officer of Borrower;

(c) promptly supply Agent with such information concerning Opus West's assets, liabilities and affairs, as Agent may reasonably request from time to time hereafter; which shall include, without necessity of any request by Agent, as soon as available and in no event later than one hundred twenty (120) days after the close of each fiscal year, audited financial statements of Opus West, and within sixty (60) days of the end of each fiscal quarter, company prepared financial statements of Opus West, each showing the results of operations of Opus West and consisting of a balance sheet, cash flow statement, and statement of income and expense prepared in accordance with generally accepted accounting principles consistently applied and signed by an officer of Opus West;

(d) 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 Opus West's compliance with the financial covenants set forth in the Guaranty;

(e) 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 change in the financial condition of Borrower;

(f) once the Project is complete and within thirty (30) days after the end of each calendar quarter, Borrower will supply Agent an updated rent roll;

(g) within forty-five (45) days after the end of the Borrower's fiscal year end, Borrower will supply Agent an updated rent roll;

(h) once the Project is complete and within sixty (60) days after the end of the Borrower's fiscal year end, Borrower will supply Agent with an operating budget;

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

(j) 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;

(k) permit Agent or Agent's Consultants to copy and make abstracts from any and all of said books and records; and

(l) shall cause Alliance Guarantor to provide Agent with its quarterly statement of financial position within thirty (30) days after the end of each calendar quarter.

All information provided to Agent from Borrower or Opus West 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 or Opus West, as the case may be, 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 and shall maintain monthly minimum balances sufficient to cover demand deposit account activities.

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 unless or until the Loans and all interest accrued thereon, the Loan Expenses and other amounts due the Banks hereunder have been paid in full.

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 **Notices Regarding Liens**. Within one (1) Business Day of receipt, Borrower shall deliver to Agent a copy of any Affidavit (as defined in Section 11.1(r) hereof) received pursuant to any of §§53.055 – 53.058, inclusive, of the Texas Property Code.

8.14 **Deferred General Contractor, Developer and Construction Management Fees**. Borrower shall defer payment of the $354,000.00 Construction Management Fee and $1,140,200.00 Developer Fee provided in the Project Budget until such time as the Loans and all

amounts due Agent under any of the Loan Documents are paid in full. Furthermore, no portion of the $1,000,000.00 General Contractor Fee may be paid from Loan Proceeds.

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 (u); 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 Joel DeSpain 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;

(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 written notice of such disapproval and diligently complete the same;

(e) An unreasonable delay in the construction of the Project or a discontinuance or abandonment of construction for a period of thirty (30) consecutive days or thirty (30) days in the aggregate excluding any delay caused by force majeure, any third party or regulatory caused delays, material failure to adhere to the Construction Schedule, or in any event an unreasonable delay in construction of the Project so that the

same, in Agent's reasonable judgment, may not be completed on or before the Completion Date;

(f) The bankruptcy or insolvency of any Contractor and, in the case of the Contractor, failure of Borrower to procure a replacement Contractor satisfactory to Agent within fifteen (15) days from the occurrence of such bankruptcy or insolvency;

(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 any Guarantor 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 change in the financial condition of Borrower or any Guarantor which materially impairs Borrower's or such Guarantor's ability to perform its obligations under the Loan Documents;

(k) The termination by Borrower of the Architect's Contract without Agent's prior written consent;

(l) If the conditions for Final Disbursement set forth in Section 7.12 hereof are not complied with prior to the Completion Date and failure to cure such default within thirty (30) days after Borrower receives notice or actual knowledge thereof;

(m) Borrower or any Guarantor (i) files a voluntary petition in bankruptcy or is adjudicated a bankrupt or insolvent or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal, state, or other statute or law, or (ii) seeks or consents to or acquiesces in the appointment of any trustee, receiver or similar officer of Borrower or any Guarantor or of all or any substantial part of the property of Borrower or any Guarantor or any of the Premises; or all or a substantial part of the assets of Borrower or any Guarantor are attached, seized, subjected to a writ or distress warrant or are levied upon unless the same is released or located within thirty (30) days;

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

(o) The dissolution, termination or merger of Borrower, Opus West or the Alliance Guarantor.

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

(q) A default by the Opus West in meeting any of the financial covenants set forth in the Opus West Guaranty;

(r) In the event the Maturity Date is extended to the Extended Maturity Date, the Premises fails at any time to maintain a Debt Coverage Ratio of not less than 1.0 to 1.0;

(s) The filing of an affidavit (an "Affidavit") by the Contractor or a Subcontractor pursuant to §53.052 of the Texas Property Code which is not contested pursuant to Section 28 of the Deed of Trust; or

(t) The failure by Borrower to deliver to Agent within one (1) Business Day of receipt thereof a copy of any Affidavit or claim received pursuant to any of §§53.055 – 53.058 inclusive of the Texas Property Code.

(u) The occurrence of a default under the MUD Contract which has not been cured under applicable cure periods.

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 (ALL OF WHICH BORROWER HEREBY EXPRESSLY WAIVES AND RELINQUISHES); 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.

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

13.2 **Actions Requiring Consent and Approval**.

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

(i) Agent shall not, without the prior approval or consent of the Required Banks, appoint a successor Agent, provided that no Bank shall unreasonably withhold 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 or any Guarantor.

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

(i) Extend the Maturity Date 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) Amend the recourse provisions in the Guaranty;

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

(viii) 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;

(ix) 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

(x) Modify any financial covenants of Guarantor or 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 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, Guarantor, or any member, partner, shareholder or officer of Borrower or Guarantor, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any lien, mortgage or security interest therein), or for any

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

13.4 **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 and Guarantor, shall be deemed to constitute any representation or warranty by Agent to any Bank as to any matter, including whether the Agent has disclosed material information in its possession. Each Bank represents to Agent that it has, independently and without reliance upon Agent and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower and Guarantor, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder.

Each Bank also represents that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly herein required to be furnished to the Banks by Agent, Agent shall not have any duty or responsibility to provide any Bank with any credit or other information concerning the business, prospects, operations, property, financial or other condition or creditworthiness of Borrower which may come into the possession of the Agent.

13.7 **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 and Guarantor as though LaSalle were not Agent hereunder and without notice to or consent of the Banks. The Banks acknowledge that, pursuant to such activities, LaSalle or its affiliates may receive information regarding Borrower or Guarantor (including information that may be subject to confidentiality obligations in favor of Borrower or Guarantor) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), LaSalle and its affiliates shall have the same rights and powers under this Agreement as any other Bank and may exercise the same as though LaSalle were not the Agent, and the terms "Bank" and "Banks" include LaSalle and its affiliates, to the extent applicable, in their individual capacities.

13.9 **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 judicial proceeding relative to Borrower or any Guarantor, the Agent (irrespective of whether the principal of any Loans shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

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

their respective agents and counsel and all other amounts due the Banks and the Agent hereunder) allowed in such judicial proceedings; and

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

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

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

ARTICLE 14 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 1211 135 South LaSalle Street Chicago, Illinois 60603 Attn: Don Broderick, First 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:	Broadstone Cypress, L.P. c/o 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:

Gallagher & Kennedy, P.A.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016
Attn: Gregory L. Mast

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

14.13 **Waiver of Defenses. OTHER THAN CLAIMS BASED UPON THE FAILURE OF AGENT OR ANY BANK TO ACT IN A COMMERCIALLY REASONABLE MANNER, THE BORROWER, ON BEHALF OF ITSELF AND ANY GUARANTOR, 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. 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.

THIS 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT THIS CONSTRUCTION LOAN AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 14.5 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY BORROWER OF AGENT AND BANKS FROM CLAIMS OR LOSSES ARISING AS A RESULT OF AGENT OR BANKS' OWN NEGLIGENCE.

BORROWER:

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

By:_____
Name:_____
Its:_____

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

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

LASALLE BANK NATIONAL ASSOCIATION HEREBY ACKNOWLEDGES AND AGREES THAT THIS CONSTRUCTION LOAN AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 13.7 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY LASALLE BANK NATIONAL ASSOCIATION OF AGENT FROM CLAIMS OR LOSSES ARISING AS A RESULT OF AGENT'S OWN NEGLIGENCE.

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

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

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

BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT THIS CONSTRUCTION LOAN AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 14.5 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY BORROWER OF AGENT AND BANKS FROM CLAIMS OR LOSSES ARISING AS A RESULT OF AGENT OR BANKS' OWN NEGLIGENCE.

BORROWER:

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

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

AGENT:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By:_____
Name:_____
Title:_____

LASALLE BANK NATIONAL ASSOCIATION HEREBY ACKNOWLEDGES AND AGREES THAT THIS CONSTRUCTION LOAN AGREEMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 13.7 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY LASALLE BANK NATIONAL ASSOCIATION OF AGENT FROM CLAIMS OR LOSSES ARISING AS A RESULT OF AGENT'S OWN NEGLIGENCE.

THE BANKS:

LASALLE BANK NATIONAL ASSOCIATION, a national banking association

By:_____
Name:_____
Title:_____

SCHEDULE 3.1

THE BANKS AND COMMITMENTS

BANK	COMMITMENT	PRO RATA SHARE [Note: To be determined to nine (9) decimal points.]
LaSalle Bank National Association 135 South LaSalle Street Suite 1211 Chicago, Illinois 60603 Attn: Don Broderick, First Vice President	$27,323,000.00	100%

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

EXHIBIT B

FORM OF NOTES

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 1st DAY OF _____, 2007 AND, TOGETHER WITH THOSE CERTAIN (i) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO _____ BANK, A _____ BANK, IN THE PRINCIPAL AMOUNT OF $_____, AND AMEND, RESTATE AND SUPERSEDE (X) THAT CERTAIN PROMISSORY NOTE DATED MAY 10, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF $3,928,500.00 FROM BORROWER TO THE BANK (AS SUCH TERM IS DEFINED BELOW).

AMENDED AND RESTATED PROMISSORY NOTE

$_____ Date: _____, 2007
Chicago, Illinois Maturity Date: _____, 2010

FOR VALUE RECEIVED, **BROADSTONE CYPRESS, L.P.**, 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 (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) _____ Million and 00/100 DOLLARS ($_____), 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

By: _____
Name: _____
Title: _____

EXHIBIT C

PERMITTED EXCEPTIONS

THE FOLLOWING ARE THE PERMITTED TITLE EXCEPTIONS PURSUANT TO PRO FORMA LOAN POLICY NO. 07001582 ISSUED BY VERITAS TITLE PARTNERS, L.P., AS AGENT FOR FIRST AMERICAN TITLE INSURANCE COMPANY:

EXCEPTION NUMBERS 3, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, and 5i, all as set forth on Schedule B.

EXHIBIT D

PROJECT BUDGET

SEE ATTACHED

EXHIBIT "B"
DEVELOPMENT BUDGET
CYPRESS

		BUDGETED COST
LAND		
Land & Related Costs		$3,301,000
BUILDING		
Construction Hard Costs	$19,421,000	
General Contractor Fee	1,000,000	
Architect & Engineering	578,200	
Construction Management Fee	354,000	
Total Building		21,353,200
DEVELOPMENT		
Development Fee – Alliance	$570,100	
Development Fee – Opus	570,100	
Municipal Fees (Permits)	1,963,500	
Marketing and Lease-Up	544,000	
Financing Fees	232,900	
Legal Closing & Taxes	469,000	
Total Development		4,349,600
INTEREST & LEASE-UP		
Construction Interest Reserve	$2,849,700	
Pre-Leasing & Operating Deficit	81,100	
Lease-Up Income	(1,206,700)	
Total Interest & Lease-Up		1,724,100
PROJECT CONTINGENCY		321,000
TOTAL PROJECT COST - GROSS		**$31,048,900**
Less MUD Reimbursement		(2,104,800)
TOTAL PROJECT COST - NET		$28,944,100

EXHIBIT E

ARCHITECT'S CERTIFICATE

Re: **Construction Loans in the aggregate principal amount of $27,323,000.00 (collectively, the "Loans") by the Banks (as defined in the Loan Agreement referenced herein), pursuant to the terms of that certain Construction Loan Agreement ("Loan Agreement") dated as of _____ 1, 2007 by and among LaSalle Bank National Association, as Agent for itself and the Banks ("Agent"), the Banks and Broadstone Cypress, L.P., a Delaware limited partnership (the "Borrower"), for construction of a two (2) and three (3) story, class "A" garden style luxury rental apartment buildings consisting of a total of approximately 312 units located in Cypress, Harris County, Texas ("Project").**

The undersigned, _____ (the "Architect"), has entered into that certain Agreement dated as of _____, 20__ with Borrower (the "Contract"). The undersigned hereby certifies to its knowledge, information and belief 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.

1. The undersigned, using the standard of professional care customary in the Cypress metropolitan area and the State of Texas, hereby certifies to its knowledge, information and belief to Agent as follows.

2. The firm has professional liability insurance in the amount of $1,000,000.00.

3. 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	Metropolitan Water Reclamation District of _____	_____
Water Pollution Control	_____	_____
Toll Highway Permit		

	Issuing Agency	**Date Issued**
Cert. of Occupancy - Bldg.		

4. 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.

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

6. 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.

7. The Plans are complete in all material respects and contain all requisite detail for building the Project.

8. Subject to force majeure, the undersigned knows of no reason why the Project will not be completed and ready to be occupied by _____.

9. 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.

10. 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.

11. 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 Agent has stated it and the Banks are relying on this Certificate in agreeing to make the Loan.

Date:_____, 2007

STEINBERG DESIGN COLLABORATIVE, LLP, a(n) _____ corporation

By:_____
Name:_____
Title:_____

Address:

1811 Bering Drive
Suite 300
Houston, Texas 77057

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) **BROADSTONE CYPRESS, L.P.**, a Delaware limited partnership ("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 Guarantor or the performance or observance by Borrower or Guarantor 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 subSection 4.10 of the Loan Agreement to deliver the forms prescribed by the Internal Revenue Service of the United States certifying as to the Assignee's exemption from United States withholding taxes with respect to all payments to be made to the Assignee under the Loan Agreement, or such other documents as are necessary to indicate that all such payments are subject to such tax at a rate reduced by an applicable tax treaty.

This Agreement is conditioned upon the acceptance of Agent pursuant to the Loan Agreement. The execution of this Agreement by Agent is evidence of 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: **CYPRESS** (the "Project")
BORROWER: **BROADSTONE CYPRESS, L.P.**, a Delaware limited partnership (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 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 _____, 200_.

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

By:_____
Name:_____
Its:_____

EXHIBIT H

SUBCONTRACTOR SCHEDULE

None as of Loan Opening Date.

ATTACHMENT 2

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 31st DAY OF AUGUST, 2007 AND, TOGETHER WITH THOSE CERTAIN (i) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO LASALLE BANK NATIONAL ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $8,504,211.00, (ii) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO LASALLE BANK NATIONAL ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $15,000,000.00, AND AMEND, RESTATE AND SUPERSEDE (X) THAT CERTAIN PROMISSORY NOTE DATED MAY 10, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF $3,928,500.00 FROM BORROWER TO THE BANK (AS SUCH TERM IS DEFINED BELOW).

AMENDED AND RESTATED PROMISSORY NOTE

$3,818,789.00 Date: August 31, 2007
Chicago, Illinois Maturity Date: August 31, 2010

FOR VALUE RECEIVED, **BROADSTONE CYPRESS, L.P.**, 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 (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) Three Million Eight Hundred Eighteen Thousand Seven Hundred Eighty-Nine and 00/100 DOLLARS ($3,818,789.00), 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 31st DAY OF AUGUST, 2007 AND, TOGETHER WITH THOSE CERTAIN (i) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO LASALLE BANK NATIONAL ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $15,000,000.00, (ii) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO LASALLE BANK NATIONAL ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $3,818,789.00, AND AMEND, RESTATE AND SUPERSEDE (X) THAT CERTAIN PROMISSORY NOTE DATED MAY 10, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF $3,928,500.00 FROM BORROWER TO THE BANK (AS SUCH TERM IS DEFINED BELOW).

AMENDED AND RESTATED PROMISSORY NOTE

$8,504,211.00 Date: August 31, 2007
Chicago, Illinois Maturity Date: August 31, 2010

FOR VALUE RECEIVED, **BROADSTONE CYPRESS, L.P.**, 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 (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) Eight Million Five Hundred Four Thousand Two Hundred Eleven and 00/100 DOLLARS ($8,504,211.00), 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

THIS AMENDED AND RESTATED PROMISSORY NOTE ("NOTE") IS MADE AS OF THE 31st DAY OF AUGUST, 2007 AND, TOGETHER WITH THOSE CERTAIN (i) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO LASALLE BANK NATIONAL ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $8,504,211.00, (ii) AMENDED AND RESTATED PROMISSORY NOTE DATED AS OF EVEN DATE HEREWITH FROM BORROWER (AS SUCH TERM IS DEFINED BELOW) TO LASALLE BANK NATIONAL ASSOCIATION, IN THE PRINCIPAL AMOUNT OF $3,818,789.00, AND AMEND, RESTATE AND SUPERSEDE (X) THAT CERTAIN PROMISSORY NOTE DATED MAY 10, 2007 IN THE ORIGINAL PRINCIPAL AMOUNT OF $3,928,500.00 FROM BORROWER TO THE BANK (AS SUCH TERM IS DEFINED BELOW).

AMENDED AND RESTATED PROMISSORY NOTE

$15,000,000.00 Date: August 31, 2007
Chicago, Illinois Maturity Date: August 31, 2010

FOR VALUE RECEIVED, **BROADSTONE CYPRESS, L.P.**, 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 (the "Agent") in Chicago, Illinois, on or before the Maturity Date (as defined in the hereinafter referred to Loan Agreement), the lesser of (i) Fifteen Million and 00/100 DOLLARS ($15,000,000.00), or (ii) the aggregate principal amount of all Loans made to the Borrower by the Bank under and pursuant to that certain 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

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

ATTACHMENT 3

Upon recordation return to:

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Scott M. Lapins, Esq.

20070539527
09/04/2007 RP3 $236.00

AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

by

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

to

TIM REDDING, an individual

for the benefit of

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

FILED
2007 SEP -4 AM 11:51
COUNTY CLERK
HARRIS COUNTY, TEXAS

RP 09-34-1245

THIS DEED OF TRUST SECURES FINANCING TO FUND THE COSTS OF CONSTRUCTING IMPROVEMENTS ON THE PROPERTY AND CERTAIN OTHER COSTS AND EXPENSES RELATED THERETO. SUCH FINANCING WILL BE FUNDED OVER TIME DURING THE COURSE OF CONSTRUCTION OF VARIOUS IMPROVEMENTS ON THE PROPERTY, IT BEING CONTEMPLATED THAT BANKS AND/OR THEIR SUCCESSORS AND ASSIGNS WILL MAKE FURTHER ADVANCES OF THE LOANS FROM AND AFTER THE DATE OF THIS DEED OF TRUST AND THAT ALL OF SUCH FUTURE ADVANCES SHALL BE SECURED BY THE LIEN OF THIS DEED OF TRUST.

THIS AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING IS MADE AS OF THE 31st DAY OF AUGUST, 2007 AND AMENDS, RESTATES AND SUPERSEDES IN ITS ENTIRETY THAT CERTAIN COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING DATED AS OF MAY 10, 2007 AND RECORDED WITH THE RECORDER OF DEEDS IN HARRIS COUNTY, TEXAS AS INSTRUMENT NO. 20070287582.

440686.5 044497-40324

Return To: DM
VERITAS TITLE PARTNERS
2415 W. ALABAMA, Ste. 203
HOUSTON, TX 77098

Upon recordation return to:

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Scott M. Lapins, Esq.

AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

by

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

to

TIM REDDING, an individual

for the benefit of

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

THIS DEED OF TRUST SECURES FINANCING TO FUND THE COSTS OF CONSTRUCTING IMPROVEMENTS ON THE PROPERTY AND CERTAIN OTHER COSTS AND EXPENSES RELATED THERETO. SUCH FINANCING WILL BE FUNDED OVER TIME DURING THE COURSE OF CONSTRUCTION OF VARIOUS IMPROVEMENTS ON THE PROPERTY, IT BEING CONTEMPLATED THAT BANKS AND/OR THEIR SUCCESSORS AND ASSIGNS WILL MAKE FURTHER ADVANCES OF THE LOANS FROM AND AFTER THE DATE OF THIS DEED OF TRUST AND THAT ALL OF SUCH FUTURE ADVANCES SHALL BE SECURED BY THE LIEN OF THIS DEED OF TRUST.

THIS AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING IS MADE AS OF THE 31st DAY OF AUGUST, 2007 AND AMENDS, RESTATES AND SUPERSEDES IN ITS ENTIRETY THAT CERTAIN COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING DATED AS OF MAY 10, 2007 AND RECORDED WITH THE RECORDER OF DEEDS IN HARRIS COUNTY, TEXAS AS INSTRUMENT NO. 20070287582.

TABLE OF CONTENTS

ARTICLE		PAGE
1.	Title	4
2.	Maintenance, Repair, Restoration, Prior Liens, Parking	5
3.	Payment of Taxes and Assessments	6
4.	Tax Deposits	6
5.	Agent's Interest In and Use of Deposits	7
6.	Insurance	7
7.	Condemnation	10
8.	Stamp Tax	10
9.	Assignment of Lease and Rents	10
10.	Effect of Extensions of Time and Other Changes	12
11.	Effect of Changes in Laws Regarding Taxation	13
12.	Agent's Performance of Defaulted Acts and Expenses Incurred by Agent	13
13.	Security Agreement	14
14.	Restrictions on Transfer	17
15.	Single Asset Entity	19
16.	Events of Default; Acceleration	20
17.	Foreclosure; Expense of Litigation	21
18.	Rights and Remedies on Default under Texas Law	22
19.	Appointment of Receiver	28
20.	Intentionally Omitted.	29
21.	Application of Income Received by Agent	29
22.	Compliance with Texas Mortgage Foreclosure Law	29
23.	Rights Cumulative	30
24.	Agent's Right of Inspection	30
25.	Release Upon Payment and Discharge of Borrower's Obligations; Partial Release	30
26.	Notices	30
27.	Waiver of Rights	31
28.	Contests	32
29.	Expenses Relating to Notes and Instrument	32

30. Financial Statements 33
31. Statement of Indebtedness 34
32. Further Instruments 34
33. Additional Indebtedness Secured 34
34. Indemnity 34
35. Subordination of Property Manager's Lien 35
36. Compliance with Environmental Laws 35
37. Miscellaneous 35
38. Usury 38

EXHIBITS
EXHIBIT A - Legal Description
EXHIBIT B - Permitted Exceptions
EXHIBIT C - Insurance Requirements
EXHIBIT D - Additional Collateral

AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

THIS AMENDED AND RESTATED COMMERCIAL DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Instrument") is made as of the 31st day of August, 2007 by **BROADSTONE CYPRESS, L.P.**, a Delaware limited partnership, whose mailing address is c/o Opus West Corporation, 2555 East Camelback Road, Suite 800, Phoenix, Arizona, 85016 ("Borrower"), to **TIM REDDING,** whose mailing address is 1500 S. Dairy Ashford, Suite 300, Houston, Texas 77077 ("Trustee"), for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and other Banks (as defined in the Loan Agreement referenced below) whose mailing address is 135 South LaSalle Street, Suite 1260, Chicago, Illinois 60603 ("Agent").

RECITALS:

A. LaSalle Bank National Association ("LaSalle") has heretofore made a loan (the "Acquisition Loan") to Borrower in the principal amount of Three Million Nine Hundred Twenty-Eight Thousand Five Hundred and 00/100 Dollars ($3,928,500.00) evidenced by a Promissory Note dated May 10, 2007, in the principal amount of the Acquisition Loan made payable by Borrower to the order of LaSalle (the "Original Note"). The Acquisition Loan is secured by (i) a Commercial Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated May 10, 2007 from Borrower to Tim Redding, as Trustee, for the benefit of LaSalle recorded with the Real Property Records of Harris County, Texas (the "Recorder's Office") as Document No. 20070287582 (the "Original Deed of Trust"), which Original Deed of Trust encumbers the real property and all improvements thereon legally described on Exhibit A hereto (the "Property"); (ii) that certain Assignment of Rents and Leases dated May 10, 2007, from Borrower to LaSalle and recorded in the Recorder's Office as Document No. 20070287583 (the "Original Assignment of Rents"); and certain other loan documents. The Original Note, the Original Deed of Trust, the Original Assignment of Rents, and the other documents now or hereafter evidencing, securing and guarantying the Acquisition Loan, in their original form and as amended, restated, modified or supplemented, in whole or in part, are sometimes collectively referred to herein as the "Original Loan Documents."

B. Pursuant to the terms and conditions of that certain Construction Loan Agreement of even date herewith (as amended, restated or replaced from time to time) by and among Borrower, Agent, as agent, and the Banks (the "Loan Agreement"), the Banks have agreed to make loans to Borrower in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) (the "Loans"). The Loans shall be evidenced by those certain (i) Amended and Restated Promissory Note in the principal amount of $8,504,211.00 in favor of LaSalle, as a Bank, (ii) Amended and Restated Promissory Note in the principal amount of $15,000,000.00 in favor of LaSalle, as a Bank, and (iii) Amended and Restated Promissory Note in the principal amount of $3,818,789.00 in favor of LaSalle, as a Bank, each of even date herewith and due on August 31, 2010, subject to extension to August 31, 2011 pursuant to the Loan Agreement (the "Maturity Date") (such notes, as amended, restated or replaced from time to time, collectively, the "Notes"), except as may be accelerated pursuant to the terms hereof or of the Notes, 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.

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

D. This Instrument amends, restates and supersedes in its entirety the Original Deed of Trust.

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

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably GRANTED, BARGAINED, SOLD and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY unto Trustee, IN TRUST, WITH POWER OF SALE, all of Borrower's estate, right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in and to the following property (referred to collectively herein as "Premises"), all of which property, rights and interests are hereby pledged primarily and on a parity with the Real Estate (as defined below) and not secondarily:

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

TOGETHER WITH all improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures and personal property of every nature whatsoever now or hereafter owned by Borrower and 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 Borrower in and to any such personal property or fixtures together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Borrower or on its behalf (the "Improvements");

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

TOGETHER WITH all rents, revenues, issues, profits, proceeds, income, royalties, "accounts," 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 Borrower thereon, to be applied against the Indebtedness (hereinafter defined); provided,

however, that Borrower, so long as no Event of Default (as hereinafter defined) has occurred hereunder, may collect rent as it becomes due, but not more than one (1) month in advance thereof;

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

TOGETHER WITH all fixtures and articles of personal property now or hereafter owned by Borrower and forming a part of or used in connection with the Real Estate or the Improvements, 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 Borrower 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 Instrument and be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Texas Business and Commerce Code in effect from time to time) (the "Code"), this Instrument shall constitute a security agreement, creating a security interest in such goods, as collateral for the benefit of Agent, as a secured party, and Borrower, as Debtor, all in accordance with the Code; and

TOGETHER WITH all of Borrower's interests in "general intangibles" including "payment intangibles" and "software" (each as defined in the Code) now owned or hereafter acquired and related to the Premises, including, without limitation, all of Borrower's right, title and interest in and to: (i) all agreements, licenses, permits and contracts to which Borrower is or may become a party and which relate to the Premises; (ii) all obligations and indebtedness owed to Borrower 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 Borrower's accounts now owned or hereafter created or acquired as relate to the Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Borrower: (i) accounts, contract rights, health-care-insurance receivables, book debts, notes, drafts, and other obligations or indebtedness owing to the Borrower arising from the sale, lease or exchange of goods or other property and/or the performance of services; (ii) the Borrower's rights in, to and under all purchase orders for goods, services or other property; (iii) the Borrower's rights to any goods, services or other property

represented by any of the foregoing; (iv) monies due to become due to the Borrower 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 Borrower); (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 Borrower with respect to the Premises;

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

TO HAVE AND TO HOLD the Premises, unto Trustee for the benefit of Agent, 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; Borrower hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Texas.

FOR THE PURPOSE OF SECURING: (i) the payment of the Loans and all interest, late charges, LIBOR breakage charges (including all amounts described in Section 4.11 of the Loan Agreement (collectively, "Make Whole Costs")) prepayment premium (if any), exit fee (if any), interest rate swap or hedge expenses (if any), reimbursement obligations, fees and expenses for letters of credit issued by Agent and any Bank for the benefit of Borrower, if any, and other indebtedness evidenced by or owing under the Notes, any of the other Loan Documents, any interest rate swap or hedge agreement now or hereafter entered into between Borrower and Agent 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 Borrower or any other obligor to or benefiting Agent which are evidenced or secured by or otherwise provided in the Notes, this Instrument or any of the other Loan Documents; and (iii) the reimbursement to Agent and the Banks of any and all sums incurred, expended or advanced by Agent and the Banks pursuant to any term or provision of or constituting additional indebtedness under or secured by this Instrument, any of the other Loan Documents, any interest rate swap or hedge agreement or any application for letters of credit and master letter of credit agreement, with interest thereon as provided herein or therein (collectively, "Indebtedness").

IT IS FURTHER UNDERSTOOD AND AGREED THAT:

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

Borrower will warrant and forever defend unto Trustee and unto Agent the title to the Premises against all claims and demands, subject only to the Permitted Exceptions.

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

(a) promptly repair, restore or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed to a condition substantially similar to the condition immediately prior to such damage or destruction, 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 Borrower'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 Borrower under the Notes, the Loan Agreement, this Instrument 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 Agent (subject to Borrower's right to contest liens as permitted by the terms of Paragraph 28 hereof);

(e) complete within a reasonable time any Improvements 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 Instrument;

(h) make no material alterations in the Premises or demolish any portion of the Premises without Agent'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 Agent's prior written consent;

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

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

(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;

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

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

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

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

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

6. **Insurance**.

(a) Borrower 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 Agent, in accordance with the terms, coverages and provisions described on Exhibit C attached hereto and made a part hereof, and such other insurance as Agent may from time to time reasonably require. Unless Borrower provides Agent evidence of the insurance coverages required hereunder, Agent may purchase insurance at Borrower's expense to cover Agent's interest in the Premises. The insurance may, but need not, protect Borrower's interest. The coverages that Agent purchases may not pay any claim that Borrower makes or any claim that is made against Borrower in connection with the Premises. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained insurance as required by this Instrument. If Agent purchases insurance for the Premises, Borrower will be responsible for the costs of such insurance, including, without limitation, interest and any other charges which Agent may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness. The cost of the insurance may be more than the cost of insurance Borrower may be able to obtain on its own.

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

(c) In the event of loss, Borrower shall give prompt notice thereof to Agent, who, if such loss exceeds ten percent (10%) of the Indebtedness ("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 Agent, 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) Agent 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 Agent shall endorse to Borrower any such payment and Borrower may collect such payment directly. Agent shall have the right, at its option and in its sole discretion, to apply any insurance proceeds received by Agent pursuant to the terms of this paragraph, after the payment of all of Agent's expenses, either (i) on account of the Indebtedness, irrespective of whether such principal balance is then due and payable, whereupon Agent may declare the whole of the balance of the Indebtedness plus Make Whole Costs 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 Agent 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 and if (i) Agent 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 and is continuing. If insurance proceeds are made available to Borrower by Agent as hereinafter provided, Borrower 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 Notes shall be subject to the Make Whole Costs. In the event of foreclosure of this Instrument, all right, title and interest of Borrower 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 Agent to Borrower, Borrower 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, Borrower shall obtain from Agent 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 Agent's option, through an escrow, the terms and conditions of which are satisfactory to Agent and the cost of which is to be borne by Borrower), Agent 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 Instrument and the Permitted Exceptions, or, if such insurance proceeds shall be insufficient to repair, restore and rebuild the Premises, Borrower has deposited with Agent 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, Agent shall be furnished with a statement of Agent's architect (the cost of which shall be borne by Borrower), 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 Agent and with all statutes, regulations or ordinances (including building and zoning ordinances) affecting the Premises; and Agent 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 Borrower shall fail to restore, repair or rebuild the Improvements within a time deemed reasonably satisfactory by Agent, then Agent, at its option, may (a) commence and perform all necessary acts to restore, repair or rebuild the said Improvements for or on behalf of Borrower, 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.

(e) **TEXAS FINANCE CODE SECTION 307.052 COLLATERAL PROTECTION INSURANCE NOTICE: (A) BORROWER IS REQUIRED TO: (I) KEEP THE PREMISES INSURED AGAINST DAMAGE IN THE AMOUNT AGENT SPECIFIES; (II) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (III) NAME AGENT AS THE**

PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF A LOSS; (B) BORROWER MUST, IF REQUIRED BY AGENT, DELIVER TO AGENT A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF THE PREMIUMS; AND (C) IF BORROWER FAILS TO MEET ANY REQUIREMENT LISTED IN ITEMS (A) OR (B), AGENT MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF BORROWER AT THE BORROWER'S EXPENSE.

7. **Condemnation**. If all or any part of the Premises are damaged, taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the remaining unpaid Indebtedness, is hereby assigned to Trustee for the benefit of Agent, who is empowered to collect and receive the same and to give proper receipts therefor in the name of Borrower and the same shall be paid forthwith to Agent. Such award or monies shall be applied on account of the Indebtedness, irrespective of whether such Indebtedness is then due and payable and, at any time from and after the taking Agent may declare the whole of the balance of the Indebtedness 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 is continuing, and if such partial condemnation, in the reasonable discretion of Agent, 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 Borrower, and Agent hereby agrees that in such event it shall not declare the Indebtedness to be due and payable, if it is not otherwise then due and payable.

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

9. **Assignment of Lease and Rents**. Borrower, 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 Agent all right, title and interest of Borrower 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. Borrower represents, warrants, covenants and agrees with Agent as follows:

(a) The sole ownership of the entire lessor's interest in the Leases is vested in Borrower, and Borrower has not, and shall not, perform any acts or execute any other

instruments which might prevent Agent from fully exercising its rights with respect to the Leases under any of the terms, covenants and/or conditions of this Instrument.

(b) The Leases are and shall be valid and enforceable in accordance with their terms and have not been and shall not be altered, modified, amended, terminated, canceled, renewed or surrendered, except as approved in writing by Agent or permitted pursuant to the terms of the Assignment. 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 Agent.

(c) Borrower shall comply with the terms of the separate Assignment of Leases and Rents of even date herewith from Borrower to Agent, the provisions of which are incorporated herein by this reference.

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

Upon the occurrence of an Event of Default, Agent 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. Agent 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.

Borrower hereby irrevocably appoints Agent its true and lawful attorney with power of substitution and with full power for Agent in its own name and capacity or in the name and capacity of Borrower, 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 Borrower or otherwise, which Agent 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 Agent, to pay any and all amounts due Borrower pursuant to the Leases to Agent or such nominee as Agent 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 Borrower in respect of all payments so made.

Upon the occurrence of any Event of Default, from and after service of a Notice, Agent 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 Agent 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 Borrower relating thereto, and Agent may exclude Borrower, its agents and servants, wholly therefrom. Borrower hereby grants full power and authority to Agent 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 Borrower to Agent, 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 Instrument, and of principal and interest payments due from Borrower to Agent on the Notes and this Instrument, all in such order as Agent may determine. Agent 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 Borrower 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 Agent, nor shall it operate to make Agent 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.

Borrower acknowledges that, concurrently herewith, Borrower has executed and delivered to Agent, as additional security for the repayment of the Loans, an Assignment of Rents and Leases ("Assignment") pursuant to which Borrower has assigned to Agent 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 Instrument. Borrower agrees to abide by all of the provisions of the Assignment.

Notwithstanding anything contained herein to the contrary, in no event shall this assignment be deemed to reduce the Indebtedness unless and to the extent such rents are delivered to Agent and applied against the principal balance of the Indebtedness, and Borrower acknowledges that in no event shall the Indebtedness be reduced by the value from time to time of the rents, income and profits of or from the Premises. In addition, Agent reserves the right, at any time, whether before or after the occurrence of an Event of Default, to recharacterize the assignment as merely constituting security for the Indebtedness to Agent, which recharacterization shall be made by written notice delivered to Borrower. Borrower's receipt of any rents, issues and profits pursuant to this assignment after the institution of foreclosure proceedings, either by court action or by the private power of sale contained in any deed of trust now or hereafter securing the Notes, shall not cure an Event of Default, or affect such proceeding or sale. THIS ASSIGNMENT SHALL NOT CONSTITUTE OR EVIDENCE ANY PAYMENT WHATSOEVER ON ACCOUNT OF THE INDEBTEDNESS, AND THE INDEBTEDNESS SHALL ONLY BE REDUCED IF AND TO THE EXTENT SUCH AMOUNTS ARE ACTUALLY PAID TO THE AGENT AND APPLIED BY AGENT IN REDUCTION OF THE UNPAID PRINCIPAL BALANCE OF THE INDEBTEDNESS.

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 Notes is changed or if the time for payment thereof is extended or varied, all persons now or at any time hereafter liable therefor, or interested in the Premises or having an interest in Borrower, shall be held to assent to

such extension, variation, release or change and their liability and the lien and all of the provisions hereof shall continue in full force, any right of recourse against all such persons being expressly reserved by Agent, notwithstanding such extension, variation, release or change.

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

12. **Agent's Performance of Defaulted Acts and Expenses Incurred by Agent**. If an Event of Default has occurred, Agent may, but need not, make any payment or perform any act herein required of Borrower in any form and manner deemed expedient by Agent, and may, but need not, make full or partial payments of principal or interest on prior 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 Borrower in any lease of the Premises. All monies paid for any of the purposes herein authorized and all expenses paid or incurred in connection therewith, including reasonable attorneys' fees, and any other monies advanced by Agent in regard to any tax referred to in Paragraph 8 above or to protect the Premises or the lien hereof, shall be so much additional Indebtedness, and shall become immediately due and payable by Borrower to Agent, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate (as defined in the Loan Agreement) then in effect. In addition to the foregoing, any costs, expenses and fees, including reasonable attorneys' fees, incurred by Agent in connection with (a) sustaining the lien of this Instrument or its priority, (b) protecting or enforcing any of Agent's rights hereunder, (c) recovering any Indebtedness, (d) any litigation or proceedings affecting the Notes, this Instrument, any of the other Loan Documents or the Premises, including without limitation, bankruptcy and probate proceedings, or (e) preparing for the commencement, defense or participation in any threatened litigation or proceedings affecting the Notes, this Instrument, any of the other Loan Documents or the Premises, shall be so much additional Indebtedness, and shall become immediately due and payable by Borrower to Agent, upon demand, and with interest thereon accruing from the date of such demand until paid at the Default Rate. The interest accruing under this Paragraph 12 shall be immediately due and payable by Borrower to Agent, and shall be additional Indebtedness evidenced by the Notes and secured by this Instrument. Agent's failure to act shall never be considered as a waiver of any right accruing to Agent on account of any Event of Default. Should any amount paid out or advanced by Agent hereunder, or pursuant to any agreement executed by Borrower in connection with the Loans, be used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any lien or encumbrance upon the Premises or any part thereof, then Agent shall be subrogated

to any and all rights, equal or superior titles, liens and equities, owned or claimed by any owner or holder of said outstanding liens, charges and Indebtedness, regardless of whether said liens, charges and Indebtedness are acquired by assignment or have been released of record by the holder thereof upon payment.

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

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

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

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

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

(e) No Financing Statement (other than Financing Statements showing Agent as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted hereby) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Borrower, at its own cost and expense, upon demand, will furnish to Agent such further information and will execute and deliver to Agent such financing statements and other documents in form satisfactory to Agent and

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

(f) Upon an Event of Default hereunder, Agent shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose, so far as Borrower can give authority therefor, with or without judicial process, may enter (if this can be done without breach of the peace) upon any place which the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and Agent shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Borrower's right of redemption in satisfaction of Borrower's obligations, as provided in the Code. Agent may render the Collateral unusable without removal and may dispose of the Collateral on the Premises. Agent may require Borrower to assemble the Collateral and make it available to Agent for its possession at a place to be designated by Agent which is reasonably convenient to both parties. Agent will give Borrower at least 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 Borrower hereinafter set forth at least ten (10) days before the time of the sale or disposition. Agent may buy at any public sale. Agent may buy at private sale if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed

standard price quotations. Any such sale may be held in conjunction with any foreclosure sale of the Premises. If Agent so elects, the Premises and the Collateral may be sold as one lot. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling and the reasonable attorneys' fees and legal expenses incurred by Agent, shall be applied against the Indebtedness in such order or manner as Agent shall select. Agent will account to Borrower 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 Instrument is intended to be a financing statement within the purview of the Code with respect to the Collateral and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Borrower (Debtor) and Agent (Secured Party) are set forth above. This Instrument is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located.

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

(j) Borrower represents and warrants that:

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

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

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

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

(v) Borrower's organizational identification number is 4335697.

(k) Borrower agrees that:

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

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

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

(l) This Instrument secures future advances to be used for construction of improvements on the Land pursuant to the Loan Agreement. Accordingly, this Instrument constitutes a "construction mortgage" under the Code.

14. **Restrictions on Transfer.**

(a) Borrower, without the prior written consent of Agent, shall not effect, suffer or permit any Prohibited Transfer (as defined herein). 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 Borrower, a corporation which is a general partner or managing member/manager in a partnership or limited liability company Borrower, 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);

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

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

(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 Borrower or Guarantor and/or owns a controlling interest in Borrower or Guarantor;

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 Instrument, the foregoing provisions of this Paragraph 14 shall not apply (i) to liens securing the Indebtedness, (ii) to the lien of current Taxes and assessments not in default, (iii) to any transfers of the Premises, or part thereof, or interest therein, or any beneficial interests, or shares of stock or partnership or joint venture interests, as the case may be, by or on behalf of an owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisees, executors, administrators, estate or personal representatives, (iv) to Leases permitted by the terms of the Loan Documents, if any, 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 Borrower shall not constitute Prohibited Transfers. "Affiliate" for this Section shall mean, when used with reference to a specific Person (as defined herein), any other Person directly or indirectly controlling, controlled by or under common control with such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlling" or "controlled by") as applied with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person whether through the ownership of voting securities or by contract or otherwise provided (but without limiting the foregoing) that no pledge of voting securities of any person without the current right to exercise voting rights with respect thereto shall by itself be deemed to constitute control over such Person. Without limiting the generality of the foregoing, with respect to Borrower, the word "Affiliate" shall include the founder of Opus Corporation, a Minnesota corporation, a trust for the benefit of the founder of Opus Corporation, a Minnesota corporation, and/or members of his family or their issue, Opus, L.L.C., Opus Corporation, or the parent or subsidiary of any of them, or a partner, limited liability company, corporation or other entity comprised of all or some of the above. "Person" means any individual, partnership, joint venture, limited liability company, corporation, trust, governmental authority or other entity.

(b) In determining whether or not to make the Loans, Agent evaluated the background and experience of Borrower and its partners/officers in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Agent's security for the Notes. Borrower and its partners/officers are well experienced in borrowing money and owning and operating property such as the Premises, were ably represented by a licensed attorney at law in the negotiation and documentation of the Loan and bargained at arm's length and without duress of any kind for all of the terms and conditions of the Loans, including this provision. Borrower recognizes that Agent is entitled to keep its

loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Borrower. Borrower further recognizes that any secondary junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Notes; (b) could result in acceleration and foreclosure by any such junior encumbrances which would force Agent to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should Agent come into possession thereof with the intention of selling same; and (d) would impair Agent's right to accept a deed in lieu of foreclosure, as a foreclosure by Agent would be necessary to clear the title to the Premises. In accordance with the foregoing and for the purposes of (i) protecting Agent's security, both of repayment and of value of the Premises; (ii) giving Agent the full benefit of its bargain and contract with Borrower; (iii) allowing Agent to raise the interest rate and collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Borrower agree that if this Paragraph 14 is deemed a restraint on alienation, that it is a reasonable one.

15. **Single Asset Entity**. Except as expressly permitted by Agent, Borrower shall not hold or acquire, directly or indirectly, any ownership interest (legal or equitable) in any real or personal property other than the Premises, or become a shareholder of or a member or partner in any entity which acquires any property other than the Premises, until such time as the Indebtedness has been fully repaid. Borrower's articles of incorporation, partnership agreement or operating agreement, as applicable, shall limit its purpose to the acquisition, operation, management and disposition of the Premises, and such purposes shall not be amended without the prior written consent of Agent. Borrower covenants until such time as the Indebtedness has been fully repaid:

(a) To maintain its assets, accounts, books, records, financial statements, stationery, invoices, and checks separate from and not commingled with any of those of any other person or entity;

(b) To conduct its own business in its own name, pay its own liabilities out of its own funds, allocate fairly and reasonably any overhead for shared employees and office space, and to maintain an arm's length relationship with its affiliates;

(c) To hold itself out as a separate entity, correct any known misunderstanding regarding its separate identity, maintain adequate capital in light of its contemplated business operations, and observe all organizational formalities;

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

(e) Except with respect to the Land Loan Note (as defined below), not to pledge its assets for the benefit of any other entity or person or make any loans or advances to any person or entity;

(f) Not to enter into any contract or agreement with any party which is directly or indirectly controlling, controlled by or under common control with Borrower (an "Affiliate"), except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any Affiliate;

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

(h) Borrower has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any constituent party of Borrower, Affiliate, any guarantor of the Notes or any other person.

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

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

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

(c) the existence of any inaccuracy or untruth in any material respect in any representation or warranty contained in this Instrument or any of the other Loan Documents or of any statement or certification as to facts delivered to Agent by Borrower or Guarantor and failure to cure such inaccuracy or untruth within thirty (30) days of Borrower's obtaining actual knowledge thereof, if such matter can be cured;

(d) Borrower 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 Borrower or any guarantor of the Notes or of all or any substantial part of the property of Borrower or any guarantor of the Notes 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;

(e) the commencement of any involuntary petition in bankruptcy against Borrower or any guarantor of the Notes 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;

(f) the dissolution, termination or merger of Borrower or any guarantor of the Notes;

(g) the occurrence of a Prohibited Transfer;

(h) the occurrence of a material adverse change in the financial condition of any guarantor of the Notes; or

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

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

(a) When all or any part of the Indebtedness shall become due, whether by acceleration or otherwise, Agent shall have the right to foreclose the lien hereof for such Indebtedness or part thereof and/or exercise any right, power or remedy provided in this Instrument or any of the other Loan Documents in accordance with the applicable foreclosure laws of the State of Texas, and including Section 51.002 of the Texas Property Code (as may be amended from time to time, collectively, the "Act"). In the event of a foreclosure sale, Agent is hereby authorized, without the consent of Borrower, to assign any and all insurance policies to the purchaser at such sale or to take such other steps as Agent may deem advisable to cause the interest of such purchaser to be protected by any of such insurance policies.

(b) In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Agent for reasonable attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title

insurance policies, and similar data and assurances with respect to the title as Agent may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature mentioned in this paragraph and such other expenses and fees as may be incurred in the enforcement of Borrower's obligations hereunder, the protection of said Premises and the maintenance of the lien of this Instrument, including the reasonable fees of any attorney employed by Agent in any litigation or proceeding affecting this Instrument, the Notes, or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding shall be immediately due and payable by Borrower, with interest thereon until paid at the Default Rate and shall be secured by this Instrument.

18. **Rights and Remedies on Default under Texas Law**. Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Agent may exercise any one or more of the following rights and remedies:

(a) Agent may declare the entire Indebtedness, including the then unpaid principal balance on the Notes, the accrued but unpaid interest thereon, court costs and attorneys' fees hereunder immediately due and payable, 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 **(ALL OF WHICH BORROWER HEREBY EXPRESSLY WAIVES AND RELINQUISHES)**, whereupon the same shall become immediately due and payable. Additionally, Agent and Banks shall not be required to make any further advances on the Notes or other Loan Documents upon the occurrence of an Event of Default or an event which, with the giving of notice or passing of time or both, would constitute an Event of Default.

(b) Agent may enter upon the Premises and take exclusive possession thereof and of all books, records and accounts relating thereto without notice and without being guilty of trespass, and hold, lease, manage, operate or otherwise use or permit the use of the Premises, either itself or by other persons, firms, agents, or entities, in such manner, for such time and upon such other terms as Agent may deem to be proper or necessary under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Agent shall deem necessary or desirable), and apply all rents and other amounts collected by Agent in connection therewith in accordance with the provisions of subsection (h) of this Section, to enforce the payment or security of the avails, rents, issues, and profits of the Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent. Borrower hereby irrevocably appoints Agent as the agent and attorney-in-fact of Borrower, with full power of substitution, and in the name of Borrower, if Agent elects to do so, to (i) endorse the name of Borrower on any checks or drafts representing proceeds of the insurance policies, or other checks or instruments payable to Borrower with respect to the Premises, (ii) prosecute or defend any action or proceeding incident to the Premises, and (iii) take any action with respect to the Premises that Agent may at any time and from time to time deem necessary or appropriate. Agent

shall have no obligation to undertake any of the foregoing actions, and if Agent should do so, it shall have no liability to Borrower for the sufficiency or adequacy of any such actions taken by Agent. Without limiting the generality of the foregoing, Agent shall have full power to:

(i) cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same;

(ii) elect to disaffirm any lease or sublease which is then subordinate to the lien hereof;

(iii) extend or modify any then existing Leases and to enter into new Leases, which extensions, modifications and Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Indebtedness, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser;

(iv) make any repairs, renewals, replacements, alterations, additions, betterments and improvements to the Premises as Agent deems are necessary;

(v) insure and reinsure the Premises and all risks incidental to Agent's possession, operation and management thereof; and

(vi) receive all of such avails, rents, issues and profits.

(c) Agent may request Trustee to proceed with foreclosure under the power of sale, which is hereby conferred, such foreclosure to be accomplished as set forth in this Instrument. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request by Agent to sell the Premises, or any part thereof, for cash at a public auction in accordance with the requirements of the Act.

(d) Agent, may, at its option, accomplish all or any of the aforesaid in such manner as permitted or required by the Act relating to the sale of real property or by Chapter 9 of the Code relating to the sale of personalty after default by a debtor (as said section and chapter now exist or may be hereinafter amended or succeeded), or by any other present or subsequent articles or enactments relating to same. At any such sale:

(i) whether made under the power herein contained, the aforesaid Act, any other legal requirement or by virtue of any judicial proceedings or any other legal right, remedy or recourse, it shall not be necessary for Trustee to have physically present, or to have constructive possession of, the Premises (Borrower shall deliver to Trustee any portion of the Premises not actually or constructively

possessed by Trustee immediately upon demand by Trustee), and the title to and right of possession of any such property shall pass to the purchaser thereof as completely as if the same had been actually present and delivered to purchaser at such sale;

(ii) each instrument of conveyance executed by Trustee shall contain a general warranty of title, binding upon Borrower;

(iii) each and every recital contained in any instrument of conveyance made by Trustee shall conclusively establish the truth and accuracy of the matters recited therein, including, without limitation, nonpayment of the Indebtedness, advertisement and conduct of such sale in the manner provided herein and otherwise by law and appointment of any successor Trustee hereunder;

(iv) any and all prerequisites to the validity thereof shall be conclusively presumed to have been performed;

(v) the receipt by Trustee or of such other party or officer making the sale of the full amount of the purchase money shall be sufficient to discharge the purchaser or purchasers from any further obligation for the payment thereof, 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;

(vi) to the fullest extent permitted by law, Borrower shall be completely and irrevocably divested of all of its right, title, interest, claim and demand whatsoever, either at law or in equity, in and to the property sold, and such sale shall be a perpetual bar, both at law and in equity, against Borrower and against all other persons claiming or to claim the property sold or any part thereof by, through or under Borrower; and

(vii) to the extent and under such circumstances as are permitted by law, Agent may be a purchaser at any such sale.

After sale of the Premises, or any portion thereof, Borrower will be divested of any and all interest and claim thereto, including any interest or claim to all insurance policies, bonds, loan commitments and other intangible property covered hereby. Additionally, Borrower will be considered a tenant at sufferance of the purchaser of the Premises, and said purchaser shall be entitled to immediate possession thereof, and if Borrower shall fail to vacate the Premises immediately, the purchaser may and shall have the right, without further notice to Borrower, to go into any justice court in any precinct or county in which the Premises is located and file an action in forcible entry and detainer, which action shall lie against Borrower or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have hereunder or otherwise.

(e) At any time during the bidding, the Trustee may require a bidding party (i) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (ii) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (A) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (B) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid may be in the best interest of Borrower and Agent, and elect to sell the Premises for credit or for a combination of cash and credit; provided, however that the Trustee shall have no obligation to accept any bid except an all cash bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(f) In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if default is made in the payment of any installment of the Indebtedness, Agent may, at Agent's option, at once or at any time thereafter while any matured installment remains unpaid, without declaring the entire Indebtedness to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Premises subject to such unmatured Indebtedness and to the rights, powers, liens, security interest, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without maturing the Indebtedness may be made hereunder whenever there is a default in the payment of any installment of the Indebtedness, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

(g) Sale of a part of the Premises shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid, performed and discharged in full. It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Agent, sell not only the Real Estate and the Improvements, but also the fixtures and personalty and other interests constituting a part of the Premises or any part thereof, along with the Real Estate and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from

time to time any part or parts of the Premises separately from the remainder of the Premises.

(h) Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, Agent may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Borrower or regard to the adequacy of the Premises, for the repayment of the Indebtedness, for appointment of a receiver of the Premises, and Borrower does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Premises upon such terms as may be approved by the court, and shall apply such rents in accordance with the provisions of subsection (l) of this Section.

(i) Agent may exercise any and all other rights, remedies and recourses granted under the Loan Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

(j) Trustee and Agent shall have all rights, remedies and recourses granted in the Loan Documents and available at law or equity (including specifically those granted by the Code in effect and applicable to the Premises or any portion thereof) and the same (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively or concurrently against Borrower, any guarantor of the Indebtedness or others obligated under the Notes, or against the Premises, or against any one or more of them at the sole discretion of Agent; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Borrower that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (iv) are intended to be, and shall be, nonexclusive.

(k) To the fullest extent permitted by law, Borrower hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Borrower by any present or future laws exempting the Premises from attachment, levy or sale on execution or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (ii) all notices (except as may be specifically provided for under the terms hereof) of any Event of Default, presentment, demand, notice of intent to accelerate, notice of acceleration and any other notice of Agent 's or Trustee's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Loan Documents; (iii) any right to appraisal or marshalling of assets or a sale in inverse order of alienation; (iv) the exemption of homestead; and (v) the administration of estates of decedents, or other matter to defeat, reduce or affect the right of Agent under the terms of this Instrument to sell the Premises for the collection of the Indebtedness secured hereby (without any prior or different resort for collection) or the right of Agent, under the terms of this Instrument, to receive the payment of the Indebtedness out of the proceeds of sale of the Premises in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted). Borrower expressly waives and relinquishes any right or remedy which it

may have or be able to assert by reason of the provisions of Chapter 34 of the Code pertaining to the rights and remedies of sureties.

(l) The proceeds of any sale of, and the rents, profits and other income generated by the holding, leasing, operating or other use of the Premises, shall be applied by Agent (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority: (i) first, to the payment of the costs and expenses of taking possession of the Premises and of holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, (A) receiver's fees; (B) costs of advertisement; (C) attorneys' and accountants' fees; and (D) court costs, if any; (ii) second, to the payment of all amounts, other than the principal amount and accrued but unpaid interest on the Notes which may be due to Banks under the Loan Documents, including all Indebtedness, together with interest thereon as provided therein, in such order and manner as Agent may determine; (iii) third, to the payment of the principal amount outstanding on the Notes in such order and manner as Agent may determine and all other Indebtedness; (iv) fourth, to the payment of all accrued but unpaid interest due on the Notes in such order and manner as Agent may determine; and (v) fifth, to Borrower. Borrower, any guarantor of the Indebtedness and any other party liable on the Indebtedness shall be liable for any deficiency remaining in the Indebtedness subsequent to any sale referenced in this subsection (l).

(m) Agent shall have the right to become the purchaser at any sale of the Premises hereunder and shall have the right to be credited on the amount of its bid therefor all of the Indebtedness due and owing as of the date of such sale.

(n) If Agent shall accelerate the Indebtedness following the occurrence of an Event of Default, any payments received by Agent following such acceleration, whether as the result of voluntary payments made by Borrower or as a result of the sale of the Premises by Trustee, shall be deemed voluntary prepayments of the Notes and accordingly, the prepayment premium, if any, required under the Loan Agreement shall also be payable, subject to the terms of the Loan Agreement.

(o) The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract made in violation of any provisions of this Instrument and may take immediate possession of the Premises free from, and despite the terms of, any such grant of easement, rental, lease or other contract.

(p) In the event an interest in any of the Premises is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, Borrower agrees as follows: notwithstanding the provisions of Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Borrower agrees that Agent shall be entitled to seek a deficiency judgment from Borrower and any other party obligated on the Notes equal to the difference between the amount owing on the Notes and the amount for which the Premises was sold pursuant to judicial or nonjudicial foreclosure sale. Borrower expressly recognizes that this section constitutes a waiver of the above-cited provisions of the Texas Property Code which would otherwise permit Borrower and other persons against whom recovery of deficiencies is sought or

Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Premises as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Borrower further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Premises for purposes of calculating deficiencies owed by Borrower, Guarantor, and others against whom recovery of a deficiency is sought.

(q) Alternatively, in the event the waiver provided for in Subsections 18(p) above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Premises as of the date of the foreclosure sale in proceedings governed by Section 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Premises shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Premises will be repaired or improved in any manner before a resale of the Premises after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Premises for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Premises, including, without limitation, brokerage commissions, title insurance, a survey of the Premises, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Premises shall be further discounted to account for any estimated holding costs associated with maintaining the Premises pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Premises must be given by persons having at least five (5) years experience in appraising property similar to the Premises and who have conducted and prepared a complete written appraisal of the Premises taking into consideration the factors set forth above.

19. **Appointment of Receiver**. Upon or at any time after the filing of a complaint to foreclose this Instrument, the court in which such complaint is filed shall, upon petition by Agent, appoint a receiver for the Premises, and Borrower hereby irrevocably consents to the appointment of such receiver(s). Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the value of the Premises or whether the same shall be then occupied as a homestead or not and Agent hereunder or any other holder of the Notes may be appointed as such receiver. Such receiver shall have power to collect the rents, issues and profits of the Premises (i) during the pendency of such foreclosure suit, (ii) in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, and (iii) during any further times when Borrower, but for the intervention of such receiver, would be entitled to collect such rents, issues and profits. Such receiver also shall have all other powers and rights that may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during said period,

including, to the extent permitted by law, the right to lease all or any portion of the Premises for a term that extends beyond the time of such receiver's possession without obtaining prior court approval of such lease. The court from time to time may authorize the application of the net income received by the receiver in payment of (a) the Indebtedness, or by any decree foreclosing this Instrument, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale, and (b) any deficiency upon a sale and deficiency.

20. **Intentionally Omitted.**

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

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

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

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

22. **Compliance with Texas Mortgage Foreclosure Law.**

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

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

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

29 of this Instrument, shall be added to the Indebtedness and/or by the judgment of foreclosure.

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

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

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

25. **Release Upon Payment and Discharge of Borrower's Obligations; Partial Release**. Upon payment of all sums secured by this Instrument and any other sums due to Agent and Banks in connection with the Loan Documents, and upon the performance of all of Borrower's other obligations under the Loan Documents, provided that no Event of Default has occurred and is continuing and the Banks have no further obligation to make advances under the Loan Documents, Agent shall release this Instrument at Borrower's sole cost and expense. Agent shall release portions of the Premises encumbered by this Instrument upon the sale of such portions of the Premises in accordance with the terms in the Loan Agreement.

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

To Agent: LaSalle Bank National Association
135 South LaSalle Street, Suite 1211
Chicago, Illinois 60603
Attn: Don Broderick, First Vice President

With a copy to: LaSalle Bank National Association
135 South LaSalle Street, Suite 1425
Chicago, Illinois 60603
Attn: Commercial Real Estate Syndications

With a copy to:	Schwartz Cooper Chartered 180 North LaSalle Street, Suite 2700 Chicago, Illinois 60603 Attn: Michael S. Kurtzon, Esq.
With a copy to Trustee:	Stephen V. Valone 10000 Memorial Drive Suite 400 Houston, Texas 77024
To Borrower:	Broadstone Cypress, L.P. c/o 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:	Gallagher & Kennedy, P.A. 2575 East Camelback Road, 11th Floor Phoenix, Arizona 85016 Attn: Gregory L. Mast

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

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

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

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

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

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

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

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

(a) Borrower will pay all expenses, charges, costs and fees relating to the Loans or necessitated by the terms of the Notes, this Instrument or any of the other Loan Documents, including without limitation, Trustee's and Agent's reasonable attorneys' fees in connection with the negotiation, documentation, administration, servicing and enforcement of the Notes, this Instrument and the other Loan Documents, all filing, registration and recording fees, all other expenses incident to the execution and acknowledgment of this Instrument and all federal, state, county and municipal taxes, and

other Taxes (provided Borrower shall not be required to pay any income or franchise taxes of Agent), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Notes and this Instrument. Borrower recognizes that, during the term of this Instrument, Agent:

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

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

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

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

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

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

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

30. **Financial Statements**. Borrower represents and warrants that the financial statements for Borrower and the Premises previously submitted to Agent are true, complete and correct in all material respects, disclose all actual and contingent liabilities of Borrower 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 Borrower or the Premises from the dates of said financial statements until the date hereof. Borrower shall furnish to Agent such financial information regarding Borrower, its constituent partners or members, as the case may be, and the Premises as Agent may from time to time reasonably request and as are otherwise required pursuant to the terms of the Loan Agreement.

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

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

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

34. **Indemnity**. **BORROWER HEREBY COVENANTS AND AGREES THAT NO LIABILITY SHALL BE ASSERTED OR ENFORCED AGAINST AGENT OR TRUSTEE IN THE EXERCISE OF THE RIGHTS AND POWERS GRANTED TO AGENT OR TRUSTEE IN THIS INSTRUMENT, AND BORROWER HEREBY EXPRESSLY WAIVES AND RELEASES ANY SUCH LIABILITY. BORROWER SHALL INDEMNIFY AND SAVE AGENT, THE BANKS AND TRUSTEE 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 AGENT, THE BANKS AND/OR TRUSTEE AT ANY TIME BY ANY THIRD PARTY WHICH RELATE OR ARISE FROM: (A) ANY SUIT OR PROCEEDING (INCLUDING PROBATE AND BANKRUPTCY PROCEEDINGS), OR THE THREAT THEREOF, IN OR TO WHICH AGENT, THE BANKS AND/OR TRUSTEE MAY OR DOES BECOME A PARTY, EITHER AS A PLAINTIFF OR AS A DEFENDANT, BY REASON OF THIS INSTRUMENT OR FOR THE PURPOSE OF PROTECTING THE LIEN OF THIS INSTRUMENTS; (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 AGENT IN ACCORDANCE WITH THE TERMS OF THIS INSTRUMENT; PROVIDED, HOWEVER, THAT BORROWER SHALL NOT BE OBLIGATED TO INDEMNIFY OR HOLD AGENT, THE BANKS AND TRUSTEE HARMLESS FROM AND AGAINST ANY CLAIMS DIRECTLY ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AGENT, THE BANKS, AND TRUSTEE. ALL COSTS PROVIDED FOR HEREIN AND PAID FOR BY AGENT, THE BANKS AND TRUSTEE SHALL BE SO MUCH ADDITIONAL INDEBTEDNESS AND SHALL BECOME IMMEDIATELY**

DUE AND PAYABLE UPON DEMAND BY AGENT AND WITH INTEREST THEREON FROM THE DATE INCURRED BY AGENT UNTIL PAID AT THE DEFAULT RATE.

WITHOUT LIMITATION, IT IS THE INTENTION OF BORROWER AND BORROWER AGREES THAT THE FOREGOING INDEMNITIES AND RELEASES SHALL APPLY TO EACH INDEMNIFIED PARTY WITH RESPECT TO LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, CLAIMS, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS) WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF THE NEGLIGENCE OF SUCH (AND/OR ANY OTHER) INDEMNIFIED PARTY.

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 Instrument and shall provide that Agent 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 Agent'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, Borrower shall cause the property manager under such agreement to enter into a subordination of the management agreement with Agent, 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 Instrument.

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

37. **Miscellaneous.**

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

(b) **Invalidity of Provisions; Governing Law. IN THE EVENT THAT ANY PROVISION OF THIS INSTRUMENT IS DEEMED TO BE INVALID BY REASON OF THE OPERATION OF LAW, OR BY REASON OF THE INTERPRETATION PLACED THEREON BY ANY ADMINISTRATIVE AGENCY OR ANY COURT, THE BORROWER AND AGENT SHALL NEGOTIATE AN EQUITABLE ADJUSTMENT IN THE PROVISIONS OF THE**

SAME IN ORDER TO EFFECT, TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PURPOSE OF THIS INSTRUMENT AND THE VALIDITY AND ENFORCEABILITY OF THE REMAINING PROVISIONS, OR PORTIONS OR APPLICATIONS THEREOF, SHALL NOT BE AFFECTED THEREBY AND SHALL REMAIN IN FULL FORCE AND EFFECT. THIS INSTRUMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

(c) **Municipal Requirements**. Borrower shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Instrument to rely on the Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Borrower hereby assigns to Agent 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 Instrument or any interest therein to fulfill any governmental or municipal requirement. Any act or omission by Borrower which would result in a violation of any of the provisions of this subparagraph shall be void.

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

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

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

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

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

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

(j) **Consent to Jurisdiction**. **TO INDUCE BANKS TO ACCEPT THE 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 NOTES AND THIS INSTRUMENT WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS UPON BORROWER, AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO BORROWER AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.**

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

(l) **Complete Agreement**. This Instrument, the Loan Agreement, the Notes and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified,

altered or amended except by an agreement in writing signed by both Borrower and Agent.

(m) **CONCERNING THE TRUSTEE**. See Exhibit "E".

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

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

38. **Usury**. All agreements between Borrower and Agent, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of demand or acceleration of the Maturity Date of the Notes or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to Agent exceed the maximum amount permissible under the applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Agent in excess of the maximum amount permissible under applicable law, the interest payable to Agent shall be reduced to the maximum amount permissible under applicable law; and if from any circumstance Agent shall ever receive anything of value deemed interest by applicable law in excess of the maximum amount permissible under applicable law, an amount equal to the excessive interest shall be applied to the reduction of the principal of the Notes and not to the payment of interest, or if such excessive amount of interest exceeds the unpaid balance of principal of the Notes, such excess shall be refunded to Borrower. All interest paid or agreed to be paid to Agent shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period (including any renewal or extension) until payment in full of the principal so that the interest accruing under the Notes for such full period shall not exceed the maximum amount

permissible under applicable law. Agent expressly disavows any intent to contract for, charge or receive interest in an amount which exceeds the maximum amount permissible under applicable law. For the purpose of determining the highest lawful rate per annum permitted by the applicable laws of the State of Texas, the "weekly ceiling" from time to time in effect as defined in Tex. Fin. Code §303.009(f) (1999), as amended, shall be the ceiling applicable to this transaction; however, if permitted by law, Agent may implement any ceiling under that law used to compute the rate of interest hereunder by notice to Borrower as provided in such article. Notwithstanding the foregoing sentence, if the Depository Institutions and Deregulation and Monetary Control Act of 1980, 12 U.S.C. Sections 1235f-7 and 1735f-7a, as amended, permits a higher maximum rate than the Texas Finance Code, such higher maximum rate shall apply to this Notes. In determining the highest lawful rate, all fees and other charges contracted for, charged or received by Agent in connection with the Indebtedness which are either deemed interest by applicable law or required by applicable law to be deducted from the principal balance of the Notes to determine the rate of interest hereon shall be taken into account.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

BORROWER HEREBY ACKNOWLEDGES AND AGREES THAT THIS INSTRUMENT CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN SECTION 34 HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY BORROWER OF AGENT, THE BANKS AND TRUSTEE FROM CLAIMS OR LOSSES ARISING AS A RESULT OF THE AGENT'S, BANKS' OR TRUSTEE'S OWN NEGLIGENCE.

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

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

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

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on the 27 day of August, 2007 by Charles Vogel, the Vice President of OWR Cypress, Inc., a Delaware corporation, on behalf of said corporation, in its capacity as the general partner of Broadstone Cypress, L.P., a Delaware limited partnership, on behalf of said limited partnership.

NOTARY PUBLIC SIGNATURE

Jennifer Williams
Printed Name of Notary Public

My Commission Expires: 6/1/10

(SEAL)

JENNIFER WILLIAMS
Notary Public - Arizona
Maricopa County
Expires 06/01/10

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

EXHIBIT B

PERMITTED EXCEPTIONS

THE FOLLOWING ARE THE PERMITTED TITLE EXCEPTIONS PURSUANT TO PRO FORMA LOAN POLICY NO. 07001582 ISSUED BY VERITAS TITLE PARTNERS, L.P., AS AGENT FOR FIRST AMERICAN TITLE INSURANCE COMPANY:

EXCEPTION NUMBERS 3, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5h, and 5i, all as set forth on Schedule B.

EXHIBIT C

INSURANCE REQUIREMENTS

GENERAL INFORMATION

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

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

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

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

5. The Mortgagor must be the named insured.

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

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

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

7. The insured property must be identified as the Northeast Corner of Mueschke Road and U.S. Highway 290, Cypress, Texas.

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

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

SPECIFIC REQUIREMENTS

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

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

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

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

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

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

ADDITIONAL REQUIREMENTS - CONSTRUCTION LOANS

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

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

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

4. Coverage should also include permission to occupy clause.

GENERAL CONTRACTOR INSURANCE REQUIREMENTS

GENERAL INFORMATION

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

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

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

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

5. The Borrower must be named as additional insured.

6. The certificate holder must be shown as follows:

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

7. The insured property must be identified as the Northeast Corner of Mueschke Road and U.S. Highway 290, Cypress, Texas.

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

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

SPECIFIC REQUIREMENTS

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

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

ARCHITECT'S INSURANCE REQUIREMENTS

GENERAL INFORMATION

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

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

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

4. The insured property must be identified as the Northeast Corner of Mueschke Road and U.S. Highway 290, Cypress, Texas.

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

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

SPECIFIC REQUIREMENTS

Errors and Omission (professional liability) insurance is required in the minimum amount of Three Million and 00/100 Dollars ($3,000,000.00).

EXHIBIT D

ADDITIONAL COLLATERAL

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

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

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

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

5. Any and all other personal property of any kind, nature or description, whether tangible or intangible, (including without limitation, any and all goods, contract rights, franchises, licenses, permits, chattel paper (including electronic chattel paper), money, equipment, deposit accounts, documents, investment property, instruments, letter-of-credit rights, supporting obligations, and general intangibles including payment intangibles) of Borrower relating to or used in connection with the operation or maintenance of the Real Estate, whether now owned or hereafter acquired, or in which Borrower now has or shall hereafter acquire any right, title or interest whatsoever (whether by bill of sale, lease, conditional sales contract, or other title retention document or otherwise);

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

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

EXHIBIT E

CONCERNING THE TRUSTEE

Section 1.1 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

Section 1.2 Certain Rights. With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith, and (iv) any and all other lawful action as Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

Section 1.3 Retention of Money. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

Section 1.4 Successor Trustees. Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforenamed Trustee, Beneficiary shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed (and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers, and duties of the aforenamed Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforenamed Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Trustees, whenever any action or undertaking of such substitute Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

Section 1.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

Section 1.6 Succession Instruments. Any substitute 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 or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

Section 1.7 No Representation by Trustee or Beneficiary. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Beneficiary pursuant to the Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Beneficiary.

ATTACHMENT 4

Upon recordation return to:

Schwartz Cooper Chartered
180 North LaSalle Street
Suite 2700
Chicago, Illinois 60601
Attn: Scott M. Lapins, Esq.

20070539528
09/04/2007 RP3 $64.00

This space reserved for Recorder's use only

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment") is made and delivered effective as of the 31st day of August, 2007 by **BROADSTONE CYPRESS, L.P.**, a Delaware limited partnership ("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").

RP 09-34356

RECITALS:

A. 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, the "Loan Agreement") by and among Assignor, Assignee, as agent, and the Banks, the Banks have agreed to make construction loans in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) (collectively, the "Loans") to Assignor. Assignor is executing those certain (i) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle Bank National Association, a national banking association ("LaSalle"), as a Bank, in the principal amount of $8,504,211.00, (ii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $15,000,000.00, and (iii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $3,818,789.00 (such notes, as amended, modified, restated or replaced from time to time, collectively, the "Notes").

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 Amended and Restated Commercial 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 Notes and any and all renewals, extensions, replacements, amendments, modifications and refinancings thereof; (ii) any and all other indebtedness and obligations that may be due and owing to 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;

(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 Notes, this Assignment or any of the other Loan Documents, together with all amendments and modifications thereof; and

(c) Notwithstanding anything contained herein to the contrary, in no event shall this assignment be deemed to reduce the indebtedness secured hereby unless and to the extent such rents are delivered to Assignee and applied against the principal balance of the indebtedness, and Assignor acknowledges that in no event shall the indebtedness be reduced by the value from time to time of the rents, income and profits of or from the Premises. In addition, Assignee reserves the right, at any time, whether before or after the occurrence of an Event of Default, to recharacterize this assignment as merely constituting security for the indebtedness to Assignee, which recharacterization shall be made by written notice delivered to Assignor. Assignor's receipt of any rents, issues and profits pursuant to this assignment after the institution of foreclosure proceedings, either by court action or by the private power of sale contained in any deed of trust now or hereafter securing the Notes, shall not cure an Event of Default (as defined in Paragraph 6), or affect such proceeding or sale. THIS ASSIGNMENT SHALL NOT CONSTITUTE OR EVIDENCE ANY PAYMENT WHATSOEVER ON ACCOUNT OF THE INDEBTEDNESS, AND THE INDEBTEDNESS SHALL ONLY BE REDUCED IF AND TO THE EXTENT SUCH AMOUNTS ARE ACTUALLY PAID TO THE ASSIGNEE AND APPLIED BY ASSIGNEE IN REDUCTION OF THE UNPAID PRINCIPAL BALANCE OF THE INDEBTEDNESS.

RP 849-34-1364

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) as of the date hereof, there are no Leases;

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

(d) 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) Assignor shall not enter into any residential leases unless such leases provide for average rental rates approved by Assignee;

(b) Assignor shall not enter into any commercial leases unless Assignor obtains Assignee's prior written consent to all aspects of such lease.

(c) 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;

(d) 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;

(e) 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;

(f) 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

RP 09-34-1365

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;

(g) 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;

(h) 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;

(i) Assignor shall not waive or excuse the obligation to pay rent under any Lease;

(j) 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;

(k) 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;

(l) 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;

(m) 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

(n) 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.

(o) 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 Notes, 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 Notes, 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

RP 09-34356

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 Notes, 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 TEXAS. 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

RF 049-34-1318

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

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.

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

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

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

RP 09-34-1311

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on this 27th day of August, 2007 by Charles Vogel, the Vice President of OWR Cypress, Inc., a Delaware corporation, on behalf of said corporation, in its capacity as the General Manager of Broadstone Cypress, L.P., a Delaware limited partnership, on behalf of said limited partnership.

Jennifer Williams
NOTARY PUBLIC SIGNATURE

Jennifer Williams
Printed Name of Notary Public

My Commission Expires: 6/1/10

(SEAL)

JENNIFER WILLIAMS
Notary Public - Arizona
Maricopa County
Expires 06/01/10

RP 849-34-1312

EXHIBIT A

LEGAL DESCRIPTION

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

RP 049-34-1313

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

RP 845-94-1314

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

RP 043-34-1315

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

SEP -4 2007

COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2007 SEP -4 AM 11:51
COUNTY CLERK
HARRIS COUNTY, TEXAS

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

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.

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

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

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

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on this 27th day of August, 2007 by Charles Vogel, the Vice President of OWR Cypress, Inc., a Delaware corporation, on behalf of said corporation, in its capacity as the General Manager of Broadstone Cypress, L.P., a Delaware limited partnership, on behalf of said limited partnership.

Jennifer Williams
NOTARY PUBLIC SIGNATURE

Jennifer Williams
Printed Name of Notary Public

My Commission Expires: 6/1/10

(SEAL)

JENNIFER WILLIAMS
Notary Public - Arizona
Maricopa County
Expires 06/01/10

ATTACHMENT 5

ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, LICENSES AND PERMITS

THIS ASSIGNMENT is made and delivered as of this 31st day of August, 2007 by **BROADSTONE CYPRESS, L.P.** a Delaware limited partnership ("Debtor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Secured Party").

RECITALS:

A. The Banks have agreed to make loans (collectively, the "Loans") to Debtor in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) 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 those certain (i) Amended and Restated Promissory Note of even date herewith executed by Borrower in favor of LaSalle Bank National Association, a national banking association ("LaSalle"), as a Bank, in the principal amount of $8,504,211.00, (ii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $15,000,000.00, and (iii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $3,818,789.00 (such notes, as amended from time to time, collectively, the "Notes").

B. The Notes are secured, inter alia, by an Amended and Restated Commercial 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, obligations and liabilities of Debtor to Secured Party, and evidenced by or secured by or otherwise provided in the Loan Agreement, the Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes 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 Illinois. 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 NOTES, 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.**

IN WITNESS WHEREOF, Debtor has caused this Assignment to be executed as of the date first above written.

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

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

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

ATTACHMENT 6

ARCHITECT'S CONSENT AGREEMENT

THIS ARCHITECT'S CONSENT AGREEMENT ("Agreement") is entered into as of this 31st day of August, 2007, by **STEINBERG DESIGN COLLABORATIVE, LLP** ("Architect"), 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) ("Agent").

RECITALS:

A. Concurrently herewith, the Banks have agreed to make loans (collectively, the "Loans") in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) to Broadstone Cypress, L.P., a Delaware limited partnership (the "Borrower") in accordance with the terms, provisions and conditions of that certain Construction Loan Agreement by and among Borrower, Agent, as agent, and the Banks of even date herewith (as amended from time to time, the "Loan Agreement").

B. Borrower owns fee simple title to certain real estate and improvements (collectively, "Property") located at League City, Texas, and legally described in Exhibit A attached hereto.

C. Alliance Realty Partners, L. P. has entered into a written agreement ("Contract") with Architect dated April 19, 2007, which has been assigned to Borrower as Owner pursuant to which Architect has agreed to perform architectural services in connection with the construction of certain improvements to be made to the Property ("Improvements").

D. As a condition to Banks making the Loans to Borrower, the Banks have required that: (i) Borrower collaterally assign the Contract to the Agent pursuant to an assignment ("Assignment") substantially in the form of Exhibit B attached hereto; (ii) Architect consent to the terms of the Assignment in favor of the Agent and agree that, upon Agent's request, Architect will continue to perform its duties and obligations under the Contract upon the occurrence of an "Event of Default" (as defined in the Assignment) by the Borrower under the Assignment or the other documents and instruments evidencing or securing the Loans (collectively, "Loan Documents"); and (iii) Architect agree to permit Agent, at Agent's option, to terminate the Contract after the occurrence of an Event of Default by the Borrower under the Loan Documents.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Architect hereby agrees as follows:

1. Architect hereby consents to the terms of the Assignment notwithstanding any terms to the contrary contained in the Contract. Architect hereby agrees that if an Event of Default has occurred under the Loan Documents and such Event of Default is not cured within any applicable grace or cure period expressly provided for in any such Loan Document and if Agent has given written notice from Agent to Architect of such Event of Default, then Agent shall have the right (a) to use all plans and project manuals prepared by Architect for the purpose of completing construction of, and for the maintenance and protection of, the

Improvements, provided Architect is paid in full for all services provided as and when due and payable without additional cost or expense, and (b) at Agent's option, either to terminate the Contract or to require that Architect perform its obligations under the Contract for the benefit of Agent provided Architect is paid in full for all services provided as and when due and payable. Agent shall exercise one of such options by giving written notice to Architect stating that such Event of Default has occurred under the Loan Documents and indicating Agent's intent to either exercise its rights under the Assignment or to terminate the Contract. If Agent elects to exercise its rights under the Assignment, then Architect shall perform all of its duties and obligations under the Contract for the benefit of Agent regardless of any prior default by Borrower or any other party under the Contract, provided that Agent pays to Architect the fees for those services rendered to Agent, at Agent's request, in accordance with the terms of the Contract. If Agent terminates the Contract, Agent shall not have any liability to Architect under the Contract and Architect's sole recourse shall be against Borrower.

2. Architect hereby acknowledges that the Assignment and the exercise by Agent of any of its rights and remedies thereunder shall not render Agent liable to Architect for any obligations of Borrower or any other party under the Contract.

3. Architect certifies that no party is in default under the Contract as of the date hereof and there are not any circumstances which would constitute a default upon the passage of time, the giving of notice, or both. Architect agrees not to enter into any material amendment or modification of the Contract without the prior written consent of Agent.

4. Architect agrees to give prompt written notice to Agent of any default or breach by Borrower of any of its obligations or duties under the Contract, and that, prior to Architect exercising any of its rights or remedies under the Contract, Agent shall have an opportunity to remedy or cure such breach for a period of thirty (30) days after receipt of notice thereof; provided, however, that if such breach cannot reasonably be remedied or cured within such 30-day period, Agent shall have such additional reasonable period of time as Agent requires to effect a remedy or cure so long as Agent commences the remedy or cure within the aforesaid 30-day period and diligently pursues such remedy or cure thereafter. If Agent remedies or cures the breach, Architect shall accept such remedy or cure and not pursue any rights under the Contract as a result thereof.

5. For purposes of this Agreement, all notices, demands or documents required or permitted to be given to either party shall be in writing and shall be (a) delivered in person, (b) mailed, postage pre-paid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

To Agent:

LaSalle Bank National Association
Suite 1211
135 South LaSalle Street
Chicago, Illinois 60603
Attn: Don Broderick, First 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 Architect:	Steinberg Design Collaborative, LLP 1811 Bering Drive Suite 300 Houston, Texas 77057 Attn: Sanford Steinberg

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 section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

6. This Agreement shall be binding upon and inure to the benefit of Agent and Architect and their respective successors and assigns. The Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Texas. All provisions of this Agreement shall be deemed valid and enforceable to the extent permitted by law. Any provision or provisions of this Agreement 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 Agreement shall subsist and remain and be fully effective according to the terms of this Agreement as though such invalid, unenforceable or unlawful provision or provisions had not been included in this Agreement. Time is of the essence of this Agreement.

7. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

STEINBERG DESIGN COLLABORATIVE, LLP
a Texas limited liability partnership

By: _____
Name: Sanford P Steinberg
Title: Principal

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May ___, 2007, recorded under Harris County Clerk's File No. _____.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May ___, 2007, recorded under Harris County Clerk's File No. _____.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

EXHIBIT B

Form of Assignment

SEE ATTACHED ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, PERMITS AND LICENSES

ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, LICENSES AND PERMITS

THIS ASSIGNMENT is made and delivered as of this 31st day of August, 2007 by **BROADSTONE CYPRESS, L.P.** a Delaware limited partnership ("Debtor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Secured Party").

RECITALS:

A. The Banks have agreed to make loans (collectively, the "Loans") to Debtor in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) 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 those certain (i) Amended and Restated Promissory Note of even date herewith executed by Borrower in favor of LaSalle Bank National Association, a national banking association ("LaSalle"), as a Bank, in the principal amount of $8,504,211.00, (ii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $15,000,000.00, and (iii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $3,818,789.00 (such notes, as amended from time to time, collectively, the "Notes").

B. The Notes are secured, inter alia, by an Amended and Restated Commercial 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, obligations and liabilities of Debtor to Secured Party, and evidenced by or secured by or otherwise provided in the Loan Agreement, the Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes 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 Illinois. 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 NOTES, 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.**

IN WITNESS WHEREOF, Debtor has caused this Assignment to be executed as of the date first above written.

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

EXHIBIT B
LIST OF DRAWINGS

COVER SHEET			
A	0.01	COVER SHEET, INDEX OF DRAWINGS	8/1/2007
ARCHITECTURAL DRAWINGS			
A	1.01a	SITE PLAN	8/1/2007
A	1.04a	FIRE ASSEMBLIES	8/1/2007
A	1.04b	FIRE ASSEMBLIES	8/1/2007
A	1.05	GENERAL NOTES	8/1/2007
A	1.06a	ACCESSIBILITY STANDARDS	8/1/2007
A	1.06b	ACCESSIBILITY STANDARDS	8/1/2007
A	1.07	DOOR, WINDOW & FINISH SCHEDULES	8/1/2007
A	2.01a	UNIT A1 FLOOR PLANS	8/1/2007
A	2.01b	UNIT A1 INTERIOR ELEVATIONS	8/1/2007
A	2.02a	UNIT A2 FLOOR PLANS	8/1/2007
A	2.02b	UNIT A2 INTERIOR ELEVATIONS	8/1/2007
A	2.03a	UNIT A4g FIRST FLOOR PLANS	8/1/2007
A	2.03b	UNIT A4g SECOND FLOOR PLANS	8/1/2007
A	2.03c	UNIT A4g THIRD FLOOR PLANS	8/1/2007
A	2.03d	UNIT A4g INTERIOR ELEVATIONS	8/1/2007
A	2.04a	UNIT B1 FLOOR PLANS	8/1/2007
A	2.04b	UNIT B1 INTERIOR ELEVATIONS	8/1/2007
A	2.05a	UNIT C1 FLOOR PLANS	8/1/2007
A	2.05b	UNIT C1 INTERIOR ELEVATIONS	8/1/2007
A	2.06a	UNIT C2g FIRST FLOOR PLANS	8/1/2007
A	2.06b	UNIT C2g SECOND FLOOR PLANS	8/1/2007
A	2.06c	UNIT C2g INTERIOR ELEVATIONS	8/1/2007
A	2.07a	UNIT C3 FLOOR PLANS	8/1/2007
A	2.07b	UNIT C3 INTERIOR ELEVATIONS	8/1/2007
A	2.08a	UNIT D1g FIRST FLOOR PLANS	8/1/2007
A	2.08b	UNIT D1g SECOND FLOOR PLANS	8/1/2007
A	2.08c	UNIT D1g INTERIOR ELEVATIONS	8/1/2007
A	3.01a	BUILDING TYPE I - FIRST FLOOR PLAN	8/1/2007
A	3.01b	BUILDING TYPE I - SECOND FLOOR PLAN	8/1/2007
A	3.01c	BUILDING TYPE I - THIRD FLOOR PLAN	8/1/2007

A	3.01d	BUILDING TYPE I - ROOF PLAN	8/1/2007
A	3.01e	BUILDING TYPE I - EXTERIOR ELEVATIONS	8/1/2007
A	3.02a	BUILDING TYPE II - FIRST FLOOR PLAN	8/1/2007
A	3.02b	BUILDING TYPE II - SECOND FLOOR PLAN	8/1/2007
A	3.02c	BUILDING TYPEII - THIRD FLOOR PLAN	8/1/2007
A	3.02d	BUILDING TYPE II - ROOF PLAN	8/1/2007
A	3.02e	BUILDING TYPE II - EXTERIOR ELEVATIONS	8/1/2007
A	3.03a	BUILDING TYPE III - FIRST FLOOR PLAN	8/1/2007
A	3.03b	BUILDING TYPE III - SECOND FLOOR PLAN	8/1/2007
A	3.03c	BUILDING TYPE III - THIRD FLOOR PLAN	8/1/2007
A	3.03d	BUILDING TYPE III- ROOF PLAN	8/1/2007
A	3.03e	BUILDING TYPE III - EXTERIOR ELEVATIONS	8/1/2007
A	3.04a	BUILDING TYPE IV - FIRST FLOOR PLAN	8/1/2007
A	3.04b	BUILDING TYPE IV - SECOND FLOOR PLAN	8/1/2007
A	3.04c	BUILDING TYPE IV - THIRD FLOOR PLAN	8/1/2007
A	3.04d	BUILDING TYPE IV- ROOF PLAN	8/1/2007
A	3.04e	BUILDING TYPE IV - EXTERIOR ELEVATIONS	8/1/2007
A	3.05a	BUILDING TYPE V - FIRST FLOOR PLAN	8/1/2007
A	3.05b	BUILDING TYPE V - SECOND FLOOR PLAN	8/1/2007
A	3.05c	BUILDING TYPE V - THIRD FLOOR PLAN	8/1/2007
A	3.05d	BUILDING TYPE V- ROOF PLAN	8/1/2007
A	3.05e	BUILDING TYPE V - EXTERIOR ELEVATIONS	8/1/2007
A	3.06a	BUILDING TYPE VI - FIRST FLOOR PLAN	8/1/2007
A	3.06b	BUILDING TYPE VI - SECOND FLOOR PLAN	8/1/2007
A	3.06c	BUILDING TYPE VI - THIRD FLOOR PLAN	8/1/2007
A	3.06d	BUILDING TYPE VI- ROOF PLAN	8/1/2007
A	3.06e	BUILDING TYPE VI - EXTERIOR ELEVATIONS	8/1/2007
A	3.07a	BUILDING TYPE VII - FIRST FLOOR PLAN	8/1/2007
A	3.07b	BUILDING TYPE VII - SECOND FLOOR PLAN	8/1/2007
A	3.07c	BUILDING TYPE VII - THIRD FLOOR PLAN	8/1/2007
A	3.07d	BUILDING TYPE VII- ROOF PLAN	8/1/2007
A	3.07e	BUILDING TYPE VII - EXTERIOR ELEVATIONS	8/1/2007
A	3.08a	BUILDING TYPE VIII - FIRST FLOOR PLAN	8/1/2007
A	3.08b	BUILDING TYPE VIII - SECOND FLOOR PLAN	8/1/2007
A	3.08c	BUILDING TYPE VIII - THIRD FLOOR PLAN	8/1/2007
A	3.08d	BUILDING TYPE VIII- ROOF PLAN	8/1/2007
A	3.08e	BUILDING TYPE VIII - EXTERIOR ELEVATIONS	8/1/2007
A	3.09a	BUILDING TYPE IX - FIRST FLOOR PLAN	8/1/2007
A	3.09b	BUILDING TYPE IX - FIRST FLOOR PLAN	8/1/2007

A	3.09c	BUILDING TYPE IX - SECOND FLOOR PLAN	8/1/2007
A	3.09d	BUILDING TYPE IX - SECOND FLOOR PLAN	8/1/2007
A	3.09e	BUILDING TYPE IX - THIRD FLOOR PLAN	8/1/2007
A	3.09f	BUILDING TYPE IX - THIRD FLOOR PLAN	8/1/2007
A	3.09g	BUILDING TYPE IX- ROOF PLAN	8/1/2007
A	3.09h	BUILDING TYPE IX- ROOF PLAN	8/1/2007
A	3.09i	BUILDING TYPE IX - EXTERIOR ELEVATIONS	8/1/2007
A	3.09j	BUILDING TYPE IX - EXTERIOR ELEVATIONS	8/1/2007
A	6.01a	CLUB DIMENSIONS PLAN	8/1/2007
A	6.01b	CLUB NOTES CONTROL PLAN	8/1/2007
A	6.02	CLUB ROOF NOTES & CEILING HEIGHT PLANS	8/1/2007
A	6.03a	CLUB FRONT & BACK ELEVATIONS	8/1/2007
A	6.03b	CLUB RIGHT & LEFT ELEVATIONS	8/1/2007
A	6.04	CLUB WINDOW & DOOR SCHEDULE	8/1/2007
A	6.05a	CLUB INTERIOR ELEVATIONS	8/1/2007
A	6.05b	CLUB INTERIOR ELEVATIONS	8/1/2007
A	6.08	CLUB BLDG SECTION	8/1/2007
A	6.08a	CLUB BLDG SECTION	8/1/2007
A	6.09	MAILROOM AT CLUB	8/1/2007
A	6.10	CLUB DETAILS	8/1/2007
A	6.11	CLUB DETAILS	8/1/2007
A	6.12	CLUB DETAILS	8/1/2007
A	6.13	CLUB DETAILS	8/1/2007
A	7.01	DETACHED GARAGE PLANS	8/1/2007
A	7.02	DETACHED GARAGE PLANS	8/1/2007
A	7.03	DETACHED GARAGE PLANS	8/1/2007
A	7.04	GARAGE DETAILS	8/1/2007
A	7.05	GARAGE DETAILS	8/1/2007
A	7.06	TRASH ENCLOSURE PLAN AND ELEVATIONS	8/1/2007
AD	1.01	DETAILS- WALL SECTIONS	8/1/2007
AD	1.02	DETAILS- WALL SECTIONS	8/1/2007
AD	1.03	DETAILS- WALL SECTIONS	8/1/2007
AD	1.04	DETAILS- WALL SECTIONS	8/1/2007
AD	1.05	DETAILS- WALL SECTIONS	8/1/2007
AD	1.06	DETAILS- WALL SECTIONS	8/1/2007
AD	1.07	DETAILS- WALL SECTIONS	8/1/2007
AD	1.08	DETAILS- WALL SECTIONS	8/1/2007
AD	1.09	DETAILS- WALL SECTIONS	8/1/2007
AD	1.10	DETAILS- WALL SECTIONS	8/1/2007

AD	1.11	DETAILS- WALL SECTIONS	8/1/2007
AD	1.12	DETAILS- WALL SECTIONS	8/1/2007
AD	2.01	DETAILS- FRAMING PLAN	8/1/2007
AD	2.02	DETAILS- FRAMING PLAN	8/1/2007
AD	3.01	DETAILS- TENANT SEPARATION	8/1/2007
AD	4.01	DETAILS- CORRIDOR	8/1/2007
AD	5.01	DETAILS- EXTERIOR WALLS	8/1/2007
AD	5.02	DETAILS- EXTERIOR WALLS	8/1/2007
AD	5.03	DETAILS- EXTERIOR WALLS	8/1/2007
AD	6.01	DETAILS- STAIR ELEVATIONS	8/1/2007
AD	7.01	DETAILS- WINDOW/ DOOR	8/1/2007
AD	7.02	DETAILS- WINDOW/ DOOR	8/1/2007
AD	7.03	DETAILS- WINDOW/ DOOR	8/1/2007
AD	8.01	DETAILS- FIRESTOPPING	8/1/2007
AD	8.02	DETAILS- FIRESTOPPING	8/1/2007
AD	9.01	DETAILS- SPECIAL	8/1/2007

ATTACHMENT 7

ASSIGNMENT OF GUARANTY

THIS ASSIGNMENT OF GUARANTY (this "Assignment") is dated as of August 31, 2007 by **BROADSTONE CYPRESS, L.P.**, a Delaware limited partnership (the "Assignor"), for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as agent for itself and other Banks (as defined in the Loan Agreement referenced below) ("Assignee").

RECITALS

A. Assignor entered into that certain [Design/Build Construction Contract (cost Plus Guaranteed Maximum)] (the "Contract") dated as of August 30, 2007 with Alliance Residential Builders, LP, a Texas limited partnership ("Contractor") whereby Contractor agreed to construct certain improvements on Assignor's property as more particularly described in the Contract.

B. As an inducement to Assignor entering into the Contract, Alliance Residential Holdings, LLC, an Arizona limited liability company ("Guarantor") executed and delivered to Assignor that certain Guaranty dated August 30, 2007.

C. Pursuant to the terms and conditions of a Construction Loan Agreement of even date herewith (as amended from time to time, the "Loan Agreement") between Assignor and Assignee, as agent, and the Banks, the Banks have agreed to loan in the principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) (the "Loans") to Assignor. The Loans are evidenced by those certain (i) Amended and Restated Promissory Note of even date herewith in the principal amount of $27,323,000.00 made by Assignor in favor of LaSalle Bank, National Association, a national banking association ("LaSalle"), as a Bank, in the principal amount of $8,504,211.00, (ii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $15,000,000.00, and (iii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $3,818,789.00 (such notes, as amended, modified, restated or replaced from time to time, (the "Notes"). All terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

D. As a condition precedent to Banks extension of the Loan to Assignor and in consideration therefore, Banks has required the execution and delivery of this Assignment by Assignor of its rights under the Guaranty.

E. Guarantor is an affiliate of the limited partner of Assignor and, having a financial interest in the Premises, has agreed to execute and deliver a consent to this Assignment.

AGREEMENT

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

1. **Assignment**. Assignor hereby transfers, assigns and conveys all of its rights, powers, privileges and interests in, to and under the Guaranty to Assignee, its successors and assigns, fully intending that Assignee shall have the rights and powers and be entitled to the

benefits thereunder to the same degree and extent as though the Guaranty had been made in favor of the Assignee.

2. **Exercise of Assignee's Remedies**. Although it is the intention of the parties that the assignment hereunder is a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Assignee shall not exercise any of the rights and powers conferred upon it herein until and unless there shall occur an "Event of Default", as defined in the Loan Agreement, of Assignor's obligations and agreements under the Loan Agreement or the other Loan Documents (as defined in the Note), in each instance after any applicable grace periods shall have expired (a "Default"). Upon the occurrence of a Default, Assignee shall have the right (but not the obligation) to assume all rights, privileges and obligations of Assignor under the Guaranty. Nothing herein contained shall be deemed to affect or impair any rights which the Assignee may have under the Note, the Deed of Trust or the other Loan Documents.

3. **Representations and Warranties of Assignor**. Assignor hereby represents and warrants to Assignee that (a) it has not executed any prior assignment of the Guaranty, nor has it performed any acts or executed any other instrument which might prevent Assignee from operating under any of the terms and conditions of this Assignment, or which would limit Assignee in such operation, (b) it has not executed or granted any modification whatsoever of the Guaranty, either orally or in writing, and (c) to its knowledge, the Guaranty is in full force and effect and constitutes a valid and legally enforceable obligation of the parties thereto and that there are no defaults now existing thereunder as of the date hereof.

4. **Power of Attorney**. From and after the occurrence of a Default and during the continuance thereof, Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact to exercise any or all of Assignor's rights in, to, and under the Guaranty, to give appropriate receipts, releases, and satisfactions on behalf of Assignor in connection with Guarantor's performance under the Guaranty, and to do any or all other acts, in Assignor's name or in Assignee's own name, that Assignor could do under the Guaranty with the same force and effect as if this Assignment had not been made. This power of attorney is coupled with an interest and cannot be revoked, modified or amended without the written consent of Assignee. Notwithstanding the foregoing, Assignee agrees that it shall not exercise its rights under this Section 4 unless or until a Default shall occur.

5. **Successors and Assigns**. All the covenants and agreements hereinabove contained on the part of Assignee and Assignor shall inure to the benefit of and bind their successors and assigns, respectively, including any purchaser at a foreclosure sale other than Assignee.

6. **Applicable Law**. This Assignment is governed as to validity, interpretation, effect and in all other respects by laws and decisions of the State of Illinois.

7. **Guarantor Not Guarantor of Loan**. Assignee hereby agrees and acknowledges that Guarantor has not guaranteed, and by this Assignment or the Consent to Assignment of Guaranty and Estoppel executed by Guarantor on or about the date of this Assignment is not guaranteeing, any obligations under the documents evidencing or pertaining to the Loan. Assignee and Assignor hereby agree and acknowledge that Guarantor is a third-party beneficiary of this Section 7.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first above written.

ASSIGNOR:

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

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

ATTACHMENT 8

CONSENT TO ASSIGNMENT OF GUARANTY AND ESTOPPEL

ALLIANCE RESIDENTIAL HOLDINGS, LLC, an Arizona limited liability company ("Guarantor"), acknowledges that the execution and delivery of this Consent to Assignment of Guaranty and Estoppel (this "Consent") is required by Banks prior to making any disbursements of the Loan (as defined in the foregoing Assignment of Guaranty (the "Assignment"); all terms defined in the Assignment are used with the same meaning herein), and, without execution and delivery of this Consent, Banks will not make the Loan. In consideration of the foregoing, Guarantor hereby agrees as follows:

1. A true, correct and complete copy of the Guaranty is attached hereto as Exhibit "A" and the Guaranty has not been amended or modified as of the date hereof.

2. Guarantor agrees that any and all present and future debts and obligations of Assignor to Guarantor hereby are subordinated to the claims of Assignee and hereby are assigned by Guarantor to Assignee as security for the Construction Obligations (as defined herein) and Guarantor's obligations under the Guaranty.

3. Until the Construction Obligations are completed, and all periods under applicable bankruptcy law for the contest of any payment by Guarantor or Assignor as a preferential or fraudulent payment have expired, Guarantor knowingly, and with advice of counsel, waives, relinquishes, releases and abandons all rights and claims to indemnification, contribution, reimbursement, subrogation and payment which Guarantor may now or hereafter have by and from Assignor and the successors and assigns of Assignor, for any payments made by Guarantor to Assignee, including, without limitation, any rights which might allow Assignor, Assignor's successors, a creditor of Assignor, or a trustee in bankruptcy of Assignor to claim in bankruptcy or any other similar proceedings that any payment made by Assignor or Assignor's successors and assigns to Assignee was on behalf of or for the benefit of Guarantor and that such payment is recoverable by Assignor, a creditor or trustee in bankruptcy of Assignor as a preferential payment, fraudulent conveyance, payment of an insider or any other classification of payment which may otherwise be recoverable from Assignee.

4. Guarantor hereby consents to the foregoing Assignment by Assignor of the Guaranty. Guarantor agrees that, if Assignee delivers written notice to Guarantor that Assignee is exercising its rights under the Assignment (i) Guarantor will, at Assignee's direction, perform any and all construction obligations pursuant to and in accordance with the terms of the Guaranty (the "Construction Obligations") provided that Assignee pays to Guarantor the fees due and performs the other obligations of Assignor in accordance with the Guaranty from and after the date such notice is given, irrespective of any contrary instructions, direction or requests from Assignor, and (ii) Guarantor will perform its Construction Obligations for Assignee notwithstanding any counterclaim, right of set-off, defense or like right of Guarantor against Assignor or Assignor's default under or breach of the Guaranty, and Assignee shall not be liable for any act or omission of Assignor.

5. Guarantor agrees that if Assignee exercises its rights under the Assignment, the Guaranty, the Contract and this Assignment shall be governed as to validity, interpretation, effect and in all other respects by laws and decisions of the State of Illinois with respect to issues

between Assignee and Guarantor, however all issues between Assignor and Guarantor shall remain governed by the laws of the State of Arizona.

6. Guarantor hereby reaffirms the validity of the representations and warranties of Guarantor contained in the Guaranty, and certifies that, to its knowledge, there exists no default under the terms, covenants or provisions of the Guaranty, nor any state of facts which, with the giving of notice, passage of time or both, would constitute a default thereunder.

7. Guarantor hereby agrees to provide to Assignee its quarterly statement of financial position within thirty (30) days after the end of each calendar quarter.

8. CONSENT TO JURISDICTION. TO INDUCE ASSIGNEE TO ACCEPT THIS CONSENT, GUARANTOR IRREVOCABLY AGREES THAT, IF ASSIGNEE EXERCISES ITS RIGHTS UNDER THE ASSIGNMENT, SUBJECT TO ASSIGNEE'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS CONSENT, THE CONTRACT OR THE GUARANTY, AS BETWEEN ASSIGNEE AND GUARANTOR, WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. GUARANTOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO GUARANTOR AT THE ADDRESS STATED IN THE GUARANTY AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

9. WAIVER OF JURY TRIAL. GUARANTOR 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 BETWEEN GUARANTOR AND ASSIGNEE TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS CONSENT, THE GUARANTY OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. GUARANTOR AGREES THAT IT WILL NOT ASSERT ANY CLAIM AGAINST ASSIGNEE ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

10. The statements herein made shall be binding upon Guarantor, its successors and assigns, and shall inure to the benefit of Assignee and the benefit of Assignee's successors and assigns.

11. Each entity, person and/or officer executing this certification is duly empowered to do so on behalf of Guarantor.

IN WITNESS WHEREOF, Guarantor has executed this Consent as of the 31st day of August, 2007.

GUARANTOR:

ALLIANCE RESIDENTIAL HOLDINGS, LLC,
an Arizona limited liability company

By: _____
Name: Patrick W. Dukes
Title: Vice President

EXHIBIT A

THE GUARANTY

08/16/07

Broadstone Cypress
Houston, Texas

GUARANTY

This Guaranty is dated as of August 30, 2007, and is made and entered into by ALLIANCE RESIDENTIAL HOLDINGS, LLC, an Arizona limited liability company (the "Guarantor"), to be effective as of the effective date set forth in the Contract (as defined below).

RECITALS

A. This Guaranty is being executed and delivered by Guarantor as an essential inducement to that certain Design/Build Construction Contract (Cost Plus Guaranteed Maximum Amount) of even date herewith by and between Broadstone Cypress, L.P., a Delaware limited partnership, hereinafter called "Owner", and Alliance Residential Builders, LP, a Delaware limited partnership doing business as Alliance Communities Builders Partners, LP, hereinafter called "Contractor" (the "Contract").

B. Unless otherwise defined in this Guaranty, all capitalized terms used in this Guaranty have the same definitions as are set forth in the Contract.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees, covenants, represents and warrants as set forth below.

1. Guaranty. Guarantor hereby unconditionally guarantees the timely payment and performance of all charges and obligations of Contractor under the Contract or otherwise owing to Owner and all other documents evidencing or securing the obligations under the Contract or otherwise owing to Owner (collectively, the "Guarantied Obligations"); provided, however, in no event will the Guarantied Obligations include any obligations of Contractor under the Contract first arising after the expiration of the Warranty Period described in Section 7.4 of the Contract. This Guaranty is an absolute guaranty of payment and performance and not of collection. This Guaranty will survive the termination of the Contract and will continue in full force and effect with respect to any of Contractor's obligations under the Contract which are not fully performed upon the termination of the Contract.

2. Rights of Owner. Guarantor authorizes Owner to, at any time and from time to time, in Owner's discretion, (a) take and hold, and apply, any security for the Guarantied Obligations; (b) accept additional or substituted security; (c) subordinate, compromise or release any security; (d) release Contractor or any other person from its liability for all or any part of the Guarantied Obligations; (e) participate in any settlement offered by Contractor or any guarantor, whether in liquidation, reorganization, receivership, bankruptcy or otherwise; (f) release, substitute or add any one or more guarantors or endorsers; (g) assign this Guaranty and/or the Guarantied Obligations in whole or in part; or (h) modify, extend and/or amend the Guarantied Obligations. Owner may take any of the foregoing actions upon any terms and conditions as Owner may elect, without giving notice to Guarantor or obtaining the consent of Guarantor and without affecting the liability of Guarantor to Owner.

3. Independent Obligations. Guarantor's obligations under this Guaranty are independent of those of Contractor or of any other guarantor. Owner may bring a separate action against Guarantor without proceeding (either before, after or concurrently) against Contractor or any other guarantor or person or any security held by Owner and without pursuing any other remedy. Owner's rights under this Guaranty shall not be exhausted by any action of Owner until all of the Guarantied Obligations have been fully performed.

4. Waiver of Defenses. Guarantor waives all of the following, whether created or imposed by or under statute, common law, or otherwise:

4.1 Any right to require Owner to proceed against Contractor or any other person or any security now or hereafter held by Owner or to pursue any other remedy whatsoever.

4.2 Any defense based upon any legal disability of Contractor or any guarantor, or any discharge or limitation of the liability of Contractor or any guarantor to Owner, or any restraint or stay applicable to actions against Contractor or any other guarantor, whether such disability, discharge, limitation, restraint or stay is consensual, or by order of a court or other governmental authority, or arising by operation of law or any liquidation, reorganization, receivership, bankruptcy, insolvency or debtor-relief proceeding, or from any other cause.

4.3 All setoffs, counterclaims, presentment, demand, protest or notice of any kind, except for any notice which may be expressly required by the provisions of this Guaranty.

4.4 Any defense based upon the modification, renewal, extension or other alteration of the Guarantied Obligations, or of the documents executed in connection therewith.

4.5 Any defense based upon the negligence of Owner, including, without limitation, the failure to file a claim in any bankruptcy of the Contractor or any guarantor.

4.6 Any defense based upon a statute of limitations and any defense based upon Owner's delay in enforcing this Guaranty.

4.7 All rights of subrogation, reimbursement, indemnity, all rights to enforce any remedy that Owner may have against Contractor, and all rights to participate in any security held by Owner for the Guarantied Obligations until the Guarantied Obligations have been paid and performed in full.

4.8 Any defense based upon or arising out of any defense that the Contractor or any other person may have to the performance of any part of the Guarantied Obligations other than Owner's prior material breach.

4.9 Any defense based upon the death, incapacity, lack of authority or termination of existence or revocation hereof by any person or entity or persons or entities, or the substitution of any party hereto.

4.10 Any defense based upon or related to Guarantor's lack of knowledge as to Contractor's financial condition.

4.11 Any and all rights to revoke this Guaranty in whole or in part.

4.12 Any defense based upon any action taken or omitted by Owner in any bankruptcy or other insolvency proceeding involving Contractor, including any election by Owner to pursue stay relief, any election to have Owner's claim allowed as secured, partially secured or unsecured, any action taken by the Owner in connection with a motion to assume, assign or reject the Contract, any extension of credit by the Owner to the Contractor in any such proceeding, and the taking and holding by the Owner of any security for any such extension of credit.

4.13 All rights and defenses arising out of an election of remedies by Owner, even though that election of remedies impairs or destroys Guarantor's right of subrogation and/or reimbursement against Contractor.

4.14 The applicability and the benefits of (i) Arizona Revised Statutes § 12-1641 and § 12-1642 and Arizona Rules of Civil Procedure 17(f), and (ii) any similar law or statute in effect from time to time for the benefit of sureties or guarantors applicable in any state governing this Guaranty or governing any assignment of this Guaranty by Owner.

5. Bankruptcy.

5.1 Until all of the Guarantied Obligations have been paid and performed in full, Guarantor shall not, without the prior written consent of Owner, commence, or join with any other person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Contractor. The obligations of Guarantor under this Guaranty shall not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Contractor, or by any defense Contractor may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. No limitation upon or stay of the enforcement of any obligation of Contractor by virtue of any such proceeding shall limit or stay Owner's enforcement of Guarantor's payment or performance of such obligation under this Guaranty. In furtherance of the foregoing, Guarantor agrees that if acceleration of the time for payment of any amount payable by Contractor under the Contract or in respect of the other Guarantied Obligations is stayed for any reason, all such amounts which would be subject to acceleration shall nonetheless be deemed to be accelerated for purposes of this Guaranty and the full amount thereof shall be payable by Guarantor hereunder forthwith upon demand.

5.2 Guarantor shall file in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law all claims that Guarantor may have against Contractor relating to any indebtedness of Contractor to Guarantor, and will upon request assign to Owner all rights of Guarantor thereunder. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim shall pay to Owner the amount payable on such claim. Guarantor hereby assigns to Owner all of the Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Owner receives cash by reason of any such payment or distribution. If Owner receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

6. Costs and Expenses. Guarantor agrees to pay, upon Owner's demand, Owner's reasonable out-of-pocket costs and expenses, including but not limited to attorneys' fees, costs and disbursements, incurred in any effort to collect or enforce any of the Guarantied Obligations or this Guaranty, regardless whether any lawsuit is filed, and in the representation of Owner in any insolvency, bankruptcy, reorganization or similar proceeding relating to Contractor or Guarantor. Until paid to Owner, such sums will bear interest from the date such costs and expenses are incurred at the rate set forth in the Contract for past due obligations. The obligations of the Guarantor under this Section shall include payment of all such costs and expenses incurred by Owner in enforcing any judgments.

7. Reinstatement. The liability of Guarantor hereunder shall be reinstated and revived, and the rights of Owner will continue, with respect to any amount at any time paid on account of the Guarantied Obligations which Owner is thereafter required to restore or return or which is avoided in connection with the bankruptcy, insolvency or reorganization of Contractor or otherwise, all as though such amount had not been paid. The determination as to whether any such payment or performance must be restored or returned will be made by Owner in its sole discretion; provided, however, that if Owner chooses to contest any such matter, Guarantor agrees to indemnify, defend and hold harmless Owner from all costs and expenses (including, without limitation, reasonable legal fees and disbursements) of such contest. Further, upon demand from Owner, Guarantor will restore or return such payment or performance directly on Owner's behalf in furtherance of Guarantor's obligations hereunder. Owner will be under no obligation to return or deliver this Guaranty to Guarantor, notwithstanding the payment of the Guarantied Obligations. If this Guaranty is nevertheless returned to Guarantor or is otherwise released, then the provisions of this Guaranty shall survive such return or release, and the liability of Guarantor under this Guaranty shall be reinstated and continued under the circumstances provided herein notwithstanding such return or release.

8. Subordination. Any indebtedness of Contractor to Guarantor now or hereafter existing shall be, and such indebtedness hereby is, deferred, postponed and subordinated to payment and performance of the Guarantied Obligations. Any payment made to Guarantor by Contractor or any third

party with respect to the indebtedness subordinated hereunder at any time when a Default exists under the Contract or while any Guarantied Obligations are otherwise then payable or performable shall be held in trust by Guarantor for the benefit of Owner and shall be turned over to Owner immediately upon receipt thereof for application by Owner against the Guarantied Obligations. Any lien, charge or claim which Guarantor now has or hereafter may have on or to any real or personal property of Contractor and any security for any loans, advances or other indebtedness of Contractor to Guarantor, shall be, and hereby is, subordinated to the payment and performance of the Guarantied Obligations.

9. Representations and Warranties. Guarantor, and each of the persons or entities executing this Guaranty as Guarantor individually, makes the following representations and warranties, which are deemed to be continuing representations and warranties until payment and performance in full of the Guarantied Obligations.

9.1 Guarantor has all the requisite power and authority to execute, deliver and be legally bound by this Guaranty on the terms and conditions herein stated.

9.2 Guarantor has all the requisite power and authority to transact any other business with Owner as necessary to fulfill the terms of this Guaranty.

9.3 This Guaranty constitutes the legal, valid and binding obligations of Guarantor enforceable against Guarantor in accordance with its terms.

9.4 Neither the execution and delivery of this Guaranty nor the consummation of the transaction contemplated hereby will, with or without notice and/or lapse of time, (a) constitute a breach of any of the terms and provisions of any note, contract, document, agreement or undertaking, whether written or oral, to which Guarantor is a party or to which Guarantor's property is subject; (b) accelerate or constitute any event entitling the holder of any indebtedness of Guarantor to accelerate the maturity of any such indebtedness; (c) conflict with or result in a breach of any writ, order, injunction or decree against Guarantor of any court or governmental agency or instrumentality; or (d) conflict with or be prohibited by any federal, state, local or other governmental law, statute, rule or regulation.

9.5 No consent of any other person not heretofore obtained and no consent, approval or authorization of any person or entity is required in connection with the valid execution, delivery or performance by Guarantor of this Guaranty.

9.6 Guarantor will receive substantial and material benefits from Owner entering into the Contract with Contractor and the consideration received by Guarantor for this Guaranty is sufficient in all respects.

9.7 Guarantor presently has and will at all times maintain sufficient assets and tangible net worth to timely pay and perform all of the Guarantied Obligations, and Guarantor will not take any action nor participate in any transaction which would materially impair Guarantor's ability to so pay and perform the Guarantied Obligations.

9.8 Neither this Guaranty nor any other statement furnished by Guarantor to Owner in connection with the transactions contemplated hereby (including, without limitation, any financial statements or other business information) contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statements contained herein or therein true and not misleading.

10. Joint and Several Liability. The obligations, waivers, promises, representations and warranties set forth herein are the joint and several undertakings of each of the persons or entities executing this Guaranty as a Guarantor and of any other guarantors or other persons or entities obligated from time to time with respect to the Guarantied Obligations. Owner may proceed hereunder against any one or more of said persons or entities without waiving its rights to proceed against any of the others.

Any married person who executes this Guaranty agrees that recourse may be had against his or her separate and community property.

11. Inducement; No Assignment. Guarantor acknowledges that the undertakings given in this Guaranty are given in consideration of Owner's entering into the Contract and that Owner would not enter into the Contract but for the execution and delivery of this Guaranty. Guarantor's obligations hereunder are personal to Guarantor and Guarantor may not assign or delegate any of its obligations under this Guaranty without Owner's prior written consent, which consent may be withheld in Owner's sole and absolute discretion.

12. Guarantor Information. Guarantor will promptly supply such financial statements and business information regarding Guarantor as may reasonably be requested from time to time by Owner or any lender or prospective purchaser of Owner for the purpose of evaluating the creditworthiness of Guarantor and Guarantor's ability to perform its obligations under this Guaranty.

13. Contractor's Financial Condition. Guarantor is relying upon its own knowledge and has made such investigation as Guarantor has deemed necessary with respect to Contractor's financial condition. Guarantor assumes full responsibility for keeping fully informed of the financial condition of Contractor and all other circumstances affecting Contractor's ability to pay and perform its obligations under the Contract, and agrees that Owner will have no duty to report to Guarantor any information which Owner receives about Contractor's financial condition or any circumstances bearing on Contractor's ability to perform. Guarantor agrees that Owner has made no representations or assurances regarding Contractor's financial condition or Contractor's ability to pay and perform Contractor's obligations under the Contract.

14. Default. The occurrence of any one or more of the following events shall, at the election of Owner, be deemed an event of default under this Guaranty: (a) Guarantor fails to pay any monetary Guarantied Obligation within five days after written demand from Owner; (b) Guarantor fails to perform any non-monetary Guarantied Obligation within 15 days after demand therefor from Owner (or, if Guarantor is not able through the use of commercially reasonable efforts to perform such Guarantied Obligation within a 15 day period, if Guarantor does not commence to perform such obligation within such 15 day period and diligently pursue such performance to completion within a reasonable amount of time after the expiration of the initial 15 day period); (c) Guarantor fails or neglects to perform, keep or observe any other term, provision, agreement or covenant contained in this Guaranty; (d) the commencement of any liquidation, reorganization, receivership, bankruptcy, assignment for the benefit of creditors or other similar proceeding by or against Guarantor (Guarantor hereby agreeing to consent to the granting of stay relief to Owner in any such proceeding); (e) if any representation or warranty made in this Guaranty shall be or become false in any material respect; or (f) the death, legal incapacity, dissolution or termination of the Guarantor. Upon the occurrence of an event of default under this Guaranty, at the option of Owner, the Guarantied Obligations shall be accelerated and shall all be due and payable and enforceable against Guarantor (regardless whether the Guarantied Obligations are then due and payable under the Contract or otherwise) and Owner may, in its sole discretion, in addition to any other right or remedy provided by law or at equity, all of which are cumulative and non-exclusive, proceed to suit against the Guarantor.

15. Transfer by Owner. Owner may sell, assign, or otherwise transfer its interest in the Project, the Contract or this Guaranty at any time. If Owner transfers (other than for collateral security purposes) the ownership of Owner's interest in the Contract, this Guaranty shall, unless Owner elects otherwise in writing, automatically apply in favor of the transferee with respect to all Guarantied Obligations arising or accruing from and after the date of the transfer. In addition, this Guaranty shall remain in full force and effect in favor of the transferor with respect to all Guarantied Obligations arising or accruing under the Contract prior to the date of the transfer including, without limitation, all Guarantied Obligations relating to Contractor's indemnity and insurance obligations (and similar obligations) under the Contract with respect to matters arising or accruing during the transferor's period of ownership.

16. Governing Law; Exclusive Forum; Service of Process. This Guaranty shall be governed by and construed under the internal laws of the State of Arizona (except to the extent otherwise provided

in an assignment of this Guaranty by Owner or in a consent by Guarantor to such an assignment). Each Guarantor hereby unconditionally consents and agrees that any legal action brought under this Guaranty may be brought in any State Court of the State of Arizona or in a Federal United States Court in Arizona, and each Guarantor hereby unconditionally consents to the jurisdiction of such courts in connection with any cause of action brought by or against Contractor and/or such Guarantor in any way directly or indirectly related to the Contract or this Guaranty. Further, each Guarantor hereby irrevocably and unconditionally appoints the Contractor as its duly authorized agent(s) for the service of process in connection with any such cause of action and may be considered a fully authorized agent for service of process. Nothing herein shall prevent Owner from serving process in any other manner permitted by law.

17. Severability. If any one or more of the covenants, provisions or terms of this Guaranty is, in any respect, held to be invalid, illegal or unenforceable for any reason, the remaining portion thereof and all other covenants, conditions, provisions, and terms of this Guaranty will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

18. Notices. All notices, demands and other communications with, to, from or upon the Guarantor and the Owner required or permitted hereunder shall be in writing, addressed to the parties at their respective addresses as follows: (a) with respect to Owner, to the notice address(es) for Owner under the Contract; and (b) with respect to Guarantor, unless a separate notice address is specified on the signature page of this Guaranty, to Guarantor in care of Contractor at the notice address(es) for Contractor under the Contract; or (c) as to either, at such other address as shall be designated in a written notice to the other complying with the terms of this Section. All such communications shall be deemed effective upon the earliest of (i) actual delivery if delivered by personal delivery; (ii) four Business Days following deposit, first class postage prepaid, with the United States mail; (iii) if sent by certified postage prepaid mail, upon the earliest to occur of (A) four Business Days following deposit thereof in the United States mail, or (B) receipt (or refusal to accept delivery); or (iv) on the next Business Day after deposit with an overnight air courier with request for next business day delivery.

19. Miscellaneous. No provision of this Guaranty or Owner's rights hereunder may be waived or modified nor can Guarantor be released from its obligations hereunder except by a writing executed by Owner. No such waiver shall be applicable except in the specific instance for which given. No delay or failure by Owner to exercise any right or remedy against Contractor or Guarantor will be construed as a waiver of that right or remedy. All remedies of Owner against Contractor and Guarantor are cumulative. The provisions of this Guaranty will bind and benefit the heirs, executors, administrators, legal representatives, successors and assigns of Guarantor and Owner. The term "Contractor" will mean not only the Contractor named herein but also any other person or entity at any time occupying all or any portion of the Premises or assuming or otherwise becoming liable (other than as a guarantor) for all or any part of the Guarantied Obligations. This Guaranty constitutes the entire agreement between Guarantor and Owner with respect to its subject matter, and supersedes all prior or contemporaneous agreements, representations and understandings.

All headings in this Guaranty are for convenience only and shall be disregarded in construing the substantive provisions of this Guaranty.

IN WITNESS WHEREOF, this Guaranty has been duly executed on behalf of Guarantor and delivered to Owner as of the date set forth above, to be effective as of the effective date set forth in the Contract.

GUARANTOR:

ALLIANCE RESIDENTIAL HOLDINGS, L.L.C., an Arizona limited liability company

By _____
Name: Patrick W. Burkes
Title: Vice President

Notice Address for Guarantor:

c/o Alliance Residential Company
4808 North 22nd Street, Suite 200
Phoenix, Arizona 85016
Attention: Jay Hiemenz/John Rippel

With copy to:

The Henderson Law Firm
2415 East Camelback Road, Suite 700
Phoenix, Arizona 85016
Attention: Scott K. Henderson, Esq.

ATTACHMENT 9

CONSENT OF DEVELOPMENT MANAGER

This **CONSENT OF DEVELOPMENT MANAGER** dated as of August 31, 2007, is executed by **BROADSTONE CYPRESS ALLIANCE, LP**, a Texas limited partnership ("BCA"), **OPUS WEST LP**, a Delaware limited partnership ("Opus West"; and together with BCA, the "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)(the "Agent").

RECITALS:

A. Concurrently herewith, the Banks have agreed to make loans (collectively, the "Loans") in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) to Broadstone Cypress, L.P., a Delaware limited partnership (the "Borrower"), in accordance with the terms, provisions and conditions of that certain Construction Loan Agreement by and among Borrower, Agent, as agent, and the Banks of even date herewith (as amended from time to time, the "Loan Agreement").

B. The Borrower owns fee simple title to certain real estate and improvements (collectively, the "Property") located at in Cypress, Texas, and legally described in Exhibit "A" attached hereto.

C. The Borrower, as owner, has entered into that certain Development Advisory and Management Agreement with Assignor dated August 30, 2007 (the "Contract"), pursuant to which the Assignor has agreed to perform general project coordination, development management and supervisory services in connection with the construction of certain improvements to be made to the Property (the "Improvements").

D. As a condition to the Banks making the Loans to the Borrower, the Banks have required that: (i) the Borrower collaterally assign the Contract to the Agent pursuant to an assignment (the "Assignment") substantially in the form of Exhibit "B" attached hereto; (ii) the Assignor consent to the terms of the Assignment in favor of the Agent and agree that, upon the Agent's request, the Assignor will continue to perform its duties and obligations under the Contract upon the occurrence of an "Event of Default" (as defined in the Assignment) by the Borrower under the Assignment or any of the other documents and instruments evidencing or securing the Loans (collectively, the "Loan Documents"); and (iii) the Assignor agree to permit the Agent, at the Agent's option, to terminate the Contract after the occurrence of an Event of Default by the Borrower under any of the Loan Documents.

E. The Assignor will benefit if the Loans are made to the Borrower, since a portion of the proceeds of the Loans will be used to pay amounts owing to the Assignor under the Contract.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor hereby agrees as follows:

AGREEMENTS:

1. The Assignor hereby consents to the terms of the Assignment notwithstanding any term to the contrary contained in the Contract. The Assignor hereby agrees that if an Event of Default has occurred under the Loan Documents and such Event of Default is not cured within any applicable grace or cure period expressly provided for in any such Loan Document and if the Agent has given written notice to the Assignor of such Event of Default, then the Agent shall have the right, at the Agent's option, either to terminate the Contract or to require that the Assignor perform its obligations under the Contract for the benefit of the Agent. The Agent shall exercise one of such options by giving written notice to the Assignor stating that such Event of Default has occurred under the Loan Documents and indicating the Agent's intent to either exercise its rights under the Assignment or to terminate the Contract. If the Agent elects to exercise its rights under the Assignment, then the Assignor shall perform all of its duties and obligations under the Contract for the benefit of the Agent regardless of any prior default by the Borrower or any other party under the Contract, provided that the Agent pays to the Assignor the fees for those services rendered to the Agent, at the Agent's request, in accordance with the terms of the Contract, and provided further, however, the payment of such fees are to be deferred pursuant to the Loan Agreement. Agent shall pay such fees as permitted pursuant to the Loan Agreement. If the Agent terminates the Contract, the Agent shall not have any liability to the Assignor under the Contract and the Assignor's sole recourse shall be against the Borrower.

2. The Assignor hereby acknowledges that the Assignment and the exercise by the Agent of any of its rights and remedies thereunder shall not render the Agent liable to the Assignor for any obligations of the Borrower or any other party under the Contract. Without limiting the generality of the foregoing, the Assignor agrees that the Agent shall not be liable pursuant to any indemnity provisions under the Contract, including any indemnity provisions with respect to the existence of asbestos or other hazardous substances or materials or other environmental problems concerning the Property.

3. The Assignor certifies that no party is in default under the Contract as of the date hereof and there are not any circumstances which would constitute a default with the giving of notice, the passage of time, or both. The Assignor agrees not to enter into any amendment or modification of the Contract without the prior written consent of the Agent.

4. The Assignor agrees to give prompt written notice to the Agent of any default or breach by the Borrower of any of its obligations or duties under the Contract, and that, prior to the Assignor exercising any of its rights or remedies under the Contract, the Agent shall have an opportunity to remedy or cure such breach for a period of thirty (30) days after receipt of notice thereof; provided, however, that if such breach cannot reasonably be remedied or cured within such thirty (30) day period, the Agent shall have such additional reasonable period of time as the Agent requires to effect a remedy or cure, so long as the Agent commences the remedy or cure within the aforesaid thirty (30) day period and diligently pursues such remedy or cure thereafter. If Agent remedies or cures the breach, Assignor shall accept such remedy or cure and not pursue any rights under the Contract as a result thereof.

5. For purposes of this Agreement, all notices, demands or documents required or permitted to be given to either party shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

To the Agent:	LaSalle Bank National Association 135 South LaSalle Street Suite 1211 Chicago, Illinois 60603 Attn: Don Broderick, First Vice President
With a copy to:	LaSalle Bank National Association 135 South LaSalle Street Suite 1425 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 _____:	_____ _____ _____ _____
To Opus West:	Opus West Corporation 2555 East Camelback Road, Suite 800 Phoenix, Arizona 85016 Attn: President
With a copy to:	Opus West Corporation 2555 East Camelback Road, Suite 800 Phoenix, Arizona 85016 Attn: Legal Departments
and to:	Gallagher & Kennedy, P.A. 2575 East Camelback Road Phoenix, Arizona 85016 Attn: Gregory L. Mast

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 section shall be

deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

6. This Agreement shall be binding upon and inure to the benefit of the Agent and the Assignor and their respective successors and assigns. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Illinois. All provisions of this Agreement shall be deemed valid and enforceable to the extent permitted by law. Any provision or provisions of this Agreement 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 Agreement shall subsist and remain and be fully effective according to the terms of this Agreement as though such invalid, unenforceable or unlawful provision or provision had not been included in this Agreement. Time is of the essence of this Agreement.

7. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Consent of Development Manager has been executed and delivered as of the date first above written.

BROADSTONE CYPRESS ALLIANCE, LP, a Texas limited Partnership

By: Alliance GP II, Inc., a Texas corporation, its general partner

By: _____
Name: Patrick W. Dukes
Title: Vice President

OPUS WEST:

OPUS WEST LP, a Delaware limited partnership

By: Opus West Corporation, a Minnesota corporation, its General Partner

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Consent of Development Manager has been executed and delivered as of the date first above written.

BROADSTONE CYPRESS ALLIANCE, LP, a Texas limited Partnership

By: Alliance GP II, Inc., a Texas corporation, its general partner

By:_____
Name: Patrick W. Dukes
Title: Vice President

OPUS WEST:

OPUS WEST LP, a Delaware limited partnership

By: Opus West Corporation, a Minnesota corporation, its General Partner

By:_____
Name:_____
Title:_____

IN WITNESS WHEREOF, this Consent of Development Manager has been executed and delivered as of the date first above written.

_____

_____, a
_____

By: _____
_____

By:_____
Name:_____
Title:_____

OPUS WEST:

OPUS WEST LP, a Delaware limited partnership

By: Opus West Corporation, a Minnesota corporation, its General Partner

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

EXHIBIT A

LEGAL DESCRIPTION

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

EXHIBIT "B"

FORM OF ASSIGNMENT

ASSIGNMENT OF PLANS, SPECIFICATIONS,
CONSTRUCTION AND SERVICE CONTRACTS, PERMITS AND LICENSES

ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, LICENSES AND PERMITS

THIS ASSIGNMENT is made and delivered as of this 31st day of August, 2007 by **BROADSTONE CYPRESS, L.P.** a Delaware limited partnership ("Debtor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Secured Party").

RECITALS:

A. The Banks have agreed to make loans (collectively, the "Loans") to Debtor in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) 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 those certain (i) Amended and Restated Promissory Note of even date herewith executed by Borrower in favor of LaSalle Bank National Association, a national banking association ("LaSalle"), as a Bank, in the principal amount of $8,504,211.00, (ii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $15,000,000.00, and (iii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $3,818,789.00 (such notes, as amended from time to time, collectively, the "Notes").

B. The Notes are secured, inter alia, by an Amended and Restated Commercial 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, obligations and liabilities of Debtor to Secured Party, and evidenced by or secured by or otherwise provided in the Loan Agreement, the Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes 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 Illinois. 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 NOTES, 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.**

IN WITNESS WHEREOF, Debtor has caused this Assignment to be executed as of the date first above written.

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

ATTACHMENT 10

CONSTRUCTION CONSULTANT'S CONSENT AGREEMENT

THIS CONSTRUCTION CONSULTANT'S CONSENT AGREEMENT is entered into as of this 31st day of August, 2007, by **OPUS WEST CONSTRUCTION CORPORATION**, a Minnesota corporation ("Consultant"), 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) ("Agent").

RECITALS:

A. Concurrently herewith, the Banks have agreed to make loans (collectively, the "Loans") in the aggregate principal amount of $27,323,000.00 to Broadstone Cypress, L.P., a Delaware limited partnership ("Borrower") in accordance with the terms, provisions and conditions of that certain Construction Loan Agreement by and among Borrower, Agent, as agent, and the Banks of even date herewith (as amended from time to time, the "Loan Agreement").

B. Borrower owns fee simple title to certain real estate and improvements (collectively, "Property") located in Cypress, Texas, and legally described in Exhibit A attached hereto.

C. Borrower, as owner, has entered into a Construction Consultant Agreement ("Contract") with Consultant dated August 30, 2007 pursuant to which Consultant has agreed to perform general construction advisory services in connection with the construction of certain improvements to be made to the Property ("Improvements").

D. As a condition to the Banks making the Loans to Borrower, the Banks have required that: (i) Borrower collaterally assign the Contract to Agent pursuant to an assignment ("Assignment") substantially in the form of Exhibit B attached hereto; (ii) Consultant consent to the terms of the Assignment in favor of Agent and agree that, upon Agent's request, Consultant will continue to perform its duties and obligations under the Contract in the event of a default by Borrower under the Assignment or the other documents and instruments evidencing or securing the Loans (collectively, "Loan Documents"); and (iii) Consultant agree to permit Agent, at Agent's option, to terminate the Contract after the occurrence of a default by Borrower under the Loan Documents.

E. Consultant will benefit if the Loans are made to Borrower, since a portion of the proceeds of the Loans will be used to pay amounts owing to Consultant under the Contract.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Consultant hereby agrees as follows:

1. Consultant hereby consents to the terms of the Assignment notwithstanding any terms to the contrary contained in the Contract. Consultant hereby agrees that if an event of default has occurred under the Loan Documents and such default is not cured within any applicable grace

or cure period expressly provided for in any such Loan Document and if Agent has given written notice from Agent to Consultant of such default, then Agent shall have the right, at Agent's option, either to terminate the Contract or to require that Consultant perform its obligations under the Contract for the benefit of Agent. Agent shall exercise one of such options by giving written notice to Consultant stating that such default has occurred under the Loan Documents and indicating Agent's intent to either exercise its rights under the Assignment or to terminate the Contract. If Agent elects to exercise its rights under the Assignment, then Consultant shall perform all of its duties and obligations under the Contract for the benefit of Agent regardless of any prior default by Borrower or any other party under the Contract, provided that Agent pays to Consultant the fees for those services rendered to Agent, at Agent 's request, in accordance with the terms of the Contract, and provided further, however, the payment of such fees are to be deferred pursuant to the Loan Agreement. Agent shall pay such fees as permitted pursuant to the Loan Agreement. If Agent terminates the Contract, Agent shall not have any liability to Consultant under the Contract and Consultant's sole recourse shall be against Borrower.

2. Consultant hereby acknowledges that the Assignment and the exercise by Agent of any of its rights and remedies thereunder shall not render Agent liable to Consultant for any obligations of Borrower or any other party under the Contract. Without limiting the generality of the foregoing, Consultant agrees that Agent shall not be liable pursuant to any indemnity provisions under the Contract, including any indemnity provisions with respect to the existence of asbestos or other hazardous substances or materials or other environmental problems concerning the Property.

3. Consultant certifies that no party is in default under the Contract as of the date hereof and there are not any circumstances which would constitute a default upon the passage of time, the giving of notice, or both. Consultant agrees not to enter into any amendment or modification of the Contract without the prior written consent of Agent.

4. Consultant agrees to give prompt written notice to Agent of any default or breach by Borrower of any of its obligations or duties under the Contract, and that, prior to Consultant exercising any of its rights or remedies under the Contract, Agent shall have an opportunity to remedy or cure such breach for a period of thirty (30) days after receipt of notice thereof; provided, however, that if such breach cannot reasonably be remedied or cured within such 30-day period, Agent shall have such additional reasonable period of time as Agent requires to effect a remedy or cure so long as Agent commences the remedy or cure within the aforesaid 30-day period and diligently pursues such remedy or cure thereafter. If Agent remedies or cures the breach, Consultant shall accept such remedy or cure and not pursue any rights under the Contract as a result thereof.

5. For purposes of this Agreement, all notices, demands or documents required or permitted to be given to either party shall be deemed to have been given if hand delivered, or if mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed to said party as follows:

To Agent:	LaSalle Bank National Association Suite 1211 135 South LaSalle Street Chicago, Illinois 60603 Attn: Don Broderick, First 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 Suite 2700 180 North LaSalle Street Chicago, IL 60601 Attention: Michael S. Kurtzon, Esq.
To Consultant:	Opus West Construction Corporation 15455 North Dallas Parkway, Suite 450 Addison, Texas 75001 Attn: Senior Director of Construction
And:	Opus West Corporation 2555 East Camelback Road, Suite 800 Phoenix, Arizona 85016 Attn: Legal Department

6. This Agreement shall be binding upon and inure to the benefit of Agent and Consultant and their respective successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

OPUS WEST CONSTRUCTION CORPORATION, a Minnesota corporation

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

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

EXHIBIT B

Form of Assignment

SEE ATTACHED ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, PERMITS AND LICENSES

ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, LICENSES AND PERMITS

THIS ASSIGNMENT is made and delivered as of this 31st day of August, 2007 by **BROADSTONE CYPRESS, L.P.** a Delaware limited partnership ("Debtor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Secured Party").

RECITALS:

A. The Banks have agreed to make loans (collectively, the "Loans") to Debtor in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) 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 those certain (i) Amended and Restated Promissory Note of even date herewith executed by Borrower in favor of LaSalle Bank National Association, a national banking association ("LaSalle"), as a Bank, in the principal amount of $8,504,211.00, (ii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $15,000,000.00, and (iii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $3,818,789.00 (such notes, as amended from time to time, collectively, the "Notes").

B. The Notes are secured, inter alia, by an Amended and Restated Commercial 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, obligations and liabilities of Debtor to Secured Party, and evidenced by or secured by or otherwise provided in the Loan Agreement, the Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes 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 Illinois. 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 NOTES, 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.**

IN WITNESS WHEREOF, Debtor has caused this Assignment to be executed as of the date first above written.

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

ATTACHMENT 11

CONTRACTOR'S CONSENT AGREEMENT

THIS CONTRACTOR'S CONSENT AGREEMENT ("Agreement") is entered into as of this 31st day of August, 2007, by **ALLIANCE RESIDENTIAL BUILDERS, LP**, a Delaware limited partnership ("Contractor"), 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) ("Agent").

RECITALS:

A. Concurrently herewith, the Banks have agreed to make loans (collectively, the "Loans") in the aggregate principal amount of $27,323,000.00 to Broadstone Cypress, L.P., a Delaware limited partnership ("Borrower"), in accordance with the terms, provisions and conditions of that certain Construction Loan Agreement by and among Borrower, Agent, as agent, and the Banks of even date herewith (as amended from time to time, the "Loan Agreement").

B. Borrower owns fee simple title to certain real estate and improvements (collectively, "Property") located in League City, Texas, and legally described in Exhibit A attached hereto.

C. Borrower, as owner, has entered into a written agreement ("Contract") with Contractor dated August 30, 2007, pursuant to which Contractor has agreed to perform general contracting services in connection with the construction of certain improvements to be made to the Property ("Improvements").

D. As a condition to the Banks making the Loans to Borrower, the Banks have required that: (i) Borrower collaterally assign the Contract to Agent pursuant to an assignment ("Assignment") substantially in the form of Exhibit B attached hereto; (ii) Contractor consent to the terms of the Assignment in favor of Agent and agree that, upon Agent's request, Contractor will continue to perform its duties and obligations under the Contract upon the occurrence of an "Event of Default" (as defined in the Assignment) by Borrower under the Assignment or any of the other documents and instruments evidencing or securing the Loans (collectively, "Loan Documents"); and (iii) Contractor agree to permit Agent, at Agent's option, to terminate the Contract after the occurrence of an Event of Default by Borrower under any of the Loan Documents.

E. Contractor will benefit if the Loans are made to Borrower, since a portion of the proceeds of the Loans will be used to pay amounts owing to Contractor under the Contract.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor hereby agrees as follows:

1. Contractor hereby consents to the terms of the Assignment notwithstanding any terms to the contrary contained in the Contract. Contractor hereby agrees that if an Event of Default has

occurred under the Loan Documents and such Event of Default is not cured within any applicable grace or cure period expressly provided for in any such Loan Document and if Agent has given written notice from Agent to Contractor of such Event of Default, then Agent shall have the right, at Agent's option, either to terminate the Contract or to require that Contractor perform its obligations under the Contract for the benefit of Agent. Agent shall exercise one of such options by giving written notice to Contractor stating that such Event of Default has occurred under the Loan Documents and indicating Agent's intent to either exercise its rights under the Assignment or to terminate the Contract. If Agent elects to exercise its rights under the Assignment, then Contractor shall perform all of its duties and obligations under the Contract for the benefit of Agent regardless of any prior default by Borrower or any other party under the Contract, provided that Agent pays to Contractor the fees for those services rendered to Agent, at Agent's request, in accordance with the terms of the Contract. If Agent terminates the Contract, Agent shall not have any liability to Contractor under the Contract and Contractor's sole recourse shall be against Borrower.

2. Contractor hereby acknowledges that the Assignment and the exercise by Agent of any of its rights and remedies thereunder shall not render Agent liable to Contractor for any obligations of Borrower or any other party under the Contract. Without limiting the generality of the foregoing, Contractor agrees that Agent shall not be liable pursuant to any indemnity provisions under the Contract, including any indemnity provisions with respect to the existence of asbestos or other hazardous substances or materials or other environmental problems concerning the Property.

3. Contractor certifies that no party is in default under the Contract as of the date hereof and there are not any circumstances which would constitute a default upon the passage of time, the giving of notice, or both. Contractor agrees not to enter into any amendment or modification of the Contract without the prior written consent of Agent.

4. Contractor agrees to give prompt written notice to Agent of any default or breach by Borrower of any of its obligations or duties under the Contract, and that, prior to Contractor exercising any of its rights or remedies under the Contract, Agent shall have an opportunity to remedy or cure such breach for a period of thirty (30) days after receipt of notice thereof; provided, however, that if such breach cannot reasonably be remedied or cured within such 30-day period, Agent shall have such additional reasonable period of time as Agent requires to effect a remedy or cure so long as Agent commences the remedy or cure within the aforesaid 30-day period and diligently pursues such remedy or cure thereafter. If Agent remedies or cures the breach, Contractor shall accept such remedy or cure and not pursue any rights under the Contract as a result thereof.

5. For purposes of this Agreement, all notices, demands or documents required or permitted to be given to either party shall be in writing and shall be (a) delivered in person, (b) mailed, postage pre-paid, either by registered or certified mail, return receipt requested, or (c) sent by overnight express carrier, addressed in each case as follows:

To Agent:	LaSalle Bank National Association Suite 1211 135 South LaSalle Street Chicago, Illinois 60603 Attn: Don Broderick, First 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 Suite 2700 180 North LaSalle Street Chicago, IL 60601 Attn: Michael S. Kurtzon, Esq.
To Contractor:	Alliance Residential Builders, LP 2415 E. Camelback Rd., 6th Floor Phoenix, Arizona 85016 Attn: Mr. Jay Himenez and Mr. John Rippel
With a copy to:	The Henderson Law Firm 2415 East Camelback Road Suite 1050 Phoenix, Arizona 85016 Attn: Scott Henderson, 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 section shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

6. This Agreement shall be binding upon and inure to the benefit of Agent and Contractor and their respective successors and assigns. The Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Illinois. All provisions of this Agreement shall be deemed valid and enforceable to the extent permitted by law. Any provision or provisions of this Agreement 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 Agreement shall subsist and remain and be fully effective according to the terms of this

Agreement as though such invalid, unenforceable or unlawful provision or provisions had not been included in this Agreement. Time is of the essence of this Agreement.

7. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

ALLIANCE RESIDENTIAL BUILDERS, LP, a Delaware limited partnership

By: Alliance Residential Builders, LLC, an Arizona limited liability company, its General Partner

By: _____
Name: Patrick W. Dukes
Title: Vice President

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May ___, 2007, recorded under Harris County Clerk's File No. _____.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May ___, 2007, recorded under Harris County Clerk's File No. _____.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

EXHIBIT B

Form of Assignment

SEE ATTACHED ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, PERMITS AND LICENSES

ASSIGNMENT OF PLANS, SPECIFICATIONS, CONSTRUCTION AND SERVICE CONTRACTS, LICENSES AND PERMITS

THIS ASSIGNMENT is made and delivered as of this 31st day of August, 2007 by **BROADSTONE CYPRESS, L.P.** a Delaware limited partnership ("Debtor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, its successors and assigns, as Agent for itself and the other Banks (as defined in the Loan Agreement referenced below) ("Secured Party").

RECITALS:

A. The Banks have agreed to make loans (collectively, the "Loans") to Debtor in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and 00/100 Dollars ($27,323,000.00) 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 those certain (i) Amended and Restated Promissory Note of even date herewith executed by Borrower in favor of LaSalle Bank National Association, a national banking association ("LaSalle"), as a Bank, in the principal amount of $8,504,211.00, (ii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $15,000,000.00, and (iii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $3,818,789.00 (such notes, as amended from time to time, collectively, the "Notes").

B. The Notes are secured, inter alia, by an Amended and Restated Commercial 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, obligations and liabilities of Debtor to Secured Party, and evidenced by or secured by or otherwise provided in the Loan Agreement, the Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes, 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 Notes 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 Illinois. 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 NOTES, 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.**

IN WITNESS WHEREOF, Debtor has caused this Assignment to be executed as of the date first above written.

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

By: OWR Cypress, Inc., a Delaware corporation, its general partner

By: _____
Name: _____
Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. Moody Survey, Abstract 547, the H.T.&B.R.R. Co. Sec. 1 Survey, Abstract 403, and the M. Burress Survey, Abstract 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A-1."

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

EXHIBIT A-1

LEGAL DESCRIPTION

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T. & B.R.R. Co. Sec. 1 Survey, A-403 and the M. Buress Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Mueschke Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;

2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;

3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;

4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;

5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 539173 of the Harris County Map Records, from which a ¾-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,058.12 feet to a ¾-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 fee to a ¾-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.848 acres of land.

Address: 14.848 acres (vacant land)
Located at the NE corner of Mueschke Road and U.S. Highway 290
Cypress, Texas

ATTACHMENT 12

BANK OF AMERICA
201 East Washington Street, 22nd Floor
AZ1-200-22-17
Phoenix, Arizona 85004-2343

March 21, 2008

Opus West Corporation
Opus West LP
O.W. Commercial , Inc.
PC 101, Inc.
Shoppes at Chino Hills, Inc.
Broadstone Cypress, L.P.
Hill Country Apartments, L.P.
Arch Road Limited Partnership
Broadstone Walker Commons, L.P.
Irvine Center Partners III, L.L.C.
Hill Country Galleria, L.P.
Broadstone Galleria, L.P.
2555 East Camelback, Suite 800
Phoenix, Arizona 85016-9267
Attention: Senior Vice President, Real Estate
Finance and Sales

Re: BANK OF AMERICA, N.A., a national banking association, on behalf of itself and as agent for other Lenders ("Lender"), loans to OPUS WEST CORPORATION, a Minnesota corporation ("OPUS"), and various affiliates

Ladies/Gentlemen:

Lender has entered into and hereby modifies the following loan agreements, guaranty agreements, promissory notes, and certificates of representations, warranties, and covenants with OPUS and various affiliates for assorted financings (collectively, the "Loans"):

(i) a Loan Agreement by and between Lender and OPUS, as borrower, dated July 28, 2003 (as amended from time to time, the "Opus RLC Agreement");

(ii) a Construction Loan Agreement by and between Lender and OPUS, as borrower, dated March 13, 2007 (as amended from time to time, the "Commons at Chino Hills Construction Agreement");

(iii) a Construction Loan Agreement by and between Lender and OPUS and O.W. COMMERCIAL, INC., a Delaware corporation, jointly and severally,

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

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

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

(vi) a Construction Loan Agreement by and between Lender and SHOPPES AT CHINO HILLS, INC., a Minnesota corporation, as borrower, dated May 16, 2007 (as amended from time to time, the "Shoppes at Chino Hills Agreement") and OPUS as guarantor pursuant to a Guaranty Agreement dated May 16, 2007 (as amended from time to time, the "Shoppes at Chino Hills Guaranty");

(vii) a Construction Loan Agreement by and between Lender and O.W. COMMERCIAL, INC., a Delaware corporation, as borrower, dated May 29, 2007 (as amended from time to time, the "Freemont Tech Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated May 29, 2007 (as amended from time to time, the "Freemont Tech Guaranty");

(viii) a Construction Loan Agreement by and between Lender and PC 101, INC., a Delaware corporation, as borrower, dated May 31, 2005 (as amended from time to time, the "Pima Center Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated May 31, 2005 (as amended from time to time, the "Pima Center Guaranty");

(ix) a Construction Loan Agreement by and between Lender and PC 101, INC., a Delaware corporation, as borrower, dated December 6, 2007 (as amended from time to time, the "Pima Center III-C Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated December 6, 2007 (as amended from time to time, the "Pima Center III-C Guaranty");

(x) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and BROADSTONE CYPRESS, L.P., a Delaware limited partnership, as borrower, dated August 31, 2007 (as amended from time to time,

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

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

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

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

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

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

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

executed by OPUS dated July 5, 2006 (as amended from time to time, the "Stanford Ranch Certificate");

(xvii) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and BROADSTONE WALKER COMMONS, L.P., a Delaware limited partnership, as borrower, dated August 31, 2007 (as amended from time to time, the "Walker Commons Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated August 31, 2007 (as amended from time to time, the "Walker Commons Construction Guaranty");

(xviii) an Amended and Restated Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and IRVINE CENTER PARTNERS III, L.L.C., a Delaware limited liability company, as borrower, dated October 31, 2006 (as amended from time to time, the "Irvine Center Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated October 11, 2006 (as amended from time to time, the "Irvine Center Construction Guaranty");

(xix) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and HILL COUNTRY GALLERIA, L.P., a Delaware limited partnership, as borrower, dated July 27, 2006 (as amended from time to time, the "Hill Country Galleria Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated July 27, 2006 (as amended from time to time, the "Hill Country Galleria Construction Guaranty");

(xx) a Construction Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and BROADSTONE GALLERIA, L.P., a Delaware limited partnership, as borrower, dated July 30, 2006 (as amended from time to time, the "Broadstone Galleria Construction Agreement") and OPUS as a guarantor pursuant to a Guaranty Agreement dated June 30, 2006 (as amended from time to time, the "Broadstone Galleria Construction Guaranty"); and

(xxi) a Loan Agreement by and between Lender, as successor by merger to LaSalle Bank National Association, a national banking association, and OPUS, as borrower, dated May 29, 2003 (as amended from time to time, the "Opus May RLC Agreement").

The documents evidencing, securing, guaranteeing or executed and delivered in connection with the Loans, including, without limitation, the Loan Agreements executed in connection with the Loans (collectively, as amended from time to time, the "Loan Agreements"), the Guaranties executed in connection with the Loans (collectively, as amended from time to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Sections 4.27, 4.28 and 4.29 of the Freemont Tech Agreement, the Pima Center Agreement and the Pima Center III-C Agreement are hereby amended in their entirety to read as follows:

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

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

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

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

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

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

(b) Guarantor hereby agrees as follows:

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

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

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

7. Section 13(B) of the Shoppes at Chino Hills Guaranty and the Freemont Tech Guaranty are hereby amended in their entirety to read as follows:

B. Guarantor hereby agrees as follows:

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

(ii) to maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million And No/100 Dollars ($125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars ($100,000,000.00) thereafter. "Tangible Net Worth" means the gross book value of the assets of Guarantor (excluding goodwill, patents, trademarks, trade names,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) to furnish to Lender certified annual financial statements within one hundred twenty (120) days after the close of each fiscal year; and

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

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

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

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

13. Sections 8.14(a), (b), (c), (d), and (e) of the Scripps Ranch Construction Agreement are hereby amended in their entirety to read as follows:

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

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

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

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

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

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

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

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

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

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

16. The following definitions are hereby added to Section 1.1 of the Broadstone Galleria Construction Agreement:

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

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

17. Sections 8.13, 8.14, and 8.15 of the Broadstone Galleria Construction Agreement are hereby amended in their entirety to read as follows:

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

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

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

18. Section 8.16 of the Broadstone Galleria Construction Agreement is hereby deleted in its entirety.

19. The following definitions are hereby added to Section 1.1 of the Opus May RLC Agreement:

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

20. Sections 5.4(b), (c), and (d) of the Opus May RLC Agreement are hereby amended in their entirety to read as follows:

> (b) Borrower shall maintain during the life of the Loan at the end of each fiscal quarter, unpledged cash, cash equivalents as determined by generally accepted accounting principles, and marketable securities ("Liquidity") of not less than Three Million And No/100 Dollars ($3,000,000.00).
>
> (c) Borrower shall maintain at the end of each fiscal quarter on a consolidated basis Tangible Net Worth plus subordinated debt equal to at least One Hundred Twenty-Five Million AND No/100 Dollars ($125,000,000.00) for fiscal year 2008 and One Hundred Million And No/100 Dollars ($100,000,000.00) thereafter.
>
> (d) Borrower shall maintain at the end of each fiscal quarter on a consolidated basis a ratio of Total Liabilities to Tangible Net Worth not exceeding 6.0 to 1.0 through December 31, 2008, and 5.0 to 1.0 thereafter.

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

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

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

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

With respect to the Opus RLC Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Commons at Chino Hills Construction Agreement:

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Camarillo Ranch Agreement:

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

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

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

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

With respect to the Highland Village Condos Agreement and the Highland Village Condos Guaranty:

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

OPUS WEST LP, a Delaware limited partnership, Borrower

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

OPUS WEST LP, a Delaware limited partnership, Borrower

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

SHOPPES AT CHINO HILLS, INC., a Minnesota corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

With respect to the 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: _____
Name: Charles Vogel
Title: Vice President

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

Opus West Corporation
March 21, 2008
Page 26

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

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

PC 101, INC., a Delaware corporation

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

QBACTIVE\6108299.5

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

Acknowledged and Agreed to as of the 25 day of March, 2008

ARCH ROAD LIMITED PARTNERSHIP, a Delaware limited partnership

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

OPUS WEST CORPORATION, a Minnesota corporation

By: _____
Name: _____
Title: _____

BORROWER

Opus West Corporation
March 21, 2008
Page 32

With respect to the Seripps Ranch Construction Agreement:

Acknowledged and Agreed to as of the 2nd day of [illegible], 2008

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

Opus West Corporation
March 21, 2008
Page 33

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

Acknowledged and agreed to as of the 20 day of March, 2008.

OPUS WEST CORPORATION, a Minnesota corporation

By: _____
Name: _____
Title: _____

BORROWER

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

Acknowledged and Agreed to as of the 2nd day of March, 2008

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

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

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

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

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

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

BORROWER

OPUS WEST CORPORATION, a Minnesota corporation

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

BORROWER

CONSENT AND AGREEMENT OF GUARANTOR

The undersigned ("Guarantor") executed guarantees in connection with one or more of the Loans described and defined in the foregoing letter agreement. The Guarantor hereby consents and agrees to the modifications and all other matters contained in the letter agreement and agrees that nothing contained in the letter agreement shall in any manner affect or impair any of the obligations or liabilities of the undersigned Guarantor to Lender. Each guaranty executed by the Guarantor in connection with one or more of the Loans is continued in full force and effect and remains unaffected and unchanged except to the extent specifically amended by this consent and agreement. All such guaranties are hereby ratified and reaffirmed and Guarantor specifically acknowledges the validity and enforceability thereof.

Dated as of March 20, 2008.

OPUS WEST CORPORATION, a Minnesota corporation

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

GUARANTOR

ATTACHMENT 13

[redacted]

20070539529
09/04/2007 RP3 $32.00

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)

Return To: DM
VERITAS TITLE PARTNERS
2415 W. ALABAMA, Ste. 203
HOUSTON, TX 77098

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #
2007 0288578

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 address of assignee in item 7c; 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 regard 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 7d–7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME
LASALLE BANK NATIONAL ASSOCIATION

OR 6b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME
LASALLE BANK NATIONAL ASSOCIATION AS AGENT

OR 7b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

7c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY
135 SOUTH LASALLE, SUITE 1425 | CHICAGO | IL | 60603 | USA

7d. SEE INSTRUCTIONS | ADD'L INFO RE ORGANIZATION DEBTOR | 7e. TYPE OF ORGANIZATION | 7f. JURISDICTION OF ORGANIZATION | 7g. ORGANIZATIONAL ID #, if any ☐ 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 assignee, 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
(44497-40324) SML FILE WITH HARRIS COUNTY, TEXAS RECORDER

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02)

RP 849-34-1316

RP 09-34-1317

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

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

9a. ORGANIZATION'S NAME

OR **BROADSTONE CYPRESS, L.P.**

9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

ORIGINAL FINANCING STATEMENT FILED UNDER CLERK'S FILE NO. 20070288878

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

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

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

11c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

11d. SEE INSTRUCTIONS | ADD'L INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION | 11f. JURISDICTION OF ORGANIZATION | 11g. ORGANIZATIONAL ID #, if any ☐ NONE

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

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX

12c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

THE REAL ESTATE AS SET FORTH ON ATTACHED EXHIBIT A.

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

16. Additional collateral description:

17. Check only if applicable and check only one box.

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

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

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

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

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

ILUCC1AD - 1997/2003 C T System Online

EXHIBIT A

Legal Description of Premises

Tract One (Fee Simple):

A tract of land containing 14.848 acres, in the J.W. MOODY SURVEY, ABSTRACT 547, the H.T.& B.R.R. CO. SEC. 1 SURVEY, ABSTRACT 603, and the M. BURRESS SURVEY, ABSTRACT 1733, all in Harris County, Texas, said tract being more particularly described by metes and bounds in Exhibit "A".

Tract Two (Easement):

Rights, interests, easements and appurtenances as set out in that certain Special Warranty Deed dated as of March 26, 2007, recorded under Harris County Clerk's File No. 20070182614 and as amended by Correction Special Warranty Deed dated as of May 8, 2007, recorded under Harris County Clerk's File No. 20070287530.

Tract Three (Easement):

Rights, interests, easements and appurtenances as set out in that certain Driveway and Reciprocal Access Agreement dated as of May 10, 2007, recorded under Harris County Clerk's File No. 20070287569.

RP 849-34-1318

RP 09-34-1319

EXHIBIT A

Legal Description of Premises

FIELD NOTES FOR 14.848 ACRES

Being a tract of land containing 14.848 acres, located in the J.W. Moody Survey, Abstract-547, the H.T.&B.R.R. Co. Sur.1 Survey, A-403 and the M. Bureau Survey, A-1733, Harris County, Texas; said 14.848 acre tract being out of a call 24.7013 acre tract of land recorded in the name of Munchkin Crossing, Ltd., in Harris County Clerk's File (H.C.C.F.) Number X466430; said 14.848 acre tract being more particularly described by metes and bounds as follows (bearings referenced to the Texas State Plane Coordinate System, South Central Zone, (NAD 83)):

COMMENCING at a 5/8-inch iron rod found on the northeast right-of-way (R.O.W.) line of U.S. Highway 290 (330 feet wide per Texas Department of Transportation map D-LT, sheet 27) at the southeast corner of said 24.7013 acre tract and the southwest corner of a called 82.1636 acre tract of land recorded in the name of Middleton Properties, Inc. in H.C.C.F. Number S775920;

THENCE, with the east line of said 24.7013 acre tract and the west line of said 82.1636 acre tract, North 02 degrees 11 minutes 42 seconds West, a distance of 356.08 feet to the POINT OF BEGINNING of the herein described tract;

THENCE, through and across said 24.7013 acre tract the following six (6) courses:

1. North 68 degrees 07 minutes 50 seconds West, a distance of 779.56 feet to an angle point;
2. North 00 degrees 00 minutes 01 seconds East, a distance of 137.29 feet to an angle point;
3. South 86 degrees 14 minutes 12 seconds West, a distance of 294.17 feet to an angle point;
4. 288.59 feet along the arc of a curve to the left, having a central angle of 27 degrees 06 minutes 25 seconds, a radius of 610.00 feet, and a chord that bears North 28 degrees 15 minutes 05 seconds West, a distance of 285.91 feet to a point of tangency;
5. North 41 degrees 48 minutes 17 seconds West, a distance of 95.56 feet to a point for the beginning of a curve to the right;

6. 58.99 feet along the arc of said curve to the right, having a central angle of 06 degrees 37 minutes 39 seconds, a radius of 510.00 feet, and a chord that bears North 38 degrees 29 minutes 28 seconds West, a distance of 58.96 feet to an angle point on the north line of said 24.7013 acre tract and the south line of Villages of Cypress Lakes, Sec. 3, a subdivision of record in Film Code Number 339173 of the Harris County Map Records, from which a 3/4-inch iron rod found at the northwest corner of said 24.7013 acre tract bears South 85 degrees 56 minutes 01 seconds West, a distance of 32.73 feet;

THENCE, with lines common to said 24.7013 acre tract and said Villages of Cypress Lakes, Sec. 3, the following two (2) courses:

1. North 85 degrees 56 minutes 01 seconds East, a distance of 1,052.12 feet to a 3/4-inch iron rod found at an angle point;

2. North 60 degrees 35 minutes 33 seconds East, a distance of 184.94 feet to a 3/4-inch iron rod found at the most northeasterly corner of said 24.7013 acre tract on the west line of said 82.1636 acre tract;

THENCE, with the line common to said 24.7013 acre tract and said 82.1636 acre tract, South 02 degrees 11 minutes 42 seconds East, a distance of 944.13 feet to the POINT OF BEGINNING and containing 14.948 acres of land.

RP-949-34-1328

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

SEP - 4 2007

COUNTY CLERK
HARRIS COUNTY, TEXAS

FILED
2007 SEP -4 AM 11:51
COUNTY CLERK
HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM:
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

443501.1 044497-40324

ATTACHMENT 14

GUARANTY OF PAYMENT

This **GUARANTY OF PAYMENT** dated as of August 31, 2007 (this "Guaranty"), is executed by **OPUS WEST CORPORATION**, a Minnesota corporation (the "Guarantor"), to and for the benefit of **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association, as Agent for itself and the other Banks (as defined in the Loan Agreement as hereinafter defined) (the "Agent").

RECITALS:

A. The Banks have agreed to make loans in the aggregate principal amount of Twenty-Seven Million Three Hundred Twenty-Three Thousand and No/100 Dollars ($27,323,000.00) (collectively, the "Loans") to Broadstone Cypress, L.P., a Delaware limited partnership ("Borrower") pursuant to the terms and conditions of that certain Construction Loan Agreement dated as of even date herewith (the "Loan Agreement") between the Borrower, Agent, as agent, and the Banks. All terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

B. As a condition precedent to Banks' making the Loans to Borrower and in consideration thereof, the Banks have required the execution and delivery of (i) this Guaranty by Guarantor, (ii) that certain Assignment of Guaranty by Borrower to and for the benefit of Agent, (iii) that certain Consent to Assignment of Guaranty and Estoppel by Alliance Residential Holdings, L.P., a Texas limited partnership, (iv) that certain Amended and Restated Promissory Note dated of even date herewith executed by Borrower in favor of LaSalle Bank National Association, a national banking association ("LaSalle"), as a Bank, in the principal amount of $8,504,211.00, (ii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $15,000,000.00, and (iii) Amended and Restated Promissory Note of even date herewith executed by Assignor in favor of LaSalle as a Bank, in the principal amount of $3,818,789.00 (such notes, as amended, modified, restated or replaced from time to time, collectively, the "Notes"), (vi) that certain Amended and Restated Commercial Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith (as amended from time to time, "Deed of Trust") from Borrower for the benefit of Agent encumbering the real property, improvements and personalty described therein ("Premises"), and (vii) the other Loan Documents (as defined in the Loan Agreement).

C. Guarantor has indirect ownership interest in Borrower and, having a financial interest in the Premises, has agreed to execute and deliver this Guaranty to Agent.

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

AGREEMENTS:

1. Guaranty of Payment. The Guarantor hereby unconditionally, absolutely and irrevocably guaranties to the Banks the punctual payment when due, whether at stated maturity or by acceleration or otherwise, of the indebtedness and other obligations of the Borrower to the Banks evidenced by the Notes and any other amounts that may become owing by the Borrower

under the Loan Documents (such indebtedness, obligations and other amounts are hereinafter referred to as "Payment Obligations"). This Guaranty is a present and continuing guaranty of payment and not of collectability, and the Agent shall not be required to prosecute collection, enforcement or other remedies against the Borrower or any other guarantor of the Payment Obligations, or to enforce or resort to any collateral for the repayment of the Payment Obligations or other rights or remedies pertaining thereto, before calling on the Guarantor for payment. If for any reason the Borrower shall fail or be unable to pay, punctually and fully, any of the Payment Obligations, the Guarantor shall pay such obligations to the Agent in full immediately upon demand. One or more successive actions may be brought against the Guarantor, as often as the Agent deems advisable, until all of the Payment Obligations are paid and performed in full. The Payment Obligations, together with all other payment and performance obligations of the Guarantor hereunder, are referred to herein as the "Obligations".

2. Representations and Warranties. The following shall constitute representations and warranties of the Guarantor, and the Guarantor hereby acknowledges that the Banks intend to make the Loans in reliance thereon:

(a) The Guarantor is not in default, and no event has occurred which, with the passage of time and/or the giving of notice, would constitute a default, under any agreement to which the Guarantor is a party, the effect of which will impair performance by the Guarantor of its obligations under this Guaranty. Neither the execution and delivery of this Guaranty nor compliance with the terms and provisions hereof will violate any applicable law, rule, regulation, judgment, decree or order, or will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of any indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind that creates, represents, evidences or provides for any lien, charge or encumbrance upon any of the property or assets of the Guarantor, or any other indenture, mortgage, deed of trust, instrument, document, agreement or contract of any kind to which the Guarantor is a party or to which the Guarantor or the property of the Guarantor may be subject.

(b) There are no litigation, arbitration, governmental or administrative proceedings, actions, examinations, claims or demands pending, or to the knowledge of the Guarantor, threatened in writing that could adversely affect performance by the Guarantor of its obligations under this Guaranty.

(c) Neither this Guaranty nor any statement or certification as to facts previously furnished or required herein to be furnished to the Agent by the Guarantor, contains any material inaccuracy or untruth in any representation, covenant or warranty or omits to state a fact material to this Guaranty.

3. Continuing Guaranty. The Guarantor agrees that performance of the Obligations by the Guarantor shall be a primary obligation, shall not be subject to any counterclaim, set-off, abatement, deferment or defense based upon any claim that the Guarantor may have against the Agent or the Banks, the Borrower, any other guarantor of the Obligations or any other person or entity, and shall remain in full force and effect without regard to, and shall not be released,

discharged or affected in any way by, any circumstance or condition (whether or not the Guarantor shall have any knowledge thereof), including without limitation:

(a) any lack of validity or enforceability of any of the Loan Documents;

(b) any termination, amendment, modification or other change in any of the Loan Documents, including, without limitation, any modification of the interest rate(s) described therein;

(c) any furnishing, exchange, substitution or release of any collateral securing repayment of the Loans, or any failure to perfect any lien in such collateral;

(d) any failure, omission or delay on the part of the Borrower, the Guarantor, any other guarantor of the Obligations or the Agent or the Banks to conform or comply with any term of any of the Loan Documents or any failure of the Agent to give notice of any Event of Default (as defined in the Loan Agreement);

(e) any waiver, compromise, release, settlement or extension of time of payment or performance or observance of any of the obligations or agreements contained in any of the Loan Documents;

(f) any action or inaction by the Agent or the Banks under or in respect of any of the Loan Documents, any failure, lack of diligence, omission or delay on the part of the Agent or the Banks to perfect, enforce, assert or exercise any lien, security interest, right, power or remedy conferred on it in any of the Loan Documents, or any other action or inaction on the part of the Agent or the Banks;

(g) any voluntary or involuntary bankruptcy, insolvency, reorganization, arrangement, readjustment, assignment for the benefit of creditors, composition, receivership, liquidation, marshalling of assets and liabilities or similar events or proceedings with respect to the Borrower, the Guarantor or any other guarantor of the Obligations, as applicable, or any of their respective property or creditors, or any action taken by any trustee or receiver or by any court in any such proceeding;

(h) any merger or consolidation of the Borrower into or with any entity, or any sale, lease or transfer of any of the assets of the Borrower, the Guarantor or any other guarantor of the Obligations to any other person or entity;

(i) any change in the ownership of the Borrower or any change in the relationship between the Borrower, the Guarantor or any other guarantor of the Obligations, or any termination of any such relationship;

(j) any release or discharge by operation of law of the Borrower, the Guarantor or any other guarantor of the Obligations from any obligation or agreement contained in any of the Loan Documents; or

(k) any other occurrence, circumstance, happening or event, whether similar or dissimilar to the foregoing and whether foreseen or unforeseen, which otherwise might

constitute a legal or equitable defense or discharge of the liabilities of a guarantor or surety or which otherwise might limit recourse against the Borrower or the Guarantor to the fullest extent permitted by law.

4. Waivers. The Guarantor expressly and unconditionally waives (i) notice of any of the matters referred to in Section 3 above, (ii) all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve intact any rights against the Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of non-payment under any of the Loan Documents and notice of any Event of Default or any failure on the part of the Borrower, the Guarantor or any other guarantor of the Obligations to perform or comply with any covenant, agreement, term or condition of any of the Loan Documents, (iii) any right to the enforcement, assertion or exercise against the Borrower, the Guarantor or any other guarantor of the Obligations of any right or remedy conferred under any of the Loan Documents, (iv) any requirement of diligence on the part of any person or entity, (v) to the fullest extent permitted by law and except as otherwise expressly provided in this Guaranty or the other Loan Documents, any claims based on allegations that Agent has failed to act in a commercially reasonable manner or failed to exercise Agent's so-called obligation of good faith and fair dealing, (vi) any requirement to exhaust any remedies or to mitigate the damages resulting from any default under any of the Loan Documents and (vii) any notice of any sale, transfer or other disposition of any right, title or interest of the Agent or the Banks under any of the Loan Documents.

5. Subordination. The Guarantor agrees that any and all present and future debts and obligations of the Borrower to the Guarantor are hereby subordinated to the claims of the Agent and Banks and are hereby assigned by the Guarantor to the Agent as security for the Obligations and the obligations of the Guarantor under this Guaranty.

6. Subrogation Waiver. Until the Obligations are paid in full and all periods under applicable bankruptcy law for the contest of any payment by the Guarantor or the Borrower as a preferential or fraudulent payment have expired, the Guarantor knowingly, and with advice of counsel, waives, relinquishes, releases and abandons all rights and claims to indemnification, contribution, reimbursement, subrogation and payment which the Guarantor may now or hereafter have by and from the Borrower and the successors and assigns of the Borrower, for any payments made by the Guarantor to the Agent, including, without limitation, any rights which might allow the Borrower, the Borrower's successors, a creditor of the Borrower, or a trustee in bankruptcy of the Borrower to claim in bankruptcy or any other similar proceedings that any payment made by the Borrower or the Borrower's successors and assigns to the Agent was on behalf of or for the benefit of the Guarantor and that such payment is recoverable by the Borrower, a creditor or trustee in bankruptcy of the Borrower as a preferential payment, fraudulent conveyance, payment of an insider or any other classification of payment which may otherwise be recoverable from the Agent.

7. Reinstatement. The obligations of the Guarantor pursuant to this Guaranty shall continue to be effective or automatically be reinstated, as the case may be, if at any time payment of any of the Obligations or the obligations of the Guarantor under this Guaranty is rescinded or otherwise must be restored or returned by the Agent upon the insolvency, bankruptcy,

dissolution, liquidation or reorganization of the Guarantor or the Borrower or otherwise, all as though such payment had not been made.

8. Financial Statements. The Guarantor represents and warrants to the Agent that (a) the financial statements of the Guarantor previously submitted to the Agent are true, complete and correct in all material respects, disclose all actual and contingent liabilities, and fairly present the financial condition of the Guarantor, and do not contain any untrue statement of a material fact or omit to state a fact material to the financial statements submitted or this Guaranty, and (b) no material adverse change has occurred in the financial statements from the dates thereof until the date hereof. The Guarantor shall furnish to the Agent such financial statements required pursuant to the terms of the Loan Agreement.

9. Transfers; Sales, Etc. The Guarantor shall not sell, lease, transfer, convey or assign any of its assets, unless such sale, lease, transfer, conveyance or assignment is performed in the ordinary course of its business consistent with past practices, and will not have a material adverse effect on the business or financial condition of the Guarantor or its ability to perform its obligations hereunder. In addition, the Guarantor shall neither become a party to any merger or consolidation, nor, except in the ordinary course of its business consistent with past practices, acquire all or substantially all of the assets of, a controlling interest in the stock of, or a partnership or joint venture interest in, any other entity.

10. Enforcement Costs. If: (a) this Guaranty, is placed in the hands of one or more attorneys for collection or is collected through any legal proceeding; (b) one or more attorneys is retained to represent the Agent or the Banks in any bankruptcy, reorganization, receivership or other proceedings affecting creditors' rights and involving a claim under this Guaranty, or (c) one or more attorneys is retained to represent the Agent or the Banks in any other proceedings whatsoever in connection with this Guaranty, then the Guarantor shall pay to the Agent upon demand all fees, costs and expenses incurred by the Agent or the Banks in connection therewith, including, without limitation, reasonable attorney's fees, court costs and filing fees (all of which are referred to herein as the "Enforcement Costs"), in addition to all other amounts due hereunder.

11. Successors and Assigns; Joint and Several Liability. This Guaranty shall inure to the benefit of the Agent and its successors and assigns. This Guaranty shall be binding on the Guarantor and the successors and assigns of the Guarantor. It is agreed that the liability of the Guarantor hereunder is several and independent of any other guarantees or other obligations at any time in effect with respect to the Obligations or any part thereof and that the liability of the Guarantor hereunder may be enforced regardless of the existence, validity, enforcement or non-enforcement of any such other guarantees or other obligations.

12. No Waiver of Rights. No delay or failure on the part of the Agent to exercise any right, power or privilege under this Guaranty or any of the other Loan Documents shall operate as a waiver thereof, and no single or partial exercise of any right, power or privilege shall preclude any other or further exercise thereof or the exercise of any other power or right, or be deemed to establish a custom or course of dealing or performance between the parties hereto. The rights and remedies herein provided are cumulative and not exclusive of any rights or

remedies provided by law. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in the same, similar or other circumstance.

13. Modification. The terms of this Guaranty may be waived, discharged, or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. No amendment, modification, waiver or other change of any of the terms of this Guaranty shall be effective without the prior written consent of the Agent.

14. Joinder. Any action to enforce this Guaranty may be brought against the Guarantor without any reimbursement or joinder of the Borrower or any other guarantor of the Obligations in such action.

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

16. Applicable Law. This Guaranty is governed as to validity, interpretation, effect and in all other respects by laws and decisions of the State of Illinois.

17. Notices. All notices, communications and waivers under this Guaranty shall be in writing and shall be (a) delivered in person, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) by overnight express carrier, addressed in each case as follows:

To Agent:	LaSalle Bank National Association Suite 12110 135 South LaSalle Street Chicago, Illinois 60603 Attn: Don Broderick, First Vice President
with a copy to:	LaSalle Bank National Association Suite 1425 135 South LaSalle Street Chicago, Illinois 60603 Attn: Commercial Real Estate Syndications
with a copy to:	Schwartz Cooper Chartered 180 North LaSalle Street, Suite 2700 Chicago, Illinois 60601 Attn: Michael S. Kurtzon, Esq.
To Guarantor:	Opus West Corporation

2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Senior Vice President, Real Estate, Finance and Sales

with a copy to:

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

with a copy to:

Gallagher & Kennedy, P.A.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225
Attn: Gregory L. Mast, Esq.
File No.:

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

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

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

20. WAIVER OF JURY TRIAL. THE GUARANTOR AND THE AGENT (BY ACCEPTANCE HEREOF), HAVING BEEN REPRESENTED BY COUNSEL, EACH

KNOWINGLY AND VOLUNTARILY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS GUARANTY OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HEREWITH AND AGREES THAT ANY SUCH ACTION OR PROCEEDING WILL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE GUARANTOR AGREES THAT THE GUARANTOR WILL NOT ASSERT ANY CLAIM AGAINST THE AGENT OR THE BANKS ON ANY THEORY OF LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES.

21. WAIVER. GUARANTOR HEREBY WAIVES (i) ANY RIGHT TO REQUIRE AGENT AND/OR BANKS TO DO ANY OF THE FOLLOWING BEFORE GUARANTOR IS OBLIGATED TO PAY OR PERFORM THE OBLIGATIONS OR BEFORE AGENT AND/OR THE BANKS MAY PROCEED AGAINST GUARANTOR: (A) SUE OR EXHAUST REMEDIES AGAINST BORROWER OR ANY OTHER PERSON LIABLE FOR THE OBLIGATIONS OR ANY PORTION THEREOF, (B) SUE ON AN ACCRUED RIGHT OF ACTION IN RESPECT OF ANY OBLIGATIONS OR BRING ANY OTHER ACTION, EXERCISE ANY OTHER RIGHT, OR EXHAUST ANY OTHER REMEDY, OR (C) ENFORCE RIGHTS AGAINST BORROWER'S ASSETS OR THE COLLATERAL PLEDGED BY BORROWER TO SECURE THE OBLIGATIONS; (ii) ANY RIGHTS RELATING TO TIMING, MANNER OR CONDUCT OF AGENT'S ENFORCEMENT OF RIGHTS AGAINST BORROWER'S ASSETS OR THE COLLATERAL PLEDGED BY BORROWER TO SECURE THE OBLIGATIONS; (iii) EACH OF THE FOREGOING RIGHTS OR DEFENSES, REGARDLESS OF WHETHER THEY ARISE UNDER (W) RULE 31 OF THE TEXAS RULES OF CIVIL PROCEDURE, (X) SECTION 17.001 OF THE TEXAS CIVIL PRACTICE AND REMEDIES CODE, (Y) CHAPTER 34 OF THE TEXAS BUSINESS AND COMMERCE CODE, OR (D) ANY OTHER STATUTE OR LAW, COMMON LAW, IN EQUITY, UNDER CONTRACT OR OTHERWISE, OR UNDER ANY AMENDMENTS, RECODIFICATIONS, SUPPLEMENTS OR ANY SUCCESSOR STATUTE OR LAW OF OR TO ANY SUCH STATUTE OR LAW; AND (iv) ANY AND ALL RIGHTS UNDER SECTIONS 51.003, 51.004 AND 51.005 OF THE TEXAS PROPERTY CODE, AND UNDER ANY AMENDMENTS, RECODIFICATIONS, SUPPLEMENTS OR ANY SUCCESSOR STATUTE OR LAW OF OR TO ANY SUCH STATUTE OR LAW.

22. Financial Covenants.

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

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

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

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

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

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

OPUS WEST CORPORATION, a Minnesota corporation

By: Charles Vogel

Name: Charles Vogel

Its: Senior Vice President

ATTACHMENT 15

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 6, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Broadstone Cypress, L.P.
c/o Opus West Corporation
Attn: Senior Vice President,
Real Estate, Finance & Sales
2555 East Camelback Road
Suite 800
Phoenix, Arizona 85016

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

RE: ***$27,323,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association and successor by merger to LaSalle Bank National Association, individually as Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Broadstone Cypress, L.P., a Delaware limited partnership ("Borrower")***

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of a default (the "Specified Default") under Section 4.2(a) of the Construction Loan Agreement dated August 31, 2007 between Borrower and the Banks (the "Loan Agreement") and under the terms of certain promissory notes executed by Borrower payable to the order of each Bank in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively 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 payable on April 1, 2009 as required under the Loan Agreement. If payment is not

received in good funds on or before April 8, 2009, then such failure will constitute a 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 commence and accrue from and after April 9, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the Specified Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Banks, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent any Bank elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Bank of the Specified Default or performance or cure of the Specified Default by Borrower; constitute an amendment of any term or condition of any Loan Document; create an obligation of any Bank to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Banks' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Banks, hereby also reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Specified Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the Project is located. The Banks may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

In the event the foregoing Specified Default is not cured on or before April 8, 2009 by payment in full of all amounts due and owing under the Loan Agreement as of April 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 Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest, 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 Banks, is entitled to enforce the Banks' 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 the Banks' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Banks and their affiliated entities under the Loan Agreement

and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and the other Banks, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any Bank, that are not referenced in this letter.

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 of Payment dated August 31, 2007 (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 West Corporation
Attn: Legal Department
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267

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

Via UPS Overnight:
Gallagher & Kennedy, P.A.
Attn: Sandy Broadfoot, Esq.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225

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

Broadstone Cypress, L.P.
c/o Opus West Corporation
2555 East Camelback Road
Suite 800
Phoenix, Arizona 85016
Attn: Senior Vice President, Real Estate, Finance & Sales

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

RE: ***$27,323,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association and successor by merger to LaSalle Bank National Association, individually as Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Broadstone Cypress, L.P., a Delaware limited partnership ("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(q) of the Construction Loan Agreement dated August 31, 2007 between Borrower and the Banks (the "Loan Agreement") and under the terms of certain promissory notes executed by Borrower payable to the order of each Bank in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively 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 22(a)(iii) of that certain instrument entitled Guaranty of Payment dated August 31, 2007

(as amended and modified from time to time, the "Guaranty"). Guarantor's failure to meet the requirements of Section 22(a)(iii) of the Guaranty constitutes an immediate Event of Default under Section 11.1(q) 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 accrue from and after April 10, 2009 on any amounts outstanding as of such date.

Notwithstanding the existence of the Event of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Banks, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent any Bank elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Bank of the 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 Bank to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Banks' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Banks, hereby also reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the 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. The Banks 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 Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest and other charges recoverable as a consequence of the Event of Default (including attorneys' fees and costs); and (ii) Bank of America, on behalf of itself and each of the Banks, is entitled to enforce the Banks' rights and remedies relating to its collateral, including, without limitation, appointment of receiver and foreclosure.

Nothing in this letter or in the Banks' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Banks and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and the other Banks, expressly reserves all such rights, remedies, defenses and objections, including with

respect to any defaults now or hereafter in existence, whether known or unknown, to any Bank, that are not referenced in this letter.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP

Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus West Corporation
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267
Attn: Legal Department

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

Via UPS Overnight:
Gallagher & Kennedy, P.A.
Attn: Gregory L. Mast, Esq. / Sandy Broadfoot, Esq.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225

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

May 5, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Broadstone Cypress, L.P.
c/o Opus West Corporation
2555 East Camelback Road
Suite 800
Phoenix, Arizona 85016
Attn: Senior Vice President, Real Estate, Finance & Sales

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

RE: ***$27,323,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association and successor by merger to LaSalle Bank National Association, individually as Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Broadstone Cypress, L.P., a Delaware limited partnership ("Borrower")***

Ladies and Gentlemen:

The purpose of this letter is to provide you with notice of the occurrence of a default (the "Specified Default") under Section 4.2(a) of the Construction Loan Agreement dated August 31, 2007 between Borrower and the Banks (the "Loan Agreement") and under the terms of certain promissory notes executed by Borrower payable to the order of each Bank in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively 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 payable on May 1, 2009 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 a 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 Banks, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent any Bank elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Bank of the Specified Default or performance or cure of the Specified Default by Borrower; constitute an amendment of any term or condition of any Loan Document; create an obligation of any Bank to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Banks' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Banks, hereby also reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the Specified Default described herein or reinstate the Loan pursuant to the provisions of the law governing the jurisdiction in which the Project is located. The Banks may apply such payments in the order provided in the Loan Agreement or other Loan Documents.

In the event the foregoing Specified Default is not cured on or before May 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 Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest, 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 Banks, is entitled to enforce the Banks' 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 the Banks' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Banks and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and the other Banks,

expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any Bank, that are not referenced in this letter.

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 of Payment dated August 31, 2007 (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 West Corporation
Attn: Legal Department
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267

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

Via UPS Overnight:
Gallagher & Kennedy, P.A.
Attn: Sandy Broadfoot, Esq.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225

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

June 16, 2009

DEFAULT NOTICE

VIA UPS OVERNIGHT

Broadstone Cypress, L.P.
c/o Opus West Corporation
2555 East Camelback Road
Suite 800
Phoenix, Arizona 85016
Attn: Senior Vice President, Real Estate, Finance & Sales

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

RE: ***$27,323,000.00 Loan (the "Loan") made by Bank of America, N.A., a national banking association and successor by merger to LaSalle Bank National Association, individually as Bank and as agent ("Bank of America"), and certain other financial institutions as Banks (together with Bank of America, the "Banks") to Broadstone Cypress, L.P., a Delaware limited partnership ("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(a) of the Construction Loan Agreement dated August 31, 2007 between Borrower and the Banks (the "Loan Agreement") and under the terms of certain promissory notes executed by Borrower payable to the order of each Bank in the amount of its respective Commitment (the "Notes"). The Loan Agreement, Notes and all other agreements, documents and instruments evidencing, securing or otherwise relating to the Loan are sometimes referred to individually and collectively herein as the "Loan Documents." The Event of Default occurred as a result of the Borrower's failure to make the installment payment of interest due payable on June 1, 2009 as required 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 Event of Default, or any additional defaults that may arise under the Loan Documents, Bank of America, on behalf of itself and the other Banks, reserves the right to elect whether or not to fund any presently pending or future draw requests during the existence of any default or Event of Default. To the extent any Bank elects to fund any such draw request, neither such election nor the actual funding thereof does or shall: constitute a commitment to lend or to modify the Loan; constitute an offer to extend credit or modify the existing Loan terms; constitute a waiver by any Bank of the 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 Bank to agree to, or to negotiate or consider an agreement to, any waiver of any obligation or default by Borrower under any Loan; or directly or indirectly impair or otherwise affect any of the Banks' rights, interests or remedies with respect to the Loan.

Bank of America, on behalf of itself and the other Banks, hereby also reserves the right to accept payments made after the date of this letter even though such payments are not offered as, or are insufficient to, cure the 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. The Banks 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 Banks, is entitled to the exercise of the Banks' rights and remedies under the Loan Documents, at law and in equity, including, without limitation, acceleration of the indebtedness due under the Loan Documents and the imposition of Default Rate interest, late charges and other 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 each of the Banks, is entitled to enforce the Banks' 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 the Banks' application of such payments is or shall be deemed to be a waiver, election or estoppel of any rights, remedies, defenses and objections available to the Banks and their affiliated entities under the Loan Agreement and related Loan Documents and under applicable laws and in equity in connection with any default by Borrower, and Bank of America, on behalf of itself and the other Banks, expressly reserves all such rights, remedies, defenses and objections, including with respect to any defaults now or hereafter in existence, whether known or unknown, to any Bank, that are not referenced in this letter.

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 of Payment dated August 31, 2007 (the "Guaranty"). Demand is hereby made on Guarantor for prompt payment or performance of Borrower's obligations under the Event of Default described herein.

Please give this matter your immediate attention.

Very truly yours,

QUARLES & BRADY LLP

for

Lori L. Winkelman

cc: Casey Carpenter, Bank of America
Daniel Denton, Esq., Bank of America
Brian Sirower, Esq.

Via UPS Overnight:
Opus West Corporation
Attn: Legal Department
2555 East Camelback Road, Suite 800
Phoenix, Arizona 85016-9267

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

Via UPS Overnight:
Gallagher & Kennedy, P.A.
Attn: Sandy Broadfoot, Esq.
2575 East Camelback Road, 11th Floor
Phoenix, Arizona 85016-9225

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: 79** *Original Filed Date*: 11/09/2009 *Original Entered Date*: 11/09/2009	*Status:* *Filed by:* CR *Entered by:* Richter, Katharine *Modified:*
Unsecured claimed: $25275187.64 **Total claimed: $25275187.64**		

History:

Details 79-1 11/09/2009 Claim #79 filed by BANK OF AMERICA, N.A., total amount claimed: $25275187.64 (Richter, Katharine)

Description: (79-1) Broadstone Cypress

Remarks: (79-1) But see Addendum for possible secured status

Claims Register Summary